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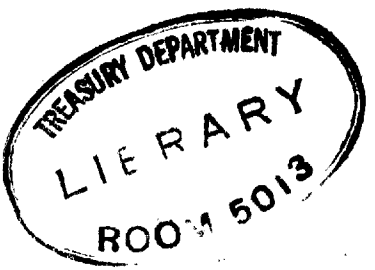
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Internal Revenue Bulletin

Cumulative Bulletin 1945

JANUARY–DECEMBER 1945

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

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

Internal Revenue Bulletin

Cumulative Bulletin 1945

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JANUARY–DECEMBER 1945

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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 : 1946

For sale by Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.
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The Internal Revenue Bulletin service for 1946 will consist of biweekly bulletins and semiannual cumulative bulletins.

The biweekly 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 biweekly 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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[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 for 1945, 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, miscellaneous taxes, and committee reports, as indicated on the title page of this Bulletin, published in the semimonthly Bulletins (1945, Nos. 1 to 24, inclusive) for the period January 1 to December 31, 1945. It also contains a list of announcements relating to decisions of The Tax Court of the United States, formerly United States Board of Tax Appeals, published in the semimonthly Internal Revenue Bulletins from January 1, to December 31, 1945.

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. 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 JANUARY 1, 1945, TO DECEMBER 31, 1945, 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. The list below, therefore, contains only such announcements printed in semimonthly Bulletins from January 1 to December 31, 1945.]

1945-24-12189

The Commissioner acquiesces in the following decisions:

Taxpayer.	Docket No.	Volume.	Page.
A.			
Adrian & James, Inc	685	4	708
Allen, Benjamin L., estate of [1] [2]	399	3	844
Allen, Jr., et al., Benjamin L., executors of estate of Benjamin L. Allen [1] [2]	399	3	844
American Depositor Corporation, depositor under trust agreements with The Chase National Bank of the City of New York [3]	93854 93855 93856 93857	[a]41	430
Arnett, R. J., agent for withholding account of G. P. Fitzgerald	1566	4	494
Arnett, R. J., trustee for G. P. Fitzgerald [Trust]	1567		
Awrey et al., Elton R., executors of estate of Fletcher E. Awrey [1]	3827	5	222
Awrey, Fletcher E., estate of [1]			
B.			
Bacon, Inc., Clyde	4223	4	1107
Barta et al., L. F	3026	5	10
Bartholomew, Frederick Cecil, a minor, estate of [4]	200	4	349
Bartholomew, Myllicent, guardian of estate of Frederick Cecil Bartholomew, a minor [4]			
Beard, Stanley D	3711	4	756
Becken, Jr., Albert C	4600	5	498
Becker, Alice E., executrix of estate of John H. Eckhardt [1]	3511	5	673

[a] Board of Tax Appeals.
[1] Estate tax decision.
[2] Nonacquiescence published in Cumulative Bulletin 1944, page 32, withdrawn.
[3] Nonacquiescence published in Cumulative Bulletin 1940-1, page 6, withdrawn.
[4] Acquiescence relates only to the issue involving the deductibility of compensation paid for the services of a chauffeur and bodyguard.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Volume.	Page.
Becker, Alice E., executrix of estate of Kate L. Eckhardt [1]	3512	5	673
Bedford, Charles E.[2]	6314	5	726
Bell et al., Maud K., executors of estate of Ida A. White [3]	93575	[a] 41	525
Biddle et al., Charles J., executors of estate of Sallie Houston Henry [1 4]	109972	4	423
Biddle et al., Sydney G., trustees of Frances Biddle trust [1 5]	112209	3	832
Biddle trust, Frances [1 5]			
Bingham, Mary Lily (Flagler), trust u/w of [6]	109384	2	853
Bishop, Edward E	692 3124	4	862
Bixby et al., Percival G., cotrustees of Alice B. Knox trust	108701	4	258
Bixby et al., Percival G., cotrustees of James H. Knox trust	108700		
Bixby et al., Percival G., cotrustees of Alice K. Scobie trust	108702		
Black, Donald S	6190	5	579
Bones, Walter I	1666	4	415
Boyles, Lucy Latham, estate of [1]	4750	4	1092
Brennen, George K	3567 3568	4	1260
Burkhartsmeier, Daniel, estate of	1648	4	529
Burkhartsmeier, Daniel, trust u/w of	1768		
Burney et al., Henry P., executors of estate of I. H. Burney [1]	3058	4	449
Burney, I. H., estate of [1]			
C.			
Cammack, Edward Arthur	3822	5	467
Cammack, Howard E	3823	5	467
Camp Wolters Land Co	4709	5	336
Campanari et al., Christopher C., executors of estate of Nina M. Campanari [1]	4384	5	488
Campanari, Nina M., estate of [1]			
Chase National Bank of the City of New York, The, trustee under trust agreements with American Depositor Corporation [7]	93854 93855 93856 93857	[a] 41	430
Clark, George F., estate of	4129	4	1120
Cochran, Williams	1836	4	942
Cohen, Moses [8]	98164	[a] 44	709
Congress Square Hotel Co	4277	4	775
Corporation of America	109579	4	566
Crawford, Annie Laurie	4892	5	91
D.			
Dennison, Robert S	2495	4	806
Dobson, Mary Margaret, estate of, transferee, P. T. Love, guardian [9]	110818	4	231

[a] Board of Tax Appeals.
[1] Estate tax decision.
[2] Gift tax decision.
[3] Nonacquiescence published in Cumulative Bulletin 1940-1, page 5, withdrawn.
[4] Acquiescence relates to the issue involving the fair market value of decedent's interest in certain realty and the issue whether any portion of the corpus of a trust created by the decedent in 1916 is includible in her gross estate.
[5] Nonacquiescence published in Cumulative Bulletin 1944, page 33, withdrawn.
[6] Nonacquiescence published in Cumulative Bulletin 1943, page 27, withdrawn.
[7] Nonacquiescence published in Cumulative Bulletin 1940-1, page 6, withdrawn.
[8] Nonacquiescence published in Cumulative Bulletin 1941-2, page 16, withdrawn.
[9] Unjust enrichment tax decision.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Volume.	Page
Donald et al., Malcolm, executors of estate of Mary B. Hunnewell [1]	4151	4	1128
Dorson, Louis J., estate of [1]	2502	4	463
Dumari Textile Co., Inc.[2]	106875	47	639
E.			
Earl, Jr., Guy C	582	4	768
Eckhardt, John H., estate of [1]	3511	5	673
Eckhardt, Kate L., estate of [1]	3512		
Economy Savings & Loan Co., The	350	5	543
Ellery, E. C	109937 4173	4	407
Empire District Electric Co., The	3247	4	925
Estes, Virgean	4607	4	691
F.			
Fahnestock et al., Georgette G. V., executors of estate of Harris Fahnestock [1]	1615	4	1096
Fahnestock, Harris, estate of [1]			
Farthing et al., trustees of the creditors and stockholders of Main Properties, Inc., dissolved	815	4	364
Felton, Samuel M	4783	5	256
Firestone Tire & Rubber Co., The [3]	111707	2	827
Fischer, William F	1193	5	507
Fitzgerald [Trust], G. P	1567	4	494
Fitzgerald, G. P., withholding account of	1566	4	494
Fleming, Albert	3196	4	168
Fleming, Calvin A	3205		
Flynn Manufacturing Co., Michael [3]	77	3	932
Forrester, D. Bruce	2634	4	907
G.			
Galbreath, Mary Margaret, Margaret W. Galbreath Hendrickson, alleged trustee-guardian [4]	109048	4	231
General Smelting Co	2795	4	313
Gilbert, Blanche B., estate of [1]	3562	4	1006
Girard Trust Co., executor of estate of Blanche B. Gilbert [1]			
Great Island Holding Corporation, The	3334	5	150
Greene Motor Co	4984	5	314
Grigsby Trust, Lewis Eugene	3397	5	51
H.			
Harman, C. Henry	1146	4	335
Harman, Sayers F	1145		
Harris Trust & Savings Bank, trustee of Kohtz Family Trust	4372	5	554
Harsaghy, Helen Krusko (formerly known as Helen Krusko) [5]	111263	2	484
Hash et ux., G. Lester	425 426	4	878

[1] Estate tax decision.
[2] Nonacquiescence published in Cumulative Bulletin 1942-2, page 24, withdrawn.
[3] Nonacquiescence published in Cumulative Bulletin 1944, page 38, withdrawn.
[4] Unjust enrichment tax decision.
[5] Nonacquiescence published in Cumulative Bulletin 1943, page 33, withdrawn.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Volume.	Page.
Hendrickson, Margaret W. Galbreath [1]	109046 109084	4	231
Hendrickson, Margaret W. Galbreath, formerly administratrix of estate of Hugh J. Galbreath [1]	109045		
Hendrickson, Margaret W. Galbreath, alleged trustee-guardian of Mary Margaret Galbreath and alleged transferee of assets of estate of Hugh J. Galbreath [1]	109048		
Hendrickson, Margaret W. Galbreath, alleged transferee of assets of estate of Hugh J. Galbreath and of estate of W. C. Thomas [1]	109047		
Henry, Sallie Houston, estate of [2 3]	109972	4	423
Higgins & Co., Wm. A	1527	4	1033
Hofford, William F., estate of [2 4]	1845	4	790
Houston Land & Trust Co. et al., executors of estate of Lucy Latham Boyles [2]	4750	4	1092
Howard, H. M. [5]	33271	[a] 22	375
Hunnewell, Mary B., estate of [2]	4151	4	1128
I.			
Iron Fireman Manufacturing Co	1908	5	452
Irving Trust Co. et al., executors of estate of Louis J. Dorson [2]	2502	4	463
J.			
Jensen et ux., Arthur R	4017	5	525
Jillson et al., Leon R., executors of estate of James Miller [2 6]	2092	3	1180
Johnson Lumber Co., The J. F	3019	3	1160
K.			
Kellett et ux., William W	3264	5	608
Kellogg, Cornelia V. W., executrix of estate of Frederic R. Kellogg [2 7]	89143	[a] 40	916
Kellogg, Frederic R., estate of [2 7]			
Kenan, Jr., et al., William R., trustees u/w of Mary Lily (Flagler) Bingham [8]	109384	2	853
Kenny, Norbert J	3102	4	750
Knowles, Frank T	4016	5	525
Knox trust, Alice B	108701	4	258
Knox trust, James H	108700		
Kohtz Family trust	4372	5	554
Kollmar et ux., Herman A	3056	4	727
Koussevitsky, Nathalie, estate of [2]	4163	5	650
Koussevitsky, Serge, executor of estate of Nathalie Koussevitsky [2]			
Krusko, Helen (now known as Helen Krusko Harsaghy) [5]	111263	2	484

[a] Board of Tax Appeals.
[1] Unjust enrichment tax decision.
[2] Estate tax decision.
[3] Acquiescence relates to the issue involving the fair market value of decedent's interest in certain realty and the issue whether any portion of the corpus of a trust created by the decedent in 1916 is includible in her gross estate.
[4] Acquiescence relates to all issues except the issue whether the value of certain stock transferred in trust is includible in gross estate under section 811(c) of the Internal Revenue Code.
[5] Nonacquiescence published in Cumulative Bulletin X-2 (1931), page 90, withdrawn.
[6] Nonacquiescence published in Cumulative Bulletin 1944, page 41, withdrawn.
[7] Nonacquiescence published in Cumulative Bulletin 1940-1, page 7, withdrawn.
[8] Nonacquiescence published in Cumulative Bulletin 1943, page 34, withdrawn.

ACQUIESCENCES—Continued.

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L.			
Lake Erie & Pittsburg Ry. Co., The	3558	5	558
Lehman et al., Cecile S., executrix and executors of estate of Harold M. Lehman	2455	4	325
Lehman, Harold M., estate of			
Leonard, J. M.	555	4	1271
Leonard, J. M., trustee of Martha Leonard Trust No. 1	579		
Leonard, J. M., trustee of Mary Leonard Trust No. 1	578		
Leonard, J. M., trustee of Miranda Leonard Trust No. 1	577		
Leonard, Mary (Mrs. J. M. Leonard)	556		
Leonard Trust No. 1, Martha	579		
Leonard Trust No. 1, Mary	578		
Leonard Trust No. 1, Miranda	577		
LeRoy, Robert [1]	2291	4	70
Lightner, Camille V.[2]	596	2	1244
Lindback Foundation, The C. R.	1617	4	652
Love, P. T., guardian of estate of Mary Margaret Dobson, transferee [3]	110818	4	231
M.			
Main Properties, Inc., dissolved	815	4	364
Manufacturers Life Insurance Co., The [4]	1368	4	811
Markle Banking & Trust Co. et al., executors of estate of William F. Hofford [5 6]	1845	4	790
Matthaei, Emma, estate of	2991	4	1132
Matthaei, Frederick C.	3220		
Matthaei, Frederick C., executor of estate of Emma Matthaei	2991		
Matthaei, Litta	2990		
McCutchin, Alex	1497	4	1242
McCutchin, Alma	1498		
McVeigh, Charles S	221	3	1246
Meier, Eleanor E.[7]	112332	2	458
Mill et ux., Horace	5582	5	691
Miller, James, estate of [5 8]	2092	3	1180
Minnesota Mortuaries, Inc	2355	4	280
N.			
New Jersey Mortgage & Title Co	109011	3	1277
Newman, Jr., et ux., J. Kiefer	2311	4	226
Northern New York Trust Co. et al., The, executor and executrix of estate of George F. Clark	4129	4	1120
Northern Trust Co., The, distributee of estate of Daniel Burkhartsmeier	1648	4	529
Northern Trust Co., The, trustee u/w of Daniel Burkhartsmeier	1768		

[1] Acquiescence relates only to the issue involving the existence of a bona fide indebtedness and its worthlessness in the year in question.
[2] Nonacquiescence published in Cumulative Bulletin 1944, page 43, withdrawn.
[3] Unjust enrichment tax decision.
[4] Acquiescence relates only to the issue whether the petitioner (on cash basis) realized income in the amount of $124,446.56, representing accrued interest on mortgage loans, when it acquired mortgaged properties through foreclosure proceedings.
[5] Estate tax decision.
[6] Acquiescence relates to all issues except the issue whether the value of certain stock transferred in trust is includible in gross estate under section 811(c) of the Internal Revenue Code.
[7] Nonacquiescence published in Cumulative Bulletin 1943, page 36, withdrawn.
[8] Nonacquiescence published in Cumulative Bulletin 1944, page 44, withdrawn.

ACQUIESCENCES—Continued.

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O.			
Oliver, Lawrence	111745	4	684
P.			
Pacific Public Service Co	2159	4	742
Patterson et al., Proctor, trustees of Marion C. Tyler trust [1]	6640	5	729
Peebles, Jr., Isaac S	4512	5	518
Peeler Hardware Co	5849	5	518
Pepsi Cola Co	3458	5	190
Plow Realty Co. of Texas	1382	4	600
Porter, Gladys C.[2]	595	2	1244
Post et al., Waldron Kintzing, executors of estate of Caroline White	108930	3	156
Pratt, Harold I., estate of [3]	2509	5	881
R.			
Reserve Loan Life Insurance Co. of Texas	3676	4	732
Richter, B. Nathaniel	2779	4	271
Riverview State Bank, The [4]	112140	1	1147
Roach, John R	4305	4	1255
Roberts Co., Inc., The	5524	5	1
S.			
Scobie trust, Alice K	108702	4	258
Security-First National Bank of Los Angeles et al., trustees of Lewis Eugene Grigsby Trust	3397	5	51
Seminole Flavor Co	1060 2332	4	1215
Shamberg, Alexander J., estate of Shamberg, Isidor W., administrator of estate of Alexander J. Shamberg	107713	3	131
Shellabarger Grain Products Co.[5]	109510	2	75
Simister, Jr., et ux., Walter	3970	4	470
Simmons, Grant G	1891	4	478
Smith et ux., Lester A	2801 2802	4	573
Southeastern Finance Co	601	4	1069
Southern California Edison Co., Ltd	708 3382	4	294
Southern Loan & Investment Co	834	4	364
Standish et ux., A. M	3949 3950	4	995
T.			
Thornton, Davis B	3545	5	116
Tyler trust, Marion C.[1]	6640	5	729
U.			
United Cooperatives, Inc	112767	4	93
United States Trust Co. of New York et al., executors of estate of Harold I. Pratt [3]	2509	5	881

[1] Acquiescence relates to result only.
[2] Nonacquiescence published in Cumulative Bulletin 1944, page 46, withdrawn.
[3] Estate tax decision.
[4] Nonacquiescence published in Cumulative Bulletin 1943, page 38, withdrawn.
[5] Nonacquiescence published in Cumulative Bulletin 1943, page 39, withdrawn.

ACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Volume.	Page.
Universal Steel Co., The	4546	5	627
Upham, Samuel A	4022	4	1120
W.			
Waggoner et ux., T. J.[1]	104161 104162	[a] 47	699
Walker et al., Katharine W., executors and trustees of estate of William Walker [2] Walker, William, estate of [2]	159	4	390
Webster, H. D	3777 4399	4	1169
Wellington Fund, Inc	112046	4	185
White, Caroline, estate of	108930	3	156
White, Ida A., estate of [3]	93575	[a] 41	525
Williams, George T., transferee of Seekonk Corporation	2172	3	1002
Wittschen et al., Otto H	3026	5	10
Y.			
Yeomans, Lucien I	4822	5	870
Your Health Club, Inc	3589	4	385
Z.			
Ziegler, Jr., et ux., William	3449	5	150

[a] Board of Tax Appeals.
[1] Nonacquiescence published in Cumulative Bulletin 1943, page 41, withdrawn.
[2] Estate tax decision.
[3] Nonacquiescence published in Cumulative Bulletin 1940-1, page 9, withdrawn.

The Commissioner does NOT acquiesce in the following decisions:

Taxpayer.	Docket No.	Volume.	Page.
A.			
Arnett, R. J., agent for G. P. Fitzgerald	1565	4	494
Arundel-Brooks Concrete Corporation	4291	4	938
Athens Roller Mills [1]	112562	4	303
Avery, Sewell L.[2]	112526	3	963
B.			
Bartholomew, Frederick Cecil, a minor, estate of [3]	200	4	349
Bartholomew, Myllicent, guardian of estate of Frederick Cecil Bartholomew, a minor [3]			
Biddle et al., Charles J., executors of estate of Sallie Houston Henry [4 5]	109972	4	423
Blauvelt et ux., Ernest E	1023	4	10
Board of Regents of the University of Colorado [4]	1277	4	678
C.			
Cornett, J. A., administrator of estate of Horace G. Wetherill [4]	1275	4	678
Crane, Beulah B	110361	3	585
Crocker First National Bank of San Francisco, individually and as trustee of Horace G. Wetherill trust [4]	1276	4	678
Curie, Charles, estate of [4]	2142	4	1175
E.			
Evans et ux., Samuel S	1024	4	10
F.			
F. P. E. Noteholders Corporation	2804	5	472
Fitzgerald, G. P	1565	4	494
G.			
Gracey, Euleon Jock	3394	5	296
H.			
Henry, Sallie Houston, estate of [4 5]	109972	4	423
Hofford, William F., estate of [4 6]	1845	4	790
L.			
LeRoy, Robert [7]	2291	4	70
Los Angeles & Salt Lake R. R. Co	106462	4	634
Lowe et al., Samuel L., trustees of Motor Mart trust	2412	4	931

[1] Unjust enrichment tax decision.
[2] Gift tax decision.
[3] Nonacquiescence relates only to the issue involving the deductibility of attorneys' fees and court costs paid pursuant to court orders in connection with numerous lawsuits.
[4] Estate tax decision.
[5] Nonacquiescence relates only to the issue whether there should be included in the gross estate any amount (*a*) on account of the receipt and disposition of stock dividends, rights, etc., by the trustees of a trust, created by decedent's father, of which decedent was one of the beneficiaries, and (*b*) as property owned by her, which had been acquired as an heir, legatee, or devisee of her mother.
[6] Nonacquiescence relates only to the issue whether the value of certain stock transferred in trust is includible in gross estate under section 811(c) of the Internal Revenue Code.
[7] Nonacquiescence relates only to the issue involving the deductibility of New York City real estate taxes.

NONACQUIESCENCES—Continued.

Taxpayer.	Docket No.	Volume.	Page.
M.			
Mahn, Dorothy (formerly Mrs. E. J. Gracey)	3395	5	296
Manufacturers Life Insurance Co., The [1]	1368	4	811
Markle Banking & Trust Co. et al., executors of estate of William F. Hofford [2 3]	1845	4	790
McWilliams, Brooks B	5947	5	623
McWilliams, John P	5945		
McWilliams, John P., executor of estate of Susan P. McWilliams	5946		
McWilliams, Susan P., estate of	5946		
Moore, Incorporated	3799	4	404
Motor Mart Trust	2412	4	931
N.			
Newman, Sydney R	3952	5	603
P.			
Palatine Insurance Co., Ltd	2446	4	239
Pearson, Forrest G	2761	4	218
S.			
Second National Bank of Paterson, The, executor of estate of Charles Curie [2]	2142	4	1175
Swent et ux., J. W	4381	5	33
U.			
University of Colorado, Board of Regents of the [2]	1277	4	678
W.			
Wade, Elizabeth F	5206	5	394
Wetherill, Horace G., estate of [2]	1275	4	678
Wetherill Trust, Horace G.[2]	1276		

[1] Nonacquiescence relates only to the issue whether the petitioner may deduct as interest the amount of $16,255.28 paid on supplementary contracts not involving life contingencies in cases in which such contracts were issued pursuant to options selected by the insured (rather than by the beneficiary).
[2] Estate tax decision.
[3] Nonacquiescence relates only to the issue whether the value of certain stock transferred in trust is includible in gross estate under section 811(c) of the Internal Revenue Code.

INCOME TAX RULINGS.—PART I.

A. INTERNAL REVENUE CODE.

CHAPTER 1.—INCOME TAX.

SUBCHAPTER B.—GENERAL PROVISIONS.

PART I.—RATES OF TAX.

SECTION 11.—NORMAL TAX ON INDIVIDUALS.

SECTION 29.11–1: Income tax on individuals. (Also Section 12, Section 20.12–2; Section 22(m), Section 29.22(m)–1; Section 22(n), Section 29.22(n)–1; Section 23(aa), Section 29.23(aa)–1; Section 25, Section 29.25–1; Section 51, Section 29.51–1; Section 400, Section 29.400–1.) 1945–1–11929 T. D. 5425

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 sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Individual Income Tax Act of 1944, relating to simplification of the individual income tax.

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 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.] to sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Individual Income Tax Act of 1944 (Public law 315, Seventy-eighth Congress), approved May 29, 1944, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 29.3–1 the following:

SEC. 6. REPEAL OF VICTORY TAX. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) TECHNICAL AMENDMENTS.—

(1) Section 3 (relating to classification of provisions) is amended by striking out the following:

"Subchapter D—Victory tax on individuals, divided into parts and sections."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 2. There is inserted immediately preceding section 29.4-1 the following:

SEC. 5. ALTERNATIVE TAX ON INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) TECHNICAL AMENDMENT.—Section 4 (relating to special classes of taxpayers) is amended by striking out subsection (1) and inserting in lieu thereof the following:

"(1) Individuals with adjusted gross income of less than $5,000,—Supplement T."

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 3. Section 29.4-1 is amended by striking out the following:

Individuals with gross income from certain sources of $3,000 or less—sections 400 to 404, inclusive.—

and inserting in lieu thereof the following:

Individuals entitled to elect to pay the tax under Supplement T—sections 400 to 404, inclusive.

PAR. 4. There is inserted immediately preceding section 29.11-1 the following:

SEC. 3. NORMAL TAX ON INDIVIDUALS. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Section 11 (relating to the normal tax on individuals) is amended to read as follows:

"SEC. 11. NORMAL TAX ON INDIVIDUALS.

"There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 3 per centum of the amount of the net income in excess of the credits against net income provided in section 25(a). For alternative tax which may be elected if adjusted gross income is less than $5,000, see Supplement T."

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 5. Section 29.11-1 is amended as follows:

(A) By inserting immediately after the heading the following subheading: "(*a*) *Taxable years beginning prior to January 1, 1944.*"

(B) By inserting at the end thereof the following:

(*b*) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, Chapter 1 imposes an income tax on individuals consisting of a normal tax (section 11) and a surtax (section 12). For optional tax in the case of taxpayers with adjusted gross income of less than $5,000 see

section 400 and section 29.400-1(*b*). The normal tax on individuals is at the rate of 3 per cent and is upon net income reduced by the amount of the normal tax exemption provided in section 25(a)(3) and by the credits under section 25(a) (1) and (2), relating to interest on certain obligations of the United States and obligations of instrumentalities of the United States.

PAR. 6. There is inserted immediately preceding section 29.12-1 the following:

SEC. 4. SURTAX ON INDIVIDUALS. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IMPOSITION OF TAX.—Section 12(b) (relating to the surtax on individuals) is amended to read as follows:

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

"If the surtax net income is:	The surtax shall be:
Not over $2,000	20% of the surtax net income.
Over $2,000 but not over $4,000	$400, plus 22% of excess over $2,000.
Over $4,000 but not over $6,000	$840, plus 26% of excess over $4,000.
Over $6,000 but not over $8,000	$1,360, plus 30% of excess over $6,000.
Over $8,000 but not over $10,000	$1,960, plus 34% of excess over $8,000.
Over $10,000 but not over $12,000	$2,640, plus 38% of excess over $10,000.
Over $12,000 but not over $14,000	$3,400, plus 43% of excess over $12,000.
Over $14,000 but not over $16,000	$4,260, plus 47% of excess over $14,000.
Over $16,000 but not over $18,000	$5,200, plus 50% of excess over $16,000.
Over $18,000 but not over $20,000	$6,200, plus 53% of excess over $18,000.
Over $20,000 but not over $22,000	$7,260, plus 56% of excess over $20,000.
Over $22,000 but not over $26,000	$8,380, plus 59% of excess over $22,000.
Over $26,000 but not over $32,000	$10,740, plus 62% of excess over $26,000.
Over $32,000 but not over $38,000	$14,460, plus 65% of excess over $32,000.
Over $38,000 but not over $44,000	$18,360, plus 69% of excess over $38,000.
Over $44,000 but not over $50,000	$22,500, plus 72% of excess over $44,000.
Over $50,000 but not over $60,000	$26,820, plus 75% of excess over $50,000.
Over $60,000 but not over $70,000	$34,320, plus 78% of excess over $60,000.
Over $70,000 but not over $80,000	$42,120, plus 81% of excess over $70,000.
Over $80,000 but not over $90,000	$50,220, plus 84% of excess over $80,000.
Over $90,000 but not over $100,000	$58,620, plus 87% of excess over $90,000.
Over $100,000 but not over $150,000	$67,320, plus 89% of excess over $100,000.
Over $150,000 but not over $200,000	$111,820, plus 90% of excess over $150,000.
Over $200,000	$156,820, plus 91% of excess over $200,000."

(b) LIMITATION ON AGGREGATE TAX.—Section 12 is amended by striking out subsection (g) and inserting in lieu thereof the following:

"(g) LIMITATION ON TAX.—The tax imposed by this section and section 11, computed without regard to the credits provided in sections 31, 32, and 35, shall in no event exceed in the aggregate 90 per centum of the net income of the taxpayer for the taxable year.

"(h) ALTERNATIVE TAX.—For alternative tax which may be elected if adjusted gross income is less than $5,000, see Supplement T."

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 7. Section 29.12-1 is amended as follows:

(A) By striking out "SURTAX.—In" and inserting in lieu thereof the following: "SURTAX.—(*a*) *Taxable years beginning before January 1, 1944.*—For taxable years beginning before January 1, 1944, in".

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

(*b*) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, there is imposed, in addition to the normal tax of 3 per cent provided in section 11, a surtax at the rates specified in section 12, as amended, upon the surtax net income of every individual, resident or nonresident, except nonresident alien individuals subject to the tax imposed by section 211(a). The surtax net income for such years is the net income minus the credits for surtax exemptions provided in section 25(b).

PAR. 8. Section 29.12-2 is amended as follows:

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

The following tables show the surtax due upon certain specified amounts of surtax net income.

(B) By changing the heading of the table to read as follows: "SURTAX TABLE—TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941, AND BEFORE JANUARY 1, 1944."

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

SURTAX TABLE—TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1943.

Surtax net income.	Per cent.	Total surtax.
$0 to $2,000	20	$400
$2,000 to $4,000	22	840
$4,000 to $6,000	26	1,360
$6,000 to $8,000	30	1,960
$8,000 to $10,000	34	2,640
$10,000 to $12,000	38	3,400
$12,000 to $14,000	43	4,260
$14,000 to $16,000	47	5,200
$16,000 to $18,000	50	6,200
$18,000 to $20,000	53	7,260
$20,000 to $22,000	56	8,380
$22,000 to $26,000	59	10,740
$26,000 to $32,000	62	14,460
$32,000 to $38,000	65	18,360
$38,000 to $44,000	69	22,500
$44,000 to $50,000	72	26,820
$50,000 to $60,000	75	34,320
$60,000 to $70,000	78	42,120
$70,000 to $80,000	81	50,220
$80,000 to $90,000	84	58,620
$90,000 to $100,000	87	67,320
$100,000 to $150,000	89	111,820
$150,000 to $200,000	90	156,820
$200,000 up	91	

PAR. 9. There is inserted immediately after section 29.12–2 the following new section:

SEC. 29.12–3. LIMITATION ON AMOUNT OF TAX.—For taxable years beginning after December 31, 1943, the aggregate amount of the surtax and the normal tax, computed before the application thereto of the credit provided in section 31 (relating to the credit for foreign income tax), section 32 (relating to the credit for tax withheld at the source under section 143 or section 144), and section 35 (relating to the credit for tax withheld on wages), can not exceed an amount equal to 90 per cent of the taxpayer's net income for the taxable year.

PAR. 10. There is inserted immediately preceding section 29.22(b)(4)–1 the following:

SEC. 11. RETURNS. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(d) INFORMATION AS TO WHOLLY TAX EXEMPT INTEREST.—The second sentence in section 22(b)(4) is amended to read as follows: "Every person owning any of the obligations enumerated in clause (A), (B), or (C) shall, when so required by regulations prescribed by the Commissioner with the approval of the Secretary, submit in the return required by this chapter a statement showing the number and amount of such obligations owned by him and the income received therefrom, in such form and with such information as such regulations may prescribe."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 11. Section 29.22(k)–1 is amended by striking out the last sentence thereof.

PAR. 12. There is inserted immediately after section 22(l) the following:

SEC. 7. SERVICES OF CHILDREN. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Section 22 (relating to gross income) is amended by inserting at the end thereof the following:

"(m) SERVICES OF CHILD.—

"(1) Amounts received in respect of the services of a child shall be included in his gross income and not in the gross income of the parent, even though such amounts are not received by the child.

"(2) All expenditures by the parent or the child attributable to amounts which are includible in the gross income of the child and not of the parent solely by reason of paragraph (1) shall be deemed to have been paid or incurred by the child.

"(3) For the purposes of this subsection, the term 'parent' includes an individual who is entitled to the services of a child by reason of having parental rights and duties in respect of the child.

"(4) Any tax assessed against the child, to the extent attributable to amounts includible in the gross income of the child and not of the parent solely by reason of paragraph (1), shall, if not paid by the child, for all purposes be considered as having also been properly assessed against the parent."

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

SEC. 29.22(m)–1. SERVICES OF CHILD.—For taxable years beginning after December 31, 1943, compensation for personal services of a child shall, regardless of the provisions of State law relating to who is entitled to the earnings of the child, and regardless of whether the income is in fact received by the child, be deemed to be the gross income of the child and not the gross income of the parent of the child. Such compensation, therefore, shall be included in the gross income of the child and reflected in the return rendered by or for such child if the gross income for the taxable year amounts to $500 or more. The income of a minor child, whether more or less than $500, is not required to be included in the gross income of the parent for income tax purposes. For requirements for making the return by such child, or for such child by his guardian, or other person charged with the care of his person or property, see section 29.51–3. Any tax assessed against the child, to the extent of the amount attributable to income included in the gross income of the child solely by reason of section 22(m)(1), if not paid by the child, shall, for the purposes of all provisions of law relating to the assessment and collection of the tax imposed by Chapter 1, be considered as having also been properly assessed against the parent. In any case in which the earnings of the child are included in the gross income of the child solely by reason of section 22(m)(1), the parent's liability is an amount equal to the amount by which the tax assessed against the child has been increased by reason of the inclusion of such earnings in the gross income of the child. Thus, if for 1944 the child has income of $1,000 from investments and of $3,000 for services rendered, and the latter amount is includible in gross income of the child under section 22(m)(1), and the child has no wife or dependents, the tax liability determined under Supplement T is $741. If the child had only the investment income of $1,000, his tax liability would be $95. If the tax of $741 is assessed against the child, the difference between $741 and $95, or $646, is the amount of such tax which is considered to have been properly assessed against the parent.

In the determination of net income or adjusted gross income, as the case may be, all expenditures made by the parent or the child attributable to amounts which are includible in the gross income of the child and not of the parent solely by reason of section 22(m)(1) are deemed to have been paid and incurred by the child. In such determination, the child is entitled to take deductions not only for expenditures made on his behalf by his parent which would be commonly considered as business expenses, but also for other expenditures such as charitable contributions made by the parent in the name of the child and out of the child's earnings.

For the purposes of section 22(m), the term "parent" includes any individual who is entitled to the services of the child by reason of having parental rights and duties in respect of the child.

SEC. 8. ADJUSTED GROSS INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IN GENERAL.—Section 22 (relating to gross income) is amended by inserting at the end thereof the following:

"(n) DEFINITION OF 'ADJUSTED GROSS INCOME'.—As used in this chapter the term 'adjusted gross income' means the gross income minus—

"(1) TRADE AND BUSINESS DEDUCTIONS.—The deductions allowed by section 23 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee;

"(2) EXPENSES OF TRAVEL AND LODGING IN CONNECTION WITH EMPLOYMENT.—The deductions allowed by section 23 which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

"(3) REIMBURSED EXPENSES IN CONNECTION WITH EMPLOYMENT.—The deductions allowed by section 23 (other than expenses of travel, meals, and lodging while away from home) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer;

"(4) DEDUCTIONS ATTRIBUTABLE TO RENTS AND ROYALTIES.—The deductions (other than those provided in paragraph (1), (5), or (6)) allowed by section 23 which are attributable to property held for the production of rents or royalties;

"(5) CERTAIN DEDUCTIONS OF LIFE TENANTS AND INCOME BENEFICIARIES OF PROPERTY.—The deductions (other than those provided in paragraph (1)) for depreciation and depletion, allowed by section 23 (l) and (m) to a life tenant of property or to an income beneficiary of property held in trust; and

"(6) LOSSES FROM SALES OR EXCHANGE OF PROPERTY.—The deductions (other than those provided in paragraph (1)) allowed by section 23 as losses from the sale or exchange of property."

* * * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

SEC. 29.22(n)–1. ADJUSTED GROSS INCOME.—The term "adjusted gross income" means the gross income computed under section 22 minus such of the deductions allowable under section 23 as are specified in section 22(n). Adjusted gross income is used as the basis for the determination of the following: The tax under Supplement T; the amount of the standard deduction; the amount of the deduction for charitable contributions under section 23(o); the amount of the deduction for medical and dental expenses under section 23(x); and the amount of the normal-tax exemption in the case of a joint return by husband and wife.

Section 22(n) does not create any new deductions, but merely specifies which of the deductions provided in section 23 shall be allowed in computing adjusted gross income. The circumstance that a particular item is specified in one of the clauses under section 22(n) and is also embraced within the terms of another of such clauses does not permit the item to be twice deducted in computing adjusted gross income.

The deductions specified in section 22(n) for the purpose of computing adjusted gross income are: (1) Deductions allowable under section 23, which are attributable to a trade or business carried on by the taxpayer not consisting of services performed as an employee; (2) deductions allowable by section 23 which constitute expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee; (3) deductions allowable by section 23 (other than expenses of travel, meals, and lodging while away from home) which consist of expenses paid or incurred in connection with the performance of services as an employee under a reimbursement or other expense-allowance arrangement with his employer; (4) deductions allowable under section 23 which are attributable to rents and royalties; (5) deductions for depreciation and depletion allowable under section 23 (l) and (m) to a life tenant of property or to an income beneficiary of property held in trust; and (6) deductions which are allowable under section 23 as losses from the sale or exchange of property.

For the purpose of the deductions specified in section 22(n), the performance of personal services as an employee does not constitute the carrying on of a trade or business. The practice of a profession, not as an employee, is considered the conduct of a trade or business within the meaning of such section. To be deductible for the purposes of determining adjusted gross income, expenses must be those directly, and not those merely remotely, connected with the conduct of the trade or business. For example, taxes are deductible in arriving at adjusted gross income only if they constitute expenditures directly attributable to the trade or business or to property from which rents or royalties are derived. Thus, property taxes paid or incurred on real property used in the trade or business are deductible but State income taxes are not deductible even though the taxpayer's income is derived from the conduct of a trade or business.

Traveling expenses paid or incurred by an employee in connection with his employment while away from home which are deductible from gross income in computing net income may be deducted from gross income in computing adjusted gross income. Among the items included in traveling expenses are charges for transportation of persons or baggage, expenditures for meals and lodging, and payments for the use of sample rooms for the display of goods. See section 29.23(a)–2.

Expenses, other than traveling expenses, paid or incurred by an employee which are deductible from gross income in computing net income and for which he is

reimbursed by the employer under an express agreement for reimbursement or pursuant to an expense allowance arrangement may also be deducted from gross income in computing adjusted gross income.

PAR. 13. There is inserted immediately preceding section 29.23(o)–1 the following:

SEC. 8. ADJUSTED GROSS INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) CHARITABLE CONTRIBUTIONS.—Section 23(o) (relating to the so-called "charitable deduction") is amended by striking out "net income as computed without the benefit of this subsection or of subsection (x)" and inserting in lieu thereof "adjusted gross income".

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 14. Section 29.23(o)–1 is amended as follows:

(A) By striking from the third paragraph "15 per cent of his net income computed without the benefit of the deduction for contributions" and inserting in lieu thereof the following: "15 per cent of his adjusted gross income or, for taxable years beginning prior to January 1, 1944, 15 per cent of his net income computed without the benefit of the deduction for contributions."

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

In the case of husband and wife making a joint return, the deduction for contributions or gifts is the aggregate of such contributions or gifts made by the spouses, and is limited to 15 per cent of the aggregate adjusted gross income of the spouses or, for taxable years beginning prior to January 1, 1944, 15 per cent of the aggregate net income of the spouses computed without the benefit of the deduction for contributions.

PAR. 15. There is inserted immediately preceding section 29.23(x)–1 the following:

SEC. 8. ADJUSTED GROSS INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(c) MEDICAL EXPENSE DEDUCTION.—Section 23(x) (relating to the so-called "medical expense deduction") is amended to read as follows:

"(x) MEDICAL, DENTAL, ETC., EXPENSES.—Expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent specified in section 25(b)(3), to the extent that such expenses exceed 5 per centum of the adjusted gross income. If only one surtax exemption is allowed under section 25(b) for the taxable year, the maximum deduction for the taxable year shall be not in excess of $1,250. If more than one surtax exemption is so allowed, the maximum deduction shall be not in excess of $2,500. The term 'medical care', as used in this subsection, shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance)."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 16. Section 29.23(x)-1 is amended as follows:

(A) By striking out the fourth paragraph thereof and inserting in lieu thereof the following:

Only such medical expenses are deductible for taxable years beginning prior to January 1, 1944, as exceed 5 per cent of the net income for the taxable year computed without the deduction for medical expenses. Where the taxpayer has allowable deductions in a taxable year beginning prior to January 1, 1944, for charitable contributions and medical expenses, the allowable deductions for charitable contributions should be computed first without regard to the deduction for medical expenses, and thereafter, the deduction for medical expenses for such taxable year should be computed (see section 29.23(o)-1). The maximum deduction allowable for medical expenses paid in any one taxable year beginning prior to January 1, 1944, is $2,500 in the case of a head of a family, or husband and wife filing a joint return for such taxable year. In all other cases the maximum for such years is $1,250.

For taxable years beginning after December 31, 1943, only such medical expenses are deductible as exceed 5 per cent of the adjusted gross income for the taxable year. As to what constitutes adjusted gross income see section 22(n). The maximum deduction allowable for medical expense paid in any one taxable year beginning after December 31, 1943, is $1,250 in the case of a taxpayer having only one surtax exemption and $2,500 in the case of a taxpayer entitled to more than one surtax exemption. A deduction for medical expenses shall not be deemed to have been allowed for any taxable year for which the taxpayer claimed and was allowed the standard deduction under section 23(aa).

PAR. 17. Section 29.23(y)-1, added by Treasury Decision 5371, approved May 11, 1944 [C. B. 1944, 80], is amended by striking out the last sentence of the first paragraph.

PAR. 18. There is inserted immediately after section 29.23(z)-1 the following:

SEC. 9. OPTIONAL STANDARD DEDUCTION. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IN GENERAL.—Section 23 is amended by adding at the end thereof a new subsection to read as follows:

"(aa) OPTIONAL STANDARD DEDUCTION FOR INDIVIDUALS.—

"(1) ALLOWANCE.—In the case of an individual, at his election a standard deduction as follows:

"(A) Adjusted Gross Income $5,000 or More.—If his adjusted gross income is $5,000 or more, the standard deduction shall be $500.

"(B) Adjusted Gross Income Less Than $5,000.—If his adjusted gross income is less than $5,000, the standard deduction shall be an amount equal to 10 per centum of the adjusted gross income upon the basis of which the tax applicable to the adjusted gross income of the taxpayer is determined under the tax table provided in section 400.

"(2) IN LIEU OF CERTAIN DEDUCTIONS AND CREDITS.—The standard deduction shall be in lieu of: (A) all deductions other than those which under section 22(n) are to be subtracted from gross income in computing adjusted gross income, (B) all credits with respect to taxes of foreign countries and possessions of the United States, (C) all credits with respect to taxes withheld at the source under section 143(a) (relating to interest on tax-free convenant bonds), and (D) all credits against net income with respect to interest on certain obligations of the United States and Government corporations of the character specified in section 25(a) (1) and (2).

"(3) METHOD AND EFFECT OF ELECTION.—

"(A) If the adjusted gross income shown on the return is $5,000 or more, the standard deduction shall be allowed only if the taxpayer so elects in his return, and the Commissioner, with

the approval of the Secretary, shall by regulations prescribe the manner of signifying such election in the return.

"(B) If the adjusted gross income shown on the return is less than $5,000, the standard deduction shall be allowed only if the taxpayer elects, in the manner provided in Supplement T, to pay the tax imposed by such supplement.

"(C) If the taxpayer does not signify, in the manner provided by subparagraph (A) or (B), his election to take the standard deduction, it shall not be allowed. If he does so signify, such election shall be irrevocable.

"(D) If the adjusted gross income shown on the return is $5,000 or more, but the correct adjusted gross income is less than $5,000, then an election by the taxpayer under subparagraph (A) to take the standard deduction shall be considered as his election to pay the tax imposed by Supplement T; and his failure to make under subparagraph (A) an election to take the standard deduction shall be considered his election not to pay the tax imposed by Supplement T. If the adjusted gross income shown on the return is less than $5,000, but the correct adjusted gross income is $5,000 or more, then an election by the taxpayer under subparagraph (B) to pay the tax imposed by Supplement T shall be considered as his election to take the standard deduction; and his failure to elect under subparagraph (B) to pay the tax imposed by Supplement T shall be considered his election not to take the standard deduction.

"(4) HUSBAND AND WIFE.—In the case of husband and wife living together, the standard deduction shall not be allowed to either if the net income of one of the spouses is determined without regard to the standard deduction. For the purposes of this paragraph the determination of whether an individual is married and living with his spouse shall be made as of the last day of the taxable year, unless his spouse dies during the taxable year, in which case such determination shall be made as of the date of such spouse's death.

"(5) SHORT PERIOD.—In the case of a taxable year of less than twelve months on account of a change in the accounting period, the standard deduction shall not be allowed."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

SEC. 29.23(aa)-1. STANDARD DEDUCTION.—(*a*) *General.*—For taxable years beginning after December 31, 1943, the taxpayer may elect to take, in addition to the deductions from gross income allowable in computing adjusted gross income, a standard deduction in lieu of all nonbusiness deductions (that is, deductions other than those allowable under section 22(n)) and in lieu of certain credits allowable to the taxpayer had he not so elected. Such credits are the credit provided by sections 31 and 131 for income tax paid to foreign countries or possessions of the United States, the credit provided by section 32 for tax paid at the source under section 143(a) by the obligor on tax-free covenant bonds with respect to interest on such bonds, and the credit provided by section 25(a) (1) and (2) for normal tax purposes with respect to interest on United States obligations and interest on obligations of instrumentalities of the United States. The standard deduction is $500, in the case of taxpayers whose adjusted gross income is $5,000 or more, and, in the case of taxpayers whose adjusted gross income is less than $5,000, about 10 per cent of the adjusted gross income upon which the tax is determined in the table provided in section 400. A taxpayer having adjusted gross income of less than $5,000, who does not elect to pay the tax imposed by Supplement T, may not take the standard deduction.

The standard deduction is not allowable—

(1) in the case of a taxable year of less than 12 months where such taxable year arises because of a change in accounting period under section 47(a);

(2) in the case of a return for a fractional part of a year under section 146(a)(1);
(3) in the case of an estate or trust;
(4) in the case of common trust funds;
(5) in the determination of the net income of a partnership;
(6) in the case of nonresident alien individuals (including those who enter and leave the United States at frequent intervals); and
(7) in the case of a citizen of the United States entitled to the benefits of section 251.

An election to take the standard deduction is not precluded by reason of the fact that the return is made for a taxable year of less than 12 months on account of the death of the taxpayer.

(*b*) *Manner and effect of election to take the standard deduction.*—The following rules are prescribed with respect to the manner of signifying an election by a taxpayer to take the standard deduction:

(1) A taxpayer whose adjusted gross income as shown by his return is $5,000 or more shall be allowed the standard deduction only if he signifies on his return his election to take such deduction. Such taxpayer shall so signify on his return by claiming thereon a deduction of $500 instead of itemizing the deductions allowable under section 23 other than those specified in section 22(n). The election so signified shall be irrevocable for the taxable year for which such election is made. If in any case the adjusted gross income shown on the return of the taxpayer is $5,000 or more, but the correct adjusted gross income is less than $5,000, then

(i) if the taxpayer has elected on his return to take the standard deduction such election shall be deemed to be an irrevocable election by the taxpayer to pay the tax imposed by Supplement T; and

(ii) if the taxpayer has not so elected upon his return, it shall be deemed that the taxpayer has irrevocably elected not to pay the tax under Supplement T.

(2) If the adjusted gross income shown on the return is less than $5,000, the standard deduction is allowable only if the taxpayer elects in the manner provided in Supplement T to pay the tax imposed by such supplement. As to the manner and effect of election to pay the tax under Supplement T, see section 29.402–1. In any case, however, in which adjusted gross income shown on the return is less than $5,000 but the correct adjusted gross income is in fact $5,000 or more, then—

(i) if the taxpayer has elected to pay the tax imposed under Supplement T, it shall be deemed that he has elected to take the standard deduction; and

(ii) if the taxpayer has not elected on his return to pay the tax under Supplement T, it shall be deemed that he has made an election not to take the standard deduction.

(*c*) *Husband and wife.*—In the case of husband and wife living together, if the net income of one spouse is determined without regard to the standard deduction, the other spouse may not elect to take the standard deduction. If a joint return is filed and election made thereon to take the standard deduction, such deduction shall be determined by reference to the aggregate adjusted gross income of both spouses. If Form W–2 (Rev.) is filed as a combined return, the standard deduction is allowed through the application to the adjusted gross income shown on such return of the tax table in Supplement T. See section 29.51–2 limiting the use of Form W–2 (Rev.) as a combined return to cases in which the aggregate adjusted gross income of the spouses is less than $5,000.

If each spouse files Form 1040 both must elect to take the standard deduction or both are denied the standard deduction. If one spouse files Form 1040 and does not elect to take the standard deduction, the other spouse may not elect to take the standard deduction and, hence, may not file Form W–2 (Rev.) as his or her return. Thus, if A and his wife B have adjusted gross incomes of $6,000 and $3,500, from wages subject to withholding, respectively, for the calendar year 1944, and A files Form 1040 and does not elect thereon to take the standard deduction, B may not file Form W–2 (Rev.) but must file Form 1040, taking thereon only her actual allowable deductions and not the standard deduction. In such case, however, if both elect to take the standard deduction, A must file Form 1040, but B may file Form W–2 (Rev.) or, in the alternative,

she may file Form 1040 and compute the tax under Supplement T. Under either alternative effect is given to the standard deduction through the application of Supplement T.

The restriction upon the right of a married person to elect the standard deduction in his separate return is applicable with respect to the taxable years of the husband and wife ending in the same calendar year, except that in the event of the death of one spouse the restriction is applicable with respect to the taxable year ended with death and the taxable year of the surviving spouse in which such death occurs. The restriction applies only in the case of a husband and wife living together and for such purpose the spouses are considered as living together unless they are permanently separated. The determination of whether an individual is married and living with his spouse shall be made as of the last day of such individual's taxable year unless his spouse dies during such taxable year, in which event the determination shall be made as of the date of death of such spouse.

Example (1). Taxpayer A makes his returns on the basis of a fiscal year ending June 30. His wife B makes her returns on the calendar year basis. On the return for the fiscal year ended June 30, 1945, A itemized and claimed his actual deductions. In October, 1945, A and B were permanently separated. In her separate return for the calendar year 1945, B may elect the standard deduction since she is not married and living with her husband A on the last day of her taxable year.

Example (2). Assume the facts as stated in example (1) except that, instead of the spouses separating, A died in October, 1945. In such case, since A and B were married and living together as of the date of death, B may not elect the standard deduction for the calendar year 1945, if the income of A for the short taxable year ending with the date of his death is determined without regard to the standard deduction.

PAR. 19. There is inserted immediately preceding section 29.25–1 the following:

SEC. 10. CREDITS AGAINST NET INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) FOR NORMAL TAX.—Section 25(a) (relating to credits against net income for the purposes of the normal tax) is amended by adding at the end thereof a new paragraph to read as follows:

"(3) NORMAL-TAX EXEMPTION.—A normal-tax exemption of $500. In the case of a joint return by husband and wife under section 51, the normal-tax exemption shall be $1,000, except that if the adjusted gross income of one spouse is less than $500, the normal-tax exemption shall be $500 plus the adjusted gross income of such spouse."

(b) FOR SURTAX.—Section 25(b) (relating to credits for both normal tax and surtax) is amended to read as follows:

"(b) CREDITS FOR SURTAX ONLY.—

"(1) CREDITS.—There shall be allowed for the purpose of the surtax, but not for the normal tax, the following credits against net income:

"(A) A surtax exemption of $500 for the taxpayer;

"(B) A surtax exemption of $500 for the spouse of the taxpayer if—

"(i) a joint return is made by the taxpayer and his spouse under section 51, in which case the surtax exemption of the spouses under subparagraph (A) and this subparagraph shall be only $1,000 in the aggregate, or

"(ii) a separate return is made by the taxpayer, and his spouse has no gross income for the calendar year in which the taxable year of the taxpayer begins and is not the dependent of another taxpayer;

"(C) A surtax 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 if such de-

pendent is married the exemption in respect of such dependent shall not be allowed if such dependent has made a joint return with the other spouse under section 51 for a taxable year beginning in such calendar year.

"(2) DETERMINATION OF STATUS.—The determination of whether an individual is married shall be made as of the last day of the taxable year, unless his spouse dies during the taxable year, in which case such determination shall be made as of the date of his spouse's death.

"(3) DEFINITION OF DEPENDENT.—As used in this chapter 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, or a descendant of either,

"(B) a stepson or stepdaughter of the taxpayer,

"(C) a brother, sister, stepbrother, or stepsister of the taxpayer,

"(D) the father or mother of the taxpayer, or an ancestor of either,

"(E) a stepfather or stepmother of the taxpayer,

"(F) a son or daughter of a brother or sister of the taxpayer,

"(G) a brother or sister of the father or mother of the taxpayer,

"(H) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.

As used in this paragraph, the terms 'brother' and 'sister' include a brother or sister by the half-blood. For the purposes of determining whether any of the foregoing relationships exist, a legally adopted child of a person shall be considered a child of such person by blood. The term 'dependent' does not include any individual who is a citizen or subject of a foreign country unless such individual is a resident of the United States or of a country contiguous to the United States. A payment to a wife which is includible under section 22(k) or section 171 in the gross income of such wife shall not be considered a payment by her husband for the support of any dependent."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 20. Section 29.25–1, as amended by Treasury Decision 5373, approved May 23, 1944 [C. B. 1944, 143], is further amended as follows:

(A) By changing the heading thereof to read as follows: "CREDITS OF INDIVIDUALS AGAINST NET INCOME.—(*a*) *Taxable years beginning before January 1, 1944.*"

(B) By striking from the second sentence thereof the words "for taxable years beginning before January 1, 1944,"

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

(*b*) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, the taxpayer's net income as determined pursuant to sections 21 to 24, inclusive, is reduced, for the purpose of computing the normal tax, by (1) the income exempt from normal tax only received upon certain obligations of the United States and upon certain obligations of corporations organized under Act of Congress which are instrumentalities of the United States, and (2) one normal-tax exemption of $500, or in the case of a

joint return by husband and wife a normal-tax exemption of $1,000, but if one of the spouses has less than $500 adjusted gross income the normal-tax exemption is $500 plus the amount of the adjusted gross income of such spouse. No exemption for dependents is allowed for normal tax purposes.

PAR. 21. Section 29.25–3 is amended as follows:

(A) By striking out "AMOUNT OF PERSONAL EXEMPTION ALLOWABLE.—A" and inserting in lieu thereof the following: "PERSONAL EXEMPTION AND SURTAX EXEMPTIONS.—(*a*) *Taxable years beginning before January 1, 1944.*—For taxable years beginning before January 1, 1944, a."

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

(*b*) *Taxable years beginning after December 31, 1943.*—For the purpose of the surtax on individuals for taxable years beginning after December 31, 1943, there are allowed as credits against net income a surtax exemption of $500 for the taxpayer and, provided certain prescribed conditions are met, a surtax exemption of $500 for the spouse of the taxpayer and for each dependent of the taxpayer. Two surtax exemptions of $500 each are allowable in case a joint return is filed under section 51 by a husband and wife or in case a separate return is made by the taxpayer, and his spouse has no gross income for the calendar year in which the taxpayer's taxable year begins, and his spouse is not the dependent of another taxpayer. If in any case a joint return is made by the taxpayer and his spouse, no surtax exemption is allowed any other person for such spouse even though such other person would have been entitled to claim a surtax exemption for such spouse as a dependent if such joint return had not been made. In addition to the surtax exemptions allowed to a taxpayer for himself and for his spouse he is entitled to a surtax exemption of $500 for each individual whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $500, who receives more than one-half of his support from the taxpayer for such calendar year, who does not file a joint return with his spouse and who is related to the taxpayer within one of the following relationships: Child; the descendants of such child; stepchild; brother; sister; brother or sister by the half-blood; stepbrother or stepsister; parent; the ancestors of such parent; stepfather or stepmother; son or daughter of the taxpayer's brother or sister; brother or sister of the taxpayer's father or mother; son-in-law; daughter-in-law; father-in-law; mother-in-law; brother-in-law; or sister-in-law. In the case of a joint return it is not necessary that the prescribed relationship exist between the person claimed as a dependent and the spouse who furnishes the support; it is sufficient if the prescribed relationship exists with respect to either spouse. Thus, a husband and wife making a joint return may claim as a dependent a daughter of the wife's brother (wife's niece) even though the husband is the one who furnishes the chief support. The relationship of affinity once existing will not terminate by divorce or the death of a spouse. A legally adopted child of a person shall be considered a child of such person by blood. A citizen or subject of a foreign country may not be claimed as a dependent, unless he is a resident of the United States, Canada, or Mexico at some time during the calendar year in which the taxable year of the taxpayer begins. Whether or not over half of a person's support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer, shall be determined by reference to the amount of expense incurred by the taxpayer for such support. A payment to a wife which is includible under section 22(k) or section 171 in the gross income of such wife shall not be considered a payment by her husband for the support of any dependent.

PAR. 22. Section 29.25–5 is amended as follows:

(A) By striking out the heading and inserting in lieu thereof the following: "PERSONAL EXEMPTION OF MARRIED PERSON FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1944."

(B) By inserting at the end thereof the following sentences:

For taxable years beginning after December 31, 1943, the personal exemption, as such, of married persons is not applicable and there are substituted therefor the normal-tax exemption and the surtax exemptions. See section 29.25–1.

PAR. 23. Section 29.25–6 is amended as follows:

(A) By striking out "CREDIT FOR DEPENDENTS.—A" and inserting in lieu thereof the following: "CREDIT FOR DEPENDENTS.—(*a*) *Taxable years beginning before January 1, 1944.*—For taxable years beginning before January 1, 1944, a."

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

(*b*) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, the provisions of subsection (*a*) of this section have no application. For surtax exemptions for dependents for such taxable years, see section 29.25–3.

PAR. 24. There is inserted immediately preceding section 29.47–1 the following:

SEC. 10. CREDITS AGAINST NET INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(c) REDUCTION OF CREDITS IN CASE OF JEOPARDY.—Section 47(e) (relating to reduction of certain credits against net income in case of jeopardy) is amended by striking out "personal exemption and credit for dependents" and inserting in lieu thereof "normal tax exemption and surtax exemptions"; and by striking out "the full credits provided" and inserting in lieu thereof "the full normal tax exemption (in the case of the normal tax) and the full surtax exemptions (in the case of the surtax)".

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 25. Section 29.47–1, as amended by Treasury Decision 5401, approved August 6, 1944 [C. B. 1944, 204], is further amended as follows:

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

If, for taxable years beginning after December 31, 1943, a return is made for a fractional part of a year resulting from termination by the Commissioner under section 146 of the taxable period, the normal-tax exemption and the surtax exemptions shall be reduced to that proportion of the full normal-tax exemption (in the case of the normal tax) and the full surtax exemptions (in the case of the surtax) which the number of months in the period for which the return is made bears to 12 months, but such exemptions shall not be reduced for a fractional part of a year otherwise resulting.

(B) By inserting in the seventh sentence after the word "exemption" the words "or the normal-tax exemption, as the case may be,".

PAR. 26. There is inserted immediately preceding section 29.51–1 the following:

SEC. 11. RETURNS. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IN GENERAL.—Section 51 (a) and (b) (relating to individual returns) is amended to read as follows:

"(a) REQUIREMENT.—Every individual having for the taxable year a gross income of $500 or more shall make a return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury. Such return shall set forth in such cases, and to such extent, and in such detail, as the Commissioner with the approval of the Secretary may by regulations prescribe, the items of gross income and the

deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as may be prescribed by such regulations.

"(b) HUSBAND AND WIFE.—A husband and wife may make a single return jointly. Such a return may be made even though one of the spouses has neither gross income nor deductions. If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. No joint return may be made if either the husband or wife is a nonresident alien or if the husband and wife have different taxable years. The status of individuals as husband and wife shall be determined as of the last day of the taxable year."

(b) RETURNS BY WAGE EARNERS.—Section 51 (relating to returns by individuals) is amended by striking out subsection (f) and inserting in lieu thereof the following:

"(f) TAX COMPUTED BY COLLECTOR IN CASE OF WAGE EARNERS.—

"(1) RETURN REQUIREMENTS.—An individual entitled to elect to pay the tax imposed by Supplement T whose gross income is less than $5,000 and is entirely from one or more of the following sources: Remuneration for services performed by him as an employee, dividends, or interest; and whose gross income from sources other than wages, as defined in section 1621(a), does not exceed $100, shall at his election be relieved, by using the form prescribed as the form for the return for the purposes of this subsection, from showing on the return the tax imposed by this chapter. In such case the tax shall be computed by the collector.

"(2) RESULT OF COMPUTATION.—After the collector has computed the tax, he shall mail to the taxpayer a notice stating the amount determined by the collector as payable and making demand therefor.

"(3) REGULATIONS.—The Commissioner with the approval of the Secretary shall prescribe regulations for carrying out this subsection, and such regulations may provide for the application of the rules of this subsection to cases where the gross income includes items other than those enumerated in paragraph (1), to cases where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100 but not more than $200, and to cases where the gross income is $5,000 or more but not more than $5,200. Such regulations shall provide (A) for the application of this subsection in the case of husband and wife, including provisions determining when a joint return under this subsection may be permitted or required and what constitutes a joint return, whether the liability shall be joint and several, and whether one spouse may make return under this subsection and the other without regard to this subsection, and (B) whether and the extent to which the benefits of this subsection may be availed of, in the case of taxable years beginning in the calendar year 1944, by persons required to make or making payments of estimated tax with respect to any such taxable year.

"(4) METHOD OF ELECTION.—The election to have the benefits of this subsection shall be made by making return on the form prescribed as the form for the return for the purposes of this subsection. An election so made shall constitute an election to pay the tax imposed by Supplement T."

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SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 27. Section 29.51-1, as amended by Treasury Decision 5373, is further amended as follows:

(A) By striking out "INDIVIDUAL RETURNS FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1944.—(*a*) *In general.*" and inserting

in lieu thereof the following: "INDIVIDUAL RETURNS.—(*a*) *In general.*—(1) *Taxable years beginning before January 1, 1944.*"

(B) There is inserted immediately preceding subsection (*b*) thereof the following:

(2) *Taxable years beginning after December 31, 1943.*—For each taxable year beginning after December 31, 1943, a return of income shall be made by each citizen of the United States, whether residing at home or abroad, and every individual residing within the United States though not a citizen thereof, regardless of family or marital status, if such citizen or resident has for such taxable year a gross income of $500 or more, or a gross income in excess of the credit allowed by section 25(a)(3), prorated as provided in section 47(e).

(C) By amending the first paragraph of subsection (*b*) thereof to read as follows:

For taxable years beginning prior to January 1, 1944, a husband and wife, if living together at the close of the taxable year may elect to make a joint return (see section 51(b)), that is, to include in a single return made by them jointly the income and deductions of each, even though one has no gross income. For taxable years beginning after December 31, 1943, a husband and wife occupying the marital status as of the last day of the taxable year may elect to make a joint return even though one of the spouses has no gross income or deductions, and even though the spouses are not living together at any time during the taxable year. If a joint return is made the tax shall be computed on the aggregate income. The liability with respect to the tax shall be joint and several. If one spouse dies prior to the last day of the taxable year, the surviving spouse may not include the income of the deceased spouse in a joint return for such taxable year. A joint return may not be made if either the husband or wife is a nonresident alien.

PAR. 28. Section 29.51-2 is amended as follows:

(A) By striking out "FORM OF RETURN.—The" and inserting in lieu thereof the following: "FORM OF RETURN.—(*a*) *Taxable years beginning before January 1, 1944.*—For taxable years beginning before January 1, 1944, the."

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

(*b*) *Taxable years beginning after December 31, 1943.*—(1) *General.*—For taxable years beginning after December 31, 1943, the return shall be on Form 1040, except in the case of a taxpayer entitled to elect, and who so elects, to use the Form W-2 (Rev.) in accordance with the rules prescribed in subsection (*b*)(2) of this section. A taxpayer, even though entitled to use Form W-2 (Rev.) for the taxable year may, nevertheless, use Form 1040 as his return. Such taxpayer otherwise entitled to use Form W-2 (Rev.) as his return for the taxable year but who does not desire to take the standard deduction provided in section 23(aa) is required to use Form 1040 as his return for such taxable year. Use of the short Form 1040A is discontinued with respect to taxable years beginning after December 31, 1943. The provisions of subsection (*a*) of this section in so far as they apply to the time and manner of making a return on Form 1040 are equally applicable to taxable years beginning after December 31, 1943.

(2) *Use of optional return on Form W-2 (Rev.); in general.*—For taxable years beginning after December 31, 1943, an individual entitled to elect to pay the tax imposed by Supplement T (except a taxpayer making his returns on a fiscal year basis) may at his election use as his return Form W-2 (Rev.) provided his gross income is less than $5,000, consists entirely of remuneration for personal services performed by him as an employee, dividends, or interest, and his gross income from sources other than wages, as defined in section 1621(a), does not exceed $100. A taxpayer who makes his return on a basis other than the cash receipts and disbursements basis may not use Form W-2 (Rev.) as his return. However, in the case of married persons domiciled in a community property State, Form W-2 (Rev.) may not be used as a return by either spouse unless the aggregate gross income of husband and wife meets the tests prescribed above and they make a combined return. If they desire to file separate returns, Form 1040 must be used.

An election to make a return on Form W–2 (Rev.) shall be exercised by properly executing and filing such form, together with all other Forms W–2 or W–2 (Rev.) received for the taxable year, with the collector on or before the due date of the taxpayer's return.

Form W–2, as distinguished from Form W–2 (Rev.), may not be used as the optional return. An individual who has been furnished by his employer with Form W–2 with respect to wages paid in 1944 and who, prior to the time prescribed for the filing of the return for that year, has not been furnished Form W–2 (Rev.) by his employer, may obtain from the collector a blank Form W–2 (Rev.). Such Form W–2 (Rev.) when filled out and executed and having attached thereto all Forms W–2 received with respect to wages paid in 1944, shall, when timely filed, constitute such individual's return for 1944 if he is eligible under section 51(f) to use the optional return.

The fact that an individual made payments of estimated tax in the calendar year 1944 does not, if such individual is otherwise entitled to use as his return for 1944 the optional return. Form W–2 (Rev.), preclude such individual from electing to file his return on Form W–2 (Rev.) for such year.

(3) *Combined return of husband and wife on Form W–2 (Rev.).*—If during the taxable year a husband and wife derive income from wages, as defined in section 1621(a), and are furnished one or more Forms W–2 or Forms W–2 (Rev.), and the aggregate gross income of both spouses is less than $5,000, consists solely of remuneration for services performed as an employee, dividends, or interest, and includes a total of not more than $100 from dividends, interest, and remuneration for personal services other than such wages, the spouses may elect to file a combined return on Form W–2 (Rev.). Such election shall be exercised by the filing of one of the Forms W–2 (Rev.) signed by both spouses and the other Forms W–2 and W–2 (Rev.) should be attached thereto.

The tax computed by the collector upon the basis of a combined return on Form W–2 (Rev.) shall be the lesser of the following amounts:

(i) a tax computed as though the combined return on Form W–2 (Rev.) constituted the separate returns of the spouses, and

(ii) a tax computed as though the combined return on Form W–2 (Rev.) constituted a joint return.

If a combined return is made by husband and wife on Form W–2 (Rev.), the liability for the tax shall be joint and several.

PAR. 29. Section 29.51–3 is amended as follows:

(A) By striking out "RETURN OF INCOME OF MINOR.—An" and inserting in lieu thereof the following: "RETURN OF INCOME OF MINOR.—(*a*) *Taxable years beginning before January 1, 1944.*—For taxable years beginning before January 1, 1944, an."

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

(*b*) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, an individual, although a minor, who is single, is required to render a return of income if he has gross income (including compensation for personal services includible in his gross income under section 22 (m)(1)) of $500 or over for the taxable year regardless of the amount of his net income. If the aggregate of the gross income of such a minor from any property which he possesses, and from any funds held in trust for him by a trustee or guardian, and from his earnings is at least $500, regardless of the amount of his net income, a return, as in the case of any other individual, must be made by him or for him by his guardian or other person charged with the care of his person or property. See section 29.142–2. If he is married see section 29.51–1.

PAR. 30. There is inserted immediately preceding section 29.56–1 the following:

SEC 6. REPEAL OF VICTORY TAX. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) TECHNICAL AMENDMENTS.—

* * * * * * *

(2) Section 56(f) (cross reference) is amended by striking out ", 144, and Part II of Subchapter D" and inserting in lieu thereof "and 144".

* * * * * * *

SEC. 12. PAYMENT IF TAX NOT COMPUTED BY TAXPAYER. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Section 56 (relating to payment of tax) is amended by inserting at the end thereof the following:

"(i) PAYMENT OF TAX IF NOT COMPUTED BY TAXPAYER.—Where under section 51(f) a taxpayer who is an individual is permitted to file return without showing the tax thereon, and the tax is to be computed by the collector, the amount determined by the collector as payable shall be paid within thirty days after the mailing by the collector to the taxpayer of a notice stating such amount and making demand therefor."

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 31. Section 29.56–1, as amended by Treasury Decision 5305, approved November 12, 1943 [C. B. 1943, 260], is further amended as follows:

(A) By striking from the first sentence "The tax" and inserting in lieu thereof the following: "Except in the case of an individual taxpayer permitted, for taxable years beginning after December 31, 1943, to file his return without showing the tax thereon, the tax."

(B) By inserting as the second paragraph thereof the following:

In any case in which an individual taxpayer for any taxable year beginning after December 31, 1943, is entitled to elect, and does so elect, to file as his return Form W–2 (Rev.) as provided in section 29.51–2(*b*), the amount of the tax determined by the collector shall be paid within 30 days after the date of mailing by the collector to the taxpayer of a notice stating the amount payable by the taxpayer and making demand upon the taxpayer therefor.

PAR. 32. There is inserted immediately after section 103 the following:

SEC. 6. REPEAL OF VICTORY TAX. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) TECHINAL AMENDMENTS.—

* * * * * * *

(3) Section 103 (relating to rates of tax on citizens and corporations of certain foreign countries) is amended by striking out "and 450" wherever appearing therein and inserting in lieu thereof "and 400".

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 33. There is inserted immediately preceding section 29.117–1 the following:

SEC. 8. ADJUSTED GROSS INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(d) CAPITAL GAINS AND LOSSES.—

(1) DEFINITION OF CAPITAL NET GAINS.—Section 117(a)(10)(B) is amended by adding at the end thereof a new sentence to read as follows: "If the tax is to be computed under Supplement T, 'net income' as used in this subparagraph shall be read as 'adjusted gross income'."

(2) LIMITATION ON CAPITAL LOSSES.—Section 117(d)(2) is amended by adding at the end thereof a new sentence to read as follows: "If the tax is to be computed under Supplement T, 'net income' as used in this paragraph shall be read as 'adjusted gross income'."

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 34. Section 29.117–1 is amended as follows:

(A) By inserting in the tenth paragraph as the fourth and fifth sentences thereof the following:

For taxable years beginning after December 31, 1943, in the case of a taxpayer whose tax liability is computed under Supplement T, the term "net income," as used in the preceding sentence, shall be read as "adjusted gross income." In the determination of adjusted gross income (prior to the determination of "net capital gain") there shall be taken into account the same percentages of the gain or loss as are taken into account in computing net income.

PAR. 35. Section 29.117–2(*b*) is amended by inserting at the end thereof the following sentence:

In case the tax is computed under Supplement T, the term "net income" shall, for taxable years beginning after December 31, 1943, be read as "adjusted gross income."

PAR. 36. Section 29.125–1(*b*) is amended by adding at the end of the second paragraph the following sentence:

In the case of a taxpayer whose tax is computed under Supplement T (section 400), or who elects to take the standard deduction (section 23(aa)), and thus no specific deduction is permitted under section 125(a)(1) for amortization of bond premiums as such, it shall be deemed, if the taxpayer has elected to amortize bond premium in accordance with the provisions of section 125, that the deduction for amortization of amortized bond premium has been allowed for the purpose of determining the adjusted basis of the bond.

PAR. 37. There is inserted immediately preceding section 29.131–1 the following:

SEC. 6 REPEAL OF VICTORY TAX. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) TECHNICAL AMENDMENTS.—

* * * * * * *

(4) Section 131(a) (relating to taxes of foreign countries and of possessions of the United States) is amended by striking out "or section 450".

(5) Section 131(i) (relating to tax withheld at source) is amended by striking out "466(e)" and by inserting in lieu thereof "35".

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 38. There is inserted immediately preceding section 29.142–1 the following:

SEC. 11. RETURNS. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(c) FIDUCIARY RETURNS.—Section 142(a) (relating to fiduciary returns) is amended by striking out paragraphs (1) to (5), inclusive, and inserting in lieu thereof the following:

"(1) Every individual having a gross income for the taxable year of $500 or over;

"(2) Every estate the gross income of which for the taxable year is $500 or over;

"(3) Every trust the net income of which for the taxable year is $100 or over, or the gross income of which for the taxable year is $500 or over, regardless of the amount of net income;

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

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 39. Section 29.142–1, as amended by Treasury Decision 5373, is further amended as follows:

(A) By redesignating subdivisions (*a*) and (*b*) thereof subdivisions (1) and (2), respectively.

(B) By striking out the heading and inserting in lieu thereof the following: "FIDUCIARY RETURNS.—(*a*) *Taxable years beginning before January 1, 1944.*"

(C) By striking out the first two sentences of the paragraph beginning with the words "The return in case," and inserting in lieu thereof the following:

The return in case (1) shall be on Form 1040 or 1040A. In case (2) a return is required on Form 1041. If the gross income of the decedent from the beginning of the taxable year to the date of his death was equal to, or in excess of, the credit allowed him by section 25(b) (1) and (3) (computed without regard to his status as head of a family), the executor or administrator shall make a return for such decedent.

(*b*) *Taxable years beginning after December 31, 1943.*—Every fiduciary, or at least one of joint fiduciaries, for taxable years beginning after December 31, 1943, must make a return of income—

(1) *Returns for individuals.*—For the individual whose income is in his charge, if the gross income of such individual is $500 or over.

(2) *Returns for estates and trusts.*—For the estate for which he acts if the gross income of such estate is $500 or over, and for the trust for which he acts if the gross income of such trust is $500 or over, or the net income of such trust, as computed under section 162, is $100 or over, or if any beneficiary of such estate or trust is a nonresident alien.

The return in case (1) shall be on Form 1040. In case (2) a return is required on Form 1041.

(*c*) *General requirements.*—

(D) By striking out the last two sentences of the paragraph beginning with the words "The return in case."

PAR. 40. Section 29.142-2 is amended as follows:

(A) By striking out "RETURN BY GUARDIAN OR COMMITTEE.—A" and inserting in lieu thereof the following: "RETURN BY GUARDIAN OR COMMITTEE.—(*a*) *Taxable years beginning before January 1, 1944.*—For taxable years beginning before January 1, 1944, a."

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

(*b*) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, a fiduciary acting as a guardian of a minor, or as the guardian or committee of an insane person, having a gross income of $500 or more, for the taxable year must make a return for such person on Form 1040, and pay the tax unless in the case of a minor the minor himself makes a return or causes it to be made. As to the use of the optional return see section 29.51-2(*b*).

PAR. 41. Section 29.142-4 is amended by striking out "Form 1040 or 1040A" and inserting in lieu thereof the following: "Form 1040 (or, for taxable years beginning prior to January 1, 1944, Form 1040 or 1040A)."

PAR. 42. There is inserted immediately preceding section 29.143-1 the following:

SEC. 10. CREDITS AGAINST NET INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(d) CREDITS AGAINST NET INCOME IN CASE OF INTEREST ON TAX-FREE COVENANT BONDS.—Section 143(a)(2) (relating to credits against net income in the case of interest on tax-free covenant bonds) is amended by striking out "credits provided in section 25(b)" and inserting in lieu thereof "normal tax exemption provided in section 25(a)(3) and the surtax exemptions provided in section 25(b)".

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 43. Section 29.143-3 is amended as follows:

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

Withholding from interest on bonds or other obligations of corporations issued prior to January 1, 1934, containing a tax-free covenant, shall not be required for taxable years beginning prior to January 1, 1944, if there is filed with the withholding agent when presenting coupons for payment, or not later than February 1 of the following year, an ownership certificate on Form 1000 stating—

(1) In the case of a citizen or resident of the United States, that his net income does not exceed his personal exemption and credit for dependents,

(2) In the case of an estate or trust, that the net income does not exceed the credit allowed under section 163(a)(1); and

if such taxable year begins after December 31, 1942, and prior to January 1, 1944, that the victory tax net income does not exceed the specific exemption of $624.

For taxable years beginning after December 31, 1943, such withholding shall not be required if there is filed with the withholding agent when presenting interest coupons for payment, or not later than February 1 of the following year, an ownership certificate on Form 1000 stating—

(1) In the case of a citizen or resident of the United States, that his net income does not exceed his normal-tax exemption; and

(2) In the case of an estate or trust, that the net income does not exceed the credit allowed in section 163(a)(1) for the purpose of the normal tax.

(B) By striking out the next to the last paragraph and inserting in lieu thereof the following:

A nonresident alien individual not engaged in trade or business within the United States at any time within the taxable year is subject to the tax imposed by section 211(a) on gross income and is not entitled to any personal exemption or credit for dependents for taxable years beginning before January 1, 1944, or to the normal-tax exemption or the surtax exemptions for taxable years beginning after December 31, 1943. A nonresident alien individual who is engaged in trade or business within the United States at any time during the taxable year is entitled to the personal exemption for taxable years beginning before January 1, 1944, and to the normal-tax exemption and the surtax exemption allowed by section 25(b)(1)(A) for taxable years beginning after December 31, 1943. If such nonresident alien is a resident of Canada or Mexico, he is also entitled to the credit for dependents for taxable years beginning before January 1, 1944, and to the surtax exemptions allowed by section 25(b)(1)(B) and (C) for taxable years beginning after December 31, 1943. The benefit of such exemptions or credit for dependents may not be received by filing a claim therefor with the withholding agent. However, in the determination of the tax to be withheld at the source under section 143(b) with respect to remuneration paid on or after July 1, 1943, for labor or personal services performed within the United States by a nonresident alien, the benefit of the personal exemption for taxable years beginning before January 1, 1944, or the normal-tax and surtax exemptions for taxable years beginning after December 31, 1943, shall be allowed, prorated upon the basis of $1.40 per day for the period of employment during any portion of which labor or personal services are performed within the United States by such alien. Thus if A, a nonresident alien seaman employed by the X Shipping Corporation, is paid upon the termination of the voyage and such voyage covers 100 days, and A performed personal services within the United States during, or incident to, such voyage, the amount of $140 will be allocated as the portion of the personal exemption or normal-tax and surtax exemptions to be allowed as a credit against the remuneration of A for personal services performed within the United States during such voyage and withholding shall be applied against the balance, if any, of such remuneration. If, for example, the total remuneration paid to A for such voyage is $800, of which the sum of $120 is allocable to sources within the United States, there is no withholding. As to what constitutes remuneration for labor or personal services rendered within the United States, see section 119(a)(3) and section 29.119-4. The amount of the compensation allocable to labor or personal services performed within the United States together with the amount of the personal exemption or normal-tax and surtax exemptions, prorated as set forth in this paragraph, shall be shown on the annual withholding return, Form 1042.

PAR. 44. There is inserted immediately preceding section 29.145-1 the following:

SEC. 6. REPEAL OF VICTORY TAX. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) TECHNICAL AMENDMENTS.—

* * * * * * *

(6) Section 145(e) (cross reference) is amended to read as follows:

"(e) For penalties for failure to file information returns with respect to foreign personal holding companies and foreign corporations, see section 340."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 45. Section 29.146-1 is amended by striking out the second sentence and inserting in lieu thereof the following:

In such a case the taxpayer is entitled to the personal exemption and credit for dependents, if otherwise allowable, but the amount allowable as personal exemption and credit for dependents (for taxable years beginning before January 1, 1944) and the amount of the normal-tax exemption and the surtax exemptions (for taxable years beginning after December 31, 1943) shall be reduced proportionately to the length of the period for which the return is made.

PAR. 46. Section 29.147-3, as amended by Treasury Decision 5313, approved December 21, 1943 [C. B. 1944, 308], is further amended as follows:

(A) By striking out clause (*g*) and inserting in lieu thereof the following:

(*g*) Payment of salaries, or other compensation for personal services, aggregating less than $624 for a calendar year prior to the calendar year 1944 made to a married individual (citizen or resident);

(B) By inserting immediately after "W-2," in clause (*i*) "W-2 (Rev.),".

PAR. 47. There is inserted immediately preceding section 29.162-1 the following:

SEC. 9. OPTIONAL STANDARD DEDUCTION. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * * *

(b) ESTATES, TRUSTS, AND COMMON TRUST FUNDS.—

(1) ESTATES AND TRUSTS.—Section 162 (relating to net income of estates and trusts) is amended by inserting at the end thereof the following:

"(f) The standard deduction provided in section 23(aa) shall not be allowed."

* * * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 48. There is inserted immediately preceding section 29.163-1 the following:

SEC. 10. CREDITS AGAINST NET INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * * *

(e) CREDITS OF ESTATE OR TRUST AGAINST NET INCOME.—Section 163 (a)(1) (relating to credits of estates and trusts against net income) is amended to read as follows:

"(1) For the purpose of the normal tax an estate shall be allowed the same normal tax exemption as is allowed to a single person under section 25(a)(3). For the purpose of the surtax an estate shall be allowed the same surtax exemption as is allowed to an individual under section 25(b)(1)(A). A trust shall be allowed a credit of $100 against net income for the purpose of the normal tax and a credit of $100 against net income for the purpose of the surtax. Such credits shall be in lieu of the normal tax exemption under section 25(a)(3) and the surtax exemption under section 25(b)(1)(A)."

* * * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 49. Section 29.163-1 is amended as follows:

(A) By inserting immediately preceding the period in the heading of subsection (*a*) thereof the following: "*for taxable years beginning before January 1, 1944.*"

(B) By striking out of the first sentence of subsection (*a*) the word "An" and inserting in lieu thereof "For taxable years beginning before January 1, 1944, an."

(C) By redesignating subsections (*b*) and (*c*) thereof subsections (*c*) and (*d*), respectively.

(D) By inserting immediately after subsection (*a*) thereof the following:

(*b*) *Normal-tax exemption and surtax exemption allowed estates and trusts.*—For taxable years beginning after December 31, 1943, an estate is allowed the same normal-tax exemption, namely, $500, as is allowed a single person under section 25(a)(3) and the same surtax exemption, namely, $500, as is allowed an individual under section 25(b)(1)(A). For proration of the normal-tax exemption and of the surtax exemption in the case of a fractional part of a year resulting from the termination by the Commissioner under section 146 of the taxable period, see section 29.47-1. A trust is allowed for both normal tax and surtax purposes a credit of $100 against net income. A credit for dependents is not allowable to an estate or trust.

(E) By striking out the third to the last sentence in subsection (*d*) (previously designated (*c*)) and inserting in lieu thereof the following:

For taxable years beginning before January 1, 1944, each beneficiary is entitled to but one personal exemption, no matter from how many trusts he may receive income. For taxable years beginning after December 31, 1943, no additional normal-tax exemption or surtax exemption is allowable to the beneficiary of a trust by reason of the receipt of income from such trust.

PAR. 50. There is inserted immediately preceding section 29.169-1 the following:

SEC. 9. OPTIONAL STANDARD DEDUCTION. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) ESTATES, TRUSTS, AND COMMON TRUST FUNDS.—

* * * * * * *

(2) COMMON TRUST FUNDS.—Section 169(d) (relating to income of common trust funds) is amended by inserting at the end thereof the following:

"(4) The standard deduction provided in section 23(aa) shall not be allowed."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 51. There is inserted immediately preceding section 29.183–1 the following:

SEC. 9. OPTIONAL STANDARD DEDUCTION. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(c) PARTNERSHIPS.—Section 183 (relating to partnership income) is amended—

(1) by striking out "(b) and (c)" in subsection (a) and inserting in lieu thereof "(b), (c), and (d)"; and

(2) by inserting at the end thereof the following:

"(d) STANDARD DEDUCTION.—In computing the net income of the partnership, the standard deduction provided in section 23(aa) shall not be allowed."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 52. Section 29.211–7(*c*) is amended by striking from the second sentence " of 6 per cent imposed by section 11, the graduated surtax imposed by section 12(b), and the victory tax imposed by section 450 " and inserting in lieu thereof ", the surtax, and, for taxable years beginning in 1943, the victory tax."

PAR. 53. Section 29.212–1(*b*) is amended by striking from the first sentence of the second paragraph " of 6 per cent, the surtax, and the victory tax " and inserting in lieu thereof ", the surtax, and, for taxable years beginning in 1943, the victory tax."

PAR. 54. There is inserted immediately preceding section 29.213–1 the following:

SEC. 9. OPTIONAL STANDARD DEDUCTION. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(d) NONRESIDENT ALIENS.—Section 213 (relating to deductions in computing net income of certain nonresident aliens) is amended by inserting at the end thereof the following:

"(d) STANDARD DEDUCTION.—The standard deduction provided in section 23(aa) shall not be allowed."

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 55. There is inserted immediately preceding section 29.214–1 the following:

SEC. 10. CREDITS AGAINST NET INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(f) CREDITS OF NONRESIDENT ALIENS AGAINST NET INCOME.—Section 214 (relating to credits of nonresident aliens against net income) is amended to read as follows:

"SEC. 214. CREDITS AGAINST NET INCOME.

"In the case of a nonresident alien individual who is not a resident of a contiguous country, the normal tax exemption allowed by section 25(a)(3) shall be only $500 and the surtax exemptions allowed by section 25(b)(1)(B) and (C) shall not be allowed."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 56. Section 29.214–1 is amended as follows:

(A) By striking out "(*b*) *United States business.*—In" and inserting in lieu thereof the following: "(*b*) *United States business.*—(1) *Taxable years beginning before January 1, 1944.*—For taxable years beginning before January 1, 1944, in."

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

(2) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, in the case of a nonresident alien individual who at any time within the taxable year was engaged in trade or business within the United States, the normal-tax exemption allowed as a credit against net income by section 25(a)(3) shall be $500, and the surtax exemption shall likewise be $500 except in the case of a nonresident alien individual who is a resident of Canada or Mexico. In the case of a resident of Canada or Mexico, the same normal-tax exemption and the same surtax exemption as in the case of a citizen of the United States shall apply.

PAR. 57. There is inserted immediately preceding section 29.215–1 the following:

SEC. 10. CREDITS AGAINST NET INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(g) CREDITS OF NONRESIDENT ALIEN AGAINST NET INCOME IN CASE OF TAX WITHHELD AT SOURCE.—Section 215(b) (relating to credits of nonresident alien against net income in case of tax withheld at source) is amended by striking out "the personal exemption and credit for dependents" and inserting in lieu thereof "the normal tax exemption and the surtax exemptions".

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 58. There is inserted immediately preceding section 29.251–1 the following:

SEC. 10. CREDITS AGAINST NET INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(h) CREDITS OF CITIZENS ENTITLED TO BENEFITS OF SECTION 251.—Section 251(f) (relating to credits against net income in the case of citizens entitled to the benefits of section 251) is amended to read as follows:

"(f) CREDITS AGAINST NET INCOME.—A citizen of the United States entitled to the benefits of this section shall be allowed a normal tax

exemption of only $500 and shall not be allowed the surtax exemptions allowed by section 25(b)(1)(B) and (C)."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 59. There is inserted immediately preceding section 29.291–1 the following:

SEC. 6. REPEAL OF VICTORY TAX. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) TECHNICAL AMENDMENTS.—

* * * * * * *

(7) Section 291(b) (cross reference) is repealed.

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 60. There is inserted immediately preceding section 29.294–1, as added by Treasury Decision 5305, approved November 12, 1943, the following:

SEC. 6. REPEAL OF VICTORY TAX. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) TECHNICAL AMENDMENTS.—

* * * * * * *

(8) Section 294(d)(2) (relating to substantial underestimate of estimated tax) is amended by striking out ", 35, and 466(e)" and inserting in lieu thereof "and 35".

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 61. There is inserted immediately preceding section 29.322–1 the following:

SEC. 6. REPEAL OF VICTORY TAX. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(b) TECHNICAL AMENDMENTS.—

* * * * * * *

(9) Section 322(a)(2) (relating to excessive withholding) is amended by striking out "Part II of Subchapter D or" and by striking out "or 466(e)".

(10) Section 322(e) (relating to presumption as to date of payment) is amended by striking out "under Part II of Subchapter D or" and "or section 466(e)".

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 62. Section 29.322-3, as amended by Treasury Decision 5333, approved February 28, 1944 [C. B. 1944, 358], is further amended as follows:

(A) By inserting in the first paragraph immediately after "Form 1040A" the following: ", or by the use of Form W-2 (Rev.),".

(B) By inserting in the second paragraph immediately after "Form 843." the following:

The filing of a properly executed return on Form W-2 (Rev.) shall constitute an election by the taxpayer to have the return treated as a claim for refund and such return shall constitute a claim for refund within the meaning of section 322 for the amount of the overpayment shown by the collector's computation of the tax on the basis of the return. For the purposes of section 322 such claim shall be considered as filed on the date on which such return is considered as filed. In any case in which a taxpayer elects to have an overpayment refunded to him he may not thereafter change his election to have the overpayment applied as a payment on account of his estimated tax.

PAR. 63. There is inserted immediately preceding section 29.400-1 the following:

SEC. 5. ALTERNATIVE TAX ON INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IN GENERAL.—Supplement T of Chapter 1 (relating to the alternative tax on individuals with gross income from certain sources of less than $3,000) is amended to read as follows:

"SUPPLEMENT T—INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000

"SEC. 400. IMPOSITION OF TAX.

"In lieu of the taxes imposed by sections 11 and 12, there shall be levied, collected, and paid for each taxable year upon the net income of each individual whose adjusted gross income for such year is less than $5,000, and who has elected to pay the tax imposed by this supplement for such year, the tax shown in the following table:

If the adjusted gross income is—		And the number of surtax exemptions is—					If the adjusted gross income is—		And the number of surtax exemptions is—								
At least	But less than	1	2	3	4	5 or more	At least	But less than	1	2	3	4	5	6	7	8	9 or more
		The tax shall be							The tax shall be								
$0	$550	$0	$0	$0	$0	$0	$2,300	$2,325	$364	$264	$164	$64	$47	$47	$47	$47	$47
550	575	1	0	0	0	0	2,325	2,350	369	269	169	69	48	48	48	48	48
575	600	7	1	1	1	1	2,350	2,375	374	274	174	74	49	49	49	49	49
600	625	12	2	2	2	2	2,375	2,400	379	279	179	79	49	49	49	49	49
625	650	17	2	2	2	2	2,400	2,425	384	284	184	84	50	50	50	50	50
650	675	22	3	3	3	3	2,425	2,450	390	290	190	90	51	51	51	51	51
675	700	27	4	4	4	4	2,450	2,475	395	295	195	95	51	51	51	51	51
700	725	32	4	4	4	4	2,475	2,500	400	300	200	100	52	52	52	52	52
725	750	38	5	5	5	5	2,500	2,525	405	305	205	105	53	53	53	53	53
750	775	43	6	6	6	6	2,525	2,550	410	310	210	110	54	54	54	54	54
775	800	48	6	6	6	6	2,550	2,575	415	315	215	115	54	54	54	54	54
800	825	53	7	7	7	7	2,575	2,600	421	321	221	121	55	55	55	55	55
825	850	58	8	8	8	8	2,600	2,625	426	326	226	126	56	56	56	56	56
850	875	64	8	8	8	8	2,625	2,650	431	331	231	131	56	56	56	56	56
875	900	69	9	9	9	9	2,650	2,675	436	336	236	136	57	57	57	57	57
900	925	74	10	10	10	10	2,675	2,700	441	341	241	141	58	58	58	58	58
925	950	79	10	10	10	10	2,700	2,725	446	346	246	146	58	58	58	58	58
950	975	84	11	11	11	11	2,725	2,750	452	352	252	152	59	59	59	59	59
975	1,000	89	12	12	12	12	2,750	2,775	457	357	257	157	60	60	60	60	60
1,000	1,025	95	12	12	12	12	2,775	2,800	462	362	262	162	62	60	60	60	60
1,025	1,050	100	13	13	13	13	2,800	2,825	468	367	267	167	67	61	61	61	61
1,050	1,075	105	14	14	14	14	2,825	2,850	473	372	272	172	72	62	62	62	62
1,075	1,100	[1]110	14	14	14	14	2,850	2,875	479	378	278	178	78	62	62	62	62
1,100	1,125	115	15	15	15	15	2,875	2,900	485	383	283	183	83	63	63	63	63
1,125	1,150	120	20	16	16	16	2,900	2,925	490	388	288	188	88	64	64	64	64
1,150	1,175	126	26	16	16	16	2,925	2,950	496	393	293	193	93	64	64	64	64
1,175	1,200	131	31	17	17	17	2,950	2,975	502	398	298	198	98	65	65	65	65
1,200	1,225	136	36	18	18	18	2,975	3,000	507	403	303	203	103	66	66	66	66
1,225	1,250	141	41	18	18	18	3,000	3,050	516	411	311	211	111	67	67	67	67
1,250	1,275	146	46	19	19	19	3,050	3,100	527	422	322	222	122	68	68	68	68
1,275	1,300	152	52	20	20	20	3,100	3,150	538	432	332	232	132	69	69	69	69
1,300	1,325	157	57	20	20	20	3,150	3,200	549	442	342	242	142	71	71	71	71
1,325	1,350	162	62	21	21	21	3,200	3,250	561	453	353	253	153	72	72	72	72
1,350	1,375	167	67	22	22	22	3,250	3,300	572	463	363	263	163	73	73	73	73
1,375	1,400	172	72	22	22	22	3,300	3,350	583	473	373	273	173	75	75	75	75
1,400	1,425	177	77	23	23	23	3,350	3,400	594	484	384	284	184	84	76	76	76
1,425	1,450	183	83	24	24	24	3,400	3,450	606	496	394	294	194	94	77	77	77
1,450	1,475	188	88	24	24	24	3,450	3,500	617	507	404	304	204	104	79	79	79
1,475	1,500	193	93	25	25	25	3,500	3,550	628	518	415	315	215	115	80	80	80
1,500	1,525	198	98	26	26	26	3,550	3,600	639	529	425	325	225	125	82	82	82
1,525	1,550	203	103	27	27	27	3,600	3,650	651	541	435	335	235	135	83	83	83
1,550	1,575	208	108	27	27	27	3,650	3,700	662	552	446	346	246	146	84	84	84
1,575	1,600	214	114	28	28	28	3,700	3,750	673	563	456	356	256	156	86	86	86
1,600	1,625	219	119	29	29	29	3,750	3,800	684	574	466	366	266	166	87	87	87
1,625	1,650	224	124	29	29	29	3,800	3,850	696	586	477	377	277	177	88	88	88
1,650	1,675	229	129	30	30	30	3,850	3,900	707	597	487	387	287	187	90	90	90
1,675	1,700	234	134	34	31	31	3,900	3,950	718	608	498	397	297	197	97	91	91
1,700	1,725	239	139	39	31	31	3,950	4,000	729	619	509	408	308	208	108	92	92
1,725	1,750	245	145	45	32	32	4,000	4,050	741	631	521	418	318	218	118	94	94
1,750	1,775	250	150	50	33	33	4,050	4,100	752	642	532	429	329	229	129	95	95
1,775	1,800	255	155	55	33	33	4,100	4,150	763	653	543	439	339	239	139	96	96
1,800	1,825	260	160	60	34	34	4,150	4,200	774	664	554	449	349	249	149	98	98
1,825	1,850	265	165	65	35	35	4,200	4,250	786	676	566	460	360	260	160	99	99
1,850	1,875	271	171	71	35	35	4,250	4,300	797	687	577	470	370	270	170	100	100
1,875	1,900	276	176	76	36	36	4,300	4,350	808	698	588	480	380	280	180	102	102
1,900	1,925	281	181	81	37	37	4,350	4,400	819	709	599	491	391	291	191	103	103
1,925	1,950	286	186	86	37	37	4,400	4,450	831	721	611	501	401	301	201	104	104
1,950	1,975	291	191	91	38	38	4,450	4,500	842	732	622	512	411	311	211	111	106
1,975	2,000	296	196	96	39	39	4,500	4,550	853	743	633	523	422	322	222	122	107
2,000	2,025	302	202	102	39	39	4,550	4,600	864	754	644	534	432	332	232	132	109
2,025	2,050	307	207	107	40	40	4,600	4,650	876	766	656	546	442	342	242	142	110
2,050	2,075	312	212	112	41	41	4,650	4,700	887	777	667	557	453	353	253	153	111
2,075	2,100	317	217	117	41	41	4,700	4,750	898	788	678	568	463	363	263	163	113
2,100	2,125	322	222	122	42	42	4,750	4,800	909	799	689	579	473	373	273	173	114
2,125	2,150	327	227	127	43	43	4,800	4,850	921	811	701	591	484	384	284	184	115
2,150	2,175	333	233	133	43	43	4,850	4,900	932	822	712	602	494	394	294	194	117
2,175	2,200	338	238	138	44	44	4,900	4,950	943	833	723	613	504	404	304	204	118
2,200	2,225	343	243	143	45	45	4,950	5,000	954	844	734	624	515	415	315	215	119
2,225	2,250	348	248	148	48	45											
2,250	2,275	353	253	153	53	46											
2,275	2,300	359	259	159	59	47											

[1] As amended by section 2, Public law 390, Seventy-eighth Congress, approved June 30, 1944.

Normal tax exemption in case of husband and wife: If the return includes gross income of both husband and wife, the tax shall be that determined under the table, reduced by 3 per centum of the smaller adjusted gross income, but not by more than $15.00.

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 64. Section 29.400–1, as amended by Treasury Decision 5360, approved April 19, 1944 [C. B. 1944, 361], is further amended as follows:

(A) By striking out the heading and inserting in lieu thereof the following: "SCOPE AND APPLICATION OF SUPPLEMENT T.—(*a*) *Calendar years 1942 and 1943.*"

(B) By striking out the second and third sentences and inserting in lieu thereof the following:

For the purposes of the $3,000 limitation in effect for the calendar years 1942 and 1943, the amount of an individual's gross income shall be determined without subtracting any amount on account of such individual's dependents.

(C) By striking out the second sentence of the second paragraph.

(D) By striking out the last two paragraphs thereof and inserting in lieu thereof the following:

(*b*) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, in lieu of the taxes imposed by sections 11 and 12, an individual may elect to pay the tax imposed by section 400 if his adjusted gross income is less than $5,000, regardless of the sources from which such income is derived and regardless of whether such income is computed on the cash basis or on the accrual basis. The application of this paragraph may be illustrated by the following example:

Example. A is employed at a salary of $4,600 for the calendar year 1945. In addition to his salary he received $750 as reimbursement for expenses incurred in the course of his employment during the calendar year. Such items constitute his sole income for 1945. In such case the gross income is $5,350 but the amount of $750 is deducted from gross income in the determination of adjusted gross income and thus A's adjusted gross income for 1945 is $4,600. Hence, the adjusted gross income being less than $5,000, he may elect to pay his tax for 1945 under Supplement T. Similarly, in the case of an individual engaged in trade or business (excluding from the term "engaged in trade or business" the performance of personal services as an employee) there may be deducted from gross income in ascertaining adjusted gross income those expenses directly relating to the carrying on of such trade or business.

For the purposes of determining whether a taxpayer may elect to pay the tax under Supplement T for taxable years beginning after December 31, 1943, the amount of the adjusted gross income, without reference to the number of surtax exemptions to which the taxpayer may be entitled, is controlling. Thus, for example, if X has, for 1945 as his only income, a salary of $5,800 and his spouse has no gross income and derives her entire support from X, then X's adjusted gross income is $5,800 (not $5,800 minus $1,000, or $4,800) and he is not, for such year, entitled to pay his tax under Supplement T. If, however, X has for 1945 a salary of $6,000 and incident to his employment he incurs expenses in the amount of $1,200 for travel, meals, and lodging while away from home, the adjusted gross income is $6,000 minus $1,200, or $4,800. In such case his adjusted gross income being less than $5,000, X may elect to pay the tax under Supplement T. If, however, X's wife has adjusted gross income of $200, thus bringing the aggregate adjusted gross income to $5,000 and his wife joins in a joint return, the taxpayer can not elect to pay the tax under Supplement T.

In the case of husband and wife living together, if their aggregate adjusted gross income is less than $5,000 and each is required to file a return both must, or neither can, elect to pay the tax under Supplement T. If, however, one of such spouses has adjusted gross income of $5,000 or more and the other spouse has adjusted gross income of less than $5,000, the latter spouse may elect to pay the tax under Supplement T provided that the other spouse elects to take the standard deduction provided in section 23(aa).

These restrictions upon the right of a married person to elect to pay the tax under Supplement T are applicable only if such person is married and living with his spouse on the last day of his taxable year or in the event of the death of his spouse during the taxable year, upon the date of such death. For rules relative to the application of these restrictions, see section 29.23(aa)-1(*c*).

To determine the amount of his tax for the taxable year beginning after December 31, 1943, the individual ascertains the amount of his adjusted gross income (without subtracting therefrom any amount with respect to surtax exemptions), refers to the schedule set forth in section 400, as amended, ascertains the income bracket into which such income falls and, using the number of surtax exemptions applicable to his case, finds the tax in the vertical column having at the top thereof a number corresponding to the number of surtax exemptions to which the taxpayer is entitled. Thus, if A has adjusted gross income of $4,415 and has three surtax exemptions, including his surtax exemption for himself, his tax is $611.

In any case in which the taxpayer and his spouse elect to pay the tax imposed by Supplement T upon the basis of a joint return, and the return includes gross income of both husband and wife, the tax determined under the table shall be reduced by 3 per cent of the smaller adjusted gross income but in an amount not in excess of $15. Under the schedule contained in section 400, as amended, no tax is imposed upon a single person, a married person making a separate return, or a married person whose spouse has no gross income, if the adjusted gross income in any such case in less than $550.

For taxable years beginning after December 31, 1943, the fact that the taxable year is a period of less than 12 months resulting by reason of the death of the taxpayer does not prevent the application of Supplement T in the determination of the tax for such period.

PAR. 65. There is inserted immediately preceding section 29.401-1 the following:

SEC. 5. ALTERNATIVE TAX ON INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IN GENERAL.—Supplement T of Chapter 1 (relating to the alternative tax on individuals with gross income from certain sources of less than $3,000) is amended to read as follows:

"SUPPLEMENT T—INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000

* * * * * * *

"SEC. 401. DEFINITION OF 'SURTAX EXEMPTION'.

"As used in the table in section 400, the term 'number of surtax exemptions' means the number of the exemptions allowed under section 25(b) as credits against net income for the purpose of the surtax imposed by section 12.

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 66. Section 29.401-1, as amended by Treasury Decision 5360, is further amended as follows:

(A) By striking out "RULES FOR APPLICATION OF SCHEDULE IN SECTION 400.—For the calendar year 1942 and subsequent calendar years" and inserting in lieu thereof the following: "RULES FOR APPLICATION OF SCHEDULE IN SECTION 400.—(*a*) *Calendar years 1942 and 1943.*—For the calendar years 1942 and 1943."

(B) By striking out examples numbered (5), (6), (7), and (8).

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

(b) *Taxable years beginning after December 31, 1943.*—The term "number of surtax exemptions" means the number of the exemptions allowed under section 25(b) as credits for surtax purposes. One surtax exemption is allowed for the taxpayer; one surtax exemption for his spouse if a joint return is made, or if a separate return is made by the taxpayer and his spouse has no gross income for the calendar year in which the taxable year of the taxpayer begins and is not the dependent of another taxpayer for such calendar year; and one surtax exemption for each dependent whose gross income is less than $500 for such calendar year. After the number of surtax exemptions is ascertained, the tax under Supplement T is determined by reference to the table contained in section 400 in the column appropriate to such number and on the line appropriate to the taxpayer's adjusted gross income.

The application of the provisions of this subsection may be illustrated by the following examples:

Example (1). A, a married man whose duties as an employee require traveling away from his home, has as his sole gross income a salary of $5,600 for the calendar year 1945. His traveling expenses, including cost of meals and lodging, amount in such year to $750, and, hence, his adjusted gross income is $4,850. His wife, B, has as her sole income dividends of $85, and thus the aggregate adjusted gross income of A and B is $4,935. A has two dependent children neither of whom has any income. A and B file a joint return for 1945 on Form 1040, electing not to use the optional return Form W–2 (Rev.). In such case four surtax exemptions are allowable. The adjusted gross income falls within the tax bracket $4,900–$4,950. By referring to the bracket and to the column headed "4" in the tax table, the tax is found to be $613. However, since B has adjusted gross income of $85, such tax must be reduced by 3 per cent of $85, or $2.55, thus producing a net tax of $610.45.

Example (2). C, a married man, has as his sole income in 1945 wages of $4,600, and has two dependent children neither of whom has any income. His wife, D, has adjusted gross income of $400. C files a separate return for 1945 and is entitled to claim three surtax exemptions. C's income falls within the tax bracket $4,600–$4,650, and hence, with three surtax exemptions his tax is $656. No surtax exemption is allowed with respect to D since D had gross income and a joint return was not filed.

PAR. 67. There is inserted immediately preceding section 29.402–1 the following:

SEC. 5. ALTERNATIVE TAX ON INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IN GENERAL.—Supplement T of Chapter 1 (relating to the alternative tax on individuals with gross income from certain sources of less than $3,000) is amended to read as follows:

"SUPPLEMENT T—INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000

* * * * * * *

"SEC. 402. MANNER AND EFFECT OF ELECTION.

"The election referred to in section 400 shall be exercised in the manner provided in regulations prescribed by the Commissioner with the approval of the Secretary. For cases in which election to take the standard deduction also constitutes an election to pay the tax imposed by this supplement, see section 23(aa)(3)(D). For cases in which election to file a return without showing tax thereon constitutes an election to pay the tax imposed by this supplement, see section 51(f).

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 68. Section 29.402-1 is amended as follows:

(A) By striking out "MANNER OF ELECTION TO COMPUTE TAX UNDER SUPPLEMENT T.—A" and inserting in lieu thereof the following: "MANNER OF ELECTION TO COMPUTE TAX UNDER SUPPLEMENT T.—(*a*) *Calendar years 1942 and 1943.*—For the calendar years 1942 and 1943, a."

(B) By adding at the end thereof the following new subsection:

(*b*) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, the taxpayer elects to pay his income tax under Supplement T either by (1) filing a return of his gross income on Form W-2 (Rev.), prescribed in section 29.51-2, or (2) by filing a return on Form 1040 and electing in such return, in the manner prescribed in section 29.23(aa)-1(*b*), to take the standard deduction provided in section 23(aa). In the case of husband and wife, if the aggregate gross income of the spouses is less than $5,000, the election may be made by the filing of a return on Form W-2 (Rev.), or by the filing of a return on Form 1040 and electing thereon to take the standard deduction. If one spouse has less than $5,000 gross income and the other spouse has gross income of $5,000 or more and the latter spouse, in filing his or her return, claims the standard deduction provided in section 22(aa), then the former spouse may file on Form W-2 (Rev.) and such filing shall constitute an election by such spouse to pay the tax imposed under Supplement T. If, however, the spouse with gross income of $5,000 or more, in filing his or her return, does not elect to take such standard deduction, then the other spouse may not elect to pay the tax imposed by Supplement T.

PAR. 69. There is inserted immediately following section 403 the following:

SEC. 5. ALTERNATIVE TAX ON INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IN GENERAL.—Supplement T of Chapter 1 (relating to the alternative tax on individuals with gross income from certain sources of less than $3,000) is amended to read as follows:

"SUPPLEMENT T—INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000

* * * * * *

"SEC. 403. CREDITS NOT ALLOWED.

"For credits against tax and against net income not allowed, in the case of a taxpayer who elects to pay the tax imposed by this supplement, because of the fact that such election constitutes an election to take the standard deduction, see section 23(aa).

* * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 70. There is inserted immediately preceding section 29.404-1 the following:

SEC. 5. ALTERNATIVE TAX ON INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IN GENERAL.—Supplement T of Chapter 1 (relating to the alternative tax on individuals with gross income from certain sources of less than $3,000) is amended to read as follows:

"SUPPLEMENT T—INDIVIDUALS WITH ADJUSTED GROSS INCOME OF LESS THAN $5,000

* * * * * * *

"SEC. 404. CERTAIN TAXPAYERS INELIGIBLE.

"This supplement shall not apply to a nonresident alien individual, to a citizen of the United States entitled to the benefits of section 251, to an estate or trust, or to an individual making a return for a period of less than twelve months on account of a change in the accounting period. For provisions making both husband and wife ineligible to elect to pay the tax imposed by this supplement if either does not elect to take the standard deduction, see section 23(aa)(4)."

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 71. Section 29.404–1, as amended by Treasury Decision 5360, is further amended as follows:

(A) By striking out the following: "TAXPAYERS TO WHOM SUPPLEMENT T IS INAPPLICABLE.—The " and inserting in lieu thereof the following: "TAXPAYERS TO WHOM SUPPLEMENT T IS INAPPLICABLE.—(*a*) *Calendar years 1942 and 1943.*—For the calendar years 1942 and 1943, the."

(B) By striking out the semicolon and the word " or " at the end of subdivision (4) and inserting a period in lieu thereof.

(C) By striking out subdivision (5) thereof.

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

(*b*) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, the following taxpayers are ineligible to file a return and pay the tax under Supplement T:

(1) a nonresident alien individual;

(2) a citizen of the United States entitled to the benefits of section 251;

(3) an estate or trust;

(4) an individual who makes a return for a period of less than 12 months on account of a change in the accounting period;

(5) an individual for whom a return is required for a fractional part of a year under section 146(a).

See section 23(aa)(4) for provisions making both husband and wife ineligible to elect to pay the tax under Supplement T if either spouse does not elect to take the standard deduction.

PAR. 72. There is inserted immediately preceding section 29.450–1 the following:

SEC. 6. REPEAL OF VICTORY TAX. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

(a) IN GENERAL.—Subchapter D of Chapter 1 (relating to the victory tax) is repealed.

* * * * * * *

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

PAR. 73. There is inserted immediately preceding section 29.3797–1 the following:

SEC. 10. CREDITS AGAINST NET INCOME. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

* * * * * * *

(1) DEFINITION OF HUSBAND AND WIFE.—Section 3797(a)(17) (defining husband and wife for certain purposes) is amended by striking out "25(b)(2)(A), and 171, and the last sentence of section 401(a)(2)" and inserting in lieu thereof "171, and the last sentence of section 25(b)(3)".

SEC. 2. TAXABLE YEARS TO WHICH APPLICABLE. (INDIVIDUAL INCOME TAX ACT OF 1944, PART I.)

Except as otherwise expressly provided, the amendments made by this part shall be applicable with respect to taxable years beginning after December 31, 1943.

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., 62) and sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the Individual Income Tax Act of 1944 (Public law 315, Seventy-eighth Congress).)

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

Approved December 29, 1944.

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

(Filed with the Division of the Federal Register December 30, 1944, 4.25 p. m.)

SECTION 29.11–1: Income tax on individuals. 1945–13–12070
T. D. 5458

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

Regulations 111 amended to correct minor miscellaneous errors.

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

To Collectors of Internal Revenue and Others Concerned:

In order to correct certain minor miscellaneous errors appearing in Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], as last amended by Treasury Decision 5454, approved May 10, 1945 [page 68, this Bulletin], such regulations are amended as follows:

PARAGRAPH 1. The fifth sentence of section 29.11–1, as amended by Treasury Decision 5425, approved December 29, 1944 [page 10, this Bulletin], is amended by inserting "35," immediately following "32,".

PAR. 2. The second sentence of section 29.22(a)–8 is amended by striking out "paragraphs (1), (2), (3), (4), and (5) of."

PAR. 3. Subsection (*a*) of section 29.22(b)(4)–4 is amended as follows:

(A) The first sentence of the second paragraph is amended by inserting immediately following the words "income tax return" the words "for any taxable year beginning before January 1, 1944,".

(B) The fourth paragraph is amended by striking therefrom " partnerships,".

PAR. 4. The first sentence of section 29.23(a)-2 is amended by striking out " lodgings " and inserting in lieu thereof " lodging."

PAR. 5. The fourth sentence of the last paragraph of section 29.23(b)-1 is amended to read as follows:

(See, however, section 121.)

PAR. 6. The sixth sentence of section 29.23(c)-1 is amended by striking out " 29.131-8 " and inserting in lieu thereof " 29.131-9."

PAR. 7. Section 29.23(e)-3 is amended as follows:

(A) By striking " capital " from the first sentence.

(B) By striking " or to other than capital assets " from the fourth sentence.

PAR. 8. The second sentence of section 29.23(g)-1 is amended by striking out " 29.117(a)-1 " and inserting in lieu thereof " 117(a)(1)."

PAR. 9. Section 29.23(k)-6 is amended by striking out " amendment " in the last sentence of the second paragraph and inserting in lieu thereof " section."

PAR. 10. Section 29.23(m)-1, as amended by Treasury Decision 5413, approved October 31, 1944 [C. B. 1944, 124], is further amended as follows:

(A) By striking out " 29.23(m)-28 " from the first sentence of the portion designated (*f*) and inserting in lieu thereof " 29.23(m)-19."

(B) By striking out " 29.23(m)-28 " from the first sentence of the portion designated (*g*) and inserting in lieu thereof " 29.23(m)-19."

PAR. 11. Section 29.27(i)-1 is amended as follows:

(A) The first sentence of the second paragraph is amended by striking out " sections 27 (h) and (i)" and inserting in lieu thereof " section 27 (h) and (i)."

(B) The last sentence of example (1) is amended by striking out " dividends paid on July 15 " and inserting in lieu thereof " dividend paid on July 15."

(C) Example (2) is amended by striking out " dividends paid on July 15 " and inserting in lieu thereof " dividend paid on July 15."

PAR. 12. In order to correct a typographical error in section 28(d)(1), as set forth preceding section 29.28(d)-1, the word " the " is stricken from the phrase " in accordance with the regulations prescribed."

PAR. 13. The third sentence of the second paragraph of section 29.44-4 is amended by striking out " if ascertained to be worthless and charged off within the taxable year " and inserting in lieu thereof " if uncollectible."

PAR. 14. The fourth sentence of section 29.47-1, as amended by Treasury Decision 5425, is amended by striking out " 29.56-1(a)" and inserting in lieu thereof " 29.56-1."

PAR. 15. The third sentence of section 29.52-1 is amended to read as follows:

For returns of insurance companies, see sections 29.201-1, 29.[illegible]-1, and 29.207-1; of foreign corporations, see section 235; and of affiliated corporations, see section 141 and section 29.141-1.

PAR. 16. The last sentence of section 29.101(8)-1 is amended by striking out " in the Code " and inserting in lieu thereof " in section 101."

PAR. 17. Section 29.101(11)–1 is amended by striking out the last sentence.

PAR. 18. The first sentence of section 29.101(12)–1 is amended by striking out " and shall not be required to file returns."

PAR. 19. The first sentence of the second paragraph of section 29.101(18)–1 is amended by inserting after the word " return," first appearing in such sentence, the words " on Form 1120."

PAR. 20. Section 29.102–4 is amended as follows:

(A) By striking out the period at the end of the second sentence and inserting in lieu thereof:

; (*d*) the credit for income subject to the tax imposed by Subchapter E of Chapter 2 provided in section 26(e).

(B) By striking out " in (*a*), (*b*), and (*c*) above " in the third and fourth sentences and inserting in lieu thereof " in (*a*), (*b*), (*c*), and (*d*) above."

PAR. 21. The first sentence of section 29.107–2 is amended by striking out " Section 107(b) provides that the gross income " and inserting in lieu thereof " Section 107(b) provides that if, in the taxable year, the gross income."

PAR. 22. In order to correct a typographical error in the first sentence of section 112(f), as set forth preceding section 29.112(f)–1, the phrase " compulsorily and involuntarily " is changed to read " compulsorily or involuntarily."

PAR. 23. The last sentence of section 29.113(a)(22)–1, as amended by Treasury Decision 5433, approved January 26, 1945 [page 158, this Bulletin], is further amended by striking out " $6,500 " and inserting in lieu thereof " $7,500."

PAR. 24. In order to correct a typographical error in section 124(f)(1), as set forth preceding section 29.124–0, the phrase " Sectary of the Navy " is changed to " Secretary of the Navy."

PAR. 25. Subsection (*b*) of section 29.125–8 is amended by striking out " is allowable as a deduction " and inserting in lieu thereof " are allowable as deductions."

PAR. 26. Section 29.126–1, as amended by Treasury Decision 5389, approved July 10, 1944 [C. B. 1944, 196], is further amended as follows:

(A) The next to the last sentence is amended by striking out " the tax attributable " and inserting in lieu thereof " the surtax attributable."

(B) The last sentence is amended by striking out " The tax attributable " and inserting in lieu thereof " The surtax attributable."

PAR. 27. The third example in section 29.131–8 is amended by striking out " 85 per cent on dividends received " and inserting in lieu thereof " 85 per cent of dividends received."

PAR. 28. In order to correct a typographical error in section 141(h), as set forth preceding section 29.141–1, the phrase " for any taxable " is changed to read " for any taxable year."

PAR. 29. The first sentence of section 29.162–1, as amended by Treasury Decision 5380, approved June 22, 1944 [C. B. 1944, 310], is amended by striking out " there is deductible " and inserting in lieu thereof " there are deductible."

PAR. 30. The last sentence of the fourth paragraph of subsection (*d*) of section 29.162-2, as amended by Treasury Decision 5380, is amended by striking out "calendar year 1943" and inserting in lieu thereof "calendar year 1942."

PAR. 31. The third sentence of example (2) of subsection (*g*) of section 29.207-4, as amended by Treasury Decision 5369, approved May 11, 1944 [C. B. 1944, 333], is amended by striking out "is apportioned" and inserting in lieu thereof "are apportioned."

PAR. 32. The second sentence of subsection (*b*) of section 29.236-1, as amended by Treasury Decision 5339, approved March 9, 1944 [C. B. 1944, 338], is amended by striking out "section 29.56-1(*a*)" and inserting in lieu thereof "section 25.56-1."

PAR. 33. The first sentence of section 29.311-1 is amended by striking out "Revised Statutes, as amended, in respect of any income tax imposed by Chapter 1 (paragraph 81 of the Appendix to these regulations)," and inserting in lieu thereof "Revised Statutes, as amended (paragraph 81 of the Appendix to these regulations) in respect of any income tax imposed by Chapter 1,".

PAR. 34. The example at the end of section 29.393-1 is amended to read as follows:

Example. The X Corporation, a personal service corporation, has for the calendar year 1942 a net income, as computed under Chapter 1, of $190,000. The Federal income tax payable under Chapter 1 for that year amounts to $76,000. Contributions or gifts payment of which is made during the taxable year to or for the use of donees described in section 23(q) for the purposes therein specified amount to $35,000. The Supplement S net income of the corporation is $94,000, computed as follows:

Net income under Chapter 1		$190,000
Add: Contributions deductible in computing net income under section 21		10,000
Net income computed without the benefit of any deduction for contributions		200,000
Less: Federal income tax	$76,000	
Contributions deductible under section 393(b) (15 per cent of $200,000)	30,000	
		106,000
Supplement S net income		94,000

PAR. 35. The first sentence of section 29.394-2 is amended to read as follows:

Each shareholder of a personal service corporation who as of the last day of the taxable year of the corporation is required to include in his gross income his proportionate share of the undistributed Supplement S net income of the corporation shall, for the purposes of the tax imposed by section 11 (normal income tax), section 13 (tax on corporations in general), section 14 (tax on special classes of corporations), section 201 (tax on life insurance companies), section 204 (tax on insurance companies other than life or mutual, and mutual marine insurance companies), section 207 (tax on mutual insurance companies other than life or marine), or section 362 (tax on regulated investment companies), be allowed a credit against net income of his proportionate share of the interest specified in section 25(a)(1), interest on United States obligations, or section 25(a)(2), interest on obligations of instrumentalities of the United States, which is included in the gross income of the corporation.

PAR. 26. Section 29.502-1(8) is amended by striking out "section 502(a)" and inserting in lieu thereof "section 502(e)."

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

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

Approved June 15, 1945.

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

(Filed with the Division of the Federal Register June 16, 1945, 3.39 p. m.)

SECTION 12.—SURTAX ON INDIVIDUALS.

SECTION 29.12-2: Computation of surtax.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5425, page 10.)

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.

Trading in securities on a "when issued" basis. (See I. T. 3721, page 164.)

SECTION 19.22(a)-1: What included in gross income. 1945-6-11991 Ct. D. 1633

INCOME TAX—REVENUE ACT OF 1938—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. GROSS INCOME—COMPENSATION FOR SERVICES—EXERCISE OF OPTION TO PURCHASE STOCK.

In 1934 a corporation employing the taxpayer gave him, "in consideration of services rendered" prior to that date, an option to purchase, at a price not less than the then value, a specified proportion of such shares of stock of another corporation as it might be entitled to receive under its management contract with that corporation. In 1938 the corporation became entitled to receive the stock, and in 1938 and 1939 the taxpayer exercised his option and acquired a large amount thereof on payment of the option price. *Held:* The excess in value of the shares of stock over the option price in the years when the option was exercised and the shares were received by the taxpayer was compensation for his services, taxable as income in those years, under sections 22(a) of the Revenue Act of 1938 and the Internal Revenue Code, and the applicable regulations. The compensation for taxpayer's services which the parties contemplated was not confined to the mere delivery to him of an option of no present value, but included the compensation obtainable by the exercise of the option given for that purpose. It does not follow that in other circumstances not here present the option itself, rather than the proceeds of its exercise, could not be found to be the only intended compensation.

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Ninth Circuit (142 Fed. (2d), 818), reversing memorandum opinion of The Tax Court, reversed.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. *John H. Smith.*
[324 U. S., 177.]

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

[February 26, 1945.]

OPINION.

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

Respondent's employer gave to him, as compensation for his services, an option to purchase from the employer certain shares of stock of another corporation at a price not less than the then value of the stock. In two later tax years, when the market value of the stock was greater than the option price, respondent exercised the option, purchasing large amounts of the stock in each year. The question for decision is whether the difference between the market value and the option price of the stock was compensation for personal services of the employee, taxable as income in the years when he received the stock, under section 22(a) of the Revenue Act of 1938 (ch. 289, 52 Stat., 447) and section 22(a) of the Internal Revenue Code (26 U. S. C., section 22(a)).

Upon a petition to review the Commissioner's finding of a tax deficiency against respondent for those years, The Tax Court sustained the Commissioner. The Court of Appeals for the Ninth Circuit reversed (142 Fed. (2d), 818), holding that there was no finding and no evidence to support a finding, that the option was intended to enable respondent to make a "bargain purchase" or that the stock was issued to him as compensation for services. It concluded that the exercise of the option was a mere purchase of a capital investment which could result in taxable income only upon sale of the stock. We granted certiorari (323 U. S., —), on a petition which asserted conflict of the decision below with the decision of the Court of Appeals for the Sixth Circuit in *Connolly's Estate* v. *Commissioner* (135 Fed. (2d), 64).

The Tax Court found that for many years, and at all relevant times, respondent was employed by the Western Cooperage Co. In 1934 Western took over the management of the Hawley Pulp & Paper Co. pursuant to a plan for its reorganization. Hawley was then in financial difficulties, with an indebtedness amounting to $2,790,150. Under its contract with Hawley, Western was to retire annually a certain amount of Hawley's indebtedness. In the event of success in this undertaking, and when the amount of Hawley's indebtedness had been reduced by the sum of $1,400,000, Western was to receive specified amounts of the Hawley company's capital stock as compensation for the services thus rendered.

Respondent, in the course of his employment by Western, was active in the reorganization of the Hawley company. As compensation for his services, the president of Western, in December, 1934, gave respondent an oral option to purchase a part of the Hawley stock, to be acquired by Western under its contract. This action was confirmed by resolution of the board of directors of Western, pursuant to which Western, as of December 10, 1934, and "in consideration of services rendered" by respondent prior to that date, agreed in writing to sell to respondent at his option, at 10 cents a share, a specified proportion of such shares of common stock as it might be entitled to receive under its contract with Hawley. On March 18, 1938, Western became entitled to the stipulated number of shares of the Hawley stock as provided by the contract with Hawley. In that and the following year respondent, by the exercise of his option, acquired from Western large amounts of the stock on payment of the option price.

The Tax Court found that at the date of the option the market price of the stock did not exceed the option price, but that in 1938 the market value of the stock then acquired by respondent exceeded its option price by $81,021. and the value of that acquired in 1939 exceeded the option price by $71,663. The court found from the option itself, the resolution of Western's board of directors, and from petitioner's own testimony, that "Western gave the option to petitioner [respondent here] as compensation for services rendered in effecting the reorganization plan of Hawley." It held that the excess of the market value of the

shares over the option price in the years when the shares were received by respondent, was compensation for his services, taxable as income in those years.

Since The Tax Court found that the market price of the stock on the date of the option did not exceed the option price, it is evident that its finding that the option was given as compensation for respondent's services, had reference to the compensation to be derived from exercise of the option after the anticipated advance in market price of the stock. The option could be exercised only when Western's contract with Hawley had been successfully performed by the reduction of a large part of Hawley's indebtedness, which would result in an increase in the value of Hawley's capital stock to be received by Western subject to respondent's option. Moreover, The Tax Court concluded as a matter of law that the facts which it found, and which we have detailed, brought the case, for the tax year 1938, within the provisions of section 22(a) of the Revenue Act of 1938, and of the interpretative Treasury Regulations 101, article 22(a)–1; and for the tax year 1939, within the identical provisions of section 22(a) of the Internal Revenue Code, and Treasury Regulations 103, article 19.22(a)–1.

Section 22(a) of the Revenue Act defines "gross income" subject to the Act as including "gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid. * * *" Treasury Regulations 101, article 22(a)–1 provides: "If property is transferred * * * by an employer to an employee, for an amount substantially less than its fair market value, regardless of whether the transfer is in the guise of a sale or exchange, such * * * employee shall include in gross income the difference between the amount paid for the property and the amount of its fair market value to the extent that such difference is in the nature of (1) compensation for services rendered. * * *"

Section 22(a) of the Revenue Act is broad enough to include in taxable income any economic or financial benefit conferred on the employee as compensation, whatever the form or mode by which it is effected. (See *Old Colony Trust Co.* v. *Commissioner*, 279 U. S., 716, 729 [Ct. D. 80, C. B. VIII–2, 226 (1929)].) The regulation specifically includes in income, property "transferred * * * by an employer to an employee, for an amount substantially less than its fair market value," even though the transfer takes the form of a sale or exchange, to the extent that the employee receives compensation.

In certain aspects an option may be spoken of as "property" in the hands of the option holder. (Cf. *Helvering* v. *San Joaquin Fruit & Investment Co.*, 297 U. S., 496, 498 [Ct. D. 1098, C. B. XV–1, 196 (1936)]; *Shuster* v. *Helvering*, 121 Fed. (2d), 643, 645.) When the option price is less than the market price of the property for the purchase of which the option is given, it may have present value and may be found to be itself compensation for services rendered. But it is plain that in the circumstances of the present case, the option when given did not operate to transfer any of the shares of stock from the employer to the employee within the meaning of section 22(a) and article 22(a)–1. (Cf. *Palmer* v. *Commissioner*, 302 U. S., 63, 71 [Ct. D. 1284, C. B. 1937–2, 251].) And as the option was not found to have any market value when given, it could not itself operate to compensate respondent. It could do so only as it might be the means of securing the transfer of the shares of stock from the employer to the employee at a price less than their market value, or possibly, which we do not decide, as the option might be sold when that disparity in value existed. Hence the compensation for respondent's services, which the parties contemplated, plainly was not confined to the mere delivery to respondent of an option of no present value, but included the compensation obtainable by the exercise of the option given for that purpose. It of course does not follow that in other circumstances not here present the option itself, rather than the proceeds of its exercise, could not be found to be the only intended compensation.

The Tax Court thus found that the option was given to respondent as compensation for services, and implicitly that the compensation referred to was the excess in value of the shares of stock over the option price whenever the option was exercised. From these facts it concluded that the compensation was taxable as such by the provisions of the applicable Revenue Acts and regulations. We find no basis for disturbing its findings, and we conclude it correctly applied the law to the facts found. Its decision is affirmed, and the judgment of the court of appeals below, reversing it, is

Reversed.

Mr. Justice ROBERTS is of opinion that the judgment should be affirmed for the reasons stated by the Circuit Court of Appeals (142 Fed. (2d), 818).

SECTION 19.22(a)–1: What included in gross income. 1945–8–12028 Ct. D. 1633 (modified)

INTERNAL REVENUE CODE AND REVENUE ACT OF 1938.

Original opinion in *Commissioner of Internal Revenue* v. *John H. Smith* (Ct. D. 1633, page 49, this Bulletin) modified.

No. 371. *Commissioner of Internal Revenue, petitioner,* v. *John H. Smith.* The opinion of the Court is modified by adding the following at the end of the first sentence on page 3 of the opinion [Ct. D. 1633, page 49, this Bulletin, first sentence first full paragraph, page 51]: "Respondent testified that if the option could have been sold at the time he received it, it would have been for only a 'negligible' or 'nominal' amount. He has never contended that the option itself had value when given and there was no finding by The Tax Court that it then had value. The Tax Court, in stating the principle which it deemed applicable to the present case, quoted from *Estate of Edward J. Connolly* (45 B. T. A., 374), as follows: 'If the options had never been exercised the optionees would never have received any additional compensation.'"

SECTION 19.22(a)–1: What included in gross income. 1945–9–12036 Ct. D. 1639

INCOME TAX—REVENUE ACT OF 1938—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. GROSS INCOME — COMPENSATION FOR SERVICES — EXERCISE OF OPTION TO PURCHASE STOCK—RECEIPT OF STOCK—WHEN COMPENSATION TAXABLE.

In 1934 a corporation employing the taxpayer gave him, "in consideration of services rendered" prior to that date, an option to purchase, at a price not less than the then value, a specified proportion of such shares of stock of another corporation as it might be entitled to receive under its management contract with that corporation. In 1938 the taxpayer gave notice of his exercise of the option and paid the option price, but at that time the corporation had a right to receive but a part of the stock subject to the option; its right to the remainder was conditioned upon further payments of certain indebtedness. In 1939 the taxpayer received a substantial part of the stock. *Held:* The finding of The Tax Court that the taxable compensation intended to be secured by the option was in fact received by the taxpayer as and when the shares of the stock were delivered to him and not when he gave notice of his exercise of the option and paid the option price finds ample support in the record and is concurred in by this Court. [Original opinion (Ct. D. 1633, page 49, this Bulletin) handed down February 26, 1945.]

2. REHEARING DENIED.

Taxpayer's petition for rehearing denied April 9, 1945.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. *John H. Smith.*
[324 U. S., 695.]

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

[April 9, 1945.]

OPINION.

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

Respondent, on motion for rehearing in this Court, for the first time contends that if he is taxable at all after the receipt of the option in 1934, he is taxable as of the date in March, 1938, when he exercised his option, and not when he received the stock in later years. The only later year in question is 1939 in which he received a substantial part of the stock. Before the delivery in 1939 and after the exercise of the option in 1938 there was a substantial increase in the value of the stock. He argues that the tax should be measured by the value of the stock in 1938 less the option price (Cf. *Palmer* v. *Commissioner*, 302 U. S., 63, 73 [Ct. D. 1284, C. B. 1937-2, 251].)

It is true that respondent gave notice of his exercise of the option and paid the option price in 1938. But at that time Western, under its contract with Hawley, had a right to receive but a part of the stock subject to respondent's option; its right to the remainder was conditioned upon its making further payments of Hawley's indebtedness. Respondent's option contemplated delivery to him of Hawley's stock only if and when Western became entitled to receive the stock from Hawley. In fact deliveries of the stock were made to respondent upon each occasion only a day or two after Western received it from Hawley.

The Tax Court found that respondent received compensation "when [he] exercised his option and received the stock." We take it that The Tax Court regarded fulfillment of the conditions upon the right of Western to receive the stock, and therefore of the conditions upon the derivative right of respondent to receive it under his option, as prerequisite to the effective exercise of the option; and that the taxable compensation to petitioner intended to be secured by the option was in fact received by respondent as and when the shares of stock were delivered to him, since prior to that time there was no certainty that he would receive the stock. This conclusion of The Tax Court finds ample support in the record, and we concur in it.

We do not have before us a case where by the exercise of an option in one year the taxpayer acquires an unconditional right to receive the stock in a later year. We express no opinion upon the question whether, in such a case, compensation would be received and would be taxable in the earlier or the later year.

The petition for rehearing is denied.

Mr. Justice ROBERTS adheres to his dissent.

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

INTERNAL REVENUE CODE.

Amounts distributed to employees from a health insurance fund. (See I. T. 3738, page 90.)

SECTION 29.22(a)–2: Compensation for personal services. 1945–20–12150 I. T. 3760

INTERNAL REVENUE CODE.

The entire amount of the disability retirement pay (annuity) received by a former officer or employee of the Lighthouse Service under the provisions of the Act of March 4, 1925 (43 Stat., 1261), is subject to Federal income tax.

Advice is requested relative to the status for Federal income tax purposes of the disability retirement pay (annuity) received by a former officer or employee of the Lighthouse Service under the provisions of the Act of March 4, 1925 (43 Stat., 1261).

The Act of March 4, 1925, supra, provides in part as follows:

* * * any officer or employee to whom section 6 of the Act entitled "An Act To authorize aids to navigation and for other works in the Lighthouse Service, and for other purposes," approved June 20, 1918, as amended, applies, who has been in the active service of the Government fifteen years or more and who is found, after examination by a medical officer of the United States, to be disabled for useful and efficient service by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall be retired * * * on an annuity computed in the manner provided in such Act.

Section 6 of the Act of June 20, 1918 (40 Stat., 607, 608), as amended and supplemented, provides, *inter alia*, for the optional retirement of certain classes of officers and employees of the Lighthouse Service who shall have reached the age of 65 years, after having been 30 years in the active service of the Government, and for the compulsory retirement of all such officers and employees who shall have reached the age of 70 years. Section 6 of the Act of June 20, 1918, supra, also provides for the manner in which annuities under that Act are to be computed.

There is no provision in the Act of June 20, 1918, supra, or in any of the Acts amending or supplementing such Act, for the deduction from the pay of an officer or employee of the Lighthouse Service of any amounts to be placed in a retirement fund. Nor do such Acts or other provisions of law provide for the exemption from Federal income tax of any part of the retirement pay received by a former officer or employee of the Lighthouse Service.

In view of the foregoing, it is held that the entire amount of the disability retirement pay (annuity) received by a former officer or employee of the Lighthouse Service under the provisions of the Act of March 4, 1925, supra, is subject to Federal income tax.

SECTION 29.22(a)–2: Compensation for personal services. 1945–24–12190 Ct. D. 1653

INCOME TAX—INTERNAL REVENUE CODE—PUBLIC SALARY TAX ACT OF 1939—DECISION OF COURT.

1. GROSS INCOME—COMPENSATION OF JUDGES OF UNITED STATES COURTS—CONSTITUTIONALITY OF STATUTE.

The portion of section 22(a) of the Internal Revenue Code added by section 3 of the Public Salary Tax Act of 1939, which provides that compensation received by judges of courts of the United States who took office on or before June 6, 1932, shall be included in gross income, is not in violation of Article III of section 1 of the Constitution of

the United States. Accordingly, the salary of a district judge of the United States who qualified for the office on April 3, 1921, is includible in his gross income for the taxable years 1939, 1940, and 1941.

2. DECISION FOLLOWED.

The decision in *O'Malley* v. *Woodrough* (307 U. S., 277, Ct. D. 1401, C. B. 1939-1 (Part 1), 160) states the rule applicable to this case.

3. DECISION AFFIRMED.

Decision of The Tax Court of the United States (4 T. C., 307) affirmed.

4. CERTIORARI DENIED.

Petition for certiorari denied on October 8, 1945.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

William E. Baker and Martha D. Baker, petitioners, v. *Commissioner of Internal Revenue, respondent.*

[149 Fed. (2d), 342.]

On petition to review the decision of The Tax Court of the United States.

Before STONE, Chief Justice of the United States, GRONER, Chief Justice of the United States Court of Appeals for the District of Columbia, and DOBIE, United States Circuit Judge.

[May 10, 1945.]

OPINION.

DOBIE, Circuit Judge: This appeal involves the validity of Federal income taxes. The Commissioner of Internal Revenue (hereinafter called the Commissioner) included within gross income for each of the years 1939, 1940, and 1941, the judicial salary of $10,000 of Hon. William E. Baker, United States district judge for the Northern District of West Virginia, and the Commissioner determined deficiencies resulting from this inclusion. The Commissioner's determination was sustained by The Tax Court of the United States.

Judge Baker's appeal to us presents a single question of law. Is the provision of section 22(a) of the Internal Revenue Code, as added by section 3 of the Public Salary Tax Act of 1939, void, as applied to Judge Baker for the three years in question, on the ground that this section violates Article III, section 1, of the Constitution of the United States?

Article III, section 1, of the Constitution, reads:

"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

Section 3 of the Public Salary Taxing Act of 1939, reads:

"Section 22(a) of the Internal Revenue Code is amended by adding at the end thereof a new sentence to read as follows: 'In the case of judges of courts of the United States who took office on or before June 6, 1932, the compensation received as such shall be included in gross income.'"

The facts of this case are not in dispute. Judge Baker qualified as United States district judge for the Northern District of West Virginia on April 3, 1921. He has since continued, and still continues in that office; has rendered, and still renders, the services thereto incident.

Three cases, all decided by the United States Supreme Court, loom large on the horizon of the present controversy. In *Evans* v. *Gore* (253 U. S., 245 (decided June 1, 1920) [T. D. 3037, C. B. 3, 93 (1920)]) it was decided (to quote a headnote of that case):

"A tax upon the net income of a United States district judge, assessed under the Act of February 24, 1919 (ch. 18, 40 Stat., 1062, section 213) (*passed since he took office*), by including his original salary in the computation, operates to

diminish his compensation, in violation of the Constitution, and is invalid." [Italics ours.]

Mr. Justice Holmes wrote a vigorous dissenting opinion in which Mr. Justice Brandeis concurred. *Miles* v. *Graham* (268 U. S., 501 (decided June 1, 1925) [T. D. 3725, C. B. IV–2, 133 (1925)]) went one step further and invalidated the tax, though Judge Graham was appointed *after* the passage of the Revenue Act of 1918, imposing the income tax on the salaries of Federal judges. Mr. Justice Brandeis dissented. Then came *O'Malley* v. *Woodrough* (307 U. S., 277 (decided May 22, 1939) [Ct. D. 1401, C. B. 1939–1 (Part 1), 160]), which expressly overruled *Miles* v. *Graham* and declared the income tax valid as to a judge appointed *after* the passage of the taxing statute. Mr. Justice Butler dissented.

It will thus be seen that Judge Baker, like Judge Graham, assumed office *after* the passage of the statute of 1918 imposing an income tax on the salaries of Federal judges, and *after* the decision in *Evans* v. *Gore*, supra. Although *Evans* v. *Gore*, supra, declared void the Act of 1918, adopted February 24, 1919 (under which the tax on Judge Evans was imposed), the Court did not rest its decision on the ground that he had taken office before the enactment of the taxing Act. But the fact that Judge Evans was commissioned long prior to the passage of any Act taxing judicial salaries was undoubtedly considered, and accordingly *O'Malley* v. *Woodrough*, in overruling *Miles* v. *Graham* and leaving *Evans* v. *Gore* standing, obviously meant to let the decision in the latter case rest upon its own facts, and in this respect to approve the views of the Attorney General that statutes imposing income taxes on the salaries of Federal judges, appointed after the passage of the salary taxing statutes were valid. (32 Op. Atty. Gen., 248 (1920).) Thus Judge Baker, like Judge Graham and Judge Woodrough, but unlike Judge Evans, assumed office at a time when Congress had committed itself to the policy of taxing the salaries of Federal judges.

It is true that section 22(a) of the Revenue Act of 1932, applicable to Judge Woodrough in *O'Malley* v. *Woodrough*, supra, requiring the inclusion of the salaries of judges of the United States in gross income, for the purpose of income taxes, purported to amend accordingly all Acts fixing the compensation of such judges, while the Revenue Act of 1918, applicable to Judge Baker and Judge Graham, imposed the tax on the salaries of judges without treating it specifically as a reduction or modification of their stated salaries, made in advance of their appointment. But the Supreme Court did not rest its decision in *O'Malley* v. *Woodrough*, supra, upon any such distinction. Instead, in deciding that case the Court found it necessary to overrule *Miles* v. *Graham*, supra, and therefore to restrict the scope of *Evans* v. *Gore*, supra, so far as its reasoning and authority could be deemed to lend support to the decision in *Miles* v. *Graham*, supra. We must take it then that the Woodrough case, inasmuch as it overruled *Miles* v. *Graham*, supra, states the rule applicable to Judge Graham's case, as well as Judge Woodrough's, and it must now be taken to state likewise the rule applicable to Judge Baker when he took office and since. The necessary effect of the Woodrough case seems to us to be that a judge who takes office under an established Congressional policy of taxing his salary becomes entitled only to the salary prescribed by statute less income taxes, and that in consequence his salary is not diminished by the tax within the meaning of *Evans* v. *Gore*, supra, and *Miles* v. *Graham*, supra, as restricted in their application by *O'Malley* v. *Woodrough*, supra.

We agree with The Tax Court that under *O'Malley* v. *Woodrough*, supra, Judge Baker's liability to the tax as established by the 1918 Act, remained unaffected by the Revenue Act of 1921. That Act, adopted November 23, 1921, repealed the 1918 Act as of January 1, 1921, but at the same time reenacted the provisions of the 1918 Act taxing his salary, making the tax applicable to the calendar year 1921 and subsequent years. There was no point of time when his salary was not made subject to the tax.

Nor are we impressed by the argument that Judge Baker fell, by the odd sequence of Congressional enactments, into a sort of statutory taxing vacuum, because by Congressional action he was relieved possibly by the 1929 Act and certainly by the 1932 Act, from income taxation, until the enactment of the 1939 Act, which was made applicable only *in futuro* as to all judges appointed before June 6, 1932. The consequence of the decision in *O'Malley* v. *Woodrough*, supra, as we interpret it, is that the Revenue Act of 1918. like that of 1932, by imposing an income tax on judges' salaries, fixed the salaries for the future at a stated amount less such income taxes as might be imposed. We can not say that a judge is any the less subject to the tax, because in some years prior to the 1939 Act, Congress did not see fit to impose it. We interpret *O'Malley* v. *Woodrough*, supra, as meaning that the tax on Judge Woodrough's salary could be constitu-

tionally increased along with general increases in income taxes, and, if once reduced, that it could be restored to its original amount, as in the case of other taxes.

Since we conclude that in overruling *Miles* v. *Graham*, supra, the decision in the Woodrough case, and the reasoning which supported it, require us to hold that judges taking office under the Act of 1918 became subject to income taxes for the years and the amounts in which Congress might see fit to impose them, we conclude that the judgment of The Tax Court must be affirmed. For this reason we find it unnecessary to consider other independent grounds urged by the Government for sustaining the tax.

Affirmed.

SECTION 29.22(a)-5: Gross income from business. (Also Section 23(a), Section 29.23(a)-1.) 1945-7-12010 I. T. 3724

INTERNAL REVENUE CODE.

Amounts paid in "black market" transactions in excess of ceiling prices established by the Office of Price Administration may not be allowed either as a part of the cost of goods sold or as a business expense deduction in computing income subject to Federal income taxation.

Advice is requested whether a taxpayer may, for Federal income tax purposes, include an amount paid in excess of the ceiling price established by the Office of Price Administration, as a part of the cost of goods sold, or deduct such excess payment as a business expense.

Section 4(a) of the Emergency Price Control Act of 1942 (Title 50, App. U. S. C. A., section 904) provides:

(a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202(b) or section 205(f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 205(b) of the Act (Title 50, App. U. S. C. A., section 925) provides in part:

(b) Any person who willfully violates any provision of section 4 of this Act * * * shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4(c) and for not more than one year in all other cases, or to both such fine and imprisonment. * * *

The courts have consistently held that a taxpayer may not obtain tax advantages from expenditures which are made in contravention of a well-defined public policy which proscribes particular types of conduct. Thus, in *Standard Oil Co.* v. *Commissioner* (129 Fed. (2d), 363, certiorari denied, 317 U. S., 688), the court denied a deduction for a payment made on a judgment for damages in favor of the Government, arising out of a bribery, either as an expense or as a loss, on the grounds of public policy. Among other cases denying tax advantages arising from a payment which was illegal or contrary to public policy are: *Frank A. Maddas* v. *Commissioner* (40 B. T. A., 572, affirmed, 114 Fed. (2d), 548), holding that protective payments made to prohibition agents to secure immunity from prosecution are not deductible;

Rugel v. *Commissioner* (127 Fed. (2d), 393), holding that amounts paid to influence State officials to award the taxpayer a printing contract are not deductible; and *Harden Mortgage Loan Co.* v. *Commissioner* (137 Fed. (2d), 282, certiorari denied, 320 U. S., 791), to the same effect as the decision in the Rugel case. The Supreme Court of the United States has considered this principle with apparent approval. (See *United States* v. *Sullivan*, 274 U. S., 259, T. D. 4028, C. B. VI–2, 177 (1927).) In *Commissioner* v. *Heininger* (320 U. S., 467, Ct. D. 1596, C. B. 1944, 484), the Court observed the principle that a deduction should not be allowed where to allow a tax advantage to flow from the expenditure would frustrate a sharply defined public policy. Also, in *Textile Mills Securities Corporation* v. *Commissioner* (314 U. S., 326, Ct. D. 1532, C. B. 1941–2, 200), the Court sustained the validity of the earlier equivalent of section 29.23(q)–1 of Regulations 111 which denies the deduction of sums spent for lobbying purposes, etc., relying in part on the ground that the general public policy is opposed to such payments.

The foregoing cases support the conclusion that an amount paid to a seller of goods in excess of the legal price for such goods may not properly be recognized for tax purposes. The excess payments are not legitimately to be classified as a part of the cost of goods sold, and public policy decrees that no tax advantage may be derived from such expenditures. To allow the characterization of an amount in excess of the ceiling prices as a part of the cost of goods sold is to allow a mere form set up by the acts of the violators to distort the true nature of the payments so made and to encourage the consequent disregard of the anti-inflationary policies established by the Emergency Price Control Act.

Accordingly, it is held that amounts paid in " black market " transactions in excess of ceiling prices established by the Office of Price Administration may not be allowed either as a part of the cost of goods sold or as a business expense deduction in computing income subject to Federal income taxation.

SECTION 19.22(a)–8: Sale of stock and rights.

INTERNAL REVENUE CODE.

Sale of stock received in nontaxable reorganization where shares sold were traceable to specific shares turned in in exchange. (See Ct. D. 1645, page 153.)

SECTION 19.22(a)–19: Sale of capital assets by corporation. (Also Section 19.22(a)–21.) 1945–7–12002 Ct. D. 1636

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

1. GROSS INCOME—SALE OF SOLE ASSET OF CORPORATION—WHETHER TAXABLE TO CORPORATION OR TO STOCKHOLDERS.

Gain from the sale of an apartment house, the sole asset of the taxpayer corporation, which was transferred in the form of a liquidating dividend to its two shareholders, who in turn formally conveyed it to a purchaser who had originally negotiated for the pur-

chase from the corporation, is taxable to the corporation under section 22 of the Internal Revenue Code. The findings of The Tax Court that the whole transaction showed a sale by the corporation rather than by the stockholders are supported by the evidence and must therefore be accepted by the courts.

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Fifth Circuit (143 Fed. (2d), 823), reversing decision of The Tax Court of the United States (2 T. C., 531), reversed.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. *Court Holding Co., a Florida Corporation.*

[324 U. S., 331.]

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

[March 12, 1945.]

OPINION.

Mr. Justice BLACK delivered the opinion of the Court.

An apartment house, which was the sole asset of the respondent corporation, was transferred in the form of a liquidating dividend to the corporation's two shareholders. They in turn formally conveyed it to a purchaser who had originally negotiated for the purchase from the corporation. The question is whether the Circuit Court of Appeals properly reversed [1] The Tax Court's conclusion [2] that the corporation was taxable under section 22 of the Internal Revenue Code [3] for the gain which accrued from the sale. The answer depends upon whether the findings of The Tax Court that the whole transaction showed a sale by the corporation rather than by the stockholders were final and binding upon the Circuit Court of Appeals.

It is unnecessary to set out in detail the evidence introduced before The Tax Court or its findings. Despite conflicting evidence, the following findings of The Tax Court are supported by the record:

The respondent corporation was organized in 1934 solely to buy and hold the apartment building which was the only property ever owned by it. All of its outstanding stock was owned by Minnie Miller and her husband. Between October 1, 1939, and February, 1940, while the corporation still had legal title to the property, negotiations for its sale took place. These negotiations were between the corporation and the lessees of the property, together with a sister and brother-in-law. An oral agreement was reached as to the terms and conditions of sale, and on February 22, 1940, the parties met to reduce the agreement to writing. The purchaser was then advised by the corporation's attorney that the sale could not be consummated because it would result in the imposition of a large income tax on the corporation. The next day, the corporation declared a "liquidating dividend," which involved complete liquidation of its assets, and surrender of all outstanding stock. Mrs. Miller and her husband surrendered their stock, and the building was deeded to them. A sale contract was then drawn, naming the Millers individually as vendors, and the lessees' sister as vendee, which embodied substantially the same terms and conditions previously agreed upon. One thousand dollars, which a month and a half earlier had been paid to the corporation by the lessees, was applied in part payment of the purchase price. Three days later, the property was conveyed to the lessees' sister.

The Tax Court concluded from these facts that, despite the declaration of a "liquidating dividend" followed by the transfers of legal title, the corporation

[1] 143 Fed. (2d), 823.
[2] 2 T. C., 531.
[3] Profits from the sale of property are taxable as income under section 22(a) of the Internal Revenue Code (26 U. S. C., 22). The Treasury regulations have long provided that gains accruing from the sales of a corporation's assets, in whole or in part, constitute income to it, but that a corporation realizes no taxable gain by a mere distribution of its assets in kind, in partial or in complete liquidation, however much they may have appreciated in value since acquisition. (Section 19.22(a)–19, 19.22(a)–21, Treasury Regulations 103.)

had not abandoned the sales negotiations; that these were mere formalities designed " to make the transaction appear to be other than what it was," and thus avoid tax liability. The Circuit Court of Appeals drawing different inferences from the record, held that the corporation had " called off " the sale, and treated the stockholders' sale as unrelated to the prior negotiations.

There was evidence to support the findings of The Tax Court, and its findings must therefore be accepted by the courts. (*Dobson* v. *Commissioner*, 320 U. S., 489 [Ct. D. 1597, C. B. 1944, 56]; *Commissioner* v. *Heininger*, 320 U. S., 467 [Ct. D. 1596, C. B. 1944, 484]; *Commissioner* v. *Scottish American Investment Co.*, 323 U. S., 119 [Ct. D. 1619, C. B. 1944, 340].) On the basis of these findings, The Tax Court was justified in attributing the gain from the sale to respondent corporation. The incidence of taxation depends upon the substance of a transaction. The tax consequences which arise from gains from a sale of property are not finally to be determined solely by the means employed to transfer legal title. Rather, the transaction must be viewed as a whole, and each step, from the commencement of negotiations to the consummation of the sale, is relevant. A sale by one person can not be transformed for tax purposes into a sale by another by using the latter as a conduit through which to pass title.[4] To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress.

It is urged that respondent corporation never executed a written agreement, and that an oral agreement to sell land can not be enforced in Florida because of the statute of frauds (Comp. Gen. Laws of Florida, 1927, volume 3, section 5779). But the fact that respondent corporation itself never executed a written contract is unimportant, since The Tax Court found from the facts of the entire transaction that the executed sale was in substance the sale of the corporation. The decision of the Circuit Court of Appeals is reversed, and that of The Tax Court affirmed.

It is so ordered.

SECTION 19.22(a)-21: Gross income of corporation in liquidation.

INTERNAL REVENUE CODE.

Distribution of corporate property to shareholders before transfer of such property to purchaser pursuant to antecedent oral agreement to sell. (See Ct. D. 1636, page 58.)

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

SECTION 29.22(b)-1: Exemptions—Exclusions from gross income. 1945-8-12016 I. T. 3725

INTERNAL REVENUE CODE.

> Amounts received by officers, enlisted men, and employees of the United States pursuant to the provisions of Executive Order 7972, approved September 15, 1938 (Title 3, Code of Federal Regulations, Cum. Sup., Book 1, 412), as amended, prescribed by the President by virtue of and pursuant to the authority vested in him by the Act of March 26, 1934 (48 Stat., 466), as amended (50 Stat., 641), to compensate for losses sustained while in service in the Netherlands West Indies, on account of appreciation of the currency of that country in its relation to the American dollar, are not includible in the gross income of such individuals for Federal income tax purposes.

Advice is requested whether amounts received by officers, enlisted men, and employees of the United States to compensate for losses

[4] *Gregory* v. *Helvering* (293 U. S. 465 [Ct. D. 911, C. B. XIV-1, 193 (1935)]); *Minnesota Tea Co.* v. *Helvering* (302 U. S. 609 [Ct. D. 1305, C. B. 1938-1, 288]; *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]).

sustained while in service in the Netherlands West Indies, on account of appreciation of the currency of that country in its relation to the American dollar, are includible in the gross income of such individuals for Federal income tax purposes.

Executive Order 7972, approved September 15, 1938 (Title 3, Code of Federal Regulations, Cum. Sup., Book 1, 412), as amended, provides for payment of the net salaries and net allowances or the net pay and allowances of officers, enlisted men, and employees of the United States serving in specified foreign countries (including the Netherlands West Indies) in such amounts as they would have received by converting into such foreign currency at specified basic rates. Executive Order 7972 was prescribed by the President pursuant to the authority in Public Law 129, Seventy-third Congress, second session (48 Stat., 466), approved March 26, 1934, as amended (50 Stat., 641), which provides in part that allowances and expenditures made pursuant to that Act to meet losses sustained on and after July 1, 1933, by officers, enlisted men, and employees of the United States while in service in foreign countries due to the appreciation of foreign currencies in their relation to the American dollar shall not be subject to income taxes.

In view of the foregoing, it is held that amounts received by officers, enlisted men, and employees of the United States pursuant to the provisions of Executive Order 7972, as amended, supra, to compensate for losses sustained while in service in the Netherlands West Indies, on account of appreciation of the currency of that country in its relation to the American dollar, are not includible in the gross income of such individuals for Federal income tax purposes.

SECTION 29.22(b)–1: Exemptions—Exclusions from gross income. 1945–11–12049 I. T. 3739

INTERNAL REVENUE CODE.

The pension or compensation received by any person under the provisions of Public Law 314 (Seventy-eighth Congress, second session, 58 Stat., 230), approved May 27, 1944, qualifies as a benefit payment "made to, or on account of, a beneficiary under any of the laws relating to veterans" within the purview of section 3 of the Act of August 12, 1935 (49 Stat., 607), and such pension or compensation is not includible in gross income for Federal income tax purposes.

Advice is requested whether the pension or compensation received by any person under the provisions of Public Law 314 (Seventy-eighth Congress, second session, 58 Stat., 230), approved May 27, 1944, should be included in gross income for Federal income tax purposes.

The Act of May 27, 1944, supra, provides in part that "any person who is receiving pay pursuant to any provision of law relating to the retirement of persons in the regular military or naval service, and who would be eligible to receive pension or compensation under the laws administered by the Veterans' Administration if he were not receiving such retired pay, shall be entitled to receive such pension or compensation upon the filing by such person with the department by which such retired pay is paid of a waiver of so much of his

retired pay and allowances as is equal in amount to such pension or compensation. * * *"

Section 3 of the Act of August 12, 1935 (49 Stat., 607), which Act was published in part in the Internal Revenue Bulletin (C. B. XIV-2, 538 (1935)), provides in part as follows:

> Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under *any of the laws relating to veterans* shall be exempt from taxation. [Italics supplied.]

The Act of May 27, 1944, supra, is a law relating to veterans. Mimeograph 4411 (C. B. XV-1, 497 (1936)) states, among other things, that benefits paid to, or on account of, any beneficiary under the laws relating to veterans are exempt from Federal income tax under all the Revenue Acts. (The term "Revenue Acts" includes the Internal Revenue Code; Public Law 1, Seventy-sixth Congress, first session, 53 Stat., Part 1, approved February 10, 1939.)

In view of the foregoing, it is held that the pension or compensation received by any person under the provisions of the Act of May 27, 1944, supra, qualifies as a benefit payment made to, or on account of, a beneficiary under any of the laws relating to veterans within the purview of section 3 of the Act of August 12, 1935, supra, and such pension or compensation is not includible in gross income for Federal income tax purposes.

SECTION 29.22(b)(2)-5: Employees' annuities. 1945-4-11964
I. T. 3715

INTERNAL REVENUE CODE.

> Application of the first sentence of subparagraph (B) of section 22(b)(2) of the Internal Revenue Code to employees of an employer which is an organization exempt from Federal income tax under section 101 of the Code, other than under paragraph (6) thereof, or which is an insurance company taxable for Federal income tax purposes under section 201 or section 207 of the Code.

Advice is requested whether the first sentence of subparagraph (B) of section 22(b)(2) of the Internal Revenue Code is applicable in determining, for Federal income tax purposes, the income of employees for whom retirement annuity contracts have been purchased by an employer which is an organization exempt from Federal income tax under section 101 of the Code, other than under paragraph (6) thereof, or which is an insurance company taxable for Federal income tax purposes under section 201 or section 207 of the Code.

The first sentence of subparagraph (B) of section 22(b)(2) of the Code, which subparagraph was added by section 162(c) of the Revenue Act of 1942, provides as follows:

> [(B) EMPLOYEES' ANNUITIES.—] If an annuity contract is purchased by an employer for an employee under a plan with respect to which the employer's contribution is deductible under section 23(p)(1)(B), or if an annuity contract is purchased for an employee by an employer exempt under section 101(6), the employee shall include in his income the amounts received under such contract for the year received except that if the employee paid any of the consideration for the annuity, the annuity shall be included in his income as provided in subparagraph (A) of this paragraph, the consideration for such annuity being considered the amount contributed by the employee.

The report of the Ways and Means Committee (House of Representatives Report No. 2333, Seventy-seventh Congress, second session, page 106 (C. B. 1942–2, 372, at page 452)), on the revenue bill of 1942, and the report of the Committee on Finance (Senate Report No. 1631, Seventy-seventh Congress, second session, page 141 (C. B. 1942–2, 504, at page 609)), also on the revenue bill of 1942, in referring to the taxation of employees' annuities purchased as a part of a plan which meets the requirements of section 165(a) (3), (4), (5), and (6) of the Code, leave no doubt that, except with respect to organizations which are exempt under section 101(6) of the Code, Congress intended "to treat amounts received by employees under annuity contracts in the same way as amounts received under pension trusts," that is, the employee is not to be taxable with respect to contributions paid toward the purchase of such an annuity contract until he receives payments thereunder, or such payments are made available to him.

Where an employer purchases retirement annuity contracts for employees under such conditions that the contributions paid toward the purchase thereof are deductible under the provisions of section 23(p)(1)(B) of the Code, such contributions do not differ in character from those paid under similar circumstances by an organization which is exempt from tax under section 101 of the Code, other than under paragraph (6) thereof, or by an insurance company which is taxable under section 201 or section 207 of the Code. Since the contributions in all such cases are of like character, and to carry out the evident intent of Congress, it is held that the first sentence of subparagraph (B) of section 22(b)(2) of the Code is applicable in determining, for Federal income tax purposes, the income of employees for whom retirement annuity contracts have been purchased by an employer which is an organization exempt from Federal income tax under section 101 of the Code, other than under paragraph (6) thereof, or which is an insurance company taxable for Federal income tax purposes under section 201 or section 207 of the Code, provided that such employer's contributions, whether or not deductible under section 23(p)(1)(B) of the Code, meet the conditions set forth in section 23(p)(1)(B). (With respect to the employees of organizations which are exempt under section 101(6) of the Code, see the third paragraph of section 29.22(b)(2)-5 of Regulations 111.)

SECTION 29.22(b)(3)-1: Gifts and bequests. 1945–8–12017
(Also Section 1622, Section 405.201, Regulations 116.) I. T. 3726

INTERNAL REVENUE CODE.

Amounts distributed to employees of the M Club, a nonprofit organization, out of a Christmas fund made up of contributions of its members for such employees and not based on services performed, constitute gifts which are not includible in the gross income of the employees nor subject to withholding under section 1622 of the Internal Revenue Code.

Advice is requested whether amounts distributed at Christmas time to employees of the M Club, a nonprofit membership organization, are considered income and whether such amounts are subject to withholding under section 1622 of the Internal Revenue Code.

The M Club requests its members each year to make voluntary contributions to a Christmas fund for distribution to its employees. The total amount subscribed or paid into the fund by its members is distributed to employees of the organization at Christmas time. The contributions are not based on any services performed by the employees sharing in the benefits of the fund and the amount paid by each member is purely within the member's discretion. The organization does not treat the contributions as its own but keeps the fund earmarked "for distribution to employees." The organization merely acts as agent for the members in the disbursement of the funds to employees.

It is held that amounts distributed to employees, under the circumstances stated, constitute gifts and are not includible in the gross income of the employees nor subject to withholding under section 1622 of the Internal Revenue Code.

SECTION 29.22(b)(3)-1: Gifts and bequests. (Also Section 1622; Section 405.201, Regulations 116.) 1945-17-12118 I. T. 3756

INTERNAL REVENUE CODE.

Tuition and maintenance stipends paid to defray expenses connected with the training of personnel by the States under the provisions of Title V of the Social Security Act (49 Stat., 629) constitute gifts for Federal income tax purposes and are not wages subject to withholding of income tax at the source under section 1622 of the Internal Revenue Code.

Advice is requested whether tuition and maintenance stipends paid to defray expenses connected with the training of personnel by the States under the provisions of Title V of the Social Security Act (49 Stat., 629) should be included in gross income for Federal income tax purposes, and whether such amounts are wages subject to withholding of income tax at the source under section 1622 of the Internal Revenue Code.

Section 501 of Title V of the Social Security Act, supra, provides for the making of appropriations by the Federal Government for the purpose of enabling each State to extend and improve, as far as practicable under the conditions in such State, services for promoting the health of mothers and children, especially in rural areas and in areas suffering from severe economic distress. The sums made available under this section are used for making payments to States which have submitted, and have had approved by the Chief of the Children's Bureau, United States Department of Labor, State plans for such services. Section 503(a) of Title V, supra, requires that a State plan for maternal and child-health service must provide for financial participation by the State, for the administration, or supervision of the administration, of the plan by the State health agency, for the extension and improvement of local maternal and child-health services administered by local child-health units, and for the development of services in needy areas and among groups in special need.

Nurses and other individuals engaged in public health work are granted tuition and maintenance stipends by State health agencies in order to enable them to take training or postgraduate courses in public work, medical-social work, crippled children's services, etc. While undergoing such training they are not on a salary basis but

receive in addition to their tuition a stipend for board and maintenance. In many cases there is no employment agreement or, if there is any commitment by the individuals involved, it is limited to a pledge merely to continue in the general field of public health work upon the completion of the course.

Section 22(b) of the Internal Revenue 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:

* * * * * * *

(3) GIFTS, BEQUESTS, DEVISES, AND INHERITANCES.—The value of property acquired by gift, bequest, devise, or inheritance. * * *

It is held that the tuition and maintenance stipends in question represent gratuities in aid of the accomplishment of the public benefit involved. Accordingly, tuition and maintenance stipends paid to defray expenses connected with the training of personnel by the States under the provisions of Title V of the Social Security Act, supra, are not includible in gross income for Federal income tax purposes and are not wages subject to withholding of income tax at the source under section 1622 of the Internal Revenue Code.

SECTION 19.22(b)(4)-1: Interest upon State obligations. 1945-22-12164 Ct. D. 1647

INCOME TAX—REVENUE ACT OF 1938—INTERNAL REVENUE CODE—DECISION OF COURT.

1. GROSS INCOME—EXCLUSIONS—INTEREST UPON OBLIGATIONS OF A STATE OR POLITICAL SUBDIVISION THEREOF.

Interest received in 1938 and 1939 on bonds of the Triborough Bridge Authority owned by the taxpayer was exempt from income tax under the provisions of sections 22(b)(4) of the Revenue Act of 1938 and the Internal Revenue Code and the applicable regulations.

2. DECISION AFFIRMED.

Decision of The Tax Court of the United States (3 T. C., 156) affirmed.

3. CERTIORARI DENIED.

Petition for certiorari denied on January 2, 1945.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Commissioner of Internal Revenue, petitioner, v. *Estate of Caroline White, Deceased, Waldron Kintzing Post, John Ross Delafield, and Bache McE. Whitlock, as Executors of the Will of Caroline White, Deceased, respondents.*

[144 Fed. (2d), 1019.]

Before AUGUSTUS N. HAND, CHASE, and FRANK, Circuit Judges.

[August 24, 1944.]

OPINION.

Petition by the Commissioner of Internal Revenue to review a decision of The Tax Court of the United States determining that there were overpayments in income taxes of Caroline White, deceased, of $2,308.59 for the year 1938, and of $1,995.52 for the year 1939. The question whether there were such overpayments depends on whether interest received by the decedent in those years on bonds issued by the Triborough Bridge Authority was exempt from income taxes. Affirmed.

AUGUSTUS N. HAND, Circuit Judge: This proceeding involves deficiencies in income taxes assessed against Caroline White, deceased, and paid under protest. The Tax Court held that she had overpaid such taxes to the extent of $2,308.59 for 1938, and $1,995.52 for 1939.

The question raised by this petition to review the determination of The Tax Court is whether interest on the bonds of the Triborough Bridge Authority owned by the decedent were exempt from income tax under section 22(b)(4) of the Revenue Act of 1938. A majority of The Tax Court held that they were exempt and for that reason that the decedent had overpaid her taxes for 1938 and 1939. In our opinion in *Commissioner* v. *Estate of Shamberg* [Ct. D. 1648, page 335, this Bulletin], filed herewith, we sustained the ruling of The Tax Court that interest on the bonds of the Port of New York Authority is exempt under the above statute. Our discussion in that opinion requires us to say little, if anything, more as to section 22(b)(4) of the Revenue Act and Treasury Regulations 101, article 22(b)(4)–1 which seem to render the interest on the Triborough bonds exempt from income tax like the bonds of the Port of New York Authority in the other case.

The Triborough Bridge Authority was created by chapter 145 of the Laws of 1933, as amended by chapter 3 of the Laws of 1937, of the State of New York as a "body corporate and politic constituting a public benefit corporation." By the New York General Corporation Law, section 3(4), a public benefit corporation is:

"a corporation organized to construct or operate a public improvement wholly or partly within the State, the profits from which enure to the benefit of this or other States, or the people thereof."

The act creating the Authority provides:

"It is hereby found, determined and declared that the creation of the Authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the State of New York, for the improvement of their health and welfare, and for the increase of their traffic and prosperity, and is a public purpose, and that the project is an essential part of the public highway system, and that the Authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this act, * * *."

The Authority owns and operates two public bridges which form a vital part of the New York State and city highway system, are wholly within the State of New York and carry intrastate traffic as part of that system. They are constructed pursuant to plans approved by the War Department because they are across navigable rivers but, since they are fully within a single State, the Secretary of War had no right to prescribe the tolls.

Under the State law creating the Authority it acquired the power to construct, maintain and operate bridges connecting three boroughs of the city of New York, to acquire necessary property, with the city's consent, in the name of the city either by purchase or condemnation, to make use of city agents, employees and facilities and to issue bonds for constructing the bridges. The statute under which it was organized also provided that the bonds should be legal investments for fiduciaries, should be exempt from State taxation other than transfer and estate taxes, should not be debts of the city or State and should be payable only out of funds of the Authority. It also provided that the State would not alter the right of the Authority to collect the tolls necessary to fulfill the terms of the bonds.

The bridges were built by the city. It financed their construction from its tax note fund in the amount of $218,721.34 and from the proceeds of sales of its long-term corporate stock in the amount of $5,162,509. On April 28, 1933, the mayor of New York appointed the three members of the Authority, who were subject to removal by him for cause. The Authority issued all of its bonds by virtue of the State statute under which it was organized and pursuant to resolution adopted by its members. The bonds were never approved by the electors of the State at any election and the comptroller of the city of New York has never included them in any of his statements of the indebtedness of the city. After the Authority was organized in 1933 the engineering force of the city bureau of plant and structure, which had theretofore been engaged in the construction work, and all records relating to the bridges were transferred to the Authority. In 1933 it applied to the Federal Emergency Administrator of Public Works for a loan and grant, the application was granted, and the United States, through the Administrator, made a grant of $9,200,000 and a loan of $35,000,000 by purchasing bonds of the Authority in that amount under an agreement dated Sep-

tember 1, 1933, which required the Authority to furnish an opinion by bond counsel that the bonds and interest would be exempt from all taxes imposed by the United States under the Constitution or by the State of New York. Such an opinion was furnished.

The bonds involved in this proceeding were issued in 1937 to the amount of $53,000,000 and were used in part to refund the $35,000,000 bonds issued in 1933 and 1937 held by the Reconstruction Finance Corporation. When the Authority issued its 1937 bonds it asked the Commissioner for a ruling and was advised by him that the interest was exempt from income tax. He said in a letter to Robert Moses, chairman of the Authority (dated February 17, 1937), the following:

"It is believed that the Triborough Bridge Authority is in effect an instrumentality of the city of New York, a political subdivision of the State of New York; that the bonds issued by such Authority will be, in effect, bonds of the city issued in the exercise of its borrowing power; and that interest on such bonds will, therefore, be exempt from Federal income tax."

The Authority is plainly a subdivision of State government empowered to exercise governmental functions on behalf of the city of New York which acquired through State legislation the right to delegate its powers to operate and maintain the toll bridges. The Authority is in essence a department of the city but so organized as not to involve the city in direct liability to persons holding Triborough bonds. Its functions are as traditional and primary State functions as any one can imagine except those of enacting and enforcing general laws. Under the decisions its activities would universally be regarded as State functions. (*Graves* v. *New York ex rel. O'Keefe*, 306 U. S., 466, 477 [Ct. D. 1390, C. B. 1939-1 (Part 1), 129]; *Brush* v. *Commissioner*, 300 U. S., 352, 372 [Ct. D. 1212, C. B. 1937-1, 217]; *Kansas City Bridge Co.* v. *Alabama State Bridge Corporation*, 58 Fed. (2d), 48, 49 (C. C. A. 5); *Gaynor* v. *Marohn*, 268 N. Y., 417, 432; *Robertson* v. *Zimmerman*, 268 N. Y., 52, 65; *People ex rel. Bridge Authority* v. *Davis*, 277 N. Y., 292, 298.)

It is argued that whether the Authority be viewed as a political subdivision of the State, or as an agency of the city acting on behalf of the State, the exemption statute can not apply because the bonds are obligations of the Authority only and not of the city. But if the city had continued to construct and had thereafter operated the bridges and collected the tolls and had issued its own bonds for the benefit of the enterprise instead of those of the Authority, it is not disputed that the interest on the bonds would have been free from income tax. While we realize that tax exemptions are matters of legislative grace and must be found in the appropriate statutes, yet there is a limit to the technical interpretation even of an exemption statute. The reason for the exemption of course was to free the States from the burden of income taxes on their investments in enterprises for the public welfare. It can make no difference whether the city or its alter ego is liable. In either case the burden would be upon a governmental activity and that is the substance of the grievance both of the Authority and of the taxpayer. The motives which induced the creation of a public corporation to operate the bridges, instead of leaving them wholly and literally to be managed by the city, that is, the form in which the municipal activities were to be exercised, seems to a majority of the court quite immaterial. The moneys of the Authority are paid to the comptroller of the city pursuant to the organic law, the title to the lands is in the city and, after the obligations of the Authority have been paid in full, all its properties and rights pass to and become vested in the city. To distinguish between such an agency and the city in regard to the exemption seems to us purely technical. Bonds of this character as well as the bonds in question have always been regarded as exempt and have been so held by the Commissioner of Internal Revenue.

Because section 22(b)(4) of the Revenue Act of 1938 and the regulations applicable thereto have in the opinion of the majority of this court rendered the interest on the taxpayer's bonds exempt from income tax, we see no reason to discuss the question whether there is any constitutional prohibition against the tax and rest our opinion, as we did in the case of *Commissioner* v. *Estate of Alexander J. Shamberg, deceased*, solely upon the exemption.

In both of these important litigations we have been afforded all possible aid by counsel for the Commissioner and for the taxpayers in briefs which have been kept within a most reasonable compass and have said everything which we think could have been said on behalf of the respective parties.

Order affirmed.

Dissenting opinion by FRANK, Circuit Judge.

SECTION 29.22(b)(12)–1: Recovery of certain items previously deducted.
(Also Section 127(c), Section 29.127(c)–1; Section 127(f), Section 29.127(f)–1; Regulations 103, 101, 94, 86, 77, 74, 65, 62, 45, and 33.)

1945–10–12043
T. D. 5454

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

Amending sections 29.22(b)(12)–1, 29.127(c)–1, and 29.127(f)–1 of Regulations 111, recovery of certain items previously deducted.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], relating to income tax, are amended as follows:

PARAGRAPH 1. Section 29.22(b)(12)–1, as amended by Treasury Decision 5307, approved November 29, 1943 [C. B. 1943, 108], is further amended as follows:

(A) By revising the title to such section and the first two paragraphs thereof to read as follows:

SEC. 29.22(b)(12)–1. RECOVERY OF CERTAIN ITEMS PREVIOUSLY DEDUCTED.—(*a*) *In general.*—Section 22(b)(12) provides that income attributable to the recovery during any taxable year of bad debts, prior taxes, and delinquency amounts shall be excluded from gross income to the extent of the "recovery exclusion" with respect to such items. The rule of exclusion so prescribed by statute applies equally with respect to all other losses, expenditures, and accruals made the basis of deductions from gross income for prior taxable years, including war losses referred to in section 127, but not including deductions with respect to depreciation, depletion, amortization, or amortizable bond premiums. (See *Dobson* v. *Commissioner*, 64 S. Ct., 239.) The term "recovery exclusion" as used in these regulations means accordingly an amount equal to the portion of the bad debts, prior taxes, and delinquency amounts (the items specifically referred to in section 22(b)(12)), and of all other items subject to the rule of exclusion which, when deducted or credited for a prior taxable year, did not result in a reduction of any tax of the taxpayer under Chapter 1 of the Internal Revenue Code (other than a tax under section 102) or under corresponding provisions of prior revenue laws.

(1) *Section 22(b)(12) items.*—The term "section 22(b)(12) items" as used in these regulations means those bad debts, prior taxes, delinquency amounts, and all other items subject to the rule of exclusion, for which a deduction or credit was allowed for a prior taxable year. If a bad debt was previously charged against a reserve by a taxpayer on the reserve method of treating bad debts, it was not deducted, and it is therefore not considered a section 22(b)(12) item. Bad debts, prior taxes, and delinquency amounts are defined in section 22(b)(12) (A), (B), and (C), respectively. A typical example of a delinquency amount described in that section is interest upon delinquent taxes. A typical example of the other items not expressly referred to in section 22(b)(12) but nevertheless subject to the rule of exclusion is a loss sustained upon the sale of stock and later recovered, in whole or in part, through an action against the party from whom such stock had been purchased.

(B) By striking from the first sentence in paragraph (*a*)(2) the words "items described in section 22(b)(12)" and by inserting in lieu thereof the words "section 22(b)(12) items."

(C) By striking the last sentence of paragraph (*a*) (4).

(D) By striking out the word "recoveries" in the second sentence of paragraph (*b*) (1) and inserting in lieu thereof the words "excludible recoveries."

(E) By striking from the first paragraph in the example in subsection (*b*) the words "$2,000 business expenses" and by inserting in lieu thereof the words "a depreciation deduction of $2,000."

(F) By striking from the second line in the tabulation in the example in subsection (*b*) the words "Business expenses" and by inserting in lieu thereof the word "Depreciation."

PAR. 2. Section 29.127(c)–1 is amended by inserting immediately after the second sentence in the first paragraph thereof the following:

War loss recoveries are considered as made first on account of war losses allowable but not actually allowed as a deduction, and second on account of war losses allowed as a deduction but which did not result in a reduction of tax under Chapter 1. If there were deductions allowed on account of war losses for two or more taxable years which did not result in a reduction of any tax under Chapter 1, a recovery on account of such losses is considered as made on account of such losses in the order of the taxable years for which they were allowed, beginning with the latest.

PAR. 3. Section 29.127(f)–1 is amended by striking out the second sentence in the first paragraph and substituting in lieu thereof the following:

In the case of recoveries of war losses and other items to which the recovery exclusion provisions of section 22(b)(12) apply, such as bad debts, the determination of the tax benefit should be made in accordance with section 29.22(b)(12)–1(*b*).

PAR. 4. The amendments to section 29.22(b)(12)–1 of Regulations 111 (covering taxable years beginning after December 31, 1941) are hereby made applicable to taxable years beginning prior to January 1, 1942 (such years being covered by Regulations 103, 101, 94, 86, 77, 74, 69, 65, 62, 45, and 33), and the amendments to sections 29.127(c)–1 and 29.127(f)–1 of Regulations 111 are hereby made applicable to taxable years beginning prior to January 1, 1942, and after December 31, 1940 (such years being covered by Regulations 103).

(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), the corresponding provisions of prior internal revenue laws, and sections 116 and 156 of the Revenue Act of 1942 (56 Stat., 812, 852; 26 U. S. C., 1940 ed., Sup. III, 22(b), 127).)

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

Approved May 10, 1945.

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

(Filed with the Division of the Federal Register May 12, 1945, 4.07 p. m.)

SECTION 29.22(b)(13)-1: Compensation of military and naval forces. 1945-8-12018 I. T. 3727

INTERNAL REVENUE CODE.

Application of section 22(b)(13) of the Internal Revenue Code to compensation received by temporary members of the Coast Guard Reserve.
I. T. 3629 (C. B. 1943, 109) modified.

The question presented in I. T. 3629 (C. B. 1943, 109) was whether temporary members of the Coast Guard Reserve, referred to therein as members of the Coast Guard Temporary Reserve, are entitled to the exclusion from gross income (additional allowance for military and naval personnel) provided for in section 22(b)(13) of the Internal Revenue Code, as amended by section 7(a) of the Current Tax Payment Act of 1943.

The last paragraph of I. T. 3629, supra, reads as follows:

Where the pay of such an individual is received from a civilian employer or, in the case of a civilian employee of the Government, where the pay is for the civilian position he occupies, the exclusion from gross income provided for in section 22(b)(13) of the Internal Revenue Code, supra, is not applicable. Where, however, a member of the Coast Guard Temporary Reserve is called into active service and is paid by the Coast Guard, he is considered to be in the military forces and the exclusion from gross income applies.

In view of the fact that the last *sentence* of I. T. 3629, supra, is unnecessary to a determination of the question presented and may be misinterpreted, I. T. 3629 is modified by eliminating that sentence from the last paragraph of the ruling and from the syllabus. I. T. 3629 is further modified to refer to temporary members of the Coast Guard Reserve rather than to members of the "Coast Guard Temporary Reserve," since there is no organization bearing the latter designation.

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

SECTION 29.22(c)-2: Valuation of inventories.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5423, below.)

SECTION 29.22(c)-6: Inventories of livestock raisers and other farmers. (Also Section 29.22(c)-2.) 1945-1-11917 T. D. 5423

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

Regulations 111 amended with respect to inventories of livestock raisers and other farmers.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], are amended as follows:

PARAGRAPH 1. Section 29.22(c)-2 is amended by striking the first sentence of the fourth paragraph and inserting in lieu thereof the following:

In respect of normal goods, whichever basis is adopted must be applied with reasonable consistency to the entire inventory except as to those goods inventoried under the elective method authorized by section 22(d) or to animals inventoried under the elective "unit-livestock-price method" authorized by section 29.22(c)-6.

PAR. 2. Section 29.22(c)-6 is amended by striking the fourth paragraph and inserting in lieu thereof the following:

Because of the difficulty of ascertaining actual cost of livestock and other farm products, farmers who render their returns upon an inventory basis may value their inventories according to the "farm-price method," and farmers raising livestock may value their inventories of animals according to either the "farm-price method" or the "unit-livestock-price method."

The "farm-price method" provides for the valuation of inventories at market price less direct cost of disposition. If this method of valuing inventories is used, it must be applied to the entire inventory except as to livestock inventoried, at the taxpayer's election, under the "unit-livestock-price method." If the use of the "farm-price method" of valuing inventories for any taxable year involves a change in method of valuing inventories from that employed in prior years, permission for such change shall first be secured from the Commissioner as provided in section 29.41-2.

The "unit-livestock-price method" provides for the valuation of the different classes of animals in the inventory at a standard unit price for each animal within a class. A livestock raiser electing this method of valuing his animals must adopt a reasonable classification of the animals in his inventory with respect to the age and kind included so that the unit prices assigned to the several classes will reasonably account for the normal costs incurred in producing the animals within such classes. Thus, if a cattle raiser determines that it costs approximately $15 to produce a calf, and $7.50 each year to raise the calf to maturity, his classifications and unit prices would be as follows: calves, $15; yearlings, $22.50; 2-year olds, $30; mature animals, $37.50. The classification selected by the livestock raiser, and the unit prices assigned to the several classes, are subject to approval by the Commissioner upon examination of the taxpayer's return.

A taxpayer who elects to use the "unit-livestock-price method" must apply it to all livestock raised, whether for sale or for breeding, draft, or dairy purposes. Once established, the unit prices and classifications selected by the taxpayer must be consistently applied in all subsequent years in the valuation of livestock inventories. No changes in the classification of animals or unit prices will be made without the approval of the Commissioner.

A livestock raiser who uses the "unit-livestock-price method" must include in his inventory at cost any livestock purchased, except that animals purchased for breeding, dairy, or draft purposes can, at the election of the livestock raiser, be included in inventory or be treated as capital assets subject to depreciation after maturity. If the animals purchased are not mature at the time of purchase, the cost should be increased at the end of each accounting year in accordance with the established unit prices, except that no increase is to be made in the year of purchase if the animal is acquired during the last six months of that year. If the records maintained permit identification of a purchased animal, the cost of such animal will be eliminated from the closing inventory in the event of its sale or loss. Otherwise, the first-in first-out method of valuing inventories must be applied.

If a taxpayer using the "farm-price method" desires to adopt the "unit-livestock-price method" in valuing his inventories of livestock, permission for the change shall first be secured from the Commissioner as provided in section 29.41-2. However, a taxpayer who has filed returns on the basis of inventories at cost, or cost or market whichever is lower, may adopt the "unit-livestock-price method" for valuing his inventories of livestock for taxable years beginning after December 31, 1943, without formal application for permission, but the classifications and unit prices selected are subject to approval by the Commissioner upon examination of the taxpayer's return. A livestock raiser who has, for taxable years beginning prior to January 1, 1944, adopted a constant unit price method of valuing livestock inventories and filed returns on that basis will be considered as having elected the "unit-livestock-price method."

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

GEO. J. SCHOENEMAN,
Acting Commissioner of Internal Revenue.

Approved December 15, 1944.

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

(Filed with the Division of the Federal Register December 16, 1944, 4.44 p. m.)

SECTION 29.22(c)–6: Inventories of livestock raisers and other farmers. 1945–1–11918 Mim. 5790

Application of Treasury Decision 5423, approved December 15, 1944 [page 70, this Bulletin], amending section 29.22(c)–6, Income Tax Regulations 111.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 16, 1944.

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

1. The regulations, as amended by Treasury Decision 5423 [page 70, this Bulletin], provide that a taxpayer who has, for taxable years beginning prior to January 1, 1944, used a constant price method of valuing livestock will be considered as having elected the "unit-livestock-price method." No application need be made to the Commissioner by such a taxpayer for permission to use the "unit-livestock-price method" for taxable years beginning after December 31, 1943. However, if the taxpayer used a constant price method in previous years for only certain classes of his animals, and inventoried other classes by some other method, he must inventory all classes on the "unit-livestock-price method" for taxable years beginning after December 31, 1943. The unit prices used in prior years will not be changed, and shall be applicable for taxable years beginning after December 31, 1943, as well as for prior years with respect to those classes of livestock inventoried in prior years on a constant unit price method. New unit prices should be selected for those classes of livestock inventoried in prior years by some other method. Such new unit prices and classifications will be used in 1944 and subsequent years only, and are subject to approval by the Commissioner on examination of the taxpayer's return. For example, suppose a taxpayer who inventoried his breeding herd on a constant price method, and who inventoried cattle for sale on the "farm-price method" had an opening inventory in 1944 as follows:

Breeding herd (constant-unit price):	
700 cows at $37.50	$26,250
100 2's heifers at $30	3,000
100 yearling heifers at $22.50	2,250
Cattle for sale (farm price):	
300 calves at $30	9,000
200 yearling steers at $45	9,000
100 2's steers at $60	6,000
	55,500

For 1944 and subsequent years he will continue to use the same unit prices used in prior years for cows and heifers, unless a change is permitted by the Commissioner. He will be required to establish unit prices for calves and steers previously inventoried on the " farm-price method " and he might select the following:

2-year old steers	$30.00
Yearling steers	22.50
Calves	15.00

The new unit prices should be applied only to animals born during the year of change and subsequent years, and new differentials should be applied to the animals growing during such year and subsequent years. Thus, the closing inventories should be as follows, assuming the numbers of animals held and retained as indicated:

Closing inventory (year of change) (100 cows sold, 100 3's steers sold, 200 calves retained):	
700 cows at $37.50	$26,250
100 2's heifers at $30	3,000
150 yearling heifers at $37.50	5,625
200 calves at $15	3,000
150 yearling steers at $37.50	5,625
200 2's steers at $52.50	10,500
	54,000
Closing inventory (second year) (100 cows sold, 200 3's steers sold, 300 calves retained):	
700 cows at $37.50	$26,250
150 2's heifers at $45	6,750
100 yearling heifers at $22.50	2,250
300 calves at $15	4,500
100 yearling steers at $22.50	2,250
150 2's steers at $45	6,750
	48,750
Closing inventory (third year) (100 cows sold, 150 3's steers sold, 250 calves retained):	
600 cows at $37.50	$22,500
150 cows at $52.50	7,875
100 2's heifers at $30	3,000
150 yearling heifers at $22.50	3,375
250 calves at $15	3,750
150 yearling steers at $22.50	3,375
100 2's steers at $30	3,000
	46,875

2. Operators on the " farm-price method " may change to the " unit-livestock-price method," with the permission of the Commissioner. Operators on the cost basis may change to the " unit-livestock-price method " without the permission of the Commissioner. The adjustment from the previous method to the " unit-livestock-price method " should be made in accordance with the following principles:

" Farm-price method " to " unit-livestock-price method."

Opening inventory:	
700 cows at $65	$45,500
100 2's heifers at $60	6,000
100 yearling heifers at $50	5,000
100 calves at $35	3,500
	60,000

600 calves produced—475 calves and 100 cows sold.
The unit livestock prices adopted are as follows:

Cows	$52
2's heifers	40
Yearling heifers	29
Calves	18

Closing inventory (year of change).

	Calculation.	Farm price beginning of year.	Farm price end of year.	Limitation.	Total
600 cows	$65	$65	$60	$60	$36,000
100 cows	72	65	60	60	6,000
100 2's heifers	61	60	55	55	5,500
100 yearling heifers	46	50	45	45	4,500
125 calves	18	35	30	18	2,250
Total					54,250

The principle of the above adjustment is to add to the value of each class of growing animals appearing in the opening inventory the increase representing a year's growth of such class to the next older class, except that in no case will such value be in excess of the farm price value for such older class at the beginning of the year of change or the end of the year of change whichever is the lesser. In the above illustration, 100 2-year-old heifers became cows during the year. The increase for a year's growth from 2-year-olds to cows is $12. Adding $12 to the value in the opening inventory of $60 gives $72. Since $72 is in excess of the lesser farm price of a cow, the value is limited to such farm price or $60.

This principle may be further illustrated by the following example, using as a basis the closing inventory shown above:

Closing inventory (second year).

100 COWS SOLD; 100 CALVES RETAINED.

	Calculation.	Farm price beginning of year of change.	Farm price end of year of change.	Limitation.	Total
500 cows	$65	$65	$60	$60	$30,000
100 cows	72	65	60	60	6,000
100 cows	73	65	60	60	6,000
100 2's heifers	57	60	55	55	5,500
125 yearling heifers	29	50	45	29	3,625
100 calves	18	35	30	18	1,800
Total					52,925

Closing inventory (third year).

100 COWS SOLD; 100 CALVES RETAINED.

	Calculation.	Farm price beginning of year of change.	Farm price end of year of change.	Limitation.	Total.
400 cows	$65	$65	$60	$60	$24,000
100 cows	72	65	60	60	6,000
100 cows	73	65	60	60	6,000
100 cows	69	65	60	60	6,000
125 2's heifers	40	60	55	40	5,000
100 yearling heifers	29	50	45	29	2,900
100 calves	18	35	30	18	1,800
Total					51,700

Closing inventory (fourth year).

100 COWS SOLD; 100 CALVES RETAINED.

	Calculation.	Farm price beginning of year of change.	Farm price end of year of change.	Limitation.	Total.
300 cows	$65	$65	$60	$60	$18,000
100 cows	72	65	60	60	6,000
100 cows	73	65	60	60	6,000
100 cows	69	65	60	60	6,000
125 cows	52	65	60	52	6,500
100 2's heifers	40	60	55	40	4,000
100 yearling heifers	29	50	45	29	2,900
100 calves	18	35	30	18	1,800
Total					51,200

3. When first selected, unit prices are subject to the approval of the Commissioner. It is recognized that operating conditions existing in the livestock industry are such that actual costs in most instances are impossible to secure. Therefore, prices which reflect reasonable estimates of normal costs of production, or prices which conform generally to industry estimates, are acceptable. Prices used on returns for prior years which have been examined and accepted by the Commissioner will be considered as established by a taxpayer who has used constant costs in prior years and has not subsequently adopted a different method, and such prices will be accepted. As to prices not previously established, moreover, the Commissioner will give great weight to the prices selected by the taxpayer and will accept such prices unless they are abnormally low. The unit prices assigned to the various classes of livestock should bear a relationship to each other that is reasonably proportionate to the estimated cost of producing each class. Various factors enter into a reasonable estimate as to each operator's cost of producing each class, such as per cent of calf crop, amount and kind of winter feeding, kinds of animals winter fed, relative weight of animals in each classification, labor required to care for each classification, etc. Therefore, the estimate of the operator as to the relationship of each classification of his animals to the others will be given great weight. Once established the unit prices and classifications adopted will not be subject to change except with the

permission of the Commissioner. Classifications and prices heretofore adopted by taxpayers using constant costs may be changed only with the permission of the Commissioner.

4. A livestock producer who inventories livestock raised on the "unit-livestock-price method" should inventory livestock purchased at cost. When the animals purchased are not mature, their values should be increased at the end of each accounting year in accordance with the unit prices established for raised animals, except that in the case of purchases made during the last six months of such year, no increase should be made during that year.

If the records maintained permit identification of such purchased animals, the identified cost may be taken into account upon subsequent disposition; otherwise the first-in first-out method should be applied.

Registered or pure-bred animals, whether male or female, purchased for breeding purposes, may be capitalized at cost and depreciated after maturity to a reasonable salvage value over their estimated useful life, provided (1) they are segregated or otherwise identifiable, (2) separate accounts are kept for such animals, and (3) the ages, when acquired, are kept of record. The offspring of such animals, however, whether held for sale or added to the breeding herd, shall be inventoried under the "unit-livestock-price method." If a livestock grower maintains a special herd of registered or pure-bred animals for whatever purpose, separate unit-livestock-prices may be established for such special herd.

5. In order clearly to reflect income, a livestock producer on any inventory method must keep accurate records as to inventoried livestock. The records should show as accurately as his operations will reasonably permit the numbers of animals in each classification. Actual counts of animals, according to classifications, should be made at least once near the close of each year and records kept thereof.

6. Correspondence concerning the provisions of this mimeograph should be addressed to the Bureau for the attention of IT:FTE.

GEO. J. SCHOENEMAN,
Acting Commissioner.

SECTION 22(k).—GROSS INCOME: ALIMONY, ETC., INCOME.

SECTION 29.22(k)-1: Alimony and separate maintenance payments—Income to former wife. (Also Section 23(u), Section 29.23(u)-1.) 1945-20-12151 I. T. 3761

INTERNAL REVENUE CODE.

Periodic payments made pursuant to an interlocutory decree of divorce in the State of California by a husband for the support of his wife are includible in her gross income under section 22(k) of the Internal Revenue Code, and are deductible by the husband under section 23(u) of the Code.

Advice is requested whether periodic payments received by a wife from her husband pursuant to an interlocutory decree of divorce in the State of California are includible in the gross income of the wife under section 22(k) of the Internal Revenue Code and deductible by the husband under section 23(u) of the Code.

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

SEC. 22. GROSS INCOME.

* * * * * * *

(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, or attributable to property transferred (in trust or otherwise) 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, and such amounts received as are attributable to property so transferred shall not be includible in the gross income of such husband. * * *

Section 23 of the Code provides in part as follows:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

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. * * *

Section 131 of Deering's Civil Code of the State of California provides in part that if, in actions for divorce, the court determines that the divorce ought to be granted, an interlocutory judgment must be entered, declaring that the party in whose favor the court decides is entitled to a divorce. Section 132 of the Civil Code of California provides that when one year has expired after the entry of such interlocutory judgment, the court on motion of either party, or upon its own motion, may enter the final judgment granting the divorce. Under section 139 of the Civil Code of California, permanent alimony may be awarded, and such award of permanent alimony is made by the interlocutory decree. (See *Bacigalupi* v. *Bacigalupi*, 72 Cal. App., 654, 238 Pac., 93.)

It is held that periodic payments made pursuant to an interlocutory decree of divorce in the State of California by a husband for the support of his wife are includible in her gross income under section 22(k) of the Internal Revenue Code, and are deductible by the husband under section 23(u) of the Code.

SECTION 22(m).—GROSS INCOME: SERVICES OF CHILD.

SECTION 29.22(m)-1: Services of child.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5425, page 10.)

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

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

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5425, page 10.)

SECTION 29.22(n)-1: Adjusted gross income. 1945-7-12003
I. T. 3722

INTERNAL REVENUE CODE.

The Philadelphia income tax, which is imposed upon salaries, wages, and net profits of unincorporated business enterprises, is not deductible in computing adjusted gross income as defined by section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944.

Advice is requested whether the Philadelphia income tax, which is imposed upon salaries, wages, and net profits of unincorporated business enterprises, is deductible in computing adjusted gross income as defined in section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944.

Section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944, provides in part as follows:

(n) DEFINITION OF "ADJUSTED GROSS INCOME".—As used in this chapter the term "adjusted gross income" means the gross income minus—

(1) TRADE AND BUSINESS DEDUCTIONS.—The deductions allowed by section 23 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee;

It is held that the Philadelphia income tax imposed upon salaries and wages is not deductible in computing adjusted gross income under section 22(n) of the Code inasmuch as such tax is attributable to a trade or business which consists of the "performance of services by the taxpayer as an employee." It is further held that the tax imposed on the net profits of businesses or professions is not deductible in the computation of such adjusted gross income since it does not represent an expense directly incurred in the carrying on of a business or profession. (Cf. I. T. 3370, C. B. 1940-1, 32.)

SECTION 29.22(n)-1: Adjusted gross income. 1945-8-12019
I. T. 3728

INTERNAL REVENUE CODE.

Treatment of deductions allowable in computing adjusted gross income for Federal income tax purposes under section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944, in the case of a salesman employed on a straight commission basis who is not reimbursed by his employer for any expenses (including traveling expenses) incurred by him in connection with the performance of his services as an employee.

Advice is requested as to expenses which are deductible in determining the adjusted gross income, for Federal income tax purposes, of a salesman who is employed on a straight commission basis, who travels away from home, who pays fees to public stenographers, salaries to sample carriers, and commissions to other salesmen, and who incurs entertainment expenses, expenses in attending business conventions, and automobile expenses, including depreciation. The individual in question is not reimbursed by his employer for any of such expenditures. Inquiry is also made whether the loss sustained upon the sale of an automobile used for business purposes is deductible in determining adjusted gross income.

Section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944, provides in part as follows:

(n) DEFINITION OF "ADJUSTED GROSS INCOME".—As used in this chapter the term "adjusted gross income" means the gross income minus—

(1) TRADE AND BUSINESS DEDUCTIONS.—The deductions allowed by section 23 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee;

(2) EXPENSES OF TRAVEL AND LODGING IN CONNECTION WITH EMPLOYMENT.—The deductions allowed by section 23 which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

(3) REIMBURSED EXPENSES IN CONNECTION WITH EMPLOYMENT.—The deductions allowed by section 23 (other than expenses of travel, meals, and lodging while away from home) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer;

* * * * * * *

(6) LOSSES FROM SALES OR EXCHANGE OF PROPERTY.—The deductions (other than those provided in paragraph (1)) allowed by section 23 as losses from the sale or exchange of property.

In order to be deductible under section 22(n)(2) of the Code, supra, expenses paid or incurred by the taxpayer must be:

(1) for "travel, meals, and lodging," and
(2) "while away from home," and
(3) "in connection with the performance by him of services as an employee."

The following types of expenses paid or incurred by an employee while traveling away from home in connection with his services as an employee will ordinarily be deductible under section 22(n), supra, in determining his adjusted gross income: expenses for travel, meals, and lodging; expenses for transportation of the employee, a reasonable amount of baggage, and necessary samples and display material; expenses for hotel rooms, sample rooms, telephone and telegraph services, and public stenographers; and expenses (including depreciation) of maintaining and operating an automobile for business purposes. Such traveling expenses incurred in attending a business convention are deductible by an employee only if he attends "in connection with the performance by him of services as an employee."

Expenses for entertainment and commissions paid to other salesmen are not deductible from gross income in determining the adjusted gross income of an employee who travels away from home and who is not reimbursed.

The expenses of operating and maintaining an automobile used for business purposes are not deductible in determining adjusted gross income by an employee who is not reimbursed and who does not travel away from home. A loss sustained on the sale of an automobile used for business purposes is deductible by an employee under section 22(n)(6) of the Code, supra.

SECTION 29.22(n)–1: Adjusted gross income. 1945–9–12030
(Also Section 23(c), Section 29.23(c)–1.) I. T. 3731

INTERNAL REVENUE CODE.

The Indiana gross income tax imposed upon the gross income of a partnership is not deductible in computing adjusted gross income under section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944, whether such tax is paid by the partnership or, in their aliquot shares, by the partners individually. It is deductible under section 23(c) of the Code by each partner on his individual income tax return.

Advice is requested whether the Indiana gross income tax imposed upon the gross income of a partnership should be treated as a partnership expense, or whether such tax should be allocated to the individual partners in a manner similar to the allocation of partnership charitable contributions, for the purpose of computing adjusted gross income under section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944. The question arises in connection with the effect such treatment of the tax may have on the use of the optional standard deduction in the preparation of the partners' individual income tax returns.

Section 64–2602, chapter 26, title 64, of Burns Annotated Indiana Statutes provides in part as follows:

LEVY OF TAX—DATE.—There is hereby imposed a tax upon the receipt of gross income, measured by the amount or volume of gross income, and in the amount to be determined by the application of rates on such gross income as hereinafter provided. Such tax shall be levied upon the receipt of the entire gross income of all persons resident and/or domiciled in the State of Indiana, except as herein otherwise provided; and upon the receipt of gross income derived from activities or businesses or any other source within the State of Indiana, of all persons who are not residents of the State of Indiana, and shall be in addition to all other taxes now or hereafter imposed with respect to particular privileges, occupations, and/or activities. * * *

Section 64–2607 of the same chapter and title of Burns Annotated Indiana Statutes provides in part as follows:

PARTNERSHIPS—JOINT VENTURES—POOLS—RETURNS.—(a) Partnerships, joint ventures and pools shall be subject to the tax provided for in this act, and shall make quarterly and annual returns to the department and pay the tax thereon, as provided in section 10 of this act. * * * Such returns shall show the aliquot share of each partner or participant in such total gross income of the partnership, joint venture or pool, after making the deduction provided for in section 5. If the tax imposed hereunder upon the receipt of gross income by the partnership, joint venture or pool has been paid by such partnership, joint venture or pool, as herein provided, the amounts received by the partners or participants as their respective distributive shares of the income of such partnership, joint venture or pool will be exempt from gross income tax when received by them. Each partner or participant shall be personally responsible for filing the returns herein provided for, and for the payment of the tax with respect thereto * * *

The Indiana gross income tax law imposes a tax on the privilege of receiving income (*Department of Treasury of Indiana* v. *Jackson*, 110 App., 36; 37 N. E. (2d), 31), and its purpose is to reach the income of all inhabitants of the State who come within its purview (*Department of Treasury of Indiana* v. *Dietzen's Estate*, 215 Ind., 528; 21 N. E. (2d), 137). Although, under the Indiana statutes in question, a partnership is a taxpaying entity, the law provides for a personal liability on each partner for the filing of the partnership return and

the payment of the tax. The law further provides that if the partnership tax is paid by the partnership as an entity, the aliquot share of each partner's income is distributable to him free of tax liability, and there may thus be, to the extent of such partnership income, a substitution of the taxpaying entity. Such substitution, however, does not operate to destroy the ultimate individual liability for the tax or the character of the tax as a State income tax.

It is held that the Indiana gross income tax imposed upon the gross income of a partnership is not deductible in computing adjusted gross income under section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944, whether such tax is paid by the partnership or, in their aliquot shares, by the partners individually. The tax is deductible under section 23(c) of the Code by each partner on his individual income tax return. In this respect, the treatment of the deduction is comparable to that provided by section 183(c) of the Code and section 29.183-1(2) of Regulations 111, relating to the allocation of charitable contributions made by a partnership.

SECTION 29.22(n)-1: Adjusted gross income. 1945-16-12106
I. T. 3752

INTERNAL REVENUE CODE.

An officer of the United States Army, whether commissioned or noncommissioned, is an employee of the United States and as such is not entitled to any trade or business deductions in computing adjusted gross income under section 22(n)(1) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944, with respect to his salary received from the United States.

Advice is requested whether an officer of the United States Army, whether commissioned or noncommissioned, is an employee of the United States and as such is entitled to any trade or business deductions in computing adjusted gross income under section 22(n) of the Internal Revenue Code with respect to his salary received from the United States. The precise question is whether such officer is prohibited from deducting the cost of insignia and other equipment especially required by his profession as "trade or business" deductions in computing adjusted gross income.

Section 22(n)(1) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944, provides as follows:

(n) DEFINITION OF "ADJUSTED GROSS INCOME".—As used in this chapter the term "adjusted gross income" means the gross income minus—

(1) TRADE AND BUSINESS DEDUCTIONS.—The deductions allowed by section 23 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee;

Section 1621(c) of the Code provides in part as follows:

(c) EMPLOYEE.—The term "employee" includes an officer, employee, or elected official of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. * * *

The term "employee" as defined in section 1621(c) of the Code includes an officer, employee, or elected official of the United States, or

any agency or instrumentality thereof. The United States Army is an agency or instrumentality of the United States, and the performance of services in the Army by an Army officer, whether commissioned or noncommissioned, constitutes the performance of services as an employee.

It is held that an officer of the United States Army, whether commissioned or noncommissioned, is an employee of the United States and as such is not entitled to any trade or business deductions in computing adjusted gross income under section 22(n)(1) of the Code, supra, with respect to his salary received from the United States. Accordingly, any expenditures made by an Army officer for the purchase of insignia and other equipment especially required by his profession are not deductible under section 22(n)(1) of the Code in computing adjusted gross income.

SECTION 29.22(n)–1: Adjusted gross income. 1945–16–12107
(Also Section 23(c), Section 29.23(c)–1.) I. T. 3753

INTERNAL REVENUE CODE.

The New York State temporary emergency tax on net incomes of unincorporated businesses imposed by section 386–a, article 16–A, chapter 62, of the New York tax law is not deductible in computing adjusted gross income under section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944.

Advice is requested whether the New York State temporary emergency tax on net incomes of unincorporated businesses imposed by section 386–a, article 16–A, chapter 62, of the New York tax law, is deductible in computing adjusted gross income under section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944.

The above-cited section of the New York law provides in part as follows:

A tax is hereby imposed upon the entire net income of any unincorporated business wholly or partly carried on within this State * * * which tax shall be equal to 4 per centum of the entire net income within this State of such unincorporated business and shall be payable by the taxpayer conducting the same. The tax imposed by this article shall be in addition to any other taxes imposed by this chapter or any other law.

Section 22(n) of the Internal Revenue Code, as added by section 8(a) of the Individual Income Tax Act of 1944, provides in part as follows:

(n) DEFINITION OF "ADJUSTED GROSS INCOME".—As used in this chapter the term "adjusted gross income" means the gross income minus—

(1) TRADE AND BUSINESS DEDUCTIONS.—The deductions allowed by section 23 which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee; * * *

Section 29.22(n)–1 of Regulations 111 provides in part as follows:

* * * For example, taxes are deductible in arriving at adjusted gross income only if they constitute expenditures directly attributable to the trade or business or to property from which rents or royalties are derived. Thus, property taxes paid or incurred on real property used in the trade or business are deductible but State income taxes are not deductible even though the taxpayer's income is derived from the conduct of a trade or business.

The Income Tax Bureau of the State of New York held in 1935 that the temporary emergency tax on net incomes of unincorporated businesses is an income tax. That ruling was sustained in 1940 by *People ex rel. Froelick* v. *Graves* (259 App. Div., 30, 18 N. Y. S. (2d), 418).

In view of the foregoing, it is held that the New York State temporary emergency tax on net incomes of unincorporated businesses, supra, is not deductible in computing adjusted gross income under section 22(n) of the Code, as added by section 8(a) of the Individual Income Tax Act of 1944.

SECTION 29.22(n)–1: Adjusted gross income. (Also Section 23(c), Section 29.23(c)–1; Section 183, Section 29.183–1.) 1945–22–12165 I. T. 3766

INTERNAL REVENUE CODE.

In computing the net income of a partnership and the distributable shares of the partners, for Federal income tax purposes, the Indiana gross income tax paid by a partnership on account of the receipt by it of gross income is deductible from partnership gross income under section 23(c) of the Internal Revenue Code. The partnership tax is not allowable as a deduction to the partners, but the deduction of the tax by the partnership does not preclude the individual partners from claiming the optional standard deduction under section 23(aa) of the Code. I. T. 3731 (page 80, this Bulletin) revoked.

Where the Indiana gross income tax is paid by an individual taxpayer on account of the receipt by him of gross income, it is not deductible from gross income in computing "adjusted gross income" under section 22(n) of the Code.

Reconsideration has been given to the question whether, for Federal income tax purposes, the Indiana gross income tax paid by a partnership on account of the receipt of gross income is deductible by the partnership, or whether, as held in I. T. 3731 (page 80, this Bulletin), such tax is deductible by the individual partners under section 23(c) of the Internal Revenue Code in a manner similar to the allocation of partnership charitable contributions. The question whether, in the case of an individual engaged in a trade or business, the Indiana gross income tax is "attributable to a trade or business carried on by the taxpayer" within the meaning of section 22(n)(1) of the Code has also been considered.

Section 64–2602 of Burns' Annotated Indiana Statutes provides in part as follows:

LEVY OF TAX—DATE.—There is hereby imposed a tax upon the receipt of gross income, measured by the amount or volume of gross income, and in the amount to be determined by the application of rates on such gross income as hereinafter provided. Such tax shall be levied upon the receipt of the entire gross income of all persons resident and/or domiciled in the State of Indiana, except as herein otherwise provided; and upon the receipt of gross income derived from activities or businesses or any other source within the State of Indiana, of all persons who are not residents of the State of Indiana, and shall be in addition to all other taxes now or hereafter imposed with respect to particular privileges, occupations, and/or activities. * * * [Acts 1933, ch. 50, section 2, page 388; 1937, ch. 117, section 2, page 604.]

Section 64–2607 of Burns' Annotated Indiana Statutes provides in part as follows:

PARTNERSHIPS—JOINT VENTURES—POOLS—RETURNS.—(a) Partnerships, joint ventures and pools shall be subject to the tax provided for in this act, and shall make quarterly and annual returns to the department and pay the tax thereon, as provided in section ten [section 64–2610] of this act. * * * Such returns shall show the aliquot share of each partner or participant in such total gross income of the partnership, joint venture or pool, after making the deduction provided for in section five [section 64–2605]. If the tax imposed hereunder upon the receipt of gross income by the partnership, joint venture or pool has been paid by such partnership, joint venture or pool, as herein provided, the amounts received by the partners or participants as their respective distributive shares of the income of such partnership, joint venture or pool will be exempt from gross income tax when received by them. Each partner or participant shall be personally responsible for filing the returns herein provided for, and for the payment of the tax with respect thereto * * * [Acts 1933, ch. 50, section 7, page 388; 1937, ch. 117, section 7, page 604.]

The act in question is entitled "An act to provide for the raising of public revenue by imposing a tax upon the receipt of gross income, to provide for the ascertainment, assessment and collection of said tax, and to provide penalties for the violation of the terms of this act, and declaring an emergency." The short title of the act is " Gross Income Tax Act of 1933." It will be noted, from the above-quoted provisions of section 64–2602 of the Indiana statutes, that the tax is levied upon the " receipt of gross income " of all persons residing and/or domiciled in the State, upon the receipt of gross income derived from activities or business or any other source within the State, and upon the receipt of gross income by all persons who are not residents of the State who derive income from sources therein.

Section 64–2601 of Burns' Annotated Indiana Statutes contains a lengthy definition of " gross income " which includes compensation for personal services, gross receipts from business, amounts received as damages, alimony, or judgments, and amounts received from investments of capital. The term " gross income " does not include " gross receipts received from sources outside the State of Indiana " derived from a trade or business having a situs outside the State. Income tax is required to be withheld at the source from fixed or determinable annual or periodical income such as wages, interest, and dividends (section 64–2617, Burns' Annotated Indiana Statutes).

The Supreme Court of Indiana, in *Miles et al.* v. *Department of Treasury et al.* (209 Ind., 172, 199 N. E., 372), referred to the Indiana tax as an excise tax, stating as follows:

We conclude that the tax in question is an excise, levied upon those domiciled within the State or who derived income from sources within the State, upon the basis of the privilege of domicile or the privilege of transacting business within the State, and that the burden may reasonably be measured by the amount of income. The reasoning which justifies a tax upon the basis of domicile as readily supports and justifies a tax upon the basis of the right to receive income within, or transact business under the protection of, the State. We feel that the weight of reason and authority sustains this view.

The constitutionality of the Indiana Gross Income Tax Act of 1933 was considered by the United States Supreme Court in *J. D. Adams Manufacturing Co.* v. *Storen et al.* (304 U. S., 307). In its opinion (pages 310 and 311), the Court stated in part as follows:

The tax is not an excise for the privilege of domicile alone, since it is levied upon the gross income of nonresidents from sources within the State. Nor is it for the transaction of business, since in many instances it hits the receipt of income by one who conducts no business. * * *

The regulations issued by the Department of the Treasury, pursuant to authority granted by the Act, treat the exaction as a gross receipts tax; and the Attorney General says in his brief that it is a privilege tax upon the receipt of gross income. We think this is a correct description.

In *Department of Treasury of Indiana* v. *Dietzen's Estate et al.* (215 Ind., 528; 21 N. E. (2d), 137), it was stated that it was the opinion of the court that the purpose of the Indiana gross income tax was to reach the income of all the inhabitants of the State and that it, therefore, included a fiduciary. However, the statute itself, as well as the opinion rendered by the United States Supreme Court in *J. D. Adams Manufacturing Co.* v. *Storen et al.*, supra, indicates that this tax is not restricted to those who are domiciled in the State, nor is it restricted to persons engaged in business in the State. On the contrary, it is imposed upon all persons who derive income from sources within Indiana, whether or not domiciled in the State and whether or not engaged in trade or business within the State. The statute does not impose an occupational tax but imposes a tax on the privilege of receiving income (*Department of Treasury of Indiana* v. *Jackson et al.*, 110 App., 36, 37 N. E. (2d), 31).

Under the provisions of section 64–2607 of Burns' Annotated Indiana Statutes, supra, partnerships, joint ventures, and pools are subject to the Indiana gross income tax. If the tax imposed upon the receipt of gross income by the partnership has been paid by the partnership, such gross income is exempt from the tax when received by the individual members. For Federal income tax purposes, partnerships are not treated as taxable entities, but the members thereof are liable for tax in their individual capacity. (See section 181 of the Internal Revenue Code.) The net income of a partnership is computed, for Federal income tax purposes, in the same manner and on the same basis as in the case of an individual, with certain exceptions not material here. Inasmuch as taxes paid to a State by an individual, whether excise or income taxes, are deductible under section 23(c) of the Code in computing net income, they are deductible in computing the net income of a partnership. Therefore, whether or not the Indiana gross income tax is an income tax or an excise tax, it is deductible by a partnership.

Accordingly, it is held that in computing the net income of a partnership and the distributable shares of the partners, for Federal income tax purposes, the Indiana gross income tax paid by a partnership on account of the receipt by it of gross income is deductible from partnership gross income under section 23(c) of the Internal Revenue Code. The partnership tax is not allowable as a deduction to the partners, but they are not precluded from claiming the optional standard deduction under section 23(aa) of the Code.

In view of the above, I. T. 3731, supra, which is not in accord with the conclusion herein reached, is revoked.

The additional question presented is whether, in the case of an individual engaged in a trade or business, the Indiana gross income tax is a deduction "attributable to a trade or business carried on by

the taxpayer" within the contemplation of section 22(n)(1) of the Internal Revenue Code, which reads as follows:

(n) DEFINITION OF "ADJUSTED GROSS INCOME".—As used in this chapter the term "adjusted gross income" means the gross income minus—

(1) TRADE AND BUSINESS DEDUCTIONS.—The deductions allowed by section 23 *which are attributable to a trade or business carried on by the taxpayer,* if such trade or business does not consist of the performance of services by the taxpayer as an employee; [Italics supplied.]

In section 29.22(n)–1 of Regulations 111, it is stated in part as follows:

For the purpose of the deductions specified in section 22(n) the performance of personal services as an employee does not constitute the carrying on of a trade or business. The practice of a profession, not as an employee, is considered the conduct of a trade or business within the meaning of such section. To be deductible for the purposes of determining adjusted gross income, expenses must be those *directly,* and *not those merely remotely,* connected with the conduct of the trade or business. For example, taxes are deductible in arriving at adjusted gross income only if they constitute expenditures *directly attributable* to the trade or business or to property from which rents or royalties are derived. Thus, *property taxes* paid or incurred on real property used in the trade or business are deductible *but State income* taxes are not deductible even though the taxpayer's income is derived from the conduct of a trade or business. [Italics supplied.]

In other words, taxes on property used in the trade or business are considered directly attributable to the trade or business, but taxes based on income derived from the trade or business are not directly attributable to such trade or business. The fact that the regulations mention "State income taxes" as not being deductible in computing "adjusted gross income" under section 22(n) of the Code does not mean that such taxes represent the only type of tax which can not be deducted. An excise tax, such as the Indiana gross income tax, which is imposed upon the receipt of income, is not deductible in computing "adjusted gross income" for the same reason that State income taxes are not deductible, i. e., because such a tax is not a direct consequence of, nor "directly attributable" to, doing business, but is imposed upon the receipt of income whether or not derived from a trade or business. As pointed out by the United States Supreme Court in *J. D. Adams Manufacturing Co.* v. *Storen et al.*, supra, the Indiana gross income tax is not "for the transaction of business, since in many instances it hits the receipt of income by one who conducts no business." The Court then added that it agreed with the view of the attorney general of the State of Indiana that "it is a privilege tax upon the receipt of gross income." The fact that the "gross income" is derived from the conduct of a trade or business is merely incidental and does not mean that the tax is imposed upon, or "directly attributable" to, such trade or business.

In view of the foregoing, it is held that where the Indiana gross income tax is paid by an individual taxpayer on account of the receipt by him of gross income, it is not deductible from gross income in computing "adjusted gross income" under section 22(n) of the Code.

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

SECTION 29.23(a)-1: Business expenses. 1945-2-11933
(Also Section 23(o), Section 29.23(o)-1; I. T. 3706
Section 23(q), Section 29.23(q)-1.)

INTERNAL REVENUE CODE.

Contributions made to the M County Development Fund, a post-war planning and development fund, by taxpayers engaged in trade or business in the city of R or the county of M are deductible for Federal income tax purposes under section 23(a)(1)(A) of the Internal Revenue Code as business expenses unless it appears that the contributions are not made for the purpose, and with a reasonable expectation, of deriving a business benefit therefrom.

Advice is requested whether contributions made to the M County Development Fund are deductible from gross income for Federal income tax purposes.

The M County Development Fund, a post-war planning and development fund sponsored by the chamber of commerce of the city of R, is an organization the objectives of which are "to promote the economic, industrial, and agricultural welfare of M County so that opportunities for employment will be provided for the returning men and women of the armed services and the newly acquired citizens of the county; to cooperate with the proper public officials in the development of the business of the port of R, and in the furtherance of plans pertaining to the creation, maintenance, and betterment of public improvements, including inland waterways, airways, railways, highways, streets, and other transportation facilities, public parks, playgrounds, and other recreational facilities." The organization's development program is maintained with funds consisting of appropriations by the city of R and the county of M and by voluntary contributions.

Section 23(a)(1)(A) of the Internal Revenue Code provides for the deduction, in computing net income, of all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Whether a contribution to such a fund as the M County Development Fund is deductible as an ordinary and necessary business expense under section 23(a)(1)(A) of the Code depends on whether the contribution is made for a bona fide business purpose and is reasonably calculated to further the business of the contributor.

It is the desire of the Bureau that its policy with respect to the treatment of such contributions be as liberal as possible, consistent with the statute. Accordingly, it is held that contributions made to the M County Development Fund by taxpayers engaged in trade or business in the city of R or the county of M are deductible for Federal income tax purposes under section 23(a)(1)(A) of the Code as business expenses unless it appears that the contributions are not made for the purpose, and with a reasonable expectation, of deriving a business benefit therefrom. (See I. T. 2653, C. B. XI-2, 94 (1932).)

The M County Development Fund is not organized for any of the purposes specified in section 23(o)(2) or section 23(q)(2) of the Internal Revenue Code, as amended, and, therefore, contributions

made to the fund by individual and corporate taxpayers are not deductible from gross income under those sections of the Code, as amended.

SECTION 29.23(a)–1: Business expenses.

INTERNAL REVENUE CODE.

Amounts paid in excess of ceiling prices established by the Office of Price Administration. (See I. T. 3724, page 57.)

SECTION 29.23(a)–1: Business expenses. 1945–9–12031
(Also Section 24, Section 29.24–2.) I. T. 3732

INTERNAL REVENUE CODE.

In the case of a newspaper publisher, the cost of microfilming newspaper files which may reasonably be considered current records and the cost of periodic microfilming of future editions are deductible as ordinary and necessary business expenses for the year in which such expenditures are paid or incurred, but the cost of microfilming old newspaper files which are not classifiable as current records should be capitalized and recovered through depreciation allowances.

Advice is requested whether amounts paid or incurred by newspaper publishers with respect to the microfilming of newspaper files and for periodic microfilming to keep such files current are deductible as ordinary and necessary business expenses for Federal income tax purposes.

The old files of newspapers maintained by newspaper publishers represent libraries which are used by the journalistic staffs of such publishers in preparing articles for publication. In many instances the oldest files are deteriorating rapidly and storage space is practically exhausted. Inasmuch as newspaper files are permanent records, it is important that such files be safeguarded as far as possible against deterioration and the hazards of fire, flood, etc. The substitution of microfilm copies for the original records enables newspaper publishers to conserve space and insures the permanency of their files. Any expenditures paid or incurred for microfilming the files would of necessity be expenditures for the improvement or betterment of an existing facility of the business.

Section 23(a)(1)(A) of the Internal Revenue Code provides that in computing net income there shall be allowed as deductions:

(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *.

Section 29.23(a)–1 of Regulations 111 provides that business expenses which are deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, except the classes of items which are deductible under section 23(b) to section 23(z) of the Code and the regulations thereunder. The principle is well established that expenditures, in order to be deductible as business expenses, must be both ordinary and necessary in the taxpayer's trade or business during the taxable year for which the return is made. (See *Welch* v. *Helvering*, 290 U. S., 111, Ct. D. 755, C. B. XII–2, 112 (1933).) Section 24(a)(2)

of the Code provides in part that no deduction shall in any case be allowed in respect of any amount paid out for permanent improvements or betterments made to increase the value of any property. Section 29.41–3 of Regulations 111 provides in part that expenditures made during the taxable year should be properly classified as between capital and expense, i. e., expenditures for items of plant, equipment, etc., which have a useful life extending substantially beyond the year should be charged to a capital account and not to an expense account.

In view of the foregoing, it is held that in the case of a newspaper publisher the cost of microfilming newspaper files which may reasonably be considered current records and the cost of periodic microfilming of future editions are deductible as ordinary and necessary business expenses for the year in which such expenditures are paid or incurred, but the cost of microfilming old newspaper files which are not classifiable as current records should be capitalized and recovered through depreciation allowances under section 23(l) of the Internal Revenue Code.

SECTION 29.23(a)–1: Business expenses. 1945–10–12044
I. T. 3735

INTERNAL REVENUE CODE AND REVENUE ACT OF 1921.

Contributions or dues paid to the State of R Taxpayers Association by taxpayers engaged in a trade or business are deductible from gross income for Federal income tax purposes as an ordinary and necessary business expense under section 23(a)(1)(A) of the Internal Revenue Code, provided it can be shown that such payments have resulted in a reduction of taxes in connection with the operation of the business or that there is a reasonable expectation that the payments will result in tax benefits to the business commensurate with the amount of the payments.

I. T. 1281 (C. B. I–1, 118 (1922)) modified.

Advice is requested whether contributions or dues paid to the State of R Taxpayers Association by taxpayers engaged in a trade or business are deductible from gross income for Federal income tax purposes as an ordinary and necessary business expense under section 23(a)(1)(A) of the Internal Revenue Code.

The main object or purpose of the State of R Taxpayers Association is to bring about, through nonpartisan means, the greatest possible economies consistent with efficiency in the collection and expenditure of public funds in the State of R. This is accomplished largely through the dissemination of factual information contained in various statistical tables and other publications. One of the functions of the association is to collect and compile the local budget estimates, together with comparative figures for the previous year. Statistical tables compiled for one county recently disclosed excessive levies which the county board of supervisors was without authority to make. Through the evidence furnished by the association, its members succeeded in having the excessive levies eliminated from the county budget. This item alone resulted in a reduction of almost $200,000 in county taxes for the year 1945 and represents a direct saving to the association's members in that particular county. The amount saved to the members is several times the amount of their dues to the association. Similar results have been obtained in many other instances.

Although the association furnishes information to members of the State legislature, such information is furnished only upon request. The association does not attempt to influence legislation, and its representatives never appear before the legislature or any members thereof in behalf of, or in opposition to, proposed or pending legislation.

It is held that contributions or dues paid to the State of R Taxpayers Association by taxpayers engaged in a trade or business are deductible from gross income for Federal income tax purposes as an ordinary and necessary business expense under section 23(a)(1)(A) of the Internal Revenue Code, provided it can be shown that such payments have resulted in a reduction of taxes in connection with the operation of the business or that there is a reasonable expectation that the payments will result in tax benefits to the business commensurate with the amount of the payments.

I. T. 1281 (C. B. I–1, 118 (1922)) is hereby modified to the extent that it is inconsistent with the conclusion reached herein.

SECTION 29.23(a)–1: Business expenses. 1945–10–12047
(Also Section 22(a), Section 29.22(a)–1; Section 1621(a), Section 405.101, Regulations 116.) I. T. 3738

INTERNAL REVENUE CODE.

Contributions consisting of a percentage of the weekly pay roll made by members of a manufacturers' association to the health insurance fund of an employees' union pursuant to the terms of a collective bargaining agreement constitute ordinary and necessary business expenses which are deductible under section 23(a) of the Internal Revenue Code. Such contributions do not constitute wages for the purposes of sections 1621(a) and 1622(a) of the Code and are not subject to withholding of income tax at the source. Any amount actually distributed to the employees from the fund will, however, constitute gross income to them for the year in which distributed.

Advice is requested whether contributions consisting of a percentage of the weekly pay roll made by members of a manufacturers' association to the health insurance fund of an employees' union are deductible for Federal income tax purposes, and whether such contributions are subject to withholding of income tax at the source on wages. Advice is also requested as to the taxability of amounts distributed to employees from the fund.

Pursuant to the collective bargaining agreement entered into by the manufacturers' association on behalf of its members and the employees' union, the employers are required to pay, beginning with the first payroll week in January, 1944, a sum equal to a specified percentage of the gross weekly pay roll of all workers covered by the agreement. The moneys are to be deposited in a health insurance fund bank account and used only for the benefit of the workers employed by the manufacturers.

The management and control of the health insurance fund are vested in a board of trustees composed of an equal number of representatives of the union and of the employers, with an impartial chairman serving as public representative whenever a disagreement occurs. The by-laws governing the fund provide that the four main objectives and purposes of the fund shall be the establishment of a sick benefit fund, the estab-

lishment of a plan to secure medical advice, the distribution of funds as a contribution toward vacation benefits, and some plan of group insurance. The fund may also receive and use for its purposes and objectives contributions from any other source. No employer, by virtue of his contribution, has any right, title, or interest in the fund. No employee has any individual right, title, interest, or claim against his employer, his employer's contribution, or the fund. The fund is to be administered for the benefit of all members of the union employed by contributing employers in such manner as is determined by the board of trustees.

It is held that contributions consisting of a percentage of the weekly pay roll made by members of a manufacturers' association to the health insurance fund of an employees' union pursuant to the terms of a collective bargaining agreement constitute ordinary and necessary business expenses which are deductible under section 23(a) of the Internal Revenue Code. Such contributions do not constitute wages for the purposes of sections 1621(a) and 1622(a) of the Code and are not subject to withholding of income tax at the source. Any amount actually distributed to the employees from the fund will, however, constitute gross income to them for the year in which distributed.

SECTION 29.23(a)–1: Business expenses. 1945–12–12060
(Also Section 29.23(a)–4; Section 23(e), Section 29.23(e)–3; Section 24, Section 29.24–2.) Mim. 5870

Treatment of reconversion costs of war contractors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., June 1, 1945.

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

In a case of a war contractor who reconverts to peacetime production and incurs reconversion costs, such costs shall be treated for Federal income and excess profits tax purposes in accordance with the following:

(*a*) *General rules applicable.*—(1) Section 23(a)(1) of the Internal Revenue Code provides that in computing net income there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred in carrying on a trade or business, and section 29.23(e)–3, Regulations 111, contains provisions for deducting losses where property is abandoned or discarded. (2) Section 24 of the Code provides that in computing net income no deduction shall in any case be allowed in respect of any amount paid for new buildings or for permanent improvements or betterments made to increase the value of any property, or in respect of any amount expended to restore property.

(*b*) *Scope of deductible reconversion costs.*—In general, such costs include the expenditures necessary to restore the plant layout to an operating condition substantially equivalent to that existing when it was converted to war production. The term does not include costs which result in enlargement or substantial improvement of the facili-

ties over their condition prior to conversion to war purposes. Ordinarily the full cost of converting newly acquired war facilities shall be capitalized. For example, in the case of facilities which were constructed or acquired for war production purposes and are owned by the Government, if a taxpayer acquired any such facilities with a view to rehabilitating or remodeling them and making them suitable for his peacetime production, no loss is deductible by reason of any demolition cost in remodeling the facilities, and the cost of remodeling constitutes a capital expenditure. A similar rule is applicable with respect to facilities the entire cost of which is being recovered by the taxpayer through amortization deductions under section 124 of the Internal Revenue Code.

(*c*) *Costs not borne by taxpayer.*—If a taxpayer is definitely entitled to compensation or reimbursement for any item of reconversion cost incurred, as, for example, where there is specific provision therefor in an agreement, the amount of the item, to the extent deductible, shall be deducted in computing net income for the taxable year for which the compensation for such item is includible in gross income; and if the compensation or reimbursement is not includible in income, the amount of such item, to the extent that it does not exceed the amount of the compensation or reimbursement, shall not be deductible for any taxable year.

(*d*) *Removal of war facilities and materials.*—Subject to the exceptions stated in this paragraph and in the preceding paragraph, the costs of removing war facilities and materials from the contractor's plant shall be deducted in computing net income for the taxable year in which such costs are incurred. In the case of facilities subject to depreciation at rates based on cost less net salvage value (i. e., gross salvage value less cost of removal), the costs of removal of such facilities shall be deductible only to the extent that they exceed the amount deducted therefor in computing such net salvage value. In the case of a facility subject to amortization deductions under section 124 of the Internal Revenue Code, as amended, the cost of removing such facility is deductible only to the extent that it exceeds the salvage value of the facility at the time of removal.

(*e*) *Loss of useful value of facilities.*—If upon termination of war production or upon reconversion to peacetime production a facility is abandoned or permanently discarded within the meaning of section 29.23(e)–3 of Regulations 111, a deduction for loss of useful value is allowable for the taxable year in which the facility is so abandoned or discarded, regardless of whether the facility is an emergency facility within the meaning of section 124 of the Internal Revenue Code, as amended (cf. I. T. 3652, C. B. 1944, 118). See, however, the above paragraph (*c*). The adjusted basis of the facility for the purpose of determining the amount of such loss shall be the adjusted basis at the date the facility is abandoned or discarded.

(*f*) *Cost of moving machinery.*—As used in this paragraph, the "cost of moving" includes expenses incidental to rearranging machinery for peacetime production and does not include installation or reinstallation costs which are discussed in paragraph (*g*), below. Where machinery was removed from the plant in converting to war production, the cost of moving such machinery to the plant in reconverting is deductible in computing net income for the taxable year in

which the expense is incurred. A similar deduction is allowed for the cost of moving machinery from one location to another within the plant. Also, where machinery installed by the contractor for war production purposes is to be used by the contractor in peacetime production, the cost of moving such machinery in rearranging the plant is deductible. The rule stated in the preceding sentence is not applicable in the case of Government-owned machinery which is acquired and moved by the taxpayer, if the Government is obligated to remove the machinery.

(*g*) *Reinstallation of machinery.*—When machinery is purchased and set up ready for use, ordinarily the cost of such installation is part of the original cost of such machinery and constitutes a capital expenditure, for the machinery is not ready for use until installed and the installing of machinery constitutes an improvement. (*MacAdam & Foster, Inc.*, 8 B. T. A., 967.) In some circumstances, however, as in the case of heavy machines, the cost of foundations and the installation costs may be charged to separate accounts, rather than to the cost of the machine. In such cases, the costs of the original foundations and original installations, less depreciation accrued thereon and less the salvage value thereof, constitute a deduction at the time they were removed to convert to war production, provided that such deduction was taken by the taxpayer in filing his return for the year of removal. Upon reconverting to peacetime production, the costs of new foundations or installations in such cases shall, to the extent of the adjusted basis of the old foundations at the time of their removal, be treated as capital expenditures. If any such foundations were constructed for war production purposes or any such installations were made for such purposes, and if in reconverting to peacetime production such foundations or installations are removed, the costs thereof, less depreciation or amortization to the date of the removal and less any salvage value, constitute a deduction in computing net income for the taxable year of the removal. In the case of machinery which was installed for war production purposes and is moved and reinstalled for peacetime production, if the entire cost of installation is being recovered through amortization under section 124 of the Code, as amended, the cost of reinstallation is not deductible and shall be capitalized as part of the cost of the machinery. The installation cost with respect to new machinery replacing old machinery which was abandoned upon conversion to war production or which is unusable upon reconversion to peacetime production, and the installation cost of any other additional machinery, constitute capital expenditures. Also, the costs of reinstalling Government-owned machinery, which is acquired and moved by the taxpayer, constitute capital expenditures. Subject to the foregoing, if the original installation cost was not deducted for the taxable year in which the machinery was moved in converting to war production, the cost of reinstalling such machinery is deductible in computing the taxable income for the year in which such cost is incurred. For the purpose of the foregoing provisions of this paragraph, "machinery" includes machines; electrical apparatus such as generators, motors, etc.; electrical accessories; ovens and furnaces; conveyor equipment, provided that they are movable. See, also, the above paragraph (*c*).

(*h*) *Cost of reconverting building.*—As used herein, the term "building" includes piping, wiring, fixtures, and other building

equipment which constitute an integral part of the building and are necessary for the general purpose for which the building would ordinarily be used in peacetime production. For example, such equipment may include plumbing and toilet facilities, water, sewer, and drain pipe, sprinkler and fire protection systems, power wiring from connections with main line systems to wall outlets, lighting wiring, heating systems (including boilers, furnaces, and accessories) installed within the building, ventilating systems, elevators, fire escapes, and steel floor plates which serve as a part of the floor. For Federal income and excess profits tax purposes, a building, together with all such equipment, may be included in one account with a composite rate of depreciation, or the building equipment may be set up in separate accounts, in which event separate rates of depreciation may be applicable to the particular items. If in converting to war production any part of a building was demolished by a taxpayer, ordinarily such taxpayer is entitled, in computing net income for the taxable year of such demolition, to deduct the undepreciated cost of the part of the building demolished. For example, if in making alterations for the purpose of converting to war production the taxpayer tore out a wall, discarded floors, or changed the roof and ceiling, the depreciated cost of the portion of the building so demolished constitutes a proper deduction in computing net income for the year in which the demolition occurred. In some cases, however, it will be very difficult to establish the undepreciated cost of the portion of the building removed or demolished. (Cf. *Treat Hardware Corporation*, 6 B. T. A., 768.) In such cases, where the taxpayer has not claimed and is not allowed any deduction of a loss for the taxable year of the removal or demolition, and it is not feasible to determine the amount of such loss, if upon reconverting to peacetime production the parts of the building so removed or demolished are replaced to restore the building to its original condition, the taxpayer may, in computing net income for the taxable year of the change, deduct the cost of making the restoration or replacement. If, however, the part of the building previously removed or demolished is, upon reconversion to peacetime production, replaced with a new and improved type of material or device, the amount allowable as a deduction in computing net income for the taxable year of the reconversion shall not exceed a reasonable estimate of the amount necessary to restore such part of the building to its original condition. The provisions of the preceding sentence are not applicable where, for example, the taxpayer installs a new heating, sprinkler, or ventilating system, for in such case the amount of loss deductible for the taxable year in which the old system was discarded is reasonably ascertainable. However, the taxpayer is entitled to deduct as ordinary and necessary business expenses (1) the cost of removing and relocating any building equipment which was moved and relocated for war production purposes and which, upon conversion to peacetime production, must again be moved and relocated, and (2) the costs of reinstalling any building equipment which was removed and stored during the period of war production. The provisions of the preceding sentence are applicable, for example, in a case of pipe, wiring, and building fixtures. See, however, the above paragraph (*c*). The foregoing provisions of this paragraph are applicable in the case of a lessee of a building with respect to which changes were made to adapt it to war production purposes. Furthermore, if the

lessee is under an obligation to restore any part of the premises to substantially its former condition, the entire cost of making such restoration is deductible in computing net income for the taxable year in which such cost is incurred.

(*i*) *Repairs.*—The cost of incidental repairs made in connection with reconversion to peacetime production is deductible in computing net income for the taxable year in which the repairs are made. Such repairs are limited to those which do not materially add to the value of the property or appreciably prolong its life. (See section 29.23(a)-4, Regulations 111.) Among the items included in this category are, for example, the cost of painting; replacing broken, damaged, or short-lived parts of machinery; replacing defective parts of a wiring system; and replacing broken or worn-out rails in a transportation system. See, however, the above paragraph (*c*).

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

JOSEPH D. NUNAN, Jr.,
Commissioner.

SECTION 29.23(a)-1: Business expenses. 1945-21-12154
I. T. 3762

INTERNAL REVENUE CODE.

Payments by an employer of (1) liquidated damages and (2) reasonable attorneys' fees allowed by the courts, pursuant to section 16(b) of the Fair Labor Standards Act of 1938 (52 Stat., 1060, 1069), are deductible as ordinary and necessary business expenses for Federal income tax purposes.

Advice is requested whether payments by an employer of (1) liquidated damages and (2) reasonable attorneys' fees allowed by the courts, pursuant to section 16(b) of the Fair Labor Standards Act of 1938 (52 Stat., 1060, 1069), are deductible as ordinary and necessary business expenses for Federal income tax purposes.

Section 16(a) of the Fair Labor Standards Act of 1938 provides for penalties consisting of fines and imprisonment for willful violations of the Act. Section 16(b) of the same Act provides as follows:

Any employer who violates the provisions of section 6 [section 6 relates to minimum wages] or section 7 [section 7 relates to maximum hours] of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

The provisions of section 16(b) of the Fair Labor Standards Act of 1938, supra, are not penal in nature. The liquidated damages provided for therein constitute compensation for delay in the payment of sums due under the Act. (See *Overnight Motor Transportation Co., Inc.*, v. *Missel*, 316 U. S., 572, and *Brooklyn Savings Bank* v. *O'Neil*, decided April 9, 1945, 65 S. Ct., 895.)

It is held that payments by an employer of (1) liquidated damages and (2) reasonable attorneys' fees allowed by the courts, pursuant to section 16(b) of the Fair Labor Standards Act of 1938, supra, are deductible as ordinary and necessary business expenses for Federal income tax purposes.

SECTION 29.23(a)-1: Business expenses.

INTERNAL REVENUE CODE.

Contribution required to be paid by employers under article 374 of Ecuadorian Decree No. 210, dated August 5, 1938. (See I. T. 3768, page 204.)

SECTION 19.23(a)-2: Traveling expenses. 1945-19-12138
(Also Section 24, Section 19.24-1.) Ct. D. 1646

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF COURT.

GROSS INCOME—DEDUCTIONS—ORDINARY AND NECESSARY EXPENSES—TRAVELING EXPENSES—CONSTRUCTION OF STATUTE—"HOME"—"PLACE OF BUSINESS."

The petitioners, justices of the Supreme Court of North Carolina, are not entitled, under section 23(a)(1)(A) of the Internal Revenue Code, to deductions for traveling expenses, including expenses for meals and lodging, while away from their homes in attendance upon the business of the court at the State capital in Raleigh. In the case of one of the petitioners, his only place of business and his actual residence during the greater part of the tax years has been at Raleigh, while his home in the ordinary sense has been at Rocky Mount, about 60 miles distant. In allowing deductions for traveling expenses to one who is away from home on business, the statute implies that the home and the place of business must be in the same general locality. The statute must be given this construction, which may be done without arbitrarily construing the word "home" as synonymous with the term "place of business."

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Maurice Victor Barnhill, petitioner, v. *Commissioner of Internal Revenue, respondent.*

Maurice Victor Barnhill and Nannie C. Barnhill, petitioners, v. *Commissioner of Internal Revenue, respondent.*

John Wallace Winborne, petitioner, v. *Commissioner of Internal Revenue, respondent.*

[148 Fed. (2d), 913.]

On petitions to review the decisions of The Tax Court of the United States.

Before PARKER, SOPER, and DOBIE, Circuit Judges.

[April 9, 1945.]

OPINION.

SOPER, Circuit Judge: These cases raise the question whether certain justices of the Supreme Court of North Carolina, in computing their net incomes under the Federal income tax law, should be allowed deductions for traveling expenses, including expenses for meals and lodging while away from their homes in attendance upon the business of the court at the State capital in Raleigh.

Maurice Victor Barnhill is the taxpayer in cases No. 5332 and 5333, which relate to the years 1939 and 1940 respectively. Separate cases were made because he filed a joint return with his wife in 1940. He was a judge of the Superior Court of North Carolina prior to 1937, and maintained a home in Rocky Mount, which is 60 miles distant from the capital. In that year he was appointed an associate justice of the supreme court of the State and in 1938 was elected to that office for a term of eight years beginning January 1, 1939. Two terms of the court are held each year, one beginning on the first Monday in February and one on the first Monday in September. Under the statutes of the State all the sessions of the court are held at the capital. The presence of the justices at the capital is required during the terms but not otherwise, except for an occasional visit two or three times a month.

The taxpayer continued to maintain and keep open his home in Rocky Mount after he became a member of the supreme court and it was continuously occupied during the tax years by some member of the family. There is an unwritten law in North Carolina that there shall be a geographical distribution of the justices of the supreme court throughout the State, and each justice has always maintained a legal residence in the section of the State in which he resided at the time of his elevation to the court. The taxpayer continued to vote in Rocky Mount and maintained his church and club affiliations and listed his tangible and intangible personal property for taxation and paid his poll tax at that place.

During each of the two years the taxpayer, as a justice of the supreme court, received a salary of $7,500 and an additional allowance of $1,550 under the State statutes "in lieu of and in commutation for expenses incident to attendance upon the court." While in Raleigh he stayed at a hotel in a room which he engaged by the year at the rate of $65 per month since he found this arrangement to be the most economical. He kept no account of the cost of his meals in Raleigh since during 1939 and 1940 neither the salary nor the expense allowance was deemed to be taxable. But he estimated his expenses for meals at $2.50 per day and claimed a deduction therefor of $557.50 in 1939 and $516 in 1940, indicating that he spent 223 days in 1939 and 206 days in 1940 at the State capital. In addition the taxpayer claimed a deduction for traveling expenses by automobile at the rate of 5 cents per mile, amounting to $276 in 1939 and $264 in 1940. When the court was in session, the taxpayer would go from his home in Rocky Mount to Raleigh and return once a week, and when the court was not in session, the taxpayer made the round trip two or three times a month. He made 46 round trips in 1939 and 44 round trips in 1940.

During the tax years the taxpayer owned three farms and a house in addition to his residence. Two of the farms and the house were let for a cash rent. The other farm located near Rocky Mount was rented on shares and he attempted to give it frequent personal attention. His net income from his real estate was $405 in 1939 and $544.77 in 1940. He also derived dividends from the stock of a real estate and insurance company in Rocky Mount of which he was a director, amounting to $214.40 in 1939 and $283 in 1940.

Upon this evidence The Tax Court found that the taxpayer's sole business in the tax years was that of associate justice of the Supreme Court of North Carolina and that his place of business was at Raleigh, the State capital. The activities of the taxpayer as one of the directors without pay and a stockholder of the real estate and insurance corporation, and as the owner of the farms and the dwelling house, were not overlooked; but the conclusion was reached that the taxpayer was not engaged in the business of farming or of investment and that his activities in these respects were merely those of an investor or owner of property. It is obvious that there was ample evidence to support these findings and conclusions.

The controversy turns upon the legal conclusion of The Tax Court that the taxpayer was not entitled to the deductions claimed for living expenses at Raleigh and traveling expenses between Raleigh and Rocky Mount. This holding was based upon the view that the statute, relating to deductions for travel and living expenses of a taxpayer while away from home on business, contemplates that the taxpayer's home shall be located in the same neighborhood as his place of business, and if he chooses to live elsewhere, he must bear the added expenses involved without the privilege of deducting them in computing his net taxable income.

The relevant provisions of the statute and Treasury regulations are as follows:

INTERNAL REVENUE CODE.

"SEC. 23 (as amended by section 121 of the Revenue Act of 1942, ch. 619, 56 Stat. 798). DEDUCTIONS FROM GROSS INCOME.

"In computing net income there shall be allowed as deductions:

"(a) EXPENSES.—

"(1) TRADE OR BUSINESS EXPENSES.—

"(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity."

* * * * * * *

(26 U. S. C., 1940 ed., section 23.)

"SEC. 24. ITEMS NOT DEDUCTIBLE.

"(a) GENERAL RULE.—In computing net income no deduction shall in any case be allowed in respect of—

"(1) Personal, living, or family expenses;"

* * * * * * *

(26 U. S. C., 1940 ed., section 24.)

TREASURY REGULATIONS 103, PROMULGATED UNDER THE INTERNAL REVENUE CODE.

"SEC. 19.23(a)–1. BUSINESS EXPENSES.—Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, * * * Among the items included in business expenses are management expenses, commissions, labor, supplies, incidental repairs, operating expenses of automobiles used in the trade or business, traveling expenses while away from home solely in the pursuit of a trade or business (see section 19.23(a)–2), advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident, or other similar losses in the case of a business, and rental for the use of business property. * * *

"SEC. 19.23(a)–2. TRAVELING EXPENSES.—

* * * * * * *

"(*b*) If an individual receives a salary and is also repaid his actual traveling expenses, he shall include in gross income the amount so repaid and may deduct such expenses.

"(*c*) * * * Only such expenses as are reasonable and necessary in the conduct of the business and directly attributable to it may be deducted.

"Commuters' fares are not considered as business expenses and are not deductible."

It is noteworthy that the allowable deductions enumerated in the statute are ordinary and necessary expenses incurred in carrying on the business, traveling and living expenses while away from home in the pursuit of business, and rentals for occupation of property in the pursuit of business; and that personal living and family expense are expressly disallowed. The regulations which interpret the statute emphasize the point that the deductible business expenses must be ordinary and necessary, and that only such traveling expenses as are reasonable and necessary in the conduct of the business may be deducted. Furthermore, commuters' fares, that is, the expenses of those whose homes are near enough to their places of business to enable them to travel back and forth daily are not deductible.

The decisions of The Tax Court have been influenced by this interpretation, and for a long period of time deductions for travel and living expenses at the place of business have been denied to a taxpayer who has chosen to establish his home elsewhere. For example, this ruling has been applied to a manager of public fairs who maintained a home distant from his place of business; to a traveling salesman who was unable to show that he had established a home in any location; to a woman whose home was in New York State but whose business interests were situated in Chicago; to a Congressman whose busi-

ness was of necessity performed at the seat of government, while his home was in a distant State; and to an actor who maintained a home for his family in New York while he was continuously engaged in his profession during the tax year at Hollywood, Calif. (See *Bixler* v. *Commissioner*, 5 B. T. A., 1181 (1927); *Duncan* v. *Commissioner*, 17 B. T. A., 1088 (1929); *Peters* v. *Commissioner*, 19 B. T. A., 901 (1930); *Lindsay* v. *Commissioner*, 34 B. T. A., 840 (1936); *Tracy* v. *Commissioner*, 39 B. T. A., 578 (1939).)

On the other hand, traveling and living expenses have been allowed to one who had his principal place of business and home in the same city but was obliged to live in another city for considerable periods of time in the pursuit of his principal occupation or of some other minor business activity. Such was the holding in respect to the representative of a New York house who, during the emergency of the First World War was obliged to reside for two years in Paris; to a lawyer whose regular place of business was in Toledo but who spent two weeks of each month during the tax year in Washington as chairman of a Congressional committee, whose other members were all Congressmen; and to a business man who maintained his home and principal place of business in Boston but earned a substantial salary for services performed while residing from time to time in the city of New York. (See *Griesemer* v. *Commissioner*, 10 B. T. A., 386 (1928); *Brown* v. *Commissioner*, 13 B. T. A., 832 (1928); *Powell* v. *Commissioner*, 34 B. T. A., 655 (1936); *Gustafson* v. *Commissioner*, 3 T. C., 998 (1944).)

In the decision in the instant case and in other decisions, The Tax Court has said that for the purposes of the statute, a taxpayer's "home" means his place of business. This statement has been criticized or repudiated by the courts in some cases on the ground that the word "home" has a well recognized meaning and that to give it the significance of "place of business" amounts to a distortion of the language of the statute and an invasion of the domain of Congress. (See *Coburn* v. *Commissioner*, 2 Cir., 138 Fed. (2d), 763; *Wallace* v. *Commissioner*, 9 Cir., 144 Fed. (2d), 407.) In both of these cases an actor was allowed deductions for living expenses at Hollywood because the court found from the evidence that the employment and residence at that place were temporary while the established home of the taxpayer was located elsewhere. If this view of the evidence in these cases is taken, the actual decision was not inconsistent with the rulings which The Tax Court has made in the cases heretofore cited and the result could have been reached, as indeed it was in the Coburn case, upon the assumption that The Tax Court's interpretation of the statute is correct. In *J. M. Flowers* v. *Commissioner* (5 Cir., — Fed. (2d), — (decided March 23, 1945)), however, the court took a position flatly at variance with that of The Tax Court by holding that an attorney who maintains a home in Jackson, Miss., and devotes himself exclusively to the law business of a railroad company at Mobile, Ala., has the right under the statute to deduct his living expenses at Mobile and his traveling expenses between the two points in computing his taxable income.

The issue must also be squarely met in the pending case for the taxpayer's only place of business and his actual residence during the greater part of the tax years has been at Raleigh, while his home in the ordinary sense has been at Rocky Mount; and the decision of The Tax Court can not be affirmed without holding that in allowing deductions for traveling expenses to one who is away from home on business, the statute implies that the home and the place of business must be in the same general locality. We think that the statute must be given this construction and that it may be done without arbitrarily construing the word "home" as synonymous with the term "place of business."

It is clear in the first place that Congress, in prescribing the rules for the computation of net income, intended to confine the deductions for business expenses to those which are ordinary and necessary, and to prohibit the deduction of personal living or family expenses. It was recognized that the taxpayer must maintain a home for his family at his own expense even when he is absent on business, and that his personal expenses during his absence on business may fairly be regarded as expenses of the business. But it is not reasonable to suppose that Congress intended to allow as a business expense those outlays which are not caused by the exigencies of the business but by the action of the taxpayer in having his home, for his own convenience, at a distance from his business. Such expenditures are not essential to the prosecution of the business and were not within the contemplation of Congress which proceeded on the assumption that a business man would live within reasonable proximity to his business. This is not the same as saying that the word "home" means

"place of business" although in most cases where deductions for traveling expenses are claimed, the result will be the same.

Doubtless these considerations give rise to the regulations set out above which confine the deductions for traveling expenses to those which are reasonable and necessary and expressly forbid the deduction of commuters' fares. This prohibition indeed would be unauthorized if the word "home" were given its ordinary meaning, for there can be no doubt that in a literal sense one who lives in the suburbs and does business in the city must pay travel expenses while absent from his home in the pursuit of business. It is significant that these provisions of the regulations have been maintained and enforced throughout successive reenactments of the statute and that they have been followed not only in the decisions of The Tax Court but in the settled administrative practice. (See O. D. 905, C. B. 4, 212 (1921); O. D. 1021, C. B. 5, 174 (1921); I. T. 1264, C. B. I–1, 122 (1922); I. T. 1355, C. B. I–1, 194 (1922); I. T. 1380, C. B. I–2, 88 (1922); I. T. 3314, C. B. 1939–2, 152; G. C. M. 23672, C. B. 1943, 66.) Under these circumstances, the regulations and the administrative interpretation must be deemed to have received implied legislative approval. (*Helvering* v. *Winmill*, 305 U. S., 79, 83 [Ct. D. 1365, C. B. 1938–2, 212].) Moreover, the decisions of The Tax Court are entitled to great weight. (*Dobson* v. *Commissioner*, 320 U. S., 489, 501–502 [Ct. D. 1597, C. B. 1944, 56].)

We do not think that a different conclusion must be reached in the pending case because the place of residence of each justice of the Supreme Court of North Carolina is taken into consideration at the time of his selection so that the justices may be fairly distributed throughout the State, or because they maintain their legal residence in the sections of the State where they lived at the time of their elevation and are given an allowance by the State in commutation of the expenses incident to attendance upon the court. It is of course recognized that the *bona fides* of the contention advanced by the appellant North Carolina judges is completely established. Not only have they maintained their homes at the old locations but they have incurred additional living expenses at the State capital which the State authorities have found to be a proper charge upon the State treasury. It is therefore appropriate that they should seek the approval of the Federal taxing authorities for the deductions they claim. But we must bear in mind that the system of Federal taxation is established by Acts of Congress and is not affected by State law or custom unless it is made applicable by the Federal enactment. (See *United States* v. *Pelzer*, 312 U. S., 399, 402 [Ct. D. 1495, C. B. 1941–1, 441].) [1] We must apply the underlying principles of Federal taxation to State and Federal officials alike, and we can see no distinction between the cases of the appellants herein and of the Members of Congress, who, for tax purposes, are deemed to reside in the National Capital although they maintain their homes in the Congressional districts which they represent.

The decisions of The Tax Court in cases Nos. 5332 and 5333 are therefore affirmed. The decision of The Tax Court in case No. 5334, which involves the tax liability of John Wallace Winborne, another associate justice of the Supreme Court of North Carolina, for the same tax years and raises no question not considered in the other cases, is also affirmed.

Affirmed.

SECTION 29.23(a)–4: Repairs.

INTERNAL REVENUE CODE.

Cost of incidental repairs made by war contractors in connection with reconversion to peacetime production. (See Mim. 5870, page 91).

[1] H. R. 1627, now pending in Congress, provides that for the purpose of section 23 of the Internal Revenue Code, the home of a Member of Congress shall be considered to be his place of residence in the State from which he is a Member.

SECTION 29.23(a)-6: Compensation for personal services. 1945-22-12166
I. T. 3767

INTERNAL REVENUE CODE.

Reasonable wages paid by a father to his unemancipated minor child for personal services actually rendered as a bona fide employee in the conduct of a trade or business, or in the production of income, are deductible as ordinary and necessary expenses, for Federal income tax purposes, for taxable years beginning after December 31, 1943.

Advice is requested whether wages paid by a father to his unemancipated minor child are deductible as ordinary and necessary expenses for Federal income tax purposes.

Section 23(a)(1)(A) of the Internal Revenue Code provides in part that in computing net income there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered. Section 23(a)(2) of the Code provides that in computing net income in the case of an individual, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

Under section 22(m)(1) of the Code, as added by section 7 of the Individual Income Tax Act of 1944, applicable to taxable years beginning after December 31, 1943, amounts received in respect of the services of a child are includible in the gross income of the child and not in the gross income of the parent, whereas, under prior revenue laws, such amounts, where the father was entitled to the services of the minor child, were required to be included in the gross income of the parent. It should be noted that section 22(m)(3) of the Code provides that for the purposes of section 22(m), the term "parent" includes an individual *who is entitled to the services of a child* by reason of having parental rights and duties in respect of the child.

It is held that reasonable wages paid by a father to his unemancipated minor child for personal services actually rendered as a bona fide employee in the conduct of a trade or business, or in the production of income, are deductible as ordinary and necessary expenses, for Federal income tax purposes, for taxable years beginning after December 31, 1943.

In reaching this conclusion, consideration was given to section 29.24-1 of Regulations 111, which provides that if a father is entitled to the services of his minor children, "allowances" which he gives them, whether said to be in consideration of services or otherwise, are not allowable deductions. That provision of the regulations, promulgated prior to the enactment of the Individual Income Tax Act of 1944, is not believed to be controlling here. Consideration was also given to *Neils Schultz* v. *Commissioner* (44 B. T. A., 146), relating to similar deductions under the Revenue Acts of 1934 and 1936.

SECTION 29.23(a)–15: Nontrade or nonbusiness expenses. 1945–10–12045
I. T. 3736

INTERNAL REVENUE CODE.

An executor's or administrator's commissions which under New York law are allocable to income required to be included in the gross income of the estate for Federal income tax purposes constitute an allowable deduction under section 23(a)(2) of the Internal Revenue Code. Such commissions are deductible for the year in which paid or accrued, depending upon the basis of accounting of the estate, and may not be prorated over the period during which the services of the executor or administrator are rendered.

Advice is requested whether an executor's or administrator's commissions which under New York law are allocable to income required to be included in the gross income of the estate for Federal income tax purposes constitute an allowable deduction under section 23(a)(2) of the Internal Revenue Code and, if so, whether the deduction may be prorated over the period during which the services of the executor or administrator are rendered.

Section 23(a)(2) of the Internal Revenue Code provides that in computing net income there shall be allowed as deductions, in the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income. Section 162 of the Code provides that the net income of an estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, with certain exceptions not here material.

In *Clarence M. Lewis et al.* v. *Bowers* (19 Fed. Supp., 745), which held that commissions paid to a New York executor for receiving and paying out income of the property during administration were not deductible from the gross estate in the estate tax return, the court said (page 747):

> What has been said has no bearing on the commissions taken for receiving and paying out income on the property during administration. By New York law commissions on income are calculated separately and are not part of the administration expenses chargeable on the corpus of the estate. They are chargeable only against income. Such commissions are a proper deduction from gross income received by the executors in paying the income tax, but they have no place as a deduction for purposes of the estate tax.

In view of the foregoing, it is held that an executor's or administrator's commissions which under New York law are allocable to income required to be included in the gross income of the estate for Federal income tax purposes constitute an allowable deduction under section 23(a)(2) of the Internal Revenue Code. Such commissions are deductible for the year in which paid or accrued, depending upon the basis of accounting of the estate, and may not be prorated over the period during which the services of the executor or administrator are rendered. (See section 29.23(a)–15(*b*) of Regulations 111.)

SECTION 19.23(a)–15: Nontrade or nonbusiness expenses. 1945–13–12071
(Also Section 162, Section 19.162–1.) Ct. D. 1643

INCOME TAX—INTERNAL REVENUE CODE—REVENUE ACT OF 1942—DECISION OF SUPREME COURT.

1. TRUST ESTATE—GROSS INCOME—DEDUCTIONS—"NON-TRADE" OR "NON-BUSINESS" EXPENSES.

Counsel fees and expenses paid in 1940 by trustees of a testamentary trust in unsuccessfully contesting the assessment of a deficiency in income tax upon the appreciation in value of securities while in their hands, and amounts paid by them in that year for legal advice in connection with the payment of one of the cash legacies, and in connection with tax and other problems arising upon the expiration of the trust and relating to the final distribution of the trust fund among the residuary legatees, are deductible from gross income of the trust as "non-trade" or "non-business" expenses within the meaning of section 23(a)(2), Internal Revenue Code, as added by section 121 of the Revenue Act of 1942 and made applicable to tax years beginning after December 31, 1938.

2. FINALITY OF TAX COURT DECISION.

The questions whether, on the facts found by The Tax Court, the expenses in question are nondeductible either because they were not to produce income or because they were related to the management of property which was not held for the production of income, turn on the meaning of the words "property held for the production of income" and are therefore clear-cut questions of law, decision of which by The Tax Court does not foreclose their decision by appellate courts, although their decision by The Tax Court is entitled to great weight.

3. VALIDITY OF REGULATION.

So far as section 19.23(a)–15 of Regulations 103 purports to deny deduction of litigation expense unless it is to produce income, it is not in conformity with the statute, and is invalid.

4. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Second Circuit (145 Fed. (2d), 568), reversing decision of The Tax Court (2 T. C., 853), reversed.

SUPREME COURT OF THE UNITED STATES.

Trust u/w of Mary Lily (Flagler) Bingham, Messrs. William R. Kenan, Jr., and Lawrence C. Haines, Trustees, petitioners, v. *Commissioner of Internal Revenue.*

[325 U. S., 365.]

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

[June 4, 1945.]

OPINION.

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

Petitioners are the trustees of a testamentary trust created for a term of 21 years under the will of Mary Lily (Flagler) Bingham. The testatrix bequeathed to the trustees the residue of her estate, including a large number of securities. The trustees were empowered in their discretion to sell any of the property held in trust (except certain securities of two companies designated as the "principal properties"), to invest and reinvest the proceeds and the income from the trust fund, and to use the proceeds and the income for the benefit of the principal properties and for the "maintenance, administration or development of the said principal or subsidiary properties." The trustees were to pay specified amounts annually to certain legatees. When the niece of the testatrix reached a certain

age, she was to receive from the trust a specified amount in cash or securities. At the end of 21 years, the trustees were directed to pay other legacies, and to distribute the remainder of the fund in equal parts to a brother and two sisters of the testatrix.

In 1935 petitioners paid the bequest to the niece partly in securities. The Commissioner assessed a deficiency of over $365,000 for income tax upon the appreciation in value of the securities while they were in petitioners' hands. In contesting unsuccessfully this deficiency, petitioners paid out in the year 1940 approximately $16,000 in counsel fees and expenses. In that year, also, petitioners paid out about $9,000 for legal advice in connection with the payment of one of the cash legacies, and in connection with tax and other problems arising upon the expiration of the trust and relating to the final distribution of the trust fund among the three residuary legatees.

The question is whether these legal expenses, paid in 1940, are deductible from gross income in the computation of the trust's income tax, as "non-trade" or "non-business" expenses within the meaning of section 23(a)(2) of the Internal Revenue Code. That section, added by section 121 of the Revenue Act of 1942, and made applicable to tax years "beginning after December 31, 1938," authorizes the deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income." Section 162 of the Code, so far as now relevant, makes section 23(a)(2) applicable to the income taxation of trusts.

Petitioners, in their income tax return for 1940, took deductions for the legal expenses. The Commissioner disallowed the deductions and assessed a tax deficiency, and petitioners filed the present suit in The Tax Court to set aside the assessment. That court, after finding the facts as we have stated them, found that the trust property was held for the production of income; that all the items in question were ordinary and necessary expenses of the management of the trust property; and that the fees and expenses for contesting the income tax deficiency assessment were also for the conservation of the trust property. It therefore concluded that all were rightly deducted in calculating the taxable net income of the trust. (2 T. C., 853.)

On the Government's petition for review, the Court of Appeals for the Second Circuit reversed. (145 Fed. (2d), 568.) We granted certiorari (— U. S., —), on a petition which asserted as grounds for the writ that the decision of the court of appeals departed from the principles laid down in *Dobson* v. *Commissioner* (320 U. S., 489 [Ct. D. 1597, C. B. 1944, 56]), governing review of decisions of The Tax Court, and that the decision conflicted in principle with *Commissioner* v. *Heininger* (320 U. S., 467 [Ct. D. 1596, C. B. 1944, 484]) and *Kornhauser* v. *United States* (276 U. S., 145 [T. D. 4222, C. B. VII–2, 267 (1928)]).

The court of appeals left undisturbed The Tax Court's findings that the questioned items were ordinary and necessary expenses for the management or conservation of the trust property, but it held that the fees for contesting the tax deficiency were nevertheless not deductible under section 23(a)(2). It thought that the expenses of contesting the income tax had nothing to do with the production of income and hence were not deductible as expenses "for the production of income" within the meaning of the statute. The court also thought that these expenses were not deductible, because they were paid in connection with property held by the trustees "ready for distribution," and hence not "for the production of income." Similarly it held that the fees for professional services rendered in connection with the payment of legacies and the distribution of the trust fund, were not expenses relating to the management of property held for the production of income, since they were rendered after the trust term had expired and when the property was ready for distribution.

The Government makes like arguments here. In addition it urges that the expenses in connection with the distribution of the trust fund were not expenses of management of the trust property held for the production of income but only expenses relating to its devolution; and that the expenses are not deductible under section 23(a)(2) because there was no proximate relationship between the expenses when paid and the property then held in trust.

We think that these objections to the deductions fail to take proper account of the plain language of section 23(a)(2), and the purpose of the section as disclosed by its statutory setting and legislative history; and that notwithstanding the weight of The Tax Court's decision against them, they raise questions of law reviewable by the Circuit Court of Appeals and by this Court.

The requirement of section 23(a)(2) that deductible expenses be "ordinary and necessary" implies that they must be reasonable in amount and must bear a reasonable and proximate relation to the management of property held for the production of income. (See H. Rept. No. 2333, Seventy-seventh Congress, second session, page 75 [C. B. 1942-2, 372]; S. Rept. No. 1631, Seventy-seventh Congress, second session, page 88 [C. B. 1942-2, 504].) Ordinarily questions of reasonableness and proximity are for the trier of fact, here The Tax Court. (*Commissioner* v. *Heininger*, supra, 475; *McDonald* v. *Commissioner*, 323 U. S., 57, 64-65 [Ct. D. 1617, C. B. 1944, 94] see *Commissioner* v. *Scottish American Inv. Co.*, 323 U. S., 119 [Ct. D. 1619, C. B. 1944, 340].) And even when they are hybrid questions of "mixed law and fact," their resolution, because of the fact element involved, will usually afford little concrete guidance for future cases, and reviewing courts will set aside the decisions of The Tax Court only when they announce a rule of general applicability, that the facts found fall short of meeting statutory requirements. (*Dobson* v. *Commissioner*, supra, 502; *Commissioner* v. *Estate of Bedford*, No. 710, decided May 21, 1945 [Ct. D. 1641, page 357, this Bulletin]; cf. Paul, "*Dobson* v. *Commissioner*," 57 Harv. Law Rev., 753, at 828-832, 836-837.) But whether the applicable statutes and regulations are such as to preclude the decision which The Tax Court has rendered, is, as was recognized in *Dobson* v. *Commissioner*, supra, 492-493, a question of law reviewable on appeal. (See also *Commissioner* v. *Heininger*, supra, 475.)

Here the decision of the court of appeals was that the expenses were not deductible because they were not for the purpose of producing income or capital gain, and because the trust property, being ready for distribution, was no longer held for the production of income. The terms of the trust, the nature of the property, and the duties of the trustees with respect to it, were all found by The Tax Court and are not challenged. The questions whether, on the facts found, the expenses in question are nondeductible, either because they were not to produce income or because they were related to the management of property which was not held for the production of income, turn in this case on the meaning of the words of section 23(a)(2), "property held for the production of income." They are therefore questions of law, decision of which is unembarrassed by any disputed question of fact or any necessity to draw an inference of fact from the basic findings. (See *Commissioner* v. *Scottish American Inv. Co.*, supra.) They are "clear cut" questions of law, decision of which by The Tax Court does not foreclose their decision by appellate courts, as in other cases (*Dobson* v. *Commissioner*, supra, 492-493), although their decision by The Tax Court is entitled to great weight. (*Dobson* v. *Commissioner*, supra, 501-502, and cases cited; cf. *Medo Photo Supply Corporation* v. *Labor Board*, 321 U. S., 678, 681-682, n. 1, and cases cited.)

Since our decision in the Dobson case we have frequently re-examined, as matters of law, determinations by The Tax Court of the meaning of the words of a statute as applied to facts found by that court.[1] A question of law is not any the less such because The Tax Court's decision of it is right rather than wrong. Whether or not its decision is "in accordance with law" is a question which the statute (Internal Revenue Code, section 1141(c)(1)) expressly makes subject to appellate review. Congress, when it thus authorized review of questions of law only, was not unaware of the difficulties of such a review of the decisions of a tribunal, which decides questions both of law and of fact. But Congress did not dispense with such review.

[1] See, e. g., *Security Mills Co.* v. *Commissioner* (321 U. S., 281, 286 [Ct. D. 1603, C. B. 1944, 526]); *Douglas* v. *Commissioner* (322 U. S., 275 [Ct. D. 1608, C. B. 1944, 512]); *Commissioner* v. *Harmon* (323 U. S., 44 [Ct. D. 1616, C. B. 1944, 166]); *McDonald* v. *Commissioner* (323 U. S., 57); *Claridge Apartments Co.* v. *Commissioner* (323 U. S., 141, 145 [Ct. D. 1620, C. B. 1944, 490]); *Fondren* v. *Commissioner* (No. 88, decided January 29, 1945 [Ct. D. 1627, page 421, this Bulletin]); *Choate* v. *Commissioner* (No. 93, decided January 29, 1945 [Ct. D. 1626, page 343, this Bulletin]); *Commissioner* v. *Field* (No. 578, decided February 5, 1945 [Ct. D. 1631, page 408, this Bulletin]); *Webre Steib Co.* v. *Commissioner* (No. 148, decided February 12, 1945 [Ct. D. 1632, page 466, this Bulletin]); *Commissioner* v. *Smith* (No. 371, decided February 26, 1945 [Ct. D. 1633, page 49, this Bulletin]); *Commissioner* v. *Wemyss* (No. 629, decided March 5, 1945 [Ct. D. 1634, page 416, this Bulletin]); *Commissioner* v. *Wheeler* (No. 354, decided March 26, 1945 [Ct. D. 1637, page 349, this Bulletin]); *Estate of Putnam* v. *Commissioner* (No. 534, decided March 26, 1945 [Ct. D. 1638, page 345, this Bulletin]); *Angelus Milling Co.* v. *Commissioner* (No. 610, decided May 21, 1945 [Ct. D. 1640, page 463, this Bulletin]); *Commissioner* v. *Bedford* (No. 710, decided May 21, 1945 [Ct. D. 1641, page 357, this Bulletin]); *Commissioner* v. *Disston* (No. 589, decided this day [Ct. D. 1642, page 426, this Bulletin]).

Hence the statute does not leave The Tax Court as the final arbiter of the issue whether its own decisions of questions of law are right or wrong. That can only be ascertained upon resort to the prescribed appellate process by a consideration of the merits of the point of law involved, and by its decision at the conclusion of the process, not before it begins. The fact that the court of appeals below, while accepting The Tax Court's findings of fact, has nevertheless reversed its decision, would seem not to leave the question of law decided so free from doubt that the mandate of the statute could rightly be disregarded on any theory. If review were to be denied in this case, it would be difficult to say that any construction of a taxing statute by The Tax Court would be subject to appellate review.

We turn to the first ground for reversal relied on by the court of appeals, that the property was held for distribution, and no longer for the production of income. The fact that the trustees, in the administration of the trust, were required to invest its corpus for the production of income and to devote the income to the purposes of the trust, establishes, as The Tax Court held, that the trust property was held for the production of income during the stated term of the trust. The decisive question is whether the property ceased to be held for the production of income because, as the trust term reached its expiry date, the trustees were under a duty to distribute the property among the remaindermen.

It is true that expiration of the trust operated to change the beneficiaries entitled to receive the income of the trust property, from those entitled to the income during the term of the trust to the remaindermen. But the duty of the trustees to hold and conserve the trust property, and until distribution, to receive income from it, continued. The property did not cease to be held for the production of income because, upon the expiration of the trust and until distribution, the trustees were under an additional duty to distribute the trust fund, or because the trustees, upon distribution, were then accountable to new and different beneficiaries, the residuary legatees, both for the principal of the fund and any income accumulating after the expiry date. To exclude from the deduction privilege, expenses which The Tax Court has held to be expenses of management of the trust, on the ground that the trust fund, upon the expiration of the trust, ceased to be "held for the production of the income" would be to disregard The Tax Court's findings of fact and the words of the statute, and would defeat its obvious purpose.

Nor is there merit in the court's conclusion that the expenses were not deductible because they were not for the production of income. Section 23(a)(2) provides for two classes of deductions, expenses "for the production * * * of income" and expenses of "management, conservation, or maintenance of property held for the production of income." To read this section as requiring that expenses be paid for the production of income in order to be deductible, is to make unnecessary and to read out of the section the provision for the deduction of expenses of management of property held for the production of income.

There is no warrant for such a construction. Section 23(a)(2) is comparable and *in pari materia* with section 23(a)(1), authorizing the deduction of business or trade expenses. Such expenses need not relate directly to the production of income for the business. It is enough that the expense, if "ordinary and necessary," is directly connected with or proximately results from the conduct of the business. (*Kornhauser* v. *United States*, supra, 152–153; *Commissioner* v. *Heininger*, supra, 470–471.) The effect of section 23(a)(2) was to provide for a class of nonbusiness deductions coextensive with the business deductions allowed by section 23(a)(1), except for the fact that, since they were not incurred in connection with a business, the section made it necessary that they be incurred for the production of income or in the management or conservation of property held for the production of income. (*McDonald* v. *Commissioner*, supra, 61–62, 66; and see H. Rept. No. 2333, Seventy-seventh Congress, second session, pages 46, 74–76; S. Rept. No. 1631, Seventy-seventh Congress, second session, pages 87–88.)

Since there is no requirement that business expenses be for the production of income, there is no reason for that requirement in the case of like expenses of managing a trust, so long as they are in connection with the management of property which is held for the production of income. Section 23(a)(2) thus treats the trust as an entity for producing income comparable to a business enterprise, and like section 23(a)(1) permits deductions of management expenses of the trust, even though the particular expense was not an expense directly producing income. It follows that all of the items of expense here in question are

deductible if, as The Tax Court has held, they are expenses of management or conservation of the trust fund, whether their expenditure did or did not result in the production of income.

The Government contends that the expenses incurred in connection with the distribution of the corpus of the trust to legatees, are not deductible, because they are not expenses of managing income producing property, but expenses in connection with the devolution of the property. If the suggestion is correct, it would follow that expenses incurred in distributing the income of the trust to the income beneficiaries are likewise not deductible, since the distribution of income is also a devolution of trust property. But the duties of the trustees were not only to hold the property for the production of income and to collect the income, but also, in administering the trust, to distribute the income and the principal so held from time to time, and the remainder of the principal at the expiration of the trust. Performance of each of these duties is an integral part of carrying out the trust enterprise. Accordingly, as The Tax Court held, the costs of distribution here were quite as much expenses of a function of "management" of the trust property as were expenses incurred in producing the trust income; and if "ordinary and necessary," they were deductible.

In support of its contention, the Government relies upon a part of the House committee report, accompanying the bill which became the Revenue Act of 1942 (see H. Rept. No. 2333, Seventy-seventh Congress, second session, page 75), and upon Treasury Regulations 103, section 19.23(a)-15, neither of which was mentioned by the court of appeals. They state that an administrator or executor may not deduct expenses incurred in the administration of the estate of a decedent, including those of distributing assets to the beneficiaries. It is argued that by analogy like expenses of trustees should not be deductible. But it is to be noted that there is no such statement in the report or regulations as to the distribution expenses of trustees. On the contrary, the regulations, section 19.23(a)-15, in dealing specifically with expenses of trustees, provides only that their expenses of management and conservation of the trust property held for the production of income are deductible. And the references in the report to the nondeductibility of expenses of administrators and executors were in explanation of the Congressional purpose to prevent the specified administration expenses from being deductible both for income and estate taxation. To accomplish that purpose the report recommended an amendment, which became section 161(a) of the Revenue Act of 1942, adding section 162(e) to the Internal Revenue Code. Section 162(e) provides, with an immaterial exception, that "amounts allowable under section 812(b) as a deduction in computing the net estate of a decedent shall not be allowed as a deduction under section 23." Here, as The Tax Court found, there is no possibility of such a double deduction, since the expenses were not deductible under the decedent's estate tax return.

What we have said applies with equal force to the expenses of contesting the tax deficiency. Section 23(a)(2) does not restrict deductions to those litigation expenses which alone produce income. On the contrary, by its terms and in analogy with the rule under section 23(a)(1), the business expense section, the trust, a taxable entity like a business, may deduct litigation expenses when they are directly connected with or proximately result from the enterprise—the management of property held for production of income. (*Kornhauser* v. *United States*, supra, 152–153; *Commissioner* v. *Heininger*, supra, 470–471.) The Tax Court could find as a matter of fact, as it did, that the expenses of contesting the income taxes were a proximate result of the holding of the property for income. And we can not say, as a matter of law, that such expenses are any less deductible than expenses of suits to recover income. (Cf. *Commissioner* v. *Heininger*, supra.)

The Government relies on Treasury Regulations 103, section 19.23(a)-15, which provide that "expenditures incurred * * * for the purpose of recovering taxes (other than recoveries required to be included in income), or for the purpose of resisting a proposed additional assessment of taxes (other than taxes on property held for the production of income) are not deductible expenses under this section [section 23(a)(2) of the Code], except that part thereof which the taxpayer clearly shows to be properly allocable to the recovery of interest required to be included in income." So far as this regulation purports to deny deduction of litigation expense unless it is to produce income, it is not in conformity to the statute, for the reasons already stated, or with the regulation already mentioned, which provides that in addition to expenses for the production or collection of trust income, expenses of management or conservation of trust property held for the production of income are also deductible. To that extent and to the extent that it departs from the rule of *Kornhauser* v. *United States*, supra, it conflicts

with the meaning and purpose of section 23(a)(2), and so is unauthorized. (*Helvering* v. *Reynolds Tobacco Co.*, 306 U. S., 110 [Ct. D. 1383, C. B. 1939–1 (Part 1), 225].)

We find no error of law in the judgment of The Tax Court. Its judgment will be affirmed and that of the Court of Appeals reversed.

Reversed.

Concurring opinion by Mr. Justice FRANKFURTER, in which Mr. Justice ROBERTS and Mr. Justice JACKSON join.

SECTION 29.23(a)–16: Wage and salary payments in contravention of wage and salary limitations not deductible. 1945–7–12004 T. D. 5446

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

Amending section 29.23(a)–16 of Regulations 111, relating to wage and salary payments in contravention of the wage and salary limitations.

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

To Collectors of Internal Revenue and Others Concerned:

Section 29.23(a)–16 of Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.] is amended to read as follows:

SEC. 29.23(a)–16. WAGE AND SALARY PAYMENTS IN CONTRAVENTION OF WAGE AND SALARY LIMITATIONS NOT DEDUCTIBLE.—In any case in which it is certified to the Commissioner, by an administering agency authorized to act in accordance with section 4001.15 of the regulations of the Economic Stabilization Director (Title 32, Chapter XVIII, Subchapter A, Part 4001, of the Code of Federal Regulations) as amended, that a wage or salary payment for which a deduction would otherwise be allowable has been made in contravention of the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes" (56 Stat., 765–768; 50 U. S. C., App., Sup., secs. 961–971), as amended, or of the regulations, orders or rulings promulgated thereunder, the entire amount of such payment shall be disallowed as a deduction and not merely an amount representing the increase or decrease made in such wage or salary in contravention of such Act or regulations, orders, or rulings promulgated thereunder, except that if the administering agency in the light of extenuating circumstances determines and certifies to the Commissioner that a lesser amount of such payment be disallowed as a deduction, then only such lesser amount shall be disallowed as a deduction. Such a payment will not be allowed for this purpose notwithstanding that the same payment is also disallowed (1) for the purpose of determining costs or expenses of an employer for the purpose of some other law or regulation, either heretofore or hereafter promulgated, including the Emergency Price Control Act of 1942, or any maximum price regulation thereof; or (2) for the purpose of determining costs or expenses under any contract made by or on behalf of the United States.

(This Treasury decision is issued under the authority contained in section 3791(a) of the Internal Revenue Code; section 2, 56 Stat., 765; 26 U. S. C., 1940 ed., 3791(a); 50 U. S. C., App. Sup., 962; and in section 4001.5 of the amended regulations relating to wages and salaries prescribed by the Economic Stabilization Director (8 F.R. 11960).)

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

Approved March 17, 1945.

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

(Filed with the Division of the Federal Register March 19, 1945, 3.51 p. m.)

SECTION 23(aa).—DEDUCTIONS FROM GROSS INCOME: OPTIONAL STANDARD DEDUCTION FOR INDIVIDUALS.

SECTION 29.23(aa)-1: Standard deduction.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5425, page 10.)

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

SECTION 29.23(b)-1: Interest. 1945-11-12050
(Also Section 43, Section 29.43-2.) I. T. 3740

INTERNAL REVENUE CODE.

Where a taxpayer keeps books of account and files Federal income tax returns on the cash receipts and disbursements basis, interest paid in advance for a period of five years constitutes an allowable deduction for Federal income tax purposes for the year in which paid, but where the accrual basis of accounting is used in reporting income, interest is deductible for the year in which the liability to pay accrues regardless of when payment is actually made.

Advice is requested whether interest paid in advance for a period of five years is deductible for Federal income tax purposes for the year in which paid or whether such interest must be prorated and deducted over the 5-year period.

Section 23(b) of the Internal Revenue Code provides that in computing net income there shall be allowed as a deduction:

(b) INTEREST.—All interest paid or accrued within the taxable year on indebtedness * * *

Section 43 of the Code provides in part as follows:

SEC. 43. PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN.

The deductions * * * provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions * * * should be taken as of a different period. * * *

Section 29.43-2 of Regulations 111 provides in part as follows:

SEC. 29.43-2. WHEN CHARGES DEDUCTIBLE.—Each year's return, so far as practicable, both as to gross income and deductions therefrom, should be complete in itself, and taxpayers are expected to make every reasonable effort to ascertain the facts necessary to make a correct return. The expenses, liabilities, or deficit of one year can not be used to reduce the income of a subsequent year. A taxpayer has the right to deduct all authorized allowances, and it follows that if he does not within any year deduct certain of his expenses, losses, interest, taxes, or other charges, he can not deduct them from the income of the next or any succeeding year. * * *

It is held that where a taxpayer keeps books of account and files Federal income tax returns on the cash receipts and disbursements basis, interest paid in advance for a period of five years constitutes an allowable deduction for Federal income tax purposes for the year in which paid, but where the accrual basis of accounting is used in report-

ing income, interest is deductible for the year in which the liability to pay accrues regardless of when payment is actually made. (See *John D. Fackler* v. *Commissioner*, 39 B. T. A., 395, acquiescence, C. B. 1939–1 (Part 1), 11, and *Court Holding Co.* v. *Commissioner*, 2 T. C., 531, acquiescence, C. B. 1943, 5; cf. G. C. M. 23587, C. B 1943, 213.)

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

SECTION 29.23(c)–1: Taxes. 1945–9–12032
G. C. M. 24599

INTERNAL REVENUE CODE.

As a result of the amendment of section 70.01 of the Wisconsin statutes by chapter 277, Laws of Wisconsin, 1943, effective January 1, 1944, the controlling date for accrual, for Federal income tax purposes, of real property taxes imposed by the State of Wisconsin is the date on which the tax roll is delivered to the local treasurer with his warrant for collection.

G. C. M. 21373 (C. B. 1939–2, 82) modified.

An opinion is requested whether the amendment of section 70.01 of the Wisconsin statutes by chapter 277, Laws of Wisconsin, 1943, effective January 1, 1944, makes any change in the accrual date, for Federal income tax purposes, of Wisconsin real property taxes, and whether it affects G. C. M. 21373 (C. B. 1939–2, 82) wherein it was held, *inter alia*, that the Bureau would follow the decision in *Commissioner* v. *Patrick Cudahy Family Co.* (102 Fed. (2d), 930, Ct. D. 1411, C. B. 1939–2, 202) in cases involving the accrual date of real and personal property taxes in the State of Wisconsin.

Prior to its amendment, section 70.01 of the Wisconsin statutes provided as follows:

SEC. 70.01. *General property taxes; upon whom levied.*—Taxes shall be levied, under the provisions of this chapter, upon all general property in this State except such as is exempted therefrom.

Section 70.01, as amended by chapter 277, Laws of Wisconsin, 1943, effective January 1, 1944, reads in part as follows:

SEC. 70.01. *General property taxes; upon whom levied.*—Taxes shall be levied, under the provisions of this chapter, upon all general property in this State except such as is exempted therefrom. Real estate taxes shall be deemed to be levied when the tax roll on which they are extended has been delivered to the local treasurer with his warrant for collection. When so levied such taxes shall be a lien upon the property against which they are assessed, superior to all other liens, effective as of May 1 in the year when levied * * *

Under the amendment of section 70.01 of the Wisconsin statutes, supra, the factors indicating the accrual date, for Federal income tax purposes, of Wisconsin real property taxes have been slightly modified. In G. C. M. 21373, supra, it was held, in effect, that Wisconsin real property taxes accrue when a lien upon the real estate attaches and that this does not occur until the tax roll is completed and the taxes are extended on such roll. The amended statute provides generally that the lien for the taxes attaches when the taxes are levied and that the taxes shall be deemed to be levied when the tax roll on which they are extended has been delivered to the local treasurer with his warrant for

collection. Thus, the controlling date, the date upon which the lien attaches, is somewhat different under the present law.

In view of the foregoing, it is the opinion of this office that as a result of the amendment of section 70.01 of the Wisconsin statutes by chapter 277, Laws of Wisconsin, 1943, effective January 1, 1944, the controlling date for accrual, for Federal income tax purposes, of real property taxes imposed by the State of Wisconsin is the date on which the tax roll is delivered to the local treasurer with his warrant for collection. G. C. M. 21373, supra, is modified to the extent that it is contrary to this conclusion.

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

SECTION 29.23(c)–1. Taxes.

INTERNAL REVENUE CODE.

Indiana gross income tax imposed on a partnership. (See I. T. 3731, page 80.)

SECTION 29.23(c)–1: Taxes.

INTERNAL REVENUE CODE.

New York State temporary emergency tax imposed on net incomes of unincorporated businesses. (See I. T. 3753, page 82.)

SECTION 29.23(c)–1: Taxes.

INTERNAL REVENUE CODE.

Indiana gross income tax. I. T. 3731 (page 80, this Bulletin) revoked. (See I. T. 3766, page 83.)

SECTION 29.23(c)–2: Federal duties and excise taxes. 1945–15–12096
G. C. M. 24461
(Also Section 43, Section 29.43–2.)

INTERNAL REVENUE CODE AND REVENUE ACT OF 1938.

In taking a deduction for the Federal capital stock tax, a corporation on the accrual basis of accounting may follow the method of accruing the tax adopted by it in keeping its accounts and filing its returns, instead of accruing the entire tax on the first day (July 1) of the capital stock tax year, provided such method of accrual clearly reflects the taxpayer's income and is consistently followed for Federal income tax purposes.

G. C. M. 23251 (C. B. 1942–2, 103) modified.

In view of the decision in *Atlantic Coast Line Railroad Co.* v. *Commissioner* (4 T. C., 140, acquiescence, C. B. 1944, 2), G. C. M. 23251 (C. B. 1942–2, 103), relating to the accrual for Federal income tax purposes of Federal capital stock taxes, has been reconsidered.

One of the questions in *Atlantic Coast Line Railroad Co.* v. *Commissioner*, supra, was the deductibility in certain years of the Federal

capital stock tax in the case of a taxpayer keeping accounts and filing Federal income tax returns on the accrual and calendar year basis. The taxpayer in that case had consistently followed an accounting practice of allocating a portion of its capital stock tax liability for each capital stock tax year between the two calendar years which were overlapped by the capital stock tax year. Thus, on July 1 of each year, it set up an accrual on its books of one-half of its estimated capital stock tax liability for the ensuing capital stock tax year. During the first six months of the next calendar year, it charged monthly accruals for the capital stock tax. These periodic accruals were adjusted to reflect changed conditions and its declaration for capital stock tax purposes at the close of the capital stock tax year. For the income-tax taxable years 1939 and 1940, it claimed deductions for the capital stock tax in accordance with its method of accounting. The court sustained the taxpayer's contention that it could deduct the capital stock tax in accordance with its consistent accounting practice since its regularly employed system of keeping its records was such as to reflect its income properly. In so holding, the court did not impair the force of its decision in *Budd International Corporation* v. *Commissioner* (45 B. T. A., 737), wherein it held that the liability for the Federal capital stock tax accrued at the beginning of the capital stock tax year, and that its accrual was not postponed by virtue of the fact that the amount of the tax depends upon a future declaration of value and a possible change in rate. It distinguished the Budd International Corporation case by stating:

> The dominant characteristic of this situation is that petitioner has consistently followed the method of accounting it now seeks to have approved. Unlike such cases as Budd International Corporation, supra, where the taxpayer's inconsistent treatment was emphasized, our sole present concern is whether this petitioner's regularly employed system of keeping its records was such as to reflect its income properly. If so, no compelling reason for condemning it has been advanced. (Section 43, I. R. C.)

In view of the foregoing, it is the opinion of this office that a taxpayer should be permitted to follow its method of keeping its books of account in taking the deduction for Federal capital stock tax, provided that such method clearly reflects the taxpayer's income and is consistently followed for Federal income tax purposes.

G. C. M. 23251, supra, is in conflict with The Tax Court's decision in the Atlantic Coast Line Railroad case in that it prescribes a fixed method for determining the deduction for the Federal capital stock tax regardless of the accounting system regularly employed by the taxpayer, and it is hereby modified to the extent of such conflict.

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

SECTION 23(e).—DEDUCTIONS FROM GROSS INCOME: LOSSES BY INDIVIDUALS.

SECTION 29.23(e)-1: Losses by individuals.

INTERNAL REVENUE CODE.

Trading in securities on a "when issued" basis. (See I. T. 3721, page 164.)

SECTION 29.23(e)-3: Loss of useful value.

INTERNAL REVENUE CODE.

Facilities abandoned or discarded by war contractors in connection with reconversion to peacetime production. (See Mim. 5870, page 91.)

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

SECTION 29.23(m)-16: Charges to capital and to expense in case of oil and gas wells. 1945-21-12155 I. T. 3763

INTERNAL REVENUE CODE.

Treatment for Federal income tax purposes of intangible development costs incurred by affiliated groups filing consolidated returns, including cases in which operating properties are transferred or acquired by members of such groups.
O. D. 1002 (C. B. 5, 161 (1921)) revoked.

Advice is requested whether a parent company which elected in a prior taxable year to capitalize intangible development costs under section 29.23(m)-16 of Regulations 111 and a subsidiary company which elected in such prior year to charge such costs to expense may, in filing a consolidated return, follow the method which each had elected in the prior taxable year. Inquiry is also made whether, in the case of an affiliated group filing a consolidated return, a subsidiary company acquiring from a parent company, or a parent company acquiring from a subsidiary company, operating properties with respect to which an election under section 29.23(m)-16 of Regulations 111 has been made, is bound by an election previously made by the acquiring company relative to intangible development costs, and whether a subsidiary company which has not previously made an election because it had no operating properties is entitled to exercise the option provided by the regulations upon the acquisition of such properties.

It is held that where a parent company elected in a prior taxable year to capitalize intangible development costs under section 29.23(m)-16 of Regulations 111 and a subsidiary company elected in such prior year to charge such costs to expense, the corporations are required, in filing a consolidated return, to follow the method which each elected in the prior taxable year. It is also held that where operating properties with respect to which an election under section 29.23(m)-16 of Regulations 111 has been made are transferred from a parent company to a subsidiary company, or from a subsidiary company to a parent company, and such companies file a consolidated return, the acquiring company is bound by an election previously made by it (the transferee) relative to intangible development costs. It is further held that where operating properties are acquired by a subsidiary company of an affiliated group filing a consolidated return and such company has not previously made an election because it had no operating properties, the subsidiary is entitled to exercise the option provided by section 29.23(m)-16 of Regulations 111, regardless of

whether the properties were acquired from a member of the affiliated group.

In view of the above-stated conclusions, O. D. 1002 (C. B. 5, 161 (1921)), which holds that a subsidiary company acquiring operating properties from its parent company is bound by the prior election of the parent company to charge development and exploration expenses to operating expenses, is revoked.

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

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

INTERNAL REVENUE CODE.

Contributions to a post-war planning and development fund. (See I. T. 3706, page 87.)

SECTION 29.23(o)-1: Contributions or gifts by individuals. 1945-2-11934
I. T. 3707

INTERNAL REVENUE CODE.

Where a taxpayer creates an irrevocable trust, reserving the income to himself for life with remainder over at his death to a beneficiary which meets the requirements of section 23(o)(2) of the Internal Revenue Code, as amended, the present value of the remainder interest is deductible by the taxpayer in his income tax return for the taxable year in which the property is transferred in trust, subject to the limitations prescribed in section 23(o) of the Code, as amended.

Advice is requested with respect to the deductibility, for Federal income tax purposes, of the value of the remainder interest in an irrevocable trust, the income of which is reserved to the grantor for his life, with remainder over at his death to a beneficiary which meets the requirements of section 23(o)(2) of the Internal Revenue Code, as amended.

Section 23(o)(2) of the Internal Revenue Code, as amended, provides as follows:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * * * *

(o) CHARITABLE AND OTHER CONTRIBUTIONS.—In the case of an individual, contributions or gifts payment of which is made within the taxable year to or *for the use of:*

* * * * * * *

(2) A corporation, trust, or community chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the law of the United States or of any State or Territory or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial

part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

* * * * * * *

to an amount which in all the above-cases combined does not exceed 15 per centum of the taxpayer's adjusted gross income. * * * [Italics supplied.]

The Bureau has held that the phrase " for the use of " is intended to convey a meaning similar to that of " in trust for." (See I. T. 1867, C. B. II-2, 155 (1923).) In I. T. 1776 (C. B. II-2, 151 (1923)), it was held, under the Revenue Act of 1921, that where a donor by written instrument gave a life estate in bonds to an individual and the remainder interest to a church, the cash value of the gift to the church was deductible. (See also I. T. 2397, C. B. VII-1, 90 (1928) and G. C. M. 3016, C. B. VII-1, 90 (1928).)

In view of the foregoing, it is held that where a taxpayer creates an irrevocable trust, reserving the income to himself for life with remainder over at his death to a beneficiary which meets the requirements of section 23(o)(2) of the Internal Revenue Code, as amended, supra, the present value of the remainder interest is deductible by the taxpayer in his income tax return for the taxable year in which the property is transferred in trust, subject to the limitations prescribed in section 23(o) of the Code, as amended.

SECTION 23(p).—DEDUCTIONS FROM GROSS INCOME: CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.

SECTION 29.23(p)-9: Contributions of an employer toward the purchase of retirement annuities (section 23(p)(1)(B)). 1945-4-11965 T. D. 5436

(Also Section 165, Section 29.165-5; Section 322, Section 19.322-7, Regulations 103.)

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

Regulations 111 and 103 amended to conform to sections 2 and 3 of Public Law 511, Seventy-eighth Congress.

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 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.] and Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.] to sections 2 and 3 of Public Law 511 (Seventy-eighth Congress), approved December 20, 1944, relating to extension of time for satisfying requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code, with respect to trusts forming part of a stock bonus, pension, or profit-sharing plan of an employer, and for filing claims for credit or refund

with respect to war losses under section 127 of such Code for a taxable year beginning in 1941, such regulations are amended as follows:

REGULATIONS 111.

PARAGRAPH 1. There is inserted immediately preceding section 29.23(p)–1 the following:

PUBLIC LAW 511 (SEVENTY-EIGHTH CONGRESS, SECOND SESSION), APPROVED DECEMBER 20, 1944.

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

* * * * * * *

SEC. 2. (a) Section 162(d)(1)(B) of the Revenue Act of 1942 (relating to employees' trusts) is amended to read as follows:

"(B) such a plan shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending June 30, 1945, if the provisions thereof satisfy such requirements by June 30, 1945, and if by that time all provisions of such plan which are necessary to satisfy such requirements are in effect and have been made effective for all purposes with respect to the portion of such period after December 31, 1943."

(b) Section 162(d)(2) of the Revenue Act of 1942 (relating to employees' trusts) is amended to read as follows:

"(2) A stock bonus, pension, profit-sharing, or annuity plan—

"(A) put into effect after September 1, 1942, and prior to January 1, 1945, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with June 30, 1945, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the portion of such period after December 31, 1943;

"(B) put into effect after December 31, 1944, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period."

PAR. 2. Section 29.23(p)–9, as amended by Treasury Decision 5342, approved March 14, 1944 [C. B. 1944, 137], is further amended by changing the parenthetical matter immediately after the fifth sentence to read as follows:

(See section 162(d) of the Revenue Act of 1942, as amended by Public Law 511 (Seventy-eighth Congress) approved December 20, 1944.)

PAR. 3. There is inserted immediately preceding section 29.165–1 the following:

PUBLIC LAW 511 (SEVENTY-EIGHTH CONGRESS, SECOND SESSION), APPROVED DECEMBER 20, 1944.

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

* * * * * * *

SEC. 2. (a) Section 162(d)(1)(B) of the Revenue Act of 1942 (relating to employees' trusts) is amended to read as follows:

" (B) such a plan shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending June 30, 1945, if the provisions thereof satisfy such requirements by June 30, 1945, and if by that time all provisions of such plan which are necessary to satisfy such requirements are in effect and have been made effective for all purposes with respect to the portion of such period after December 31, 1943."

(b) Section 162(d)(2) of the Revenue Act of 1942 (relating to employees' trusts) is amended to read as follows:

" (2) A stock bonus, pension, profit-sharing, or annuity plan—

" (A) put into effect after September 1, 1942, and prior to January 1, 1945, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with June 30, 1945, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the portion of such period after December 31, 1943;

" (B) put into effect after December 31, 1944, shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period."

PAR. 4. Section 29.165–5, as amended by Treasury Decision 5342, approved March 14, 1944, is further amended by striking out the second and third paragraphs and substituting the following:

In the case of a plan in effect on or before September 1, 1942, the plan will be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending June 30, 1945, if the provisions of the plan satisfy such requirements by June 30, 1945, and if by that time all provisions of such plan which are necessary to satisfy such requirements are in effect and have been made effective for all purposes with respect to the portion of such period after December 31, 1943. Thus, if an employer having such a plan in effect makes a return on the basis of the calendar year, he will have until June 30, 1945, to amend his plan so as to make it satisfy the requirements of section 165(a) (3), (4), (5), and (6) for the calendar years 1943 and 1944 provided that by June 30, 1945, all provisions of such plan necessary to satisfy such requirements are in effect and have been made retroactive for all purposes to January 1, 1944. If the employer is on a fiscal year basis, for example, February 1 to January 31, he will have until June 30, 1945, to amend his plan so as to make it satisfy the requirements of section 165(a) (3), (4), (5), and (6) for the fiscal years beginning February 1, 1943, and ending January 31, 1944, and beginning February 1, 1944, and ending January 31, 1945, provided that by June 30, 1945, all provisions of such plan necessary to satisfy such requirements are in effect and have been made retroactive for all purposes to January 1, 1944.

In the case of a plan put into effect after September 1, 1942, and prior to January 1, 1945, the plan will be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with June 30, 1945, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the portion of such period after December 31, 1943. Thus, if an employer in 1943 adopts such a plan effective as of January 1, 1943, and makes a return on the basis of the calendar year he will have until June 30, 1945, to amend his plan so as to make it satisfy the requirements of section 165(a) (3), (4), (5), and (6) for the calendar years 1943 and 1944, provided that by June 30, 1945, all provisions of such plan necessary to satisfy such requirements are in effect and have been

made retroactive for all purposes to January 1, 1944. If the employer is on a fiscal year basis, for example, July 1 to June 30, and in 1943 adopts such a plan effective as of July 1, 1943, he will have until June 30, 1945, to amend his plan so as to make it satisfy the requirements of section 165(a) (3), (4), (5), and (6) for the fiscal years beginning July 1, 1943, and ending June 30, 1944, and beginning July 1, 1944, and ending June 30, 1945, provided that by June 30, 1945, all provisions of such plan necessary to satisfy such requirements are in effect and have been made retroactive for all purposes to January 1, 1944.

In the case of a plan put into effect after December 31, 1944, the plan will be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period. Thus if an employer in 1945 adopts such a plan effective as of January 1, 1945, and makes a return on the basis of the calendar year, he will have until March 15, 1946, to amend his plan so as to make it satisfy the requirements of section 165(a) (3), (4), (5), and (6) for the calendar year 1945 provided that by March 15, 1946, all provisions of such plan necessary to satisfy such requirements are in effect and have been made retroactive for all purposes to January 1, 1945, the effective date of the plan. If an employer is on a fiscal year basis, for example, April 1 to March 31, and in 1945 adopts such a plan effective as of April 1, 1945, he will have until June 15, 1946, to amend his plan so as to make it satisfy the requirements of section 165(a) (3), (4), (5), and (6) for the fiscal year beginning April 1, 1945, and ending March 31, 1946, provided that by June 15, 1946, all provisions of such plan necessary to satisfy such requirements are in effect and have been made retroactive for all purposes to April 1, 1945, the effective date of the plan.

REGULATIONS 103.

PAR. 5. There is inserted immediately preceding section 19.322–1 the following:

PUBLIC LAW 511 (SEVENTY-EIGHTH CONGRESS, SECOND SESSION), APPROVED DECEMBER 20, 1944.

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

* * * * * * *

SEC. 3. 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, 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, 1945. In the case of such a claim filed on or before December 31, 1945, 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 such code, whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of the loss described in this section.

PAR. 6. Section 19.322–7 as amended by Treasury Decision 5395, approved August 11, 1944 [C. B. 1944, 360], is further amended by changing the last sentence of subsection (*a*) to read as follows:

The provisions of this subsection are subject to the exceptions provided in subsections (*b*) (*c*), and (*d*) of this section and in section 3 of Public Law 511 (Seventy-eighth Congress), approved December 20, 1944, extending to December 31, 1945, the time for filing a claim for credit or refund based upon an overpayment of the tax as a result of the failure to take a war-loss deduction in respect of property considered destroyed or seized under section 127(a) of the Code for a taxable year beginning in 1941.

(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 sections 2 and 3 of Public Law 511 (Seventy-eighth Congress), approved December 20, 1944.)

GEO. J. SCHOENEMAN,
Acting Commissioner of Internal Revenue.

Approved February 3, 1945.

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

(Filed with the Division of the Federal Register February 5, 1945, 11.37 a. m.)

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

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

INTERNAL REVENUE CODE.

Contributions to a post-war planning and development fund. (See I. T. 3706, page 87.)

SECTION 29.23(q)–1: Contributions or gifts by corporations. 1945–9–12033 I. T. 3733

INTERNAL REVENUE CODE.

Where a corporation's net income has been redetermined due to renegotiation of Government contracts or subcontracts, the charitable deduction allowable under section 23(q) of the Internal Revenue Code is limited to 5 per cent of the net income after renegotiation.

Advice is requested as to the deduction for contributions allowable for Federal income and excess profits tax purposes where the net income of a corporation, subsequent to the filing of its Federal income and excess profits tax returns, has been redetermined due to renegotiation of Government contracts or subcontracts.

Under Title IV of the Sixth Supplemental National Defense Appropriation Act, 1942 (Public Law 528, Seventy-seventh Congress, second session, 56 Stat., 226, 244), as amended, certain Government departments or agencies are authorized and directed to require contractors or subcontractors to renegotiate the contract price with respect to designated contracts and subcontracts in case any amounts of excessive profits have been, or are likely to be, realized therefrom and recover such excessive profits paid or withhold payment if the profits have not been paid. Section 3806(a) of the Internal Revenue Code, as added by section 508 of the Revenue Act of 1942, requires that a payment or repayment within a taxable year ending after December 31, 1941, of excessive profits pursuant to renegotiation shall be treated as a reduction of the price of the contracts or subcontracts for the taxable year for which such price was received or accrued.

Section 23(q) of the Code provides that in computing net income, in the case of a corporation, there shall be allowed as deductions contributions or gifts payment of which is made within the taxable year to or for the use of the types of organizations described therein, limited

to an amount which does not exceed 5 per cent of the taxpayer's net income as computed without the benefit of the deduction for contributions.

In determining the amount of the repayment of excessive profits, on the basis of renegotiated contracts or subcontracts, the net income for the year for which the contracts or subcontracts were renegotiated would have to be redetermined and the deduction for contributions revised in view of the 5 per cent limitation contained in section 23(q) of the Code, supra, in order to arrive at the correct tax liability for the year and to form a basis for the repayment. (See I. T. 3611, C. B. 1943, 978.) Accordingly, the deduction for contributions in such cases is limited to 5 per cent of the corporation's net income determined after the contracts or subcontracts have been renegotiated.

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

SECTION 29.23(u)–1: Periodic alimony payments.

INTERNAL REVENUE CODE.

Periodic payments made pursuant to an interlocutory decree of divorce in California (See I. T. 3761, page 76.)

SECTION 23(x).—DEDUCTIONS FROM GROSS INCOME: MEDICAL, DENTAL, ETC., EXPENSES.

SECTION 29.23(x)–1: Medical, dental, etc., expenses.

INTERNAL REVENUE CODE.

Deductibility of medical expenses paid in behalf of a dependent whose gross income for the taxable year 1944 exceeds $500. (See I. T. 3703, page 127.)

SECTION 23(y).—DEDUCTIONS FROM GROSS INCOME: SPECIAL DEDUCTION FOR BLIND INDIVIDUALS.

SECTION 29.23(y)–1: Special deduction for blind individuals. 1945–8–12027 T. D. 5451

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

Regulations 111 amended—Certificate to be attached to the return in the case of certain blind individuals.

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

To Collectors of Internal Revenue and Others Concerned:

Section 29.23(y)–1 of Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], as amended by Treasury Decision

5425, approved December 29, 1944 [page 10, this Bulletin], is further amended by striking from the sentence beginning with the words "An individual" the following:

showing in detail the condition of his eyes as of the status determination date.

and inserting in lieu thereof the following:

stating that as of the status determination date, in the opinion of such physician or optometrist, (1) such individual's central visual acuity did not exceed 20/200 in the better eye with correcting lenses or (2) such individual's visual acuity was accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(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,
Acting Commissioner of Internal Revenue.

Approved April 17, 1945.

HERBERT E. GASTON,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register April 17, 1945, 3.54 p. m.)

SECTION 24.—ITEMS NOT DEDUCTIBLE.

SECTION 19.24–1: Personal and family expenses.

INTERNAL REVENUE CODE.

Traveling expenses incurred by State court judges in attendance upon court business at the State capital. (See Ct. D. 1646, page 96.)

SECTION 29.24–2: Capital expenditures.

INTERNAL REVENUE CODE.

Cost of microfilming old newspaper files in case of newspaper publisher. (See I. T. 3732, page 88.)

SECTION 29.24–2: Capital expenditures.

INTERNAL REVENUE CODE.

Certain expenditures of war contractors in connection with reconversion to peacetime production. (See Mim. 5870, page 91.)

SECTION 25.—CREDITS OF INDIVIDUAL AGAINST NET INCOME.

SECTION 29.25–1: Credits of individual against net income.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5425, page 10.)

SECTION 29.25-3: Personal exemption and surtax exemptions. 1945-7-12005 I. T. 3723

(Also Section 1622, Section 405.205, Regulations 116.)

INTERNAL REVENUE CODE.

Treatment for Federal income tax purposes of (1) the surtax exemptions under section 25(b)(1) of the Internal Revenue Code, as amended by section 10(b) of the Individual Income Tax Act of 1944, allowable to a taxpayer where a serviceman's monthly family allowance is received by the individual claimed as a dependent by the taxpayer, and (2) the withholding exemptions under section 1622(h)(1) of the Code, as amended by section 22(d) of the Individual Income Tax Act of 1944, which the wife of a serviceman is entitled to claim on her employee's withholding exemption certificate, Form W-4 (Rev. 1944), where she receives a monthly family allowance for herself and two children.

Advice is requested whether, under the circumstances hereinafter stated, (1) a taxpayer is entitled to a surtax exemption of $500 under section 25(b)(1) of the Internal Revenue Code, as amended by section 10(b) of the Individual Income Tax Act of 1944, for an individual (daughter) receiving a serviceman's monthly family allowance from the Government, and whether (2) the wife of a serviceman is entitled to claim withholding exemptions under section 1622(h)(1) of the Code, as amended by section 22(d) of the Individual Income Tax Act of 1944, for herself, her husband, and two children, where she receives a monthly family allowance from the Government for herself and the two children.

In the first case, relating to allowance of a surtax exemption, a father furnished more than 50 per cent of the support of a daughter during the calendar year in which the father's taxable year began. The daughter is married to an enlisted man serving in the armed forces, and she receives a monthly family allowance for herself from the Government, which allowance is not used for her support but is deposited in a bank. She is not employed and receives no other income.

In the second case, relating to withholding exemptions, the taxpayer, who is employed, is the wife of a serviceman, and she receives a monthly family allowance from the Government for herself and two children. The specific question presented is the number of withholding exemptions which she is entitled to claim on her employee's withholding exemption certificate, Form W-4 (Rev. 1944), required to be filed with her employer.

Section 25(b) of the Code, as amended, provides in part as follows:

(b) CREDITS FOR SURTAX ONLY.—

(1) CREDITS.—There shall be allowed for the purpose of the surtax, but not for the normal tax, the following credits against net income:

(A) A surtax exemption of $500 for the taxpayer;

(B) A surtax exemption of $500 for the spouse of the taxpayer if—

(i) a joint return is made by the taxpayer and his spouse under section 51, in which case the surtax exemption of the spouses under subparagraph (A) and this subparagraph shall be only $1,000 in the aggregate, or

(ii) a separate return is made by the taxpayer, and his spouse has no gross income for the calendar year in which the taxable year of the taxpayer begins and is not the dependent of another taxpayer;

(C) A surtax 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 if such dependent is married the exemption in respect of such dependent shall not be allowed if such dependent has made a joint return with the other spouse under section 51 for a taxable year beginning in such calendar year.

* * * * * * *

(3) DEFINITION OF DEPENDENT.—As used in this chapter 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, * * *.

Section 1622(h)(1) of the Code, as amended, provides in part as follows:

(1) IN GENERAL.—An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) An exemption for himself.

(B) If the employee is married, an exemption with respect to his spouse, unless his spouse has in effect a withholding exemption certificate claiming a withholding exemption under subparagraph (A).

(C) An exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable a surtax exemption under section 25(b)(3) for the taxable year under Chapter 1 in respect of which amounts deducted and withheld under this subchapter in the calendar year in which such day falls are allowed as a credit.

Section 29.25-3 of Regulations 111 provides in part:

Whether or not over half of a person's support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer, shall be determined by reference to the amount of expense incurred by the taxpayer for such support.

It is provided under the terms of the Servicemen's Dependents Allowance Act of 1942 (56 Stat., 381), as amended by the Act of October 26, 1943 (57 Stat., 577), that a monthly family allowance shall be granted and paid by the United States to certain dependents of an enlisted man. The amount of such monthly family allowance in the case of a wife but no child shall be $50, a wife and one child $80, and an additional $20 for each additional child. It is further provided that for any month for which such monthly family allowance is paid the monthly pay of such enlisted man shall be reduced by, or charged with, the amount of $22. The balance consists of the Government's contribution to such allowance. The Bureau has taken the position that the Government's contribution to the monthly family allowance is not taxable income, but that the amount charged to the pay of an enlisted man is includible in his gross income to the same extent as if paid directly to him. (See I. T. 3574, C. B. 1942-2, 52.)

Where a taxpayer furnishes more than half of the amount actually used for the support of an individual who meets the relationship requirements prescribed by section 25(b)(3) of the Code and whose gross income is less than $500, the taxpayer is entitled to a credit against net income (surtax exemption) for a dependent even though the person claimed as a dependent has income in excess of the amount furnished by the taxpayer, provided such income is not used for the support of such person. In other words, the test to be applied in determining whether a taxpayer has furnished more than half of the support of a person claimed as a dependent is one of *actual support*, and is, therefore, a question of fact in each case.

In view of the foregoing, since the family allowance received by the daughter in the first case mentioned above does not constitute

"gross income," and since the father furnished more than one-half of the actual support of his daughter, he is entitled to a surtax exemption of $500 under section 25(b)(1) of the Internal Revenue Code, as amended, with respect to the daughter, provided she does not file a joint return with her husband.

In the second situation, the taxpayer may, on her employee's withholding exemption certificate, Form W–4 (Rev. 1944), claim a withholding exemption under section 1622(h)(1) of the Code, as amended, for herself and one for her husband, if he has no withholding exemption certificate in effect. If the taxpayer in that case provides more of the support received by the children than is received by them through the monthly family allowance or otherwise, she is also entitled to a withholding exemption for each of the children. This conclusion is based on the premise that the Government furnishes the amount of the family allowance (except the amount of $22 included in such allowance which is furnished by the husband).

SECTION 29.25–3: Personal exemption and surtax exemptions. 1945–11–12051 I. T. 3741

INTERNAL REVENUE CODE.

An individual whose spouse's only income consists of compensation received for active service in the military or naval forces of the United States, which compensation does not exceed $1,500 during the calendar year in which the taxable year of the taxpayer begins, is entitled, on his or her separate return, to a surtax exemption of $500 for such spouse under section 25(b)(1)(B)(ii) of the Internal Revenue Code, as amended by section 10(b) of the Individual Income Tax Act of 1944.

Advice is requested whether an individual whose spouse's only income consists of compensation received for active service in the military or naval forces of the United States, which compensation does not exceed $1,500 for the calendar year in which the taxable year of the taxpayer begins, is entitled to a surtax exemption of $500 for such spouse under section 25(b)(1)(B)(ii) of the Internal Revenue Code, as amended by section 10(b) of the Individual Income Tax Act of 1944.

Section 25(b)(1)(B)(ii) of the Code provides as follows:

(b) CREDITS FOR SURTAX ONLY.—

(1) CREDITS.—There shall be allowed for the purpose of the surtax, but not for the normal tax, the following credits against net income:

* * * * * * *

(B) A surtax exemption of $500 for the spouse of the taxpayer if—

* * * * * * *

(ii) a separate return is made by the taxpayer, and his spouse has no *gross income* for the calendar year in which the taxable year of the taxpayer begins and is not the dependent of another taxpayer; [Italics supplied.]

Section 22(b)(13) of the Code, as amended by section 7(a) of the Current Tax Payment Act of 1943, 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:

* * * * * * *

(13) ADDITIONAL ALLOWANCE FOR MILITARY AND NAVAL PERSONNEL.—In the case of compensation received during any taxable year and before the termi-

nation of the present war as proclaimed by the President, by a member of the military or naval forces of the United States for active service in such forces during such war, * * * so much of such compensation as does not exceed $1,500.

Inasmuch as the taxpayer's spouse in the instant case has no income which is includible in gross income for Federal income tax purposes, such spouse has no "gross income," as that term is used in the quoted provisions of the Code, and such spouse, being in active service in the military or naval forces of the United States, is "not the dependent of another taxpayer."

Accordingly, it is held that an individual whose spouse's only income consists of compensation received for active service in the military or naval forces of the United States, which compensation does not exceed $1,500 during the calendar year in which the taxable year of the taxpayer begins, is entitled, on his or her separate return, to a surtax exemption of $500 for such spouse under section 25(b)(1)(B)(ii) of the Code, as amended.

SECTION 29.25–3: Personal exemption and surtax exemptions. 1945–13–12072 I. T. 3745

INTERNAL REVENUE CODE.

A taxpayer who supports the widow of his deceased wife's brother is not entitled, for Federal income tax purposes, to claim her as his dependent, even though her entire support is furnished by him.

Advice is requested whether a taxpayer who supports the widow of his deceased wife's brother is entitled, for Federal income tax purposes, to claim her as his dependent if her entire support is furnished by him. The precise question is whether the individual supported by the taxpayer is a dependent (sister-in-law) within the meaning of section 25(b)(3) of the Internal Revenue Code.

Section 25(b) of the Internal Revenue Code, as amended by section 10(b) of the Individual Income Tax Act of 1944 and applicable to taxable years beginning after December 31, 1943, provides in part as follows:

(b) CREDITS FOR SURTAX ONLY.—

(1) CREDITS.—There shall be allowed for the purpose of the surtax, but not for the normal tax, the following credits against net income:

* * * * * * *

(C) A surtax 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 if such dependent is married the exemption in respect of such dependent shall not be allowed if such dependent has made a joint return with the other spouse under section 51 for a taxable year beginning in such calendar year.

* * * * * * *

(3) DEFINITION OF DEPENDENT.—As used in this chapter 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:

* * * * * * *

(H) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.

As the term "sister-in-law" is not defined by the Internal Revenue Code nor by the regulations promulgated thereunder, the rules of

affinity are controlling here. Affinity, at common law, means relationship by marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. (Black's Law Dictionary, Second Edition.) The relations of the wife, her brothers, her sisters, her uncles, are allied to the husband by affinity; and his brothers, sisters, etc., are allied in the same way to the wife. (Cyclopedic Law Dictionary, Third Edition; Bouvier's Law Dictionary, Rawle's Third Revision; Words and Phrases, Vol. 2.) Though a man is related to his wife's brother by affinity, he is not so related to his wife's brother's wife. (*Chinn* v. *State*, 26 N. E., 986.) (See also 32 Op. A. G., 254.)

Section 29.25–3 of Regulations 111 provides in part that the relationship of affinity once existing will not terminate by divorce or the death of a spouse. In the instant case, however, the relationship of sister-in-law, a relationship of affinity, never existed between the taxpayer and the widow of his deceased wife's brother. It is, therefore, held that a taxpayer who supports the widow of his deceased wife's brother is not entitled, for Federal income tax purposes, to claim her as his dependent, even though her entire support is furnished by him.

SECTION 29.25–3: Personal exemption and surtax exemptions. 1945–15–12097 I. T. 3750

INTERNAL REVENUE CODE.

The presumptive date of death of an individual reported missing in action in 1942 while a member of the armed forces, as determined by the head of the department concerned in accordance with section 5 of Public Law 490, Seventy-seventh Congress, second session (56 Stat., 143), as amended by Public Law 848, Seventy-seventh Congress, second session (56 Stat., 1092), constitutes the date of death for Federal income tax purposes. The status of a surviving spouse from and after such presumptive date is that of a single person, and a personal exemption is allowable on that basis for 1943.

Advice is requested, for Federal income tax purposes, as to (1) the date to be used as the date of death in the case of a member of the armed forces who was reported missing in action in 1942, and (2) the personal exemption allowable to the surviving spouse for 1943.

In the case presented, pursuant to authority contained in section 5 of Public Law 490, Seventy-seventh Congress, second session (56 Stat., 143), approved March 7, 1942 (known as the Missing Persons Act), as amended by Public Law 848, Seventy-seventh Congress, second session (56 Stat., 1092), approved December 24, 1942, the Secretary of the Navy has issued a certificate of presumptive death which states that it is presumed that death occurred on the day following the day of expiration of an absence of 12 months.

Section 5 of Public Law 490, as amended, provides as follows:

When the 12 months' period from date of commencement of absence is about to expire in any case of a person missing or missing in action and no official report of death or of being a prisoner or of being interned has been received, the head of the department concerned shall cause a full review of the case to be made. Following such review and when the 12 months' absence shall have expired, or following any subsequent review of the case which shall be made whenever warranted by information received or other circumstances, the head of the department concerned is authorized to direct the continuance of the person's missing status, if the person may reasonably be presumed to be living,

or is authorized to make a finding of death. When a finding of death is made it shall include the date upon which death shall be presumed to have occurred for the purposes of termination of crediting pay and allowances, settlements of accounts, and payments of death gratuities and such date shall be the day following the day of expiration of an absence of 12 months, or in cases in which the missing status shall have been continued as hereinbefore authorized, a day to be determined by the head of the department.

Public Law 490 was enacted to provide authorization for the continued payment or credit in the accounts of pay and allowances of missing persons for one year following the date of commencement of absence from their posts of duty or until such persons have been officially declared dead. Generally, a finding of presumptive death by the head of the department concerned, pursuant to section 5 of Public Law 490, as amended, supra, is for the purposes of termination of crediting pay and allowances, settlements of accounts, and payments of death gratuities. However, a finding of death pursuant to section 5 of Public Law 490, as amended, was also designed to aid other departments or agencies of the Federal Government in those cases in which the question of death is pertinent. (See House Committee Report No. 2723, which accompanied Public Law 848, supra, wherein it is stated "The amendments to the Missing Persons Act were also designed to aid various Federal agencies * * * in determining a reasonable date on which rights shall accrue, based on the finding of the missing man's death.")

In view of the foregoing, it is held that the presumptive date of death of an individual reported missing in action in 1942 while a member of the armed forces, as determined by the head of the department concerned in accordance with section 5 of Public Law 490, as amended, supra, constitutes the date of death for Federal income tax purposes. The status of a surviving spouse from and after such presumptive date is that of a single person, and a personal exemption is allowable on that basis for 1943.

SECTION 29.25–6: Credit for dependents. 1945–1–11919
(Also Section 23(x), Section 29.23(x)–1.) I. T. 3703

INTERNAL REVENUE CODE.

Where a taxpayer pays medical expenses of his mother, who is a dependent as defined in section 25(b)(3) of the Internal Revenue Code (effective for taxable years beginning after December 31, 1943), and whose gross income for the taxable year 1944 exceeds $500, he is not entitled to the surtax credit against net income provided in section 25(b)(1)(C) of the Code, as added by section 10(b) of the Individual Income Tax Act of 1944, but he may deduct medical expenses paid during the taxable year 1944 in behalf of such dependent to the extent that the total medical expenses of the taxpayer, including those of his dependent, exceed 5 per cent of his adjusted gross income and fall within the limitations of section 23(x) of the Code, as amended by section 8(c) of the Individual Income Tax Act of 1944.

Advice is requested whether, for the taxable year 1944, a taxpayer is entitled to (1) a surtax exemption for a dependent, and (2) a deduction for medical expenses paid on behalf of the dependent where the dependent's gross income exceeds $500.

The taxpayer's mother, an invalid, normally receives investment income of $2,000 to $2,500 per year, and in 1944 she received $2,300,

but such income is insufficient to meet expenses incurred for her medical care. The taxpayer annually contributes approximately $4,000 toward the amount needed to pay two nurses and other medical expenses of his mother. For taxable years prior to 1944, such expenditures entitled the taxpayer to claim credit for a dependent on his Federal income tax returns. The question presented is whether certain changes in the Internal Revenue Code, effected by the Individual Income Tax Act of 1944, will deprive the taxpayer of a dependency exemption for his mother and a deduction for medical expenses paid on her behalf.

Section 25(b)(1)(C) of the Code, as added by section 10(b) of the Individual Income Tax Act of 1944, provides in part as follows:

> (1) CREDITS.—There shall be allowed for the *purpose* of the surtax, *but not for the normal tax*, the following credits against net income:
>
> * * * * * * *
>
> (C) A surtax 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, * * *. [Italics supplied.]

Inasmuch as the gross income of the taxpayer's mother exceeds $500, the taxpayer is not entitled to the surtax credit against net income provided in section 25(b)(1)(C) of the Code, supra, even though he furnished more than one-half of her support.

Section 25(b)(3) of the Code, as amended by section 10(b) of the Individual Income Tax Act of 1944 (effective for taxable years beginning after December 31, 1943), provides in part as follows:

> (3) DEFINITION OF DEPENDENT.—As used in this chapter 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:
>
> * * * * * * *
>
> (D) the father or mother of the taxpayer * * *.

Section 23(x) of the Code, as amended by section 8(c) of the Individual Income Tax Act of 1944, provides as follows:

> In computing net income there shall be allowed as deductions:
>
> * * * * * * *
>
> (x) MEDICAL, DENTAL, ETC., EXPENSES.—Expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent specified in section 25(b)(3), *to the extent that such expenses exceed 5 per centum of the adjusted gross income. If only one surtax exemption is allowed under section 25(b) for the taxable year the maximum deduction for the taxable year shall be not in excess of $1,250. If more than one surtax exemption is so allowed, the maximum deduction shall be not in excess of $2,500.* The term "medical care", as used in this subsection, shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance). [Italics supplied.]

Accordingly, the medical expenses which the taxpayer paid during the taxable year 1944 in behalf of his mother, who is a dependent, are deductible in his Federal income tax return for that year to the extent that his total medical expenses, including those of such dependent, exceed 5 per cent of his adjusted gross income and fall within the limitations prescribed in section 23(x) of the Code, as amended, supra.

SECTION 27(a).—CORPORATION DIVIDENDS PAID CREDIT: DEFINITION IN GENERAL.

SECTION 29.27(a)-1: Dividends paid credit.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5460, page 260.)

SECTION 29.27(a)-2: Deficit credit.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5460, page 260.)

SECTION 29.27(a)-3: Amounts used or irrevocably set aside to pay or to retire indebtedness.
(Also Section 19.27(a)-3, Regulations 103.)

INTERNAL REVENUE CODE.

Regulations 103 and 111 amended. (See T. D. 5460, page 260.)

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING.

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

SECTION 29.42-1: When included in gross income. 1945-2-11935
I. T. 3708

INTERNAL REVENUE CODE AND REVENUE ACT OF 1938.

An amount specified in the terms of a contract of employment, which amount, in the event of the death of the employee prior to the expiration of the contract, was payable by the employer to the legal representatives of the employee or to beneficiaries designated by him, accrued as of the date of the employee's death in 1942, and, under section 42(a) of the Internal Revenue Code, as applicable to the taxable year 1942, is properly includible in the return of the decedent notwithstanding payment of such amount to beneficiaries designated by him.

I. T. 3315 (C. B. 1939-2, 164) revoked.

Advice is requested relative to the taxable status for Federal income tax purposes for the taxable year 1942 of an amount specified in the terms of a contract of employment, which amount, in the event of the death of the employee prior to the expiration of the contract, was payable by the employer to the legal representatives of the employee or to beneficiaries designated by him.

The above-mentioned contract of employment provided that in the event of the death of the employee prior to the expiration of the contract, an amount equal to the amount of the employee's annual salary was to be paid, during the 12-month period following the employee's death, at a proportionate rate each month to the legal representatives of the employee or to certain beneficiaries designated in writing by him. The employee died in 1942 and payment of the

amount specified in the contract was made over the 12-month period to certain relatives who had been designated by the employee.

The question presented involves the application of I. T. 3315 (C. B. 1939–2, 164) in which there was under consideration the taxable status of an amount designated as a "mortuary benefit," payable pursuant to a resolution of the board of directors of the M Life Insurance Co. in the case of an employee of the company who died in 1938. It was held that the amount payable at the death of the employee to his designated beneficiary did not represent income which was accruable in the return of the decedent as of the date of his death, under the provisions of section 42 of the Revenue Act of 1938.

The last sentence of section 42(a) of the Internal Revenue Code, applicable to taxable years beginning on or before December 31, 1942, and the last sentence of section 42 of the Revenue Act of 1938 provide as follows:

> In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period.

That provision first appeared as the last sentence of section 42 of the Revenue Act of 1934.

In considering the meaning of the term "accrued," as used in the last sentence of section 42 of the Revenue Act of 1934, the Supreme Court of the United States, in *Helvering* v. *Estate of John M. Enright et al.* (312 U. S., 636, Ct. D. 1500, C. B. 1941–1, 353), stated:

> * * * The completion of the work in progress was necessary to fix the amount due but the right to payment for work ordinarily arises on partial performance. Accrued income under section 42 for uncompleted operations includes the value of the services rendered by the decedent, capable of approximate valuation whether based on the agreed compensation or on quantum meruit. The requirement of valuation comprehends the elements of collectibility. The items here meet these tests and are subject to accrual.

In the instant case, the amount of the payments made to designated beneficiaries was payable pursuant to an employment contract, and, therefore, the right to the payment represents consideration for the services rendered by the employee. By virtue of that contract, suit could have been instituted to obtain redress in case of a breach of that provision of the employment contract pertaining to the payment of the amount under consideration. The work under the employment contract had been performed by the employee up to the date of his death, and the right to the additional compensation then immediately accrued to his credit for the benefit of his beneficiaries. That right was an enforceable right, and the value of the right was ascertainable. Accordingly, upon the principle stated by the Supreme Court of the United States in the Enright case, supra, it is held that the amount paid under the terms of the employment contract accrued as of the date of the employee's death in 1942, and that amount is properly includible in the return of the decedent under the provisions of section 42(a) of the Internal Revenue Code, as applicable to the taxable year 1942, notwithstanding payment of such amount to beneficiaries designated by him.

In view of the above, I. T. 3315, supra, which is not in accord with the conclusion here reached, is revoked.

In connection with the present inquiry, it should be noted that section 134(a) of the Revenue Act of 1942 affords relief from the

hardship resulting from including in the income for the decedent's last taxable year amounts which ordinarily would be receivable over a period of several years. That section amended the last sentence of section 42(a) of the Internal Revenue Code, supra, to read as follows:

> In the case of the death of a taxpayer whose net income is computed upon the basis of the accrual method of accounting, amounts * * * accrued only by reason of the death of the taxpayer shall not be included in computing net income for the period in which falls the date of the taxpayer's death.

That amendment is applicable with respect to taxable years beginning after December 31, 1942. Section 134(e) of the Revenue Act of 1942 added section 126 to the Code, which section provides in substance that the amount of all items of gross income in respect of a decedent which is not properly includible in the decedent's return should be included in the gross income of the estate of the decedent or of the persons who, by reason of the death of the decedent, or by bequest, devise, or inheritance, acquire from the decedent the right to receive the amount. Section 126 of the Code is applicable to taxable years ending after December 31, 1942. However, section 134(g) of the Revenue Act of 1942 provides for the retroactive application of the aforementioned amendments if certain consents are filed by all parties affected, permitting the adjustment of their respective income tax liabilities as if the amendments were a part of the applicable law for any taxable period which began after December 31, 1933, in which fell the date of death of the decedent. (See section 29.126–4 of Regulations 111.)

SECTION 29.42–1: When included in gross income. 1945–16–12108
Mim. 5897

Treatment of compensation for termination of war contracts, deductions upon termination, and no-cost settlements—Mimeograph 5766 [C. B. 1944, 156] restated and supplemented.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., July 24, 1945.

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

Mimeograph 5766 [C. B. 1944, 156], dated November 1, 1944, contains rules governing the treatment of compensation for the termination of fixed-price contracts which constitute war contracts within the meaning of section 3 of the Contract Settlement Act of 1944 [58 Stat., 649, 650], in cases where the contractor renders his returns other than on a basis of cash receipts and disbursements and the compensation is received pursuant to a negotiated settlement, together with rules with respect to the effect of a no-cost settlement in respect of a termination of a fixed-price contract. The method of treatment therein prescribed will continue to be followed. Pursuant to the provisions of section 29.42–1 of Regulations 111, as amended by Treasury Decision 5405 [C. B. 1944, 154], approved September 22, 1944, the provisions of Mimeograph 5766 are, however, restated in

this mimeograph and are supplemented to prescribe rules for the treatment of compensation for the termination of all war contracts in all cases where the contractor renders his returns other than on a basis of cash receipts and disbursements.

(*a*) WHEN COMPENSATION INCLUDED IN GROSS INCOME.—In the case of a termination of a contract which constitutes a war contract within the meaning of section 3 of the Contract Settlement Act of 1944, compensation for the termination shall be included in computing gross income for the taxable year or years determined in accordance with the following rules:

(1) TAXABLE YEARS ENDING PRIOR TO JULY 21, 1944.—In case a war contract is terminated within a taxable year ending prior to July 21, 1944, the effective date of the Contract Settlement Act of 1944, compensation for the termination shall be included in computing gross income for the taxable year in which the claim is allowed (or the settlement proposal is accepted), or for the taxable year in which its value is otherwise definitely determined, or for the first taxable year ending after July 20, 1944, whichever year is the earliest; provided, however, that the contractor shall not be required or permitted to include in income for such year any part of the income from the contract termination which was included in income for the taxable year of the contract termination.

The provisions of the preceding sentence are applicable in the case of negotiated settlements of fixed-price war contracts and in all other cases of terminations of war contracts. Under such provisions, if, pursuant to contractual provisions relating to the contract termination, a contractor is entitled, upon termination, to compensation for any particular item of cost, expense, or loss incurred within the taxable year of the contract termination or within any prior taxable year, the compensation for such item shall be included in computing gross income for the taxable year of the contract termination. Where there is an agreement to pay to the contractor upon termination of the contract, as compensation for the termination, amounts which are specified in the agreement or which are definitely ascertainable by the contractor by a calculation or computation based on ascertained factors, such amounts shall be included in computing gross income for the taxable year of the contract termination. In any other case of an agreement to pay to the contractor, upon termination, compensation for the termination (as, for example, where at the time of the contract termination there is a binding agreement to pay the contractor compensation for the termination and the amounts due under such agreement can be estimated but can be definitely ascertained only by agreement of the parties, by determination of a governmental agency, or by litigation), the contractor shall not be permitted or required merely by reason of such agreement to include in income for such year any part of such amounts which is in excess of that so included by him in filing his return for such year. In the case of a negotiated lump-sum settlement of a fixed-price contract (see paragraph (*b*), below), the amounts which, under the preceding provisions of this subparagraph, are properly includible in computing gross income for the taxable year of the contract termination, shall be applied against the amount of the lump-sum settlement for the purpose of determining the part of such settlement which is in-

cludible in computing gross income for any taxable year subsequent to the year of the contract termination.

If at the close of the taxable year of the contract termination there is no agreement to pay to the contractor any compensation for the termination, or if the agreement to pay is conditioned upon events which have not occurred, no compensation for the contract termination shall be includible in computing gross income for such year. If by contractual provisions relating to the contract termination a contractor is entitled to compensation for any particular item of cost, expense, or loss incurred within a taxable year subsequent to the year of the contract termination, the compensation for such item shall be included in computing gross income for such subsequent year, except that this rule shall not apply in the case of a negotiated lump-sum settlement of a fixed-price contract (see paragraph (*b*), below) where the amount of such settlement is includible in computing gross income for any prior taxable year or years.

(2) TAXABLE YEARS ENDING ON OR AFTER JULY 21, 1944.—In case a war contract is terminated within a taxable year ending on or after July 21, 1944, the income from the contract termination shall be included in computing gross income for the taxable year of the contract termination. The foregoing method shall apply in all such cases unless a different method is prescribed or approved by the Commissioner. Notwithstanding the foregoing provisions of this subparagraph, if any part of the compensation is for any particular item of cost, expense, or loss incurred within a taxable year subsequent to the year of the contract termination, such part shall be included in computing gross income for such subsequent year. The rule stated in the preceding sentence is applicable where, for example, any such item is incurred under contractual provisions entitling the contractor to reimbursement, or where the contractor is entitled to compensation for a particular item under contractual provisions relating to the termination, or pursuant to procedures and practices under the Contract Settlement Act of 1944 other than those referred to in the Director's statement in paragraph (*b*), below.

(3) ADJUSTMENT OF RETURN.—If the income from the contract termination which, under the above subparagraph (1), is to be taken into account in computing gross income for the taxable year in which the Contract Settlement Act of 1944 became effective, or which, under the above subparagraph (2), is to be taken into account for the year of the contract termination, is not definitely ascertained at the time of filing the return, the contractor shall include in his return a reasonable estimate of such income, and should attach to his return a statement identifying the contract termination to which such estimate relates. When the correct amount of such income from the contract termination is ascertained, an adjustment shall be made for the year for which such income was included. (Cf. *Continental Tie & Lumber Co.* v. *United States*, 286 U. S., 290 [Ct. D. 494, C. B. XI–1, 260 (1932)].)

(4) COMPENSATION FOR INVENTORY ITEMS.—Despite the provisions of the above subparagraphs (1) and (2), if any part of the compensation is for, or in reimbursement of, any articles of inventory, or the costs thereof, which, upon termination or as a condition to the allowance of the compensation, are required to be transferred to the Govern-

ment or any customer, such part of the compensation shall, to the extent not in excess of the cost of such articles, be included in computing gross income for the taxable year within which such transfer occurs. (See, however, paragraph (*b*), below.)

(5) SPECIAL PROVISIONS AS TO COST-PLUS-A-FIXED-FEE CONTRACTS.—In the case of a termination of a cost-plus-a-fixed-fee contract, the part of the reimbursements, fixed-fee, or other income accruing to the contractor under the contract prior to the date of the contract termination shall be included in computing gross income for the taxable year for which it accrues. (See I. T. 3459, C. B. 1941–1, 236.) As used herein, the term "cost-plus-a-fixed-fee contract" includes the provisions of a contract denominated a fixed-price contract, in case such provisions call for the manufacture, construction, or acquisition, on a reimbursable cost basis, of facilities, materials, or services.

(6) CORRELATION OF DEDUCTIONS AND INCOME.—As a general rule, items which are deductible in computing net income and which, for contract termination purposes, are allocable to the uncompleted portion of a terminated contract shall be deductible in computing net income for the taxable year for which the income from the contract termination is includible in gross income (Cf. *Hoe & Co., Inc.*, v. *Commissioner*, 30 Fed. (2d), 630.) In the case of a fixed-price war contract terminated within a taxable year ending prior to July 21, 1944, the rule stated in the preceding sentence shall not apply to any item allocable to the uncompleted portion of the terminated contract in case there is no agreement upon termination to pay to the contractor compensation for the termination or for such item. In the case of a fixed-price contract, regardless of when it is terminated, a contractor shall not be permitted to deduct for the taxable year of the contract termination expenses incurred, or losses, depreciation, or amortization sustained, in a taxable year prior to the year of the contract termination (see, however, paragraph (*b*) of section 29.42–4 of Regulations 111, in case the income from the contract may be reported upon the completed contract basis); but if any such item is properly includible as a part of the cost of articles of inventory, it shall be so included. With respect to costs of articles of a kind which would properly be included in the inventory of the contractor if on hand at the close of a taxable year, if upon termination of a war contract a contractor becomes definitely bound or obligated by law or contractual provisions to transfer any such articles to the Government or to any other customer, and the contractor is entitled to compensation for, in reimbursement of, or allocable to, such articles or the costs thereof (but see paragraph (*b*), below), such articles, if on hand at the close of any taxable year, shall be inventoried at cost, unless prior to the close of such year the contractor has been relieved of his obligation to make the transfer and his right to compensation for such articles has been canceled. The cost of any such articles which are transferred to the Government or other customer shall be included as a part of the cost of goods sold within the taxable year of the transfer. Where, by contractual provisions relating to the termination, or by procedures and practices under the Contract Settlement Act of 1944 other than those referred to in the Director's statement in paragraph (*b*), below, a contractor becomes entitled, upon termination of a war contract, to compensation or

reimbursement for any particular articles of inventory previously acquired or for the costs thereof which were previously incurred, though the contractor is not under an obligation to transfer such articles to the Government or any other customer, such articles, if on hand at the close of a taxable year, shall be inventoried at cost, unless such compensation or reimbursement is includible in gross income for such year or unless, prior to the close of such year, a settlement of the contractor's right to such compensation or reimbursement has been made. In the case of inventory costs or other items incurred pursuant to contractual provisions entitling the contractor to reimbursement therefor, such costs or other items, if deductible, shall be deducted only for the taxable year for which the reimbursement is includible in computing gross income, or for the taxable year within which a settlement is made, whichever taxable year is the earlier. The rule stated in the preceding sentence is also applicable with respect to items incurred within the taxable year of the contract termination, in case compensation for such items is provided for by law or contractual provisions, or by procedures and practices under the Contract Settlement Act of 1944, other than those referred to in the Director's statement in paragraph (*b*), below.

(*b*) SCOPE OF NEGOTIATED SETTLEMENTS.—By letter to the Bureau, dated October 25, 1944, the Director of Contract Settlement states:

> Under the procedures and practices prescribed by this office under the Contract Settlement Act of 1944 in respect of negotiated settlements of claims arising out of terminations of fixed-price contracts, no part of the compensation for the contract termination as determined for the purposes of the Act and as agreed to by the contractor and the contracting agency is made in payment of any particular item, except that a part of the compensation may be authorized and agreed to as payment for a part of the cost of an emergency facility as defined in section 124 of the Internal Revenue Code, as amended.

This statement is referred to herein as the "Director's statement." In view of this statement, in the case of a negotiated lump-sum settlement of a claim for compensation for termination of a fixed-price contract, the contractor is precluded from showing, and the Commissioner from determining, for Federal income and excess profits tax purposes, that any part of the compensation is for, in reimbursement of, or attributable to, any particular item of property, cost, expense, or loss, except that this does not apply in cases where specific provisions in the settlement agreement require otherwise. In such excepted cases, there shall be excluded from income that portion of the compensation which (1) under such provisions is for, or in reimbursement of, any such item, and (2) is to be applied in reduction of the cost or basis of such item or, in the event such item is deductible, is includible in income for the taxable year in which such item is incurred. Such reduction in basis shall be made as of the effective date of the contract termination. (See *Glendinning, McLeish & Co., Inc.*, v. *Commissioner*, 24 B. T. A., 518, affirmed, 61 Fed. (2d), 950 [Ct. D. 681, C. B. XII–1, 279 (1933)]; *A. J. Tower Co.* v. *Commissioner*, 38 Fed. (2d), 618; *New York, Chicago & St. Louis R. R. Co.* v. *Commissioner*, 26 B. T. A., 1229, 1289; *Edith Henry Barbour* v. *Commissioner*, 44 B. T. A., 1117; and, also, section 124(h) of the Internal Revenue Code.) The compensation which is to be treated as having been received pursuant to a negotiated settlement does not include any amounts determined as fair compensation (1) by the contracting agency pursu-

ant to section 13(a) of the Contract Settlement Act of 1944, (2) by the appeal board provided for in section 13 of such Act, (3) by arbitration as provided for in such Act, or (4) by any court. With respect to such amounts, the contractor is not precluded from showing, and the Commissioner is not precluded from determining, the portion which is for, in reimbursement of, or attributable to, any particular item of property, cost, expense, or loss.

(*c*) NO-COST SETTLEMENTS OF TERMINATIONS OF FIXED-PRICE CONTRACTS.—"No-cost settlement" as used herein refers to a settlement in respect of a contract termination pursuant to which the contractor waives or releases all claim to compensation for the contract termination. In the case of a settlement which is a no-cost settlement except for the fact that the contractor reserves or retains a claim for compensation in respect of one or more particular items, the rules hereinafter stated with respect to no-cost settlements are applicable only to the no-cost provisions of such settlement. In case a no-cost settlement is made in respect of a termination of a fixed-price contract, regardless of whether it is made pursuant to the provisions of section 6(c) of the Contract Settlement Act of 1944 or otherwise, in view of the Director's statement (see paragraph (*b*), above), the treatment of such settlement for Federal income and excess profits tax purposes shall be consistent with the following:

(1) EFFECT ON INCOME.—No amount shall be treated as income from the contract termination for the purposes of the above paragraph (*a*), and, if any such amount is included in the return for any year, the return shall be adjusted to accord with the provisions of this subparagraph. This adjustment may be made at any time within the period prescribed by the statute of limitations, regardless of when the no-cost settlement is made.

(2) EFFECT ON DEDUCTIONS.—The execution of a no-cost settlement does not preclude the contractor from being entitled, in computing net income for a given taxable year, to deduct any item which is allowable as a deduction under the provisions of the Internal Revenue Code. Conversely, the execution of such settlement does not alone establish for the contractor a right to deduct for any particular year any item not otherwise allowable in computing net income for such year. (Cf. *H. D. Lee Mercantile Co.* v. *Commissioner*, 79 Fed. (2d), 391 [Ct. D. 1108, C. B. XV–1, 302 (1936)].) The deductibility of any item is to be determined upon the basis of all the pertinent facts and circumstances and irrespective of whether a no-cost settlement is or is not made. Consequently, in terminations of fixed-price contracts, the provisions of the Contract Settlement Act of 1944, as construed and applied by the Director of Contract Settlement in negotiated settlements, including no-cost settlements, do not preclude the deduction of expenses incurred, or losses, depreciation, or amortization sustained, in connection with the terminated contract, though such items are allocable to the uncompleted portion of such contract; and the deductibility of such items is to be determined without regard to any right of the contractor to compensation in such cases.

(3) EFFECT ON INVENTORIES.—Regardless of when the no-cost settlement is made, the determination of what articles are properly includible in the closing inventory of the year of the contract termination,

or the closing inventory of any subsequent year, and the valuation of such articles for inventory purposes, are to be made without regard to any right of the contractor to compensation for termination of a contract terminated prior to the inventory date. (See *U. S. Cartridge Co.* v. *United States*, 284 U. S., 511 [Ct. D. 460, C. B. XI–1, 282 (1932)]; *American Propeller & Mfg. Co.* v. *United States*, 14 Fed. Supp., 168.) If upon termination of a war contract a contractor becomes entitled to compensation for, or in reimbursement of, any particular articles or the costs thereof, such circumstances, if prevailing on the inventory date, shall be taken into consideration in valuing the articles for inventory purposes. (Cf. paragraph (*a*)(6), above.)

(4) TREATMENT OF SPECIAL AGREEMENTS OR PROCEDURES.—Despite the provisions of the preceding subparagraphs (1), (2), and (3), in the case of any no-cost settlement, consideration shall be given to any pertinent special agreement or procedure, as, for example, (i) where there is an agreement to pay the contractor upon termination of the contract, as compensation for the termination, amounts which are specified in the agreement or which are definitely ascertainable by the contractor by a calculation or computation based on ascertained factors, (ii) where compensation for particular items is definitely provided for by law or contractual provisions or by procedures and practices under the Contract Settlement Act of 1944, other than those referred to in the Director's statement, or (iii) where, prior to the settlement, fair compensation for the contract termination has been determined by the contracting agency pursuant to section 13(a) of the Contract Settlement Act of 1944, or has been determined by a court or by the appeal board referred to in section 13(b) of such Act. The extent to which the provisions of the preceding subparagraphs (1), (2), and (3) are applicable in such cases shall be determined by reference to all the pertinent facts in the particular case. In this connection, see paragraph (*a*), above.

(*d*) COMPENSATION FOR PROPERTY.—Except in the case of property of a kind which would properly be included in the inventory of the contractor if on hand at the close of a taxable year, if any part of the compensation for the contract termination is for property, or a loss with respect to property, which is required to be transferred to the Government upon termination or as a condition to the allowance of the compensation, such part of the compensation shall, to the extent not in excess of the adjusted basis of the property at the date of the contract termination, be excluded in determining the amount of compensation to be included in computing gross income pursuant to the provisions of the above paragraph (*a*), and the amount of such exclusion shall be treated as consideration for the property. In such case, if the property with respect to which the allowance is received is an emergency facility as defined by section 124 of the Internal Revenue Code, as amended, all rights to amortization deductions under such section cease at the time of the contract termination and no such deductions are allowable with respect to the facility for the month of the contract termination or for any subsequent month; and no recomputation of the amortization deductions under the provisions of section 124(d) of the Code shall be made, unless the date of the President's proclamation (or the date specified in a non-necessity certifi-

cate issued with respect to the facility) falls within a month which is earlier than the month of the contract termination.

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

JOSEPH D. NUNAN, Jr.,
Commissioner.

SECTION 29.42–1: When included in gross income. 1945–23–12177
I. T. 3770

INTERNAL REVENUE CODE.

The amount of the credit to which an employer is entitled under section 577 of the New York unemployment insurance law, as added by section 1, chapter 646, Laws of 1945, should be reported as income in the Federal income tax return of an employer who keeps accounts and files Federal income tax returns on the accrual basis to the extent that, and in the year when, he first becomes liable for contributions to the unemployment insurance fund against which the amount of such credit may be applied. The amount of such a credit should be reported as income by an employer who keeps accounts and files Federal income tax returns on the cash receipts and disbursements basis to the extent that, and in the year when, it becomes available to him in satisfaction of his liability for such contributions.

Advice is requested with respect to the treatment for Federal income tax purposes of the credit to which qualified employers are entitled under section 577 of the New York unemployment insurance law, as added by section 1, chapter 646, Laws of 1945.

Section 577.3 of the New York unemployment insurance law provides for the assignment to qualified employers of a portion of the unemployment insurance fund "surplus." The term "surplus" is defined in section 577.1(e) of the statute in question. Section 577.4 of the New York unemployment insurance law provides in part as follows:

4. CREDIT NOTICES.—Each qualified employer shall * * * be furnished a notice showing the amount of credit to which he is entitled. The amount shown on the notice may be applied against contributions which are *payable on wages paid in the four consecutive calendar quarters beginning on the effective date* [July 1 of any year], and reported not later than thirty days after the date prescribed by the commissioner [industrial commissioner of the State of New York] for payment of contributions on wages paid in the last of such quarters. * * * [Italics supplied.]

Section 570.2 of the New York unemployment insurance law provides that all contributions from employers shall be paid at such times and in such manner as the commissioner (industrial commissioner of the State of New York) may prescribe. The commissioner has prescribed in the applicable regulations that payments of contributions shall become due on or before the last day of the month following the close of the quarter during which the wages are paid.

Section 42 of the Internal Revenue Code provides, as a general rule, that the amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41 of the Code, any such amounts are to be properly accounted for as of a different period. Section 41 of the Code provides in part for the

computation of net income in accordance with the method of accounting regularly employed in keeping the books of the taxpayer. In view of those provisions of law, a taxpayer keeping accounts and filing Federal income tax returns on the accrual basis, unlike a taxpayer keeping accounts and filing Federal income tax returns on the cash receipts and disbursements basis, includes in his return all items of income accrued during the taxable year regardless of when actually received. Similar treatment with respect to deductions and credits is provided for in section 43 of the Code. Accordingly, in the case of a qualified employer in the State of New York keeping accounts and filing Federal income tax returns on the accrual basis, the New York unemployment insurance tax which accrues during any taxable year is deductible in the return for that year regardless of the fact that a part of such tax is not paid until after the close of the taxable year. Since the credit to which qualified employers are entitled under section 577 of the New York unemployment insurance law may be applied "against contributions which are payable on wages paid in the four consecutive calendar quarters beginning on the effective date," such part of the credit which is applicable against unemployment insurance tax accrued during a particular taxable year is includible in gross income of that year.

In view of the foregoing, it is held that the amount of the credit to which an employer is entitled under section 577 of the New York unemployment insurance law, supra, should be reported as income in the Federal income tax return of an employer who keeps accounts and files Federal income tax returns on the accrual basis to the extent that, and in the year when, he first becomes liable for contributions to the unemployment insurance fund against which the amount of such credit may be applied. The amount of such a credit should be reported as income by an employer who keeps accounts and files Federal income tax returns on the cash receipts and disbursements basis to the extent that, and in the year when, it becomes available to him in satisfaction of his liability for such contributions.

Application of the above-stated conclusions may be illustrated by the following example: A taxpayer (employer) who files his Federal income tax returns on the calendar year basis receives a notice on July 1, 1945, that he is entitled to an unemployment insurance tax credit of $1,500. If the taxpayer keeps accounts and files Federal income tax returns on the accrual basis and he becomes liable for contributions to the unemployment insurance fund in the amount of $675 for each of the quarters ended September 30, 1945, and December 31, 1945, the amount of $1,350 should be included in his gross income for the calendar year 1945 and a deduction may be taken for the full amount of his liability ($1,350) to the fund. The balance of the credit ($150) should be included in the taxpayer's gross income for the calendar year 1946, provided it may be used to offset his liability to the fund for that year. If, however, the taxpayer keeps accounts and files Federal income tax returns on the cash receipts and disbursements basis and his liability for contributions to the unemployment insurance fund for each of the quarters ended September 30, 1945, and December 31, 1945, is $800, the amount of $800 should be included in his gross income for the calendar year 1945 and a deduction from gross income may be taken for that year in the amount of his cash

payments to the fund plus the $800 credit. The balance of the credit ($700) should be included in the taxpayer's gross income for the calendar year 1946, provided it may be used to offset his liability to the fund for that year.

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

SECTION 29.43–2: When charges deductible. 1945–4–11966
I. T. 3716

INTERNAL REVENUE CODE.

Treatment of deductions for Federal income and excess profits tax purposes of (1) retroactive wage increases awarded by the National War Labor Board and (2) wage and salary adjustments under Public Law 729, Seventy-seventh Congress, second session (56 Stat., 765), approved October 2, 1942, as amended by the Public Debt Act of 1943 (57 Stat., 63).

Advice is requested relative to the treatment of deductions for Federal income and excess profits tax purposes of (1) retroactive wage increases awarded by the National War Labor Board, and (2) wage and salary adjustments under Public Law 729, Seventy-seventh Congress, second session (56 Stat., 765), approved October 2, 1942, as amended by the Public Debt Act of 1943 (57 Stat., 63).

Section 43 of the Internal Revenue Code provides in part as follows:

SEC. 43. PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN.—The deductions * * * provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred," dependent upon the method of accounting upon the basis of which the net income is computed, *unless in order to clearly reflect the income the deductions* * * * should be taken as of a *different period.* * * * [Italics supplied.]

Pursuant to the above-quoted provisions of section 43 of the Code, it is the position of the Bureau that in a case in which an employer was ready and willing to pay retroactive wage increases requiring the approval of the National War Labor Board, the payments of such increased wages are deductible for the year in which the employer filed an application for such approval with the National War Labor Board, to the extent that such payments relate to services rendered in the year of the application or years prior thereto. In a case in which the employer contests the wage increases or allowances and retroactive pay increases are ordered by the National War Labor Board, the deduction therefor is allowable only for the year in which the controversy is settled. This principle is equally applicable to wage and salary adjustments under Public Law 729, as amended, supra, which adjustments are subject to the approval of the National War Labor Board, the Commissioner of Internal Revenue, or the War Food Administrator.

SECTION 29.43–2: When charges deductible.

INTERNAL REVENUE CODE.

Prepaid interest. (See I. T. 3740, page 109.)

SECTION 29.43-2: When charges deductible. 1945-13-12073
I. T. 3746

INTERNAL REVENUE CODE AND REVENUE ACT OF 1938.

Where an employer, who keeps accounts and makes Federal income tax returns on the accrual basis, denies liability for deficiencies in wages for prior years under the Fair Labor Standards Act of 1938 (52 Stat., 1060), and thereafter pays amounts in satisfaction of the deficiencies, such amounts should be accrued and deducted for the taxable year in which liability is finally determined.
I. T. 3563 (C. B. 1942-2, 115) modified.

Reconsideration has been given to I. T. 3563 (C. B. 1942-2, 115) in the light of the decision of the Supreme Court of the United States in *Dixie Pine Products Co.* v. *Commissioner* (320 U. S., 516, Ct. D. 1598, C. B. 1944, 509) and the decision of The Tax Court of the United States in *Atlantic Coast Line Railroad Co.* v. *Commissioner* (4 T. C., 140, acquiescence, C. B. 1944-1, 2).

I. T. 3563, supra, holds in part that amounts paid under the Fair Labor Standards Act of 1938 (52 Stat., 1060) as restitution for deficiencies in wages for prior years should be accrued and deducted by employers who report income upon the accrual basis for the years in which the services were rendered.

In *Dixie Pine Products Co.* v. *Commissioner*, supra, it was held that a taxpayer may not take a deduction for a tax while denying liability for the tax and contesting it in court but must await the outcome of the litigation and claim a deduction only for the taxable year in which such liability is finally adjudicated. In *Atlantic Coast Line Railroad Co.* v. *Commissioner*, supra, it was held that where a taxpayer contends it is not liable for the payment of additional wages under the Fair Labor Standards Act of 1938 because the wages already paid are sufficient to liquidate its liability under that Act, liability for such additional wages paid pursuant to a stipulation in settlement of the controversy did not accrue during the years in which the services were rendered but in the year of settlement, and the additional wages were deductible for that year. In reaching that conclusion, The Tax Court relied primarily upon *Dixie Pine Products Co.* v. *Commissioner*, supra, *Security Flour Mills Co.* v. *Commissioner* (321 U. S., 281, Ct. D. 1603, C. B. 1944, 526), and *Jamaica Water Supply Co.* v. *Commissioner* (125 Fed. (2d), 512, certiorari denied, 316 U. S., 698).

In view of the foregoing, it is held that where an employer, who keeps accounts and makes Federal income tax returns on the accrual basis, denies liability for deficiencies in wages for prior years under the Fair Labor Standards Act of 1938 (52 Stat., 1060), and thereafter pays amounts in satisfaction of the deficiencies, such amounts should be accrued and deducted for the taxable year in which liability is finally determined.

I. T. 3563, supra, is modified to accord with this conclusion.

SECTION 29.43-2: When charges deductible.

INTERNAL REVENUE CODE AND REVENUE ACT OF 1938.

Deduction for Federal capital stock tax. G. C. M. 23251 (C. B. 1942-2, 103) modified. (See G. C. M. 24461, page 111.)

SECTION 45.—ALLOCATION OF INCOME AND DEDUCTIONS.

SECTION 29.45-1: Determination of the taxable net income of a controlled taxpayer.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5426, page 196.)

PART V.—RETURNS AND PAYMENT OF TAX.

SECTION 51.—INDIVIDUAL RETURNS.

SECTION 29.51-1: Individual returns.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5425, page 10.)

SECTION 29.51-1: Individual returns. 1945-12-12061
I. T. 3743

INTERNAL REVENUE CODE.

Husband and wife holding property as tenants by the entirety in the State of Oregon may each report one-half of the income from such property in their separate Federal income tax returns.

Advice is requested as to the proper treatment for Federal income tax purposes of income from property held by husband and wife as tenants by the entirety in the State of Oregon.

Section 33-203 of the Oregon Code (1930) reads as follows:

CONVEYANCES BETWEEN HUSBAND AND WIFE VALID—ESTATES BY THE ENTIRETY.—A conveyance, transfer or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons; provided, that when a husband or wife shall convey to the other an undivided one-half of any real property and shall retain a like undivided half, and in such conveyance there be used words indicating an intention to create an estate in entirety, said husband and wife shall be deemed to hold the real property described in said conveyance by entireties.

In the decision of the Supreme Court of Oregon rendered March 22, 1927, in *Ganoe* v. *Ohmart* (121 Oreg., 116, 254 Pac., 203), it was stated by the court that the Married Women's Act does not repeal estates by the entirety, but such act abolished the right of the husband to the exclusive enjoyment of the usufruct of an estate held by the entirety, and that returns and profits of land owned by the entirety are common property of husband and wife, each owning one-half thereof.

In G. C. M. 19143 (C. B. 1937-2, 223), it was held that a husband and wife holding property as tenants by the entirety in the State of Michigan may each report one-half of the income from such property in their separate returns. In I. T. 3235 (C. B. 1938-2, 160), it was held that a husband and wife, who owned an orange grove in Florida as tenants by the entirety, were each entitled to report one-half of the income derived from the operation of the orange grove.

In view of the principles of law governing estates by the entirety in the State of Oregon, it is held that husband and wife who hold property as tenants by the entirety in that State may each report one-half of the income from such property in their separate Federal income tax returns.

SECTION 29.51–1: Individual returns. 1945–16–12109
(Also Section 113(a), Section 29.113(a)–2.) I. T. 3754

INTERNAL REVENUE CODE.

Husband and wife holding real estate as joint tenants in the State of Wisconsin may, for Federal income tax purposes, each report one-half of the net rental income of such property. Upon sale of the property, the sale price should be allocated in equal amounts to the husband and wife, provided the joint tenancy was not created under circumstances which would bring the sale within the rule laid down in *J. L. McInerney* v. *Commissioner* (82 Fed. (2d), 665, Ct. D. 1156, C. B. XV–2, 218 (1936)), in which all arrangements had been completed for the sale of the property prior to the transfer of a one-half interest to the wife.

Where property situated in the State of Wisconsin is held by husband and wife as joint tenants and either husband or wife dies, the gain or loss basis of the property upon the sale by the survivor is, under section 113(a) of the Internal Revenue Code, the cost of the property rather than one-half of the cost plus one-half the fair market value at the date of death of the deceased spouse.

Advice is requested as to the proper treatment, for Federal income tax purposes, of (1) rental income from real estate held in joint tenancy in the State of Wisconsin, and (2) proceeds received by the joint tenants from the sale of such property, and the gain or loss basis of such property upon sale by the surviving spouse.

Sections 246.01, 246.03, and 234.21 of Wisconsin Statutes, 1941 (relating to the rights of the wife in property), provide as follows:

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

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

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

It appears that the above-quoted sections are an adoption of the generally accepted principle that each joint tenant is entitled to his or her share of the rents and profits derived from property held in joint tenancy. (See 14 Am. Jur., Cotenancy, section 31; *Washburn On Real Property*, volume 1, page 421; *Case et al.* v. *Owen et al.*, 139 Ind., 22, 38 N. E., 395.)

It is held that for Federal income tax purposes a husband and wife owning real estate as joint tenants in the State of Wisconsin may each report one-half of the net rental income of such property. Upon the sale of such property, the sale price should be allocated in equal amounts to the husband and wife, provided, however, the joint tenancy was not created under circumstances which would bring the sale within the rule laid down in *McInerney* v. *Commissioner* (82 Fed. (2d), 665, Ct. D. 1156, C. B. XV–2, 218 (1936)), in which all arrangements had been completed for the sale of the property prior to the transfer of a one-half interest to the wife.

With respect to the gain or loss basis where either the husband or wife dies while holding property as joint tenants and the surviving spouse sells the property, under the common law each joint tenant is considered as being seized of the entire estate, so that when one joint tenant dies his or her interest does not pass from the decedent to the survivor, but merely ceases and the entire estate continues in the surviving joint tenant by right of survivorship. (See *Tiffany, Real Property* (third edition), volume 2, sections 418, 419, at pages 196 and 198; *Washburn On Real Property*, volume 1, pages 421, 425, 426; *Hernandez* v. *Becker*, 54 Fed. (2d), 542; *Farr et al.* v. *Trustees of Grand Lodge, A. O. U. W.*, 83 Wis., 446, 53 N. W., 738.) It was held in G. C. M. 6677, C. B. VIII–2, 172 (1929), and by the Board of Tax Appeals (now The Tax Court of the United States) in *Helen G. Carpenter* v. *Commissioner* (27 B. T. A., 282) that the basis for the determination of gain or loss upon the sale by the surviving spouse of property situated in Illinois, which was held by the husband and wife as joint tenants, was the cost of such property. The reasoning contained in G. C. M. 6677, supra, and in the Board's decision is applicable to Wisconsin rental property held by the husband and wife as joint tenants.

Accordingly, it is held that where property situated in the State of Wisconsin is held by husband and wife as joint tenants and either the husband or wife dies, the gain or loss basis of the property upon the sale by the survivor, is, under the provisions of section 113(a) of the Code, the cost of the property, rather than one-half the cost plus one-half the fair market value at the date of death of the deceased spouse.

SECTION 29.51–1: Individual returns. 1945–19–12139
I. T. 3759

INTERNAL REVENUE CODE.

A widow filed a Federal income tax return in her name and that of her deceased husband who died after the close of the taxable year but before the due date of the return. The widow was entitled to the entire estate and no administration was required. The income included in the return consisted of the decedent's salary and income derived from property held as joint tenants. *Held*, a valid election to file a joint return was made and the widow is liable for the tax shown thereon to be due.

Advice is requested whether a widow who filed a Federal income tax return in her name and that of her deceased husband who died after the close of the taxable year but before the due date of the re-

turn made a valid election to file a joint return and whether she is liable for the tax shown thereon to be due.

The husband, who was domiciled in the State of R, died intestate in January following the close of a taxable calendar year, leaving no estate which was required to be administered under the laws of the State of R, and, therefore, no administrator was appointed. The widow was entitled to the entire estate. Subsequent to the date of death, but before the due date for filing a Federal income tax return for the calendar year preceding the husband's death had expired, the widow filed a return, Form 1040, in her name and that of her deceased husband. The income reported in the return consisted of the decedent's salary and a small amount of income derived from rental property which had been held by the decedent and his wife as joint tenants with the right of survivorship.

Section 51(b) of the Internal Revenue Code, as amended, provides in part as follows:

(b) HUSBAND AND WIFE.—A husband and wife may make a single return jointly. Such a return may be made even though one of the spouses has neither gross income nor deductions. *If a joint return is made the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.* * * * The status of individuals as husband and wife shall be determined as of the last day of the taxable year. [Italics supplied.]

It is held that where a widow filed a Federal income tax return in her name and that of her deceased husband who died after the close of the taxable year but before the due date of the return leaving no estate which was required to be administered, the income included in the return consisting of the decedent's salary and a small amount of rental income, a valid election to file a joint return was made and the widow is liable for the tax shown thereon to be due.

SECTION 29.51-2: Form of return.

INTERNAL REVENUE CODE.

Coal miners whose occupational expenses do not constitute wages subject to withholding of income tax at the source. (See I. T. 3755, page 321.)

SECTION 52.—CORPORATION RETURNS.

SECTION 29.52-1: Corporation returns. 1945-1-11920
G. C. M. 24423

INTERNAL REVENUE CODE.

A new taxable entity is not created upon the conversion of a State bank into a national bank, pursuant to section 35, title 12, United States Code, and in such cases only one Federal income tax return is required for the entire taxable year.

An opinion is requested whether a new taxable entity is created upon the conversion of a State bank into a national bank, pursuant to section 35, title 12, United States Code, and whether separate Federal income tax returns are required to be filed, one for the State bank and one for the national bank.

Section 35, title 12, United States Code, provides in part as follows:

SEC. 35. Organization of State banks as national banking associations

Any bank incorporated by special law of any State * * * or organized under the general laws of any State * * * and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than 51 per centum of the capital stock of such bank * * * with the approval of the Comptroller of the Currency be converted into a national banking association, with any name approved by the Comptroller of the Currency. * * *

The Bureau took the position in O. D. 476 (C. B. 2, 222 (1920)) that since, in the conversion of a State bank into a national bank, there is not a dissolution of the corporation but merely a change of title and the extension of Federal supervision thereover, a bank so changing during the taxable year should file one return for the entire year. That ruling was revoked by I. T. 2299 (C. B. V–2, 121 (1926)) on the basis of S. M. 4947A (C. B. V–2, 120 (1926)) wherein it was held in effect that where a trust company is created for the purpose of acquiring the assets and taking over the business of a national bank, a new corporate entity results and each corporation is required to file a return for the period during which it was in existence. That ruling (S. M. 4947A) distinguished S. M. 4947 (C. B. V–1, 98 (1926)) wherein it was held that where a new corporation was created under the laws of one State to take over the business of a corporation existing under the laws of another State a new entity is created, and pointed out that no new entity is created where both the old and new corporations are organized under the laws of the same State.

The revocation of O. D. 476, supra, was not compelled by the ruling in S. M. 4947A, supra. Where a national bank converts into a State bank created for the purpose of taking over the business and assets of the national bank, the national bank is wound up and dissolved and a new corporate entity comes into existence. The State corporation continues the business as a distinct entity.

I. T. 2299, supra, is in effect contrary to the position taken in G. C. M. 11387 (C. B. XII–1, 427 (1933)) wherein it was held that where a State bank becomes a national bank by conversion, neither the issue nor surrender of stock incident to that conversion is subject to the stamp tax on the original issue of shares or certificates of stock, since the identity of the corporation continues. In *Metropolitan National Bank* v. *Claggett* (141 U. S., 520), the United States Supreme Court stated:

* * * the change or conversion of the Metropolitan Bank into the Metropolitan National Bank did not "close its business of banking" nor destroy its identity or its corporate existence, but simply resulted in a continuation of the same body with the same officers and stockholders, the same property, assets, and banking business under a changed jurisdiction; that it remained one and the same bank, and went on doing business uninterruptedly; * * *

A number of lower courts have applied this concept in a variety of circumstances, and, although the decision was not made in a tax case, it is persuasive where the issue is whether, for tax purposes, a new entity is created. The Comptroller of the Currency, the officer charged with the administration of the national banking laws, also takes the position that no new entity comes into existence upon conversion of a State bank into a national bank pursuant to section 35, title 12, United States Code, supra. His interpretation of that section is entitled to considerable weight in connection with its interpretation for tax purposes.

The decisions relied upon by this office as authority for the opinion expressed in S. M. 4947A, supra, i. e., *Marr* v. *United States* (268 U. S., 536, T. D. 3755, C. B. IV–2, 116 (1925)) and *United States* v. *Phellis* (257 U. S., 156, T. D. 3270, C. B. 5, 37 (1921)) do not compel the conclusion that the continuing national bank is a new entity. In each of those cases it was assumed that there was a new entity, and the issue was whether there was a substantially different entity. The fundamental question here is whether, in fact, a new legal entity is created upon conversion. This question is dependent upon an interpretation of the section of law pursuant to which the conversion is accomplished. The decision of the Supreme Court in the Metropolitan National Bank case, interpreting the equivalent of section 35, title 12, United States Code, supra, holds that there is no new entity for the purposes there in question, and it is believed that such holding should be followed in a Federal income tax case.

In view of the foregoing, it is the opinion of this office that a new taxable entity is not created upon the conversion of a State bank into a national bank pursuant to section 35, title 12, United States Code, and in such cases only one Federal income tax return is required for the entire taxable year. However, this memorandum is intended to apply only to cases involving a mere conversion under section 35, title 12, United States Code, supra, and it does not affect S. M. 4947A, supra, in any way, nor does it overrule S. M. 3451 (C. B. IV–2, 83 (1925)). It is recommended that I. T. 2299, supra, be modified to reinstate the position taken in O. D. 476, supra.

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

SECTION 54.—RECORDS AND SPECIAL RETURNS.

SECTION 29.54–1: Records and income tax forms. 1945–3–11948
(Also Section 101, Section 29.101–2.) I. T. 3710

INTERNAL REVENUE CODE.

Amounts received by a hospital, which has been held to be exempt from Federal income tax under section 101(6) of the Internal Revenue Code as a charitable organization, from the United States or a State for the care of patients under Government programs, do not constitute "funds contributed" by the United States or any State within the meaning of section 54(f) of the Code, as added by section 117(a) of the Revenue Act of 1943, and the hospital is required to file the annual returns of information (Form 990) prescribed by that section.

Advice is requested whether a hospital, which is exempt from Federal income tax under section 101(6) of the Internal Revenue Code as a charitable organization and which receives amounts from the United States or a State for the care of patients under Government programs, is required to file the annual returns of information (Form 990) prescribed by section 54(f) of the Code.

Information has been received indicating that a considerable number of hospitals which are exempt from Federal income tax under section 101(6) of the Code as charitable organizations receive income from the Federal and State Governments in the form of fees paid for the care of patients pursuant to public assistance, workmen's compen-

sation, emergency maternity and infant care, or any other of the Government programs under which the hospitals care for patients and receive payment therefor. Such information shows that some of such hospitals do not receive any voluntary contributions from the United States, or any of the States, but only fees for the care of patients.

Under section 54(f) of the Internal Revenue Code, as added by section 117(a) of the Revenue Act of 1943, applicable with respect to taxable years beginning after December 31, 1942, every organization, except as therein provided, exempt from taxation under section 101 of the Code, is required to file an annual return stating specifically the items of its gross income, receipts, and disbursements. Section 54(f)(3) of the Code provides that no such annual return need be filed by a charitable organization which is exempt under section 101(6), if such organization is supported, in whole or in part, by "funds contributed" by the United States or any State or political subdivision thereof.

It is held that amounts received by a hospital, which has been held to be exempt from Federal income tax under section 101(6) of the Internal Revenue Code as a charitable organization, from the United States or a State for the care of patients under Government programs, do not constitute "funds contributed" by the United States or any State within the meaning of section 54(f) of the Code, as added by section 117(a) of the Revenue Act of 1943, and the hospital is required to file the annual returns of information prescribed by that section. Such amounts are in the nature of fees paid for services rendered by the hospital. In order that the amounts received may be regarded as contributions, it is necessary that there be no services rendered or other consideration for which the fees are paid.

SECTION 55.—PUBLICITY OF RETURNS.

1945-9-12041
T. D. 5453

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 458, SUBPART F.—INSPECTION OF CERTAIN RETURNS UNDER THE INTERNAL REVENUE CODE.

Inspection of individual statistical transcript punch cards by the Federal Security Agency.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

Inspection of statistical transcript punch cards by the Federal Security Agency.—Statistical transcript punch cards prepared by the Bureau of Internal Revenue from individual income tax returns made under the Internal Revenue Code, as amended, for taxable years beginning in 1944 and ending on or before June 30, 1945, may be open to inspection by the Federal Security Agency. The inspection of such transcript cards herein authorized may be made by any officer or employee of the Agency duly authorized by the Administrator of the Agency to make such inspection. Upon written notice by such Administrator to the Secretary of the Treasury giving the classes of selected transcript cards it is desired to inspect, the Secretary and any

officer or employee of the Treasury Department, with the approval of the Secretary, may furnish such Agency with any data on such cards or may make the cards, or any of them, available in the office of the Commissioner of Internal Revenue for inspection and copying by the Agency or by such examiners or agents as the Administrator thereof may designate. The information so obtained may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer. (E. O. 9546, May 1, 1945, and sec. 55(a) of the Internal Revenue Code; 53 Stat., 29; 26 U. S. C., 1940 ed., 55(a).)

HERBERT E. GASTON,
Acting Secretary of the Treasury.

Approved May 1, 1945.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register May 1, 1945, 11.16 a. m.)

EXECUTIVE ORDER—INSPECTION BY THE FEDERAL SECURITY AGENCY OF STATISTICAL TRANSCRIPT PUNCH CARDS PREPARED FROM INDIVIDUAL INCOME TAX RETURNS.

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat., 29), it is hereby ordered that statistical transcript punch cards prepared by the Bureau of Internal Revenue from individual income tax returns made under the Internal Revenue Code, as amended, for taxable years beginning in 1944 and ending on or before June 30, 1945, may be open to inspection by the Federal Security Agency; such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in the Treasury decision relating to the inspection of such cards by the Federal Security Agency, approved by me this date.

This order shall be published in the Federal Register.

HARRY S. TRUMAN.

THE WHITE HOUSE,
May 1, 1945.

(9546)

(Filed with the Division of the Federal Register May 1, 1945, 11.16 a. m.)

1945–12–12068
T. D. 5457

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 458, SUBPART F.—INSPECTION OF CERTAIN RETURNS UNDER THE INTERNAL REVENUE CODE.

Regulations governing the inspection of corporation statistical transcript cards by the Office of Price Administration.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

Treasury Decision 5173, approved October 26, 1942 [C. B. 1942–2, 119] [Sec. 458.308, Title 26, Code of Federal Regulations, Cum. Sup.],

as amended by Treasury Decision 5336, approved March 7, 1944 [C. B. 1944, 171], is hereby further amended by striking out "for any taxable year ending after June 30, 1941, and before July 1, 1943," in the first sentence, and inserting in lieu thereof "for any taxable year ending after June 30, 1941, and before July 1, 1944." (E. O. 9569 [below], June 14, 1945, and sections 55(a) and 603, 53 Stat., 29, 111; 26 U. S. C., 1940 ed., 55(a), 603.)

H. MORGENTHAU, Jr.,
Secretary of the Treasury.

Approved June 14, 1945.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register June 15, 1945, 11.50 a. m.)

EXECUTIVE ORDER—INSPECTION BY THE OFFICE OF PRICE ADMINISTRATION OF CORPORATION STATISTICAL TRANSCRIPT CARDS PREPARED FROM INCOME AND DECLARED VALUE EXCESS PROFITS TAX RETURNS.

By virtue of the authority vested in me by sections 55(a) and 603 of the Internal Revenue Code (53 Stat., 29, 111), it is hereby ordered that corporation statistical transcript cards prepared by the Bureau of Internal Revenue from corporation income and declared value excess profits tax returns made under the Internal Revenue Code, as amended, for any taxable year ending after June 30, 1943, and before July 1, 1944, shall be open to inspection by the Office of Price Administration; such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury Decision 5173, approved October 26, 1942, relating to the inspection of similar cards by the Office of Price Administration, and the amendments approved March 7, 1944, and this date.

This order shall be published in the Federal Register.

HARRY S. TRUMAN.

THE WHITE HOUSE,
June 14, 1945.

(9569)

(Filed with the Division of the Federal Register June 15, 1945, 11.50 a. m.)

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT A.—RATES OF TAX.

SECTION 101.—EXEMPTIONS FROM TAX ON CORPORATIONS.

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

INTERNAL REVENUE CODE.

Hospital receiving amounts from the United States or a State for the care of patients under Government programs—annual returns. (See I. T. 3710, page 147.)

SECTION 107.—COMPENSATION FOR SERVICES RENDERED FOR A PERIOD OF THIRTY-SIX MONTHS OR MORE AND BACK PAY.

SECTION 29.107-2: Artistic work or invention. 1945-24-12192
I. T. 3773

INTERNAL REVENUE CODE.

In computing the Federal income tax of an individual, under section 107(b) of the Internal Revenue Code, which is attributable to royalties from a literary composition as if such royalties had been received ratably over a period of not more than 36 calendar months preceding the close of the taxable year, commissions and other expenses paid in connection therewith which are dependent upon the amount of such royalties should be treated as if paid ratably over the same period.

Expenses incurred in defense of libel suits resulting from publication of the literary composition are deductible for the taxable year in which paid or accrued and may not be prorated over the taxable year and preceding taxable years.

Advice is requested whether, in computing the income tax of an individual under section 107(b) of the Internal Revenue Code as if royalties from a literary composition had been received ratably over a period of not more than 36 calendar months preceding the close of the taxable year, commissions and other expenses paid in connection with such royalties should be treated as if paid ratably over the same period.

In accordance with a common practice in the literary and publishing field, the taxpayer, an author, placed a literary composition, the work on which covered a period of more than 36 months, with a publisher through an agent whose compensation (commission) by agreement with the author is determined by a percentage of the royalties received. The contract entered into by the author with the publisher provides that the author shall keep the publisher indemnified against all claims, proceedings, and expenses which may be taken or incurred on the ground that the literary composition contains anything libelous or illegal. The contract also provides that the author shall, at his own expense, obtain the services of a certain individual to aid the author in rewriting and preparing the material for publication. As in the case of the taxpayer's agent, the compensation of such individual is determined by a percentage of the royalties received by the author.

Pursuant to authority contained in the contract between the publisher and the author, the publisher paid the royalties due the author to his agent who deducted his commission, paid certain amounts to the rewrite assistant, and remitted the balance to the author. The amount of the royalties received by the author during the taxable year is not less than 80 per cent of the total gross income received and to be received by the author from the literary composition. During the taxable year, expenses were incurred by the author in connection with the defense of lawsuits brought against him and the publisher for alleged libel.

Section 107(b) of the Internal Revenue Code provides as follows:

(b) PATENT, COPYRIGHT, ETC.—For the purposes of this subsection, the term "artistic work or invention", in the case of an individual, means a literary, musical, or artistic composition of such individual or a patent or copyright covering an invention of or a literary, musical, or artistic composition of such indi-

vidual, the work on which by such individual covered a period of thirty-six calendar months or more from the beginning to the completion of such composition or invention. If, in the taxable year, the gross income of any individual from a particular artistic work or invention by him is not less than 80 per centum of the gross income in respect of such artistic work or invention in the taxable year plus the gross income therefrom in previous taxable years and the twelve months immediately succeeding the close of the taxable year, the tax attributable to the part of such gross income of the taxable year which is not taxable as a gain from the sale or exchange of a capital asset held for more than 6 months shall not be greater than the aggregate of the taxes attributable to such part had it been received ratably over that part of the period preceding the close of the taxable year but not more than thirty-six calendar months.

The terms of the author's agreements with the publisher, the agent, and the rewrite assistant show clearly that had the royalties received during the taxable year been received during previous taxable years, the commission due the agent and the compensation due the rewrite assistant in connection with such royalties would have been paid during such previous years. Accordingly, the tax attributable to the royalties had they been reported for Federal income tax purposes for such previous years would have been the tax computed on such royalties less the commission and compensation paid.

In view of the foregoing, it is held that in computing the Federal income tax of the author, under section 107(b) of the Internal Revenue Code, which is attributable to royalties from a literary composition as if such royalties had been received ratably over a period of not more than 36 calendar months preceding the close of the taxable year, commissions and other expenses paid in connection therewith which are dependent upon the amount of such royalties should be treated as if paid ratably over the same period. However, the expenses incurred in defense of libel suits resulting from the publication of the literary composition are deductible for the taxable year in which paid or accrued and may not be prorated over the taxable year and preceding taxable years.

SECTION 109.—WESTERN HEMISPHERE TRADE CORPORATIONS.

SECTION 29.109–1: Western Hemisphere trade corporations. 1945–14–12083 I. T. 3748

INTERNAL REVENUE CODE.

Puerto Rico is a "country" within the meaning of section 109 of the Internal Revenue Code, relating to Western Hemisphere trade corporations.

Advice is requested whether Puerto Rico is a "country" within the meaning of section 109 of the Internal Revenue Code, relating to Western Hemisphere trade corporations.

Under the provisions of section 15 of the Internal Revenue Code, a domestic corporation qualifying as a Western Hemisphere trade corporation is exempt from the surtax imposed by that section upon corporations generally. Section 109 of the Code provides that for the purposes of Chapter 1 of the Code, the term "western hemisphere trade corporation" means a domestic corporation all of whose business is

done in any "country or countries" in North, Central, or South America, or in the West Indies, or in Newfoundland, and which satisfies certain specified conditions. The first of these conditions is that 95 per cent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources other than sources within the United States. Section 29.109–1 of Regulations 111 provides in part that gross income from sources without the United States and within the United States shall be determined (for the purposes of section 109 of the Code) as provided in section 119 of the Code and the regulations prescribed thereunder. Section 29.119–8 of Regulations 111 provides in part that a possession of the United States [which includes Puerto Rico] constitutes a "country," within the meaning of that section, separate and distinct from the United States.

In view of the foregoing, it is held that Puerto Rico is a "country" within the meaning of section 109 of the Internal Revenue Code, supra.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

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

SECTION 29.113(a)–2: General rule.

INTERNAL REVENUE CODE.

Basis in case of a sale by the surviving spouse of Wisconsin real estate held in joint tenancy. (See I. T. 3754, page 143.)

SECTION 19.113(a)(6)–1: Property acquired upon a tax-free exchange. (Also Section 22(a), Section 19.22(a)–8.)

1945–14–12084
Ct. D. 1645

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF COURT.

GAIN OR LOSS—ADJUSTED BASIS—SALE OF STOCK RECEIVED IN TAX-FREE EXCHANGE—IDENTIFICATION OF SHARES.

The taxpayer in 1940 sold shares of stock which she had received in 1939 in a nontaxable reorganization as the result of a statutory merger of two corporations. The evidence shows that the shares sold were traceable through stock certificate numbers to specific shares of stock turned in in exchange. *Held:* In arriving at the gain or loss upon the sale, the taxpayer is entitled to use the known cost of the shares so turned in as the cost of the new shares received and sold. If one group of shares with its cost known is traceable into another group of shares and the latter group is sold, the cost of the former group will be taken as the cost of the latter group. No closer identity is required, and the result is exactly and not merely approximately correct.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Amelia Davis Bloch, petitioner, v. *Commissioner of Internal Revenue, respondent.*
[148 Fed. (2d), 452.]

Upon petition to review a decision of The Tax Court of the United States.

Before MATHEWS, STEPHENS, and BONE, Circuit Judges.

[March 14, 1945.]

OPINION.

STEPHENS, Circuit Judge: We are considering a petition of an income tax taxpayer for the review of The Tax Court's decision upholding the method of the Commissioner of Internal Revenue in arriving at gain or loss upon a sale of corporate stock.

The judge of The Tax Court presiding at the hearing states the case so admirably in a memorandum opinion that we repeat it here. We do not, however, agree with his reasoning or with The Tax Court's decision. The statement includes facts relevant to a review pending as to Louis Bloch, husband of petitioner, and it is stipulated that the determination of the review of Amelia Davis Bloch shall control the decision as to the review of Louis Bloch. Quotation marks are not used for the reason that we have deleted parts of the statement which are not relevant to the issues raised in Amelia Davis Bloch's case.

> Judge SMITH: These proceedings are for the redetermination of income tax deficiencies for the calendar year 1940. The issue presented is whether the respondent erred in determining the basis of certain shares of stock of the Dow Chemical Co. sold by the petitioner during the taxable year by averaging the cost of shares of Great Western Electro-Chemical Co. which were exchanged by petitioners therefor in a nontaxable reorganization [merger of one corporation into another existing corporation].
>
> All of the facts have been stipulated.
>
> In 1940 the petitioner Amelia Davis Bloch sold 212 shares of Dow Chemical Co. for a total selling price of $33,264.24. The certificates evidencing the shares sold were received by the petitioner in 1939 under a statutory merger of Great Western, a California corporation, and Dow, a Michigan corporation. The shares of Dow sold by the petitioner in 1940 are traceable through stock certificate numbers to specific shares of Great Western which were turned in in exchange. The cost to petitioner of the 212 shares of such stock sold by petitioner Amelia Davis Bloch was $13,900.17. She used such cost basis in determining the capital gains attributable to the sales made by her.
>
> In his determination of the deficiency the respondent, Commissioner, has held that the petitioner may not use such cost basis but must in lieu thereof use the cost of each Dow share determined by dividing the total cost of the Great Western shares acquired at different times and different prices by the total number of Dow shares received and then multiplying that amount by the number of Dow shares sold.
>
> The only question presented for decision relates to the basis. No contention is made that the petitioners' bases used are not correct provided they may trace the Dow shares sold by specific certificate numbers to the Great Western shares purchased.
>
> There is no question but that the Dow shares were received by the petitioners in 1939 upon a reorganization under section 112(g)(1), I. R. C. Neither is there any question but that the following portion of section 113 I. R. C. is applicable in the determination of the basis of the shares:
>
> "SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.
>
> "(a) BASIS (UNADJUSTED) OF PROPERTY.—The basis of property shall be the cost of such property; except that—* * *
>
> "(6) TAX-FREE EXCHANGES GENERALLY.—If the property was acquired, after February 28, 1913, upon an exchange described in section 112 (b) to (e), inclusive, the basis (except as provided in paragraphs (15), (17), or (18) of this section) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange

under the law applicable to the year in which the exchange was made. * * *"

The respondent contends that no identification of the shares of Dow stock received in exchange for Great Western shares is permissible[1] and that the basis of the Dow shares should be computed by dividing the total cost of the Great Western shares by the total number of Dow shares received. In support of such proposition the respondent cites *Commissioner* v. *Bolender* (82 Fed. (2d), 591 (C. C. A. 7, 1936)); *Commissioner* v. *Oliver* (78 Fed. (2d), 561 (C. C. A. 3, 1935)); *Helvering* v. *Stifel*, (75 Fed. (2d), 583 (C. C. A. 4, 1935)), and *Commissioner* v. *Von Gunten* (76 Fed. (2d), 670 (C. C. A. 6, 1935)). Respondent submits that in those cases:

"* * * the courts rejected the 'first in first out' rule which the Commissioner had contended was applicable in the absence of identification. But under the rationale of those cases it is clear that attempts to establish the cost basis of the shares received by identification would be equally futile. Identification is permissible only when there is identity between the shares of stock sought to be identified. * * *"

Judge Smith goes on to say in his memorandum that " under the rule identification of the shares of a reorganized corporation with those of another corporation is immaterial," and cites and quotes from *Arrott* v. *Commissioner* (136 Fed. (2d), 449 (C. C. A. 3, 1943)), and *Raoul H. Fleischmann* (40 B. T. A., 672, 688 [acquiescence, C. B. 1940–1, 2]).

As has been seen, it is stated in the memorandum opinion that: "The shares of Dow sold by the petitioners in 1940 are traceable through stock certificate numbers to specific shares of Great Western which were turned in in exchange." Respondent disputes the accuracy of this statement upon two counts. He firstly contends that the complete matching of certificates is impossible and secondly that even if they can be matched this fact does not, of itself, establish identity of a share in the absorbing corporation with a share in the absorbed corporation. The following shows that the certificates can be matched.

Upon the conversion of the certificates evidencing Great Western stock into certificates evidencing Dow stock, seven Great Western certificates were surrendered each evidencing various numbers of shares for six Dow certificates each evidencing various numbers of shares. The total number of Dow shares received was 412$^{3}/_{16}$.

The following is the eleventh paragraph of the stipulation of facts:

" In March, 1940, taxpayer sold 212 common shares of Dow for a total selling price of $33,264.24, 100 of which said 212 shares were represented by said Dow certificate C5822 and 62 of which said 212 shares were represented by Dow certificate C018244 and 50 of which said 212 shares were represented by Dow certificate C018245."

The following is from paragraph X of the stipulation of facts:

" The Cleveland Trust Co. [agent for handling the stock exchange under the statutory merger] canceled said certificates so forwarded by taxpayer and issued to taxpayer the following numbered certificates of Dow, respectively *in lieu of* the following numbered certificates of Great Western so forwarded by taxpayer [italics added]:

Dow certificates issued.	Dow common shares represented thereby.	Great Western certificates canceled.
C5822	100 shares	P392–398.
C18244	62 shares	PL145.
CLF171	$^{3}/_{16}$ths	PL414.
C5823	100 shares	273.
C5824	100 shares	274.
C018245	50 shares	L261. L1178.

[1] It would appear from this statement that respondent conceded upon the hearing before The Tax Court that the shares sold can be identified with shares purchased. In this review respondent contends that no identification is possible under the evidence.

The date of the acquisition of each one of the Great Western certificates and the cost of the shares in each separate certificate is but a matter of simple arithmetic from the stipulated facts. Thus, there appears to be a perfect alignment or matching of certificates, and the exact cost of each certificate (bundle) of shares and the date of their purchase is again but an arithmetical problem. This conclusion is in accord with The Tax Court's memorandum opinion.

Contrarywise, it is the view of the Commissioner and The Tax Court, though it has not always been the view of either, that the studied matching of certificates (the issuing of one *in lieu* of the other as stated in the stipulation), does not produce identity of share exchange or succession. They would hold that in a merger of corporations wherein 100 shares of the absorbing corporation evidenced by one certificate are received by a stockholder of the absorbed corporation upon his surrender of one certificate for 100 shares of the absorbed corporation, there is no matching or trading of share for share. They would claim that a certain single share of the one corporation must be identified with some other certain single share of the other before there is identity. Thus they argue no identity has been shown, and therefore some theory of convenience must be invented and applied which confessedly only produces an approximately correct answer.

The Commissioner of Internal Revenue has propounded a rule that in instances of reorganization of a single corporation where identity of stock exchanged is not shown, the rule of first in first out[2] shall be followed. It is quite apparent that this is a rule of convenience, and its use can only be justified through necessity, i. e. the purchase price of the shares sold can not be ascertained. At this point it will be well to realize that the facts sought is not the identity of stock sold but the cost of the stock sold. The Commissioner and the courts generally in the matter of corporate reorganization look to the realities and do not insist upon a showing that any single identified share has been exchanged for any other single identified share. (*Kraus* v. *Commissioner*, 88 Fed. (2d), 616 (C. C. A. 2, 1937) [Ct. D. 1273, C. B. 1937–2, 249]; *Fuller* v. *Commissioner of Internal Revenue*, 81 Fed. (2d), 176 (C. C. A. 1, 1936).) For contra see *Crespi* v. *Commissioner* (126 Fed. (2d), 699 (C. C. A. 5, 1942)). It is the rationale of these cases that if one group of shares with its cost known, is traceable into another group of shares, and the latter group is sold, the cost of the former group will be taken as the cost of the latter group. No closer identity is required, and, of course, the result is exactly and not merely approximately correct.

The Tax Court, however (and some United States District Courts and Circuit Courts of Appeals as well) has refused to apply this definite method of arriving at cost of stock sold. The Tax Court has recently held in *Raoul H. Fleischmann* (40 B. T. A., 672, 688): "* * * It is now well established that where stock of one corporation is exchanged for stock of another, in pursuance of a plan of reorganization, the basis of the shares surrendered (after adjustment for any recognized gain or loss) must be allocated equally to the shares acquired, and the cost of some particular lot of the old shares may not be allocated to some particular lot of the new shares. * * *," plainly applying the language found in *Arrott* v. *Commissioner* (136 Fed. (2d), 449, 452 (C. C. A. 3, 1943)), as follows: "We think it is the only sound rule. The old shares all have the same exchange value for the new ones no matter what they cost the taxpayer. He gets as much new stock for the share for which he paid $80 as he does for the share for which he paid $120. The old shares lose their identity when traded for the new, just as the money with which one buys a war bond loses its identity in the certificate, though to the purchaser some of it may have been a gift, some won on a horse race and the remainder earned by the sweat of his brow. The old shares are gone; the new shares in what is at least nominally a new company take their place. Each new share costs the taxpayer the quotient of the sum of the cost of the old shares divided by the number of new shares he receives." This last statement imports into the transaction of reorganization or merger an important element which does not belong there. The owner of stock in surrendering his stock for new stock through a reorganization or merger is not a purchaser. He may be and often is

[2] If shares of stock in a corporation are sold from lots purchased at different dates or at different prices and the identity of the lots can not be determined, the stock sold shall be charged against the earliest purchases of such stock. (Article 4, paragraph 60, of Treasury Regulations 33 (Revised).)

opposed to the transformation but must make the best of it by going along or accepting a present valuation of his stock.[3]

The Commissioner, scenting the point, argues that since the owner has the choice of two courses, whichever course he chooses becomes his own voluntary act.

We would not concede that this conclusion would help his case even if it were a correct one, but the conclusion does not follow. The owner of a span of horses is told that he may swap them for certain others, but if he is not in a trading mind, he nevertheless must part with his horses. He may, if he likes, have their market value in cash. We think the owner does not part with his horses voluntarily no matter which alternative he chooses.

The Arrott case, last above quoted from, is not an ordinary case of refinancing of a single corporation but a merger of two corporations wherein one is absorbed by the other. It would appear that The Tax Court could see no more reason in applying the strict matching of share for share in a corporate reorganization than in a merger of corporations, and in the Fleischmann case it went the whole way. We are in entire agreement with The Tax Court that the application of the average cost rule is as sound in the one case as it is in the other case, but we think it is not sound at all. The Commissioner in his brief cites a number of authorities as to which we make brief comment.

Commissioner v. *Von Gunten* (76 Fed. (2d), 670 (C. C. A. 6, 1935)). This case is critical of the first in first out rule and adopts the average cost rule. Unlike the instant case it was necessary to adopt a rule of convenience because identification as to the stock sold with the stock originally purchased could not be traced. *Commissioner* v. *Oliver* (78 Fed. (2d), 561); *Helvering* v. *Stifel* (75 Fed. (2d), 583 (C. C. A. 4, 1935)). Again, in these cases no identification of stock sold can be traced to stock surrendered together with the cost of the original stock. In the circumstances the court preferred the average cost rule. (*Commissioner* v. *Bolender*, 82 Fed. (2d), 591 (C. C. A. 7, 1936).) It is stated by the court in this case that "No part of the new shares can be identified as having been issued for any particular lot of the old shares." The court goes on to say that the doctrine of ascertaining gain or loss in a stock sale identity of shares applies only to reorganizations of one corporation. It is apparent that the court having found identity impossible need not have gone on to express its opinion as to a limitation of the identity method of ascertaining cost.

It seems to us that the reasoning in *Arrott* v. *Commissioner*, supra, is erroneous and derives from a tangent of reasoning which the author of that opinion mistakes for the main stem. So far as the affairs of the absorbing corporation are concerned, it may be quite right to hold, if any such issue were before us, that all of the stock put together which is possessed by a stockholder of the absorbed corporation is surrendered for the proper amount of stock in the absorbing corporation. No doubt the books of the surviving corporation would show the exchange as all stock issued for all stock surrendered. But the incident of the absorbing reorganization in its effect upon the corporation has nothing directly to do with the problem here. It is the exact gain or loss where it is ascertainable on an investment in stock that the law says must be the basis for his tax. If the stock owner keeps his account through any number of stock movements so that when he sells certain shares he can trace their transmigrations either singly or in certificates evidencing a plural number of shares to the investment in them, we can see no reason why this should not be done.

A business man keeps his books of investments with tax problems in mind. A reorganization of the corporation in which he has stock or a consolidation of such corporation with another corporation are possibilities he is bound to know may happen. He sees it every day in the corporate world in which he lives. He has made units of investment, and he preserves their identity through any and all of these changes. It would be a strange paradox in the law if it should say to him, yes, you pay upon your gain when you sell stock but your actual gain on the stock sold has no materiality.[4]

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[3] The respondent's view appears in his brief as follows: "But in any event, taxpayer erroneously asserts that the exchange was involuntary in her case. The right was preserved to her by the agreement of merger and by law (section 369, Civil Code of California (1941)) to demand and receive the fair market value of her Great Western stock if she did not approve of the merger. Thus she had an option to participate in the reorganization or to receive the value of her stock, and her election to become a shareholder in the new company precludes the exchange from being an involuntary one."

[4] See statement in Tax Court memorandum: "Under the rule identification of the shares of a reorganized corporation with those of another corporation is immaterial."

The decision of The Tax Court is reversed, and the case is remanded with instructions to proceed to its decision by arriving at the gain or loss of the stock sold as herein indicated.

Reversed and remanded.

SECTION 29.113(a)(22)–1: Basis of property acquired by corporation as result of certain bankruptcy or receivership proceedings. (Also Regulations 103 and Regulations 86, 94, and 101.)

1945–3–11949
T. D. 5433

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

Regulations 111 amended. Section 29.113(a)(22)–1, relating to basis of property acquired by corporation as result of certain bankruptcy or receivership proceedings, amended.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Section 29.113(a)(22)–1 of Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], added by Treasury Decision 5402, approved September 5, 1944 [C. B. 1944, 229], is amended as follows:

(A) By adding at the end of the second paragraph the following:

For example, the provisions of section 113(b) relating to adjusted basis shall be applied as if section 113(a)(22) were a part of the Internal Revenue Code and prior revenue laws applicable to all taxable years beginning after December 31, 1933. Hence, in determining the amount of the adjustments for depreciation, depletion, etc., under the provisions of section 113(b)(1)(B), the "amount allowable" is the amount computed with reference to the basis provided in section 113(a)(22).

(B) By amending example (1) to read as follows:

Example (1). On January 1, 1935, the Y Corporation, a taxpayer making its returns on the calendar year basis, acquired depreciable property from the X Corporation as the result of a transaction described in section 113(a)(22). On January 1, 1935, the property had, in the hands of the X Corporation, a basis of $200,000, an adjusted basis of $150,000, a fair market value as of January 1, 1935, of $80,000, and an estimated remaining life of 20 years. The 1935 transaction was treated as a taxable exchange and, accordingly, the Y Corporation claimed and was allowed depreciation in the amount of $4,000 for each of the nine taxable years 1935 through 1943, inclusive. On June 30, 1944, the property was sold for $40,000, cash. The amount of the loss sustained upon the sale is computed as follows:

Basis to Y Corporation (section 113(a)(22))		$200,000
Adjustment for depreciation in the hands of X Corporation (section 113(b))		50,000
Adjusted basis for depreciation in the hands of Y Corporation		150,000
Deduct:		
Depreciation allowable in amount of $7,500 per year (1/20 of $150,000) for 8 years, from January 1, 1935, through December 31, 1942	$60,000	
Depreciation allowable January 1, 1943, to June 30, 1944 (1½ years at $7,500)	11,250	
		71,250
Adjusted basis for computing gain or loss		78,750
Sale price		40,000
Loss sustained		38,750

For the taxable years 1943 and 1944, the Y Corporation is entitled to deductions for depreciation in respect of such property in the amounts of $7,500 and $3,750, respectively, in the determination of its tax liabilities for such years. But no change in the tax liability is authorized for preceding taxable years by reason of the difference between the $7,500 depreciation allowable and the $4,000 deduction previously allowed.

(C) By amending example (2) to read as follows:

Example (2). Assume the same facts as in example (1), except that the property acquired by the Y Corporation had a fair market value as of January 1, 1935, of $180,000, instead of $80,000, and that the Y Corporation claimed and was allowed depreciation in the amount of $9,000 for each of the eight taxable years 1935 to 1942, inclusive, and in the amount of $6,500 for the taxable year 1943. In such case, the amount of the loss sustained upon the sale of the property would be computed as follows:

Adjusted basis for depreciation in the hands of Y Corporation as computed in example (1)		$150,000
Deduct:		
(1) Depreciation allowed in the amount of $9,000 per year for 8 years, January 1, 1935, to December 31, 1942	$72,000	
(2) Depreciation allowable for taxable years 1943 and 1944 (one and one-half times $6,500)	9,750	
		81,750
Adjusted basis for computing gain or loss		68,250
Sale price		40,000
Loss sustained		28,250

No change in the tax liability is authorized for taxable years preceding 1943 by reason of the difference between the $6,500 depreciation allowable and the $9,000 deduction previously allowed.

PAR. 2. To the extent necessary to accord with section 121 of the Revenue Act of 1943 as applicable to taxable years beginning prior to January 1, 1942, section 29.113(a)(22)–1 of Regulations 111 as amended by this Treasury decision is hereby made applicable to taxable years beginning prior to January 1, 1942, and after December 31, 1933 (such years being covered by Regulations 103, 101, 94, and 86).

(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), corresponding provisions of prior revenue laws, and section 121 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress).)

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

Approved January 26, 1945.

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

(Filed with the Division of the Federal Register January 27, 1945, 11.59 a. m.)

SECTION 115.—DISTRIBUTIONS BY CORPORATIONS.

SECTION 29.115–3: Earnings or profits. (Also Section 718, Section 35.718–2, Regulations 112.) 1945–18–12132 I. T. 3758

INTERNAL REVENUE CODE.

The adjustment to the basis for determining gain or loss for Federal income tax purposes, required by article 34(c)(2) of Regulations 78 (consolidated return regulations under the Revenue Act

of 1932) where a corporation sells stock in an affiliated corporation after operating losses of such affiliate were availed of in consolidated returns, is not an adjustment proper in computing earnings and profits for the purpose of determining the taxability of dividend income and for the purpose of determining the amount to be included in the computation of equity invested capital.

Advice is requested whether the adjustment to the basis for determining gain or loss for Federal income tax purposes, required by article 34(c)(2) of Regulations 78 (consolidated return regulations under the Revenue Act of 1932) where a corporation sells stock in an affiliated corporation after operating losses of such affiliate were availed of in consolidated returns, is an adjustment proper for the purpose of determining the taxability of dividend income or for the purpose of determining the amount to be included in the computation of equity invested capital.

Under article 34(c)(2) of Regulations 78, where a corporation which is a member of an affiliated group sells shares of stock issued by another member of such group, which stock was held by the selling corporation during any part of the taxable year 1929 or any subsequent taxable year for which a consolidated return was made or required, and such sale breaks the affiliation of the issuing corporation with the remaining members of the group, the basis of the stock sold is required to be reduced by the sum of the losses of the issuing corporation sustained during each of the consolidated return periods, to the extent that such losses could not have been availed of by such corporation as a net loss in computing its tax for such periods if it had made a separate return for each of such periods.

Section 115(l) of the Internal Revenue Code provides in general that in determining an increase or decrease in earnings and profits of a corporation, gain or loss from the sale of property shall be computed by using the adjusted basis for determining gain under the law applicable to the taxable year in which the sale was made. Such section also provides as follows:

Where in determining the adjusted basis used in computing such realized gain or loss the adjustment to the basis differs from the adjustment proper for the purpose of determining earnings or profits, then the latter adjustment shall be used in determining the increase or decrease above provided.

In general, it may be said that the computation of earnings and profits of a corporation for dividend purposes is based upon reasonable accounting concepts. Thus, in determining earnings and profits where percentage depletion of minerals has been taken as a deduction for income tax purposes, only a proper portion based on cost depletion is allowed as a deduction from earnings and profits otherwise computed. This is because, although a larger deduction is allowable in computing net income, only the portion of cost of the assets which has actually been lost has disappeared from the property accounts of the corporation, and there accordingly remains for consideration an amount of earnings and profits equal to the difference between cost depletion and percentage depletion. Also, upon the same principle, losses and expenses which are disallowed as deductions from income for income tax purposes, contributions in excess of the limitation provided therefor, and other items which have actually depleted the assets of the corporation, even though not reflected in the income computation, are allowed as deductions in com-

puting earnings and profits. (See section 29.115-3 of Regulations 111.) Under the requirements of sections 728 and 729(a) of the Internal Revenue Code, the concept of earnings and profits is the same for excess profits tax purposes as for income tax purposes except where inconsistent treatment is prescribed in the excess profits tax provisions of the Code. No such treatment is prescribed with respect to the computation of equity invested capital except as to subsections (a)(3)(B) and (b)(2) of section 718 of the Code, and the treatment prescribed in such subsections is immaterial in connection with the present inquiry. (See also section 35.718-2 of Regulations 112.)

In computing the earnings and profits of a parent corporation after a consolidated return period during which losses of a subsidiary were availed of as an offset to the income of such parent, the amount of the income of the parent corporation should be added to its earnings and profits account even though such amount was offset for tax purposes by losses of the subsidiary. The adjustment of the basis of the stock of the subsidiary and the taxability of the profit resulting therefrom on sale reflect the principle that double deductions or their equivalent may not be allowed. (See *Charles Ilfeld Co.* v. *Hernandez*, 292 U. S., 62, Ct. D. 819, C. B. XIII-1, 139 (1934).) By providing for an adjustment to the basis of the stock of the subsidiary in the amount of losses availed of, the equivalent of a double deduction on disposition of the subsidiary's stock is avoided. However, in the computation of earnings and profits where the income which was offset by the subsidiary's loss is included in the earnings and profits of the corporation, the addition of the profit upon the sale of the subsidiary's stock in the amount of the adjustment of the basis provided with regard to such losses is in effect adding the amount of such profit twice. Thus, in a case where Corporation A holding all of the stock of Corporation B for three consolidated return years availed itself of the subsidiary's losses in the amount of $100,000 each year, it would have $300,000 in its earnings and profits account at the end of such 3-year period. Assuming the stock of the subsidiary was held at a cost basis of $1,000,000 and sale thereof was made at the same amount, the parent would have assets over and above its capital of $300,000. If the profit for the three years be added to the profit based upon the adjustment provided by article 34(c)(2) of Regulations 78, the parent would have earnings and profits of $600,000 (exclusive of other adjustments not here material). Assuming further that the corporation's assets other than the stock of the subsidiary are liquidated without gain or loss for $1,300,000, the corporation would have on hand cash in the amount of $2,300,000. If the amount of the profit of $300,000 realized upon the sale of the stock be added to the earnings and profits account, the stockholders will be taxed upon a distribution in the amount of $600,000. After distribution of earnings and profits, only $1,700,000 will remain to satisfy an outstanding capital (assumed) of $2,000,000. This represents a distortion rather than a true representation of the status of the corporation's earnings and capital. The distortion will be present in all cases in which such an adjustment is made. Under the circumstances, it appears that the adjustment to basis, prescribed by article 34(c)(2) of Regulations 78, differs from that proper for computing earnings and profits.

In view of the foregoing, it is held that the adjustment to the basis for determining gain or loss for Federal income tax purposes, required by article 34(c)(2) of Regulations 78 where a corporation sells stock in an affiliated corporation after operating losses of such affiliate were availed of in consolidated returns, is not an adjustment proper in computing earnings and profits for the purpose of determining the taxability of dividend income and for the purpose of determining the amount to be included in the computation of equity invested capital.

SECTION 29.115–3: Earnings or profits.

INTERNAL REVENUE CODE.

Amortizable bond premium on wholly tax-exempt bonds. (See I. T. 3764, page 188.)

SECTION 117.—CAPITAL GAINS AND LOSSES.

SECTION 29.117–1: Meaning of terms. 1945–3–11950
(Also Section 29.117–7 and Section 122, Section 29.122–3.) I. T. 3711

INTERNAL REVENUE CODE.

Numerous parcels of real estate owned by A and regularly and continuously managed and operated by her through agents as a source of income are not "capital assets," as defined in section 117(a)(1) of the Internal Revenue Code, as amended by section 151(a) of the Revenue Act of 1942. A net loss sustained by her upon sale in 1944 of several of the parcels then so used which had been held by her for more than six months, and during which taxable year she had no net gains falling within the ambit of section 117(j) of the Code, as added by section 151(b) of the Revenue Act of 1942, is not subject to the limitations of section 117 (b) and (d) of the Code. By virtue of the particular provisions of section 117(j) of the Code, which are applicable to the net loss, it is deductible in full as an ordinary loss in computing her net income.

Inasmuch as A is not a regular trader or dealer in real estate, the loss is deductible in computing her "net operating loss," as defined in section 122(a) of the Code, as added by section 211(b) of the Revenue Act of 1939 and amended by section 105(e)(3)(A) of the Revenue Act of 1942, only to the extent provided in section 122(d)(5) of the Code, as added by section 211(b) of the Revenue Act of 1939 and amended by section 105(e)(3)(C) of the Revenue Act of 1942.

Advice is requested as to the treatment for Federal income tax purposes of a loss sustained by A in 1944 from the sale of several parcels of real estate held for more than six months, which, together with numerous other parcels, were owned and operated by A as a source of income, with particular reference to whether such loss represents an item of deduction in determining "net operating loss," as defined in section 122(a) of the Internal Revenue Code, as added by section 211(b) of the Revenue Act of 1939 and amended by section 105(e)(3)(A) of the Revenue Act of 1942.

A's father was engaged in the buying, selling, and renting of real estate for many years. He and another individual organized a real estate firm of which he was a partner until the time of his death in 1925. He devised 18 parcels of real estate to his daughter, A. Upon the acquisition of these properties, the taxpayer (A) took over the

management and control thereof and, with the assistance of her husband and the real estate firm in which her father had been a partner, has continued to manage and operate them as a source of income, making sales of certain properties as changed conditions and reduced rentals made such action seem advisable. From the date of her father's death in 1925 until 1938, the details of the management of A's real estate were handled by her agent, the above-mentioned real estate firm, working under the general direction of herself and her husband. He retired from his own business in 1938 and took over the management of A's real estate holdings. The real estate firm acts as rental agent for all the properties, obtains tenants when the properties become vacant, supervises the making of repairs, collects the rents, pays the taxes, and keeps the buildings insured, for which services its receives the usual commissions on the gross amount of rents collected. The activities of the real estate firm with respect to A's properties are under the direct supervision of her husband and he is consulted as to all matters having to do with these properties. The net income received from the rental of the properties averaged $7x$ dollars a year for the years 1941, 1942, and 1943. Several of the properties were sold in February, 1944, for $62x$ dollars. The adjusted basis thereof was $210x$ dollars and the net loss sustained was $148x$ dollars.

A's net income for the year 1944 from all sources and before the deduction for any loss on the sale of the real estate is estimated at $50x$ dollars, and the net loss will be approximately $98x$ dollars. It is contended that the real estate activities referred to above constitute the carrying on of a trade or business for the production of income, that the loss of $148x$ dollars was incurred in the carrying on of a business, and that A is entitled to the benefit of the carry-over and carry-back provisions of section 122 of the Internal Revenue Code with respect to the net operating loss sustained.

Section 117(a)(1) of the Internal Revenue Code, as amended by section 151(a) of the Revenue Act of 1942, excludes from the definition of "capital assets" property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l) of the Code, and real property used in the trade or business of the taxpayer. Under the provisions of section 117(j) of the Code, as added by section 151(b) of the Revenue Act of 1942, gains and losses upon the sale or exchange of property used in the taxpayer's trade or business, held for more than six months, are treated as gains and losses from the sale or exchange of capital assets held for more than six months if the aggregate of such gains exceeds the aggregate of such losses, but may not be so treated if the aggregate of such gains does not exceed the aggregate of such losses.

It is held that A's real estate, being regularly and continuously managed and operated by her as a source of income, even though through her agents, constitutes property used in her business of managing and operating income-producing real estate and, therefore, not "capital assets" as defined in section 117(a)(1) of the Code, supra. (Cf. *Amos R. E. Pinchot, Executor*, v. *Commissioner*, 113 Fed. (2d), 718; *John Fackler* v. *Commissioner*, 133 Fed. (2d), 509.) Since the properties were held for more than six months, the provisions of section 117(j) of the Code are applicable with respect to gains and losses from the sale thereof at the time so used. (See sections 29.117–1 and 29.117–7 of Regulations 111.) Since it appears that the aggregate

gains from all of the transactions do not exceed the losses thereon, none of such gains and losses should be treated as gains and losses from the sale or exchange of capital assets. Under such circumstances, the loss from the sale of the above-mentioned properties is not subject to the limitations provided in section 117 (b) or (d) of the Code, with respect to capital gains and losses. Accordingly, such loss is deductible by A in full as an ordinary loss in computing her net income for the taxable year 1944.

It is further held, however, that such loss is deductible by A in computing her "operating net loss," as defined in section 122(a) of the Code, as added by section 211(b) of the Revenue Act of 1939 and amended by section 105(e)(3)(A) of the Revenue Act of 1942, only to the extent provided in section 122(d)(5) of the Code, as added by section 211(b) of the Revenue Act of 1939, supra, and amended by section 105(e)(3)(C) of the Revenue Act of 1942, which reads as follows:

> Deductions otherwise allowed by law not attributable to the operation of a trade or business regularly carried on by the taxpayer shall (in the case of a taxpayer other than a corporation) be allowed only to the extent of the amount of the gross income not derived from such trade or business. For the purposes of this paragraph deductions and gross income shall be computed with the exceptions, additions, and limitations specified in paragraphs (1) to (4) of this subsection.

The basis for this conclusion is that, although it is determined that the property upon the sale of which the loss was sustained was used in A's business of managing and operating income-producing real estate, the loss from the sale thereof is "not attributable to the operation of a trade or business regularly carried on by the taxpayer" within the purview of section 122(d)(5) of the Code, supra, since she was not a regular trader or dealer in real estate. In other words, as supported by the facts here presented, the only business *regularly* carried on by A was managing and operating her income-producing real estate and not trading or dealing in real estate; the property was held primarily for use, rather than for sale, in her business; and the loss did not arise or result from the operation of such business but upon the disposition of assets used therein. (See *Louise C. Slack et al., Executors*, v. *Commissioner*, 35 B. T. A., 271; *Burrows McNeir* v. *Commissioner*, 30 B. T. A., 418; *Estate of Hetty H. R. Green* v. *Commissioner*, 27 B. T. A., 1195; *G. D. Anderson* v. *United States*, 48 Fed. (2d), 201; *Fridolin Pabst* v. *Lucas*, 36 Fed. (2d), 614, certiorari denied, 281 U. S., 741; cf. *S. Rose Lloyd* v. *Commissioner*, 32 B. T. A., 887, acquiescence, C. B. XIV–2, 13 (1935).)

SECTION 29.117–1: Meaning of terms. 1945–6–11992
(Also Section 22(a), Section 29.22(a)–1; I. T. 3721
Section 23(e), Section 29.23(e)–1.)

INTERNAL REVENUE CODE.

Treatment for Federal income tax purposes of transactions in connection with the purchase and sale, on a "when issued" basis, of securities of corporations.

Advice is requested relative to the treatment for Federal income tax purposes of transactions in connection with the purchase and sale, on a "when issued" basis, of securities of corporations.

The usual situation in which trading in securities on a "when issued" basis takes place is one in which there is submitted a plan of reorganization of a corporation providing for the issuance, in exchange for its outstanding securities, of securities of a new corporation or of new securities of the reorganized old corporation. Before such a plan of reorganization actually becomes effective, the approval of the interested security holders must be obtained or the plan must be approved by regulatory bodies or the courts. There is often litigation as a result of which the plan of reorganization may be abandoned or approved in a modified form. The time elapsing between the submission of the plan and the actual exchange of old securities for new securities under the plan, or the plan as modified, may be as much as several years. After the submission of the plan of reorganization, trading may be commenced in the new securities which are to be issued under the plan of reorganization. Inasmuch as these new securities are not in existence, and will never come into existence if the plan of reorganization is not carried out, the trading is on the basis of "when, as, and if issued," commonly called "when issued." The trading is carried on by the execution of contracts for the purchase and sale of the new securities "when issued" at specified prices.

In *Lewis K. Walker* v. *Commissioner* (35 B. T. A., 640, acquiescence, C. B. 1938–1, 32), the United States Board of Tax Appeals (now The Tax Court of the United States) considered the income tax aspects of dealings in securities "when issued," holding that delivery of *old* stock of a corporation did not constitute performance of a contract to sell "*when issued*" stock of the reorganized corporation. It was pointed out that where there is a sale of stock on a "when issued" basis, no actual sale can take place until the new stock is issued. The Board stated in part (page 645) as follows:

* * * Dealings in stock on a "when issued" basis are not sales of stock, but merely sales of contracts to sell stock which are made on the express condition that no delivery and payment are required unless and until the stock is issued. * * * Unless and until the stock is issued, no performance is required and if the stock is never issued the contract falls by its own terms, the only money changing hands being the broker's commissions. * * *

The income tax aspects of several basic types of transactions in the "when issued" securities of the Y Company will hereinafter be discussed at some length in the light of the decision in the Walker case, supra, for the purpose of developing the underlying principles applicable to transactions of this character, after which those principles will be applied briefly to a number of specific questions presented in connection with dealings in the "when issued" securities of the Y Company. It is believed that the following questions and answers are illustrative of some of the transactions in "when issued" securities, particularly stocks, which are most frequently consummated:

Question 1: A, who owns stock in the Y Company which is in reorganization, sells stock of the reorganized corporation "when issued" at a certain price, holds the stock in the old corporation until he receives the new stock after the reorganization has taken place, and then delivers the new stock in completion of his sale of the "when issued" stock. How should this transaction be treated for Federal income tax purposes?

Answer: (*a*) Assume that the reorganization of the Y Company, when consummated, is a *taxable* reorganization for Federal income tax purposes.

When the old stock of the Y Company, which A owns, is exchanged for the new stock, gain or loss is realized from such a disposition of the old stock, measured by the difference between the basis of the old stock and the value of the new stock received, such gain or loss constituting a long-term or a short-term capital gain or loss depending on the length of time the old stock was held. (See section 117(a) of the Internal Revenue Code.) The new stock takes as its basis the value at which it was included in the calculation of gain or loss upon the exchange. The difference between such basis of the *new* stock of the Y Company and the price for which it was sold under the terms of A's sale of this stock "when issued" determines the capital gain or loss from the disposition of the stock. Such gain or loss presumably would in all cases be a short-term capital gain or loss within the meaning of section 117(a) of the Code, since it is understood that such transactions are completed within a comparatively short time after the issuance of the new stock.

Under the circumstances here described, that is, where the reorganization is a taxable reorganization, there is no "tacking" of the time the old stock was held to the time the new stock was held in determining whether the sale of the new stock gives rise to a long-term or a short-term capital gain or loss.

(*b*) Assume that the reorganization of the Y Company, when consummated, is a *nontaxable* reorganization for Federal income tax purposes.

The basis of the new stock, under section 113(a)(6) of the Code, depends on the basis of the old stock, and the period of time the new stock is held, under section 117(h) of the Code, includes the time the old stock was held. Under these circumstances, the amount of gain or loss derived from the sale by A of the new stock of the Y Company would depend on the cost or other basis of the old stock, and the period of time the new stock was held for the purpose of determining whether the gain or loss was a long-term or a short-term capital gain or loss would depend upon the period of time the old stock was held. In other words, under these conditions, the period of time the old stock was held would be "tacked" on to the period of time the new stock was held in determining whether the sale of the new stock gave rise to a long-term or to a short-term capital gain or loss.

Question 2(*a*): A, who does *not* own old stock of the Y Company, believes that the price of the Y Company "when issued" stock, which is selling at 20, will increase, and he enters into a contract to buy 25 shares of the stock "when issued" at that price; the price of the "when issued" stock increases to 25. A, in order to get the benefit of this potential profit, proceeds as follows:

(1) he assigns or transfers his contract to purchase 25 shares of Y Company stock "when issued" at 20 to B for a stated consideration; or

(2) he enters into a contract to sell 25 shares of stock of the Y Company "when issued" to C at 25; or

(3) after he has entered into the contract to sell to C, he assigns his rights in both his buy contract and his sell contract to D for a given consideration.

Question 2(*b*): A, who does *not* own old stock of the Y Company, believes that the price of the Y Company "when issued" stock, which is selling at 20, will decrease, and enters into a contract to sell 25 shares of the stock "when issued" at that price; the price of the "when issued" stock later drops to 15. A, in order to get the benefit of this potential profit, proceeds as follows:

(1) he assigns or transfers his sell contract to B for a stated consideration; or

(2) he enters into a contract to buy 25 shares of the stock of the Y Company "when issued" at 15; or

(3) after he has entered into the contract to buy 25 shares of the stock "when issued" at 15, he assigns his rights in both his sell contract and his buy contract to D for a given consideration.

Question 2(*c*): If A, who does *not* own stock of the Y Company, purchases "when issued" stock of that corporation and the price goes down, or if he sells "when issued" stock and the price goes up, he can limit his loss

(1) by paying B to take over his buy contract or his sell contract; or

(2) by entering into a balancing "when issued" sell contract or "when issued" buy contract; or

(3) after he has entered into such a balancing "when issued" sell or buy contract, by assigning his rights in both his buy contract and his sell contract to B for a given consideration.

How should these transactions be treated for Federal income tax purposes?

Answer 2(*a*) and 2(*b*): In the cases described in questions 2(*a*)(1) and 2(*b*)(1), when an individual enters into a contract to buy (or to sell) "when issued" stock, he acquires the right to purchase (or to sell) that stock when it is issued. It is believed that the right so acquired constitutes a "capital asset," as that term is defined in section 117(a)(1) of the Code. Accordingly, where an individual, who has contracted to buy (or to sell) stock "when issued," sells his right to buy (or to sell) such stock, he sells a capital asset. It follows that if, in the cases described in questions 2(*a*)(1) and 2(*b*)(1), supra, A sells his buy contract or his sell contract to B, the gain arising from the sale of the contract, under section 117(a) of the Code, would be a long-term capital gain if he held the contract for more than six months before selling it, or a short-term capital gain if he held the contract for *not* more than six months before selling it. The gain, under these conditions, is of course realized at the time when the contract of purchase or sale is disposed of.

In the cases described in questions 2(*a*)(2) and 2(*b*)(2), supra, if A buys stock "when issued" and then sells stock "when issued," or if he sells stock "when issued" and then buys stock "when issued," he does not thereby effect a disposition of the "when issued" stock which results in realized gain or loss, although for practical purposes he fixes the amount of the gain or loss that will be realized if and when the reorganization is consummated. As previously indicated, when an individual buys or sells securities on a "when issued" basis, he merely enters into a contract to purchase or to sell those securities if and when they are issued. If the reorganization is not consummated, the contracts fail. It follows, therefore, that no gain or loss is realized when an individual, after buying or selling securities on a "when

issued" basis, sells or buys the same securities on a "when issued" basis—until and unless the reorganization is consummated. When that takes place and the individual acquires the new stock pursuant to his buy contract, and then disposes of that stock pursuant to his sell contract, gain or loss is realized.

In questions 2(*a*)(3) and 2(*b*)(3), supra, A enters into a "when issued" buy or sell contract and some time thereafter enters into a "when issued" sell or buy contract at a different price with the result that, provided the reorganization is consummated, he is assured of a profit from the combination of the two contracts. He then sells all his right and interest in the two contracts to another individual. The question arises as to the income tax consequences of such disposition.

In the cases described in questions 2(*a*)(3) and 2(*b*)(3), supra, the contract to buy and the contract to sell are to be treated as entirely separate capital assets. Accordingly, where two contracts are sold for a net consideration, there are in reality two dispositions since there are two properties. It is, therefore, necessary to determine the consideration paid for the transfer of each contract. This is a question of fact to be determined in each case. If in any case where the parties themselves, as a part of the transaction, have stated the consideration paid for each contract (and it is believed that such cases would be rare), the considerations so stated will be accepted as correct unless it appears that such considerations are arbitrary or unreasonable. Where, as is generally, if not always, the case, the parties have not stated the considerations in their agreement, the amount paid for each contract should be determined on the basis of the value of the two contracts at the date of sale thereof. "When issued" stock ordinarily has an established market value and, in this respect, is similar to ordinary issued stock. Its value fluctuates and, consequently, contracts to buy or to sell it vary in value from time to time. Thus, a contract to buy or to sell "when issued" stock may increase in value or decrease in value and may even become a liability dependent upon the then value of the "when issued" stock. Accordingly, in a situation such as that under consideration, where buy and sell contracts are sold together, the value may be represented entirely by the buy contract or by the sell contract, or the value may be represented by each of the two contracts in the same or different proportions. Generally, where the entire value is represented by one of the contracts, the other contract is in fact a liability. In such instances, the net consideration paid to the seller represents in substance the payment to the seller of the value of the valuable contract less an amount attributable to the assumption of the liability of the other contract.

Since the sales of such contracts are customarily carried on through brokers who keep records of such transactions, it is believed that any particular contract on a given date could be valued by reference to sales of similar contracts at or about the date of sale of the particular contract in question. If in any case this is not possible, the value of the contract should be considered as the difference between the market value of the "when issued" security at the date the contract is sold and the amount at which the security is required to be bought or sold under the contract in question. The foregoing may be illustrated by the following examples:

Example (*a*): B entered into a "when issued" buy contract for 200 shares of Y Company preferred stock at 20. Within six months after

such purchase, he entered into a " when issued " sell contract for 200 shares at 25. More than six months after the date of the buy contract but within six months from the date of the sell contract and at a time when the market price of the Y Company preferred stock " when issued " is 40, B sells his interest in both contracts (under which he has a contingent profit of $1,000) to D for $800. Does B have a long-term capital gain?

Answer: Since the " when issued " stock at the date of sale of the two contracts has a market value of 40, the contract to buy is valuable whereas the contract to sell is a liability. This is so because the owner of the contract to buy at 20 could go into the open market and enter into a contract to sell at 40, the prevailing market price of the " when issued" stock. In such a situation, it will be considered that B received for the valuable contract the amount of its fair market value and that that figure, less the net amount actually received, represents the amount which B constructively paid to D for taking over B's obligation under the other contract. This latter amount will be treated by B as a capital loss. (See question 2(*c*)(1) as set forth in answer 2(*c*), infra, for detailed discussion of this specific problem.) The question whether the capital gain or loss will be long-term or short-term will depend upon whether the particular contract was held for more or less than six months.

Example (*b*): B has entered into a " when issued " buy contract for 200 shares of Y Company preferred stock at 20. Within six months after such purchase, he has entered into a " when issued " sell contract at 25. More than six months after the date of the buy contract but within six months from the date of the sell contract and at a time when the market price of the Y Company preferred stock " when issued " is 15, B sells his interest in both contracts (under which he has a contingent profit of $1,000) to D for $800. Does B have a long-term capital gain?

Answer: Since B owns a contract to buy at 20 and a contract to sell at 25 and the " when issued " stock at the date of sale of the two contracts has a market value of 15, the contract to sell is valuable whereas the contract to buy is a liability. This is so because a purchaser could go into the open market and enter into a contract to buy at 15. B, however, holds the obligation of another party to purchase at 25. In such a situation, it will be considered that B received for the valuable contract the amount of its fair market value and that figure, less the net amount actually received, represents the amount which B constructively paid D for taking over B's obligation under the other contract. This latter amount will be treated by B as a capital loss. The question whether the capital gain or loss will be long-term or short-term will depend upon whether the particular contract was held for more or less than six months.

Example (*c*): The facts are the same as in examples (*a*) and (*b*) except that the market price is 22 at the time B sells his interest in the two " when issued " contracts. Does B have a long-term capital gain?

Answer: Since the prevailing market price of the " when issued " stock is 22, both the buy and sell contracts have values. This is so because a purchaser would have to pay 22 at the market whereas B owns a contract to buy at 20 and he owns the obligation of some one

to purchase from him at 25 which he could fulfill by buying the stock at 22 on the market. In such a case, the net consideration of $800 received by B should be allocated to each of the contracts on the basis of two-fifths to the buy contract and three-fifths to the sell contract. Since B held the buy contract for more than six months, he will realize a long-term capital gain of $320. Since he held the sell contract for less than six months, he will realize a short-term capital gain of $480.

Answer 2(*c*): Questions 2(*c*) (2) and 2(*c*) (3) are governed by what has been said above with respect to questions 2(*a*) (2) and 2(*a*) (3). Question 2(*c*) (1) is now considered in connection with a transaction presented as follows:

More than six months ago, A purchased stock in the X Company at 19. Against this purchase, he immediately sold at 20 on a "when issued" basis the new stock in the Y Company which, under a plan of reorganization, was to be issued in exchange for the old stock in the X Company. At the present time, the old stock is selling at 39, and the new stock, on a "when issued" basis, is selling at 40. However, the reorganization has not been finally approved and may never be approved. A wants to realize his profit this year as a long-term capital gain. He proposes, therefore, to sell his X Company stock in the open market at its present value of 39. This sale would give him a profit of 20 points, which would be a long-term capital gain. A also proposes to dispose of his "when issued" sell contract by paying B 80 per cent of the difference between the price at which the "when issued" stock was sold (20) and its present market value (40), or 16 points, for which B agrees to assume all of A's liabilities under the contract.

Thereafter B finds that C is the owner of a contract entitling him to buy the "when issued" stock at 19. C's position is that he has a potential profit of 21 points which may disappear entirely if the reorganization does not go through or may decrease if, at the time the reorganization is effected, the market value of the new stock is less than 39. He is, therefore, willing to dispose of his potential profit of 21 points by selling his contract to B for 80 per cent of such potential profit, or 16.8 points. If B proceeds as above outlined, his situation will be as follows: He has received 16 points from A for assuming the latter's liability under the "when issued" sell contract, and he has paid C 16.8 points for an assignment of the latter's purchase contract. If the reorganization is not consummated, he will lose eight-tenths of a point. If the reorganization is consummated, he will make a gross profit of 1 point (the difference between the prices in his buy and sell contracts) which, after deducting his net cash outlay of eight-tenths of a point, will give him a net profit of two-tenths of a point. Since B feels strongly that the reorganization will go through, he is willing to risk the loss of eight-tenths of a point against the possibility of a net profit of two-tenths of a point.

The questions presented upon the foregoing assumed facts are:

First, is the amount which A pays to B in consideration of B's assuming A's liabilities under the "when issued" sell contract deductible by A as an ordinary loss or as a business expense?

Second, is the amount which B receives from A for assuming the latter's liabilities under the "when issued" sell contract taxable to B as ordinary income at the time of receipt, or may it be offset against the amount which B pays to C?

Third, if the amount which B receives from A is income to B at the time of receipt, may B deduct at the time of payment the amount which he pays to C for an assignment of C's "when issued" buy contract?

It is held that the transaction is an exchange by A of his contract, a capital asset, and that the resulting loss is a capital loss within the meaning of section 117 of the Code.

Section 111(a) of the Code provides that the loss upon the sale or other disposition of property shall be the excess of the adjusted basis over the amount realized. Section 111(b) of the Code provides that the amount realized shall be the sum of any money received plus the fair market value of the property (other than money) received.

Presumably, A's contract to sell "when issued" stock of the Y Company at 20 cost him nothing in cash at the time it was entered into. However, A obligated himself to carry out the contract according to its terms. Such obligation should be treated as a part of the basis of the contract in A's hands. According to the form of the transaction, A received in the exchange B's agreement to assume A's obligation and this would equal in value A's basis. However, in view of the fact that A was required to pay B a cash amount, the substance of the matter is that the net value received by A was reduced by that amount. Thus, the excess of A's basis over the amount received by him in the exchange is equal to the amount which he paid to B.

A somewhat similar situation was presented in *H. T. Robinson* v. *Commissioner* (97 Fed. (2d), 552). There the taxpayer, sole owner of a water company, contracted with certain land subdividers to supply the subdivisions with water. The subdividers agreed to pay the cost of installing water mains, etc., and to transfer title to the taxpayer. The taxpayer, in consideration of such agreement, agreed to keep such property in repair and to furnish an adequate supply of water. The cost of the water mains, etc., to the subdividers was approximately $170,000. The court held that it must be assumed that the obligation of the taxpayer was equal to the value of the property received and that it constituted a part of the cost basis of the property in the hands of the taxpayer. In addition, the taxpayer had expended about $36,000, which made the total cost basis of the assets to him about $206,000. Thereafter the taxpayer organized a corporation to which he transferred the entire assets in exchange for bonds and stock. The corporation assumed the executory obligation of the taxpayer under the contract with the subdividers and relieved the taxpayer of any further performance thereunder. The court sustained the Board of Tax Appeals (now The Tax Court of the United States), which held that the taxpayer received in exchange for the assets of the water system not only the stock and bonds of the corporation, but also the corporation's assumption of performance under the contract with the subdividers, and that such assumption of performance constituted a full recovery of the consideration given by him for the donations in aid of construction. The court held, in effect, that the assumption of the obligation by the corporation offset the taxpayer's obligation, which was valued at $170,000, and that the remaining $36,000 should be considered as the amount of the cost of the bonds and stock received by the taxpayer.

Attention is invited to section 29.22(a)–18 of Regulations 111, which provides that if a purchaser takes over all the assets and assumes the

liabilities of a corporation, the amount so assumed is part of the selling price. In *Consolidated Coke Co. et al.* v. *Commissioner* (70 Fed. (2d), 446), it was held that in such a situation the assumption of liabilities constitutes cost of the assets to the purchaser. Attention is also invited to section 29.44–2 of Regulations 111, which provides that in the sale of mortgaged property the amount of the mortgage assumed by the purchaser shall be included as part of the selling price of the property. (Cf. *United States* v. *L. Manuel Hendler*, 303 U. S., 564, Ct. D. 1328, C. B. 1938–1, 285.)

In answer to the first question, in accordance with the views expressed above, it is held that the loss should be considered as a capital loss under section 117 of the Code. Since, under the assumed facts, the contract was held by A for more than six months, the loss would be a long-term capital loss. It may be added that the same conclusion would be reached if a *purchaser* of securities "when issued" paid another a sum of money in order to be relieved of his obligations under the contract.

In answer to the second question, it is held that the amount which B received from A is not taxable as ordinary income at the time of receipt, but is a factor to be taken into consideration in determining the ultimate gain or loss derived by B when he complies with the obligations of the contract or it is definitely ascertained that the reorganization will not be consummated. In the event the reorganization is consummated and B carries out the contract, the gain or loss which B sustains will be a capital gain or loss. Whether it is a short-term or long-term capital gain or loss will depend upon the length of time B holds the stock before delivering it under the contract to sell. If the reorganization is not consummated, B will have derived ordinary gain as of the time it is established that the reorganization will not be consummated, in the amount he received from A.

In view of the position taken above, it is unnecessary to consider the third question.

The principles heretofore developed will now be briefly applied to certain additional questions which have been presented and which are not entirely covered by the foregoing.

Question (*a*): B buys 200 shares of Y Company preferred stock at 20 "when issued." This is accomplished by entering into a contract with C under which B agrees to purchase from C 200 shares of such stock at 20 a share. More than six months after entering into this contract, and at a time when the market for the stock "when issued" is 25, B sells all of his right and interest in the contract with C to D for $950, but he agrees with D that if the plan of reorganization under which the Y Company preferred stock is to be issued is not consummated, he (B) will refund the $950 to D. Has B a long-term capital gain?

Answer: In such a situation it should not be considered that there has been a final sale of the contract until it becomes certain that the reorganization will be consummated. Accordingly, not until that time is gain or loss realized by B. If the reorganization is consummated, B will realize a long-term capital gain of $950.

Question (*b*): B, a member of the New York Stock Exchange, enters into a "when issued" buy contract with C under which B agrees to purchase from C 200 shares of Y Company preferred stock at 20. At a time when the market price of the Y Company preferred stock "when

issued" is 25, the Stock Clearing Corporation calls for an intermediate clearance and a marking of contracts to 25. B receives a contingent credit on the books of the Stock Clearing Corporation in the amount of $1,000. Has B any taxable gain as a result of this credit?

Answer: B realizes no taxable gain as a result of this credit. No gain or loss will be realized by B on the contract to buy stock of the Y Company "when issued" until and unless the reorganization of the Y Company is consummated.

Question (*c*): B enters into a "when issued" sell contract with C under which B agrees to sell to C 200 shares of Y Company preferred stock at 20. At a time when the market is 40, B purchases from D a "when issued" buy contract under which D has agreed to purchase from A 200 shares of Y Company preferred stock at 20, and B pays D $3,200 (80 per cent of D's potential profit) for the contract. He then induces C to accept an assignment of D's contract with A as satisfaction of his (B's) contract with C. Does B have a short-term capital loss?

Answer: A capital loss of $3,200 is sustained by B at the time he assigns to C the buy contract he purchased from D. Whether such loss is a short-term or a long-term capital loss depends upon the length of time B held the buy contract.

Question (*d*): B enters into a contract with C under which B agrees to buy from C 200 shares of Y Company preferred stock "when issued" at 20. At a time when the market is 25, he sells all his right and interest in this contract to D for $800 (80 per cent of his potential gain) without recourse. How should the amount paid by D to B be treated by D for Federal income tax purposes?

Answer: No gain or loss will be realized by D when, after the reorganization is consummated, he purchases the new stock pursuant to the buy contract. The amount paid by D to B for the buy contract should be added to the cost of the stock so bought for the purpose of determining the gain or loss to D upon a subsequent sale of the stock.

Question (*e*): B enters into a contract to purchase 200 shares of Y Company preferred stock "when issued" at 20. More than six months after entering into the contract to purchase such stock, the reorganization of the company is consummated and B receives the 200 shares of stock upon payment of $4,000. Within six months of the receipt of these shares, B sells them at 25 for $5,000. Is B's gain a long-term or a short-term capital gain?

Answer: When B sold for $5,000 the new stock of the Y Company which he had purchased for $4,000 on a "when issued" basis, he realized a short-term capital gain of $1,000, since he had held the new stock for not more than six months. B did not complete his purchase of the new stock until the reorganization of the old company was consummated and he acquired the new stock pursuant to his buy contract, at which time the holding period began for the purpose of determining whether the gain was a long-term or short-term capital gain.

Question (*f*): B enters into a contract with A under which B agrees to purchase from A 200 shares of Y Company preferred stock "when issued" at 20. More than six months later, B enters into a contract with C under which B agrees to sell to C 200 shares of Y Company preferred stock "when issued" at 25. Subsequently, the plan of reorganization is consummated and shares of the Y Company preferred

stock are issued. B immediately receives 200 shares of Y Company preferred stock from A upon payment of $4,000, and on the next day, B delivers 200 shares to C upon receipt of $5,000. Is B's profit a long-term or a short-term capital gain?

Answer: B realized a short-term capital gain of $1,000 from this transaction, since he had held the new stock of the Y Company for not more than six months. When B entered into the contracts with respect to purchase and sale of the stock of the Y Company on a " when issued " basis, he merely entered into contracts to purchase and to sell the stock if and when it was issued. When the reorganization was consummated, he acquired the Y Company stock pursuant to his buy contract and immediately disposed of the stock pursuant to his sell contract.

Question (*g*): B enters into a contract with A under which B agrees to purchase from A 200 shares of Y Company preferred stock " when issued " at 20. More than six months later, B enters into a contract with C under which B agrees to sell to C 200 shares of Y Company preferred stock " when issued " at 25. The plan of reorganization is consummated, and preferred stock of the Y Company is issued. The New York Stock Exchange calls for a clearance and A, B, and C report their contracts to the exchange. B neither receives nor delivers any stock but does receive $1,000 from the Stock Clearing Corporation. Is B's gain a long-term or a short-term capital gain?

Answer: B realized a short-term capital gain of $1,000. The transactions, in effect, have been completed through the New York Stock Exchange, and no further acquisition or disposition of the new stock will be made under the contracts in so far as B is concerned.

The conclusions set forth herein are applicable to transactions entered into by investors and traders in securities but are not applicable to transactions entered into by dealers in securities where such transactions constitute a part of the business of dealers in securities.

SECTION 29.117-4: Determination of period for which capital assets are held. 1945-1-11922 I. T. 3705

INTERNAL REVENUE CODE AND REVENUE ACT OF 1938.

For the purpose of determining capital gains and losses under section 117 of the Revenue Act of 1938 and section 117 of the Internal Revenue Code, the period during which a security is held by a taxpayer commences on the day after he purchases the security and ends on the day he sells it. This rule is not affected by the intervention of holidays or less than full business days between the date of purchase or sale of a security and the date of delivery and payment.

I. T. 3287 (C. B. 1939-1 (Part 1), 138) amplified.

Advice is requested whether the rule set forth in I. T. 3287 (C. B. 1939-1 (Part 1), 138), relating to the holding period of assets for the purpose of determining capital gains and losses under section 117 of the Revenue Act of 1938, is affected where holidays and less than full business days intervene between the date of purchase or sale of a *security* and the date of delivery and payment. I. T. 3287, which is equally applicable to capital gains and losses under section 117 of the Internal Revenue Code, holds that the period during which an asset was held is to be computed by excluding the day on which the asset was acquired by the taxpayer and including the day on which sold by him.

Under the rules of most of the registered security exchanges, delivery and payment, upon either a purchase or a sale of a security, are not required to be made until the second full business day after the date on which the purchase or sale is executed. It appears to be generally understood, in applying the rule of I. T. 3287 to a security which is so purchased and sold by a taxpayer, that the period it is held by him commences on the day after he purchases it even though payment by and delivery to him are not made until the second day after he purchases it, and that such holding period ends on the day he sells the security even though delivery by and payment to him are not made until two days after the sale. Such computation of the period during which a security, thus acquired and disposed of by the taxpayer, is held by him is in accord with the position of the Bureau and is consistent with numerous rulings and decisions relating to when a purchase or other acquisition and a sale or other disposition of securities are consummated for Federal income tax purposes. (See G. C. M. 21503, C. B. 1939–2, 205, and decisions therein cited; I. T. 3323, C. B. 1939–2, 90; and *Robert A. Pulfer* v. *Commissioner*, 43 B. T. A., 677, affirmed, 128 Fed. (2d), 742.)

In some instances, particularly where a holiday intervenes, more than two days after a purchase or sale of a security is executed may elapse before delivery and payment are made. A case is presented in which a security was purchased by a taxpayer on Wednesday, October 11, 1944, payment by and delivery to him not being made until Monday, October 16, 1944, which was the second full business day after the purchase date, because of the intervention of Thursday, October 12, 1944, which was a legal holiday, Saturday, October 14, 1944, which was not a full business day, and Sunday, October 15, 1944, which was not a business day. The questions presented are (1) whether the holding period in such case commenced on October 12, 1944, as indicated by I. T. 3287, supra, or on October 17, 1944, the day following payment and delivery, and (2) if a security had been sold by the taxpayer on October 11, 1944, delivery by and payment to him not being made until October 16, 1944, when would the holding period have ended?

The intervention of holidays or less than full business days between the date of a purchase or a sale of a security and the date of delivery and payment therefor does not vary the application of the rule laid down in I. T. 3287, supra. Accordingly, in the above-mentioned case of the purchase, the holding period commenced on October 12, 1944, the day after the taxpayer purchased (acquired) the security, and, in the above-mentioned case of the sale, the holding period ended on October 11, 1944, the day on which the taxpayer sold (disposed of) the security.

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

INTERNAL REVENUE CODE.

Loss on sale of real estate owned and operated as a source of income. (See I. T. 3711, page 162.)

SECTION 29.117–7: Gains and losses from involuntary conversions and from the sale or exchange of certain property used in the trade or business. 1945–3–11951 I. T. 3712

INTERNAL REVENUE CODE:

Method to be used by livestock raisers in determining the extent to which gains and losses from sales of breeding cattle held for more than six months constitute capital gains and losses within the meaning of section 117(j) of the Internal Revenue Code, as construed by I. T. 3666 (C. B. 1944, 270).

Advice is requested as to the method to be employed by livestock raisers in determining the extent to which gains and losses from sales of breeding cattle held for more than six months constitute capital gains and losses within the meaning of section 117(j) of the Internal Revenue Code, as construed by I. T. 3666 (C. B. 1944, 270).

A breeding herd owned by a livestock raiser is recognized by I. T. 3666, supra, as "property used in the trade or business," of a character which is subject to the allowance for depreciation, within the meaning of section 117(j) of the Code, provided it is held for more than six months. The offspring of the breeding herd, however, are "property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business" and, therefore, are not subject to the provisions of section 117(j) of the Code if such offspring, in the case of cattle, consist of all steers, all heifers not held for replacement in the breeding herd, and all cows and bulls not held for breeding purposes but held for sale in the normal course of business. It is recognized that customarily a livestock raiser sells from the breeding herd not only old animals, unfit for breeding purposes, but also a certain number of animals which may be used by another livestock raiser for breeding purposes or which may go to a feeder or direct to slaughter. I. T. 3666, supra, recognizes that the ordinary sales of livestock by a livestock raiser are productive of ordinary income, and abnormal sales which effect a reduction in the breeding herd are subject to the provisions of section 117(j) of the Code.

I. T. 3666, supra, provides that the sale of animals culled from the breeding herd as feeder or slaughter animals in the regular course of business is not to be treated as the sale of a capital asset. The phrase "culled from the breeding herd" refers to the normal selection for sale of those animals which, due to injury, age, disease, or for any other reason (other than that of changing the breed or the quality of the offspring) are no longer desired by the livestock raiser for breeding purposes, and also the normal selection for sale of animals for the purpose of maintaining the herd at a regular size. The primary factor is normal practice in the case of the particular taxpayer involved.

Since in many cases it will be found impractical to determine accurately the number of animals sold from the breeding herd, the following prima facie test is provided for the guidance of livestock raisers. If the number of animals sold from the breeding herd during a taxable year exceeds the number of raised animals added to the breeding herd during the same year, it will be presumed that the excess number sold consisted of animals held for breeding purposes, the gain or loss from which (if held for more than six months) is sub-

ject to the provisions of section 117(j) of the Code. Such sales effect a reduction in the livestock raiser's breeding herd. For the purpose of the foregoing test, livestock purchased for the herd to improve its quality or change its breeding shall not be considered as replacing animals sold. However, the livestock raiser who normally sells all of his cattle's offspring and maintains his breeding herd through purchases shall be considered, for purposes of the foregoing test, as maintaining his herd with animals raised by him. If animals which were held for breeding purposes and were sold can not be identified, it will be presumed that the resulting number of the highest-priced animals sold were breeding animals and the balance "culls." If the number of raised animals added to the herd is greater than the number of such animals found unfit for breeding purposes and sold during the year, none of the animals sold will be considered capital assets subject to the provisions of section 117(j) of the Code.

The determination of whether an animal sold was "held for breeding purposes" or was a "cull" shall be made from the point of view of the seller, and it shall in no case be affected by the purpose to which the animal is put by the purchaser. Thus, if a livestock raiser reduces his herd by abnormal sales of breeding animals, it makes no difference whether they are purchased by another livestock raiser for breeding purposes or by a packer for slaughter. Similarly, if a livestock raiser of registered animals sells his normal production of animals to another livestock raiser who uses them for breeding purposes, they are considered his ordinary product and the gains resulting therefrom are ordinary income not subject to section 117(j) of the Code. However, gains and losses from abnormal sales from such a livestock raiser's own breeding herd held for more than six months are subject to section 117(j) of the Code. The reasons of the livestock raiser for making abnormal sales of breeding animals held for more than six months are immaterial, and the provisions of section 117(j) of the Code apply whether the animals are sold because of drought, economic circumstances, or for any other cause.

Immature animals which have been retained by a livestock raiser for breeding purposes shall be considered a part of the breeding herd. Gains and losses from normal sales of such immature animals, however, in accordance with the foregoing principles, are not subject to the provisions of section 117(j) of the Code. Ewe lambs and heifer yearlings held through the winter shall be presumed to be held for breeding purposes. Heifer calves shall be considered to be held for breeding purposes if and to the extent that the livestock raiser normally keeps such heifer calves for breeding purposes. The same principles shall apply to young females of other species and to young unaltered males.

I. T. 3666, supra, further provides that, for the purposes of section 117(j) of the Code, in determining the gain derived from the sale of livestock in the case of a livestock raiser operating upon an accrual basis, in which inventories are used, the basis should reflect any amount of depreciation which has been sustained and which has, in effect, been allowed in the inventory computations. That provision has no application with respect to livestock inventoried by use of the "farm-price method," since such method reflects in the inventory computations the depreciation sustained and it does not contemplate the use of

a basis which represents cost. Neither will such provision be applied in the case of animals raised by a livestock raiser and inventoried by him by the use of the "unit-livestock-price method," because the proper salvage value generally approximates the unit livestock price used by the livestock raiser. (See section 29.22(c)-6 of Regulations 111, as amended by T. D. 5423, page 70, this Bulletin, and Mim. 5790, page 72, this Bulletin.) The basis of livestock which has been carried in a capital account is subject to adjustment on account of depreciation. Also, when livestock purchased for dairy or breeding purposes is included in the inventory and later sold under conditions whereby the sale is treated as the sale of a capital asset, the basis of such livestock on the date of sale should be adjusted to reflect depreciation sustained from the date of acquisition to the date of sale. Such depreciation on purchased animals should be computed by taking into account the salvage value estimated as of the date of acquisition. The basis of such purchased animals should be reduced, however, only to the extent that the livestock raiser has, in effect, received the equivalent of a deduction for depreciation through his inventory computations.

A livestock raiser who claims that sales of his livestock during any taxable year should be treated as sales of capital assets under the provisions of section 117(j) of the Code should attach to his Federal income tax return for such year a statement setting forth the necessary facts relating to the animals sold and indicating in detail the amounts entered in his return and the items and schedules in which they are reported.

SECTION 29.117-8: Gain or loss upon the cutting and disposal of timber. 1945-3-11952 I. T. 3713

INTERNAL REVENUE CODE.

With respect to partnership items, the right to the election, under section 117(k)(1) of the Internal Revenue Code, as added by section 127(a) of the Revenue Act of 1943, to have the cutting of timber (for sale or for use in the taxpayer's trade or business) considered as a sale or exchange of such timber cut during a taxable year extends to and must be exercised by the partnership. An election thus made will apply only to assets of the particular partnership, and will not constitute an election by any of the partners as to his own individual assets or as to the assets of any other partnership of which one or more of such individuals may be members.

Advice is requested whether, under section 117(k)(1) of the Internal Revenue Code, a partnership may exercise the election to have the cutting of timber (for sale or for use in the taxpayer's trade or business) considered as a sale or exchange of such timber cut during a taxable year.

Section 117(k)(1) of the Internal Revenue Code, as added by section 127(a) of the Revenue Act of 1943, applicable with respect to taxable years beginning after December 31, 1943, provides as follows:

(k) GAIN OR LOSS UPON THE CUTTING OF TIMBER.—

(1) If the taxpayer so elects upon his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than six months prior to the beginning of such year) shall be considered as a sale or exchange of such timber cut

during such year. In case such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the adjusted basis for depletion of such timber in the hands of the taxpayer and the fair market value of such timber. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this paragraph such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding upon the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Commissioner, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this paragraph except with the consent of the Commissioner.

Pursuant to the provisions of section 117(k)(1) of the Code, supra, the election to secure the benefits therein provided must be made by the *taxpayer*.

Section 3797(a)(14) of the Code defines "taxpayer" as follows:

(14) TAXPAYER.—The term "taxpayer" means any person subject to a tax imposed by this title.

Section 181 of the Code provides as follows:

SEC. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

In view of the provisions of section 181 of the Code, supra, a partnership is not taxable as such and may not be classified as a "taxpayer," as that term is defined in section 3797(a)(14) of the Code, supra. Nevertheless, a partnership is treated as a unit in section 183 of the Code, under which section the partnership net income must be computed, and in section 187 of the Code, which requires that every partnership shall make a return for each taxable year of its gross income and deductions, together with other information for the purpose of carrying out the provisions of Chapter 1 of the Code, relating to income tax. Also, under section 29.187-1 of Regulations 111, a partnership is required to adopt its own annual accounting period. In order to accomplish a proper reflection of partnership gross income and deductions in the ascertainment of partnership net income, partnership items must be recognized as unit items returnable as such in the partnership return. It follows, therefore, that in so far as partnership items are concerned, the right to the election provided for in section 117(k)(1) of the Code, supra, upon which there depends a benefit granted to taxpayers generally, must be considered as available to a partnership, and the right to the election must be exercised by it.

Accordingly, it is held that, with respect to partnership items, the right to the election, under section 117(k)(1) of the Internal Revenue Code, as added by section 127(a) of the Revenue Act of 1943, to have the cutting of timber (for sale or for use in the taxpayer's trade or business) considered as a sale or exchange of such timber cut during a taxable year extends to and must be exercised by the partnership. It is not necessary that the election be signed by all of the partners since the decision of a majority in interest is controlling in partnership affairs. It will be sufficient if the election is made in the partnership return as ordinarily prepared and filed. An election thus made will apply only to assets of the particular partnership, and

will not constitute an election by any of the partners as to his own individual assets or as to the assets of any other partnership of which one or more of such individuals may be members.

SECTION 122.—NET OPERATING LOSS DEDUCTION.

SECTION 29.122–3: Computation of net operating loss in case of a taxpayer other than a corporation.

INTERNAL REVENUE CODE.

Loss on sale of real estate owned and operated as a source of income. (See I. T. 3711, page 162.)

SECTION 124.—AMORTIZATION DEDUCTION.

SECTION 29.124–0: Definitions. 1945–3–11953
(Also Sections 29.124–1, 29.124–2, 29.124–5, T. D. 5432
29.124–6, and 29.124–7.)

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 Executive Order No. 9406, Executive Order No. 9486, and Executive Order No. 9490 under Title I of the First War Powers Act of 1941, transferring functions with respect to certificates of necessity and of nonnecessity from the Secretary of War and the Secretary of the Navy to the Chairman of the War Production Board.

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 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.] to Executive Order No. 9406, dated December 17, 1943, Executive Order No. 9486, dated September 30, 1944, and Executive Order No. 9490, dated October 20, 1944, such regulations are amended as follows:

PARAGRAPH 1. Section 29.124–0 is amended as follows:

(A) By changing subsection (*a*) to read:

(*a*) "Certifying officer" means the Secretary of War or the Secretary of the Navy, as the case may be, or the duly authorized representative of either. The term "certifying officer" includes the Chairman of the War Production Board, or his duly authorized representative, in case any certification provided for in section 124 is made by the Chairman of the War Production Board or his duly authorized representative pursuant to Executive order.

(B) By adding in subsection (*b*) after "Secretary of the Navy," the words "or the Chairman of the War Production Board, or his duly authorized representative," and by striking out in such subsection (*b*) "Secretary of the department concerned," wherever it occurs, and inserting in lieu thereof "certifying officer."

PAR. 2. Sections 29.124–1, 29.124–2, 29.124–5, 29.124–6, and 29.124–7 are amended by striking out "Secretary of the department concerned" wherever it occurs, and substituting in lieu thereof "certifying officer."

PAR. 3. Section 29.124–5 is further amended:

(A) By striking out, in the seventh line of the example in subsection (*b*), "Secretary of War" and substituting in lieu thereof "certifying officer."

(B) By striking out, in the fifth line of the example in subsection (*d*), "Secretary of the Navy" and substituting in lieu thereof "certifying officer."

(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).)

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

Approved January 23, 1945.

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

(Filed with the Division of the Federal Register January 24, 1945, 11.44 a. m.)

SECTION 29.124–1: Certificate of necessity.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5432, page 180.)

SECTION 29.124–2: Amortization deduction—General rule.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5432, page 180.)

SECTION 29.124–5: Termination of amortization period. 1945–24–12200 Mim. 5957

Problems relating to the ending of the amortization period as provided in section 124(d)(1) of the Internal Revenue Code.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 12, 1945.

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

Numerous questions have arisen as a result of the President's proclamation ending the emergency period, as defined in section 124(e)(2) of the Internal Revenue Code. It is the purpose of this mimeograph to answer the most prevalent questions. The President's proclamation was signed on September 29, 1945, and was filed with the Federal Register on October 3, 1945.

Section 124(d)(1) of the Internal Revenue Code, relative to termination of the amortization period, provides as follows:

(1) If the President has proclaimed the ending of the emergency period (as defined in subsection (e)), or if the Secretary of War or the Secretary of the Navy has, in accordance with regulations prescribed by the President, certified to the Commissioner that an emergency facility ceased, on the date specified in

the certificate, to be necessary in the interest of national defense during the emergency period, and if the date of such proclamation or the date specified in such certificate occurs within sixty months from the beginning of the amortization period with respect to such emergency facility, then the taxpayer may elect (in accordance with paragraph (4) of this subsection) to terminate the amortization period with respect to such emergency facility as of the end of the month in which such proclamation was issued or in which occurred the date specified in such certificate, whichever is the earlier. In such case the amortization period with respect to such facility shall end with the end of such month in lieu of the end of the sixty-month period.

In order for a taxpayer to receive any amortization deductions with respect to facilities, it is necessary that a certificate shall have been issued certifying that such facilities are necessary in the interest of national defense during the emergency period. A taxpayer who has received such a necessity certificate but has not elected to take amortization deductions may, nevertheless, by reason of the President's proclamation or the issuance of a non-necessity certificate, elect to take amortization deductions using an amortization period beginning with the month following the month in which the emergency facility was completed or acquired and ending September 30, 1945, or as of the end of the month within which occurred the date specified in the non-necessity certificate, whichever is the earlier. In any event, the question of making an election to terminate the amortization period is a matter within the discretion of the taxpayer.

The word "facilities" where used hereinafter means emergency facilities as defined in section 124(e)(1) of the Code. Appropriate answer to each numbered question follows each question.

1. What is the form of election and what is the expiration date of the 90-day period for making an election to terminate the amortization period in accordance with section 124(d)(4) of the Code?

No special form has been prescribed for making this election. It may be made by addressing a letter to the Commissioner of Internal Revenue, Washington 25, D. C., attention IT:P:CA, stating the election and giving a brief description identifying the facilities. Although the President's proclamation ended the emergency period on September 29, 1945, an election to terminate the amortization period will be considered timely if filed on or before January 1, 1946, 90 days from the date the President's proclamation was filed with the Federal Register. If, however, a non-necessity certificate is issued, the time for filing an election to terminate the amortization period will expire 90 days from the date of issuance of the non-necessity certificate.

2. In making the election to terminate the amortization period under section 124(d) of the Code, is it necessary under section 29.124–5(e) of Regulations 111 to give a detailed description of the facilities such as is contained in the certificate of necessity?

The Bureau has not prescribed any particular form for the description of emergency facilities under section 29.124–5(e) of Regulations 111. A detailed itemization is not required. Such facilities should be clearly identified by a brief description and reference to the certificate of necessity numbers. Where the election does not cover all of the facilities listed in a certificate of necessity, it will be necessary to furnish sufficient information to identify the particular facilities which are covered by the election.

3. May the taxpayer disregard the non-necessity certificate and elect to terminate the amortization period as of September 30, 1945, on the basis of the President's proclamation?

If the taxpayer has received a non-necessity certificate and the date specified in such certificate is before the date of the President's proclamation, the date specified in such non-necessity certificate is determinative of the end of the amortization period.

4. Having elected to terminate the amortization period, may the taxpayer nevertheless continue amortization on the 60-month basis?

If the taxpayer has elected to terminate the amortization period, there is no authority under the law to take amortization on the basis of a 60-month period. Such election is not revocable unless the revocation is made within a 90-day period referred to in question 1.

5. May the taxpayer elect to terminate the amortization period with respect to one or more facilities and continue amortizing its other facilities on the 60-month basis?

Section 124(d)(1) of the Code, refers to "an emergency facility." Since reference is not therein made to all of the emergency facilities of the taxpayer, the taxpayer may elect to terminate the amortization period with respect to one or more of its facilities without terminating such period with respect to all of its facilities. As to what constitutes separate facilities, see the answer to question 6.

6. Where a necessity certificate covers more than one facility, how can the separate facilities be distinguished?

It is difficult to lay down a rule for distinguishing the line of demarcation between separate facilities. A necessity certificate may cover several facilities. Generally, each separate functional unit should be considered a separate facility. In some instances, certain items of equipment constitute separate facilities while in other cases exactly similar items might constitute only parts of a functional facility. For instance, in some cases certain motors might be considered separate facilities, whereas in other cases they will constitute only parts of one facility, and this is true even though they might be usable as replacement parts for other facilities. The purpose for which each item was acquired should be considered. If an item is only part of a functional unit, it is not a separate facility, though in other cases a similar item might constitute a separate facility.

7. May the cost of facilities which are in process of construction on September 29, 1945, be amortized over a 60-month period after completion?

Facilities which were in process of construction on September 29, 1945, may be amortized over a 60-month period beginning with the month following completion, or with the succeeding taxable year if proper election is made in accordance with section 124(b) of the Code.

8. Are facilities acquired after September 29, 1945, subject to amortization?

Generally, facilities acquired after September 29, 1945, are subject to amortization over the 60-month period provided in section 124(a) of the Code if the taxpayer proceeded with due diligence to acquire such facilities.

9. Are facilities acquired after September 29, 1945, subject to amortization over the shortened period in accordance with section 124(d) of the Code?

Since the emergency period had been terminated prior to the beginning of the amortization period with respect to such facilities, there is no shortened period over which such facilities may be amortized.

10. Are facilities which were sold or abandoned prior to September 29, 1945, or prior to the date specified in a non-necessity certificate, as the case may be, subject to amortization over the shortened period provided in section 124(d) of the Code?

Facilities which were sold or abandoned prior to September 29, 1945, the date of termination of the emergency period, or prior to the date specified in a non-necessity certificate, as the case may be, are not subject to amortization over the shortened period provided in section 124(d) of the Code because their use as emergency facilities was terminated by reason of such sale or abandonment. Under such circumstances, the adjusted basis for gain or loss at the date of sale or abandonment must be determined without reference to the shortened emergency period provided in section 124(d). If the facilities were not sold before September 29, 1945, they are subject to amortization over the shortened period even though subsequently sold either before or after the date of the notice of election.

11. Are facilities acquired in September, 1945, subject to amortization over the shortened period provided in section 124(d) of the Code?

Section 124(a) of the Code provides that the 60-month period shall begin, at the election of the taxpayer, with the month following the month in which the facility was completed or acquired or with the succeeding taxable year. Section 124(d), with respect to termination of the amortization period, provides that in the event the taxpayer elects to terminate the amortization period as of the end of the month in which the President's proclamation was issued, the amortization period shall end with the end of the month in which such proclamation was issued in lieu of the end of the 60-month period. Inasmuch as the amortization period, with respect to facilities acquired in September, 1945, could not begin until October 1, 1945, and since the date of the President's proclamation ending the emergency period on September 29, 1945, occurred not within but prior to the beginning of the amortization period, such facilities are not subject to amortization over a shortened amortization period.

12. May facilities which are under construction on September 29, 1945, be completed and the entire cost be amortized over the shortened period provided in section 124(d) of the Code?

With respect to facilities which were incomplete on September 29, 1945, any costs incurred subsequent to that date may not be amortized over the period ended September 30, 1945. Section 124(d)(6) of the Code provides that the taxpayer may make an election to take an amortization deduction using an amortization period beginning with the month in which the construction, reconstruction, erection, or installation was begun and ending as of the end of the month within which the President's proclamation was issued. The costs thus subject to amortization include only those incurred on or before September 29, 1945, the end of the emergency period. The costs incurred subsequent to September 29, 1945, for depreciable assets, in event of election under section 124(d)(6), are subject only to the depreciation allowance. If, however, the taxpayer does not elect to terminate the amortization period under section 124(d), he may amortize the entire cost, including costs incurred both before and after September 29, 1945, over a 60-month period after completion. As to what constitutes costs incurred before the end of that period, see the answer to question 14.

13. Where less than 100 per cent of the cost has been certified as emergency facilities and such facilities were not completed on September 29, 1945, can the entire cost to that date be considered as representing cost of emergency facilities if the percentage of completion does not exceed the percentage certified as emergency facilities?

As an illustration of the problem presented by this question, assume that the War Production Board has certified that a certain facility will be considered an emergency facility to the extent of 50 per cent of the cost thereof. Assume further that on September 29, 1945, the facility was 50 per cent completed. The question arises as to whether the 50 per cent of the total cost which has been incurred during the emergency period represents the full 50 per cent portion of the completed facility which is to be recognized as necessary in the interests of national defense during the emergency period. It is held that the emergency portion of such facility arises ratably over the entire cost. In other words, when the facility is 50 per cent completed only 25 per cent of the total cost of the completed facility constitutes cost of an emergency facility.

14. In case of facilities under construction by the taxpayer at the time the emergency period ended, what is the status of costs under contracts for materials, title to which has not passed to the taxpayer or for labor which has not been performed?

With respect to facilities under construction by the taxpayer which are incomplete on September 29, 1945, materials and labor contracted for but with respect to which title to the materials had not passed to the taxpayer, or labor had not been performed on or before September 29, 1945, there is no cost subject to amortization beginning with the month in which the construction was begun and ending as of the end of the month in which the President's proclamation was issued, as provided in section 124(d)(6) of the Code. The total cost of such facilities when completed may, however, be amortized over the 60-month period as explained in the answer to question 12, provided election is not made under section 124(d)(6) of the Code to take amortization of costs incurred to September 29, 1945.

15. What method should be used under section 124(d)(6) of the Code for computation of amortization of facilities which were incomplete at the end of the emergency period?

Stated more specifically, this question is (1) whether the cost of such facilities to September 29, 1945, should be amortized ratably over the number of months beginning with the month in which the construction, reconstruction, erection, or installation was begun and ending as of the end of the month within which the President's proclamation was issued or within which occurred the date specified in the non-necessity certificate, or (2) whether the cost during each month of such shortened period should be charged off ratably over such month and the succeeding months of the emergency period. Assume, for instance, that the cost of an incomplete facility to September 29, 1945, amounted to $120,000, and assume further, for convenience, that such cost had been incurred ratably over a period of 12 months beginning with October, 1944. Under (1) the $120,000 would be amortized at the rate of $10,000 per month from October, 1944, to September, 1945, inclusive. This method would, in some cases, result in deductions for the earlier months of construction exceeding the total expenditures for those months. Under (2) the costs of $10,000 incurred in October,

1944, would be amortized over the 12-month period, the November costs would be amortized over an 11-month period, the December costs would be amortized over a 10-month period, etc. The latter method follows in principle section 29.124–2 of Regulations 111 and would be applicable.

16. In making application for a tentative adjustment with respect to amortization deductions (Forms 1140 and 1046), should effect be given to the carry-back of a net loss or an unused excess profits credit or to adjustment of such carry-backs which result from the increased amortization deduction?

Section 7(j) of the Tax Adjustment Act of 1945 provides for filing an application for tentative adjustment with respect to the taxes for taxable years prior to the taxable year in which such application is filed which are to be computed as required by section 124(d)(4) of the Internal Revenue Code as the result of such election. Section 124(d)(4) of the Code provides that when such election has been made, the taxes for all taxable years beginning with the taxable year in which the amortization period began shall be computed by using (in lieu of the 60-month period) the shortened amortization period. Accordingly, there is no authority to make a tentative adjustment with respect to any taxable year prior to the taxable year in which the amortization period began. Any net loss carry-back or unused excess profits credit carry-back, or adjustment thereof, to the extent attributable to the increased amortization deduction, should be given effect in so far as taxable years during the amortization period are concerned.

17. In the event the taxpayer has not previously elected to take amortization deductions, is it necessary to make the regular election under section 124(b) of the Code in addition to the election under section 124(d)?

No. Section 124(d)(3) permits an original election.

18. In making an application for tentative adjustment, is it necessary to adjust invested capital for the additional amortization and for the decrease in State income taxes, etc.?

Yes. However, inasmuch as the adjustment is only tentative, the Bureau will not be unreasonably strict in requiring incidental adjustments of small amounts involving complicated computations.

19. In case of consolidated returns, should the parent company make the election?

Yes, in conjunction with the election of each subsidiary corporation to which a certificate of necessity has been issued.

20. Is a claim on Form 843 necessary in addition to the application for tentative adjustment?

If the refund made on the basis of an application on Form 1046 or Form 1140, whichever is applicable, is the correct amount as finally determined, a claim on Form 843 is unnecessary. If, however, the Commissioner disallows the application for a tentative adjustment, or if for any reason the refund is not made within the statutory period provided in section 322 or 124(d)(5) of the Internal Revenue Code, the taxpayer's remedy is the usual claim for credit or refund (Form 843) on which suit may be maintained as provided in the Code. Also, if it should later be determined that an additional refund is due on the basis of the revised amortization deduction, such refund would be barred if not made within the statutory period provided in section 322 or 124(d)(5) of the Code unless a claim on Form 843 is filed within such statutory period.

21. To what extent will certificates of necessity be recognized if the facilities are transferred to another taxpayer?

Complete information regarding such transfers must be considered in determining to what extent certificates of necessity may be recognized for the purpose of allowance of amortization deductions to the successor taxpayer. Such information should include:

(*a*) The reason why the transfer was necessary or desirable.
(*b*) Nature of business conducted by the former and present holder of the certificates, the organization under which each business was operated, and the ownership thereof.
(*c*) A nontechnical description of the facilities, the nature of their use in the interest of national defense during the emergency period, and the nature of their use since that time.

Generally, the certificate issued to a transferor will be recognized in the hands of the transferee if the transfer was made in a nontaxable transaction under section 112(b) of the Code.

22. What is the procedure for securing an extension of time for payment of installments of tax falling due during the period an application for tentative adjustment of amortization is under consideration by the Commissioner?

No form has been prescribed for this purpose. Upon request of the taxpayer, addressed to the collector of internal revenue, at or after the date of filing an application for tentative adjustment, an extension of time will be granted for payment of tax determined by the taxpayer for the preceding taxable year or any installment thereof falling due during the period of consideration of the application. The amount deferred shall not exceed the net decrease in taxes shown on Form 1140 or Form 1046 reduced by the unpaid taxes other than amounts not yet due. The extension will terminate when the Commissioner approves the allowance of the tentative adjustment or disallows the application.

Correspondence in regard to the contents of this mimeograph should refer to its number and the symbols IT: P: CA–FSM.

JOSEPH D. NUNAN, Jr.,
Commissioner.

SECTION 29.124–5: Termination of amortization period.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5432, page 180.)

SECTION 29.124–6: Adjusted basis of emergency facility.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5432, page 180.)

SECTION 29.124–7: Depreciation of portion of emergency facility not subject to amortization.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5432, page 180.)

SECTION 125.—AMORTIZABLE BOND PREMIUM.

SECTION 29.125–1: In general. 1945–21–12156
(Also Section 115, Section 29.115–3; Section 718, I. T. 3764
Section 35.718–2, Regulations 112.)

INTERNAL REVENUE CODE.

The amortizable bond premium (determined under section 125 of the Internal Revenue Code, as added and made applicable by section 126 of the Revenue Act of 1942 to taxable years beginning after December 31, 1941) on *wholly tax-exempt* bonds owned by a corporation otherwise than as a dealer in securities, although expressly not allowable as a deduction for the purpose of computing net income, must be taken into account, together with the interest on the bonds, for *each* taxable year in computing earnings and profits for that year for the purposes of determining (1) earnings and profits available for the payment of dividends, and (2) accumulated earnings and profits includible in invested capital.

Advice is requested whether the amortizable bond premium, determined under section 125 of the Internal Revenue Code, as added and made applicable by section 126 of the Revenue Act of 1942 to taxable years beginning after December 31, 1941, on *wholly tax-exempt* bonds owned by a corporation and not held by it as a dealer in securities, must be taken into account, together with interest on the bonds, in computing earnings and profits for each taxable year for the purposes of determining (1) earnings and profits available for the payment of dividends under section 115 of the Code, and (2) accumulated earnings and profits includible in invested capital under section 718 of the Code.

Section 125 of the Internal Revenue Code provides in part as follows:

(a). GENERAL RULE.—In the case of any bond, as defined in subsection (d), the following rules shall apply to the amortizable bond premium (determined under subsection (b)) on the bond for any taxable year beginning after December 31, 1941:

(1) INTEREST WHOLLY OR PARTIALLY TAXABLE.—In the case of a bond (other than a bond the interest on which is excludible from gross income), the amount of the amortizable bond premium for the taxable year shall be allowed as a deduction.

(2) INTEREST WHOLLY TAX-EXEMPT.—In the case of any bond the interest on which is excludible from gross income, *no deduction shall be allowed for the amortizable bond premium for the taxable year.*

(3) ADJUSTMENT OR CREDIT IN CASE OF INTEREST PARTIALLY TAX-EXEMPT.—In the case of any bond the interest on which is allowable as a credit against net income, the credit provided in section 25(a) (1) or (2), or section 26(a), as the case may be, shall be reduced by the amount of the amortizable bond premium for the taxable year.

(For adjustment to basis on account of amortizable bond premium, see section 113(b)(1)(H)).

(b) AMORTIZABLE BOND PREMIUM.—

* * * * * * *

(2) AMOUNT AMORTIZABLE.—*The amortizable bond premium of the taxable year* shall be the amount of the bond premium *attributable to such year.*

* * * * * * *

(d) DEFINITION OF BOND.—As used in this section, the term "bond" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation and bearing interest (including any like obligation issued by a government or political subdivision thereof), with interest coupons or in registered form, but does not include any such obligation which constitutes stock in trade of the taxpayer or any such obligation of a kind which would properly be

included in the inventory of the taxpayer if on hand at the close of the taxable year, or any such obligation held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. [Italics supplied.]

Section 113(b)(1)(H) of the Code, as added by section 126 of the Revenue Act of 1942, provides for adjustment of gain or loss basis or adjusted basis as follows:

> (H) in the case of any bond (as defined in section 125) the interest on which is wholly exempt from the tax imposed by this chapter, to the extent of the amortizable bond premium disallowable as a deduction pursuant to section 125(a)(2) * * *

Section 29.125–1 of Regulations 111 provides in part as follows:

IN GENERAL.—(*a*) *Application.*—Section 125 makes provision for the amortization of bond premium by the owners of the bonds. It is mandatory with respect to—

(1) fully tax-exempt bonds (the interest on which is excludible from gross income), whether the owner is a corporation, individual, or other taxpayer; and

* * * * * * *

(*b*) *Operation.*—In the case of a fully tax-exempt bond, the amortizable bond premium for the taxable year is simply an adjustment to the basis or adjusted basis of the bonds. Thus, if such premium is $1, the basis or adjusted basis of the bond is reduced by $1. No deduction is allowable on account of such amortizable bond premium. In the case of a fully taxable bond to which section 125 is applicable, the amortizable bond premium is both an adjustment to the basis or adjusted basis of the bond and a deduction.

In the case of a partially tax-exempt bond to which such section is applicable, the amortizable bond premium for the taxable year is used for three purposes: (1) as an adjustment to the basis or adjusted basis of the bond; (2) as a deduction; and (3) as a reduction of the credit for the interest on the bond, provided in section 25(a)(1) or (2), or section 26(a).

Statements similar to the provisions of section 29.125–1(*b*) of Regulations 111 appear in the Congressional committee reports on the revenue bill of 1942. (See H. R. Report No. 2333, C. B. 1942–2, 372, 432; Senate Report No. 1631, C. B. 1942–2, 504, 574.)

Since, under the definition in section 125(d) of the Code, supra, of the term "bond" as used in section 125 of the Code, bonds owned by dealers in securities and held by them in such business are excluded, section 125 has no application thereto, even though the bonds are wholly tax-exempt.

Section 29.115–3 of Regulations 111 provides in part as follows:

Among the items entering into the computation of corporate earnings or profits for a particular period are all income exempted by statute, income not taxable by the Federal Government under the Constitution, as well as all items includible in gross income under section 22(a) or corresponding provisions of prior Revenue Acts. Gains and losses within the purview of section 112 or corresponding provisions of prior Revenue Acts are brought into the earnings and profits at the time and to the extent such gains and losses are recognized under that section (see section 29.115–12). Interest on State bonds and certain other obligations, although not taxable when received by a corporation, is taxable to the same extent as other dividends when distributed to shareholders in the form of dividends.

Section 718(a)(4) of the Code provides in effect that in determining equity invested capital there shall be included the accumulated earnings and profits as of the beginning of the taxable year, and section 35.718–2 of Regulations 112 provides in part as follows:

The term "accumulated earnings and profits" is not defined in the Internal Revenue Code. See, however, section 115 and the regulations prescribed thereunder as to the effect of certain transactions on earnings and profits * * *. In general, the concept of "accumulated earnings and profits" for the purpose of the excess profits tax is the same as for the purpose of the income tax. * * *

The corporation involved in the instant case states that, for each taxable year beginning before January 1, 1942, in computing its earnings and profits for the purposes of determining earnings and profits available for the payment of dividends and accumulated earnings and profits includible in invested capital, it included, with respect to all bonds owned by it, whether the interest therefrom was wholly taxable, partially tax-exempt, or wholly tax-exempt, the full amount of the interest therefrom for each year without any reduction on account of amortization of premiums paid in acquiring the bonds. This was correct in view of the provisions of prior regulations corresponding with those quoted from sections 29.115–3 of Regulations 111 and 35.718–2 of Regulations 112, supra, and the concept of such a bond premium then applicable for Federal income and excess profits tax purposes, namely, that it represented a part of the capital investment in the bond and, hence, was includible in the gain or loss basis thereof whereby it ultimately was reflected in earnings and profits upon, and as of the time of, sale or other disposition of the bond (see *New York Life Insurance Co.* v. *Edwards*, 271 U. S., 109, T. D. 3872, C. B. V–1, 305 (1926)).

The instant corporation further states that, for taxable years beginning after December 31, 1941, in such computations, it included, with respect to all bonds owned by it, the amount of the interest therefrom, less the amortizable bond premium, for each year. But it presents the question whether this is correct, with respect to *wholly tax-exempt* bonds owned by it, especially in view of the statement in section 29.125–1 of Regulations 111, supra, that "In the case of a fully tax-exempt bond, the amortizable bond premium for the taxable year is simply an adjustment to the basis or adjusted basis of the bonds," and similar statements in the Congressional committee reports relating to the present section 125 of the Code, supra. It adds that it recognizes, of course, that, if it is proper for the purposes here concerned, to include, in the computation of earnings and profits for each taxable year beginning after December 31, 1941, the full amount of the interest from such bonds, without any reduction on account of the amortizable bond premium thereon for each year while they were owned, then the aggregate amount of the amortizable bond premium for the taxable years (beginning after December 31, 1941) during which they were owned would have to be taken into account in computing earnings and profits for such purposes for the taxable year in which they are sold or otherwise disposed of. However, in so far as such statements in the regulations and Congressional committee reports are here concerned, it is manifest that, when read with their context, they merely point out the differences in the operation of amortizable bond premium under section 125 of the Code, supra, as between fully tax-exempt bonds, fully taxable bonds, and partially tax-exempt bonds, for the purposes of (1) adjustment of basis or adjusted basis (under section 113(b)(1)(H), supra), (2) deduction in computing net income (under sections 23(v) and 125(a)(1), supra), and (3) adjustment of credit against net income for interest (under section 25(a)(1) or (2), or section 26(a), and section 125(a)(3), supra).

Therefore, the question here presented, as to whether the amortizable bond premium on wholly tax-exempt bonds should be taken into account for each taxable year in computing earnings and profits for

that year for the purposes of determining (1) earnings and profits available for dividends (under section 115, supra), and (2) accumulated earnings and profits includible in invested capital (under section 718, supra), is not controlled by such statements. On the other hand, certain provisions of section 125 of the Code, supra, under which the new concept in the treatment of bond premium for Federal income tax purposes was generally adopted for taxable years beginning after December 31, 1941, indicate it was the intent that the amortizable bond premium, even on wholly tax-exempt bonds to which the section is applicable, is to be taken into account *for each taxable year* in so far as the computation of earnings and profits for the purposes of determining earnings and profits available for dividends and accumulated earnings and profits includible in invested capital is concerned. Section 125(b)(2) of the Code, supra, provides that *the amortizable bond premium of the taxable year* shall be the amount of the bond premium *attributable to such year*, and section 125(a)(2) provides, with respect to wholly tax-exempt bonds, that no deduction shall be allowed for *the amortizable bond premium for the taxable year*. In other words, although no deduction from gross income for the purpose of computing net income is allowable for amortizable bond premium on bonds the interest from which is not includible in gross income, the provisions of section 125 of the Code indicate that the amortizable bond premium thereon, as in the case of other bonds to which section 125 is applicable, is definitely attributable to each taxable year (beginning after December 31, 1941) during which the bonds are owned, and should be taken into account in computing the earnings and profits for each such taxable year for the purposes of determining earnings and profits available for the payment of dividends and accumulated earnings and profits includible in invested capital.

In the absence of any express provision to the contrary, this view is consistent with the provision of section 113(b)(1)(H) of the Code, supra, for adjustment of the gain or loss basis of the bonds "to the extent of the amortizable bond premium disallowable as a deduction pursuant to section 125(a)(2)," coupled with the provisions of section 115(l) of the Code, and section 29.115–12 of Regulations 111, relating to the effect on earnings and profits for the purposes here concerned of gain or loss realized from the sale or disposition (after February 28, 1913) of property by a corporation, under which the amortizable bond premium will not be reflected in such gain or loss for the purposes here concerned. This view is also consistent with the expressions in section 29.125–1 of Regulations 111, supra, that section 125 of the Code, supra, with respect to bonds to which it is applicable, "makes provision for the amortization of bond premium by the owners of the bonds," and that "It is mandatory with respect to—(1) fully tax-exempt bonds," unless the bonds are held by the owner as a dealer in securities. Moreover, such treatment of the amortizable bond premium on wholly tax-exempt bonds corresponds with the treatment, for the same purposes, of many other items which are attributable to a particular taxable year but are not allowable as deductions in computing net income for that year, such as charitable and other contributions not allowable under section 23 (o) and (q) of the Code and certain expenses and interest not allowable under section 24(c) of the Code.

In view of the foregoing, it is held that the amortizable bond premium (determined under section 125 of the Code, supra, for taxable years beginning after December 31, 1941) on *wholly tax-exempt* bonds owned by a corporation otherwise than as a dealer in securities, must be taken into account, together with the interest from the bonds, for *each* taxable year in computing earnings and profits for that year for the purposes of determining (1) earnings and profits available for the payment of dividends (under section 115, supra), and (2) accumulated earnings and profits includible in invested capital (under section 718, supra). Stated otherwise, in such computations, the full amount of the interest from the bonds for each taxable year must be added to other earnings and profits for that year and the amortizable bond premium for the year must be subtracted.

SECTION 126.—INCOME IN RESPECT OF DECEDENTS.

SECTION 29.126–1: Inclusion in gross income of income in respect of a decedent. 1945–12–12062 I. T. 3744

INTERNAL REVENUE CODE.

Where a retired United States civil service employee has received, as tax-free income, annuity payments equal to, or in excess of, his entire contribution to the civil service retirement fund, the aggregate amount of the unexpended balance in the fund which was paid to the administrator of his estate upon the death of the employee in 1944 is includible, under section 126(a) of the Internal Revenue Code, in the gross income of the estate for the taxable period in which received.

Advice is requested as to the treatment, for Federal income tax purposes, of the amount paid from the civil service retirement fund to the administrator of the estate of a retired United States civil service employee.

The employee retired in 1940 and died in 1944. He had received during his lifetime, as tax-free income, annuity payments in excess of his entire contribution to the retirement fund. Amounts received thereafter were taxed to him in full in accordance with the provisions of section 22(b)(2)(A) of the Internal Revenue Code. (See T. D. 5208, C. B. 1943, 65.) In 1944 the unexpended balance, including interest, in the civil service retirement fund to which the employee was entitled was paid to the administrator of his estate.

Section 126(a) of the Internal Revenue Code, as added by section 134(e) of the Revenue Act of 1942, applicable with respect to taxable years ending after December 31, 1942, provides in part as follows:

> * * * (1) GENERAL RULE.—The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period shall be included in the gross income, for the taxable year when received, of:
>
> (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;
>
> * * * * * * *
>
> (3) CHARACTER OF INCOME DETERMINED BY REFERENCE TO DECEDENT.—The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent * * * as if it had been acquired by the estate * * * in the transaction by which the decedent acquired

such right; and the amount includible in gross income under paragraph (1) * * * shall be considered in the hands of the estate * * * to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

It is held that where a retired United States civil service employee has received, as tax-free income, annuity payments equal to, or in excess of, his entire contribution to the civil service retirement fund, the aggregate amount of the unexpended balance in such fund which was paid to the administrator of his estate upon the death of the employee in 1944 is includible, under section 126(a) of the Internal Revenue Code, supra, in the gross income of the estate for the taxable period in which received. (See section 29.22(b)(2)–5, Regulations 111.)

SECTION 29.126–1: Inclusion in gross income of income in respect of a decedent. 1945–13–12074 T. D. 5459

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

Income in respect of a decedent.—Section 29.126–1 of Regulations 111 amended.

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

To Collectors of Internal Revenue and Others Concerned:

Section 29.126–1 of Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], as amended by Treasury Decision 5389, approved July 10, 1944 [C. B. 1944, 196], is further amended as follows:

(A) By striking the last sentence of the first paragraph.

(B) By striking the fifth sentence of the fourth paragraph, which reads as follows:

Upon his death, the payments by the surviving partners must be included in the widow's income to the extent they exceed the adjusted basis of such assets in the hands of the decedent immediately prior to his death.—

and by inserting in lieu thereof the following:

Upon his death, the payments by the surviving partners must be included in the widow's income to the extent they are attributable to the earnings of the partnership accrued only by reason of his death.

(C) By striking at the beginning of the sixth sentence of the fourth paragraph the words "This gain" and by inserting in lieu thereof the following:

The income reflected by the payments to the extent they are so attributable

(D) By striking at the end of the fourth paragraph the words "represent the gain on the sale." and by inserting in lieu thereof the following:

are attributable to the earnings of the partnership accrued only by reason of the death.

(E) By inserting immediately after the fourth paragraph the following:

Example. Suppose that A and the decedent B were equal partners in a business possessed of tangible assets having a present value considerably in excess of cost; suppose that certain current partnership business was well advanced

toward completion prior to the death of B; and suppose that the partnership agreement provided that, upon the death of one of the partners, all partnership assets, including unfinished business, should pass to the surviving partner, and that the surviving partner should make certain payments to the estate of the decedent. To the extent that the payments by A to the estate of B are attributable to B's interest in the previously earned proportion of the unfinished partnership business transactions, their receipt by the estate of B will reflect the realization of income. With respect to such portion of the payments by A as is attributable to B's interest in the tangible assets of the partnership which had appreciated in value, no gain to the estate of B will be recognized. If some portion of the payments by A is attributable to a sale of B's interest in partnership assets consummated by B prior to his death, however, the gain to the estate of B reflected in such payments will be recognized regardless of the character of the assets sold, and regardless of whether or not payment was due on a day which must occur after B's death.

(This Treasury decision is issued under the authority contained in sections 62 and 126 of the Internal Revenue Code (53 Stat., 32; 56 Stat., 831; 26 U. S. C. and Sup., 62, 126).)

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

Approved June 18, 1945.

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

(Filed with the Division of the Federal Register June 20, 1945, 2.06 p. m.)

SECTION 29.126–1: Inclusion in gross income of income in respect of a decedent. 1945–23–12178 I. T. 3771

INTERNAL REVENUE CODE.

Where the actual date of death of an individual who had been reported missing in action while a member of the armed forces is known, that date and not the presumptive date of death as determined by the head of the department concerned in accordance with section 5 of Public Law 490, Seventy-seventh Congress, second session (56 Stat., 143), as amended by Public Law 848, Seventy-seventh Congress, second session (56 Stat., 1092), constitutes the date of death for Federal income tax purposes.

I. T. 3750 (page 126, this Bulletin) distinguished.

Advice is requested whether, in the case of an individual who had been reported missing in action while a member of the armed forces, the actual date of death, or the presumptive date of death as determined by the head of the department concerned in accordance with section 5 of Public Law 490, Seventy-seventh Congress, second session (56 Stat., 143), as amended by Public Law 848, Seventy-seventh Congress, second session (56 Stat., 1092), should be considered the date of death for Federal income tax purposes.

In the instant case, the decedent was reported missing in action in 1942 and was so carried on the records of the War Department until April —, 1945. As of that date, the Adjutant General of the Army advised the decedent's mother that he had died on July —, 1942, while a prisoner of war, but that for the purpose of accounting he would be deemed to have died as of April —, 1945.

Section 2 of Public Law 490, supra, provides in part as follows:

Any person who is in active service and is officially reported as missing, missing in action, interned in a neutral country, or captured by an enemy shall, while so absent, be entitled to receive or to have credited to his account the same pay and allowances to which such person was entitled at the time of the beginning of the absence or may become entitled to thereafter * * *

Section 3 of Public Law 490, as amended, provides in part as follows:

Any person entitled under section 2 of this Act to receive pay and allowances, and who has made an allotment of pay for the support of dependents or for the payment of insurance premiums, shall be entitled to have such allotments for dependents or insurance premiums as he previously may have executed continued for a period of twelve months from date of commencement of absence * * *

Section 5 of Public Law 490, as amended, provides as follows:

When the twelve months' period from date of commencement of absence is about to expire in any case of a person missing or missing in action and no official report of death or of being a prisoner or of being interned has been received, the head of the department concerned shall cause a full review of the case to be made. Following such review and when the twelve months' absence shall have expired, or following any subsequent review of the case which shall be made whenever warranted by information received or other circumstances, the head of the department concerned is authorized to direct the continuance of the person's missing status, if the person may reasonably be presumed to be living, or is authorized to make a finding of death. When a finding of death is made it shall include the date upon which death shall be presumed to have occurred for the purposes of termination of crediting pay and allowances, settlements of accounts, and payments of death gratuities and such date shall be the day following the day of expiration of an absence of twelve months, or in cases in which the missing status shall have been continued as hereinbefore authorized, a day to be determined by the head of the department.

In general, fixing of the date of death pursuant to Public Law 490, as amended, supra, may be said to be for the purposes stated in that Act. However, such determination was also designed to aid other departments or agencies of the Federal Government in those cases in which the question of the date of death is pertinent. In I. T. 3750 (page 126, this Bulletin), where the date of death of the decedent was not known, it was held that the presumptive date of death of an individual reported missing in action while a member of the armed forces constitutes the date of death for Federal income tax purposes. In the instant case, the actual date of death was reported by the Adjutant General of the Army as July —, 1942, whereas the presumptive date of death, for purposes of termination of crediting pay and allowances, settlements of accounts, and payments of death gratuities, was deemed to have occurred on April —, 1945, the date as of which notice of the actual date of death was furnished. It is believed, therefore, that the presumptive date of death when determined under the provisions of Public Law 490, as amended, supra, is to be regarded as conclusive only for the purposes prescribed in that Act, or where Congress has by collateral legislation made it conclusive for other purposes. No such collateral legislation has been adopted by Congress in respect of Federal income tax. Accordingly, in the administration of the Federal income tax laws, where the actual date of death of a taxpayer becomes material and such date is known, the Bureau will not recognize a presumptive date of death rather than the established date of death. Nevertheless, as indicated in I. T. 3750, supra, where the actual date of death is not reliably established, the Bureau, as a matter of administrative practice, will adopt the presumptive date of death

fixed by the head of the appropriate department as the date of death in so far as that date may be material for Federal income tax purposes.

In view of the foregoing, it is held that where the actual date of death of an individual who had been reported missing in action while a member of the armed forces is known, that date, and not the presumptive date of death as determined by the head of the department concerned in accordance with section 5 of Public Law 490, as amended, supra, constitutes the date of death of such individual for Federal income tax purposes.

SECTION 127(c).—WAR LOSSES: RECOVERIES INCLUDED IN GROSS INCOME.

SECTION 29.127(c)–1: Recoveries included in gross income. (Also Sections 19.127(c)–1 and 19.127(c)–2, Regulations 103.)

INTERNAL REVENUE CODE.

Regulations 103 and 111 amended. (See T. D. 5454, page 68.)

SECTION 127(f)—WAR LOSSES: DETERMINATION OF TAX BENEFITS.

SECTION 29.127(f)–1: Determination of tax benefits from allowable deductions.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5454, page 68.)

SECTION 129.—ACQUISITIONS MADE TO EVADE OR AVOID INCOME OR EXCESS PROFITS TAX.

SECTION 29.129–1: Meaning and use of terms. (Also Sections 29.129–2, 29.129–3, 29.129–4, and 29.129–5; Section 45, Section 29.45–1.) 1945–2–11936 T. D. 5426

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

Regulations 111 amended to conform to section 128 of the Revenue Act of 1943, relating to acquisitions to evade or avoid income or excess profits tax.

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 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.] to section 128 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress), enacted February 25, 1944, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately after section 29.128–1 the following:

SEC. 128. ACQUISITIONS TO AVOID INCOME OR EXCESS PROFITS TAX. (REVENUE ACT OF 1943.)

(a) IN GENERAL.—Chapter 1 is amended by inserting after section 128 the following new section:

"SEC. 129. ACQUISITIONS MADE TO EVADE OR AVOID INCOME OR EXCESS PROFITS TAX.

"(a) DISALLOWANCE OF DEDUCTION, CREDIT, OR ALLOWANCE.—If (1) any person or persons acquire, on or after October 8, 1940, directly or indirectly, control of a corporation, or (2) any corporation acquires, on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately prior to such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income or excess profits tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit, or other allowance shall not be allowed. For the purposes of clauses (1) and (2), control means the ownership of stock possessing at least 50 per centum of the total combined voting power of all classes of stock entitled to vote or at least 50 per centum of the total value of shares of all classes of stock of the corporation.

"(b) POWER OF COMMISSIONER TO ALLOW DEDUCTION, ETC., IN PART.—In any case to which subsection (a) is applicable the Commissioner is authorized—

"(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income and excess profits tax for which the acquisition was made; or

"(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income and excess profits tax for which the acquisition was made; or

"(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2)."

* * * * * * *

(c) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by this section shall be effective with respect to taxable years beginning after December 31, 1943. The determination of the law applicable to prior taxable years shall be made as if this section had not been enacted and without inferences drawn from the fact that the amendment made by this section is not expressly made applicable to prior taxable years.

SEC. 29.129–1. MEANING AND USE OF TERMS.—As used in section 129 and in sections 29.129–2 to 29.129–5, inclusive—

(*a*) The term "allowance" refers to anything in the internal revenue laws which has the effect of diminishing tax liability. The term includes, among other things, a deduction, a credit, an adjustment, an exemption, or an exclusion.

(*b*) The phrase "evasion or avoidance" is not limited to cases involving criminal penalties, or civil penalties for fraud.

(*c*) The phrase "Federal income or excess profits tax" refers to any Federal tax imposed by Congress upon an income base.

(*d*) The term "control" means the ownership of stock possessing at least 50 per cent of the total combined voting power of all classes of stock entitled to vote, or at least 50 per cent of the total value of shares of all classes of stock

of the corporation. To "acquire, on or after October 8, 1940, * * * control," it is not necessary that all of such stock be acquired on or after October 8, 1940. Thus, if A, on October 7, 1940, and at all times thereafter, owns 40 per cent of the stock of Corporation X and acquires on October 8, 1940, an additional 10 per cent of such stock, an acquisition within the meaning of such phrase is made by A on October 8, 1940. Similarly, if B, on October 7, 1940, owns certain assets and transfers on October 8, 1940, such assets to a newly organized Corporation Y in exchange for all the stock of Corporation Y, an acquisition within the meaning of such phrase is made by B on October 8, 1940. If, under the facts stated in the preceding sentence, B is a corporation, all of whose stock is owned by Corporation C, then an acquisition within the meaning of such phrase is also made by Corporation C on October 8, 1940, by the shareholders taken as a group on such date, and by any of such shareholders if such shareholders as a group own 50 per cent of the stock of C on such date.

(*e*) The term "person" includes an individual, a trust, an estate, a partnership, a company, or a corporation.

SEC. 29.129–2. PURPOSE AND SCOPE OF SECTION 129.—Section 129 is designed to prevent in the instances specified therein the use of the sections of the Internal Revenue Code providing deductions, credits, or allowances in evading or avoiding Federal income or excess profits taxes. See section 29.129–3.

Under the Code, an amount otherwise constituting a deduction, credit, or other allowance becomes unavailable as such under certain circumstances. Characteristic of such circumstances are those in which the effect of the deduction, credit, or other allowance would be to distort the liability of the particular taxpayer when the essential nature of the transaction or situation is examined in the light of the basic purpose or plan which the deduction, credit, or other allowance was designed by the Congress to effectuate. The distortion may be evidenced, for example, by the fact that the transaction was not undertaken for reasons germane to the conduct of the business of the taxpayer, by the unreal nature of the transaction such as its sham character, or by the unreal or unreasonable relation which the deduction, credit or other allowance bears to the transaction. The principle of law making an amount unavailable as a deduction, credit, or other allowance in cases in which the effect of making an amount so available would be to distort the liability of the taxpayer, has been judicially recognized and applied in several cases. Included in these cases are *Gregory* v. *Helvering* (1935) (293 U. S., 465 [C. B. XIV–1, 193]); *Griffiths* v. *Helvering* (1939) (308 U. S., 355 [C. B. 1940–1, 136]); *Higgins* v. *Smith* (1940) (308 U. S., 473 [C. B. 1940–1, 127]); and *J. D. & A. B. Spreckels Co.* v. *Commissioner* (1940) (41 B. T. A., 370). In order to give effect to such principle, but not in limitation thereof, several provisions of the Code, for example, section 24 (b) and (c) and section 130, specify with some particularity instances in which disallowance of the deduction, credit, or other allowance is required. Section 129 is also included in such provisions of the Code. The principle of law and the particular sections of the Code are not mutually exclusive and in appropriate circumstances they may operate together or they may operate separately.

SEC. 29.129–3. INSTANCES IN WHICH SECTION 129(a) DISALLOWS A DEDUCTION, CREDIT, OR OTHER ALLOWANCE.—Section 129 specifies two instances in which a deduction, credit, or other allowance is to be disallowed. These instances, described in (1) and (2) of section 129(a), are those in which:

(1) Any person or persons acquire, directly or indirectly, on or after October 8, 1940, control of a corporation; and

(2) Any corporation acquires, directly or indirectly, on or after October 8, 1940, property of another corporation (not controlled, directly or indirectly, immediately prior to such acquisition by such acquiring corporation or its stockholders), the basis of which property in the hands of the acquiring corporation is a substituted basis.

In either instance the principal purpose for which the acquisition was made must have been the evasion or avoidance of Federal income or excess profits tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy. The principal purpose actuating the acquisition must have been to secure the benefit which such person or persons or corporation would not otherwise enjoy. If this requirement is satisfied, it is immaterial by what method or by what conjunction of events the benefit was sought. If the purpose to evade or avoid Federal income or excess profits tax exceeds in importance any other purpose, it is the principal purpose. This does not mean

that only those acquisitions fall within the provisions of section 129 which would not have been made if the evasion or avoidance purpose was not present. The determination of the purpose for which an acquisition was made requires a scrutiny of the entire circumstances in which the transaction or course of conduct occurred, in connection with the tax result claimed to arise therefrom.

If the requisite acquisition and purpose exist, among the transactions within (1) of section 129(a) are the following:

(1) A corporation (or the interest controlling such a corporation) with large profits acquires control of another corporation with current, past, or prospective credits, deductions, net operating losses, unused excess profits credits, or other allowances and the acquisition is followed by such transfers or other action as is necessary to bring the deduction, credit, or other allowance into conjunction with the income; or

(2) A corporation with large profits transfers the assets of each of its branches or departments to newly organized corporations in order to secure the benefit of the exemption provided in section 710(b)(1); or

(3) A corporation with high earning assets transfers them to a newly or-organized subsidiary retaining assets likely to produce losses or to be disposed of at a loss for the purpose of securing refunds through a utilization of the unused excess profits carry-back or the net operating loss carry-back.

If the requisite acquisition and purpose exist, among the transactions within (2) of section 129(a) is the following:

A corporation acquires property having in its hands a substituted basis which is materially greater than its fair market value at the time of such acquisition in order to secure a larger excess profits credit or to utilize the property to create tax-reducing losses.

SEC. 29.129-4. POWER OF COMMISSIONER TO ALLOCATE DEDUCTION, CREDIT, OR ALLOWANCE IN PART.—The Commissioner is authorized by subsection (b) of section 129 to allow a part of the amount disallowed by section 129(a), but he may allow such part only if and to the extent that he determines that the amount allowed will not result in the evasion or avoidance of Federal income and excess profits tax for which the acquisition was made. The Commissioner is also authorized to use other methods to give effect to part of the amount disallowed under subsection (a) of section 129 but only to such extent as he determines will not result in the evasion or avoidance of Federal income and excess profits tax for which the acquisition was made. Whenever appropriate to give proper effect to the deduction, credit, or other allowance, or such part of it which may be allowed, this authority includes the distribution, apportionment, or allocation of both the gross income and the deductions, credits, or other allowances the benefit of which was sought, between or among the corporations, or properties, or parts thereof, involved, and includes the disallowance of any such deduction, credit, or other allowance to any of the taxpayers involved.

SEC. 29.129-5. TAXABLE YEARS TO WHICH APPLICABLE.—The provisions of section 129 apply to taxable years beginning after December 31, 1943. A deduction, credit, or other allowance which would be disallowed by section 129 if that section were applicable to taxable years beginning prior to January 1, 1944, is nevertheless disallowed if its disallowance is required under any applicable law or rule of law.

PAR. 2. There is inserted immediately preceding section 29.45-1 the following:

SEC. 128. ACQUISITIONS TO AVOID INCOME OR EXCESS PROFITS TAX. (REVENUE ACT OF 1943.)

* * * * * * *

(b) TECHNICAL AMENDMENT.—Section 45 (relating to allocation of income and deductions) is amended by striking out "gross income or deductions" and inserting in lieu thereof "gross income, deductions, credits, or allowances".

(c) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by this section shall be effective with respect to taxable years beginning after December 31, 1943. The determination of the law applicable to prior taxable years shall be made as if this section had not been enacted and without inferences drawn from the fact that the amendment made by this section is not expressly made applicable to prior taxable years.

PAR. 3. Section 29.45–1 is amended as follows:

(A) By amending the last sentence of subsection (*a*) to read as follows:

It does not mean the income, the deductions, the credits, the allowances, or the item or element of income, deductions, credits, or allowances, resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement, the controlled taxpayer, or the interests controlling it, chose to make (even though such contract, transaction, or arrangement be legally binding upon the parties thereto).

(B) By striking the words "gross income or deductions," from the third sentence of the first paragraph of subsection (*b*) and inserting in lieu thereof the following: "gross income, deductions, credits, or allowances,".

(C) By amending the second sentence of the third paragraph of subsection (*b*) to read as follows:

It is not intended (except in the case of the computation of consolidated net income under a consolidated return) to effect in any case such a distribution, apportionment, or allocation of gross income, deductions, credits, or allowances, or any item of gross income, deductions, credits, or allowances, as would produce a result equivalent to a computation of consolidated net income under section 141.

(D) By striking the last three words "income or deductions" from the second sentence of the first paragraph of subsection (*c*) and inserting in lieu thereof the following: "income, deductions, credits, or allowances."

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., 62) and section 128 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress).)

GEO. J. SCHOENEMAN,
Acting Commissioner of Internal Revenue.

Approved December 29, 1944.

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

(Filed with the Division of the Federal Register December 30, 1944, 4.25 p. m.)

SECTION 29.129–2: Purpose and scope of section 129.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5426, page 196.)

SECTION 29.129–2: Purpose and scope of section 129. 1945–17–12119
I. T. 3757

INTERNAL REVENUE CODE.

The creation of a new domestic corporation to carry on the business in the Western Hemisphere (other than in the United States) of an existing domestic corporation does not constitute tax avoidance within the meaning of section 129 of the Internal Revenue Code, even though the new corporation was created for the principal purpose of gaining the benefits provided by the first exception in section 15(b) of the Code, relating to exemption from surtax in the case of Western Hemisphere trade corporations, and by section 727(g) of the Code, relating to certain domestic corporations which are exempt from excess profits tax.

Advice is requested whether the creation of a new domestic corporation to carry on the business in the Western Hemisphere (other than in the United States) of an existing domestic corporation constitutes tax avoidance within the meaning of section 129 of the Internal Revenue Code where the new corporation was created for the principal purpose of gaining the benefits provided by the first exception in section 15(b) of the Code, relating to exemption from surtax in the case of Western Hemisphere trade corporations, and by section 727(g) of the Code, relating to certain domestic corporations which are exempt from excess profits tax.

Section 15(b) of the Internal Revenue Code provides in the first of two parenthetical exceptions for an exemption from corporation surtax in the case of Western Hemisphere trade corporations, as defined in section 109 of the Code. The latter section defines a Western Hemisphere trade corporation to be a domestic corporation all of whose business is done in any country or countries in North, Central, or South America, or in the West Indies, or in Newfoundland, and which meets certain other requirements with respect to the percentage of gross income derived from sources other than sources within the United States. Section 727(g) of the Code provides for an exemption from excess profits tax in the case of a domestic corporation (except a member of an affiliated group of corporations filing consolidated returns) where specified percentages of its gross income for certain periods were derived from sources other than sources within the United States and from the active conduct of a trade or business.

Section 129 of the Code, as added by section 128(a) of the Revenue Act of 1943, provides in part as follows:

SEC. 129. ACQUISITIONS MADE TO EVADE OR AVOID INCOME OR EXCESS PROFITS TAX.

(a) DISALLOWANCE OF DEDUCTION, CREDIT, OR ALLOWANCE.—If (1) any person or persons acquire, on or after October 8, 1940, directly or indirectly, control of a corporation, or (2) any corporation acquires, on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately prior to such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation, and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income or excess profits tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit, or other allowance shall not be allowed. * * *

The exemption provided by the first exception in section 15(b) of the Code was intended primarily to remove competitive disadvantages created by double taxation with respect to the income of domestic corporations doing business to a substantial degree in foreign countries. (Senate Report No. 1631, Seventy-seventh Congress, second session (C. B. 1942–2, 504, 532).) The purpose of the enactment of section 727(g) of the Code appears to have been similar in nature. It is not believed that Congress, in enacting section 129 of the Code, had any intention of repealing or otherwise varying existing benefits provided by the first exception in section 15(b) and by section 727(g) of the Code. It appears from the structure of sections 109 and 727(g) of the Code, and the apparent purpose thereof, that Congress sought to make this relief available to any domestic corporation, provided only that it could satisfy the gross income and other specific requirements

of those sections of the Code. The absence of any other restrictions or conditions relating to eligibility for such relief leads to the conclusion that the basic policy underlying those sections contemplates that they shall apply to any domestic corporation which can, for a particular taxable year, satisfy such conditions as are specifically set forth therein without regard to the time of, or the occasion for, the organization of such corporation.

In view of the foregoing, it is held that the creation of a new domestic corporation to carry on the business in the Western Hemisphere (other than in the United States) of an existing domestic corporation does not constitute tax avoidance within the meaning of section 129 of the Code, even though the new corporation was created for the principal purpose of gaining the benefits provided by the first exception in section 15(b) of the Code and by section 727(g) of the Code.

SECTION 29.129–3: Instances in which section 129(a) disallows a deduction, credit, or other allowance.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5426, page 196.)

SECTION 29.129–4: Power of Commissioner to allocate deduction, credit, or allowance in part.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5426, page 196.)

SECTION 29.129–5: Taxable years to which applicable.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5426, page 196.)

SUPPLEMENT C.—CREDITS AGAINST TAX.

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

SECTION 29.131–1: Analysis of credit for taxes. 1945–14–12085
I. T. 3749

INTERNAL REVENUE CODE.

Under article 14(B) (*a*) of the tax convention and protocol between the United States and the French Republic (page 522, this Bulletin), effective January 1, 1945, a French citizen who is a resident of the United States may claim the credit provided by section 131(a)(3) of the Internal Revenue Code for income taxes paid to France. He is not entitled to such a credit for any income taxes paid to any other foreign country.

Advice is requested whether, under the tax convention and protocol between the United States and the French Republic (page 522, this Bul-

letin), effective January 1, 1945, a French citizen who is a resident of the United States may claim the credit provided by section 131(a)(3) of the Internal Revenue Code for income taxes paid to France or to any other foreign country.

Section 131(a)(3) of the Internal Revenue Code provides that if the taxpayer chooses to have the benefits of section 131, the tax imposed by Chapter 1 of the Code (which includes the normal tax and surtax on the income of individuals) shall, in the case of an alien resident of the United States, be credited with the amount of any income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country. The allowance of such a credit against Federal income tax for income taxes paid by a French citizen, who is a resident of the United States, to any foreign country depends on whether the French Government allows an American citizen who is a resident of France a similar credit against his French income taxes for any income taxes paid by him to such country.

Article 14(B)(*a*) of the convention constituting a part of the tax convention and protocol, supra, provides, with respect to French schedular taxes, as follows:

> Income from securities, debts and trusts having its source in the United States of America shall be subject in France to the tax on income from securities; but this tax shall be reduced by the amount of the tax already paid in the United States of America on the same income. In consideration of the fiscal regime to which the legislation of the United States of America subjects the income of nonresident aliens and foreign corporations or other entities, the deduction of the tax paid in the United States of America shall be effected in a lump sum through a reduction of 12 in the rate of the tax established by the French law.
>
> The income other than that indicated in the preceding paragraph shall not be subject to any schedular tax in France when, according to this convention, it is taxable in the United States of America.

Article 14(B)(*b*) of the convention deals with the French general tax on revenue. No reference is made in that article to credit for United States taxes for the reason that under article 14(B)(*a*) France has already allowed a direct or indirect credit by exclusion of income from United States sources, thereby in practically all instances exhausting the United States taxes paid (the French schedular taxes being higher) before the computation of the general income tax is reached. (See Senate Executive Report No. 4, Seventy-eighth Congress, second session, relating to this provision.)

The tax convention and protocol contain no provision whereby credit against French income taxes is allowed an American citizen who is a resident of France for income taxes paid by him to any country other than the United States.

Accordingly, it is held that under article 14(B)(*a*) of the tax convention and protocol between the United States and the French Republic, a French citizen who is a resident of the United States may claim the credit provided by section 131(a)(3) of the Internal Revenue Code for income taxes paid to France. He is not, however, entitled to such a credit for any income taxes paid to any other foreign country.

SECTION 29.131–1: Analysis of credit for taxes. 1945–24–12193 I. T. 3774

INTERNAL REVENUE CODE.

Credit against Federal income taxes for income taxes paid to the Government of Curacao, Netherlands West Indies.

Advice is requested whether certain taxes paid by a domestic corporation to the Government of Curacao, Netherlands West Indies, may be claimed as a credit under section 131(a) (1) of the Internal Revenue Code.

The taxes in question were assessed under official decrees issued by the Governor of Curacao, namely, Decrees PB 34 and PB 35, both dated April 30, 1940, Decree PB 104, dated June 21, 1940, Decree PB 157, dated August 11, 1942, and Decree PB 126, dated July 10, 1943.

An examination of the above-mentioned decrees shows that they were promulgated for the purpose of levying tax according to the profit of corporations derived from within Curacao territory. By "profit" is meant the net advantages (realizations), under any name and in any form acquired, from business and from capital employed outside business. Since the taxes imposed under the official decrees issued by the Governor of Curacao, Netherlands West Indies, referred to above, come within the American concept of income, war-profits, and excess-profits taxes, they are allowable as credits to a domestic corporation under the provisions of section 131(a) (1) of the Internal Revenue Code, subject to the limitations contained in section 131(b).

SECTION 29.131–2: Meaning of terms. (Also Section 23(a), Section 29.23(a)–1.) 1945–22–12167 I. T. 3768

INTERNAL REVENUE CODE.

The contribution equivalent to not less than 5 per cent of net profits, required to be paid by employers under article 374 of Ecuadorian Decree No. 210, dated August 5, 1938, is not allowable as a credit, under section 131 of the Internal Revenue Code, against United States income tax. Such contribution is deductible as a business expense under section 23(a) of the Code.

Advice is requested whether the contribution equivalent to not less than 5 per cent of net profits, required to be paid by employers under article 374 of Ecuadorian Decree No. 210, dated August 5, 1938, is allowable as a credit, under section 131 of the Internal Revenue Code, against United States income tax.

By Presidential Decree No. 210, the Republic of Ecuador established a Labor Code to provide numerous benefits for employees in that country. Article 374 of such decree, which provides the means for raising the funds for the purpose of enforcing the Labor Code, reads as follows:

The undertaking concerned shall be bound to pay a contribution equivalent to not less than 5 per cent. of its net profits to the works council. This contribution shall be paid on the basis of the balance sheet and at the time when the balance sheet is drawn up.

The question presented is whether the "contribution" equivalent to not less than 5 per cent of net profits is an income tax within the meaning of section 131(a) (1) of the Internal Revenue Code. The

purpose of the foreign tax credit provisions of section 131 of the Code is to avoid double income taxation by permitting a domestic corporation to claim as an offset against United States income tax the amount of income, war-profits, and excess-profits taxes paid to a foreign country in respect to the same income, subject to the limitations contained in section 131(b) of the Code. (See *Burnet* v. *Chicago Portrait Co.*, 285 U. S., 1, Ct. D. 463, C. B. XI–1, 286 (1932); *Charles H. Hubbard* v. *United States*, 17 Fed. Supp., 93, certiorari denied, 300 U. S., 666, Ct. D. 1224, C. B. 1937–1, 259.) It was not the purpose of Congress to allow as a credit against United States income tax any and all taxes which might be levied or imposed by foreign countries. The Republic of Ecuador has an income tax law separate and distinct from the Labor Code, and the Bureau has held that the tax imposed thereunder on domestic corporations operating in Ecuador is an income tax within the meaning of section 131(a)(1) of the Revenue Act of 1928 which corresponds to section 131(a)(1) of the Internal Revenue Code. (See I. T. 2445, C. B. VIII–1, 102 (1929).)

The word "taxes," in its most enlarged sense, embraces all the regular impositions made by government upon the person, property, privileges, occupations, and enjoyments of the people for the purpose of raising public revenue. (See Cooley's Principles of Constitutional Law, page 56.) Fundamentally, a tax is an exaction imposed by a government upon its people *for public purposes*. Although a sovereign State, in general, has authority by legislative enactment to compel enforced contribution for the purpose of regulating business or industry, such an imposition can not correctly be designated a tax. (Cf. G. C. M. 4606, C. B. VII–2, 256 (1928) and I. T. 2759, C. B. XIII–1, 33 (1934), relating to amounts recaptured under section 15(a)6 of the Interstate Commerce Act, as amended.) In *Bailey* v. *Drexel Furniture Co.* (259 U. S., 20), also known as the Child Labor Tax case, it was held that the so-called tax imposed by the child labor tax law, which was designed to regulate child labor, was not in fact a tax under Article I, section 8, of the Constitution, because the exaction was a penalty for violation of the regulations. In *United States* v. *William M. Butler et al.* (297 U. S., 1, Ct. D. 1070, C. B. XV–1, 421 (1936)), it was held that the so-called processing tax imposed on processors of "basic agricultural commodities," under the Agricultural Adjustment Act, 1933 (48 Stat., 31), to defray the cost of regulating agricultural production and payment to farmers of certain benefits, was not a tax. In other words, an imposition for the purpose of regulating certain industries or business enterprises, rather than for the purpose of raising revenue for the general support of government, does not come within the definition of the word "taxes."

From an examination of the Labor Code of Ecuador, it appears that the contribution in question is an exaction for the enforcement of the Labor Code with respect to all employers of labor in that country. Furthermore, the amount so paid by the employer is paid directly to the "works council," as specifically provided by article 374 of the decree establishing the Labor Code, and the "works council" is, in turn, composed of at least 50 per cent of wage-earning employees of the undertaking, as provided by article 369 of the Labor Code.

It is therefore held that the contribution equivalent to not less than 5 per cent of net profits, required to be paid by employers under article

374 of Ecuadorian Decree No. 210, supra, is not allowable as a credit, under section 131 of the Internal Revenue Code, against United States income tax. Such contribution is deductible, however, as a business expense under section 23(a) of the Code.

SECTION 29.131–5: Countries which do or do not satisfy the similar credit requirement. 1945–4–11967 I. T. 3717

INTERNAL REVENUE CODE.

Argentina satisfies the similar credit requirement of section 131(a)(3) of the Internal Revenue Code.

SECTION 29.131–5: Countries which do or do not satisfy the similar credit requirement. 1945–8–12020 I. T. 3729

INTERNAL REVENUE CODE.

Venezuela satisfies the similar credit requirement of section 131(a)(3) of the Internal Revenue Code.

SECTION 29.131–7: Taxes of subsidiary corporation. (Also Section 19.131–7, Regulations 103.)

INTERNAL REVENUE CODE.

Regulations 103 and 111 amended. (See T. D. 5452, below.)

SECTION 29.131–8: Limitations on credit for foreign taxes. 1945–9–12034 T. D. 5452
(Also Section 29.131–7; Sections 19.131–7 and 19.131–8, Regulations 103; Section 729, Section 35.729–4, Regulations 112.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PARTS 19, 29, AND 35.—INCOME TAX AND EXCESS PROFITS TAX.

Amending Regulations 103, 111, and 112 to conform to section 130 of the Revenue Act of 1943, relating to credit for taxes of foreign countries and possessions of the United States.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 103, 111, and 112 [Parts 19, 29, and 35, Title 26, Code of Federal Regulations, 1940 Sup., Cum. Sup., and Cum. Sup., respectively] to the provisions of section 130 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress), enacted February 25, 1944, such regulations are amended as follows:

REGULATIONS 103.

PARAGRAPH 1. There is inserted immediately preceding section 19.131–1 the following:

SEC. 130. TECHNICAL AMENDMENTS RELATING TO FOREIGN TAX CREDIT. (REVENUE ACT OF 1943, TITLE I.)

* * * * * * *

(b) TAXES OF FOREIGN SUBSIDIARY.—The first sentence of section 131(f) (relating to foreign taxes deemed to have been paid by a domestic corporation with respect to the accumulated profits of a foreign subsidiary) is amended to read as follows: "For the purposes of this section, a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits."

(c) TAXABLE YEARS TO WHICH APPLICABLE.— * * * The amendment made by subsection (b) shall be effective with respect to all taxable years beginning after December 31, 1939.

PAR. 2. Section 19.131–7(*a*), as amended by Treasury Decision 5226, approved February 10, 1943 [C. B. 1943, 375], is further amended by striking out the second sentence and inserting in lieu thereof the following:

The amount of taxes deemed to have been paid is limited, however, for taxable years beginning prior to January 1, 1940, to an amount which shall in no case exceed the same proportion of the tax against which the credit for foreign taxes is taken, which the amount of such dividends bears to the amount of the entire net income of the domestic corporation in which such dividends are included.

PAR. 3. Section 19.131–8, as amended by Treasury Decision 5226, is further amended by striking from the fourth example immediately preceding the paragraph beginning with the words "Under the provisions of section 202," the following:

Limitation under section 131(f) $\left(\frac{50,000}{262,500}\right.$ of $54,862.50)$	10,450
Income and profits taxes deemed to have been paid (French taxes applicable to accumulated profits distributed to domestic corporation, reduced in accordance with the limitation under section 131(f))	7,500.00

and inserting in lieu thereof the following:

Income and profits taxes deemed to have been paid (French taxes applicable to accumulated profits distributed to domestic corporation)	7,500.00

REGULATIONS 111.

PAR. 4. There is inserted immediately preceding section 29.131–1 the following:

SEC. 130. TECHNICAL AMENDMENTS RELATING TO FOREIGN TAX CREDIT. (REVENUE ACT OF 1943, TITLE I.)

(a) LIMIT ON CREDIT.—Section 131(b) (relating to limitations on credit allowed for taxes of foreign countries and possessions of the United States) is amended to read as follows:

"(b) LIMIT ON CREDIT.—The amount of the credit taken under this section shall be subject to each of the following limitations:

"(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed, in the case of a taxpayer other than

a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income for the same taxable year, or in the case of a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's normal-tax net income from sources within such country bears to its entire normal-tax net income for the same taxable year; and

"(2) The total amount of the credit shall not exceed, in the case of a taxpayer other than a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income for the same taxable year, or, in the case of a corporation, the same proportion of the tax against which such credit is taken, which the taxpayer's normal-tax net income from sources without the United States bears to its entire normal-tax net income for the same taxable year; and

"(3) For the purposes of paragraphs (1) and (2) of this subsection, the terms 'normal-tax net income from sources within such country' and 'normal-tax net income from sources without the United States' shall mean the net income from such sources minus an amount equivalent to the same proportion of the credit provided in section 26(e) which the taxpayer's excess profits net income from such sources bears to its entire excess profits net income for the same taxable year."

(b) TAXES OF FOREIGN SUBSIDIARY.—The first sentence of section 131(f) (relating to foreign taxes deemed to have been paid by a domestic corporation with respect to the accumulated profits of a foreign subsidiary) is amended to read as follows: "For the purposes of this section, a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits."

(c) TAXABLE YEARS TO WHICH APPLICABLE.—The amendment made by subsection (a) shall be effective for all taxable years beginning after December 31, 1941. The amendment made by subsection (b) shall be effective with respect to all taxable years beginning after December 31, 1939.

PAR 5. Section 29.131–7(*a*) is amended by striking out the second sentence reading as follows:

The amount of taxes deemed to have been paid is limited, however, to an amount which shall in no case exceed the same proportion of the tax against which the credit for foreign taxes is taken which the amount of such dividends bears to the amount of the normal-tax net income of the domestic corporation in which such dividends are included.

PAR. 6. Section 29.131–8 is amended as follows:

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

The amount of the income and profits taxes paid or accrued (including the taxes which, in accordance with the provisions of section 131(f), are deemed to have been paid) during the taxable year to each foreign country or possession of the United States, limited under section 131(b)(1) so as not to exceed that proportion of the tax against which credit is taken which the taxpayer's net income from sources within such country or possession bears to his entire net income, or, in the case of a corporation, which the taxpayer's normal-tax net income from sources within such country or possession bears to its entire normal-tax net income, for the same taxable year, is the tentative credit in respect of the taxes paid or accrued to such country or possession. The sum of these tentative credits, limited under section 131(b)(2) so as not to exceed the

same proportion of the tax against which credit is taken which the taxpayer's net income from sources without the United States bears to his entire net income, or, in the case of a corporation, which the taxpayer's normal-tax net income from sources without the United States bears to its entire normal-tax net income, for the same taxable year, is the amount allowable as a credit against the income tax under Chapter 1 for income or profits taxes paid or accrued to foreign countries or possessions of the United States.

(B) By striking out the last two paragraphs thereof.

(C) By inserting at the end of example (2) the following:

It is provided in section 131(b) that in the case of a domestic corporation the amount of the credit for any taxable year with respect to the tax paid or accrued to any foreign country or possession of the United States shall not exceed the same proportion of the tax imposed by Chapter 1 which the corporation's normal-tax net income from sources within such foreign country or possession of the United States bears to the entire normal-tax net income of such corporation for the same taxable year. The total amount of the credit shall not exceed the same proportion of the tax imposed by Chapter 1 which the corporation's normal-tax net income from sources without the United States bears to the entire normal-tax net income for the same taxable year.

The normal-tax net income from sources within any foreign country or possession of the United States shall be determined by deducting from net income from such country or possession of the United States the same proportion of the credit provided in section 26(e) which the taxpayer's excess profits net income from sources within such country or possession of the United States bears to the taxpayer's entire excess profits net income. The normal-tax net income from sources without the United States shall likewise be determined by deducting from the net income from sources without the United States the same proportion of such credit as the excess profits net income from sources without the United States bears to the entire excess profits net income. For the determination of excess profits net income from a foreign country or from sources without the United States, and of the entire excess profits net income, for the purposes of the credit for foreign taxes, in the case of a corporation computing its excess profits tax under sections 721, 726, 731, or 736(b), see section 35.729–4, Regulations 112.

The operation of the limitations provided in section 131(b) on the credit for foreign taxes paid by corporations may be illustrated by the following examples:

Example (3). The following facts exist for the calendar year 1942 with respect to the A Corporation, which makes its income tax returns on the calendar year basis:

Net income from all sources	$250,000.00
Less:	
Adjusted excess profits net income	75,000.00
Normal tax net income	175,000.00
Net income from foreign country X	100,000.00
Foreign tax paid on country X income	35,000.00
Total normal tax and surtax	70,000.00

Computation of foreign tax credit for purposes of normal tax and surtax:

$\$100{,}000 \text{ minus } \left(\frac{100}{250} \times \$75{,}000\right)$ / $\$250{,}000 \text{ minus } \$75{,}000$ $\times \$70{,}000$ equals	$28,000.00
Amount allowable as a credit	28,000.00

For the purpose of the computation, it is assumed that there are no adjustments to net income in determining excess profits net income.

In the event that normal-tax net income is derived from more than one foreign country or possession of the United States, the limitation provided in section 131(b)(2) shall be applied based upon the taxpayer's normal-tax net income from sources without the United States and the entire normal-tax net income of the corporation and such limitation is in addition to the limitation provided in section 131(b)(1).

As to the allowance of credit for foreign income, war profits, or excess profits taxes against the excess profits tax imposed under Chapter 2E, see section 729 and section 35.729–3, Regulations 112.

(D) By striking out the paragraph in which appears the third example (prior to the amendments made by this Treasury decision) and inserting in lieu thereof the following:

Example (4). The net income for the calendar year 1942 and the income and profits taxes paid or accrued to foreign countries and possessions of the United States in the case of a domestic corporation were as follows:

Country.	Net income.	Loss.	Income and profits taxes (paid or accrued).
United States	$157,500		
Great Britain	30,000		$17,000
Canada	20,000		5,600
Brazil	40,000		5,800
Argentine Republic	60,000		None
Mexico		$100,000	None
Puerto Rico	10,000		2,250
France (dividend)	50,000		9,000
France (branch)	20,000		6,000

Net income		$287,500.00
Less: Interest on United States obligations		25,000.00
		262,500.00
Less: Credit provided in section 26(e) for income subject to excess profits tax		105,000.00
Normal tax net income		157,500.00
Surtax net income ($287,500 minus $105,000)		182,500.00
Total foreign net income		130,000.00
United States tax (not including tax imposed under section 102)—		
Normal tax	$37,800.00	
Surtax	29,200.00	
		67,000.00

The income and losses from all foreign countries and possessions of the United States, except the dividend from sources within France, were derived from branch operations. Dividends of $50,000 were received from a French corporation, a majority of the voting stock of which was owned by the domestic corporation. The French corporation paid to France income and profits taxes on income earned by it and in addition a dividend tax for the account of its shareholders on income distributed to them, the latter tax being withheld and paid at the source. For the purpose of simplicity it is assumed that the corporation computes its excess profits credit under section 713 and that there are no adjustments under section 711 other than that under section 711(a)(1)(A), and that consequently the net income from the countries referred to is the same as the excess profits net income from such countries.

The computation of the credit is as follows:

Great Britain.

Income and profits taxes paid or accrued	$17,000.00
Limitation under section 131(b)(1)	
$\frac{\$30{,}000 \text{ minus } \left(\frac{30{,}000}{262{,}500} \times \$105{,}000\right)}{\$262{,}500 \text{ minus } \$105{,}000} \times \$67{,}000$	7,657.14
Tentative credit	7,657.14

Canada.

Income and profits taxes paid or accrued	$5,600.00
Limitation under section 131(b)(1)	
$\frac{\$20{,}000 \text{ minus } \left(\frac{20{,}000}{262{,}500} \times \$105{,}000\right)}{\$262{,}500 \text{ minus } \$105{,}000} \times \$67{,}000$	5,104.76
Tentative credit	5,104.76

Brazil.

Income and profits taxes paid or accrued	$5,800.00
Limitation under section 131(b)(1)	
$\$40{,}000 \text{ minus } \left(\frac{40{,}000}{262{,}500} \times \$105{,}000\right)$ / $\$262{,}500 \text{ minus } \$105{,}000 \times \$67{,}000$	10,209.52
Tentative credit	5,800.00

Argentine Republic.

Tentative credit	None

Mexico.

Tentative credit	None

Puerto Rico.

Income and profits taxes paid or accrued	$2,250.00
Limitation under section 131(b)(1)	
$\$10{,}000 \text{ minus } \left(\frac{10{,}000}{262{,}500} \times \$105{,}000\right)$ / $\$262{,}500 \text{ minus } \$105{,}000 \times \$67{,}000$	2,552.38
Tentative credit	2,250.00

France.

Dividend tax paid at source		$9,000.00
Income and profits taxes paid or accrued on branch operations		6,000.00
Income and profits taxes deemed under section 131(f) to have been paid, computed as follows:		
Dividend received on December 31 of the taxable year	$50,000.00	
Income of French corporation earned during taxable year	200,000.00	
Income and profits taxes paid to France on $200,000	30,000.00	
Accumulated profits $200,000 minus $30,000	170,000.00	
French taxes applicable to accumulated profits distributed $\left(\frac{50{,}000}{170{,}000} \text{ of } \frac{170{,}000}{200{,}000} \text{ of } \$30{,}000\right)$		7,500.00
Total income and profits taxes paid or accrued and deemed to have been paid to France		22,500.00
Limitation under section 131(b)(1)		
$\$70{,}000 \text{ minus } \left(\frac{70{,}000}{262{,}500} \times \$105{,}000\right)$ / $\$262{,}500 - \$105{,}000 \times \$67{,}000$		17,866.66
Tentative credit		17,866.66

Sum of tentative credits.

Great Britain	$7,657.14
Canada	5,104.76
Brazil	5,800.00
Puerto Rico	2,250.00
France	17,866.66
	38,678.56
Limitation on sum of tentative credits under section 131(b)(2) to determine credit $\$130{,}000 \text{ minus } \left(\frac{130{,}000}{262{,}500} \times \$105{,}000\right)$ / $\$262{,}500 - \$105{,}000 \times \$67{,}000$	33,180.94
Total amount of credit allowable (sum of tentative credits or the limitation under section 131(b)(2), whichever is the lesser)	33,180.94

PAR. 7. There is added immediately following section 35.729–3 the following new section:

SEC. 35.729–4. APPLICATION OF CREDIT TO CASES WITHIN RELIEF PROVISIONS.—In cases within the scope of sections 721, 726, 731, or 736(b), relating to relief provisions affecting the tax imposed under Chapter 2E, special rules, as set forth herein, are applicable with respect to the determination of the credit for foreign tax under section 729.

In any case within the provisions of section 721, relating to abnormalities in income in the taxable year, the amount of the abnormal income attributable to any prior taxable year shall, for the purposes of computing the amount of the credit under section 729 for the taxable year, be included in gross income in determining the excess profits net income for the year in which the whole of such abnormal income would without regard to section 721 be includible. In such case the excess profits tax for the taxable year against which the credit is taken shall be deemed to include the increase in excess profits tax for any previous taxable year resulting from the inclusion in the gross income for such previous taxable year of the portion of the abnormal income attributable to such previous taxable year. For computation of such excess profits tax, see section 35.721–4.

In any case in which an amount of abnormal income is attributable to any future taxable year such amount shall, for the purposes of computing the amount of the credit under section 729, be excluded from gross income in determining the excess profits net income for the taxable year in which the whole of such abnormal income would without regard to section 721 be includible. In such case the excess profits tax for such taxable year against which the credit is taken shall not include the increase in excess profits tax for any such future taxable year resulting from the inclusion in the gross income for such future taxable year of the portion of the abnormal income attributable to such future taxable year. In such case the amount so attributable to a future taxable year shall be included in the gross income for such future taxable year for the purpose of determining the excess profits net income for such future taxable year. For computation of excess profits tax for such future taxable year, see section 35.721–5.

In any case within the scope of section 726, relating to corporations completing contracts under Merchant Marine Act, 1936, the tax against which the credit is taken shall be the tax computed under section 726(b) if, and only if, the tax so computed is less than the tax computed under section 710. In that event any payments made or to be made to the United States Maritime Commission for any taxable year shall be included in gross income for the purpose of determining the entire excess profits net income under section 729 (c) and (d).

In any case within the scope of section 731, relating to corporations engaged in the mining of strategic materials, the excess profits net income attributable to such mining shall be excluded from the entire excess profits net income for the purpose of determining the credit provided in section 729.

In any case within the scope of section 736(b), relating to taxpayers with income from long-term contracts, the income attributable under such subsection to prior taxable years shall, for the purpose of computing the amount of the credit under section 729, be included in determining excess profits net income for the year in which such income would without regard to section 736(b) be included in excess profits net income. In such case the tax against which credit is taken for the purposes of section 729 shall be deemed to include any increase in excess profits tax for any year beginning prior to the taxable year in which the entire income from a long-term contract would without regard to section 736(b) be included for excess profits tax purposes. Thus, for example, the excess profits tax for a taxable year beginning in 1942 shall be deemed to include any increase in excess profits tax for a taxable year beginning in 1940 or 1941 and attributable to the contract ending in the taxable year 1942. For the method of determination of such increase see section 35.736(b)–3.

The application of these principles may be illustrated by the following examples:

Example (1). The A Corporation has for the taxable year 1942 the following income and excess profits tax liability:

Total excess profits net income		$500,000.00
Foreign excess profits net income, representing royalties from patents		200,000.00
Foreign tax paid with respect to foreign royalties		90,000.00
Portion of foreign income attributable as abnormal income under section 721 to taxable year 1941		100,000.00
Excess profits credit for 1942	$220,000.00	
Special exemption	5,000.00	
		225,000.00

The computation of the credit for foreign tax is as follows:

Total excess profits net income		$500,000.00
Less: Foreign income attributable to 1941		100,000.00
Excess profits net income attributable to 1942		400,000.00
Less: Excess profits credit and specific exemption, as above		225,000.00
Adjusted excess profits net income for 1942		175,000.00
Excess profits tax at 1942 rates	$157,500.00	
Assumed increase in excess profits tax for 1942 due to amount of excess profits net income attributable to 1941	32,500.00	
Total excess profits tax for 1942		190,000.00

Limitation upon amount of foreign tax credit for the purpose of Chapter 2E:

$\frac{200,000}{500,000} \times \$190,000$ $76,000.00

See, however, the limitation provided in section 35.729–3. Applying such latter limitation and assuming that the credit allowed for such foreign tax under Chapter 1 is $48,000, the amount allowable as a credit for excess profits tax purposes is $90,000 minus $48,000, or $42,000.

Example (2). The B Corporation has for 1942 total excess profits net income of $600,000, which for the purposes of this example is equal to the entire net income, of which $200,000 is attributable to the mining in the United States of a strategic mineral and $100,000 is derived from sources in the X foreign country upon which the sum of $50,000 income tax has been paid to the government of the X country. The excess profits tax, after the application of section 731, on the portion of the adjusted excess profits net income not attributable to the mining in the United States of a strategic mineral is assumed to be $135,000. The limitation on the credit under section 729 is $\frac{100,000}{600,000 \text{ minus } 200,000} \times \$135,000$, or $33,750. However, the amount allowable against such tax shall not in any event exceed the amount by which the sum of $50,000, foreign income tax, exceeds the credit allowed the B Corporation against the tax imposed under Chapter 1. For the purposes of the credit under section 131, the normal-tax net income from X country is $100,000 minus $\frac{100,000}{400,000} \times \left(\frac{100}{90} \times \$135,000\right)$ or $100,000 minus $37,500, or $62,500. This amount, $62,500, constitutes the numerator of the limitation fractions under section 131(b) while the denominator of the fraction is $600,000 minus $150,000, or $450,000.

Example (3). The X Corporation had for the taxable year 1942 a net income of $1,000,000, of which the sum of $600,000 was derived from the performance of a long-term contract requiring more than 12 months to complete. The corporation reported income upon the completed contract basis for income tax purposes. It also derived $100,000 ordinary income from the Y country upon which the sum of $45,000 income tax was paid to that country. The remainder of the net income was ordinary domestic income. The X Corporation elects to compute its excess profits tax under the provisions of section 736(b). Under that section, of the total amount of $600,000 derived from the long-term contract, the sum of $150,000 is attributable to 1940 and $200,000 is attributable to 1941, leaving $250,000 subject to 1942 excess profits tax rates. The excess profits tax for 1942, before taking into consideration the additional excess profits tax by reason of long-term contract income attributable to 1940 and 1941 under the percentage of completion method, is assumed to be $125,000, and the amounts by which the

excess profits tax imposed for the taxable years 1940 and 1941, resulting from attributing to such years the portion of the income from the long-term contract, exceeds the excess profits tax imposed for such years without considering any income from the contract completed in 1942, are assumed to be $45,000 and $100,000, respectively. In such case the credit for foreign tax under section 729 is determined as follows:

Total excess profits tax ($125,000 plus $45,000 plus $100,000)	$270,000.00
Limitation upon credit $\left(\frac{100,000}{1,000,000} \times \$270,000\right)$	27,000.00

The amount actually allowable as credit (excess of foreign tax paid over credit under section 131) is $17,000. The $17,000 credit is determined as follows:

Excess profits tax for 1942 plus the increases in excess profits tax for 1940 and 1941 caused by the inclusion of income from the long-term contract completed in 1942	$270,000.00
Credit under section 26(e), $\frac{100}{90} \times \$27,000$	300,000.00
Normal-tax net income from foreign sources ($100,000 minus $\left(\frac{100,000}{1,000,000} \times \$300,000\right)$	70,000.00
Entire normal-tax net income ($1,000,000 minus $300,000)	700,000.00
Normal tax and surtax (40 per cent)	280,000.00
Limitation upon credit $\left(\frac{70,000}{700,000} \times \$280,000\right)$	28,000.00
Foreign tax paid	45,000.00
Amount available as credit against excess profits tax ($45,000 minus $28,000)	17,000.00

(This Treasury decision is issued under the authority contained in sections 62 and 729(a) of the Internal Revenue Code (53 Stat., 32; 54 Stat., 989; 26 U. S. C., 62 and 729(a)) and section 130 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress).)

GEO. J. SCHOENEMAN,
Acting Commissioner of Internal Revenue.

Approved April 19, 1945.

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

(Filed with the Division of the Federal Register April 20, 1945, 11.26 a. m.)

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX.

SECTION 141.—CONSOLIDATED RETURNS.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5478, page 262.)

SECTION 29.141–1: Consolidated income and excess profits tax returns of affiliated corporations. (Also Section 23.34, Regulations 104; Section 33.34, Regulations 110.) 1945–5–11989 T. D. 5441

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29, PART 23, AND PART 33.

Regulations 111, relating to income tax in so far as they pertain to affiliated corporations, Regulations 104, relating to consolidated income tax returns of affiliated corporations, and Regulations 110, relating to consolidated excess profits tax returns of affiliated corporations, amended to conform to the Revenue Act of 1943, and for other purposes.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], Regulations 104 [Part 23, Title 26, Code of Federal Regulations, Cum. Sup.], and Regulations 110 [Part 33, Title 26, Code of Federal Regulations, Cum. Sup.] to the provisions of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress), enacted February 25, 1944, and for other purposes, such regulations are amended as follows:

REGULATIONS 111.

PARAGRAPH 1. Section 29.113(a)(11)–1 is amended by changing the last paragraph thereof to read as follows:

Except as otherwise provided in Regulations 104, the basis of property after a consolidated return period shall be the same as immediately prior to the close of such period.

PAR. 2. Section 29.141–1(*c*)(7), as added by Treasury Decision 5401, approved August 26, 1944 [C. B. 1944, 204], is amended by striking out the last two sentences and inserting in lieu thereof the following:

If such corporation is a common parent corporation, the making and filing of the consolidated income tax return shall constitute the making and filing of its consent under section 141(e)(7). If such corporation is a subsidiary, the filing of its authorization and consent on Forms 1122 and 1122E in the manner prescribed by section 23.12(*b*) of Regulations 104 and section 33.12(*b*) of Regulations 110 shall constitute the making and filing of such consent. A consent to be treated as an includible corporation under section 141(e)(7) can not be withdrawn or revoked at any time after the consolidated return is filed for the first taxable year for which the consent is filed.

REGULATIONS 104.

PAR. 3. There is inserted immediately preceding section 23.0 the following:

SEC. 131. EXTENSION OF CONSOLIDATED RETURNS PRIVILEGE TO CERTAIN CORPORATIONS. (REVENUE ACT OF 1943, TITLE I.)

Section 141(e) (relating to the definition of includible corporations) is amended by adding at the end thereof the following new paragraph:

"(7) Any corporation described in section 725(a), or in section 727 (e), (g), or (h) (without regard to the exception in the initial clause of section 727) but not including such a corporation which has made and filed a consent, for the taxable year or any prior taxable year beginning after December 31, 1943, to be treated as an includible corporation. Such consent shall be made and filed at such time and in such manner as may be prescribed by the Commissioner with the approval of the Secretary."

SEC. 101. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (REVENUE ACT OF 1943, TITLE I.)

Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1943.

SEC. 204. INCREASE IN SPECIFIC EXEMPTION. (REVENUE ACT OF 1943, TITLE II.)

* * * * * * *

(c) CONSOLIDATED RETURNS.—Section 141(c) (relating to computation of tax in case of consolidated return) is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 201. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (REVENUE ACT OF 1943, TITLE II.)

Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1943.

PAR. 4. Section 23.2(*b*), as amended by Treasury Decision 5244, approved March 13, 1943 [C. B. 1943, 439], is further amended as follows:

(A) By striking from the first and the fourth paragraphs the words "section 159 of the Revenue Act of 1942" and inserting in lieu thereof the words "section 159 of the Revenue Act of 1942 and section 131 of the Revenue Act of 1943";

(B) By inserting immediately after the fourth paragraph the following new paragraph:

In the determination of the includible corporations of the affiliated group for a taxable year beginning after December 31, 1943, a personal service corporation as described in section 725(a) or a corporation otherwise entitled to exemption from excess profits tax under section 727 (e), (g), or (h) shall be treated as an includible corporation only if it has made and filed pursuant to section 141(e)(7) its consent to be treated as an includible corporation for such year or for a prior taxable year beginning after December 31, 1943.

PAR. 5. Section 23.12(*b*) is amended as follows:

(A) By changing the heading to read:

(b) AUTHORIZATIONS AND CONSENTS.

(B) By inserting at the end the following:

The filing of Form 1122 for a taxable year beginning after December 31, 1943, by a subsidiary which is either a personal service corporation as described in section 725(a) or a corporation described in section 727 (e), (g), or (h) shall constitute the making and filing of its consent to be treated as an includible corporation under section 141(e)(7).

If the common parent corporation is a personal service corporation as described in section 725(a) or a corporation described in section 727 (e), (g), or (h), the making and filing of the consolidated income tax return for a taxable year beginning after December 31, 1943, shall constitute the making and filing of its consent to be treated as an includible corporation under section 141(e)(7).

A corporation which consents to be treated as an includible corporation for a taxable year beginning after December 31, 1943, shall be treated as an includible corporation for all subsequent years, regardless of whether the affiliated group of which such corporation is a member during such subsequent years is the same as the affiliated group of which such corporation was a member when such consent was filed. No consent to be treated as an includible corporation under section 141(e)(7) can be withdrawn or revoked at any time after the consolidated return is filed for the first taxable year for which the consent is filed.

PAR. 6. Section 23.31(*b*)(2)(xix), as added by Treasury Decision 5244, is amended by striking the words "for the taxable year is 90 per cent," and by inserting in lieu thereof the words "is 90 per cent for a taxable year beginning prior to January 1, 1944, or 95 per cent for a taxable year beginning after December 31, 1943,".

PAR. 7. Section 23.33, as amended by Treasury Decision 5127, approved March 5, 1942 [C. B. 1942–1, 117], is further amended by changing paragraphs (*b*) and (*c*) to read as follows:

(*b*) That the basis for determining the gain or loss, in the case of shares of stock, or in the case of bonds or other obligations, held during any part of a consolidated return period, shall be determined in accordance with sections 23.34 and 23.35; and

(*c*) As provided in section 23.36 (imposing certain limitations upon losses otherwise allowable upon sales of stock, or bonds or other obligations).

PAR. 8. Section 23.34, as amended by Treasury Decision 5244, is further amended as follows:

(A) By striking paragraphs (*a*) and (*b*) and that portion of paragraph (*c*) preceding subparagraph (3), and by inserting in lieu thereof the following:

(*a*) SCOPE OF SECTION.

This section prescribes the basis for determining the gain or loss upon any sale or other disposition (hereinafter referred to as "sale") by a corporation, which is (or has been) a member of an affiliated group which makes (or has made) a consolidated return for any taxable year, of any share of stock issued by another member of such group (whether issued before or during the period that it was a member of the group and whether issued before, during, or after the taxable year 1929), and held by the selling corporation during any part of a period for which a consolidated return is made or required under these regulations.

For the basis in the case of a sale which does not break the affiliation and which is made during a taxable year for which a return is required to be filed on or before March 1, 1945, see paragraph (*b*).

For the basis in the case of a sale which does not break the affiliation and which is made during a taxable year for which a return is required to be filed after March 1, 1945, and in the case of a sale made at any time which breaks the affiliation, see paragraph (*c*).

For the basis in the case of a sale made after the selling corporation has ceased to be a member of the affiliated group, see paragraph (*d*).

For the basis in the case of a sale of bonds, see section 23.35.

(*b*) SALES MADE DURING TAXABLE YEAR FOR WHICH RETURN REQUIRED ON OR BEFORE MARCH 1, 1945, WHICH DO NOT BREAK AFFILIATION.

With respect to a sale made during a taxable year for which the last day prescribed by law for the filing of the return fell on or before March 1, 1945, the date on which Treasury Decision 5441 was filed with the Division of the Federal Register, if, notwithstanding such sale, the issuing corporation remains a member of the affiliated group, the basis shall be determined and adjusted in the same manner as if the selling corporation and the issuing corporation had never been members of an affiliated group.

But see section 23.38(*b*), relating to intercompany transactions.

(*c*) SALES MADE DURING TAXABLE YEAR FOR WHICH RETURN REQUIRED AFTER MARCH 1, 1945, WHICH DO NOT BREAK AFFILIATION; AND SALES MADE AT ANY TIME WHICH BREAK AFFILIATION.

If the sale is made within a period during which the selling corporation is a member of the affiliated group, whether or not during a consolidated return period, and whether or not, as a result of such sale, the issuing corporation ceases to be a member of the group (not including sales made during a taxable year for which the last day prescribed by law for the filing of the return fell on or before March 1, 1945, if such sale did not break the affiliation), the basis shall be determined as follows:

(1) The aggregate bases of all shares of stock of the issuing corporation held by each member of the affiliated group (exclusive of the issuing corporation) immediately prior to the sale shall be determined separately for each member of the group and adjusted in accordance with the Code, but without regard to any adjustment under the last sentence of section 113(a)(11) relating to losses of the issuing corporation sustained by such corporation after it became a member of the affiliated group.

(2) From the combined aggregate bases as determined in paragraph (1), there shall be deducted the sum of the losses of such issuing corporation sustained during taxable years for which consolidated income tax returns were made or were required (whether the taxable year 1929 or any prior or subsequent taxable year) after such corporation became a member of the affiliated group and prior to the sale of the stock to the extent that such losses could not have been availed of by such corporation as a net loss or net operating loss in computing its net income for such taxable years if it had made a separate return for each of such years, reduced by any losses of the issuing corporation apportioned under this section to its stock sold or otherwise disposed of in a prior transaction, disregarding any transaction between members of the affiliated group during a consolidated return

period which did not constitute a partial liquidation of the issuing corporation. For any taxable year in which the group sustained a consolidated loss not availed of in prior or subsequent years as a deduction under net loss or net operating loss provisions, the amount deducted under this paragraph shall be further reduced by an amount equal to that proportion of such consolidated loss which the loss of the issuing corporation for the year in which such loss was sustained bears to the aggregate losses of the members of the group for such year;

(B) By renumbering subparagraphs (2) and (3) of paragraph (*d*) as (3) and (4), respectively, and by inserting immediately following subparagraph (1) the following new subparagraph:

(2) The reduction (under paragraph (*c*)(2)) with respect to losses apportioned to stock sold or otherwise disposed of in prior transactions shall be determined without regard to the transaction which terminated the affiliation and all subsequent transactions.

PAR. 9. Section 23.35, as amended by Treasury Decision 5127, approved March 5, 1942, is further amended to read as follows:

SEC. 23.35. SALE OF BONDS OR OTHER OBLIGATIONS—BASIS FOR DETERMINING GAIN OR LOSS.

In the case of a sale or other disposition by a corporation, which is (or has been) a member of an affiliated group which makes (or has made) a consolidated income tax return for any taxable year, of bonds or other obligations issued or incurred by another member of such group (whether or not issued or incurred while it was a member of the group and whether issued or incurred before, during or after the taxable year 1929) and held by the selling corporation during any part of a period for which a consolidated return is made or required under the regulations, the basis of each bond or obligation, for determining the gain or loss upon such sale or other disposition, determined in accordance with the Code, but without regard to any adjustment under the last sentence of section 113 (a)(11), shall be decreased (except as otherwise provided in this section) by the excess, if any, of the aggregate of the deductions computed under paragraph (*c*)(2) or (*d*) of section 23.34 over the sum of the aggregate bases of the stock of the debtor corporation as computed under paragraph (*c*)(1) or (*d*), as the case may be, held by the members of the group. The adjustment with respect to so much of such deductions as is based upon losses sustained during the taxable year 1929 and subsequent taxable years for which the last day prescribed by law for the filing of the return fell on or before March 1, 1945 (the date on which Treasury Decision 5441 was filed with the Division of the Federal Register), and availed of on consolidated returns filed for such years shall be made only in those cases in which the sales or other disposition of such bonds or other obligations resulted in a loss. (See, also, section 23.40, relating to disallowance of loss upon intercompany bad debts.)

PAR. 10. Section 23.38(*a*) is amended to read as follows:

(*a*) GENERAL RULE.

Subject to the provisions of paragraphs (*b*) and (*c*) and except as otherwise provided in sections 23.34 and 23.39, the basis during a consolidated return period for determining the gain or loss from the sale or other disposition of property, or upon which exhaustion, wear and tear, obsolescence, and depletion are to be allowed, shall be determined and adjusted in the same manner as if the corporations were not affiliated (see sections 111 to 115, inclusive), whether such property was acquired before or during a consolidated return period. Except as otherwise provided in section 23.39, such basis immediately after a consolidated return period (whether the affiliation has been broken or whether the privilege of making a consolidated return is not exercised) shall be the same as immediately prior to the close of such period.

PAR. 11. Section 23.38(*c*)(4), as amended by Treasury Decision 5127, is further amended by striking that portion preceding subdivision (ii) and by inserting in lieu thereof the following:

(4) Where property was acquired either during the month of December, 1938, upon a distribution in which gain or loss to the distributee was recognized pursuant to the provisions of section 112(b)(7) of the Revenue Act of

1938, or during some one calendar month of 1944 upon a distribution in which gain or loss to the distributee was recognized pursuant to the provisions of section 112(b)(7) of the Code, as added by section 120(a) of the Revenue Act of 1943, the basis of such property shall be the same as the basis (determined in accordance with sections 111 to 115, inclusive, and section 23.34) of the stock exchanged therefor, adjusted—

(i) For the transfer of assets within the affiliated group by the distributing corporation (by sale, gift, or otherwise) without consideration or at markedly fictitious values, during the period for which the corporations were affiliated (whether or not a consolidated return was made and regardless of the taxable year in which such transfer occurred);

PAR. 12. Section 23.43(*a*)(2), as amended by Treasury Decision 5127, is further amended to read as follows:

(2) In computing the credit for a taxable year beginning after December 31, 1939, the "normal-tax net income" for the taxable year shall be its normal-tax net income computed as if a separate return were filed except that the net income used in such computation shall be determined in accordance with the provisions of section 23.31(*c*), and the "tax against which such credit is taken" shall be that proportion of the tax computed upon the consolidated normal-tax net income of the affiliated group which is allocable to such corporation, and

REGULATIONS 110.

PAR. 13. There is inserted immediately preceding section 33.0 the following:

SEC. 131. EXTENSION OF CONSOLIDATED RETURNS PRIVILEGE TO CERTAIN CORPORATIONS. (REVENUE ACT OF 1943, TITLE I.)

Section 141(e) (relating to the definition of includible corporations) is amended by adding at the end thereof the following new paragraph:

"(7) Any corporation described in section 725(a), or in section 727 (e), (g), or (h) (without regard to the exception in the initial clause of section 727) but not including such a corporation which has made and filed a consent, for the taxable year or any prior taxable year beginning after December 31, 1943, to be treated as an includible corporation. Such consent shall be made and filed at such time and in such manner as may be prescribed by the Commissioner with the approval of the Secretary."

SEC. 101. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (REVENUE ACT OF 1943, TITLE I.)

Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1943.

SEC. 204. INCREASE IN SPECIFIC EXEMPTION. (REVENUE ACT OF 1943, TITLE II.)

* * * * * * *

(c) CONSOLIDATED RETURNS.—Section 141(c) (relating to computation of tax in case of consolidated return) is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 201. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (REVENUE ACT OF 1943, TITLE II.)

Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1943.

PAR. 14. Section 33.1(*a*), as amended by Treasury Decision 5245, approved March 13, 1943 [C. B. 1943, 801], is further amended by striking the words "and section 141 as amended by section 159 of the Revenue Act of 1942, applicable with respect to subsequent taxable years," and by inserting in lieu thereof the words "section 141 as

amended by section 159 of the Revenue Act of 1942, applicable with respect to taxable years beginning after December 31, 1941, but prior to January 1, 1944, and as further amended by section 131 of the Revenue Act of 1943, applicable with respect to taxable years beginning after December 31, 1943,".

PAR. 15. Section 33.2(*b*), as amended by Treasury Decision 5245, is further amended as follows:

(A) By striking from the first and third paragraphs the words " section 159 of the Revenue Act of 1942 " wherever appearing therein and by inserting in lieu thereof in each case the words " section 159 of the Revenue Act of 1942 and section 131 of the Revenue Act of 1943."

(B) By inserting immediately after the third paragraph the following new paragraph:

In the determination of the includible corporations of the affiliated group for a taxable year beginning after December 31, 1943, a personal service corporation as described in section 725(a) or a corporation otherwise entitled to exemption from excess profits tax under section 727 (e), (g), or (h) shall be treated as an includible corporation only if it has made and filed pursuant to section 141(e)(7) its consent to be treated as an includible corporation for such year or for a prior taxable year beginning after December 31, 1943.

PAR. 16. Section 33.12(*b*) is amended as follows:

(A) By changing the heading to read:

(*b*) AUTHORIZATIONS AND CONSENTS.

(B) By inserting at the end the following:

The filing of Form 1122E for a taxable year beginning after December 31, 1943, by a subsidiary which is either a personal service corporation as described in section 725(a) or a corporation described in section 727 (e), (g), or (h) shall constitute the making and filing of its consent to be treated as an includible corporation under section 141(e)(7).

If the common parent corporation is a personal service corporation as described in section 725(a) or a corporation described in section 727 (e), (g), or (h), the making and filing of the consolidated income tax return for a taxable year beginning after December 31, 1943, shall constitute the making and filing of its consent to be treated as an includible corporation under section 141(e)(7).

A corporation which consents to be treated as an includible corporation for a taxable year beginning after December 31, 1943, shall be treated as an includible corporation for all subsequent years, regardless of whether the affiliated group of which such corporation is a member during such subsequent years is the same as the affiliated group of which such corporation was a member when such consent was filed. No consent to be treated as an includible corporation under section 141(e)(7) can be withdrawn or revoked at any time after the consolidated return is filed for the first taxable year for which the consent is filed.

PAR. 17. Section 33.14 is amended by striking from the second paragraph the words " section 19.46–1, Regulations 103," and by inserting in lieu thereof the words " section 19.46–1 of Regulations 103, or section 29.46–1 of Regulations 111, as the case may be,".

PAR. 18. Section 33.18(*b*), as amended by Treasury Decison 5245, is further amended by striking the words " section 159 of the Revenue Act of 1942," and by inserting in lieu thereof the words " section 159 of the Revenue Act of 1942 and section 131 of the Revenue Act of 1943,".

PAR. 19. Section 33.30, as amended by Treasury Decision 5245, is further amended by changing the next to the last paragraph to read as follows:

For a consolidated return period beginning after December 31, 1941, the consolidated excess profits tax liability shall be whichever of the following amounts is the lesser:

(A) Ninety-five per cent (or for taxable years beginning prior to January 1, 1944, 90 per cent) of the consolidated adjusted excess profits net income, or

(B) An amount which when added to the consolidated tax computed under Regulations 104 (not including any tax imposed by section 102 or section 500) equals 80 per cent of the consolidated corporation surtax net income, computed without regard to the section 26(e) credit (relating to income subject to excess profits tax) and, for a taxable year beginning after December 31, 1943, without regard to 80 per cent of the consolidated section 26(h) credit (relating to dividends paid on certain public utility preferred stock) computed with the limitations provided in section 23.31(*b*)(2)(xx)(C) of Regulations 104, increased by the excess, if any, of the consolidated net income computed under these regulations over the consolidated net income computed under Regulations 104, or decreased by the excess, if any, of the consolidated net income computed under Regulations 104 over the consolidated net income computed under these regulations, and computed with a dividend received credit determined by reference to a consolidated net income similarly increased or decreased.

PAR. 20. Section 33.31(*b*), as added by Treasury Decision 5245, is amended as follows:

(A) By striking from subparagraph (19) the expression "90 per cent," and inserting in lieu thereof the expression "95 per cent (or for a taxable year beginning prior to January 1, 1944, 90 per cent),";

(B) By changing subparagraph (24)(i) to read as follows:

(i) A specific exemption of $10,000 ($5,000 for a taxable year beginning prior to January 1, 1944),

(C) By changing subparagraph (26) to read as follows:

(26) The consolidated excess profits credit based on invested capital shall be the sum of—

(i) With respect to taxable years beginning after December 31, 1943—

(A) Eight per cent of that portion of the consolidated invested capital not in excess of $5,000,000,

(B) Six per cent of that portion of the consolidated invested capital in excess of $5,000,000 but not in excess of $10,000,000, and

(C) Five per cent of that portion of the consolidated invested capital in excess of $10,000,000, or

(ii) With respect to taxable years beginning after December 31, 1941, but prior to January 1, 1944—

(A) Eight per cent of that portion of the consolidated invested capital not in excess of $5,000,000,

(B) Seven per cent of that portion of the consolidated invested capital in excess of $5,000,000 but not in excess of $10,000,000,

(C) Six per cent of that portion of the consolidated invested capital in excess of $10,000,000 but not in excess of $200,000,000, and

(D) Five per cent of that portion of the consolidated invested capital in excess of $200,000,000;

PAR. 21. Section 33.31(*c*), as added by Treasury Decision 5245, approved March 13, 1943, and amended by Treasury Decision 5341, approved March 14, 1944 [C. B. 1944, 297], is further amended as follows:

(A) By inserting in subparagraph (2)(xi)(H) immediately after the expression "Regulations 109" the following: "or section 35.742–3(*b*) of Regulations 112, as the case may be,";

(B) By inserting in subparagraph (2)(xii)(F) immediately after the expression "Regulations 109" the following: "or section 35.743–1(*b*) of Regulations 112, as the case may be,";

(C) By striking from subparagraph (2) (xiii) (C) the period at the end thereof and inserting in lieu thereof the following: " or section 35.743–1(*b*) of Regulations 112, as the case may be,";

(D) By changing subparagraph (13) (iv) (C) (bb) to read as follows:

(bb) A provision of law is applicable prescribing the nonrecognition of gain or loss, in whole or in part, upon such receipt, including a provision of the regulations applicable to a consolidated income or excess profits tax return, but not including the provisions of section 112(b)(7) of the Revenue Act of 1938 relating to certain complete liquidations occurring during December 1938, the provisions of section 112(b)(7) of the Internal Revenue Code relating to certain complete liquidations occurring during some one calendar month in 1944, the provisions of section 112(b)(9) relating to certain complete liquidations of railroad corporations, or the provisions of section 112(b)(10) relating to reorganizations of corporations in certain receivership and bankruptcy proceedings,

(E) By amending subparagraph (14) (i) to read as follows:

(i) The portion of the consolidated excess profits credit otherwise allowable with respect to the common parent corporation and with respect to any subsidiaries which were members of the group on March 14, 1941, shall not exceed—

(A) The portion of the consolidated excess profits net income for the taxable year attributable to such common parent corporation, in the case of a group formed subsequent to March 14, 1941, or

(B) In the case of a group formed prior to March 15, 1941, but having among its members in the taxable year one or more subsidiaries which became members of the group subsequent to March 14, 1941, the aggregate of the portion of the consolidated excess profits net income for the taxable year attributable to the common parent corporation and to the several subsidiary corporations which were members of the group on March 14, 1941;

(F) By striking from that portion of subparagraph (14) (iv) preceding the lettered inferior subdivisions the words " or to the common parent corporation of a group in existence on March 14, 1941," and inserting in lieu thereof the words " or to the common parent corporation or subsidiaries of a group in existence on March 14, 1941,".

PAR. 22. Section 33.33, as amended by Treasury Decision 5126, approved March 5, 1942 [C. B. 1942–1, 147], is further amended by changing paragraphs (*b*) and (*c*) to read as follows:

(*b*) That the basis for determining the gain or loss, in the case of shares of stock, or in the case of bonds or other obligations, held during any part of a consolidated return period, shall be determined in accordance with sections 33.34 and 33.35; and

(*c*) As provided in section 33.36 (imposing certain limitations upon losses otherwise allowable upon sales of stock, or bonds or other obligations).

PAR. 23. Section 33.34, as amended by Treasury Decision 5245, is further amended as follows:

(A) By striking paragraphs (*a*) and (*b*) and that portion of paragraph (*c*) preceding subparagraph (3), and by inserting in lieu thereof the following:

(*a*) SCOPE OF SECTION.

For the purpose of computing excess profits net income, this section prescribes the basis for determining the gain or loss upon any sale or other disposition (hereinafter referred to as "sale") by a corporation, which is (or has been) a member of an affiliated group which makes (or has made) a consolidated income or excess profits tax return for any taxable year, of any share of stock issued by another member of such group (whether issued before or during the period that it was a member of the group and whether issued before, during, or after the taxable year 1929), and held by the selling corporation during any

part of a period for which a consolidated return is made or required under these regulations.

For the basis in the case of a sale which does not break the affiliation and which is made during a taxable year for which a return is required to be filed on or before March 1, 1945, see paragraph (*b*).

For the basis in the case of a sale which does not break the affiliation and which is made during a taxable year for which a return is required to be filed after March 1, 1945, and in the case of a sale made at any time which breaks the affiliation, see paragraph (*c*).

For the basis in the case of a sale made after the selling corporation has ceased to be a member of the affiliated group, see paragraph (*d*).

For the basis in the case of a sale of bonds, see section 33.35.

(b) SALES MADE DURING TAXABLE YEAR FOR WHICH RETURN REQUIRED ON OR BEFORE MARCH 1, 1945, WHICH DO NOT BREAK AFFILIATION.

With respect to a sale made during a taxable year for which the last day prescribed by law for the filing of the return fell on or before March 1, 1945, the date on which Treasury Decision 5441 was filed with the Division of the Federal Register, if, notwithstanding such sale, the issuing corporation remains a member of the affiliated group, the basis shall be determined and adjusted in the same manner as if the selling corporation and the issuing corporation had never been members of an affiliated group.

But see section 33.38(*b*), relating to intercompany transactions.

(*c*) SALES MADE DURING TAXABLE YEAR FOR WHICH RETURN REQUIRED AFTER MARCH 1, 1945, WHICH DO NOT BREAK AFFILIATION; AND SALES MADE AT ANY TIME WHICH BREAK AFFILIATION.

If the sale is made within a period during which the selling corporation is a member of the affiliated group, whether or not during a consolidated return period, and whether or not, as a result of such sale, the issuing corporation ceases to be a member of the group (not including sales made during a taxable year for which the last day prescribed by law for the filing of the return fell on or before March 1, 1945, if such sale did not break the affiliation), the basis shall be determined as follows:

(1) The aggregate bases of all shares of stock of the issuing corporation held by each member of the affiliated group (exclusive of the issuing corporation) immediately prior to the sale shall be determined separately for each member of the group and adjusted in accordance with the Code, but without regard to any adjustment under the last sentence of section 113(a)(11) relating to losses of the issuing corporation sustained by such corporation after it became a member of the affiliated group.

(2) From the combined aggregate bases as determined in subparagraph (1), there shall be deducted the sum of—

(i) All losses of such issuing corporation sustained during taxable years for which consolidated income tax returns were made or were required (whether the taxable year 1929 or any prior or subsequent taxable year) after such corporation became a member of the affiliated group and prior to the sale of the stock to the extent that such losses could not have been availed of by such corporation as net loss or net operating loss in computing its net income for such taxable years if it had made a separate return for each of such years,

(ii) With respect to each of such taxable years for which consolidated returns were made or were required both for income and for excess profits tax purposes, the excess, if any, of all losses of such issuing corporation for such year, properly adjusted in the computation of consolidated excess profits net income, over the amount of such losses for such year computed under (i) to the extent that such excess could not have been availed of by such corporation as a net operating loss in computing its excess profits net income for such taxable years if it had made a separate excess profits tax return for each of such years, and

(iii) With respect to each of such taxable years for which consolidated returns were made or were required for excess profits tax purposes only, all losses of such issuing corporation for such year, properly adjusted in the computation of consolidated excess profits net income, to the extent that such losses could not have been availed of by such corporation as a net operating loss in computing its excess profits net income for such taxable years if it had made a separate excess profits tax return for each of such years,

reduced by any losses of the issuing corporation apportioned under this section to its stock sold or otherwise disposed of in a prior transaction, disregarding any transaction between members of the affiliated group during a consolidated income or excess profits tax return period which did not constitute a partial liquidation of the issuing corporation. For any taxable year (whether beginning prior to January 1, 1940, or on or after such date) in which the group sustained a consolidated loss not availed of in prior or subsequent years as a deduction under net loss or net operating loss provisions, the amount deducted under this subparagraph shall be further reduced by an amount equal to that proportion of such consolidated loss which the loss of the issuing corporation for the year in which such loss was sustained bears to the aggregate losses of the members of the group for such year.

(B) By renumbering subparagraphs (2) and (3) of paragraph (*d*) as (3) and (4), respectively, and by inserting immediately following subparagraph (1) the following new subparagraph:

(2) The reduction (under paragraph (*c*)(2)) with respect to losses apportioned to stock sold or otherwise disposed of in prior transactions shall be determined without regard to the transactions which terminated the affiliation and all subsequent transactions.

PAR. 24. Section 33.35, as amended by Treasury Decision 5126, approved March 5, 1942, is further amended to read as follows:

SEC. 33.35. SALE OF BONDS OR OTHER OBLIGATIONS—BASIS FOR DETERMINING GAIN OR LOSS.

In the case of a sale or other disposition by a corporation, which is (or has been) a member of an affiliated group which makes (or has made) a consolidated income or excess profits tax return for any taxable year, of bonds or other obligations issued or incurred by another member of such group (whether or not issued or incurred while it was a member of the group and whether issued or incurred before, during, or after the taxable year 1929) and held by the selling corporation during any part of a period for which a consolidated return is made or required under these regulations, the basis of each bond or obligation, for determining the gain or loss upon such sale or other disposition, determined in accordance with the Code, but without regard to any adjustment under the last sentence of section 113(a)(11), shall be decreased (except as otherwise provided in this section) by the excess, if any, of the aggregate of the deductions computed under paragraph (*c*)(2) or (*d*) of section 33.34 over the sum of the aggregate bases of the stock of the debtor corporation as computed under paragraph (*c*)(1) or (*d*), as the case may be, held by the members of the group. The adjustment with respect to so much of such deductions as is based upon losses sustained during the taxable year 1929 and subsequent taxable years for which the last day prescribed by law for the filing of the return fell on or before March 1, 1945 (the date on which Treasury Decision 5441 was filed with the Division of the Federal Register), and availed of on consolidated returns filed for such years shall be made only in those cases in which the sale or other disposition of such bonds or other obligations resulted in a loss. (See, also, section 33.40, relating to disallowance of loss upon intercompany bad debts.)

PAR. 25. Section 33.38(*a*) is amended to read as follows:

(*a*) GENERAL RULE.

Subject to the provisions of paragraphs (*b*) and (*c*) and except as otherwise provided in sections 33.34 and 33.39, the basis during a consolidated return period for determining the gain or loss from the sale or other disposition of property, or upon which exhaustion, wear and tear, obsolescence, and depletion are to be allowed, shall be determined and adjusted in the same manner as if the corporations were not affiliated (see sections 111 to 115, inclusive), whether such property was acquired before or during a consolidated return period. Except as otherwise provided in section 33.39, such basis immediately after a consolidated return period (whether the affiliation has been broken or whether the privilege of making a consolidated return is not exercised) shall be the same as immediately prior to the close of such period.

PAR. 26. Section 33.39(*c*), as amended by Treasury Decision 5245, is further amended by striking the words "subparagraph (2) of this subsection" wherever they appear and by inserting in lieu thereof in each case the words "paragraph (*b*) of this section."

(This Treasury decision is issued under the authority of section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., 62), section 141 of the Internal Revenue Code (53 Stat., 58; 26 U. S. C., 141) as amended by section 159 of the Revenue Act of 1942 (56 Stat., 858), and section 131 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress).)

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

Approved February 28, 1945.

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

(Filed with the Division of the Federal Register March 1, 1945, 11.10 a. m.)

REGULATIONS 104, SECTION 23.11: Consolidated returns for subsequent years. (Also Section 33.11, Regulations 110.)

1945-22-12168
I. T. 3769

INTERNAL REVENUE CODE.

Election with respect to filing separate Federal income and excess profits tax returns for fiscal years ending in 1945 by affiliated corporations which filed consolidated Federal income and excess profits tax returns for fiscal years ended in 1944.

Advice is requested whether affiliated corporations which filed consolidated Federal income and excess profits tax returns for fiscal years ended in 1944 may elect to file separate Federal income and excess profits tax returns for fiscal years ending in 1945.

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

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

Section 23.11(*a*) of Regulations 104, as amended by Treasury Decision 5087 (C. B. 1941-2, 141), relating to consolidated income tax returns of affiliated corporations, provides in part as follows:

* * * 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 * * * [Italics supplied.]

Section 33.11(*a*) of Regulations 110, as amended by Treasury Decision 5087, supra, relating to consolidated excess profits tax returns of affiliated corporations, provides in part as follows:

* * * 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 Subchapter E of Chapter 2 of the Code, or *these regulations which have been consented to*, have been amended and any such amendment is of a character which makes less advantageous to affiliated groups as a class the continued filing of consolidated returns * * * [Italics supplied.]

It is held that Regulations 104 and Regulations 110 have been so amended by paragraphs 8 and 23, respectively, of Treasury Decision 5441 (page 214, this Bulletin), approved February 28, 1945, as to make less advantageous to affiliated groups as a class the continued filing of consolidated Federal income and excess profits tax returns. Accordingly, affiliated corporations filing returns on a fiscal year basis may elect to file separate income and excess profits tax returns for a taxable year ending in 1945, notwithstanding the fact that consolidated income and excess profits tax returns were filed for a fiscal year ended in 1944, except where, pursuant to an extension of time granted by the Commissioner, the consolidated returns for the fiscal year ended in 1944 were not required to be filed until after March 1, 1945, the date on which Treasury Decision 5441, supra, was filed with the Division of the Federal Register. (See section 23.1(*a*) of Regulations 104 and section 33.1(*a*) of Regulations 110; cf. I. T. 3684, C. B. 1944, 304.)

REGULATIONS 104, SECTION 23.31: Bases of tax computation. 1945–18–12133
(Also Section 33.31, Regulations 110.) T. D. 5476

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 23 AND PART 33.

Regulations 104, relating to consolidated income tax returns of affiliated corporations, and Regulations 110, relating to consolidated excess profits tax returns of affiliated corporations, amended with respect to deduction for charitable contributions, and with respect to certain computations involving capital gains and losses and gains and losses under section 117(j) of the Internal Revenue Code.

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

To Collectors of Internal Revenue and Others Concerned:

Effective for taxable years for which the return is due to be filed on or after the date of the approval of this Treasury decision, Regulations 104 [Part 23, Title 26, Code of Federal Regulations, Cum. Sup.] and Regulations 110 [Part 33, Title 26, Code of Federal Regulations, Cum. Sup.] are amended as follows:

REGULATIONS 104.

PARAGRAPH 1. Section 23.31(*b*)(2)(i)(A), as amended by Treasury Decision 5244, approved March 13, 1943 [C. B. 1943, 439], is further amended to read as follows:

(A) Minus the sum of—

(aa) Any consolidated net operating loss deduction,

(bb) Any consolidated net loss from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j), and

(cc) The aggregate amount of any contributions or gifts made by the several affiliated corporations during the taxable year, subject to the provisions of section 23(q), but not in excess of 5 per cent of the consolidated net income computed without regard to such contributions or gifts, and

PAR. 2. Section 23.31(*b*)(2)(iii)(D), as amended by Treasury Decision 5244, is further amended to read as follows:

(D) The amount of the net operating loss, if any, sustained by such corporation for the second preceding taxable year reduced by the net income, if any, of such corporation for the first preceding taxable year, or, if the income of such corporation is included in the consolidated return for the first preceding taxable year, reduced either by the net income of such corporation for such year increased with respect to its separate net short-term and long-term capital gains (or for years beginning after December 31, 1941, its separate net capital gain) and increased or decreased, as the case may be, with respect to its separate gains or losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j) or by the consolidated net income for such year, whichever is the lesser, the net income for the first preceding taxable year being computed in such case with the exceptions, additions, and limitations provided in section 122(d) (1), (2), (4), and (6), and with a net operating loss deduction or a consolidated net operating loss deduction, as the case may be, for such first preceding taxable year determined without regard to the net operating loss of such corporation for the second preceding taxable year and without regard to any net operating loss carry-back,

PAR. 3. Section 23.31(*b*)(2)(iv)(C), as amended by Treasury Decision 5244, is further amended to read as follows:

(C) The amount of the net operating loss, if any, sustained by such corporation for the first succeeding taxable year reduced by the net income, if any, of such corporation for the first preceding taxable year, or, if the income of such corporation is included in the consolidated return for the first preceding taxable year, reduced either by the net income of such corporation for such year increased with respect to its separate net short-term and long-term capital gains (or, for years beginning after December 31, 1941, its separate net capital gain) and increased or decreased, as the case may be, with respect to its separate gains or losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j) or by the consolidated net income for such first preceding taxable year, whichever is the lesser, the net income for the first preceding taxable year being computed in either case with the exceptions, additions, and limitations provided in section 122(d) (1), (2), (4), and (6), and with a net operating loss deduction or a consolidated net operating loss deduction, as the case may be, for the first preceding taxable year determined without regard to the net operating loss of such corporation for the first succeeding taxable year, and

PAR. 4. Section 23.31(*d*)(1), as amended by Treasury Decision 5341, approved March 14, 1944 [C. B. 1944, 297], is further amended by striking from subdivision (vi) the word "and"; by striking the period at the end of subdivision (vii) and inserting in lieu thereof a comma and the word "and"; and by inserting therein the following new subdivision:

(viii) No deduction under section 23(q) with respect to charitable or other contributions shall be taken into account.

PAR. 5. Section 23.31(*d*) (2) (iii), as amended by Treasury Decision 5341, is further amended as follows:

(A) By revising that portion thereof preceding the lettered inferior subdivisions to read:

(iii) Capital gains and losses, short-term capital gains and losses, long-term capital gains and losses, and the additional capital loss deduction authorized by section 204(c)(5) shall be determined without regard to—

(B) By revising inferior subdivision (C) to read:

(C) The net capital loss carry-overs provided in section 117(e)(1), and, in the first taxable year beginning after December 31, 1941, the net short-term capital loss carry-over provided in section 117(e)(2),

PAR. 6. Section 23.31(*d*) (2) (ix), as added by Treasury Decision 5341, is amended to read as follows:

(ix) Gains and losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j) shall be determined without regard to—

(A) Gains or losses from intercompany transactions, and

(B) In the case of a corporation which became a member of the affiliated group subsequent to March 14, 1941, common parent corporation or subsidiary, as the case may be, such portion of any such loss as is disallowed pursuant to the provisions of subparagraph (11) of this paragraph.

PAR. 7. Section 23.31(*d*) (3), as amended by Treasury Decision 5244, is further amended by striking the period at the end of the first sentence and by inserting in lieu thereof the following:

and increased or decreased, as the case may be, with respect to its separate gains or losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j).

PAR. 8. Section 23.31(*d*) (10), as added by Treasury Decision 5341, is amended by striking the period at the end and by inserting in lieu thereof the following:

increased with respect to its separate net gains from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j).

REGULATIONS 110.

PAR. 9. Section 33.31(*b*) (1) (i), as amended by Treasury Decision 5245, approved March 13, 1943 [C. B. 1943, 801], is further amended to read as follows:

(i) Minus the sum of—

(A) Any consolidated net operating loss deduction,

(B) Any consolidated net loss from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j), and

(C) The aggregate amount of any contributions or gifts made by the several affiliated corporations during the taxable year, subject to the provisions of section 23(q), but not in excess of 5 per cent of the consolidated net income computed without regard to such contributions or gifts, and

PAR. 10. Section 33.31(*b*) (3), as amended by Treasury Decision 5245, is further amended by striking all of that portion thereof following subdivision (iii) and by inserting in lieu thereof the following:

(iv) The amount of the net operating loss, if any, sustained by such corporation for the second preceding taxable year reduced by the net income, if any, of such corporation for the first preceding taxable year, or, if the

income of such corporation is included in the consolidated return for the first preceding taxable year, reduced either by the net income of such corporation for such year increased with respect to its separate net short-term and long-term capital gains (or for years beginning after December 1, 1941, its separate net capital gain) and increased or decreased, as the case may be, with respect to its separate gains or losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j) or by the consolidated net income for such year, whichever is the lesser, the net income for the first preceding taxable year being computed in such case with the exceptions, additions, and limitations provided in section 122(d) (1), (2), (4), and (6), and with a net operating loss deduction or a consolidated net operating loss deduction, as the case may be, for such first preceding taxable year determined without regard to the net operating loss of such corporation for the second preceding taxable year and without regard to any net operating loss carry-back,

but only to the extent that such net operating losses, consolidated or separate, as the case may be, were not absorbed as net operating loss carry-backs, and, with respect to net operating losses subject to the provisions of (iv), were not absorbed by the group in the first preceding taxable year as war losses pursuant to the last sentence of section 141(b) of the Code;

PAR. 11. Section 33.31(*b*)(4)(iii), as amended by Treasury Decision 5245, is further amended to read as follows:

(iii) The amount of the net operating loss, if any, sustained by such corporation for the first succeeding taxable year reduced by the net income, if any, of such corporation for the first preceding taxable year, or, if the income of such corporation is included in the consolidated return for the first preceding taxable year, reduced either by the net income of such corporation for such year increased with respect to its separate net short-term and long-term capital gains (or, for years beginning after December 31, 1941, its separate net capital gain) and increased or decreased, as the case may be, with respect to its separate gains or losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j) or by the consolidated net income for such first preceding taxable year, whichever is the lesser, the net income for the first preceding taxable year being computed in either case with the exceptions, additions, and limitations provided in section 122(d) (1), (2), (4), and (6), and with a net operating loss deduction or a consolidated net operating loss deduction, as the case may be, for the first preceding taxable year determined without regard to the net operating loss of such corporation for the first succeeding taxable year, and

PAR. 12. Section 33.31(*c*)(1), as amended by Treasury Decision 5341, approved March 14, 1944, is further amended by striking from subdivision (vi) the word "and"; by striking the period at the end of subdivision (vii) and inserting in lieu thereof a comma and the word "and"; and by inserting therein the following new subdivision:

(viii) No deduction under section 23(q) with respect to charitable or other contributions shall be taken into account.

PAR. 13. Section 33.31(*c*)(2)(ii), as amended by Treasury Decision 5341, is further amended by striking from inferior subdivision (A) the word "and"; by inserting immediately following the semicolon at the end of inferior subdivision (B) the word "and"; and by inserting therein the following new inferior subdivision:

(C) Capital gains and losses, short-term capital gains and losses, and long-term capital gains and losses shall be determined without regard to—

(aa) Gains or losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j), and

(bb) The net capital loss carry-overs provided in section 117(e)(1), and, in the first taxable year beginning after December 31, 1941, the net short-term capital loss carry-over provided by section 117(e)(2);

PAR. 14. Section 33.31(*c*)(3), as amended by Treasury Decision 5245, is further amended by striking the period at the end of the first sentence and by inserting in lieu thereof the following:

and increased or decreased, as the case may be, with respect to its separate gains or losses from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j).

PAR. 15. Section 33.31(*c*)(15), as added by Treasury Decision 5341, is amended by striking the period at the end and by inserting in lieu thereof the following:

increased with respect to its separate net gains from involuntary conversions and from sales or exchanges of property subject to the provisions of section 117(j).

(This Treasury decision is issued under the authority of section 141(b) of the Internal Revenue Code as amended by section 159 of the Revenue Act of 1942 (53 Stat., 58, 56 Stat., 858; 26 U. S. C., 1940 ed. and Sup., 141).)

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

Approved September 10, 1945.

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

(Filed with the Division of the Federal Register September 11, 1945, 4.31 p. m.)

REGULATIONS 104, SECTION 23.34: Sale of stock—
Basis for determining gain or loss.

INTERNAL REVENUE CODE.

Regulations 104 amended. (See T. D. 5441, page 214.)

REGULATIONS 110, SECTION 33.31: Bases of tax computation.

INTERNAL REVENUE CODE.

Regulations 110 amended. (See T. D. 5476, page 226.)

REGULATIONS 110, SECTION 33.34: Sale of stock—
Basis for determining gain or loss.

INTERNAL REVENUE CODE.

Regulations 110 amended. (See T. D. 5441, page 214.)

SECTION 142.—FIDUCIARY RETURNS.

SECTION 29.142–1: Fiduciary returns.

INTERNAL REVENUE CODE.

Bankrupt partnership estates. (See G. C. M. 24617, page 235.)

SECTION 143.—WITHHOLDING OF TAX AT SOURCE.

SECTION 29.143–1: Withholding tax at source.

INTERNAL REVENUE CODE.

Withholding of income tax on compensation of citizens of Puerto Rico brought into the United States through the facilities of the War Manpower Commission for temporary employment essential to the war effort. (See I. T. 3709, page 248.)

SECTION 29.143–3: Exemption from withholding. (Also Section 211, Section 29.211–7; Section 231, Section 29.231–1.) 1945–6–11993 T. D. 5443

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 the tax convention and protocol between the United States and France, effective January 1, 1945.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. The tax convention and protocol between the United States and France, proclaimed by the President of the United States on January 5, 1945, effective on January 1, 1945, provide in part as follows:

ARTICLE 7.

* * * * * * *

Royalties derived from within one of the contracting States by a resident or by a corporation or other entity of the other contracting State as consideration for the right to use copyrights, patents, secret processes and formulae, trademarks and other analogous rights shall be exempt from taxation in the former State, provided such resident, corporation or other entity does not have a permanent establishment there.

ARTICLE 8.

* * * * * * *

Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

ARTICLE 14.

* * * * * * *

Notwithstanding any other provision of this convention, the United States of America in determining the income and excess-profits taxes, including all surtaxes, of its citizens, or residents, or corporations, may include in the basis upon which such taxes are imposed, all items of income taxable under the revenue laws of the United States of America, as though this convention had not come into effect. The United States of America shall, however, deduct from the taxes thus computed the amount of French income tax paid. This deduction shall be made in accordance with the benefits and limitations of section 131 of the United States Internal Revenue Code relating to credit for foreign taxes.

* * * * * * *

ARTICLE 27.

* * * * * * *

This convention shall become effective on the 1st day of January following the exchange of the instruments of ratification.

The convention shall remain in force for a period of five years and indefinitely thereafter but may be terminated by either contracting State at the end of the 5-year period or at any time thereafter, provided six months' prior notice of

termination has been given, the termination to become effective on the 1st day of January following the expiration of the 6-month period.

Upon the coming into effect of this convention, the convention for the avoidance of double income taxation between the United States of America and France, signed April 27, 1932 [C. B. XIV-2, 535 (1935)], shall terminate.

* * * * * * *

PROTOCOL.

III.

* * * * * * *

(a) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, stores, purchasing and selling and other offices, agencies, warehouses, and other fixed places of business but does not include a subsidiary corporation.

When an enterprise of one of the contracting States carries on business in the other State through an employee or agent, established there, who has general authority to negotiate and conclude contracts or has a stock of merchandise from which he regularly fills orders which he receives, this enterprise shall be deemed to have a permanent establishment in the latter State. But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the latter State.

Insurance enterprises shall be considered as having a permanent establishment in one of the States as soon as they receive premiums from or insure risks in the territory of that State.

* * * * * * *

PAR. 2. Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.] are amended as follows:

(A) Section 29.143-3, as amended by Treasury Decision 5425, approved December 29, 1944 [page 10, this Bulletin], is further amended by striking out the paragraph beginning with the words "The following items" and the paragraph beginning with the words "The person paying" and substituting in lieu of such paragraphs the following:

The following items of fixed or determinable annual or periodical income from sources within the United States received before January 1, 1945, by a citizen of France residing in France or a corporation organized under the laws of France, or received on or after January 1, 1945, by a resident of France (whether or not such resident is a citizen of France) or by a corporation or other entity organized under the laws of France, are not subject to the withholding provisions of the Internal Revenue Code, since such income is, except in the case of citizens of the United States, exempt from Federal income tax, if received before January 1, 1945, under the provisions of the tax convention and protocol between the United States and France, signed April 27, 1932, and effective January 1, 1936 (see paragraph 108 of the Appendix to these regulations), or, if received on or after January 1, 1945, under the provisions of the tax convention and protocol between the United States and France, signed July 25, 1939, and effective January 1, 1945:

(1) Royalties derived as consideration for the right to use copyrights, patents, secret processes and formulas, trade-marks, and other analogous rights, provided, however, in the case of such royalties received on or after January 1, 1945, such resident of France, or corporation or other entity organized under the laws of France, does not have a permanent establishment within the United States.

(2) Private pensions and life annuities.

The person paying such income shall be notified by letter from the French citizen residing in France, the individual resident of France, or the corporation or other entity organized under the laws of France, as the case may be, that the income is exempt from taxation under the provisions of the applicable convention and protocol. Such letter from a citizen of France, with respect to income received before January 1, 1945, shall contain his address and a statement that he is a citizen of France residing in France. The letter of notification from an individual resident of France shall contain his address and a statement that he is a resident of France. The letter of notification from a corporation or other entity organized under the laws of France shall contain the

address of its office or place of business and a statement that it is a corporation or other entity organized under the laws of France, shall be signed by an officer of such corporation or entity, and shall set forth his official title. In the case of royalties derived on or after January 1, 1945, the letter of notification shall also state that the individual resident of France, or corporation or other entity organized under the laws of France, as the case may be, does not have a permanent establishment in the United States. The recipient of the letter of notification shall immediately forward such letter or a copy thereof to the Commissioner of Internal Revenue, Withholding Returns Section, Washington 25, D. C.

(B) Section 29.211–7, as amended by Treasury Decision 5425, is further amended by striking out the sentence beginning with the words "The items of fixed or determinable" which occurs in the first paragraph of subdivision (*a*) thereof and inserting in lieu of such sentence the following:

The items of fixed or determinable annual or periodical income from sources within the United States received before January 1, 1945, by a citizen of France residing in France which are exempt from Federal income taxation under the provisions of the tax convention and protocol between the United States and France, signed April 27, 1932, and effective January 1, 1936 (see paragraph 108 of the Appendix to these regulations), or received on or after January 1, 1945, by a resident of France which are so exempt under the provisions of the tax convention and protocol between the United States and France, signed July 25, 1939, and effective January 1, 1945, are described in section 29.143–3.

(C) Section 29.231–1 is amended by striking out the sentence beginning with the words "The items of fixed or determinable" which occurs in subdivision (*a*) thereof and substituting in lieu of such sentence the following:

The items of fixed or determinable annual or periodical income from sources within the United States received before January 1, 1945, by a corporation organized under the laws of France, which are exempt from Federal income tax under the provisions of the tax convention and protocol between the United States and France, signed April 27, 1932, and effective January 1, 1936 (see paragraph 108 of the Appendix to these regulations), or received on or after January 1, 1945, by a corporation or other entity organized under the laws of France, which are so exempt under the provisions of the tax convention and protocol between the United States and France, signed July 25, 1939, and effective January 1, 1945, are described in section 29.143–3.

PAR. 3. In the case of income paid after December 31, 1944, and before March 15, 1945, compliance with the provisions of section 29.143–3 of Regulations 111 prior to its amendment by this Treasury decision as applicable with respect to nonresident aliens who are citizens of France residing therein, or corporations organized under the laws of France, shall be considered as sufficient compliance with the provisions of law and regulations relating to withholding of the tax at the source of residents of France or corporations or other entities organized under the laws of France.

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., 62) and the tax convention and protocol between the United States and France, signed July 25, 1939, effective January 1, 1945 (Treaty Series No. 988).)

GEO. J. SCHOENEMAN,
Acting Commissioner of Internal Revenue.

Approved March 2, 1945.

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

(Filed with the Division of the Federal Register March 3, 1945, 4.16 p. m.)

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SECTION 147.—INFORMATION AT SOURCE.

SECTION 29.147-2: Return of information as to payments to employees. 1945-19-12140 T. D. 5480

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

Regulations 111 amended—return of information as to payments to employees:

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

To Collectors of Internal Revenue and Others Concerned:

Section 29.147-2 of Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], as amended by Treasury Decision 5313, approved December 21, 1943 [C. B. 1944, 308], is further amended to read as follows:

SEC. 29.147-2. RETURN OF INFORMATION AS TO PAYMENTS TO EMPLOYEES.—The names of all employees to whom payments of $500 or more are made in any calendar year, whether such total sum is made up of wages, salaries, annuities, commissions, or compensation in any other form, must be reported. In the case of any such payments of $500 or more made during the calendar year 1945 or a subsequent calendar year, if a portion thereof constitutes wages subject to withholding under section 1622 and such portion is reported on Form W-2, the remainder of such payments must be reported on Form 1099. For example, if such payments made to an employee by his employer in 1945 amount to $600 and $400 thereof represent wages subject to withholding under section 1622, and the remaining $200 represent compensation not subject to withholding, for instance, advances or reimbursements for traveling or other expenses, or insurance premiums which in accordance with section 29.165-6 are income to the employee for the year in which the insurance is purchased, the $400 must be reported on Form W-2 and the $200 must be reported on Form 1099. Heads of branch offices and subcontractors employing labor, who keep the only complete record of payments therefor, should file returns of information in regard to such payments with the Commissioner of Internal Revenue, Processing Division, 260 East One Hundred Sixty-first Street, New York 51, N. Y. When both main office and branch office have adequate records, the return should be filed by the main office.

For years prior to 1945, amounts distributed or made available under an employees' trust governed by the provisions of section 165 to any beneficiary, in excess of the sum of his personal exemption and the amounts paid into the fund by him, must be reported by the trustee. For the calendar year 1945 and subsequent calendar years amounts distributed or made available under an employees' trust governed by the provisions of section 165, or under an annuity plan to which section 29.22(b)(2)-5 relates, to a beneficiary shall be reported to the extent such amounts are includible in the gross income of such beneficiary where the amounts so includible are $500 or more.

In the case of payments made by the United States to persons in its service (civil, military, or naval) of wages, salaries, or compensation in any other form, the returns of information shall be made by the heads of the executive departments and other United States Government establishments.

For cases where no returns of information are required, see section 29.147-3. (See also section 29.22(a)-3.)

(This Treasury decision is issued under the authority contained in sections 62 and 147 of the Internal Revenue Code (53 Stat., 32, 64; 56 Stat., 828; 26 U. S. C., 62, 147).)

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

Approved September 26, 1945.

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

(Filed with the Division of the Federal Register September 26, 1945, 4.35 p. m.)

SECTION 29.147-2: Return of information as to payments to employees. 1945-23-12179 Mim. 5947

Character of advances or reimbursements for traveling or other expenses to be reported on Form 1099.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., November 19, 1945.

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

1. Inquiry has been made as to the scope of that part of Treasury Decision 5480, approved September 26, 1945 [page 234, this Bulletin], which provides that "compensation not subject to withholding, for instance, advances or reimbursements for traveling or other expenses" is to be reported on Form 1099 if the wages subject to withholding and such advances or reimbursements total $500 or more for the calendar year.

2. Treasury Decision 5480 does not change the rule that information returns are required from all persons making payment to employees of wages, salaries, annuities, commissions, or compensation in any other form amounting to $500 or more in any calendar year. It merely provides that in such cases if only a portion of such compensation constitutes wages subject to withholding and such portion is reported on Form W-2, the remainder of such payments must be reported on Form 1099.

3. The advances or reimbursements for expenses contemplated by Treasury Decision 5480 are those which are made by the employer without requiring an accounting by the employee to the employer that the expenses are ordinary and necessary expenses incurred in the business of the employer. The Bureau will consider that the employer has complied with the provisions of the Treasury decision if the advances or reimbursements for expenses to be reported on Form 1099 are confined to those with respect to which the employer does not require the employee to submit expense accounts showing that the advances or reimbursements are ordinary and necessary expenses in the employer's business.

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

WM. T. SHERWOOD,
Acting Commissioner.

SUPPLEMENT E.—ESTATES AND TRUSTS.

SECTION 161.—IMPOSITION OF TAX.

SECTION 29.161-1: Imposition of the tax. (Also Section 142, Section 29.142-1.) 1945-8-12021 G. C. M. 24617

INTERNAL REVENUE CODE AND REVENUE ACTS OF 1921 AND 1926.

The income of a bankrupt partnership estate, like that of a bankrupt individual's estate, should be taxed as income of an estate under section 161 of the Internal Revenue Code, and the returns of such estates should be made on Form 1041 (Fiduciary Income Tax Return).

G. C. M. 8488 (C. B. X-1, 270 (1931)) modified; recommended that I. T. 1540 (C. B. I-2, 178 (1922)) be modified.

Reconsideration has been given to G. C. M. 8488 (C. B. X–1, 270 (1931)), in which it was held, among other things, that the income of a bankrupt partnership estate should be reported by the trustees in bankruptcy on Form 1065 (Partnership Return of Income), and that the amounts reported as distributed to themselves as trustees in bankruptcy of the bankrupt partners should be included in the income reported by them on Form 1040 or Form 1040–A (Individual Income Tax Returns) for the bankrupt individuals.

It appears that the above-stated conclusions in G. C. M. 8488, supra, were based primarily upon the premise that the status of a trustee in bankruptcy is identical with that of such a receiver as was contemplated by article 424 of Regulations 69, prescribed under the Revenue Act of 1926, now section 29.142–4 of Regulations 111, prescribed under the Internal Revenue Code. Apparently it was considered that the fact that partnership assets were in the hands of a trustee in bankruptcy did not change the status of the firm for Federal income tax purposes, i. e., it was thought to be a unit for the purpose of filing an information return on behalf of a group of individuals rather than a separate taxable entity. At the same time, the intervention of a trustee in bankruptcy for an individual was regarded as creating an entity separate and apart from the individual bankrupt. Evidently the latter conclusion depended upon the effect of the bankruptcy action, while a like effect was not attributed to bankruptcy action with respect to a partnership. In accordance with a suggestion that the two views seem inconsistent, the problem has been reconsidered.

Under the long-established practice of the Bureau, the estate held by a trustee in bankruptcy for an individual bankrupt is treated as an estate within the meaning of section 161 of the Internal Revenue Code and corresponding provisions of prior revenue laws, and distributions to creditors are not considered deductible by the estate because such distributions represent capital payments within the purview of *Helvering* v. *Pardee et al.* (290 U. S., 365, Ct. D. 769, C. B. XIII–1, 151 (1934)). G. C. M. 8488, supra, adopts this view in requiring that the tax on income of the estate of a bankrupt partner be assessed against such estate. Section 161 of the Code is general in its terms and should be held to apply to all estates and trusts unless there exists some special reason for making an exception to the rule stated. That a trustee in bankruptcy is a fiduciary is not open to question, and this office perceives no reason why an estate of an individual in bankruptcy should not be regarded as an estate within the meaning of section 161 of the Code. The conclusion that an estate in bankruptcy in the case of an individual is an estate within the meaning of section 161 of the Code is based on the intervention of the status of bankruptcy into the affairs of the individual. Upon reconsideration, it is believed that such a rule is equally applicable to the estate of a bankrupt partnership. Section 5 of the Bankruptcy Act, as amended, makes no distinction between the status of an estate holding the assets of a bankrupt partnership and an estate holding the assets of a bankrupt individual.

The above-stated premise leading to the opposite conclusion seems unsound. That the term "receiver," as used in section 29.142–4 of Regulations 111, supra, was not intended to include a trustee in bankruptcy is shown by the fact that the first sentence of such section states in effect that a receiver who has all the property of an individual must

file a return and pay the tax. In only rare cases will a trustee of an individual bankrupt have all of such individual's property. Ordinarily, the individual will retain such property as is exempt under bankruptcy law, and, in the case of a partner, the partnership property will be in the hands of the other members of the partnership, or, if the partnership be also bankrupt, in the hands of the partnership trustee in bankruptcy. The receiver intended by section 29.142–4 is clearly a receiver acting in a manner similar to that of the fiduciary described in section 29.142–1(*a*) of Regulations 111, rather than a trustee in bankruptcy. The same reasoning impels the conclusion that the status of a trustee in bankruptcy, though similar in some respects, is not identical with that of a receiver for Federal income tax purposes.

In view of the foregoing, it is the opinion of this office that the income of a bankrupt partnership estate, like that of a bankrupt individual's estate, should be taxed as income of an estate under section 161 of the Internal Revenue Code, and the returns of such estates should be made on Form 1041 (Fiduciary Income Tax Return). G. C. M. 8488, supra, is modified in so far as it is inconsistent herewith.

To the extent that I. T. 1540 (C. B. I–2, 178 (1922)) may be construed as indicating that a trustee in bankruptcy is a receiver for the purposes of section 29.142–4 of Regulations 111, supra, and similar provisions of prior regulations, it is recommended that such ruling be modified.

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

SECTION 162.—NET INCOME.

SECTION 19.162–1: Income of estates and trusts.

INTERNAL REVENUE CODE.

Expenses of litigation, etc., in connection with management and distribution of trust property. (See Ct. D. 1643, page 103.)

SECTION 19:162–1: Income of estates and trusts. 1945–18–12134
G. C. M. 24749

INTERNAL REVENUE CODE AND REVENUE ACT OF 1938.

Where the executor of an estate distributes estate income before January 1, 1942 (the effective date of the amendment of section 162 of the Internal Revenue Code by section 111 of the Revenue Act of 1942), to a residuary legatee, *including a trustee-legatee*, during the period of administration or settlement of the estate, the will and State law not providing for income distributions, such distributions are deductible by the estate and taxable to the legatee as "properly paid" under the provisions of section 162(c) of the Internal Revenue Code and section 162(c) of the Revenue Act of 1938, provided the distributions are paid to and received by the legatee *as income*.

G. C. M. 22034 (C. B. 1940–1, 90) modified.

Reconsideration has been given to G. C. M. 22034 (C. B. 1940–1, 90), which holds that distributions of income, including gains on the sale of capital assets, to residuary testamentary trustees by the executor of an estate during the period of administration of the estate, the will being silent as to distributions during administration and

the State law not providing for such distributions, are not deductible by the estate for Federal income tax purposes as income properly paid to a legatee, heir, or beneficiary under the provisions of section 162(c) of the Revenue Act of 1938. G. C. M. 22034 also holds that distributions of such income to individual residuary beneficiaries are deductible by the estate and taxable to the beneficiaries. The last two paragraphs of that memorandum read as follows:

> The will of A not only directs that portions of the residuary estate be paid directly to certain named beneficiaries but it directs that a part of such estate be paid to certain named persons in trust for the benefit of others. With respect to the distribution of estate income to trustees, it was held in *Weigel et al.* v. *Commissioner* (96 Fed. (2d), 387), that the residue of an estate, including income, is received by a testamentary trustee as a bequest or devise of trust corpus and, therefore, the payment of such income is not deductible by an estate under the provisions of section 162(c) of the Revenue Act of 1928.
>
> Applying the rule laid down in the Weigel case, supra, the distributions of income to testamentary trustees by the executor of the estate of A during the period of administration are not deductible by the estate for Federal income tax purposes as income "properly paid" to any legatee, heir, or beneficiary under the provisions of section 162(c) of the Revenue Act of 1938. Such income is taxable to the estate.

At the time G. C. M. 22034, supra, was promulgated, it was the position of this office that a trustee could not be a legatee for the purposes of section 162(c) of the Revenue Act of 1938 and similar provisions of prior Revenue Acts. This position was based on certain language used in *Weigel et al.* v. *Commissioner* (96 Fed. (2d), 387), which patently implied that a trustee could not be a legatee. However, since that memorandum was issued, it has been held in several cases that a trust or a trustee can be a legatee or beneficiary under section 162(c) of the Internal Revenue Code or its counterpart in the various Revenue Acts. In *Estate of Ida A. White et al.* v. *Commissioner* (41 B. T. A., 525, acquiescence, page 7 of this Bulletin), the Board of Tax Appeals (now The Tax Court) stated:

> We have no doubt that a trust, and hence its controlling trustees, can be a legatee within the contemplation of the statute. * * * The word "legatee" connotes the recipient or object of a legacy. The trustees, being such recipient here, became the "legatee" under the direction of the will. The trust was a taxable entity and returned the income received for taxation. Here the securities not needed to pay the debts of the estate were specifically bequeathed to the trustees by the codicil to Mrs. White's will. They were thus made legatees by force of its testamentary language.

The decisions in *Commissioner* v. *Bishop Trust Co., Ltd.* (136 Fed. (2d), 390), affirming *Estate of John A. McCandless* v. *Commissioner* (42 B. T. A., 1309); *Commissioner* v. *Estate of George W. Crawford et al.* (139 Fed. (2d), 616); and *Estate of Robert W. Harwood et al.* v. *Commissioner* (3 T. C., 1104, acquiescence, C. B. 1944, 13) are to the same effect. In each of those cases it was held that distributions of income by the executors to the trusts or trustees were properly deductible by the executors under the provisions of section 162(c) of the controlling Revenue Act. In addition, it has been held that a subsidiary trust can be a beneficiary of a principal trust and that, therefore, distributions of income by a principal trust to a subsidiary trust are deductible by the principal trust. (See *Lynchburg Trust & Savings Bank et al.* v. *Commissioner*, 68 Fed. (2d), 356, certiorari denied, 292 U. S., 640; *Angier B. Duke* v. *Commissioner*, 38 B. T. A., 1264, acquiescence, C. B. 1939–1 (Part 1), 10; *George G. Allen et al.* v. *Commissioner*, 40 B. T. A., 351, acquiescence, C. B. 1939–2, 1.)

In view of the foregoing, it is the opinion of this office that a residuary testamentary trust may be a legatee or beneficiary for the purpose of section 162(c) of the Internal Revenue Code and section 162(c) of the Revenue Act of 1938.

Even though a trust or trustee can be a legatee or beneficiary, in order for the distribution by the executor of the estate to be deductible within the meaning of the phrase "properly paid or credited" as used in section 162(c), supra, the distribution must be paid or credited to the trustee *as income*. If such distribution is paid or credited as a legacy (corpus), it is nontaxable as income to the legatee under section 22(b)(3) of the Code and corresponding provisions of prior revenue laws. The general purpose of section 162(c), supra, is to tax estate or trust income either to the fiduciary or to the beneficiary. (See *Helvering* v. *Julia Butterworth et al.*, 290 U. S., 365, Ct. D. 769, C. B. XIII-1, 151 (1934).) However, the estate or trust may deduct the amounts distributed and the beneficiaries are taxable thereon only in case the amounts distributed constitute income paid *as such* to, and received *as such* by, the beneficiaries. Thus, the question in each particular case is whether the amounts were distributed *as income* or as corpus.

In *Weigel et al.* v. *Commissioner*, supra, the testatrix by the terms of her will gave, devised, and bequeathed the residue of her estate to her executors in trust for the lifetime of her husband and provided that part of the income of the trust be paid to a faithful servant and the remainder to her husband. During the course of administration of the estate, the executors sold certain shares of stock at a large profit and, during the taxable year involved, distributed part of the profit to themselves as trustees of the testamentary trust. A controversy arose as to whether the distribution of such income was deductible under the provisions of section 162(c) of the Revenue Act of 1928. In holding the distribution was not deductible, the court stated in part as follows:

> *Under the terms of the will* in the instant case there can be no proper distribution of the estate income, as income, to the trustees of the testamentary trust. The term estate income when applied to any assets of the estate which were transferred or "paid" to the trustees merely designates the source of that particular portion of the residue of the estate. *By the terms of the will* the residue of the estate, including all estate income as well as personal property which passed to the executors, became and constituted the corpus of the trust estate; and, in our opinion, the residue of the estate was received by the trustees as a bequest or devise of trust corpus and not as a payment of income, either trust or estate. The property thus received came within the classification of section 22(b)(3) and was, therefore, exempt from the tax imposed by the Act of 1928. [Italics supplied.]

Thus, the basis of that decision is that the amount of the distribution was not paid or credited as income but was distributed as part of the corpus of the trust estate by virtue of the terms of the will.

However, there is other language in the Weigel opinion to the effect that a distribution of residue, consisting of estate corpus and estate income, to a testamentary trust is received as corpus because it becomes a part of the trust *res*, but if a like distribution were made to an individual residuary legatee, that portion representing estate income would be received by the legatee as income. The decisions by the Board of Tax Appeals (now The Tax Court) and the circuit courts on this point are to the same effect, namely, that distributions of estate income to individual residuary legatees during the period of

administration are taxable to the distributees and deductible by the estates. (See *Marinda Leith* v. *Commissioner*, 3 B. T. A., 1082; *Harold A. Whitlock et al.* v. *Commissioner*, 22 B. T. A., 1355; *Carrie G. Cox et al.* v. *Commissioner*, 31 B. T. A., 819; *Samuel Riker* v. *Commissioner*, 42 Fed. (2d), 150, Ct. D. 264, C. B. IX–2, 366 (1930); *Margaretha Weber* v. *Commissioner*, 111 Fed. (2d), 766; *County National Bank & Trust Co. of Santa Barbara* v. *Helvering*, 122 Fed. (2d), 29.)

It is believed that the considerations for determining the taxation of distributions of estate income to residuary testamentary trusts are the same as those applicable to like distributions to individual residuary legatees, and that it is immaterial that the distribution of income to the trustees becomes a part of the trust *res* so long as the distribution is received by the trustees *as income*. (See *Commissioner* v. *Estate of George W. Crawford et al.*, supra.) Any other conclusion would appear to be in direct conflict with a holding that a testamentary trust can be a legatee or beneficiary.

It should be noted that a distinction has been made by the courts between distributions during the period of administration or settlement of the estate on the one hand and final distributions on the other, in the application of section 162(c) of the Code to distributions made before January 1, 1942, the effective date of the amendment of section 162 of the Code by section 111 of the Revenue Act of 1942. Where the will or the State law does not provide for the current distribution of estate income to the legatee and the residuary legatee receives the residue of the estate, including estate income, upon the completion of administration, the courts have consistently held that the legatee is not subject to income tax with respect to any portion of the amount received as residue, it being received as a legacy, exempt under section 22(b)(3), supra, and, therefore, nondeductible by the estate under section 162(c), supra. (See *S. F. Durkheimer* v. *Commissioner*, 41 B. T. A., 585, acquiescence, C. B. 1943, 6; *Elizabeth S. Whitaker* v. *United States*, 44 Fed. Supp., 484; *Sarah B. Frazer* v. *Driscoll*, 46 Fed. Supp., 838; *Emma S. Norris* v. *Glenn*, 48 Fed. Supp., 673.) However, if the State law provides that the legatee is entitled to estate income from the date of the settlor's death, it has been held that the distribution of such income, even in final settlement of the estate, is deductible by the estate and taxable to the legatee-trust. (See *Commissioner* v. *Bishop Trust Co., Ltd.*, supra.)

Accordingly, where the executor of an estate distributes estate income before January 1, 1942 (the effective date of the amendment of section 162 of the Internal Revenue Code by section 111 of the Revenue Act of 1942), to a residuary legatee, *including a trustee-legatee*, during the period of administration or settlement of the estate, the will and State law not providing for income distributions, it is the opinion of this office that such distributions are deductible by the estate and taxable to the legatee as "properly paid" under the provisions of section 162(c) of the Internal Revenue Code and section 162(c) of the Revenue Act of 1938, provided the distributions are paid to and received by the legatee *as income*.

G. C. M. 22034, supra, is modified to accord with the conclusions reached herein.

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

SECTION 29.162-1: Income of estates and trusts. 1945-19-12141
G. C. M. 24702

INTERNAL REVENUE CODE.

Amounts distributed by an estate out of its income during the taxable year in which the residue becomes payable are, to the extent the estate had income (other than income in respect of a decedent) for such taxable year, taxable to the legatee and deductible by the estate under section 162(b) of the Internal Revenue Code, as amended by section 111 of the Revenue Act of 1942, regardless of the fact that under State law such income is considered principal to the legatee, except where the distribution is made in satisfaction or payment of a pecuniary legacy.

An opinion is requested whether amounts distributed by an estate out of its income during the taxable year in which the residue becomes payable are taxable to the legatee and deductible by the estate under section 162(b) of the Internal Revenue Code, as amended by section 111 of the Revenue Act of 1942, where such income is considered principal to the legatee under State law.

In the instant case the decedent died in 1942, a resident of the State of Connecticut. Under the terms of his will, the executor is directed to divide the rest, residue, and remainder of the estate into 10 equal parts. Six of those parts are devised and bequeathed to a trustee who is directed to pay to the decedent's widow the income therefrom and so much of the principal thereof as the trustee may deem necessary or proper for her comfortable maintenance and support. Upon the death of the widow, the trust fund remaining is to be divided equally among decedent's children then living. The other four equal parts of the estate are directed to be divided among the decedent's children.

It is stated that under the law of Connecticut the widow, as life tenant of 60 per cent of the residue left in trust, is entitled to 60 per cent of the income earned during the period of administration; that the remaining 40 per cent of the residue constitutes an absolute gift to the children; that the income earned during administration on the latter 40 per cent becomes additional principal which is added to the entire residue with the result that upon final distribution of the estate 60 per cent of such additional principal will be distributed to the trustees as principal and be added to trust corpus and 40 per cent will be distributed to the children. The law of Connecticut, as declared by the Supreme Court of Errors in *Stanley et al.* v. *Stanley et al.* (108 Conn., 100, 142 Atl., 851), appears to be to that effect. Thus, the question is clearly presented whether Congress intended section 162 of the Internal Revenue Code, as amended by section 111 of the Revenue Act of 1942, to be applied without resort to the law of the jurisdiction where the estate is being administered. Section 162(b) of the Code, as so amended, provides as follows:

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the legatees, heirs, or beneficiaries, but the amount so allowed as a deduction shall be included in computing the net income of the legatees, heirs, or beneficiaries whether distributed to them or not. As used in this subsection, "income which is to be distributed currently" includes income for the taxable year of the estate or trust which, within the taxable year, becomes payable to the legatee, heir, or beneficiary. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

Prior to the amendment of section 162 of the Code by section 111 of the Revenue Act of 1942, the Board of Tax Appeals (now The Tax Court) and the courts held that where the income of an estate for the taxable year was distributed to an individual legatee upon final settlement of the estate, such income was not taxable to the legatee under section 162(c) of the Code and corresponding provisions of prior revenue laws. (See *S. F. Durkheimer* v. *Commissioner*, 41 B. T. A., 585, acquiescence, C. B. 1943, 6; *Mabel I. Wilcox* v. *Commissioner*, 43 B. T. A., 931, acquiescence, C. B. 1943, 25; *Elizabeth S. Whitaker* v. *United States*, 44 Fed. Supp., 484; *Sarah B. Frazer* v. *Driscoll*, 46 Fed. Supp., 838; *Emma S. Norris* v. *Glenn*, 48 Fed. Supp., 673.) Those decisions are based on the theory that the residue was determined when the administration was completed and that the income earned during administration became principal in the residue, and that, therefore, both the principal and income were received by the legatee as a legacy, exempt under section 22(b)(3) of the Code and corresponding provisions of prior revenue laws. The Board of Tax Appeals and the United States Circuit Court of Appeals for the Ninth Circuit held to the same effect where estate income was paid to a residuary testamentary trust upon final settlement of the estate. (See *Estate of Frank B. Anderson* v. *Commissioner*, 126 Fed. (2d), 46.)

In G. C. M. 22034 (C. B. 1940–1, 90), it was held in effect that a testamentary trust could not be a legatee for the purposes of the provisions of section 162(c) of the Revenue Act of 1938. It is now the opinion of this office that a testamentary trust may be a legatee. (See G. C. M. 24749, page 237, this Bulletin, modifying G. C. M. 22034.)

The general statutory plan with respect to estates has been to tax in some way the whole net income of the estate (*Helvering* v. *Julia Butterworth et al.*, 290 U. S., 365, Ct. D. 769, C. B. XIII–1, 151 (1934)), that is, the income is either taxed to the estate as a separate entity or to the legatee to whom the income is paid. The basic principle underlying section 111 of the Revenue Act of 1942 is to impose the tax, with stated limitations, upon the person who enjoys the income (the residuary legatee) and still preserve the nontaxability of pecuniary legatees with respect to estate income used to discharge lump-sum bequests. Thus, under section 162(b) of the Code, as amended, the amounts distributed to the residuary legatee (including a trust-legatee) during the taxable year in which the residue becomes payable, to the extent the estate has income for such taxable year, would represent income to the residuary legatee.

Senate Report No. 1631, Seventy-seventh Congress, second session (C. B. 1942–2, 504, at page 559), states in part as follows:

> Your committee bill adds an amendment to section 162(b) of the Code designed to include in the income of a legatee or beneficiary the income of the estate or trust for its taxable year which, within such taxable year, becomes payable to the legatee or beneficiary, even though it then becomes payable as part of an accumulation of income held until the happening of some event which occurs within the taxable year. Such cases are usually cases where accumulated income of an estate is paid to a residuary legatee upon termination of the estate or where income of a trust is accumulated for distribution upon the beneficiary's reaching a specified age.

Although it is not expressly stated that the provisions of section 162(b) of the Code, as amended, should be applied without regard to State law, it is inferred that such was the Congressional intent, for it seems clear that Congress intended to change the rule laid down in the

Durkheimer case, supra, and in similar cases, so that the amount paid to the residuary legatee would be taxable to the legatee to the extent that the estate had income for the taxable year in which the residue became payable, irrespective of the fact that under the law of most States such income would be considered an addition of principal to the residue. (See section 29.162–2(*b*) of Regulations 111.)

Accordingly, it is the opinion of this office that amounts distributed by an estate out of its income during the taxable year in which the residue becomes payable are, to the extent the estate had income (other than income in respect of a decedent) for such taxable year, taxable to the legatee and deductible by the estate under section 162(b) of the Internal Revenue Code, as amended by section 111 of the Revenue Act of 1942, regardless of the fact that under State law such income is considered principal to the legatee, except where the distribution is made in satisfaction or payment of a pecuniary legacy. (See *Old Colony Trust Co. et al.* v. *Commissioner*, 38 B. T. A., 828, and *Arthur H. Wellman* v. *Welch*, 99 Fed. (2d), 75, with respect to the exception.)

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

SECTION 165.—EMPLOYEES' TRUSTS.

SECTION 29.165–5: Effect of amendments to section 165(a) on old and new stock bonus, pension, profit-sharing, and annuity plans.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5436, page 115.)

SUPPLEMENT F.—PARTNERSHIPS.

SECTION 183.—COMPUTATION OF PARTNERSHIP INCOME.

SECTION 29.183–1: Computation of partnership income.

INTERNAL REVENUE CODE.

Indiana gross income tax. I. T. 3731 (page 80, this Bulletin) revoked. (See I. T. 3766, page 83.)

SUPPLEMENT G.—INSURANCE COMPANIES.

SECTION 202.—ADJUSTED NORMAL-TAX NET INCOME.

SECTION 29.202–1: Reserve and other policy liability credit for adjusted normal-tax net income. 1945–2–11937 T. D. 5427

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., January 1, 1945.

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

By virtue of the authority vested in me by section 202(b) of the Internal Revenue Code (53 Stat., 71), as amended by section 163 of the Revenue Act of 1942 (56 Stat., 870; 26 U. S. C., 1940 ed., 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 1944 shall be .9261.

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

(Filed with the Division of the Federal Register January 2, 1945, 11.51 a. m.)

SUPPLEMENT H.—NONRESIDENT ALIEN INDIVIDUALS.

SECTION 211.—TAX ON NONRESIDENT ALIEN INDIVIDUALS.

SECTION 29.211–2: Definition. 1945–13–12081
(Also Section 29.211–7.) Mim. 5883

Taxation of aliens deriving income from transactions on the stock market, from the sale of securities, from dealings in commodities, and from other sources within the United States.
I. T. 3386 (C. B. 1940–1, 66) modified.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., June 27, 1945.

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

1. The Bureau has under consideration the question of the taxation of capital gains, profits, and other income derived from sources within the United States by aliens who have left their country of origin, especially in Europe, on account of war conditions and who during their stay in the United States have accumulated considerable income as the result of transactions in the stock market and on the commodity exchanges. Attention is invited to the fact that aliens for Federal income tax purposes fall within the following general classes: (1) nonresident aliens not engaged in trade or business within the United States who are taxed only on fixed or determinable annual or periodical income; (2) nonresident aliens not engaged in trade or business within the United States whose fixed or determinable annual or periodical income exceeds $15,400; (3) nonresident aliens engaged in trade or business within the United States; (4) resident aliens.

2. Very little difficulty is encountered in connection with the collection of income tax with respect to the first class. Such aliens are taxable under section 211(a) of the Internal Revenue Code at the rate of 30 per cent, and the entire amount of tax is, in general, required to be

withheld at the source under section 143(b) of the Internal Revenue Code. With respect to the second class, although a tax at the rate of 30 per cent is required to be withheld at the source from their fixed or determinable annual or periodical income, they are also subject to surtax and returns are required to be filed by the individuals in such cases on Form 1040NB(a), accounting for the balance of the tax. With respect to those individuals engaged in trade or business within the United States, such aliens are subject to tax on their entire income from sources within the United States, including capital gains. However, as provided in section 211(b) of the Internal Revenue Code, the phrase "engaged in trade or business within the United States" does not include the effecting, through a resident broker, commission agent, or custodian, of transactions in the United States in commodities, or in stocks or securities. It follows that a *nonresident alien*, not otherwise engaged in trade or business in the United States, would not be subject to tax on capital gains *merely* by reason of such transactions in commodities, or stocks, or securities. Special attention should, however, be given to the cases of aliens who derive profits from these transactions and who claim to be nonresident aliens not engaged in trade or business within the United States. In this connection, it should be pointed out that the term "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year as specifically provided by section 211(b) of the Code. It follows, therefore, that if any of the aliens of this class perform personal services in the United States at any time during the taxable year, they would be subject to tax on their entire income derived from sources within the United States, including capital gains. However, certain other activities such as the buying and selling of personal or real property, on the alien's own behalf or on behalf of others, would ordinarily constitute engaging in trade or business. In the investigation of the tax liability of any nonresident alien claiming not to be engaged in trade or business within the United States, particular attention should, therefore, be given to such activities of the alien.

3. The most important class of aliens with whom the Bureau is concerned consists of those who, having realized profits on securities transactions or otherwise, claim to be nonresidents of the United States and have thus failed to file proper income tax returns even though they are in fact *residents* of the United States. In connection with the general question as to what constitutes residence in the United States, it should be borne in mind that residence is a mixed question of law and fact and the element of intention is one of primary importance. The Federal income tax laws have been uniform in levying a tax on the entire income of aliens, if resident in the United States, and residence has been construed by the Bureau in all rulings as something which may be less than domicile. (See *Bowring* v. *Bowers*, 24 Fed. (2d), 918, T. D. 4164, C. B. VII-1, 98 (1928).) In other words, residence, although used as the equivalent of domicile in connection with probate matters, succession taxes, and inheritance taxes, as well as the estate tax law, is not necessarily the same as domicile for Federal income tax purposes. It is stated in section 29.211-2 of Regulations 111 that an alien actually present in the United States who is not a mere transient or sojourner is a resident of the United States for purposes of the income tax. It is

also stated in that section that if he lives in the United States and has no definite intention as to his stay, he is a resident. Furthermore, one who comes to the United States for a definite purpose which in its nature may be promptly accomplished is a transient; but if his purpose is of such a nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his home temporarily in the United States, he becomes a resident, though it may be his intention at all times to return to his domicile abroad when the purpose for which he came has been consummated or abandoned. These provisions of the regulations, it is thought, will cover many cases of aliens who, by reason of conditions stemming from the war, have come to the United States.

4. Attention is invited to the last sentence of section 29.211–2, Regulations 111, which states that an alien whose stay in the United States is limited to a definite period by the immigration laws is not a resident of the United States within the meaning of that section, *in the absence of exceptional circumstances*. The general rule adopted by the Bureau is that the type of visa issued is only one of the elements entering into the classification of an alien as a resident or nonresident. It is believed that there are many cases now which will come under the phrase "in the absence of exceptional circumstances" because of the fact that many visitors' permits, or temporary visas, were issued to aliens who desired merely to get out of a war-torn country under any conditions and under any passport or visa so long as they reached the shores of the United States. For example, while the vast majority of such aliens originally entered the United States on temporary permits, numerous extensions of such permits have been applied for and granted and a great number of applications have been made by such aliens to enter a third country in order to qualify for reentry into the United States on immigrants' visas, thus indicating an intention to become residents of the United States even though such immigrants' visas may not have been granted. On the other hand, the possession of an immigrant's visa by an alien, upon his initial entrance into the United States, is not conclusive of his classification as a resident of this country. Those aliens, therefore, who are properly classified as residents within the meaning of the regulations referred to above and under the general rules of law relating to what constitutes residence, should in every case be required to file returns on Form 1040, accounting for income from all sources, both within and without the United States, including capital gains. Furthermore, all nonresident aliens who are physically present in the United States and who have been engaged in trade or business within this country at any time during the taxable year should file complete returns on Form 1040B, accounting for their entire income from sources within this country, including capital gains.

5. In view of what has been said above, the field officers of the Bureau are requested to take prompt action and set up the necessary procedure for the purpose of investigating those cases in which it is evident that the aliens have made gains from dealings in stocks, securities, commodities, and similar transactions, to the end that aliens engaged in trade or business within the United States, and those who are resident aliens, may be properly taxed on such capital gains and that only nonresident aliens not engaged in trade or business within the United States shall be relieved of taxation in this respect, as provided by sections 211(a) and 211(c) of the Internal Revenue Code.

6. In connection with the examination of aliens, information should be obtained regarding (*a*) date of arrival in the United States; (*b*) whether members of the alien's family accompanied him; (*c*) type of visa or permit issued to him; (*d*) reasons for coming to the United States; (*e*) whether the alien registered under the Selective Service Act; (*f*) what funds, securities, or other personal property were brought into the United States by the alien or transferred to his account, or held for his benefit directly or indirectly through nominees or otherwise, prior to or after his arrival; (*g*) whether he performed personal services or engaged in any other business activities within the United States; (*h*) complete disclosure as to capital gains from dealings in securities or commodities; (*i*) whether he owns any real estate in the United States in his own name or in the name of a nominee; (*j*) if the alien entered the United States on a temporary permit, how many times it has been renewed; and (*k*) whether the alien has applied for or been granted an immigration visa or otherwise declared his desire or intention to reside in the United States.

7. I. T. 3386 (C. B. 1940–1, 66), holding that a subject of a foreign country who entered the United States on a temporary visa which had been renewed from time to time during continuance of the war has the status of a nonresident alien, is modified to accord with the foregoing principles.

Correspondence relating to this mimeograph should refer to its number and the symbols IT : P.

JOSEPH D. NUNAN, Jr.,
Commissioner.

SECTION 29.211–7: Taxation of nonresident alien individuals.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5443, page 231.)

SECTION 29.211–7: Taxation of nonresident alien individuals.

INTERNAL REVENUE CODE.

Income from transactions in securities and commodities, and from other sources within the United States. (See Mim. 5883, page 244.)

SUPPLEMENT I.—FOREIGN CORPORATIONS.

SECTION 231.—TAX ON FOREIGN CORPORATIONS.

SECTION 29.231–1: Taxation of foreign corporations.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5443, page 231.)

SECTION 252.—CITIZENS OF POSSESSIONS OF UNITED STATES.

SECTION 29.252–1: Status of citizens of United States possession. (Also Section 143, Section 29.143–1.) 1945–2–11938 I. T. 3709

INTERNAL REVENUE CODE.

Application of the withholding provisions of the Internal Revenue Code (sections 143(b) and 1622) in the case of citizens of Puerto Rico brought into the United States through the facilities of the War Manpower Commission, and procedure to be followed by such individuals in making and filing Federal income tax returns.

Advice is requested relative to the application of sections 143(b) and 1622 of the Internal Revenue Code, as amended, to citizens of Puerto Rico brought into the United States through the facilities of the War Manpower Commission for war work in the United States, and to the procedure to be followed by such individuals in making and filing Federal income tax returns.

Citizens of Puerto Rico are, with few, if any, exceptions, citizens of the United States. However, section 252(a) of the Internal Revenue Code provides that any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under Chapter 1 of the Code only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources. In short, such individuals are taxed in the same manner as nonresident aliens. (See section 29.252–1 of Regulations 111.)

Section 143(b) of the Internal Revenue Code provides generally that in the case of a nonresident alien the fixed or determinable annual or periodical income from sources within the United States, including wages, is subject to the withholding of a tax of 30 per cent of the gross amount of such income. However, that section was amended by section 132(a) of the Revenue Act of 1943 to provide that in respect of the compensation for services performed by nonresident alien individuals brought into the United States under the authority of the War Manpower Commission for temporary employment essential to the war effort and subject to withholding under section 143(b), the deduction and withholding shall be at the rate of 10 per cent, and there shall be no deduction or withholding under section 1622 of the Code. The amendment is applicable to all compensation paid on or after the tenth day after February 25, 1944, the date of enactment of the Revenue Act of 1943. (Section 132(b) of the Revenue Act of 1943.)

As shown by the report of the Senate Committee on Finance on the revenue bill of 1943 (Senate Report No. 627, Seventy-eighth Congress, first session, (C. B. 1944, 973), the amendment of section 143(b) of the Code was intended to apply to citizens of possessions of the United States who are not otherwise citizens of the United States

and who are brought into the United States under authority of the War Manpower Commission for temporary employment essential to the war effort. Accordingly, Treasury Decision 5357 (C. B. 1944, 307) amended section 29.143–1 of Regulations 111 to read in part as follows:

On and after March 6, 1944, the rate of withholding provided with respect to compensation for services performed by a nonresident alien individual, or by a citizen of a possession of the United States not otherwise a citizen of the United States, brought into the United States under the authority of the War Manpower Commission for temporary employment essential to the war effort shall be at the reduced rate of 10 per cent. In applying such reduced rate of withholding, however, to the compensation of a nonresident alien or other individual coming within the scope of this paragraph the proration of the personal exemption provided in section 29.143–3 is not applicable. The rate of 10 per cent provided in this paragraph should, therefore, be applied against the gross amount of the compensation derived from labor or personal services by such an individual. The provisions of section 143(b), as amended by section 132 of the Revenue Act of 1943, shall not be construed as canceling or affecting any exemption from withholding in the case of any nonresident alien individual under existing law, regulations, or ruling, nor do such provisions affect the liability to tax of such a nonresident alien individual.

Accordingly, in the case of a citizen of Puerto Rico who is not otherwise a citizen of the United States and who was brought into the United States under authority of the War Manpower Commission for temporary employment essential to the war effort, the withholding under section 143(b) of the Code, as amended, should be at the rate of 10 per cent of the gross amount of the wages paid. Attention is also called to the fact that the wages of such individuals are not subject to withholding under section 1622 of the Code, as amended.

Should any such individual leave the United States before the close of a taxable year, he must, before departing, obtain a certificate of compliance with income tax obligations by filing a return on Form 1040C with the collector of internal revenue for the district in which he was employed. The amount of the tax liability shall be computed on that form, credit claimed for the amount of tax withheld at the source, and payment made of the balance of tax as thus disclosed. In order to obtain credit for tax withheld, it is necessary that a written statement of the employer showing the amount of such withholding be furnished the collector. For the purposes of the Form 1040C, the normal tax and surtax exemptions to which the taxpayer may be entitled are prorated in accordance with the portion of the taxable year which has elapsed at the time of his departure.

On or before the 15th day of June following the close of the taxable year, each of the above-described class of individuals (including those who have left the country during the taxable year), whose gross income from sources within the United States during the taxable year amounts to $500 or more, is required to file a return on Form 1040B, reporting therein his income for the entire taxable year, claiming the deductions and exemptions to which he is entitled, and computing his tax upon the taxable income thus disclosed at the same rates which are applicable to United States citizens and residents. For the purpose of this final return, a taxpayer who has departed from the country during the taxable year is allowed the normal tax and surtax exemptions to which he is entitled for the period of the full year.

Credit for the amount of tax withheld or otherwise paid may be claimed by the taxpayer, who will pay only the amount by which the total tax exceeds such credit. If the amount of the credit exceeds the amount of the tax, the excess is refundable. Where such taxpayer's gross income from sources within the United States is less than $500, he may, nevertheless, report his income on Form 1040B, as well as the amount of tax withheld or otherwise paid for his account. In such a case, the tax liability will be zero; hence, the tax paid for his account during that year is refundable in its entirety. In all cases in which the taxpayer is entitled to a refund, he should file a claim therefor on Form 843.

The foregoing conclusion that withholding of tax, under section 143(b) of the Code, shall be at the rate of 10 per cent of the total wages paid to the employee is based upon the factual assumption that the particular individual citizen of Puerto Rico has been brought into the United States by the War Manpower Commission for work of a temporary nature and that the individual is still engaged in such temporary employment, thus retaining the status of a nonresident. If any such individual accepts other employment not of a temporary nature, or otherwise evidences an intention of remaining in the United States for an indefinite period (as is the right of such an individual since he is a citizen of the United States), he will be considered a resident and his wages will be subject to withholding under section 1622 of the Code, as in the case of any other citizen who is a resident of the United States.

A citizen of Puerto Rico who comes to the United States (but not under the auspices of the War Manpower Commission) and who does not become a resident of the United States is, under section 252(a) of the Code, taxed in the same manner as a nonresident alien individual.

SUPPLEMENT K.—CHINA TRADE ACT CORPORATIONS.

SECTION 262.—CREDIT AGAINST NET INCOME.

SECTION 29.262–3: Meaning of terms used in connection with China Trade Act corporations. (Also Section 19.262–3, Regulations 103.) — 1945–1–11921, T. D. 5424

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

Amending section 19.262–3 of Regulations 103, and section 29.262–3 of Regulations 111, relating to the latest permissible date for China Trade Act corporations to distribute special dividends under section 262(b)(1) of the Internal Revenue Code.

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

To Collectors of Internal Revenue and Others Concerned:

Section 19.262–3 of Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.], and section 29.262–3 of Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], are

each amended by striking out the first sentence of the third paragraph of each such section and inserting in lieu thereof the following:

The term "special dividend" means the amount which, during the year ending on the date fixed by law for the filing of the corporation's return, is distributed as a dividend to or for the benefit of such persons as on the last day of the taxable year were resident in China, the United States, or possessions of the United States, or were individual citizens of the United States or China, and owned shares of stock of the corporation. The time fixed by law for filing the return includes the period of any extension of time granted under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(This Treasury decision is issued under the authority contained in sections 62, 262, and 3805 of the Internal Revenue Code (53 Stat., 32, 866; 56 Stat., 961; 26 U. S. C., and Sup. 62, 262, 3805).)

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

Approved December 26, 1944.

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

(Filed with the Division of the Federal Register December 27, 1944, 11.34 a. m.)

SUPPLEMENT L.—ASSESSMENT AND COLLECTION OF DEFICIENCES.

SECTION 271.—DEFINITION OF DEFICIENCY.

SECTION 29.271–1: Deficiency defined. (Also Section 272, Section 29.272–2; Section 322, Section 29.322–7; Section 3801(d), Section 29.3801(d)–1.)

1945–7–12006
T. D. 5447

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

Regulations 111 amended to conform to section 14 of the Individual Income Tax Act of 1944, relating to definition of deficiency.

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 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.] to section 14 of the Individual Income Tax Act of 1944 (Public Law 315, Seventy-eighth Congress), approved May 29, 1944, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 29.271–1 the following:

SEC. 14. TECHNICAL AMENDMENT OF DEFINITION OF DEFICIENCY. (INDIVIDUAL INCOME TAX ACT OF 1944.)

(a) IN GENERAL.—Section 271 (defining the term "deficiency") is amended to read as follows:

"SEC. 271. DEFINITION OF DEFICIENCY.

"(a) IN GENERAL.—As used in this chapter in respect of a tax imposed by this chapter, 'deficiency' means the amount by which the tax imposed by this chapter exceeds the excess of—

"(1) the sum of (A) the amount shown as the tax by the taxpayer upon his return, if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus (B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

"(2) the amount of rebates, as defined in subsection (b)(2), made.

"(b) RULES FOR APPLICATION OF SUBSECTION (a).—For the purposes of this section—

"(1) The tax imposed by this chapter and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 35, and without regard to so much of the credit under section 32 as exceeds 2 per centum of the interest on obligations described in section 143(a);

"(2) The term 'rebate' means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by this chapter was less than the excess of the amount specified in subsection (a)(1) over the amount of rebates previously made; and

"(3) The computation by the collector, pursuant to section 51(f), of the tax imposed by this chapter shall be considered as having been made by the taxpayer and the tax so computed considered as shown by the taxpayer upon his return."

* * * * * * *

(e) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by subsections (a) * * * shall be applicable with respect to taxable years beginning after December 31, 1942. * * * In the application of the amendments made by this section in the case of taxable years beginning in 1943, "section 35" in the amendment made by subsection (a) shall be read as "section 35 and section 466(e)".

PAR. 2. Section 29.271–1 is amended as follows:

(A) By striking out all of the first paragraph following the heading and inserting in lieu thereof the following:

(*a*) *Taxable years beginning prior to January 1, 1943.*—In defining the term "deficiency" for taxable years beginning prior to January 1, 1943, the Internal Revenue Code recognizes two classes of cases—one, where the taxpayer makes a return showing some tax liability; the other, where the taxpayer makes a return showing no tax liability, or where the taxpayer fails to make a return. Additional tax shown on an "amended return," so-called, filed after the due date of the return for the taxable year, is a deficiency within the meaning of the Code.

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

(*b*) *Taxable years beginning after December 31, 1942.*—For taxable years beginning after December 31, 1942, the term "deficiency" means the excess of the tax imposed by Chapter 1 over the sum of the amount shown as the tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as a deficiency; but such sum shall first be reduced by the amount of rebates made. If no return is made, or if the return (except a return on Form W–2 (Rev.) pursuant to section 51(f)) does not show any tax, for the purposes of the definition "the amount shown as the tax by the taxpayer upon his return" shall be considered as zero. Accordingly, in any such case, if no deficiencies have been assessed, or collected without assessment, and no rebates have been made, the deficiency is the amount of the tax imposed by Chapter 1. Additional tax shown on an "amended return," so-called, filed after the due date of the return for the taxable year, is a deficiency within the meaning of the Code.

For the purposes of the definition, the tax imposed by Chapter 1 and the tax shown on the return shall both be determined without regard to the credit provided in section 35 for tax withheld at the source, and without regard to so much of the credit provided in section 32 for taxes

exceeds 2 per cent of the interest on bonds containing a tax-free covenant. Payments on account of estimated tax, like other payments of tax by the taxpayer, shall likewise be disregarded in the determination of a deficiency. For taxable years beginning in 1943, the credit provided in section 466(e) for victory tax withheld at the source shall also be disregarded for such purposes.

The computation by the collector, pursuant to section 51(f), of the tax imposed by Chapter 1 shall be considered as having been made by the taxpayer and the tax so computed shall be considered as the tax shown by the taxpayer upon his return.

If so much of the credits claimed on the return for taxes withheld at the source as exceeds 2 per cent of the interest on tax-free covenant bonds is greater than the amount of such credits allowable, the unpaid portion of the tax attributable to such difference will be collected not as a deficiency but as an underpayment of the tax shown on the return.

The application of these provisions may be illustrated by the following examples:

Example (1). The amount of tax shown by the taxpayer upon his return for the calendar year 1944 was $1,500. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. He claimed a credit in the amount of $2,000 for tax withheld at source on wages, and a refund of $500 (not a rebate under section 271) was made to him as an overpayment of tax for the taxable year. It is later determined that the correct tax for the taxable year is $1,750. A deficiency of $250 is determined, as follows:

Tax imposed by Chapter 1		$1,750
Tax shown on return	$1,500	
Tax previously assessed (or collected without assessment) as a deficiency	None	
Total	1,500	
Amount of rebates made	None	
Balance		1,500
Deficiency		250

Example (2). The taxpayer made a return for the calendar year 1944 showing a tax of $1,250 before any credits for tax withheld at the source. He claimed a credit in the amount of $800 for tax withheld at source on wages under section 1622 and $60 for tax paid at source under section 143 upon interest on bonds containing a tax-free covenant. The taxpayer had no amounts previously assessed (or collected without assessment) as a deficiency. The Commissioner determines that the 2 per cent tax paid at the source on tax-free covenant bonds is $40 instead of $60 as claimed by the taxpayer and that the tax imposed by Chapter 1 is $1,360 (total tax $1,400 less $40 tax paid at source on tax-free covenant bonds). A deficiency in the amount of $170 is determined, as follows:

Tax imposed by Chapter 1 ($1,400 minus $40)		$1,360
Tax shown on return ($1,250 minus $60)	$1,190	
Tax previously assessed (or collected without assessment) as a deficiency	None	
Total	1,190	
Amount of rebates made	None	
Balance		1,190
Deficiency		170

Example (3). For the calendar year 1945, the taxpayer, a nonresident alien individual not engaged in trade or business within the United States, received gross income from sources within the United States consisting of dividends, and interest on bonds containing a tax-free covenant under which the tax liability assumed by the obligor does not exceed 2 per cent of the interest. The taxpayer made a return showing a tax of $7,800 before any credits for tax withheld at the source. He claimed a credit of $6,000 under section 32 for tax withheld at the source under section 143, of which amount $5,600 was represented as tax withheld and $400 was represented as the tax at 2 per cent paid by the obligor on interest on tax-free covenant bonds described in section 143(a). The Commissioner determines that the 2 per cent tax paid by the obligor on interest on tax-free

covenant bonds amounts to $200 instead of $400 as claimed by the taxpayer, and that the tax imposed by Chapter 1 is $11,320 (total tax $11,520 less $200 tax paid by obligor on interest on tax-free covenant bonds). The Commissioner also determines that the tax withheld at the source amounts to $7,750 in addition to the $200 paid by the obligor of the bonds. A deficiency in the amount of $3,860 is determined, as follows:

Tax imposed by Chapter 1 ($11,520 minus $200)		$11,320
Tax shown on return ($7,860 minus $400)	$7,460	
Tax previously assessed (or collected without assessment) as a deficiency	None	
Total	7,460	
Amount of rebates made	None	
Balance		7,460
Deficiency		3,860

As used in section 271, the term "rebate" means so much of an abatement, credit, refund, or other repayment as is made on the ground that the tax imposed by Chapter 1 is less than the excess of (1) the amount shown as the tax by the taxpayer upon his return increased by the amount previously assessed (or collected without assessment) as a deficiency over (2) the amount of rebates previously made. For example, assume that the amount of the tax shown by the taxpayer upon his return for the taxable year is $600 and the amount claimed as a credit under section 35 for tax withheld at the source is $900. If the Commissioner determines that the tax imposed by Chapter 1 is $600 and makes a refund of $300 no part of such refund constitutes a "rebate" since the refund is not made on the ground that the tax imposed by Chapter 1 is less than the tax shown on the return. If, however, the Commissioner determines that the tax imposed by Chapter 1 is $500 and refunds $400, the amount of $100 of such refund would constitute a rebate since it is made on the ground that the tax imposed by Chapter 1 ($500) is less than the tax shown on the return ($600). The amount of such rebate ($100) would be taken into account in arriving at the amount of any deficiency subsequently determined.

PAR. 3. Section 29.272–2 is amended by inserting immediately preceding the words "amount so assessed" the words "unpaid portion of the."

PAR. 4. There is inserted immediately preceding section 293 the following:

SEC. 14. TECHNICAL AMENDMENT OF DEFINITION OF DEFICIENCY. (INDIVIDUAL INCOME TAX ACT OF 1944.)

* * * * * * *

(c) INTEREST ON DEFICIENCIES.—Section 292(a) (relating to interest on deficiencies) is amended by inserting at the end thereof the following: "If any portion of the deficiency assessed is not to be collected by reason of a prior satisfaction, in whole or in part, of the tax, proper adjustment shall be made with respect to the interest on such portion."

* * * * * * *

(e) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by subsections * * * (c) * * * shall be applicable with respect to taxable years beginning after December 31, 1942. * * *

PAR. 5. There is inserted immediately preceding section 29.322–1 the following:

SEC. 14. TECHNICAL AMENDMENT OF DEFINITION OF DEFICIENCY. (INDIVIDUAL INCOME TAX ACT OF 1944.)

* * * * * * *

(d) OVERPAYMENT FOUND BY TAX COURT IN CASE OF DEFICIENCY.—Section 322(d) (relating to overpayments found by Tax Court) is amended by inserting after "in respect of which the Commissioner determined the deficiency," the following: "or finds that there is a deficiency but that the taxpayer has made an overpayment of tax in respect of such taxable year,".

(e) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by subsections * * * (d) shall be applicable with respect to taxable years beginning after December 31, 1942. * * *

PAR. 6. Section 29.322–7(d) is amended by striking out of subdivision (1) the words " there is no deficiency but that."

PAR. 7. There is inserted immediately preceding section 29.3801(d)–1 the following:

SEC. 14. TECHNICAL AMENDMENT OF DEFINITION OF DEFICIENCY. (INDIVIDUAL INCOME TAX ACT OF 1944.)

* * * * * * *

(b) AMENDMENT OF SECTIONS 3801 AND 3806.—The second sentence of section 3801(d) (relating to ascertainment of amount of adjustment under section 3801), * * * are respectively amended to read as follows: " The amount of the tax previously determined shall be the excess of—

" (1) the sum of (A) the amount shown as the tax by the taxpayer upon his return (determined as provided in section 271(b) (1) and (3)), if a return was made by the taxpayer and an amount was shown as the tax by the taxpayer thereon, plus (B) the amounts previously assessed (or collected without assessment) as a deficiency, over—

"(2) the amount of rebates, as defined in section 271(b)(2), made."

* * * * * * *

(e) TAXABLE YEARS TO WHICH APPLICABLE.— * * * The amendment made by subsection (b) to section 3801(d) of the Internal Revenue Code shall, for the purposes of such section and sections 124, 130, and 3807 of such Code, be applicable in the determination of a tax previously determined only if such tax is for a taxable year beginning after December 31, 1942. * * *

PAR. 8. Section 29.3801(d)–1 is amended by striking out the matter following the heading and preceding the paragraph beginning " With the exception of the items upon which the tax " and inserting in lieu thereof the following:

In computing the amount of the adjustment under section 3801 there must first be ascertained the amount of the tax previously determined for the taxpayer as to whom the error was made for the taxable year with respect to which the error was made. The tax previously determined for any taxable year may be the amount of tax shown on the taxpayer's return, but if any changes in that amount have been made they must be taken into account. In such cases, the tax previously determined will be ascertained as follows:

(1) For taxable years beginning before January 1, 1943, the tax previously determined will be the tax shown on the return, increased by any amounts previously assessed (or collected without assessment) as deficiencies, and decreased by any amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. If no amount was shown as the tax upon the return, or if no return was made, the tax previously determined will be the sum of the amounts previously assessed, or collected without assessment, as deficiencies, decreased by any amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax.

(2) For taxable years beginning after December 31, 1942, the tax previously determined will be the sum of the amount shown as the tax by the taxpayer upon his return and the amounts previously assessed (or collected without assessment) as deficiencies, reduced by the amount of any rebates made. The amount shown as the tax by the taxpayer upon his return and the amount of any rebates shall be determined in accordance with the provisions of section 271 and section 29.271–1(b).

The tax previously determined may consist of tax for any taxable year beginning after December 31, 1931, imposed by Chapter 1 and Subchapters A, B, D, and E of Chapter 2 of the Internal Revenue Code, by the corresponding provisions of prior Revenue Acts, or by any one or more of such provisions.

After the tax previously determined has been ascertained, a recomputation must then be made to ascertain the increase or decrease in tax, if any, resulting from the correction of the error. The difference between the tax previously determined and the tax as recomputed after correction of the error will be the amount of the adjustment.

(This Treasury decision is issued under the authority contained in section 14 of the Individual Income Tax Act of 1944 (Public Law 315, Seventy-eighth Congress) and section 62 of the Internal Revenue Code (53 Stat., 32; 26 U. S. C., 62).)

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

Approved March 21, 1945.

D. W. BELL,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register March 22, 1945, 11.21 a. m.)

SECTION 272.—PROCEDURE IN GENERAL.

SECTION 29.272–2: Collection of a deficiency.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5447, page 251.)

SUPPLEMENT M.—INTEREST AND ADDITIONS TO THE TAX.

SECTION 294.—ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.

SECTION 29.294–1: Additions to the tax. 1945–7–12011
T. D. 5448

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

Treasury Decision 5420 [C. B. 1944, 355], relating to penalties in connection with estimated tax, amended to provide special rule for computation of penalties for taxable years beginning before September 1, 1944.

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

To Collectors of Internal Revenue and Others Concerned:

Treasury Decision 5420, amending section 29.294–1 of Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], approved December 8, 1944 [C. B. 1944, 355], is amended by inserting immediately after paragraph 2 thereof the following:

PAR. 3. In the application of section 29.294–1, as amended, of Regulations 111 to taxable years beginning before September 1, 1944, the additions to the tax for failure to file a declaration of estimated tax within the time prescribed,

or for underestimate of the estimated tax, shall be computed upon the basis of the tax shown on the return or the tax as finally determined, whichever is the lesser.

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

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

Approved March 28, 1945.

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

(Filed with the Division of the Federal Register March 29, 1945, 11.44 a. m.)

SUPPLEMENT O.—OVERPAYMENTS.

SECTION 322.—REFUNDS AND CREDITS.

SECTION 29.322-3: Claims for refund by taxpayers. 1945-9-12035
I. T. 3734

INTERNAL REVENUE CODE.

Authority of Army officers to administer oaths with respect to refund claims and other documents.

Advice is requested with respect to the authority of Army officers to administer oaths in connection with the execution of refund claims and other documents.

A claim for the refund of income tax must set forth in detail and under oath each ground upon which a refund is claimed. (See section 29.322-3 of Regulations 111.) Section 3632(b) of the Internal Revenue Code provides that any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, etc. The words "authorized to administer oaths for general purposes" signify that the authority of the person so described is not limited to specific purposes or circumstances, but is broad enough to enable him to administer oaths generally.

The authority vested in Army officers to administer oaths is derived from article 114 of the Articles of War (Act of June 4, 1920, 41 Stat., 759, 810), as amended by the Act of December 14, 1942 (56 Stat., 1050). Prior to December 14, 1942, the date of its amendment, article 114 of the Articles of War provided that certain designated officers shall have power to administer oaths for the purposes of administration of military justice and for other purposes of military administration, "and in foreign places where the Army may be serving shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and all other forms of

notarial acts to be executed by persons subject to military law." Pursuant to article of war 114 as it existed prior to its amendment, the Bureau held that the designated officers were authorized to administer oaths in connection with income tax returns of such persons in foreign places as may be subject to military law as provided in article 2(d) of the Articles of War. (See I. T. 3558, C. B. 1942–1, 92.) In an earlier ruling, the Bureau had held that Army officers have no authority to administer oaths to taxpayers filing claims for refund. (See I. T. 2228, C. B. IV–2, 104 (1925).)

Article 114 of the Articles of War, as amended by the Act of December 14, 1942, supra, provides in part as follows:

Authority to administer oaths.—Any officer of any component of the Army of the United States on active duty in Federal service commissioned in or assigned or detailed to duty with the Judge Advocate General's Department, any staff judge advocate or acting staff judge advocate, the president of a general or special court-martial, any summary court-martial, the trial judge advocate or any assistant trial judge advocate of a general or special court-martial, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant, assistant adjutant or personnel adjutant of any command shall have power to administer oaths for the purposes of the administration of military justice and for other purposes of military administration; and *shall also have the general powers of a notary public in the administration of oaths*, the execution and acknowledgment of legal instruments, the attestation of documents and all other forms of notarial acts *to be executed by persons subject to military law* * * * [Italics supplied.]

Article 2 of the Articles of War (Act of June 4, 1920, 41 Stat., 759, 787) provides that the term "persons subject to military law" shall be understood to include the following persons:

(*a*) All officers, members of the Army Nurse Corps, warrant officers, Army field clerks, field clerks Quartermaster Corps, and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft or order to obey the same;

(*b*) Cadets;

(*c*) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President * * *;

(*d*) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;

(*e*) All persons under sentence adjudged by courts-martial;

(*f*) All persons admitted into the Regular Army Soldiers' Home at Washington, District of Columbia.

The clause "persons accompanying or serving with the armies of the United States in the field" includes civilian employees of the War Department who are serving in the field (*McCune* v. *Kilpatrick*, 53 Fed. Supp., 80) as well as civilians who are not employees of the War Department but are employed by certain Government contractors (*In re Di Bartolo*, 50 Fed. Supp., 929). In order that an individual may be considered a part of the land forces under article 2 of the Articles of War, supra, and so may be subjected to military law even though he is not a member of the military forces of the United States, it is not

necessary that he be in uniform. (See *Ex parte Jochen*, 257 Fed., 200; *In re Di Bartolo*, supra; *Perlstein* v. *United States*, 57 Fed. Supp., 123.)

The words "in the field," as used in article 2 of the Articles of War, have been held to include service in mobilization, concentration, instruction, or maneuver camps within the United States, as well as service in a campaign, simulated campaign, or on the march. (See *Ex parte Jochen*, supra.) Such words have also been held to include forces in cantonments or training camps within or without the United States. (See *Hines* v. *Mikell*, 259 Fed., 28, certiorari denied, 250 U. S., 645.)

In view of the foregoing, it is held that the Army officers referred to in article 114 of the Articles of War, as amended, are duly authorized, on and after December 14, 1942, to administer oaths generally, within or without the United States, with respect to refund claims and other documents required to be executed under oath by members of the Regular Army, by volunteers, draftees, or selectees in the Army of the United States, by civilians accompanying or serving with the armies of the United States (without the territorial jurisdiction of the United States) in time of peace, by civilians accompanying or serving with the armies of the United States in the field (both within and without the territorial jurisdiction of the United States) in time of war, and by members of the other classes of individuals referred to in article 2 of the Articles of War, supra.

REGULATIONS 103, SECTION 19.322-7: Limitations upon the crediting and refunding of taxes paid—Taxable years beginning prior to January 1, 1942.

INTERNAL REVENUE CODE.

Regulations 103 amended. (See T. D. 5436, page 115.)

SECTION 29.322-7: Limitations upon the crediting and refunding of taxes paid.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5447, page 251.)

SUPPLEMENT T.—INDIVIDUALS WITH GROSS INCOME FROM CERTAIN SOURCES OF $3,000 OR LESS.

SECTION 400.—IMPOSITION OF TAX.

SECTION 29.400-1: Scope and application of Supplement T.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5425, page 10.)

CHAPTER 2.—ADDITIONAL INCOME TAXES.

SUBCHAPTER A.—PERSONAL HOLDING COMPANIES.

SECTION 504.—UNDISTRIBUTED SUBCHAPTER A NET INCOME.

SECTION 29.504–2: Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934. (Also Section 27(a), Sections 29.27(a)–1, 29.27(a)–2, and 29.27(a)–3; Section 19.27(a)–3, Regulations 103; Regulations 103, 101, 94, and 86.)

1945–13–12075
T. D. 5460

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PARTS 9, 19, AND 29.

Deficit credit and credit or deduction for amounts used or irrevocably set aside to pay or retire indebtedness.—Section 29.27(a)–1, 29.27(a)–2, 29.27(a)–3, and 29.504–2 of Regulations 111; section 19.27(a)–3 of Regulations 103; and article 27(a)–3 of Regulations 101 amended.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.], and Regulations 101 [Part 9, Title 26, Code of Federal Regulations, 1938 Sup.] are amended as follows:

REGULATIONS 111.

PARAGRAPH 1. Paragraphs (3) and (4) of section 27(a) of the Internal Revenue Code, inserted immediately preceding section 29.27(a)–1, are stricken and there is inserted in lieu thereof the following:

[Paragraphs (3) and (4) of section 27(a) have no application to taxable years beginning after December 31, 1941.]

PAR. 2. Section 29.27(a)–1 is amended to read as follows:

SEC. 29.27(a)–1. DIVIDENDS PAID CREDIT.—The amount of the dividends paid credit provided by section 27(a) is an amount equivalent to the sum of the following:

(1) The basic surtax credit for the taxable year. For computation of the basic surtax credit see section 27(b).

(2) The dividend carry-over to the taxable year. For computation of the dividend carry-over see section 27(c).

The deficit credit provided by section 27(a)(3) and the credit for amounts used or irrevocably set aside to pay or to retire indebtedness as provided in section 27(a)(4) have no application to taxable years beginning after December 31, 1941, covered by these regulations.

PAR. 3. Section 29.27(a)–2 and section 29.27(a)–3 are stricken in their entirety from these regulations.

PAR. 4. Section 29.504–2 is amended as follows:

(A) By striking out the third sentence of the second paragraph of subsection (*a*) and inserting in lieu thereof the following:

In the case of refunding, renewal or other change in the form of an indebtedness, the giving of a new promise to pay by the taxpayer will not have the effect of changing the date the indebtedness was incurred.

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

In the case of refunding, renewal or other change in the form of an indebtedness, the mere giving of a new promise to pay by the taxpayer will not result in an allowable deduction.

PAR. 5. The amendment to subsections (*a*) and (*b*) of section 29.504–2 of Regulations 111 set forth in this Treasury decision, which regulations cover taxable years beginning after December 31, 1941, are hereby made applicable to taxable years beginning after December 31, 1933, and prior to January 1, 1942, such years being covered by Regulations 103, 101, 94, and 86.

REGULATIONS 103 AND 101.

PAR. 6. Section 19.27(a)–3 of Regulations 103 and article 27(a)–3 of Regulations 101, each as amended by Treasury Decision 5259, approved April 14, 1943 [C. B. 1943, 182], are further amended as follows:

(A) By striking out the second, third, fourth, and fifth sentences of the first paragraph of subsection (*a*) and inserting in lieu thereof the following:

If the indebtedness was so evidenced at the close of business on December 31, 1937, it is still an indebtedness within the meaning of section 27(a)(4) though, prior to the time payment is made or amounts are irrevocably set aside, it has been renewed or refunded. Such renewal or refunding need not be evidenced by one of the types of instruments enumerated in section 27(a)(4), provided that the indebtedness as existing at the close of business on December 31, 1937, was so evidenced. An indebtedness once renewed or refunded may be again renewed or refunded without depriving the corporation of the benefits of section 27(a)(4).

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

The issuance of a renewal or refunding obligation will, therefore, not result in an allowable credit.

(This Treasury decision is issued under the authority of sections 27, 62, and 504 of the Internal Revenue Code and corresponding sections of prior internal revenue laws (53 Stat., 19, 32, 107; 26 U. S. C., 1940 ed., 27, 62, 504).)

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

Approved June 19, 1945.

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

(Filed with the Division of the Federal Register June 20, 1945, 4.01 p. m.)

SUBCHAPTER E.—EXCESS-PROFITS TAX.

PART I.

SECTION 710.—IMPOSITION OF TAX.

REGULATIONS 112, SECTION 35.710–1: Scope of tax. 1945–19–12142 T. D. 5478

(Also Sections 35.710–2 and 35.710–3, Regulations 112; Section 729, Regulations 112; Section 141, Regulations 111.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 29 AND PART 35.

Regulations 111 and 112 amended to conform to section 2, Tax Adjustment Act of 1945.

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 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.] and Regulations 112 [Part 35, Title 26, Code of Federal Regulations, Cum. Sup.] to section 2 of the Tax Adjustment Act of 1945 (Public Law 172, Seventy-ninth Congress), approved July 31, 1945 [page 532, this Bulletin], such regulations are amended as follows:

REGULATIONS 111.

PARAGRAPH 1. There is inserted immediately preceding section 29.141–1 the following:

SEC. 2. INCREASE IN EXCESS-PROFITS TAX SPECIFIC EXEMPTION. (TAX ADJUSTMENT ACT OF 1945.)

* * * * * * *

(c) CONSOLIDATED RETURNS.—Section 141(c) of the Internal Revenue Code is amended by striking out "of $10,000" and inserting in lieu thereof "as".

(d) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by this section shall be applicable to taxable years beginning after December 31, 1945, and to taxable years beginning in 1945 and ending in 1946.

REGULATIONS 112.

PAR. 2. There is inserted immediately preceding section 35.710–1 the following:

SEC. 2. INCREASE IN EXCESS-PROFITS TAX SPECIFIC EXEMPTION. (TAX ADJUSTMENT ACT OF 1945.)

(a) IN GENERAL.—Section 710(b)(1) of the Internal Revenue Code is amended to read as follows:

"(1) SPECIFIC EXEMPTION.—A specific exemption of $25,000, except that in the case of a taxable year begining in 1945 and ending in 1946, the specific exemption shall be an amount equal to the sum of (A) an amount which bears the same relation to $10,000 which the number of days in such taxable year prior to January 1, 1946, bears to the total number of days in such taxable year and (B) an amount which bears the same relation to $25,000 which the number of days

In such taxable year after December 31, 1945, bears to the total number of days in such taxable year; and in the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter, a specific exemption of $50,000;"

* * * * * * *

(d) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by this section shall be applicable to taxable years beginning after December 31, 1945, and to taxable years beginning in 1945 and ending in 1946.

PAR. 3. Section 35.710–1, as amended by Treasury Decision 5386, approved July 1, 1944 [C. B. 1944, 374], is further amended:

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

An excess profits tax return for a taxable year need not be filed by a corporation whose excess profits net income, computed as provided in section 711(a) (2) and (3), is not greater than

(*a*) $5,000 if such taxable year is a taxable year beginning prior to January 1, 1944;

(*b*) $10,000 if such taxable year is a taxable year beginning after December 31, 1943, and ending prior to January 1, 1946;

(*c*) $25,000 if such taxable year is a taxable year beginning after December 31, 1945;

(*d*) In the case of a taxable year beginning in 1945 and ending in 1946, the amount of the specific exemption for such year, that is, an amount equal to the sum of (1) an amount which bears the same relation to $10,000 which the number of days in such taxable year prior to January 1, 1946, bears to the total number of days in such taxable year and (2) an amount which bears the same relation to $25,000 which the number of days in such taxable year after December 31, 1945, bears to the total number of days in such taxable year; or

(*e*) $50,000 in the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter.

The application of (*d*) above may be illustrated by the following example:

Example. Corporation A's taxable year begins on April 1, 1945, and ends on March 31, 1946. For such taxable year its specific exemption is $13,698.63, determined as follows:

$\frac{275}{365} \times \$10,000$	$7,534.25
$\frac{90}{365} \times \$25,000$	6,164.38
Specific exemption for year April 1, 1945–March 31, 1946	13,698.63

(B) By inserting immediately preceding the period in the fourth sentence thereof the following: " and section 2(b) of the Tax Adjustment Act of 1945."

PAR. 4. Section 35.710–2(*a*), as amended by Treasury Decision 5386, is further amended to read as follows:

(*a*) The specific exemption applicable to such taxable year, as provided in section 710(b)(1). See section 35.710–1.

PAR. 5. Section 35.710–3(*b*), as amended by Treasury Decision 5386, is further amended as follows:

(A) By striking out that portion of the fifth sentence which follows the colon and inserting in lieu thereof the following:

The adjusted excess profits net income is computed for each such taxable year without the specific exemption allowed by section 710(b)(1) and without credit of any carry-over or carry-back from the taxable year in which such unused excess profits credit arose or from any taxable year subsequent thereto.

(B) By striking out in that part of the example designated as "(2) (iv)" the expression "$10,000" immediately preceding "specific exemptions" and substituting in lieu thereof "$25,000."

(C) By striking out in that part of the example designated as "(3) (iv)" the expression "$10,000" immediately preceding "specific exemption" and substituting in lieu thereof "$25,000."

(D) By striking out "$5,000 or $10,000 specific exemption" in the last sentence and substituting in lieu thereof "$5,000, $10,000, or $25,000 specific exemptions."

PAR. 6. There is inserted immediately preceding section 35.729–1 the following:

SEC. 2. INCREASE IN EXCESS PROFITS TAX SPECIFIC EXEMPTION. (TAX ADJUSTMENT ACT OF 1945.)

* * * * * * *

(b) RETURN REQUIREMENT.—Section 729(b)(2) of the Internal Revenue Code is amended by striking out "$10,000 or, in the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter, is not greater than $50,000" and inserting in lieu thereof "the specific exemption provided in section 710(b)(1)".

* * * * * * *

(d) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by this section shall be applicable to taxable years beginning after December 31, 1945, and to taxable years beginning in 1945 and ending in 1946.

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code as made applicable by section 729(a) of the Internal Revenue Code (53 Stat., 32; 54 Stat., 989; 26 U. S. C., 1940 ed., 62, 729(a)) and section 2 of the Tax Adjustment Act of 1945 (Public Law 172, Seventy-ninth Congress), approved July 31, 1945.)

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

Approved September 20, 1945.

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

(Filed with the Division of the Federal Register September 20, 1945, 3.42 p. m.)

REGULATIONS 112, SECTION 35.710–2: Measure of tax.

INTERNAL REVENUE CODE.

Regulations 112 amended. (See T. D. 5478, page 262.)

REGULATIONS 112, SECTION 35.710–3: Unused excess profits credit adjustment.

INTERNAL REVENUE CODE.

Regulations 112 amended. (See T. D. 5478, page 262.)

SECTION 712.—EXCESS PROFITS CREDIT—ALLOWANCE.

REGULATIONS 112, SECTION 35.712–1: Excess profits credit—Allowance. 1945–3–11954 I. T. 3714

INTERNAL REVENUE CODE.

Domestic corporations which were in existence before January 1, 1940, including such corporations taking a credit for debt retirement, must, under section 712(a) of the Internal Revenue Code, as amended, compute the excess profits credit by using the method (income or invested capital) which produces the lesser amount of excess profits tax. That tax is the tax imposed by section 710(a) of the Code, as amended, determined without reduction by the post-war credit provisions of Subchapter E of Chapter 2 of the Code.

Advice is requested whether domestic corporations which were in existence before January 1, 1940, are entitled to compute the excess profits credit by using whichever method (income or invested capital) produces (1) the lesser amount of excess profits tax or (2) the lesser amount of excess profits credit. It is understood that certain corporations are desirous of using the method of computation which produces the smaller excess profits credit in order to obtain a larger post-war refund credit and a larger amount of post-war refund bonds.

Section 712(a) of the Internal Revenue Code, as amended, provides in part as follows:

DOMESTIC CORPORATIONS.—In the case of a domestic corporation which was in existence before January 1, 1940, the excess profits credit for any taxable year shall be an amount computed under section 713 or section 714, whichever amount results in the *lesser tax* under this subchapter for the taxable year for which the tax under this subchapter is being computed. * * * [Italics supplied.]

In view of the specific provisions of section 712(a) of the Code, as amended, supra, it is held that domestic corporations which were in existence before January 1, 1940, including such corporations taking a credit for debt retirement, must compute the excess profits credit by using the method (income or invested capital) which produces the lesser amount of excess profits tax. That tax is the tax imposed by section 710(a) of the Code, as amended, determined without reduction by the post-war credit provisions of Subchapter E of Chapter 2 of the Code. (See section 35.712–1 of Regulations 112.)

SECTION 713.—EXCESS PROFITS CREDIT—BASED ON INCOME.

REGULATIONS 112, SECTION 35.713–2: Excess profits credit based on income—Adjustments in excess profits credit on account of capital changes. 1945–5–11979 I. T. 3719

INTERNAL REVENUE CODE.

In the case of a taxpayer which keeps its accounts and files its Federal income and excess profits tax returns on the accrual basis, the term "earnings and profits," as used in section 713(g)(4) of the Internal Revenue Code, relating to the daily capital reduction on account of distributions to shareholders, means the earnings

and profits of the taxable year reduced by the amount of income and excess profits taxes which have accrued during such year. In the case of a taxpayer which keeps its accounts and files its returns on the cash receipts and disbursements basis, the term means earnings and profits of the taxable year reduced by the amount of income and excess profits taxes actually paid during such year, and the earnings and profits may be so reduced only from the date of actual payment.

Advice is requested whether the term "earnings and profits," as used in section 713(g)(4) of the Internal Revenue Code, relating to the daily capital reduction on account of distributions to shareholders, means the earnings and profits of the taxable year reduced by the amount of Federal income and excess profits taxes attributable to such year.

Section 713(g)(4) of the Internal Revenue Code provides as follows:

(g) ADJUSTMENTS IN EXCESS PROFITS CREDIT ON ACCOUNT OF CAPITAL CHANGES.—For the purposes of this section—

* * * * * * *

(4) The daily capital reduction for any day of the taxable year shall be the aggregate of the amounts of distributions to shareholders, not out of earnings and profits, after the beginning of the taxpayer's first taxable year under this subchapter and prior to such day.

Section 728 of the Code provides that the terms used in Subchapter E of Chapter 2 thereof, relating to the excess profits tax, shall have the same meaning as when used in Chapter 1 of the Code, relating to the income tax, and section 729(a) of the Code states that all provisions of law applicable to the income tax are applicable to the excess profits tax in so far as they are not inconsistent therewith. Interpreting the term "earnings and profits," as used in section 713(g)(4) of the Code, as having the same meaning as that term, as used in section 115 of the Code, relating to the income tax effect of corporate distributions, gives rise to no inconsistency with excess profits tax provisions. Accordingly, in interpreting section 713(g)(4) of the Code, the Bureau has relied upon the regulations and court decisions with respect to section 115 of the Code. (See section 35.718–2 of Regulations 112.)

In the case of a taxpayer which keeps its accounts and files its Federal income and excess profits tax returns on the accrual basis, it has been consistently held that in computing earnings and profits for a taxable year for the purpose of section 115 of the Code, a reduction is allowed for income and excess profits taxes which have accrued during that year. (See *Commissioner* v. *James*, 49 Fed. (2d), 707, and *Rose* v. *Dobbs*, 36 Fed. (2d), 464.) In *Fawcus Machine Co.* v. *United States* (282 U. S., 375, Ct. D. 278, C. B. X–1, 424 (1931)), the Supreme Court of the United States stated: "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." In the case of a taxpayer which keeps its accounts and files its returns on the cash receipts and disbursements basis, earnings and profits may be reduced only from the date of actual payment. (See *Helvering* v. *M. H. Alworth Trust et al.*, 136 Fed. (2d), 812, Ct. D. 1592, C. B. 1943, 1033, certiorari denied, 320 U. S., 784.)

As indicated above, the foregoing general rules are applicable to the determination of "earnings and profits" for excess profits tax purposes, except to the extent that the excess profits tax provisions of the Code are inconsistent therewith. Section 718(c)(3) of the Code is an exception to the general rule in so far as it provides that in determining whether a distribution is out of earnings and profits of any taxable year, for certain limited purposes, such earnings and profits shall be computed as of the close of the taxable year without diminution by reason of excess profits tax or income tax for such taxable year. However, no such exception is made with respect to section 713(g)(4) of the Code, and, accordingly, the above-stated general rules must be followed.

In view of the foregoing, it is held that in the case of a taxpayer which keeps its accounts and files its Federal income and excess profits tax returns on the accrual basis, the term "earnings and profits," as used in section 713(g)(4) of the Code, means the earnings and profits of the taxable year reduced by the amount of income and excess profits taxes which have accrued during such year. In the case of a taxpayer which keeps its accounts and files its returns on the cash receipts and disbursements basis, the term means earnings and profits of the taxable year reduced by the amount of income and excess profits taxes actually paid during such year, and the earnings and profits may be so reduced only from the date of actual payment.

SECTION 718.—EQUITY INVESTED CAPITAL.

REGULATIONS 112, SECTION 35.718-2: Determination of daily equity invested capital—Accumulated earnings and profits. 1945-5-11980 I. T. 3720

INTERNAL REVENUE CODE.

> In the case of a taxpayer keeping its books and filing its income and excess profits tax returns on the accrual basis, the amount of the excess profits tax to be subtracted in computing accumulated earnings and profits as of the beginning of the taxable year for the purposes of section 718(a)(4) of the Internal Revenue Code is the total tax levied under Subchapter E of Chapter 2 of the Code for the preceding taxable year, undiminished by the amount of the post-war credit under section 780 of the Code. The post-war credit accrues as of the date on which the taxpayer's payment of excess profits tax exceeds the amount which would have been payable had the tax rate been 85½ per cent (81 per cent for the years 1942 and 1943), and will be reflected in accumulated earnings and profits for invested capital purposes at the beginning of the succeeding taxable year.

Advice is requested whether, in the determination of accumulated earnings and profits to be included in invested capital under section 718(a)(4) of the Internal Revenue Code, such earnings and profits at the beginning of the taxable year should be reduced by the gross amount of the excess profits tax for the preceding taxable year or whether they should be reduced by the amount of the excess profits tax for the preceding taxable year less the post-war credit provided in section 780 of the Code.

Section 718 of the Internal Revenue Code provides in part as follows:

SEC. 718. EQUITY INVESTED CAPITAL.

(a) DEFINITION.—The equity invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following amounts, reduced as provided in subsection (b)—

* * * * * * *

(4) EARNINGS AND PROFITS AT BEGINNING OF YEAR.—The accumulated earnings and profits as of the beginning of such taxable year; * * *

Section 35.718–2(*a*) of Regulations 112, relating to the computation of accumulated earnings and profits in connection with the determination of daily equity invested capital, provides in part as follows:

* * * In computing accumulated earnings and profits as of the beginning of the taxable year, a taxpayer keeping its books and making its income tax returns on the accrual basis shall subtract the income and excess profits taxes for the preceding taxable year. * * *

The excess profits tax mentioned in section 35.718–2(*a*) of Regulations 112, supra, is that levied under the provisions of Subchapter E of Chapter 2 of the Code, as imposed specifically by section 710(a)(1) of that subchapter. It follows that the tax levied by that subchapter is the tax to be subtracted in computing accumulated earnings and profits to be included in the determination of invested capital. The provisions of sections 780 and 781 of the Code with respect to the post-war credit do not vary the amount of the excess profits tax imposed.

The conclusion reached above does not, however, dispose of the question whether the post-war credit provided by section 780 of the Code may be added to earnings and profits as of the close of the taxable year to which it relates and thus, whether it may be included in the computation of the accumulated earnings and profits as of the beginning of the succeeding taxable year for the purposes of section 718(a)(4) of the Code. If the post-war credit can be said to have accrued to the taxpayer as of the close of the taxable year to which it relates, the accumulated earnings and profits as of the close of such taxable year will reflect a reduction of only 90 per cent of the amount of the excess profits tax.

The right to receive an amount accrues when such right becomes fixed. (See *Spring City Foundry Co.* v. *Commissioner*, 292 U. S., 182, Ct. D. 829, C. B. XIII–1, 281 (1934), and *Continental Tie & Lumber Co.* v. *United States*, 286 U. S., 290, Ct. D. 494, C. B. XI–1, 260 (1932).) Section 780(a) of the Code provides for a post-war credit in an amount equal to 10 per cent of the tax imposed by Subchapter E of Chapter 2. Section 781(d)(1) of the Code, as amended by section 250(f) of the Revenue Act of 1943, provides as follows:

(d) LIMITATION.—

(1) GENERAL RULE.—The credit under section 780(a) for any taxable year shall not be greater than the excess of the amount of the tax paid under this subchapter to the United States (and not credited or refunded under the internal revenue laws) in respect of such year over the amount of tax which would be payable to the United States if the excess profits tax rate were 85½ per centum, or, if the limitation of section 710(a)(1)(B) is applicable, if the amount determined under such section were reduced by 10 per centum.

It follows that the taxpayer has no right to a post-war credit until it has made payment to the United States under Subchapter E of

Chapter 2 of the Code (and which payment has not been credited or refunded) of more than the amount which would have been payable had the tax rate been 85½ per cent (81 per cent for the years 1942 and 1943). Accordingly, the accrual date for the post-war credit is the date on which the taxpayer's payment of excess profits tax exceeds the amount which would have been payable had the rate been 85½ per cent, or 81 per cent, as the case may be.

In view of the foregoing, it is held that in the case of a taxpayer keeping its books and filing its income and excess profits tax returns on the accrual basis, the amount of the excess profits tax to be subtracted in computing accumulated earnings and profits as of the beginning of the taxable year for the purposes of section 718(a)(4) of the Code is the total tax levied under Subchapter E of Chapter 2 of the Code for the preceding taxable year, undiminished by the amount of the post-war credit under section 780 of the Code. The post-war credit accrues as of the date on which the taxpayer's payment of excess profits tax exceeds the amount which would have been payable had the tax rate been 85½ per cent (81 per cent for the years 1942 and 1943), and will be reflected in accumulated earnings and profits for invested capital purposes at the beginning of the succeeding taxable year.

REGULATIONS 112, SECTION 35.718–2: Determination of daily equity invested capital—Accumulated earnings and profits.

INTERNAL REVENUE CODE.

Treatment of adjustment required by article 34(c)(2) of Regulations 78 for purpose of computing equity invested capital. (See I. T. 3758, page 159.)

REGULATIONS 112, SECTION 35.718–2: Determination of daily equity invested capital—Accumulated earnings and profits.

INTERNAL REVENUE CODE.

Amortizable bond premium on wholly tax-exempt bonds. (See I. T. 3764, page 188.)

REGULATIONS 112, SECTION 35.718–4: Determination of daily equity invested capital—New capital. 1945–15–12098 I. T. 3751

INTERNAL REVENUE CODE.

In the case of a newly organized corporation not subject to the limitations set forth in subparagraphs (A), (B), and (C) of section 718(a)(6) of the Internal Revenue Code, the initial paid-in capital should be treated as new capital for the purpose of computing the 25 per cent addition to capital provided for in that section. The equity invested capital of a newly organized corporation as of the first day of its first taxable year beginning after December 31, 1940, is zero, and the limitation in subparagraph (E) of section 718(a)(6) of the Code, relating to maximum new capital allowable, is inapplicable.

Advice is requested whether a newly organized corporation is entitled to treat its initial paid-in capital as new capital for the purpose of computing equity invested capital under section 718 of the Internal Revenue Code, as amended.

Section 718(a)(6) of the Code, as amended, provides for inclusion in equity invested capital of an amount equal to 25 per cent of the new capital for any day of any taxable year determined as of the beginning of such day. The term "new capital" for any day means so much of the amounts of money or property includible for such day under paragraphs (1) and (2) of section 718(a) of the Code as was previously paid in during a taxable year beginning after December 31, 1940, and so much of the distributions in stock includible for such day under paragraph (3) of section 718(a) of the Code as was previously made during a taxable year beginning after December 31, 1940, subject to the limitations set forth in subparagraphs (A) to (F) of section 718(a)(6) of the Code.

It is held that in the case of a newly organized corporation not subject to the limitations set forth in subparagraphs (A), (B), and (C) of section 718(a)(6) of the Code, the initial paid-in capital should be treated as new capital for the purpose of computing the 25 per cent addition to capital provided for in that section. The equity invested capital of a newly organized corporation as of the first day of its first taxable year beginning after December 31, 1940, is zero, and the limitation in subparagraph (E) of section 718(a)(6) of the Code, relating to maximum new capital allowable, is therefore inapplicable with respect to such a corporation.

REGULATIONS 112, SECTION 35.718–5: Determination of daily equity invested capital—Reductions by distributions. 1945–21–12157 I. T. 3765

INTERNAL REVENUE CODE.

Where a corporation had a deficit in accumulated earnings and profits on the first day of each of the calendar years 1936 to 1943, inclusive, and in each of such years distributions were made in amounts not exceeding the earnings and profits of the respective (current) years, no reduction in equity invested capital is required by section 718(b)(1) of the Internal Revenue Code on account of such distributions.

Advice is requested whether, in determining the excess profits credit under the invested capital method, equity invested capital must be reduced on account of distributions made during each of the calendar years 1936 to 1943, inclusive, in amounts not in excess of the earnings and profits of the respective years, where the taxpayer corporation had a deficit in accumulated earnings and profits at the beginning of each of such years.

Under section 718(b)(1) of the Internal Revenue Code, equity invested capital in respect of each excess profits tax taxable year, computed as otherwise provided in section 718 of the Code, must be reduced by distributions made prior to such taxable year which were not out of *accumulated earnings and profits*. The term "accumulated

earnings and profits" is not defined in the Code. However, in general, the concept of "accumulated earnings and profits" for the purpose of the excess profits tax is the same as for the purpose of the income tax. (See section 35.718–2 of Regulations 112.)

The determination of the taxability of corporate distributions is dependent upon the status of the distributions as dividends. In that connection, section 115(a) of the Internal Revenue Code provides in part as follows:

(a) DEFINITION OF DIVIDEND.—The term "dividend" when used in this chapter * * * means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after February 28, 1913, *or (2) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.* * * * [Italics supplied.]

The matter in italics first appeared in the Revenue Act of 1936. Article 115–1 of Regulations 94, promulgated thereunder, reads in part as follows:

The earnings or profits of the taxable year shall be computed as of the close of such year, without diminution by reason of any distributions made during the taxable year. For the purpose of determining whether a distribution constitutes a dividend, it is unnecessary to ascertain the amount of the earnings and profits accumulated since February 28, 1913, if the earnings and profits of the taxable year are equal to or in excess of the total amount of the distributions made within such year.

(See corresponding provisions of subsequent regulations, including section 29.115–1 of Regulations 111.)

The result has been that with respect to taxable years beginning after December 31, 1935, distributions by corporations to stockholders from current earnings and profits were taxable to the stockholders as dividends notwithstanding the existence of a deficit in accumulated earnings and profits at the beginning of the taxable year. To the extent that a corporation had current earnings and profits, distributions during the taxable year, notwithstanding the existence of a deficit in accumulated earnings and profits, have not been considered as distributions of capital.

Under the circumstances, it seems evident that in enacting section 718(b)(1) of the Code it was not contemplated that reductions in equity invested capital should be effected unless distributions were made out of capital and, further, that it was not intended to tax distributions as being out of a corporation's earnings or profits and, at the same time, provide for a reduction of equity invested capital by the amount of such distributions as being out of capital.

In view of the foregoing, it is held that where a corporation had a deficit in accumulated earnings and profits on the first day of each of the calendar years 1936 to 1943, inclusive, and in each of such years distributions were made in amounts not exceeding the earnings and profits of the respective (current) years, no reduction in equity invested capital is required by section 718(b)(1) of the Internal Revenue Code on account of such distributions.

CHAPTER 2, SUBCHAPTER E.—EXCESS PROFITS TAX.

PART I.

SECTION 722.—GENERAL RELIEF—CONSTRUCTIVE AVERAGE BASE PERIOD NET INCOME.

REGULATIONS 112, SECTION 35.722–3: Determination of excessive and discriminatory tax; taxpayer entitled to excess profits credit based on income. 1945–2–11939 Mim. 5806

Determinations under section 722(b)(3)(A) of the Internal Revenue Code.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., January 10, 1945.

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

Further study of the minor industrial groups not covered in the tentative determinations contained in Mimeograph 5747 (C. B. 1944, 410), dated September 23, 1944, has led to the following conclusions:

1. No minor industrial group (according to the classification used by the Bureau of Internal Revenue for statistical purposes in 1937) as a whole meets the requirements of section 722(b)(3)(A) of the Internal Revenue Code in the sense that all industries which it includes were depressed during the base period because of a variant profits cycle, i. e., "a profits cycle differing materially in length and amplitude from the general business cycle."

2. Exploratory studies by the Bureau indicate that industries in which corporations were characteristically depressed in the base period because of a variant profits cycle are likely to be found chiefly in the building and closely related fields.

3. It is impracticable to go further toward identifying variant cycle industries by additional studies, industry by industry, over the entire field of corporate business. Such a procedure would involve intensive and time-consuming studies of numerous industries, the members of which have offered no serious evidence of cyclical depression in sufficient degree to show that their average base period net income is an inadequate standard of normal earnings. Accordingly, determinations with respect to the status of particular industries under section 722(b)(3)(A) of the Internal Revenue Code will be made only for those industries, members of which have submitted substantial evidence that they would qualify for relief under that provision of the Code, in the event that such industries were held to meet the statutory requirements.[1] These determinations will be made on the basis of evidence offered by taxpayers, supplemented by Bureau investigations.

Correspondence relating to the provisions of this mimeograph should refer to its number and the symbols IT: NDC.

JOSEPH D. NUNAN, Jr.,
Commissioner.

[1] For definition of "industry" for this purpose and for the nature of the proof required, reference should be made to the Bulletin on Section 722 of the Internal Revenue Code, issued by the Bureau of Internal Revenue November 2, 1944, and obtainable by the public from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., price 25 cents.

REGULATIONS 112, SECTION 35.722–3: Determination of excessive and discriminatory tax; taxpayer entitled to excess profits credit based on income. 1945–2–11940 Mim. 5807

Statistics as to corporate profits, years 1918–1939, for use in consideration of applications under section 722 of the Code.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., January 10, 1945.

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

1. The accompanying tables and chart give the best available measures of corporate profits in the years 1918 to 1939, inclusive, for use in consideration of applications for relief under section 722 of the Internal Revenue Code.[1] The underlying data have been issued previously by the Bureau of Internal Revenue in its annual publication, Statistics of Income, Part 2. Many of these volumes are out of print, and the data they contain are most useful in connection with section 722 problems only after certain adjustments. Therefore, it seems desirable, for the convenience of all concerned, to make available this material for as long a period in the past as is possible with comparable data.

2. Three series of data are given in table I, for all corporations filing returns: (A) the total compiled net profit or loss (column 2) as reported in Statistics of Income, representing the ordinary concept of net income from all sources before Federal income taxes; (B) series A adjusted by the subtraction of certain tax-exempt income to approximate excess profits net income (column 4); and (C) series B with the addition of interest paid to represent the earnings of corporate business irrespective of changes in the proportions between equity capital and borrowed capital (column 6). Certain factors which interfere with precise comparability within each series are indicated in the footnotes to the table.

3. The accompanying chart portrays the above-mentioned three series of corporate profits data in accordance with the index numbers in columns 3, 5, and 7 of table I. In computing these index numbers the average of the 18-year period 1922–1939 was taken to equal 100 per cent. This 18-year period was selected for reasons indicated in the Bulletin on Section 722 of the Internal Revenue Code, Part IV(B) (referred to in footnote 1).

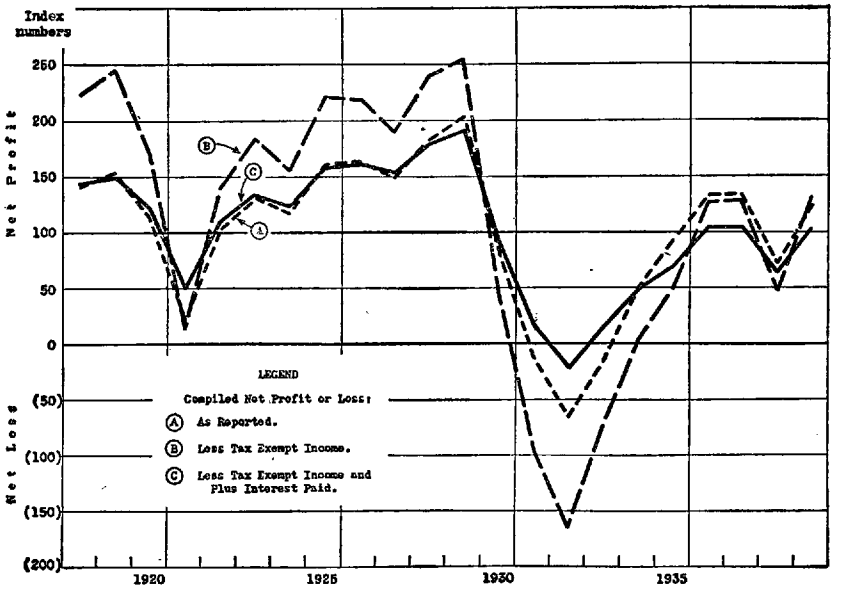
4. In table II are given data comparable to those in table I, for the shorter period for which available, for the corporations which submitted balance sheets with their returns. In addition, table II gives the net worth, total assets, and capital assets of these corporations in order to permit the comparisons suggested in the Bulletin on Section 722 of the Internal Revenue Code (referred to in footnote 1).

5. Correspondence relating to the provisions of this mimeograph should refer to its number and the symbols IT: NDC.

JOSEPH D. NUNAN, Jr.,
Commissioner.

[1] For the application of these data, reference should be made to the Bulletin on Section 722 of the Internal Revenue Code, issued by the Bureau of Internal Revenue November 2, 1944, and obtainable by the public from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., price 25 cents.

Corporate Profits in the United States, 1918-1939.
(Index Numbers, 1922-39 Av. = 100)



Source: See accompanying table I and footnotes.

TABLE I.—*Corporate earnings in the United States, 1918–1939.*[1]

(All corporations filing returns.)

Year.[2]	Number of returns.[3]	Compiled net profit (or loss) before Federal income taxes.					
		(A) Total as reported.		(B) Total less tax-exempt income.[4]		(C) Total less tax-exempt income and plus interest paid.[5]	
		Amount. ($1,000,000)	Index. 1922–39=100	Amount. ($1,000,000)	Index. 1922–39=100	Amount. ($1,000,000)	Index. 1922–39=100
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1918	317,579	8,238	141.4	7,672	223.4	10,305	144.4
1919	320,198	8,970	154.0	8,416	245.1	10,624	149.0
1920	345,595	6,625	113.8	5,873	171.0	8,708	122.0
1921	356,397	1,156	19.8	458	13.3	3,599	50.4
1922	382,883	5,967	102.5	4,770	138.9	7,839	109.8
1923	398,933	7,634	131.1	6,308	183.7	9,586	134.3
1924	417,421	6,795	116.7	5,363	156.2	8,808	123.4
1925	430,072	9,316	160.0	7,621	221.9	11,238	157.4
1926	455,320	9,510	163.3	7,504	218.5	11,493	161.0
1927	425,675	8,669	148.8	6,510	189.6	10,885	152.5
1928	443,611	10,667	183.2	8,227	239.6	12,808	179.4
1929	456,021	11,870	203.8	8,740	254.5	13,665	191.4
1930	463,036	4,649	79.8	1,552	45.2	6,413	89.8
1931	459,704	(777)	(13.3)	(3,288)	(95.7)	1,204	16.9
1932	451,884	(3,829)	(65.7)	(5,643)	(164.3)	(1,600)	(22.4)
1933	446,842	(930)	(16.0)	(2,547)	(74.2)	964	13.5
1934	469,804	2,970	51.0	94	2.7	3,516	49.3
1935	477,113	5,423	93.1	1,696	49.4	4,957	69.4
1936	478,857	7,771	133.4	4,370	127.3	7,451	104.4
1937	477,838	7,830	134.4	4,407	128.3	7,410	103.8
1938	471,032	4,131	70.9	1,608	46.8	4,479	62.8
1939	469,617	7,178	123.2	4,509	131.3	7,306	102.4
Average, 1922–39	443,286	5,825	100.0	3,434	100.0	7,135	100.0
Average, 1936–39	474,336	6,728	115.5	3,724	108.4	6,662	93.4

For footnotes, see page 275.

TABLE II—*Corporate earnings in the United States and selected balance-sheet items, 1926–1939.*[1]

(Corporations submitting balance sheets with returns.)

Year.[2]	Number of returns.[3]	Compiled net profit (or loss) before Federal income taxes. (A) Total as reported.	(B) Total less tax-exempt income.[4]	(C) Total less tax-exempt income and plus interest paid.[5]	Net worth[9] end of year.	Total assets end of year.	Capital assets[10] end of year.
		($1,000,000)	($1,000,000)	($1,000,000)	($1,000,000)	($1,000,000)	($1,000,000)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1926	359,449	[11]	[11]	[11]	119,260	[12] 262,179	97,523
1927	379,156	[11]	[11]	[11]	132,403	287,542	104,945
1928	384,548	[11]	[11]	[11]	142,888	307,218	109,931
1929	398,815	[11]	[11]	[11]	[6] 160,369	335,778	116,446
1930	403,173	[11]	[11]	[11]	[7] 161,282	334,002	120,994
1931	381,088	(487)	(2,925)	1,444	[7] 143,363	296,497	[7] 114,303
1932	392,021	(3,511)	(5,263)	(1,357)	133,569	280,083	108,553
1933	388,564	(639)	(2,183)	1,192	127,578	268,206	104,958
1934	410,626	[8] 3,037	258	3,597	141,585	301,307	102,751
1935	415,205	5,500	1,884	5,044	138,931	303,150	100,480
1936	415,654	7,618	[8] 4,332	7,263	133,468	303,180	97,873
1937	416,902	7,777	[8] 4,446	7,372	[8] 133,966	303,357	100,320
1938	411,941	4,144	[8] 1,722	4,525	[9] 130,136	300,022	99,299
1939	412,759	7,236	[8] 4,264	7,350	[9] 128,975	306,801	[10] 100,226

Footnotes to tables I and II.

[1] Based on data in Statistics of Income, Part 2, compiled from unaudited income tax returns filed by all corporations. Reference should be made to these reports for exact definitions of terms and methods of compilation. For taxable years beginning after December 31, 1933, the privilege of filing consolidated returns by affiliated groups, except by railroads, was discontinued. As a result of this change, Series A is substantially overstated in 1934 and subsequent years in relation to the earlier years. Series B and C are slightly overstated after 1933 for the same reason, the effects of the change to nonconsolidated returns being greatly reduced by the elimination of intercorporate dividends.

[2] In addition to calendar year returns the tabulation for a given year includes returns for fiscal years ending after June 30 of the year but prior to July 1 of the succeeding year, and part-year returns with the greater number of months in the given calendar year.

[3] In table I the number of returns is slightly greater than the number of corporations reporting because of some duplication in case of part-year returns. In addition, beginning with 1927 the number of returns represents active corporations, while prior to that date they include inactive corporations. This, of course, has no influence on the income data, but explains the decline in number of returns from 1925 to 1927. In table II the number of returns represents the number of active corporations that submitted balance sheets.

[4] Tax-exempt income consists of dividends on stocks of domestic corporations and tax-exempt interest (including that subject to declared value excess-profits tax and to surtax only) on Federal, State, and municipal bonds. Although dividends on stocks of domestic corporations became partially taxable in 1936 for income tax purposes, they remain nontaxable for excess profits tax purposes. In any case, domestic dividends must be excluded throughout in order to make the data for 1936 and subsequent years comparable with those for earlier years. Compiled net profit or loss less tax-exempt income gives a reasonably close approximation to "excess profits net income" applicable to 1941 and subsequent taxable years. (Income taxes are deductible for 1940 but not for subsequent taxable years in computing excess profits net income.) The principal difference between this series and excess profits net income is the absence of adjustment for capital gains and losses, data for which are not available prior to 1929.

[5] Interest paid on both short-term and long-term borrowings, which are not separately tabulated.

[6] Revised. See Statistics of Income, 1930, pages 28, 239, and Statistics of Income, 1935, Part II, page 24.

[7] Revised. See Statistics of Income, 1933, page 37.

[8] Revised. See Statistics of Income, 1935, Part II, page 26.

[9] Includes common stock, preferred stock, and surplus and undivided profits less deficit. Does not include surplus reserves data for which are available beginning in 1937. Surplus reserves amounted to $7,667,000,000 in 1937, $7,301,000,000 in 1938, and $7,889,000,000 in 1939. Data for 1939 differ from those published in Statistics of Income, 1939, Part II, for the reason that $42,000,000 of surplus reserves of raw rayon manufacturers were erroneously tabulated and included in published data under preferred stock.

[10] Capital assets consist of land and depreciable and depletable assets less depreciation and depletion. Prior to 1939, includes intangible assets other than copyrights, formulas, good will, patents, and trade-marks. In 1939, all intangible assets are included.

[11] Not available.

[12] Revised. See Statistics of Income, 1928, page 388.

REGULATIONS 112, SECTION 35.722–5: Application for relief under section 722. 1945–15–12099 Mim. 5895

Date on which constructive average base period net income has been finally determined within meaning of section 35.722–5(*d*) of Regulations 112.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., July 17, 1945.

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

1. Section 35.722–5(*d*) of Regulations 112 provides in part that "if a constructive average base period net income has been finally determined under section 722(a) with respect to the taxpayer * * *, such taxpayer may use the constructive average base period net income so determined, except as further adjustments may be required by section 711(b), in computing its excess profits credit based on income, its adjusted excess profits net income, and its excess profits tax in any return required to be filed thereafter." Inquiry has been made as to how the taxpayer will have knowledge that the "constructive average base period net income has been finally determined under section 722(a)" so that it may be used by the taxpayer in computing its excess profits tax liability in returns subsequently filed.

2. *Allowance in part of relief claimed.*—If the taxpayer's claim for relief under section 722 of the Internal Revenue Code is allowed in part, a statutory notice of disallowance under section 732 of the Code will be issued. Should the taxpayer decide not to file a petition with The Tax Court of the United States within the 90-day period prescribed in section 732, the constructive average base period net income allowed by the Bureau will be considered as "finally determined under section 722(a)," within the meaning of the regulation cited, at the expiration of the time prescribed for filing a petition. In the event the taxpayer files a petition with The Tax Court of the United States for a redetermination of the relief allowed under section 722(a), the taxpayer may use the constructive average base period net income allowed by that court in computing excess profits tax liability in returns filed after the decision of the court becomes final.

3. *Allowance in full of relief claimed.*—In any case in which a statutory notice under section 732 is not issued for the reason that the taxpayer's claim for relief under section 722 is allowed in full by the internal revenue agent in charge or by the head of a division of the Technical Staff, the taxpayer will be notified by letter when the constructive average base period net income has been "finally determined under section 722(a)," within the meaning of the regulation. Upon receipt of such a notice the taxpayer may use the determined constructive average base period net income in computing its excess profits tax liability in returns subsequently filed.

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

JOSEPH D. NUNAN, Jr.,
Commissioner.

REGULATIONS 112, SECTION 35.722–5: Application for relief under section 722. (Also Section 30.722–5, Regulations 109.) 1945–22–12173 T. D. 5483

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 30 AND PART 35.—INCOME AND EXCESS PROFITS TAXES.

Provisions of Regulations 109 and 112 prescribed under section 722 of the Internal Revenue Code, relating to the filing of applications for general excess profits tax relief, amended.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 109 [Part 30, Title 26, Code of Federal Regulations, 1941 Sup.] and Regulations 112 [Part 35, Title 26, Code of Federal Regulations, Cum. Sup.] are amended as follows:

REGULATIONS 109.

PARAGRAPH 1. Section 30.722–5(*a*), as amended by Treasury Decision 5393, approved July 31, 1944 [C. B. 1944, 415], is further amended as follows:

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

If new grounds in addition to those set forth in such application are relied upon by the taxpayer for relief under section 722 with respect to years beginning in 1940 or 1941, an amendment to the application already filed for such years shall be filed under oath on Form 991 (revised January, 1943).

(B) By striking out the second sentence in the third paragraph.

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

Only one application for relief under section 722 shall be filed for an excess profits tax taxable year. New grounds or additional facts not contained in the original application shall be presented as an amendment to the original application for the taxable year. Any supplemental or additional applications filed after the filing of the original application shall be considered amendments to the original application previously filed. No new grounds presented by the taxpayer after the period of time for filing a claim for credit or refund prescribed by section 322, and no new grounds or additional facts presented after the disallowance, in whole or in part, of the application for relief and the claim for refund based thereon, will be considered in determining whether the taxpayer is entitled to relief or the amount of the constructive average base period net income to be used in computing such relief for the taxable year.

Prior to final action by the Commissioner on the taxpayer's application for relief, the taxpayer will be given a notice affording it an opportunity to be heard on its application and to submit any information thereon which it deems necessary or desirable. If in the opinion of the Commissioner there has been no substantial investigative action on an application for relief, the Commissioner may on request of the taxpayer permit the taxpayer to withdraw its application. The request for withdrawal of the application for relief shall be in writing and shall be executed by at least two officers empowered to sign for the corporation, and the corporate seal shall be affixed thereto. If the corporation has no seal, the request for withdrawal shall be accompanied by a certified copy of the resolution of the board of directors giving such officers authority to sign the request for withdrawal. If the Commissioner approves the taxpayer's request for withdrawal of its application the case shall be treated as though no application had been filed.

PAR. 2. Section 35.722–5(*a*), as amended by Treasury Decision 5393, approved July 31, 1944, is further amended as follows:

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

If new grounds in addition to those set forth in such application are relied upon by the taxpayer for relief under section 722, an amendment to the application already filed for such year shall be filed under oath on Form 991 (revised January, 1943).

(B) By striking out the second sentence in the fourth paragraph.

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

Only one application for relief under section 722 shall be filed for an excess profits tax taxable year. New grounds or additional facts not contained in the original application shall be presented as an amendment to the original application for the taxable year. Any supplemental or additional applications filed after the filing of the original application shall be considered amendments to the original application previously filed. No new grounds presented by the taxpayer after the period of time for filing a claim for credit or refund prescribed by section 322, and no new grounds or additional facts presented after the disallowance, in whole or in part, of the application for relief and the claim for refund based thereon, will be considered in determining whether the taxpayer is entitled to relief or the amount of the constructive average base period net income to be used in computing such relief for the taxable year.

Prior to final action by the Commissioner on the taxpayer's application for relief, the taxpayer will be given a notice affording it an opportunity to be heard on its application and to submit any information thereon which it deems necessary or desirable. If in the opinion of the Commissioner there has been no substantial investigative action on an application for relief, the Commissioner may on request of the taxpayer permit the taxpayer to withdraw its application. The request for withdrawal of the application for relief shall be in writing and shall be executed by at least two officers empowered to sign for the corporation, and the corporate seal shall be affixed thereto. If the corporation has no seal, the request for withdrawal shall be accompanied by a certified copy of the resolution of the board of directors giving such officers authority to sign the request for withdrawal. If the Commissioner approves the taxpayer's request for withdrawal of its application the case shall be treated as though no application had been filed.

(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) as made applicable by section 729(a) of the Internal Revenue Code (54 Stat., 989; 26 U. S. C., 729(a)).)

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

Approved November 5, 1945.

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

(Filed with the Division of the Federal Register November 6, 1945, 1.55 p. m.)

SECTION 729.—LAWS APPLICABLE.

INTERNAL REVENUE CODE.

Regulations 112 amended. (See T. D. 5478, page 262.)

REGULATIONS 112, SECTION 35.729–3: Foreign tax credit. 1945–17–12120
T. D. 5473
(Also Section 30.729–3, Regulations 109.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 30 AND PART 35.

Regulations 109 and Regulations 112 amended.

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

To Collectors of Internal Revenue and Others Concerned:

Section 30.729–3 of Regulations 109 [Part 30, Title 26, Code of Federal Regulations, 1941 Sup.] and section 35.729–3 of Regulations 112 [Part 35, Title 26, Code of Federal Regulations, Cum. Sup.] are amended as follows:

REGULATIONS 109.

PARAGRAPH 1. Section 30.729–3 is amended by striking out the second sentence and inserting in lieu thereof the following:

A taxpayer is allowed such a credit against the excess profits tax for taxable years beginning prior to January 1, 1941, if it claims such credit in its Federal income tax return and likewise claims such credit in its excess profits tax return. For taxable years beginning after December 31, 1940, the taxpayer is allowed such a credit against its excess profits tax if it chooses to have the benefits of such credit (or, having chosen to the contrary, changes its choice) at any time prior to the expiration of the period prescribed by statute for the making of a claim for credit or refund for such taxable year. In any case in which a credit would not be available except by reason of the provisions of section 131(f) and the taxpayer has for a taxable year beginning prior to January 1, 1941, claimed in its Federal income tax return the benefits of section 131, it shall be deemed, for the purpose of the credit, that such taxpayer has likewise claimed in its excess profits tax return for such year the benefits of section 729(c).

REGULATIONS 112.

PAR. 2. Section 35.729–3 is amended by striking out the second sentence and inserting in lieu thereof the following:

If the taxpayer so chooses (or, having chosen to the contrary, changes its choice) at any time prior to the expiration of the period prescribed by statute for the making of a claim for credit or refund for the taxable year, it is allowed such a credit against the excess profits tax.

(This Treasury decision is issued under the authority contained in section 62 as made applicable by section 729(a), and section 131(f) of the Internal Revenue Code (53 Stat., 32; 54 Stat., 989; 56 Stat., 857; 26 U. S. C., 62, 798(a)) and Sup. III, 131(f).)

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

Approved August 21, 1945.

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

(Filed with the Division of the Federal Register August 22, 1945, 11.54 a. m.)

REGULATIONS 112, SECTION 35.729–4: Application of credit to cases within relief provisions.

INTERNAL REVENUE CODE.

Regulations 112 amended. (See T. D. 5452, page 206.)

CHAPTER 1.

SUBCHAPTER E.—EXCESS PROFITS TAX.

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. 1945–17–12121 T. D. 5474

(Also Section 30.732–1, Regulations 109.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 30 AND PART 35.

Excess Profits Tax Regulations 109 and 112 amended to conform to Public Law 105, approved June 30, 1945 [page 531, this Bulletin].

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 109 [Part 30, Title 26, Code of Federal Regulations, 1941 Sup.], and Regulations 112 [Part 35, Title 26, Code of Federal Regulations, Cum. Sup.] to Public Law 105 (Seventy-ninth Congress, first session), approved June 30, 1945 [page 531, this Bulletin], such regulations are amended as follows:

REGULATIONS 109.

PARAGRAPH 1. There is inserted immediately preceding section 30.732–1 the following:

JOINT RESOLUTION. (PUBLIC LAW 105, SEVENTY-NINTH CONGRESS, APPROVED JUNE 30, 1945.)

* * * * * * *

SEC. 2. Section 732(d) of the Internal Revenue Code is amended to read as follows:

"(d) REVIEW BY SPECIAL DIVISION OF BOARD.—The determinations and redeterminations by any division of the Board involving any question arising under section 721(a)(2)(C) or section 722 with respect to any taxable year shall be reviewed by a special division of the Board which shall be constituted by the Chairman and consist of not less than three members of the Board. The decisions of such special division shall not be reviewable by the Board, and shall be deemed decisions of the Board."

PAR. 2. Section 30.732–1, as amended by Treasury Decision 5264, approved May 8, 1943 [C. B. 1943, 761], is further amended by changing the third sentence of the third paragraph to read as follows:

If the determinations and redeterminations by any division of The Tax Court involve any question arising under section 721(a)(2)(C) or section 722 with

respect to any taxable year, such determinations and redeterminations shall be reviewed by a special division of The Tax Court which shall be constituted by the Presiding Judge and shall consist of not less than three judges of The Tax Court.

REGULATIONS 112.

PAR. 3. There is inserted immediately preceding section 35.732–1 the following:

JOINT RESOLUTION. (PUBLIC LAW 105, SEVENTY-NINTH CONGRESS, APPROVED JUNE 30, 1945.)

* * * * * * *

SEC. 2. Section 732(d) of the Internal Revenue Code is amended to read as follows:

"(d) REVIEW BY SPECIAL DIVISION OF BOARD.—The determinations and redeterminations by any division of the Board involving any question arising under section 721(a)(2)(C) or section 722 with respect to any taxable year shall be reviewed by a special division of the Board which shall be constituted by the Chairman and consist of not less than three members of the Board. The decisions of such special division shall not be reviewable by the Board, and shall be deemed decisions of the Board."

PAR. 4. Section 35.732–1 is amended by changing the third sentence of the third paragraph to read as follows:

If the determinations and redeterminations by any division of The Tax Court involve any question arising under section 721(a)(2)(C) or section 722 with respect to any taxable year, such determinations and redeterminations shall be reviewed by a special division of The Tax Court which shall be constituted by the Presiding Judge and shall consist of not less than three judges of The Tax Court.

(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) as made applicable by section 729(a) of the Internal Revenue Code (54 Stat., 989; 26 U. S. C. 729(a)) and Public Law 105, approved June 30, 1945.)

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

Approved August 21, 1945.

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

(Filed with the Division of the Federal Register August 22, 1945, 11.54 a. m.)

REGULATIONS 109, SECTION 30.732–1: Review of abnormalities by The Tax Court of the United States. 1945–24–12198 Ct. D. 1654

INCOME AND EXCESS PROFITS TAXES—INTERNAL REVENUE CODE—DECISION OF COURT.

1. APPLICATION FOR GENERAL RELIEF UNDER SECTION 722—PROCEDURE—JURISDICTION OF TAX COURT.

On May 5, 1942, the taxpayer filed with The Tax Court a petition for review of the Commissioner's determination of an income and excess profits tax deficiency for the year 1940. After the amendment of section 722 of the Internal Revenue Code by section 222 of the Revenue Act of 1942, the taxpayer filed an amendment to its petition, seeking relief under section 722, and also filed with the Commissioner an application for the same relief sought before The Tax Court. While the amended petition was pending, section 722 was

again amended by Public Law 201, Seventy-eighth Congress, first session, approved December 17, 1943 (C. B. 1944, 813), omitting the provision for application to The Tax Court for general relief from excess profits tax, such amendment being applicable to the taxable year here involved. *Held:* The Tax Court did not err in dismissing the proceeding for lack of jurisdiction in so far as it related to relief under section 722 of the Code. The court's order merely required the taxpayer to submit its claim for relief to the Commissioner before making application to The Tax Court, leaving available to taxpayer the right to contest the action of the Commissioner before the court. Such an order is not one reviewable by the circuit court of appeals. Even if The Tax Court had jurisdiction of the amended petition at the time it was filed, there was no abuse of discretion in requiring the taxpayer, in the interest of a uniform administration of the Revenue Act, to resort to the procedure open to it under section 722 of the Code, as amended by the Act of December 17, 1943.

2. DECISIONS FOLLOWED.

Uni-Term Stevedoring Co. v. *Commissioner* (3 T. C., 917) and *Pioneer Parachute Co.* v. *Commissioner* (4 T. C., 25) followed.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Ceco Steel Products Corporation, petitioner, v. *Commissioner of Internal Revenue, respondent.*

[150 Fed. (2d), 698.]

On petition to review decision of The Tax Court of the United States.

Before GARDNER, JOHNSEN, and RIDDICK, Circuit Judges.

[July 23, 1945.]

OPINION.

RIDDICK, Circuit Judge, delivered the opinion of the court.

On May 5, 1942, the taxpayer filed with The Tax Court a petition for a review of a deficiency determined by the Commissioner in the taxpayer's income tax and excess profits tax for the year 1940.

After the Commissioner had answered the taxpayer's petition, the Revenue Act of 1942 was enacted and approved. Section 222 of this Act amended section 722 of the Internal Revenue Code with regard to procedure on claims for relief from a discriminatory excess profits tax due to abnormalities in income.

In addition to the procedure theretofore provided on claims for relief under section 722 of the Internal Revenue Code, the amendment referred to also authorized applications for relief on such claims by petition to The Tax Court in certain exceptional cases. (See *Pioneer Parachute Co.* v. *Commissioner,* 4 T. C., 27.) The taxpayer, conceiving that the provisions of section 722 of the Internal Revenue Code, as amended by section 222 of the Revenue Act of 1942, permitted it in the circumstances of this case to appeal directly to The Tax Court for relief, or possibly, as stated in its brief, required it to make its application for the relief claimed both to the Commissioner and by way of a petition before The Tax Court, applied to The Tax Court for leave to amend its pending petition in that court to seek relief under section 722, and also filed with the Commissioner its application for the same relief sought in its petition before The Tax Court.

Leave to amend was granted as requested, and on March 3, 1943, the taxpayer filed the amendment to its petition. The Commissioner answered, denying the taxpayer's right to the relief claimed. Before any action by The Tax Court in the proceeding before it, which, as amended, asked for a review of the deficiency determined by the Commissioner in the taxpayer's income tax and excess profits tax for the year 1940, and for relief under section 722 of the Internal Revenue Code, Congress again amended section 722 of the Internal Revenue Code by omitting therefrom the provision for application to The Tax Court for general relief from excess profits tax. (Public Law 201, first session, Seventy-eighth Congress, approved December 17, 1943, 57 Stat., 601, 26 U. S. C. A., Int. Rev. Acts, 1944 Supp., page 311 [C. B. 1944, 813].) This amendment to section 722 was made applicable in respect to the taxable year here involved. Following

the approval of the Act of December 17, 1943, the Commissioner moved to dismiss the taxpayer's amended petition in so far as it related to the application for relief under section 722 of the Code, on the ground that it was prematurely filed, the Commissioner not having acted upon the claim for the same relief pending before him, and The Tax Court, for that reason, being without jurisdiction of taxpayer's claim for relief under section 722.

The Commissioner's motion to dismiss was sustained by The Tax Court and an order entered on October 4, 1944, providing: "That the respondent's motion is granted and the proceeding is dismissed for lack of jurisdiction in so far as it relates to relief claimed under section 722 of the Internal Revenue Code."

The taxpayer seeks a review of this order of The Tax Court, and the Commissioner moves to dismiss on the ground that the order is one not subject to review by this court, and, in the alternative, contends that the order of The Tax Court must be affirmed if it is such an order as this court has jurisdiction to review under section 1141(a) of the Internal Revenue Code.

The basis for the Commissioner's motion to dismiss is that the order of The Tax Court is a mere intermediate order governing only the course of procedure before The Tax Court, and not a final or definite determination by The Tax Court of taxpayer's right to the relief claimed. In the brief on behalf of the Commissioner it is stated that the application for relief under section 722 of the Code, which the taxpayer has presented to the Commissioner, was denied by the Commissioner on October 2, 1944, and that on October 6, 1944, taxpayer filed with The Tax Court a petition for review of the Commissioner's action in the premises. This assertion in the Commissioner's brief is not denied by the taxpayer, and, accordingly, it is accepted. We think the Commissioner's interpretation of the order of The Tax Court is correct and that the order is not effective as a definitive decision by the court of the taxpayer's right to the relief asserted in its dismissed petition, but that its effect is merely to determine the procedure under which that right may be asserted and be brought to decision by The Tax Court. In view of the opinions of The Tax Court in *Uni-Term Stevedoring Co.* v. *Commissioner* (3 T. C., 917) and in *Pioneer Parachute Co.* v. *Commissioner*, supra, no other conclusion seems possible. In the Pioneer Parachute Co. case The Tax Court had before it the identical procedural question presented to it in this case. The court said:

"The Code now discloses a congressional intention that the new system (procedure on applications for relief under section 722 of the Code provided by the Act of December 17, 1943) shall be applied universally to all claims for relief arising under section 722, so that in no case shall the question of possible relief under 722 be tried before this court until after the Commissioner has acted adversely upon the claim. This petitioner has a claim for relief pending before the Commissioner. The latter may grant all the relief which the petitioner asks—a possibility which amply demonstrates the undesirability of the procedure which the petitioner is advocating here. The Commissioner must act upon that claim. He has no alternative. If he denies it, or if he gives less relief than the petitioner demands, it can then institute a proceeding before this court to contest that action of the Commissioner. Therefore, in order to carry out the intention of Congress, all reference to section 722 will be stricken from this petition."

In the present case all that has been done by The Tax Court in the order which we are asked to review is to require the taxpayer, in accordance with the court's interpretation of section 722, as amended by the Act of December 17, 1943, to submit its claim for relief under section 722 of the Internal Revenue Code to the Commissioner for his action before making application to The Tax Court, leaving available to petitioner the right to contest the action of the Commissioner before The Tax Court. The taxpayer's petition to review the Commissioner's action is still pending before The Tax Court. The order of The Tax Court is not one reviewable by this court. (9 Mertens Law of Federal Taxation, section 51.18; *McCarthy* v. *Commissioner*, 7 Cir., 139 Fed. (2d), 20, 22; *Michael* v. *Commissioner*, 2d Cir., 56 Fed. (2d), 825; *Oviatt's* v. *Commissioner*, 9 Cir., 128 Fed. (2d), 352; *Sisto Financial Corporation* v. *Commissioner*, 2d Cir., 149 Fed. (2d), 268, 269.) Conceding, but not deciding, that The Tax Court had jurisdiction of the taxpayer's amended petition at the time it was filed, we can not say that there was any abuse of discretion in requiring the taxpayer, in the interest of a uniform administration of the Revenue Act, to resort to the procedure open to it under section 722 of the Internal Revenue Code, as amended by the Act of December 17, 1943.

The petition to review is dismissed.

SECTION 735.—NONTAXABLE INCOME FROM CERTAIN MINING AND TIMBER OPERATIONS, AND FROM NATURAL GAS PROPERTIES.

REGULATIONS 112, SECTION 35.735–2: Definitions. 1945–14–12086
T. D. 5461

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PARTS 35, 30, 29, 19, 9, AND 3.

Regulations 112 and 109, in so far as they relate to the computation of nontaxable income from exempt excess output and of nontaxable bonus income, and Regulations 111, 103, 101, 94, 86, and 77, in so far as they relate to the computation of depletion of certain natural deposits, amended.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 112 [Part 35, Title 26, Code of Federal Regulations, Cum. Sup.], Regulations 109 [Part 30, Title 26, Code of Federal Regulations, 1941 Sup.], Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.], Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.], Regulations 101 [Part 9, Title 26, Code of Federal Regulations, 1939 Sup.], Regulations 94 [Part 3, Title 26, Code of Federal Regulations], Regulations 86, and Regulations 77 are amended as follows:

REGULATIONS 112.

PARAGRAPH 1. Section 35.735–2(*i*)(2), as amended by Treasury Decision 5404, approved September 15, 1944 [C. B. 1944, 430], is further amended as follows:

(A) By inserting at the end of the second paragraph the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

(B) By inserting at the end of the fourth paragraph beginning with the words " In case any of the ordinary treatment processes " the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

PAR. 2. Section 35.735–2(*l*)(2), as amended by Treasury Decision 5404, is further amended as follows:

(A) By inserting at the end of the first paragraph the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the timber block, then such gross income shall be computed by the use of such other method.

(B) By inserting at the end of the fifth paragraph the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to

costs, clearly reflects the gross income from the natural gas property, then such gross income shall be computed by the use of such other method.

PAR. 3. Section 35.735(*a*), as amended by Treasury Decision 5404, is further amended by striking from example (2) that portion immediately preceding the headings of the numbered columnar computation and inserting in lieu thereof the following:

Example (*2*). Corporation A, which is on a calendar year basis, owns a mineral property from which it extracts minerals containing gold and silver. The output of silver for each of its four base period years was 2,500,000 ounces, and of gold was 12,500 ounces. The "gross income from the property" for each base period year was the sum of the net smelter returns of $1,500,000 received for silver and $437,500 for gold, a total of $1,937,500. Allowable deductions, excluding the allowance for depletion, amounted to $1,000,000. Of the amount of such deductions, $774,193.55 represented the amount allocable to silver production $\left(\frac{1,500,000}{1,937,500}\right.$ times $1,000,000) and $225,806.45 represented the amount allocable to gold production $\left(\frac{437,500}{1,937,500}\right.$ times $1,000,000). The net income from the mineral property (computed without the allowance for depletion) was $725,806.45 attributable to silver and $211,693.55 attributable to gold. The allowance for percentage depletion computed with respect to silver mining was $225,000 (15 per cent of $1,500,000 but not in excess of 50 per cent of $725,806.45); the allowance for such depletion computed with respect to gold mining was $65,625 (15 per cent of $437,500 but not in excess of 50 per cent of $211,693.55). For 1942 the total output of silver was 4,800,000 ounces and of gold was 8,000 ounces. The "gross income from the property" for 1942 was the sum of the net smelter returns of $3,360,000 received for silver and $280,000 received for gold, a total of $3,640,000. Allowable deductions, excluding the allowance for depletion, amounted to $1,280,000. Of the amount of such deductions, $1,181,538.46 represented the amount allocable to silver production $\left(\frac{3,360,000}{3,640,000}\right.$ times $1,280,000) and $98,461.54 represented the amount allocable to gold production $\left(\frac{280,000}{3,640,000}\right.$ times $1,280,000). The net income from the mineral property (computed without the allowance for depletion) was $2,178,461.54 attributable to silver and $181,538.46 attributable to gold. The allowance for percentage depletion computed with respect to silver mining was $504,000 (15 per cent of $3,360,000 but not in excess of 50 per cent of $2,178,461.54); the allowance for such depletion computed with respect to gold mining was $42,000 (15 per cent of $280,000 but not in excess of 50 per cent of $181,538.46). It is estimated that as of December 31, 1942, there were 19,200,000 units of silver and 32,000 units of gold remaining in the mineral property. There is no nontaxable income from exempt excess output of gold, since the normal output exceeds the 1942 output of that metal. The nontaxable income from exempt excess output of silver is $138,220.80, computed as follows:

PAR. 4. Section 35.735–6, as amended by Treasury Decision 5404, is further amended as follows:

(A) By adding immediately preceding the third sentence from the end of the portion designated (*a*) the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation clearly reflects the net income attributable to the output in excess of the quota, the net income so attributable shall be computed by the use of such other method.

(B) By adding immediately at the end of the portion designated (*a*) the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation clearly reflects the net income attributable to the output in excess of the quota established for such type, then the net income so attributable shall be computed by the use of such other method.

(C) By adding immediately preceding the last sentence of the portion designated (*b*), which sentence begins with the words "Net income computed," the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation clearly reflects the net income attributable to the output in excess of the quota, then the net income so attributable shall be computed by the use of such other method.

(D) By striking from the example that portion immediately preceding the numbered columnar computation and inserting in lieu thereof the following:

Example. Corporation C, which is on a calendar year basis, owns a mineral property from which it extracts copper ore. The output of copper for each of the four base period years was 4,380,000 pounds. The 1942 output of copper was 5,500,000 pounds. With respect to Corporation C, a 1942 quota of 4,000,000 pounds of copper was established and a bonus of $0.05 per pound was paid for above quota production. The "gross income from the property" for 1942 was the sum of the net smelter returns, $660,000, and the bonus payments of $75,000, a total of $735,000. Allowable deductions, excluding the allowance for depletion, amounted to $579,700. Net income from the property, without regard to the allowance for depletion, was $155,300. Percentage depletion amounted to $77,650 (15 per cent of $735,000 but not in excess of 50 per cent of $155,300). As of December 31, 1942, it was estimated that 35,000,000 pounds of copper remained in the mineral property. Since the excess output for 1942 did not exceed 5 per cent of the estimated recoverable units for 1942, nontaxable income from exempt excess output is not authorized by section 735(b)(1). The amount of nontaxable bonus income for 1942 is $21,177, computed as follows:

PAR. 5. Section 35.735–7, as amended by Treasury Decision 5404, is further amended by striking out the first paragraph of the example and inserting in lieu thereof the following:

Example. Corporation P, which is on a calendar year basis, owns a mineral property from which it extracts minerals containing lead and silver. For each of the four taxable years in the base period the output of lead was 1,000,000 pounds and of silver was 100,000 ounces. The "gross income from the property" for each year in the base period was the sum of the net smelter returns of $50,000 received for lead and $70,000 for silver, a total of $120,000. Allowable deductions for each year, excluding the allowance for depletion, amounted to $40,000. Of the amount of such deductions, $16,666.67 represented the amount allocable to lead production $\left(\frac{50,000}{120,000}\right.$ times $40,000) and $23,333.33 represented the amount allocable to silver production $\left(\frac{70,000}{120,000}\right.$ times $40,000). The net income from the mineral property (computed without the allowance for depletion) was $33,333.33 attributable to lead and $46,666.67 attributable to silver. The allowance for percentage depletion computed with respect to lead mining was $7,500 (15 per cent of $50,000 but not in excess of 50 per cent of $33,333.33); the allowance for such depletion computed with respect to silver mining was $10,500 (15 per cent of $70,000 but not in excess of 50 per cent of $46,666.67). For 1942, the output of lead was 1,600,000 pounds and of silver was 160,000 ounces. A quota of 900,000 pounds of lead was established by the War Production Board and the Office of Price Administration with respect to the taxpayer and a bonus of $0.02¾ per pound was paid to the taxpayer with respect to production in excess of such quota. The "gross income from the property" for the year 1942 was $235,250 consisting of $123,250 attributable to lead (the sum of the net smelter returns of $104,000 received for lead and the bonus payment of $19,250 for above-quota production of lead) and $112,000 attributable to silver. Allowable deductions for the year excluding allowance for depletion amounted to $80,000. Of the amount of such deductions, $41,912.86 represented the amount allocable to lead production $\left(\frac{123,250}{235,250}\right.$ times $80,000) and $38,087.14 represented the amount allocable to silver production $\left(\frac{112,000}{235,250}\right.$ times $80,000). The net income from the

mineral property (computed without the allowance for depletion) was $81,337.14 attributable to lead and $73,912.86 attributable to silver. The allowance for percentage depletion computed with respect to lead mining was $18,487.50 (15 per cent of $123,250 but not in excess of 50 per cent of $81,337.14); the allowance for such depletion computed with respect to silver mining was $16,800 (15 per cent of $112,000 but not in excess of 50 per cent of $73,912.86). It is estimated that as of December 31, 1942, there were 6,500,000 pounds of lead and 510,000 ounces of silver remaining in the mineral property. For 1942, the amount of nontaxable income from exempt excess output of lead was $3,099.60, the amount of nontaxable bonus income from lead was $19,250, and the amount of nontaxable income from exempt excess output of silver was $6,510.06.

REGULATIONS 109.

PAR. 6. Section 30.735–2(*i*) (2), as added by Treasury Decision 5286, approved July 22, 1943 [C. B. 1943, 837], is amended as follows:

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

For the purposes of section 735, the term "gross income from the property" for any year in the base period means the gross income from mining. The term "mining" as used herein includes not only the extraction of ores or minerals from the ground but also the ordinary treatment processes which are normally applied by the mine owners or operators to the crude mineral product after extraction in order to obtain the commercially marketable mineral product or products.

If the taxpayer sells the crude mineral product of the property in the immediate vicinity of the mine, "gross income from the property" means the amount for which such product was sold, but, if the product is transported or processed (other than by the ordinary treatment processes described below) before sale, "gross income from the property" means the representative market or field price (as of the date of sale) of a mineral product of like kind and grade as beneficiated by the ordinary treatment processes actually applied, before transportation of such product. If there is no such representative market or field price (as of the date of sale), then there shall be used in lieu thereof the representative market or field price of the first marketable product resulting from any process or processes (or, if the product in its crude mineral state is merely transported, the price for which sold) minus the costs and proportionate profits attributable to the transportation and the processes beyond the ordinary treatment processes. If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

The term "ordinary treatment processes," as used herein, shall include the following:

(1) In the case of coal—cleaning, breaking, sizing, and loading for shipment;

(2) In the case of sulphur—pumping to vats, cooling, breaking, and loading for shipment;

(3) In the case of iron ore and ores which are customarily sold in the form of a crude mineral product—sorting, concentrating, and sintering to bring to shipping grade and form, and loading for shipment;

(4) In the case of lead, zinc, copper, gold, or silver ores, and ores which are not customarily sold in the form of the crude mineral product—crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation, or by substantially equivalent processes or combination of processes used in the separation or extraction of the product or products from the ore. The furnacing of quicksilver ores is included in the term "ordinary treatment processes." The following processes are not included in the term "ordinary treatment processes": electrolytic deposition, roasting, thermal or electric smelting, refining, or substantially equivalent processes.

In case any of the ordinary treatment processes are not applied in the immediate vicinity of the mining district in which the mine is located, costs incurred for transportation to the processing location and, if transported by the taxpayer, the proportionate profits attributable to transportation, should be subtracted from the sale price of the product to determine "gross income from the property." If the taxpayer establishes to the satisfaction of the Commissioner that

another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

(B) By changing the last sentence in the last paragraph to read as follows:

If the gross income from the property is determined by excluding the costs and proportionate profits attributable to transportation and to processes other than the ordinary treatment processes listed above, or if such gross income is an amount different from the gross proceeds received from the sale of the minerals, the gross income attributable to each type of metal, coal, or nonmetallic substance shall be an amount which bears the same ratio to the gross income from the property which the gross proceeds received from the sale of such type of metal, coal, or nonmetallic substance in the minerals bears to the total gross proceeds received from the sales of all such types.

PAR. 7. Section 30.735–4, as amended by Treasury Decision 5311, approved December 14, 1943 [C. B. 1943, 687], is further amended as follows:

(A) By adding immediately preceding the third sentence from the end of the portion designated (*a*) the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation clearly reflects the net income attributable to the output in excess of the quota, then the net income so attributable shall be computed by the use of such other method.

(B) By adding immediately at the end of the portion designated (*a*) the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation clearly reflects the net income attributable to the output in excess of the quota established for such type, then the net income so attributable shall be computed by the use of such other method.

(C) By adding immediately preceding the last sentence of the portion designated (*b*) the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation clearly reflects the net income attributable to the output in excess of the quota, then the net income so attributable shall be computed by the use of such other method.

REGULATIONS 111.

PAR. 8. Section 29.23(m)–1(*f*), as amended by Treasury Decision 5413, approved October 31, 1944 [C. B. 1944, 124], is further amended as follows:

(A) By inserting at the end of the fourth paragraph, which begins with the words "If the taxpayer" the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

(B) By inserting at the end of the next to the last paragraph the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

REGULATIONS 103, 101, 94, 86, AND 77.

PAR. 9. Section 19.23(m)–1(*f*) of Regulations 103, article 23(m)–1(*f*) of Regulations 101, article 23(m)–1(*g*) of Regulations 94 and

86, and article 221(*f*) of Regulations 77, as amended by Treasury Decision 5413, are further amended as follows:

(A) By inserting immediately after the fourth paragraph, which begins with the words "If the taxpayer" the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

(B) By inserting at the end of the sixth paragraph beginning with the words "In case any of the ordinary treatment processes" the following:

If the taxpayer establishes to the satisfaction of the Commissioner that another method of computation, other than the computation of profits proportionate to costs, clearly reflects the gross income from the property, then such gross income shall be computed by the use of such other method.

(This Treasury decision is issued under the authority contained in section 62 of the Internal Revenue Code and of the Revenue Acts of 1938, 1936, 1934, and 1932, respectively (53 Stat., 32; 52 Stat., 480; 49 Stat., 1673; 48 Stat., 700; 47 Stat., 191; 26 U. S. C., 62) and section 62 of the Internal Revenue Code as made applicable by section 729(a) of the Internal Revenue Code (54 Stat., 989; 26 U. S. C., 729(a)).)

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

Approved July 9, 1945.

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

(Filed with the Division of the Federal Register July 11, 1945, 10.08 a. m.)

SECTION 780.—POST-WAR REFUND OF EXCESS PROFITS TAX.

REGULATIONS 112, SECTION 35.780–1: Post-war refund of excess profits tax. 1945–6–11994
T. D. 5442
(Also Section 35.780–2; Section 781, Section 35.781–1; Section 783, Sections 35.783–1, 35.783–2, and 35.783–3; Sections 30.780–1, 30.780–2, and 30.781–1, Regulations 109.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 30 AND PART 35.

Regulations 109 and 112 amended to conform to section 250 of the Revenue Act of 1943, relating to post-war refund of excess profits tax; and Regulations 109 amended to conform to section 2 of the Joint Resolution approved March 31, 1943, relating to the time within which certain excess profits tax refund bonds are required to be issued.

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

To Collectors of Internal Revenue and Others Concerned:

REGULATIONS 109.

In order to conform Regulations 109 [Part 30, Title 26, Code of Federal Regulations, 1941 Sup.] to section 2 of the Joint Resolution

approved March 31, 1943 (Public Law 21, Seventy-eighth Congress), and to section 250 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress), enacted February 25, 1944, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 30.780–1, added by Treasury Decision 5254, approved April 2, 1943 [C. B. 1943, 914], the following:

SECTION 2 OF THE JOINT RESOLUTION APPROVED MARCH 31, 1943 (PUBLIC LAW 21, SEVENTY-EIGHTH CONGRESS).

Section 780(b) of the Internal Revenue Code (relating to application of credit to purchase of bonds) is amended by inserting immediately after the word "applies" the following: "(or, if such taxable year begins or ends in 1942, within one year after payment of the excess-profits tax shown on the return for such year)".

SEC. 250. POST-WAR REFUND OF EXCESS PROFITS TAX. (REVENUE ACT OF 1943.)

(a) CREDIT IN CASE OF FISCAL YEAR BEGINNING IN 1941 AND ENDING AFTER JUNE 30, 1942.—The last sentence of section 780(a) (providing for a post-war refund of excess profits tax) is amended to read as follows: "For the purposes of this part, in the case of a taxpayer whose tax is determined under section 710(a)(3), the term 'tax imposed under this subchapter' means the portion of the tentative tax determined under section 710(a)(3)(B)."

(b) TRANSFERS TO SUCCESSORS OF TAXPAYER.—Section 780(c) (relating to terms and maturity of bonds) is amended by inserting after "pledge, hypothecation, or otherwise," the following: "except to a successor as defined in subsection (g),".

(c) EXEMPTION OF PROCEEDS FROM TAX.—Section 780(d) (relating to exemption of proceeds of bonds from tax upon redemption) is amended by inserting after "such bond" the following: "paid to the taxpayer".

(d) RIGHTS AND LIABILITIES OF SUCCESSOR.—Section 780 (relating to post-war refund of excess profits tax) is amended by inserting at the end therof the following:

"(f) RIGHTS AND LIABILITIES OF SUCCESSORS OF TAXPAYER.—Subject to, and to the extent provided in, regulations prescribed by the Secretary, a successor of the taxpayer shall succeed to all the rights and liabilities of the taxpayer under this part.

"(g) DEFINITION OF 'SUCCESSOR'.—For the purposes of this part the term 'successor' means such person or persons who succeed, either directly or through one or more other persons, to ownership of property of the taxpayer, as the Secretary may by regulations prescribe."

* * * * * * *

(g) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by subsections (b), (c), and (d) * * * shall be effective as if made by section 250 of the Revenue Act of 1942. The amendment made by subsection (a) * * * shall be applicable with respect to taxable years beginning in 1941 and ending after June 30, 1942. * * *

PAR. 2. Section 30.780–1, added by Treasury Decision 5254, is amended as follows:

(A) By striking out section 30.780–1(*a*) and inserting in lieu thereof the following:

(*a*) *In general.*—Section 780(a) authorizes and directs the Secretary to establish a post-war credit, for each taxable year specified in such section, to the account of each taxpayer subject to excess profits tax. The taxable years so specified are those ending after December 31, 1941, which begin on or before the "date of cessation of hostilities in the present war," as defined in section 780(e). However, any taxable year which began in 1941 and ended before July 1, 1942, is excluded.

These regulations in so far as they relate to the post-war credit are applicable only to such credit for taxable years beginning in 1941 and ending after June

30, 1942. For provisions relating to the post-war credit for taxable years beginning after December 31, 1941, see Regulations 112.

The post-war credit accounts of taxpayers subject to excess profits tax shall be maintained by the Commissioner of Internal Revenue.

Subject to the limitations prescribed in section 781(d)(2) (see section 30.781–1(*b*)), the post-war credit of a taxpayer for a taxable year is an amount equal to 10 per cent of the excess profits tax imposed upon the taxpayer for such year.

However, for such purpose the tax imposed for a taxable year beginning in 1941 and ending after June 30, 1942 (with respect to which section 710(a)(3) is applicable), is the amount of the portion of the tentative tax determined under section 710(a)(3)(B) prior to (1) any credit under section 131, as made applicable by section 729, for tax paid or accrued to a foreign country or possession of the United States, and (2) any adjustment under section 734 on account of position inconsistent with prior income tax liability. If it is determined, in the case of any taxpayer with respect to such taxable year, that constructive average base period net income should be used pursuant to section 722 in computing its tax, the tax imposed, for the purpose of the post-war credit for such year, is the amount determined pursuant to the preceding sentence after the determination pursuant to such section. But in such case, pending the final determination of the tax pursuant to section 722, the tax imposed shall, for such purpose, be tentatively considered as an amount determined without regard to the determination under section 722. For the purpose of the post-war credit, the tax imposed does not include any interest, penalty, additional amount, or addition to the tax.

For provisions relating to reduction of the post-war credit on account of the allowance of a credit for debt retirement, see section 783(c) and section 35.783–1(*c*) of Regulations 112 (which regulations superseded Regulations 109 for all taxable years with respect to which a credit for debt retirement is allowable).

(B) By inserting immediately after the third sentence of section 30.780–1(*b*) the following:

If the proof of successorship in respect of a post-war credit required under section 30.780–2(*c*)(1) is submitted to the Commissioner prior to the certification of the statement of the amount of such post-war credit to the Secretary, such statement will show the credit in the name of the successor entitled thereto.

(C) By striking out the last sentence of section 30.780–1(*b*) and inserting in lieu thereof the following:

For provisions relating to reduction of the amount of bonds on account of the allowance of a credit for debt retirement, see section 783(c) and section 35.783–1(*c*) of Regulations 112.

(D) By striking out section 30.780–1(*c*) and inserting in lieu thereof the following:

(*c*) *Exemption of proceeds of bonds from tax.*—No income is realized by reason of the receipt by a taxpayer of the proceeds of any bond purchased with the post-war credit established to the account of such taxpayer which are paid upon redemption of such bond. Nor is any income realized by a successor by reason of his receipt of the proceeds of any bond acquired pursuant to section 30.780–2 which are paid upon redemption of the bond, if, under the provisions of section 113, such bond had, for the purpose of determining gain or loss from a sale or exchange, the same basis in the hands of the successor as it would have had in the hands of the taxpayer. Otherwise, income may be realized by the successor upon the redemption of such bond.

PAR. 3. There is inserted immediately after section 30.780–1, added by Treasury Decision 5254, the following new section:

SEC. 30.780–2. SUCCESSOR OF TAXPAYER.—(*a*) *Rights and liabilities.*—Except as otherwise expressly provided in these regulations, a successor as defined in paragraph (*b*) who has acquired as such successor, either directly or indirectly from the taxpayer, a post-war credit, or a bond under section 780 prior to the time that the bond becomes negotiable, shall succeed to all the rights of the taxpayer under sections 780 and 781 and sections 30.780–1 and 30.781–1 of these regulations, and to all the liabilities of the taxpayer under such sections, section 783(c), and section 35.783–1(*c*) of Regulations 112, in respect of the post-war credit or bond so acquired.

(*b*) *Definition of successor.*—For the purposes of sections 780, 781, and 783(c) and the regulations prescribed thereunder, the term "successor" means—

(1) a corporation into which the taxpayer has merged;

(2) a corporation resulting from the consolidation of the taxpayer and one or more other corporations;

(3) a corporation resulting from a mere change in the identity, form, or place of organization of the taxpayer;

(4) a corporation which is organized or made use of by creditors or shareholders of the taxpayer for the purpose of continuing the business of such taxpayer and which has acquired substantially all the properties of the taxpayer;

(5) a corporation which has acquired as a distributee in the complete liquidation of the taxpayer substantially all the properties of such taxpayer;

(6) a corporation, partnership, or individual, which has acquired as a purchaser in connection with the liquidation of the taxpayer substantially all the properties of such taxpayer;

(7) an assignee for the benefit of creditors who has acquired substantially all the properties of the taxpayer under a voluntary assignment made by such taxpayer, or a purchaser of all or a part of such properties from such assignee;

(8) a receiver, trustee, or other fiduciary, who has acquired substantially all the properties of the taxpayer in an insolvency, receivership, foreclosure, or similar proceeding, or a purchaser of all or a part of such properties from such receiver, trustee, or other fiduciary;

(9) a trustee, or other fiduciary, who has acquired substantially all the properties of the taxpayer in a proceeding under the National Bankruptcy Act, as amended, or a purchaser of all or a part of such properties from such trustee or other fiduciary;

(10) a purchaser of all or a part of the properties of the taxpayer at a sale under writ of distraint, writ of execution, writ of attachment, or similar process, of substantially all the properties of such taxpayer;

(11) a purchaser, distributee, or other transferee, who has acquired all or a part of the properties of the taxpayer in pursuance of an order of any agency of the United States;

(12) a distributee, or other transferee, who has acquired all or a part of the properties of the taxpayer by operation of law, or a purchaser of all or a part of such properties from a fiduciary who acquired such properties by operation of law;

(13) a corporation, or partnership, organized for the purpose of continuing the business formerly carried on by the taxpayer, which has acquired from the former shareholders of the taxpayer, or from a trustee on their behalf, substantially all the properties received by such shareholders as distributees, or by such trustee, in the complete liquidation of the taxpayer;

(14) the shareholder or the several shareholders of the taxpayer who have acquired as distributees substantially all the properties of the taxpayer in the complete liquidation of such taxpayer, or a trustee appointed to hold for their benefit all or a part of the properties to which such shareholders were entitled as distributees in the complete liquidation of the taxpayer;

(15) a shareholder of the taxpayer who has acquired from another shareholder of such taxpayer all or a part of the properties to which the transferor-shareholder was entitled as a distributee in the complete liquidation of the taxpayer;

(16) the person or persons who as transferees of the taxpayer paid the excess profits tax of such taxpayer, or a deficiency in respect of such tax, for any taxable year for which a post-war credit is provided, to the extent that the post-war credit is attributable to the tax or deficiency in tax paid by such transferees, or a trustee appointed to hold for the benefit of such transferees the post-war credit or bonds to which such transferees were entitled by virtue of such payment;

(17) a transferee of the taxpayer who has acquired from another transferee of such taxpayer the interest in the post-war credit to which such other transferee was entitled by virtue of the payment of a part of the excess profits tax of such taxpayer, or of a deficiency in respect of such tax, for any taxable year for which a post-war credit is provided; or

(18) any other person who, on application setting forth the pertinent facts under oath, may be deemed by the Secretary to constitute a successor within the purpose and intent of these regulations.

For the purposes of the foregoing definition, the term "taxpayer" includes a successor as defined herein.

(c) *Proof of successorship and records to be kept.*—(1) *Proof.*—A person who has acquired as successor a post-war credit, either directly or indirectly from the taxpayer, shall promptly submit to the Commissioner of Internal Revenue a complete statement under oath of all facts necessary to establish his status as a successor in respect of such post-war credit, including—

(i) the name of the taxpayer, the taxable year for which the excess profits tax was imposed with respect to which the post-war credit is attributable, and the amount of the post-war credit claimed;

(ii) a certified copy of each resolution, order, certificate, instrument, document, or other paper pertinent to the transaction in which the post-war credit was acquired, together with a statement in detail showing all relevant facts with respect to such transaction; and

(iii) such other or additional proof as the Commissioner may deem necessary to establish the status of the particular person as a successor in respect of the post-war credit.

If evidence has been filed with the Commissioner of the Public Debt or the Secretary in connection with the reissue of bonds which were acquired by the successor in the same transaction as that in which the successor acquired the post-war credit and reference is made to that fact in the statement filed with the Commissioner of Internal Revenue, such evidence need not be submitted to the Commissioner of Internal Revenue except upon receipt of a specific request therefor.

(2) *Records.*—Permanent records in substantial form shall be kept by every taxpayer a party to a transaction pursuant to which a post-war credit or bonds under section 780 are transferred, showing all pertinent facts with respect to the various items of property transferred in such transaction, including the post-war credit or bonds and any liabilities assumed, in order to facilitate the determination of gain or loss from a subsequent disposition of such post-war credit, bonds, or other property.

PAR. 4. There is inserted immediately preceding section 30.781–1, added by Treasury Decision 5254, the following:

SEC. 250. POST-WAR REFUND OF EXCESS PROFITS TAX. (REVENUE ACT OF 1943.)

* * * * * * *

(e) EFFECT OF REFUNDS.—Section 781(b) (relating to effect of refunds) is amended to read as follows:

"(b) EFFECT OF REFUNDS.—In the case of an overpayment of the tax imposed by this subchapter for any taxable year for which a credit is provided in section 780(a), the credit, if any, provided in such section for such taxable year existing in favor of the taxpayer shall be reduced by an amount equal to 10 per centum of the excess of the tax imposed by this subchapter on the basis of which such tax (in respect of which the internal revenue refund or credit is made) was previously computed and paid, over the tax imposed by this subchapter as determined in connection with the determination of the amount of the overpayment. In such a case, if such credit provided in section 780(a) for such taxable year is less than the amount by which it is required to be reduced, or if there is no such credit then existing in favor of the taxpayer, the excess of such amount over the amount of such credit, if any, shall constitute a charge against the taxpayer to be applied in reduction of the amount of the bonds previously issued to the taxpayer under section 780(b) with respect to such taxable year. If the bonds issued with respect to such taxable year are not made available for the purpose of such reduction or the amount of such bonds so made available is less than the amount of such charge, such charge or the excess of such charge over the amount of such bonds so made available, as the case may be, shall be applied at the time of the credit or refund (or as of the time of the maturity of bonds issued with respect to such taxable year, if that time is earlier) in reduction of the amount of the credit or refund of the overpayment of the tax."

(f) LIMITATION ON POST-WAR CREDIT.—Section 781(d) (relating to the limitation on the post-war credit or refund of excess profits tax) is amended to read as follows:

" (d) LIMITATION.—

"(1) GENERAL RULE.— * * *

"(2) SPECIAL RULE IN CASE OF FISCAL YEARS BEGINNING IN 1941 AND ENDING AFTER JUNE 30, 1942.—In the case of a taxable year beginning in 1941 and ending after June 30, 1942, the credit under section 780(a) for such taxable year shall not be greater than the excess of the tax paid under this subchapter to the United States for such taxable year (and not credited or refunded under the internal revenue laws) over the amount of tax which would be payable to the United States under this subchapter if the portion of the tentative tax determined under section 710(a)(3)(B) were reduced by 10 per centum.

* * * * * * *

(g) TAXABLE YEARS TO WHICH APPLICABLE.—* * * the amendments made by subsection (e) (except with respect to credits or refunds made on or prior to the date of the enactment of this Act) shall be effective as if made by section 250 of the Revenue Act of 1942. * * * the amendment made by subsection (f) inserting a new paragraph (2) of section 781(d) of the Internal Revenue Code, shall be applicable with respect to taxable years beginning in 1941 and ending after June 30, 1942. * * *

PAR. 5. Section 30.781–1, added by Treasury Decision 5254, is amended to read as follows:

SEC. 30.781–1. SPECIAL RULES FOR APPLICATION OF SECTION 780.—(*a*) *Deficiencies; refunds and credits of overpayments.*—In case a deficiency is paid by the taxpayer, or an overpayment is refunded or credited to the taxpayer, for any taxable year to which section 780(a) applies, appropriate adjustments will be made in the post-war credit account of the taxpayer. In such case, whenever the amount of bonds should be increased or reduced, the Commissioner of Internal Revenue shall certify the status of the account to the Secretary in order that appropriate adjustments may be made in the amount of bonds. If the refund or credit of an overpayment was made on or before February 25, 1944 (the date of the enactment of the Revenue Act of 1943), the adjustment of the post-war credit or bonds of the taxpayer shall be made in accordance with section 781(b) in force prior to such date. If the refund or credit of an overpayment is made after February 25, 1944, such adjustment, or in an appropriate case the reduction in the amount of the refund or credit of the overpayment of the tax, shall be made in accordance with section 781(b), as amended by section 250(e) of the Revenue Act of 1943. Collection from a taxpayer under section 781(b) in force prior to February 25, 1944, of the amount by which charges (arising by reason of a refund or credit of an overpayment) exceed the amount of the post-war credit of the taxpayer, and payment to a taxpayer under section 781(c) of amounts of any outstanding post-war credit against which bonds have not been issued, shall be made by the Commissioner of Internal Revenue. No income is realized by reason of the receipt by a taxpayer of any such payment under section 781(c). Nor is any income realized by a successor by reason of his receipt of any such payment, if, under the provisions of section 113, the outstanding post-war credit with respect to which the payment is made had, for the purpose of determining gain or loss from a sale or exchange, the same basis in the hands of the successor as it would have had in the hands of the taxpayer. Otherwise, income may be realized by the successor from the receipt of such a payment.

(*b*) *Limitations on amount of post-war credit.*—The post-war credit provided for in section 780(a) (see section 30.780–1(*a*)) is subject to the limitations set forth in section 781(d)(2). The limitations operate in certain cases in which the taxpayer takes a credit against excess profits tax, pursuant to section 131, as made applicable by section 729, for tax paid or accrued to a foreign country or United States possession. They operate also to eliminate or reduce the post-war credit in case the excess profits tax is not paid, or is not paid in full, and in certain cases in which the excess profits tax is reduced by an adjustment under section 734 on account of position inconsistent with prior income tax liability (as, for example, if the amount of such reduction exceeds the amount of excess profits tax which would be payable if the portion of the tentative tax determined under

section 710(a)(3)(B) were reduced by 10 per cent). The limitations are as follows:

(1) The post-war credit is provided only with respect to excess profits tax *paid* (and not credited or refunded under the internal revenue laws). (See example (1), below.)

(2) In the case of any taxable year to which section 710(a)(3) is applicable (that is, a taxable year beginning in 1941 and ending after June 30, 1942), the post-war credit for such year shall not be greater than the excess of the excess profits tax paid over the amount of excess profits tax which would be payable if the portion of the tentative tax determined under section 710(a)(3)(B) were reduced by 10 per cent. (See example (2), below.) This limitation is applicable to any taxable year beginning in 1941 and ending after June 30, 1942, irrespective of whether section 710(a)(1)(B) (relating to the 80 per cent limitation) is applicable in the computation of the tentative tax under section 710(a)(3)(B), the provisions of section 710(a)(1)(B) being taken into account in computing the limitation.

The application of section 781(d)(2) may be illustrated by the following examples:

Example (1). The X Corporation has for the taxable year beginning December 1, 1941, and ending November 30, 1942, an adjusted excess profits net income of $1,000,000. The 80 per cent limitation under section 710(a)(1)(B) is not applicable in the computation of the tax. The excess profits tax of the corporation for that year determined under section 710(a)(3) is $699,035.61, of which only $690,000 is actually paid. The post-war credit of the corporation for that year is $28,690.42, computed as follows:

Adjusted excess profits net income	$1,000,000.00
Tentative excess profits tax computed under section 710(a)(3)(A) ($254,000 plus 60 per cent of $500,000)	554,000.00
Tentative excess profits tax computed under section 710(a)(3)(B) (90 per cent of $1,000,000)	900,000.00
Portion of tentative excess profits tax determined under section 710(a)(3)(A) (212/365 of $554,000)	321,775.34
Portion of tentative excess profits tax determined under section 710(a)(3)(B) (153/365 of $900,000)	377,260.27
Excess profits tax determined under section 710(a)(3)	699,035.61
Excess profits tax imposed, as defined in section 780(a) (portion of tentative excess profits tax determined under section 710(a)(3)(B))	377,260.27
Post-war credit computed under section 780(a) without regard to the limitation under section 781(d)(2) (10 per cent of $377,260.27 (tax imposed))	37,726.03

Limitation under section 781(d)(2).

Excess profits tax paid		$690,000.00
Less excess profits tax which would be payable if the portion of the tentative excess profits tax determined under section 710(a)(3)(B) were reduced by 10 per cent:		
Portion of tentative excess profits tax determined under section 710(a)(3)(A)	$321,775.34	
Portion of tentative excess profits tax determined under section 710(a)(3)(B) reduced by 10 per cent ($377,260.27 minus $37,726.03)	339,534.24	
		661,309.58
Limitation under section 781(d)(2)		28,690.42
Post-war credit allowable		28,690.42

Since the post-war credit under section 780(a) ($37,726.03) computed without regard to the limitation under section 781(d)(2) is greater than the amount ($28,690.42) determined under section 781(d)(2), the amount determined under section 781(d)(2) is the amount of the post-war credit.

Example (2). The X Corporation, a domestic corporation, has for the taxable year beginning December 1, 1941, and ending November 30, 1942, an adjusted

excess profits net income of $1,000,000. The 80 per cent limitation under section 710(a)(1)(B) is not applicable in the computation of the tax. The corporation pays to a foreign country with respect to the taxable year an income tax upon income from sources within the foreign country. After allowance of the credit against normal tax and surtax for foreign tax paid, the amount of $140,000 of the foreign tax is available as a credit against the excess profits tax for the taxable year. Such credit is limited by section 729 to one-fifth of the corporation's excess profits tax for the taxable year since only one-fifth of its entire excess profits net income is from sources within the foreign country. The corporation pays its excess profits tax for the taxable year in full. The post-war credit of the corporation for such year is $30,180.83, computed as follows:

Adjusted excess profits net income	$1,000,000.00
Portion of tentative excess profits tax determined under section 710(a)(3)(A) (see example (1), above)	321,775.34
Portion of tentative excess profits tax determined under section 710(a)(3)(B) (see example (1), above)	377,260.27
Sum of portions of tentative excess profits taxes determined under section 710(a)(3)	699,035.61
Less foreign tax credit (⅕ of $699,035.61)	139,807.12
Excess profits tax determined under section 710(a)(3)	559,228.49
Excess profits tax imposed (as defined in section 780(a))	377,260.27
Post-war credit computed under section 780(a) without regard to the limitation under section 781(d)(2) (10 per cent of $377,260.27 (tax imposed))	37,726.03

Limitation under section 781(d)(2).

Excess profits tax paid		$559,228.49
Less excess profits tax which would be payable if the portion of the tentative excess profits tax determined under section 710(a)(3)(B) were reduced by 10 per cent:		
Portion of tentative excess profits tax determined under section 710(a)(3)(A)	$321,775.34	
Portion of tentative excess profits tax determined under section 710(a)(3)(B) reduced by 10 per cent ($377,260.27 minus $37,726.03)	339,534.24	
Excess profits tax payable before foreign tax credit	661,309.58	
Less foreign tax credit (⅕ of $661,309.58)	132,261.92	
		529,047.66
Limitation under section 781(d)(2)		30,180.83
Post-war credit allowable		30,180.83

Since the post-war credit under section 780(a) ($37,726.03) computed without regard to the limitation under section 781(d)(2) is greater than the amount ($30,180.83) determined under section 781(d)(2), the amount determined under section 781(d)(2) is the amount of the post-war credit.

REGULATIONS 112.

In order to conform Regulations 112 [Part 35, Title 26, Code of Federal Regulations, Cum. Sup.] to section 250 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress), enacted February 25, 1944, and for other purposes, such regulations are amended as follows:

PAR. 6. The last sentence of section 780(a), added by section 250 of the Revenue Act of 1942, preceding section 35.780–1, is stricken out; and three asterisks are inserted in lieu thereof.

PAR. 7. There is inserted immediately preceding section 35.780–1 the following:

SEC. 250. POST-WAR REFUND OF EXCESS PROFITS TAX. (REVENUE ACT OF 1943.)

* * * * * * *

(b) TRANSFERS TO SUCCESSORS OF TAXPAYER.—Section 780(c) (relating to terms and maturity of bonds) is amended by inserting after "pledge, hypothecation, or otherwise," the following: "except to a successor as defined in subsection (g),".

(c) EXEMPTION OF PROCEEDS FROM TAX.—Section 780(d) (relating to exemption of proceeds of bonds from tax upon redemption) is amended by inserting after "such bond" the following: "paid to the taxpayer".

(d) RIGHTS AND LIABILITIES OF SUCCESSOR.—Section 780 (relating to post-war refund of excess profits tax) is amended by inserting at the end thereof the following:

"(f) RIGHTS AND LIABILITIES OF SUCCESSORS OF TAXPAYER.—Subject to, and to the extent provided in, regulations prescribed by the Secretary, a successor of the taxpayer shall succeed to all the rights and liabilities of the taxpayer under this part.

"(g) DEFINITION OF 'SUCCESSOR'.—For the purpose of this part the term 'successor' means such person or persons who succeed, either directly or through one or more other persons, to ownership of property of the taxpayer, as the Secretary may by regulations prescribe."

* * * * * * *

(g) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by subsections (b), (c), and (d) * * * shall be effective as if made by section 250 of the Revenue Act of 1942. * * *

PAR. 8. Section 35.780–1 is amended as follows:

(A) By adding after the second sentence of section 35.780–1(*a*) the following:

For provisions relating to the post-war credit for taxable years beginning in 1941 and ending after June 30, 1942, see Regulations 109.

(B) By inserting immediately after the third sentence of section 35.780–1(*b*) the following:

If the proof of successorship in respect of a post-war credit required under section 35.780–2(*c*) (1) is submitted to the Commissioner prior to the certification of the statement of the amount of such post-war credit to the Secretary, such statement will show the credit in the name of the successor entitled thereto.

(C) By striking out section 35.780–1(*c*) and inserting in lieu thereof the following:

(*c*) *Exemption of proceeds of bonds from tax.*—No income is realized by reason of the receipt by a taxpayer of the proceeds of any bond purchased with the post-war credit established to the account of such taxpayer which are paid upon redemption of such bond. Nor is any income realized by a successor by reason of his receipt of the proceeds of any bond acquired pursuant to section 35.783–2 which are paid upon redemption of the bond, if, under the provisions of section 113, such bond had, for the purpose of determining gain or loss from a sale or exchange, the same basis in the hands of the successor as it would have had in the hands of the taxpayer. Otherwise, income may be realized by the successor upon the redemption of such bond.

PAR. 9. There is inserted immediately after section 35.780–1 the following new section:

SEC. 35.780–2. SUCCESSOR OF TAXPAYER.—(*a*) *Rights and liabilities.*—Except as otherwise expressly provided in these regulations, a successor as defined in paragraph (*b*) who has acquired as such successor, either directly or indirectly from the taxpayer, a post-war credit, or a bond under section 780 prior to the time that the bond becomes negotiable, shall succeed to all the rights of the taxpayer under sections 780 and 781 and sections 35.780–1 and 35.781–1, and to all the liabilities of the taxpayer under such sections, section 783(c), and section 35.783–1 (*c*), in respect of the post-war credit or bond so acquired.

(*b*) *Definition of successor.*—For the purposes of sections 780, 781, and 783(c) and the regulations prescribed thereunder, the term "successor" means—

(1) a corporation into which the taxpayer has merged;

(2) a corporation resulting from the consolidation of the taxpayer and one or more other corporations;

(3) a corporation resulting from a mere change in the identity, form, or place of organization of the taxpayer;

(4) a corporation which is organized or made use of by creditors or shareholders of the taxpayer for the purpose of continuing the business of such taxpayer and which has acquired substantially all the properties of the taxpayer;

(5) a corporation which has acquired as a distributee in the complete liquidation of the taxpayer substantially all the properties of such taxpayer;

(6) a corporation, partnership, or individual, which has acquired as a purchaser in connection with the liquidation of the taxpayer substantially all the properties of such taxpayer;

(7) an assignee for the benefit of creditors who has acquired substantially all the properties of the taxpayer under a voluntary assignment made by such taxpayer, or a purchaser of all or a part of such properties from such assignee;

(8) a receiver, trustee, or other fiduciary, who has acquired substantially all the properties of the taxpayer in an insolvency, receivership, foreclosure, or similar proceeding, or a purchaser of all or a part of such properties from such receiver, trustee, or other fiduciary;

(9) a trustee, or other fiduciary, who has acquired substantially all the properties of the taxpayer in a proceeding under the National Bankruptcy Act, as amended, or a purchaser of all or a part of such properties from such trustee or other fiduciary;

(10) a purchaser of all or a part of the properties of the taxpayer at a sale under writ of distraint, writ of execution, writ of attachment, or similar process, of substantially all the properties of such taxpayer;

(11) a purchaser, distributee, or other transferee, who has acquired all or a part of the properties of the taxpayer in pursuance of an order of any agency of the United States;

(12) a distributee, or other transferee, who has acquired all or a part of the properties of the taxpayer by operation of law, or a purchaser of all or a part of such properties from a fiduciary who acquired such properties by operation of law;

(13) a corporation, or partnership, organized for the purpose of continuing the business formerly carried on by the taxpayer, which has acquired from the former shareholders of the taxpayer, or from a trustee on their behalf, substantially all the properties received by such shareholders as distributees, or by such trustee, in the complete liquidation of the taxpayer;

(14) the shareholder or the several shareholders of the taxpayer who have acquired as distributees substantially all the properties of the taxpayer in the complete liquidation of such taxpayer, or a trustee appointed to hold for their benefit all or a part of the properties to which such shareholders were entitled as distributees in the complete liquidation of the taxpayer;

(15) a shareholder of the taxpayer who has acquired from another shareholder of such taxpayer all or a part of the properties to which the transferor-shareholder was entitled as a distributee in the complete liquidation of the taxpayer;

(16) the person or persons who as transferees of the taxpayer paid the excess profits tax of such taxpayer, or a deficiency in respect of such tax, for any taxable year for which a post-war credit is provided, to the extent that the post-war credit is attributable to the tax or deficiency in tax paid by such transferees, or a trustee appointed to hold for the benefit of such transferees the post-war credit or bonds to which such transferees were entitled by virtue of such payment;

(17) a transferee of the taxpayer who has acquired from another transferee of such taxpayer the interest in the post-war credit to which such other transferee was entitled by virtue of the payment of a part of the excess profits tax of such taxpayer, or of a deficiency in respect of such tax, for any taxable year for which a post-war credit is provided; or

(18) any other person who, on application setting forth the pertinent facts under oath, may be deemed by the Secretary to constitute a successor within the purpose and intent of these regulations.

For the purposes of the foregoing definition, the term "taxpayer" includes a successor as defined herein.

(c) *Proof of successorship and records to be kept.*—(1) *Proof.*—A person who has acquired as successor a post-war credit, either directly or indirectly from the taxpayer, shall promptly submit to the Commissioner of Internal Revenue a complete statement under oath of all facts necessary to establish his status as a successor in respect of such post-war credit, including—

(i) the name of the taxpayer, the taxable year for which the excess profits tax was imposed with respect to which the post-war credit is attributable, and the amount of the post-war credit claimed;

(ii) a certified copy of each resolution, order, certificate, instrument, document, or other paper pertinent to the transaction in which the post-war credit was acquired, together with a statement in detail showing all relevant facts with respect to such transaction; and

(iii) such other or additional proof as the Commissioner may deem necessary to establish the status of the particular person as a successor in respect of the post-war credit.

If evidence has been filed with the Commissioner of the Public Debt or the Secretary in connection with the reissue of bonds which were acquired by the successor in the same transaction as that in which the successor acquired the post-war credit and reference is made to that fact in the statement filed with the Commissioner of Internal Revenue, such evidence need not be submitted to the Commissioner of Internal Revenue except upon receipt of a specific request therefor.

(2) *Records.*—Permanent records in substantial form shall be kept by every taxpayer a party to a transaction pursuant to which a post-war credit or bonds under section 780 are transferred, showing all pertinent facts with respect to the various items of property transferred in such transaction, including the post-war credit or bonds and any liabilities assumed, in order to facilitate the determination of gain or loss from a subsequent disposition of such post-war credit, bonds, or other property.

PAR. 10. There is inserted immediately preceding section 35.781–1 the following:

SEC. 250. POST-WAR REFUND OF EXCESS PROFITS TAX. (REVENUE ACT OF 1943, TITLE II.)

* * * * * * *

(e) EFFECT OF REFUNDS.—Section 781(b) (relating to effect of refunds) is amended to read as follows:

"(b) EFFECT OF REFUNDS.—In the case of an overpayment of the tax imposed by this subchapter for any taxable year for which a credit is provided in section 780(a), the credit, if any, provided in such section for such taxable year existing in favor of the taxpayer shall be reduced by an amount equal to 10 per centum of the excess of the tax imposed by this subchapter on the basis of which such tax (in respect of which the internal revenue refund or credit is made) was previously computed and paid, over the tax imposed by this subchapter as determined in connection with the determination of the amount of the overpayment. In such a case, if such credit provided in section 780(a) for such taxable year is less than the amount by which it is required to be reduced, or if there is no such credit then existing in favor of the taxpayer, the excess of such amount over the amount of such credit, if any, shall constitute a charge against the taxpayer to be applied in reduction of the amount of the bonds previously issued to the taxpayer under section 780(b) with respect to such taxable year. If the bonds issued with respect to such taxable year are not made available for the purpose of such reduction or the amount of such bonds so made available is less than the amount of such charge, such charge or the excess of such charge over the amount of such bonds so made available, as the case may be, shall be applied at the time of the credit or refund (or as of the time of the maturity of bonds issued with respect to such taxable year, if that time is earlier) in reduction of the amount of the credit or refund of the overpayment of the tax."

(f) LIMITATION ON POST-WAR CREDIT.—Section 781(d) (relating to the limitation on the post-war credit or refund of excess profits tax) is amended to read as follows:

"(d) LIMITATION.—

"(1) GENERAL RULE.—The credit under section 780(a) for any taxable year shall not be greater than the excess of the amount of the tax paid under this subchapter to the United States (and not credited or refunded under the internal revenue laws) in respect of such year over the amount of tax which would be payable to the United States if the excess profits tax rate were 85½ per centum, or, if the limitation of section 710(a)(1)(B) is applicable, if the amount determined under such section were reduced by 10 per centum.

* * * * * * *

"(3) SPECIAL RULE IN CASE OF CERTAIN FISCAL YEARS BEGINNING IN 1943.—In the case of a taxable year beginning in 1943 and ending in 1944, the credit under section 780(a) for such taxable year shall not be greater than the excess of the tax paid under this subchapter to the United States for such taxable year (and not credited or refunded under the internal revenue laws) over the amount which would be payable to the United States if—

"(A) in the computation under section 710(a)(6)(A) the excess profits tax rate were 81 per centum, or, in case the limitation of section 710(a)(1)(B) is applicable in such computation, if the amount determined under such section 710(a)(1)(B) were reduced by 10 per centum, and

"(B) in the computation under section 710(a)(6)(B) the excess profits tax rate were 85½ per centum, or, in case the limitation of section 710(a)(1)(B) is applicable in such computation, if the amount determined under section 710(a)(1)(B) were reduced by 10 per centum."

(g) TAXABLE YEARS TO WHICH APPLICABLE.—* * * the amendments made by subsection (e) (except with respect to credits or refunds made on or prior to the date of the enactment of this Act) shall be effective as if made by section 250 of the Revenue Act of 1942. * * * The amendment made by subsection (f) inserting a new paragraph (3) of section 781(d) of the Internal Revenue Code shall be applicable with respect to taxable years beginning in 1943 and ending in 1944.

SEC. 201. TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE. (REVENUE ACT OF 1943, TITLE II.)

Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after December 31, 1943.

PAR. 11. Section 35.781–1 is amended to read as follows:

SEC. 35.781–1. SPECIAL RULES FOR APPLICATION OF SECTION 780.—(*a*) *Deficiencies; refunds and credits of overpayments.*—In case a deficiency is paid by the taxpayer, or an overpayment is refunded or credited to the taxpayer, for any taxable year to which section 780(a) applies, appropriate adjustments will be made in the post-war credit account of the taxpayer. In such case, whenever the amount of bonds should be increased or reduced, the Commissioner of Internal Revenue shall certify the status of the account to the Secretary in order that appropriate adjustments may be made in the amount of bonds. If the refund or credit of an overpayment was made on or before February 25, 1944 (the date of the enactment of the Revenue Act of 1943), the adjustment of the post-war credit or bonds of the taxpayer shall be made in accordance with section 781(b) in force prior to such date. If the refund or credit of an overpayment is made after February 25, 1944, such adjustment, or in an appropriate case the reduction in the amount of the refund or credit of the overpayment of the tax, shall be made in accordance with section 781(b), as amended by section 250(e) of the Revenue Act of 1943. Collection from a taxpayer under section 781(b) in force prior to February 25, 1944, of the amount by which charges (arising by reason of a refund or credit of an overpayment) exceed the amount of the post-war credit of the taxpayer, and payment to a taxpayer under section 781(c) of

amounts of any outstanding post-war credit against which bonds have not been issued, shall be made by the Commissioner of Internal Revenue. No income is realized by reason of the receipt by a taxpayer of any such payment under section 781(c). Nor is any income realized by a successor by reason of his receipt of any such payment, if, under the provisions of section 113, the outstanding post-war credit with respect to which the payment is made had, for the purpose of determining gain or loss from a sale or exchange, the same basis in the hands of the successor as it would have had in the hands of the taxpayer. Otherwise, income may be realized by the successor from the receipt of such a payment.

(*b*) *Limitations on amount of post-war credit.*—The post-war credit provided for in section 780(a) (see section 35.780–1(*a*)) is subject to the limitations set forth in section 781(d). The limitations operate in certain cases in which the taxpayer takes a credit against excess profits tax, pursuant to section 131, as made applicable by section 729, for tax paid or accrued to a foreign country or United States possession. They operate also to eliminate or reduce the post-war credit in case the excess profits tax is not paid, or is not paid in full, and in certain cases in which the excess profits tax is reduced by an adjustment under section 734 on account of position inconsistent with prior income tax liability (as, for example, if the amount of such reduction exceeds the amount of excess profits tax which would be payable if the excess profits tax rate were 81 per cent or 85½ per cent, whichever is applicable). The limitations are as follows:

(1) The post-war credit for any taxable year is provided only with respect to excess profits tax *paid* (and not credited or refunded under the internal revenue laws). (See example (1), below.)

(2) In the case of a taxable year beginning after December 31, 1941, and ending before January 1, 1944, the post-war credit for such year shall not be greater than the excess of the excess profits tax paid over—

(i) the amount which would be payable if the excess profits tax rate were 81 per cent (see examples (1) and (2), below), *or*

(ii) if section 710(a)(1)(B) (relating to the 80 per cent limitation) is applicable in the computation of the tax, the amount which would be payable if the amount determined under section 710(a)(1)(B) were reduced by 10 per cent (see example (3), below).

(3) In the case of a taxable year beginning in 1943 and ending in 1944 (with respect to which section 710(a)(6) is applicable), the post-war credit for such year shall not be greater than the excess of the excess profits tax paid over the amount which would be payable if—

(i) in the computation under section 710(a)(6)(A), the excess profits tax rate were 81 per cent, or, in case the limitation of section 710(a)(1)(B) is applicable in such computation, if the amount determined under section 710(a)(1)(B) were reduced by 10 per cent, *and*

(ii) in the computation under section 710(a)(6)(B), the excess profits tax rate were 85½ per cent, or, in case the limitation of section 710(a)(1)(B) is applicable in such computation, if the amount determined under section 710(a)(1)(B) were reduced by 10 per cent. (See example (4), below.)

(4) In the case of a taxable year beginning after December 31, 1943, and not after the "date of cessation of hostilities in the present war," as defined in section 780(e), the post-war credit for such year shall not be greater than the excess of the excess profits tax paid over—

(i) the amount which would be payable if the excess profits tax rate were 85½ per cent (see example (5), below), *or*

(ii) if the limitation of section 710(a)(1)(B) is applicable in the computation of the tax, the amount which would be payable if the amount determined under section 710(a)(1)(B) were reduced by 10 per cent (see example (6), below).

For the purpose of the limitations prescribed in section 781(d), the amount of credit for debt retirement allowed under section 783, if any, shall be considered as an amount of tax paid; and for such purpose, in determining amounts of tax which would be payable under the conditions prescribed in section 781(d), such amounts shall be determined without regard to any credit for debt retirement.

The application of section 781(d) may be illustrated by the following examples:

Example (1). The X Corporation has for the calendar year 1942 an adjusted excess profits net income of $1,000,000, which is subject to the excess profits tax rate of 90 per cent. The excess profits tax imposed is $900,000 (90 per cent of $1,000,000), of which only $850,000 is actually paid. The post-war credit of the corporation for such year under section 780(a) computed without regard to the

limitation provided in section 781(d) would be $90,000 (10 per cent of $900,000). However, such credit is limited by section 781(d) to $40,000, computed as follows:

Excess profits tax paid		$850,000
Less excess profits tax which would be payable if rate were 81 per cent (81 per cent of $1,000,000)		810,000
Post-war credit allowable		40,000

Example (2). The normal-tax net income, surtax net income, and excess profits net income of the X Corporation, a domestic corporation, for the calendar year 1943 is $1,000,000, of which $200,000 is from sources within a foreign country and $800,000 from sources within the United States. (Likewise, the net income from sources within the foreign country is $200,000 and from sources within the United States is $800,000.) The amount of the normal-tax net income and of the surtax net income is stated hereinbefore without regard to the credit for income subject to excess profits tax provided in section 26(e). The corporation pays to the foreign country with respect to the calendar year 1943 income tax in the amount of $160,000 upon income from sources therein. After allowance of the credit against normal tax and surtax for foreign tax paid, the amount of $136,000 of the foreign tax is available as a credit against the excess profits tax for 1943. Such credit is limited by section 729 to one-fifth of the corporation's excess profits tax for that year since only one-fifth of its entire excess profits net income is from sources within the foreign country. The excess profits credit of the corporation for 1943 under section 712 is $295,000, and its specific exemption under section 710(b) is $5,000. The corporation pays its excess profits tax for 1943 in full. The post-war credit of the corporation for that year is $50,400, computed as follows:

Excess profits net income		$1,000,000
Less:		
Specific exemption	$5,000	
Excess profits credit	295,000	
		300,000
Adjusted excess profits net income		700,000
Excess profits tax imposed (90 per cent of $700,000)		630,000
Less foreign tax credit (1/5 of $630,000)		126,000
Excess profits tax determined under section 710		504,000
Post-war credit under section 780(a), computed without regard to the limitation under section 781(d) (10 per cent of $630,000 (tax imposed))		63,000

Limitation under section 781(d).

Excess profits tax paid		$504,000
Less excess profits tax which would be payable if rate were 81 per cent:		
Tax at 81 per cent rate (81 per cent of $700,000)	$567,000	
Less foreign tax credit (1/5 of $567,000)	113,400	
		453,600
Limitation under section 781(d)		50,400
Post-war credit allowable		50,400

Since the post-war credit under section 780(a) ($63,000) computed without regard to the limitation under section 781(d) is greater than the amount ($50,400) determined under section 781(d), the amount determined under section 781(d) is the amount of the post-war credit.

Example (3). The facts are the same as in example (2) except that the excess profits credit of the X Corporation under section 712 is $95,000 instead of $295,000 and the amount of the foreign tax available as a credit against the corporation's excess profits tax, after allowance of the credit against normal tax and surtax for foreign tax paid, is $152,000, instead of $136,000. The post-war credit of the X Corporation for the calendar year 1943 is $60,800, computed as follows:

Excess profits net income		$1,000,000
Less:		
Specific exemption	$5,000	
Excess profits credit	95,000	
		100,000
Adjusted excess profits net income		900,000
Excess profits tax determined under section 710(a)(1)(A) (90 per cent of $900,000)		810,000
Normal-tax net income before credit for adjusted excess profits net income		1,000,000
Less credit for adjusted excess profits net income		900,000
Normal-tax net income		100,000
Normal tax (24 per cent of $100,000)		24,000
Surtax net income before credit for adjusted excess profits net income		1,000,000
Less credit for adjusted excess profits net income		900,000
Surtax net income		100,000
Surtax (16 per cent of $100,000)		16,000
Limitation under section 710(a)(1)(B): 80 per cent of surtax net income before credit for adjusted excess profits net income (80 per cent of $1,000,000)		800,000
Less:		
Normal tax	$24,000	
Surtax	16,000	
		40,000
Excess profits tax imposed (as defined in section 35.780–1(a))		760,000
Less foreign tax credit (⅕ of $760,000)		152,000
Excess profits tax determined under section 710(a)(1)(B)		608,000
Post-war credit under section 780(a), computed without regard to the limitation under section 781(d) (10 per cent of $760,000 (tax imposed))		76,000
Limitation under section 781(d).		
Excess profits tax paid		$608,000
Less excess profits tax which would be payable if amount determined under section 710(a)(1)(B) were reduced by 10 per cent ($608,000 minus $60,800)		547,200
Limitation under section 781(d)		60,800
Post-war credit allowable		60,800

Since the post-war credit under section 780(a) ($76,000), computed without regard to the limitation under section 781(d), is greater than the amount ($60,800) determined under section 781(d), the amount determined under section 781(d) is the amount of the post-war credit.

Example (4). The normal-tax net income, surtax net income, and excess profits net income of the X Corporation, a domestic corporation, for the taxable year beginning July 1, 1943, and ending June 30, 1944, is $1,000,000, of which $200,000 is from sources within a foreign country and $800,000 from sources within the United States. (Likewise, the net income from sources within the foreign country is $200,000 and from sources within the United States is $800,000.) The amount of the normal-tax net income and of the surtax net income is stated hereinbefore without regard to the credit for income subject to excess profits tax provided in section 26(e). The corporation pays to the foreign country with respect to the taxable year beginning July 1, 1943, and ending June 30, 1944, income tax in the amount of $155,000 upon income from sources therein. After allowance of the credit against normal tax and surtax for foreign tax paid, the amount of $130,801.09 of the foreign tax is available as a credit against the excess profits tax for the taxable year. Such credit is limited by section 729 to one-fifth

of the corporation's excess profits tax for that year since only one-fifth of its entire excess profits net income is from sources within the foreign country. The excess profits credit of the corporation for the taxable year under section 712 is $295,000. In the computation of the tentative excess profits tax under section 710(a)(6)(A) specific exemption under section 710(b) is $5,000; and in the computation of the tentative excess profits tax under section 710(a)(6)(B) the specific exemption under section 710(b) is $10,000. The 80 per cent limitation under section 710(a)(1)(B) is not applicable in the computation of the tax. The corporation pays its excess profits tax for the taxable year in full. The post-war credit of the corporation for such year is $51,603.39, computed as follows:

Tentative excess profits tax computed under section 710(a)(6)(A).

Excess profits net income		$1,000,000.00
Less:		
Specific exemption	$5,000.00	
Excess profits credit	295,000.00	
		300,000.00
Adjusted excess profits net income		700,000.00
Tentative excess profits tax computed under section 710(a)(6)(A) (90 per cent of $700,000)		630,000.00

Tentative excess profits tax computed under section 710(a)(6)(B).

Excess profits net income		$1,000,000.00
Less:		
Specific exemption	$10,000.00	
Excess profits credit	295,000.00	
		305,000.00
Adjusted excess profits net income		695,000.00
Tentative excess profits tax computed under section 710(a)(6)(B) (95 per cent of $695,000)		660,250.00

Excess profits tax determined under section 710(a)(6).

Portion of tentative excess profits tax determined under section 710(a)(6)(A) (184/366 of $630,000)	$316,721.31
Portion of tentative excess profits tax determined under section 710(a)(6)(B) (182/366 of $660,250)	328,321.04
Excess profits tax imposed (as defined in section 35.780–1(a))	645,042.35
Less foreign tax credit (1/5 of $645,042.35)	129,008.47
Excess profits tax determined under section 710(a)(6)	516,033.88

Post-war credit under section 780(a) computed without regard to the limitation under section 781(d)(3).

Excess profits tax imposed (as defined in section 35.780–1(a))	$645,042.35
Post-war credit under section 780(a), computed without regard to the limitation under section 781(d)(3) (10 per cent of $645,042.35 (tax imposed))	64,504.24

Limitation under section 781(d)(3).

Excess profits tax paid		$516,033.88
Less excess profits tax which would be payable if (i) in the computation under section 710(a)(6)(A) the excess profits tax rate were 81 per cent, and (ii) in the computation under section 710(a)(6)(B) the excess profits tax rate were 85½ per cent:		
Tentative excess profits tax computed under section 710(a)(6)(A) at 81 per cent rate (81 per cent of $700,000)	$567,000.00	
Portion of tentative excess profits tax computed under section 710(a)(6)(A) at 81 per cent rate (184/366 of $567,000)	$285,049.18	

Less excess profits tax, etc.—Continued.		
Tentative excess profits tax computed under section 710(a)(6)(B) at 85½ per cent rate (85½ per cent of $695,000)	$594,225.00	
Portion of tentative excess profits tax computed under section 710(a)(6)(B) at 85½ per cent rate (182/366 of $594,225)	$295,488.93	
Tax payable before foreign tax credit	580,538.11	
Less foreign tax credit (1/5 of $580,538.11)	116,107.62	
		$464,430.49
Limitation under section 781(d)(3)		51,603.39
Post-war credit allowable		51,603.39

Since the post-war credit under section 780(a) ($64,504.24) computed without regard to the limitation under section 781(d)(3) is greater than the amount ($51,603.39) determined under section 781(d)(3), the amount determined under section 781(d)(3) is the amount of the post-war credit.

Example (5). The normal-tax net income, surtax net income, and excess profits net income of the X Corporation, a domestic corporation, for the calendar year 1944 is $1,000,000, of which $200,000 is from sources within a foreign country and $800,000 from sources within the United States. (Likewise, the net income from sources within the foreign country is $200,000 and from sources within the United States is $800,000.) The amount of the normal-tax net income and of the surtax net income is stated hereinbefore without regard to the credit for income subject to excess profits tax provided in section 26(e). The corporation pays to the foreign country with respect to the calendar year 1944 income tax in the amount of $160,000 upon income from sources therein. After allowance of the credit against normal tax and surtax for foreign tax paid, the amount of $136,000 of the foreign tax is available as a credit against the excess profits tax for 1944. Such credit is limited by section 729 to one-fifth of the corporation's excess profits tax for that year since only one-fifth of its entire excess profits net income is from sources within the foreign country. The excess profits credit of the corporation for 1944 under section 712 is $290,000, and its specific exemption under section 710(b) is $10,000. The corporation pays its excess profits tax for 1944 in full. The post-war credit of the corporation for that year is $53,200, computed as follows:

Excess profits net income		$1,000,000
Less:		
Specific exemption	$10,000	
Excess profits credit	290,000	
		300,000
Adjusted excess profits net income		700,000
Excess profits tax imposed (95 per cent of $700,000)		665,000
Less foreign tax credit (⅕ of $665,000)		133,000
Excess profits taxes determined under section 710		532,000
Post-war credit under section 780(a) computed without regard to the limitation under section 781(d)(1) (10 per cent of $665,000 (tax imposed))		66,500

Limitation under section 781(d)(1).

Excess profits tax paid		$532,000
Less excess profits tax which would be payable if rate were 85½ per cent:		
Tax at 85½ per cent rate (85½ per cent of $700,000)	$598,500	
Less foreign tax credit (⅕ of $598,500)	119,700	
		478,800
Limitation under section 781(d)(1)		53,200
Post-war credit allowable		53,200

Since the post-war credit under section 780(a) ($66,500) computed without regard to the limitation under section 781(d)(1) is greater than the amount ($53,200) determined under section 781(d)(1), the amount determined under section 781(d)(1) is the amount of the post-war credit.

Example (6). The facts are the same as in example (5) except that the excess profits credit of the X Corporation under section 712 is $90,000 instead of $290,000 and the amount of the foreign tax available as a credit against the corporation's excess profits tax, after allowance of the credit against normal tax and surtax for foreign tax paid, is $152,000 instead of $136,000. The post-war credit of the X Corporation for the calendar year 1944 is $60,800, computed as follows:

Excess profits net income		$1,000,000
Less:		
Specific exemption	$10,000	
Excess profits credit	90,000	
		100,000
Adjusted excess profits net income		900,000
Excess profits tax determined under section 710(a)(1)(A) (95 per cent of $900,000)		855,000
Normal tax net income before credit for adjusted excess profits net income		1,000,000
Less credit for adjusted excess profits net income		900,000
Normal tax net income		100,000
Normal tax (24 per cent of $100,000)		24,000
Surtax net income before credit for adjusted excess profits net income		1,000,000
Less credit for adjusted excess profits net income		900,000
Surtax net income		100,000
Surtax (16 per cent of $100,000)		16,000
Limitation under section 710(a)(1)(B):		
80 per cent of surtax net income before credit for adjusted excess profits net income (80 per cent of $1,000,000)		800,000
Less:		
Normal tax	$24,000	
Surtax	16,000	
		40,000
Excess profits tax imposed (as defined in section 35.780–1(*a*))		760,000
Less foreign tax credit (⅕ of $760,000)		152,000
Excess profits tax determined under section 710(a)(1)(B)		608,000
Post-war credit under section 780(a) computed without regard to the limitation under section 781(d)(1) (10 per cent of $760,000 (tax imposed))		76,000

Limitation under section 781(d)(1).

Excess profits tax paid		$608,000
Less excess profits tax which would be payable if amount determined under section 710(a)(1)(B) were reduced by 10 per cent ($608,000 minus $60,800)		547,200
Limitation under section 781(d)(1)		60,800
Post-war credit allowable		60,800

Since the post-war credit under section 780(a) ($76,000) computed without regard to the limitation under section 781(d)(1) is greater than the amount ($60,800) determined under section 781(d)(1), the amount determined under section 781(d)(1) is the amount of the post-war credit.

PAR. 12. Section 35.783–1(*a*), as amended by Treasury Decision 5362, approved April 25, 1944 [C. B. 1944, 442], is further amended, is further amended by inserting at the end thereof the following:

For special provisions relating to the election to take the credit, in certain cases in which the indebtedness of the taxpayer is assumed by a successor, in any amount to which the successor-taxpayer would not be entitled were it not for section 35.783–3, see section 35.783–3(*f*).

PAR. 13. The last sentence of the second paragraph of section 35.783–2(*a*), added by Treasury Decision 5362, is amended by inserting before the period a comma and the following: " except as provided in section 35.783–3(*f*)."

PAR. 14. There is inserted immediately after section 35.783–2, added by Treasury Decision 5362, the following new section:

SEC. 35.783–3. CREDIT FOR DEBT RETIREMENT IN CASE OF CERTAIN SUCCESSIONS.—(*a*) *In general.*—This section applies only to those cases in which indebtedness (as defined in section 783(d) and section 35.783–1(*d*) is assumed by a successor in a succession referred to in section 35.780–2(*b*) (1) to (5), both inclusive, which occurs after August 31, 1942. The provisions of this section shall not affect any credit for debt retirement for any taxable year prior to that in which such succession occurs. Except as otherwise expressly provided in this section, any credit for debt retirement allowable to the successor or to the predecessor shall be computed as in the case of any other taxpayer. As used in this section, the term " predecessor " means a predecessor as defined in paragraph (*e*).

(*b*) *Rights and liabilities of successor.*—Subject to the special rules set forth in paragraph (*c*)(2), a successor as defined in subparagraphs (1) to (5), both inclusive, of section 35.780–2(*b*) shall succeed to all the rights and liabilities of the taxpayer under section 783 and section 35.783–1 with respect to the indebtedness of the taxpayer assumed by such successor in the succession.

(*c*) *Special rules.*—(1) *Predecessor.*—If indebtedness of the predecessor is assumed by the successor in the succession (thus becoming indebtedness of such successor), it thereby ceases to be indebtedness of the predecessor. The amount of the indebtedness of the predecessor as of the beginning of September 1, 1942, and as of the close of each taxable year of the predecessor ending after September 1, 1942, and prior to the succession shall be deemed to be the excess of (i) the amount of the indebtedness of the predecessor as of the applicable time (determined without regard to such succession) over (ii) the amount of the indebtedness of the predecessor assumed by the successor in the succession but not to exceed the smallest amount of the indebtedness of the predecessor as of the beginning of September 1, 1942, or as of the close of any taxable year of the predecessor ending after September 1, 1942, and prior to the succession (determined without regard to such succession).

(2) *Successor.*—The amount of the indebtedness of the successor as of the beginning of September 1, 1942, and as of the close of each taxable year of the successor ending after September 1, 1942, and prior to the succession (whether or not in existence at the applicable time) shall be deemed to be the sum of (i) the amount of the indebtedness of the successor as of the applicable time (determined without regard to such succession) and (ii) the aggregate of the amount of the indebtedness of the several predecessors assumed by the successor in the succession (or, in the case of only one predecessor, the amount of the indebtedness of such predecessor assumed by the successor in the succession), not including with repect to any predecessor an amount in excess of the smallest amount of the indebtedness of such predecessor as of the beginning of September 1, 1942, or as of the close of any taxable year of such predecessor ending after September 1, 1942, and prior to the succession (determined without regard to such succession). For example, if A and B were consolidated into C on June 30, 1943, and as a part of the consolidation C assumed indebtedness of $400,000, consisting of indebtedness of A of $250,000 and of B of $150,000; if the indebtedness as of the beginning of September 1, 1942, of A was $200,000 and of B was $200,000; and if the indebtedness as of the close of the taxable year ending December 31, 1942, of A was $250,000 and of B was $200,000, the aggregate amount of the indebtedness of the several predecessors taken into account under subdivision (ii), above would be $350,000, computed as follows: $200,000 (indebtedness of A assumed after application of the limitation) plus $150,000 (indebtedness of B assumed since it is less than the amount of the limitation). For the purposes of these provisions, the close of any taxable year of the successor during which the successor was not in existence shall be deemed to be such moment as would have constituted the close of such

taxable year of the successor had it then been in existence and reporting its income on the basis of a taxable year ending on a date corresponding to the close of its first taxable year. For example, if a corporation is organized on September 30, 1944, and reports its income on the basis of a taxable year ending December 31, 1944, the close of any preceding taxable year shall be deemed to be December 31. For the purposes of this section, an assumption of indebtedness includes the issuance by the successor of its bonds, promissory notes, debentures, or other evidences of indebtedness in exchange for, and satisfaction of, indebtedness of the predecessor in connection with the acquisition of properties of such predecessor in a succession to which this section is applicable, but in such case the amount of the indebtedness assumed by the successor as the result of such exchange shall not exceed the amount of such indebtedness of the predecessor or the amount of such indebtedness of the successor, whichever amount is the lesser.

(3) *Examples of computation of credit.*—The application of this section may be illustrated by the following examples (all indebtedness referred to therein being indebtedness as defined in section 783(d) and section 35.783–1(*d*)):

Example (*1*). On September 30, 1944, the X Corporation merged into the Y Corporation, and the Y Corporation as a part of the merger assumed the outstanding indebtedness of the X Corporation in the amount of $100,000. The excess profits tax imposed upon the X Corporation for the taxable period of nine months ending September 30, 1944, is $400,000. The amounts paid by the X Corporation in repayment of indebtedness in 1944 total $90,000. The outstanding indebtedness of the X Corporation was as follows:

	Paid.	Borrowed.	Total indebtedness.
January 1, 1942			$200,000
September 1			200,000
December 5	$25,000		175,000
December 31			175,000
January 1, 1943			175,000
March 15		$15,000	190,000
December 31			190,000
January 1, 1944			190,000
June 30	90,000		100,000
September 30 (before merger)			100,000
September 30 (after merger)			(1)
Total paid	90,000		

[1] $100,000 assumed by Y Corporation in the merger ceases to be indebtedness of X Corporation.

The outstanding indebtedness of the X Corporation, as reconstructed in accordance with paragraph (*c*) (1) for purposes of the computation of the credit for debt retirement of such corporation for 1944, is as follows:

	Total indebtedness.
September 1, 1942, $200,000 (indebtedness of X Corporation September 1, 1942), *minus* $100,000 (indebtedness of X Corporation assumed by Y Corporation in the merger, $100,000, but not to exceed smallest amount of indebtedness of X Corporation September 1, 1942, or at close of any taxable year of X Corporation ending after September 1, 1942, and prior to the merger (September 1, 1942, $200,000; December 31, 1942, $175,000; December 31, 1943, $190,000), $175,000)	$100,000
December 31, 1942, $175,000 (indebtedness of X Corporation December 31, 1942), *minus* $100,000 (indebtedness of X Corporation assumed by Y Corporation in the merger, after application of the limitation as shown above)	75,000
December 31, 1943, $190.000 (indebtedness of X Corporation December 31, 1943), *minus* $100,000 (indebtedness of X Corporation assumed by Y Corporation in the merger, after application of the limitation as shown above)	90,000

The credit for debt retirement allowable to the X Corporation for 1944 is $30,000, computed as follows:

40 per cent of $90,000, the total repaid in 1944 (see section 783(a) and section 35.783–1(*a*))	$36,000

But the credit for debt retirement allowable to the X Corporation for 1944 may not exceed whichever of the following amounts is the lesser (see section 783(b) (1) and (2) and sections 35.783-1(*b*) (3) and 35.783-3(*c*) (1)):

10 per cent of $400,000 (amount of tax imposed) $40,000
40 per cent of $75,000 (amount by which amount of indebtedness September 1, 1942, as reconstructed, $100,000, or smallest amount of indebtedness, as reconstructed, at close of any preceding taxable year ending after September 1, 1942 (December 31, 1942, $75,000; December 31, 1943, $90,000), $75,000, whichever amount ($100,000 or $75,000) is the lesser, $75,000, exceeds amount of indebtedness at close of taxable year (September 30, 1944), zero) 30,000

The excess profits tax imposed upon the Y Corporation for the calendar year 1944 is $500,000 and for the calendar year 1945 is $600,000. The amounts paid by the Y Corporation in repayment of indebtedness throughout the year 1944 total $100,000 and throughout the year 1945 total $150,000. The outstanding indebtedness of the Y Corporation was as follows:

	Paid.	Borrowed.	Total indebtedness.
January 1, 1942			$150,000
September 1			150,000
December 31			150,000
January 1, 1943			150,000
November 1	$50,000		100,000
December 31			100,000
January 1, 1944			100,000
July 1	50,000		50,000
September 30 (before merger)			50,000
September 30 (after merger)			150,000
December 1	50,000		100,000
December 31			100,000
Total paid	100,000		
January 1, 1945			100,000
April 15		$50,000	150,000
October 1	100,000		50,000
December 15	50,000		
December 31			
Total paid	150,000		

[1] Includes $100,000 assumed in the merger.

The outstanding indebtedness of the Y Corporation, as reconstructed in accordance with paragraph (*c*) (2) for purposes of the computation of the credit for debt retirement of such corporation for 1944 and subsequent years, is as follows:

	Total indebtedness.
September 1, 1942, $150,000 (indebtedness of Y Corporation September 1, 1942), *plus* $100,000 (indebtedness of X Corporation assumed by Y Corporation in the merger, $100,000, but not to exceed smallest amount of indebtedness of X Corporation September 1, 1942, or at close of any taxable year of X Corporation ending after September 1, 1942, and prior to the merger (September 1, 1942, $200,000; December 31, 1942, $175,000; December 31, 1943, $190,000), $175,000	$250,000
December 31, 1942, $150,000 (indebtedness of Y Corporation December 31, 1942), *plus* $100,000 (indebtedness of X Corporation assumed by Y Corporation in the merger, after application of the limitation as shown above)	250,000
December 31, 1943, $100,000 (indebtedness of Y Corporation December 31, 1943), *plus* $100,000 (indebtedness of X Corporation assumed by Y Corporation in the merger, after application of the limitation as shown above)	200,000

The credit for debt retirement allowable to the Y Corporation for 1944 is $40,000, computed as follows:

40 per cent of $100,000, the total repaid in 1944 (see section 783(a) and section 35.783-1(a))	$40,000

But the credit for debt retirement allowable to the Y Corporation for 1944 may not exceed whichever of the following amounts is the lesser (see section 783(b) (1) and (2) and sections 35.783-1(b)(3) and 35.783-3(c)(2)):

10 per cent of $500,000 (amount of tax imposed)	$50,000
40 per cent of $100,000 (amount by which amount of indebtedness September 1, 1942, as reconstructed, $250,000, or smallest amount of indebtedness, as reconstructed, at close of any preceding taxable year ending after September 1, 1942 (December 31, 1942, $250,000; December 31, 1943, $200,000), $200,000, whichever amount ($250,000 or $200,000) is the lesser, $200,000, exceeds amount of indebtedness at close of taxable year (December 31, 1944), $100,000)	40,000

The credit for debt retirement allowable to the Y Corporation for 1945 is $40,000, computed as follows:

40 per cent of $150,000, the total repaid in 1945 (see section 783(a) and section 35.783-1(a))	$60,000

But the credit for debt retirement allowable to the Y Corporation for 1945 may not exceed whichever of the following amounts is the lesser (see section 783(b) (1) and (2) and sections 35.783-1(b)(3) and 35.783-3(c)(2)):

10 per cent of $600,000 (amount of tax imposed)	$60,000
40 per cent of $100,000 (amount by which amount of indebtedness September 1, 1942, as reconstructed, $250,000, or smallest amount of indebtedness (as reconstructed for 1942 and 1943) at close of any preceding taxable year ending after September 1, 1942 (December 31, 1942, $250,000; December 31, 1943, $200,000; December 31, 1944, $100,000), $100,000, whichever amount ($250,000 or $100,000) is the lesser, $100,000, exceeds amount of indebtedness at close of taxable year (December 31, 1945), zero)	40,000

Example (2). On September 30, 1944, the X Corporation and the Y Corporation were consolidated into the Z Corporation, and the Z Corporation as a part of the consolidation assumed the outstanding indebtedness of the X Corporation in the amount of $100,000 and of the Y Corporation in the amount of $150,000. The excess profits tax imposed upon the X Corporation for the taxable period of nine months ending September 30, 1944, is $400,000. The amounts paid by the X Corporation in repayment of indebtedness in 1944 total $90,000. The outstanding indebtedness of the X Corporation during the years 1942, 1943, and 1944 is the same as in example (1); and the credit for debt retirement allowable to the X Corporation for 1944 is $30,000, computed as in example (1).

The excess profits tax imposed upon the Y Corporation for the taxable period of nine months ending September 30, 1944, is $400,000. The amounts paid by the Y Corporation in repayment of indebtedness in 1944 total $50,000. The outstanding indebtedness of the Y Corporation was as follows:

	Paid.	Borrowed.	Total indebtedness.
January 1, 1942			$150,000
September 1			150,000
December 31			150,000
January 1, 1943			150,000
November 1	$50,000		100,000
December 31			100,000
January 1, 1944			100,000
July 1		$100,000	200,000
July 15	50,000		150,000
September 30 (before consolidation)			150,000
September 30 (after consolidation)			(1)
Total paid	50,000		

[1] $150,000 assumed by Z Corporation in the consolidation ceases to be indebtedness of Y Corporation.

The outstanding indebtedness of the Y Corporation, as reconstructed in accordance with paragraph (c)(1) for purposes of the computation of the credit for debt retirement of such corporation for 1944, is as follows:

September 1, 1942, $150,000 (indebtedness of Y Corporation September 1, 1942) *minus* $100,000 (indebtedness of Y Corporation assumed by Z Corporation in the consolidation, $150,000, but not to exceed smallest amount of indebtedness of Y Corporation September 1, 1942, or at close of any taxable year of Y Corporation ending after September 1, 1942, and prior to the consolidation (September 1, 1942, $150,000; December 31, 1942, $150,000; December 31, 1943, $100,000), $100,000)	$50,000
December 31, 1942, $150,000 (indebtedness of Y Corporation December 31, 1942), *minus* $100,000 (indebtedness of Y Corporation assumed by Z Corporation in the consolidation, after application of the limitation as shown above)	50,000
December 31, 1943, $100,000 (indebtedness of Y Corporation December 31, 1943), *minus* $100,000 (indebtedness of Y Corporation assumed by Z Corporation in the consolidation, after application of the limitation as shown above)	zero

The credit for debt retirement allowable to the Y Corporation for 1944 is zero, computed as follows:

40 per cent of $50,000, the total repaid in 1944 (see section 783(a) and section 35.783–1(a))	$20,000

But the credit for debt retirement allowable to the Y Corporation for 1944 may not exceed whichever of the following amounts is the lesser (see section 783(b)(1) and (2) and sections 35.783–1(b)(3) and 35.783–3(c)(1)):

10 per cent of $400,000 (amount of tax imposed)	$40,000
40 per cent of zero (amount by which amount of indebtedness September 1, 1942, as reconstructed, $50,000, or smallest amount of indebtedness, as reconstructed, at close of any preceding taxable year ending after September 1, 1942 (December 31, 1942, $50,000; December 31, 1943, zero), zero, whichever amount ($50,000 or zero) is the lesser, zero, exceeds amount of indebtedness at close of taxable year (September 30, 1944), zero)	zero

The Z Corporation was organized on September 30, 1944. The excess profits tax imposed upon the Z Corporation for that portion of the calendar year 1944 during which it was in existence is $100,000, and for the calendar year 1945 is $900,000. The amounts paid by the Z Corporation in repayment of indebtedness in 1944 total $100,000, and throughout the year 1945 total $200,000. The outstanding indebtedness of the Z Corporation was as follows:

	Paid.	Borrowed.	Total indebtedness.
September 30, 1944			[1] $250,000
October 15		$50,000	300,000
December 1	$100,000		200,000
December 31			200,000
Total paid	100,000		
January 1, 1945			200,000
June 30	100,000		100,000
November 15	100,000		
December 31			
Total paid	200,000		

[1] Amount assumed in the consolidation.

The outstanding indebtedness of the Z Corporation, as reconstructed in accordance with paragraph (*c*)(2) for purposes of the computation of the credit for debt retirement of such corporation for 1944 and subsequent years, is as follows:

	Total indebtedness.
September 1, 1942, zero (indebtedness of Z Corporation September 1, 1942), *plus* $200,000 ($100,000 (indebtedness of X Corporation assumed by Z Corporation in the consolidation, $100,000, but not to exceed smallest amount of indebtedness of X Corporation September 1, 1942, or at close of any taxable year of X Corporation ending after September 1, 1942, and prior to the consolidation (September 1, 1942, $200,000; December 31, 1942, $175,000; December 31, 1943, $190,000), $175,000), *plus* $100,000 (indebtedness of Y Corporation assumed by Z Corporation in the consolidation, $150,000, but not to exceed smallest amount of indebtedness of Y Corporation September 1, 1942, or at close of any taxable year of Y Corporation ending after September 1, 1942, and prior to the consolidation (September 1, 1942, $150,000; December 31, 1942, $150,000; December 31, 1943, $100,000), $100,000))	$200,000
December 31, 1942, zero (indebtedness of Z Corporation December 31, 1942), *plus* $200,000 (aggregate indebtedness of X Corporation and Y Corporation assumed by Z Corporation in the consolidation, after application of the limitation as shown above)	200,000
December 31, 1943, zero (indebtedness of Z Corporation December 31, 1943), *plus* $200,000 (aggregate indebtedness of X Corporation and Y Corporation assumed by Z Corporation in the consolidation, after application of the limitation as shown above)	200,000

The credit for debt retirement allowable to the Z Corporation for 1944 is zero, computed as follows:

40 per cent of $100,000, the total repaid in 1944 (see section 783(a) and section 35.783–1(*a*))	$40,000

But the credit for debt retirement allowable to the Z Corporation for 1944 may not exceed whichever of the following amounts is the lesser (see section 783(b)(1) and (2) and sections 35.783–1(*b*)(3) and 35.783–3(*c*)(2)):

10 per cent of $100,000 (amount of tax imposed)	$10,000
40 per cent of zero (amount by which amount of indebtedness September 1, 1942, as reconstructed, $200,000, or smallest amount of indebtedness, as reconstructed, at close of any preceding taxable year ending after September 1, 1942 (December 31, 1942, $200,000; December 31, 1943, $200,000), $200,000, whichever amount ($200,000 or $200,000) is the lesser, $200,000, exceeds amount of indebtedness at close of taxable year (December 31, 1944), $200,000)	zero

The credit for debt retirement allowable to the Z Corporation for 1945 is $80,000, computed as follows:

40 per cent of $200,000, the total repaid in 1945 (see section 783(a) and section 35.783–1(*a*))	$80,000

But the credit for debt retirement allowable to the Z Corporation for 1945 may not exceed whichever of the following amounts is the lesser (see section 783(b)(1) and (2) and sections 35.783–1(*b*)(3) and 35.783–3(*c*)(2)):

10 per cent of $900,000 (amount of tax imposed)	$90,000
40 per cent of $200,000 (amount by which amount of indebtedness September 1, 1942, as reconstructed, $200,000, or smallest amount of indebtedness (as reconstructed for 1942 and 1943) at close of any preceding taxable year ending after September 1, 1942 (December 31, 1942, $200,000; December 31, 1943, $200,000; December 31, 1944, $200,000), $200,000, whichever amount ($200,000 or $200,000) is the lesser, $200,000, exceeds amount of indebtedness at close of taxable year (December 31, 1945), zero)	80,000

(*d*) *Proof of credit and records to be kept.*—(1) *Proof.*—The credit under this section with respect to amounts paid by the successor during the taxable year in repayment of the principal of indebtedness assumed by the successor in a succession to which this section is applicable shall not be allowed unless there is submitted to the Commissioner of Internal Revenue, or the collector of internal rev-

enue, a complete statement under oath of all facts necessary to establish the right of the successor to such credit, including—

(i) the names of the several predecessors, the amount of the indebtedness of each predecessor assumed by the successor in the succession, the amount of the indebtedness of each predecessor as of the beginning of September 1, 1942 (determined without regard to such succession), and a complete schedule of the indebtedness of each predecessor for each taxable year of the respective predecessor ending after September 1, 1942, to and including the taxable year in which the succession occurs (determined without regard to such succession for taxable years ending prior to the succession);

(ii) the amount of the indebtedness of the successor as of the beginning of September 1, 1942 (determined without regard to such succession), and a complete schedule of the indebtedness of the successor for each taxable year of such successor ending after September 1, 1942, to and including the taxable year with respect to which the credit is claimed (determined without regard to such succession for taxable years ending prior to the succession);

(iii) a certified copy of each resolution, order, certificate, instrument, document, or other paper pertinent to the transaction resulting in the succession, together with a statement in detail showing all relevant facts with respect to such transaction; and

(iv) such other or additional proof as the Commissioner may deem necessary to establish the right to the credit under this section.

(2) *Records.*—The successor shall keep such records as will enable it to establish its right to the credit under this section.

(*e*) *Definition of predecessor.*—For the purposes of this section, the term "predecessor" means—

(1) in the case of a merger referred to in section 35.780–2(*b*)(1), the several corporations merged, except the corporation into which the other corporations have merged;

(2) in the case of a consolidation referred to in section 35.780–2(*b*)(2), the several corporations consolidated, except the corporation resulting from the consolidation;

(3) in the case of a corporation resulting from a mere change in the identity, form, or place of organization, of another corporation referred to in section 35.780–2(*b*)(3), the corporation other than that resulting from such change;

(4) in the case of a succession referred to in section 35.780–2(*b*)(4), the corporation the property of which was acquired; or

(5) in the case of a liquidation referred to in section 35.780–2(*b*)(5), the corporation the property of which was distributed.

(*f*) *Special election.*—This paragraph applies only to those cases in which, by reason of the provisions of this section, a successor would be entitled, had the election provided for in section 783(a) (see section 35.783–1(*a*)) been duly made, to take any credit for debt retirement in any excess profits tax return filed prior to May 31, 1945, the ninetieth day after the approval of Treasury Decision 5442, in any amount to which such successor would not be entitled were it not for this section. In those cases the election of the successor to take such credit in such amount may be made in an amended excess profits tax return, for the taxable year with respect to which such credit is allowable, filed by the successor (1) on or before such ninetieth day or (2) on or before the last day on which the successor's excess profits tax return for such year is required to be filed (including any extension of time for filing the return granted pursuant to section 53), whichever is the later. The election to take the credit in any other amount in a case to which this paragraph is applicable and the election to take the credit in any amount in a case to which this paragraph is not applicable shall be made in accordance with section 783(a) and section 35.783–1(*a*). If the election under this paragraph is made in an amended return, such return shall fully and accurately set forth all the information required by the return form and by these regulations with respect to the computation of the tax, including the recomputation of the credit for debt retirement, the excess profits tax due, and the post-war credit under section 780(a). The recomputation of the credit for debt retirement shall include (1) any allowable credit for debt retirement for the taxable year duly claimed by the successor in its return previously filed and with respect to which the election under section 35.783–1(*a*) or 35.783–2 has become irrevocable and (2) any allowable credit for debt retirement for the taxable year which the successor elects to take pursuant to this paragraph.

If the election under section 35.783–1(*a*) has not become irrevocable, the recomputation should include, in lieu of the credit mentioned in clause (1) of the preceding sentence with respect to which the election under section 35.783–1(*a*) has not become irrevocable, any allowable credit for debt retirement for the taxable year which the successor desires to take pursuant to an election under such section. The amended return shall not constitute a claim for credit or refund of an overpayment of the tax. If the application of the credit for debt retirement, as recomputed, results in an overpayment of the excess profits tax for the taxable year, a timely claim for credit or refund should be filed in the usual manner. No interest will be allowed or paid upon any such overpayment. For limitations upon credits and refunds generally, see section 322.

(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), as made applicable by section 729(a) of the Internal Revenue Code (54 Stat., 989; 26 U. S. C., 1940 ed., 729(a)), in section 2 of the Joint Resolution approved March 31, 1943 (Public Law 21, Seventy-eighth Congress), and in section 250 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress).)

GEO. J. SCHOENEMAN,
Acting Commissioner of Internal Revenue.

Approved March 2, 1945.

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

(Filed with the Division of the Federal Register March 5, 1945, 10.25 a. m.)

REGULATIONS 112, SECTION 35.780–2: Successor of taxpayer.
(Also Section 30.780–2, Regulations 109.)

INTERNAL REVENUE CODE.

Regulations 109 and 112 amended. (See T. D. 5442, page 289.)

SECTION 781.—SPECIAL RULES FOR APPLICATION OF SECTION 780.

REGULATIONS 112, SECTION 35.781–1: Special rules for application of section 780.
(Also Section 30.781–1, Regulations 109.)

INTERNAL REVENUE CODE.

Regulations 109 and 112 amended. (See T. D. 5442, page 289.)

SECTION 783.—CREDIT FOR DEBT RETIREMENT.

REGULATIONS 112, SECTION 35.783–1: Credit for debt retirement. 1945–4–11968
I. T. 3718

INTERNAL REVENUE CODE.

Computation of the credit for debt retirement under section 783 of the Internal Revenue Code, as amended, in the case of an affiliated group of corporations which files a consolidated excess profits tax return.

Advice is requested relative to the computation of the credit for debt retirement under section 783 of the Internal Revenue Code, as amended,

in the case of an affiliated group of corporations which files a consolidated excess profits tax return.

Section 783(a) of the Internal Revenue Code, subject to the limitations prescribed by section 783(b) of the Code, as amended by section 251(a) of the Revenue Act of 1943 (applicable to taxable years beginning after September 1, 1942), provides that an amount equal to 40 per cent of the amounts paid by the taxpayer during the taxable year in repayment of the principal of indebtedness (as defined in section 783(d) of the Code) shall, if the taxpayer so elects in its return for that year, be allowed as a credit against the excess profits tax for such year. In the case of taxable years beginning after September 1, 1942, section 783(b) of the Code limits the credit under section 783(a) to the lesser of the following amounts:

(1) An amount equal to 10 per centum of the tax imposed under this subchapter for the taxable year.

(2) An amount equal to 40 per centum of the amount by which (A) the amount of indebtedness as of September 1, 1942, or (B) the smallest amount of indebtedness as of the close of any preceding taxable year ending after September 1, 1942, whichever amount is the lesser, exceeds the amount of indebtedness as of the close of the taxable year.

In connection with the computation of the credit for debt retirement, the following questions are presented:

1. Whether, in the case of a consolidated excess profits tax return to be filed for an affiliated group of corporations, the affiliated group is to be considered as the " taxpayer " under section 783 of the Code.

2. If so, whether the 10 per cent limitation applies to the *consolidated* excess profits tax of the affiliated group or whether, where only one member of the group has a net reduction in indebtedness pursuant to section 783 of the Code, the limitation applies to an amount which would constitute the excess profits tax of that member upon a separate return.

In answer to the first question, it is held that where an affiliated group of corporations makes or is required to make consolidated income and excess profits tax returns, the credit for debt retirement under section 783(a) is to be computed as if the affiliated group were the " taxpayer " within the meaning of section 783 of the Code, subject to the following rules:

(I) In computing the aggregate of the amounts paid by the several affiliated corporations during the taxable year in repayment of the principal of indebtedness, there shall be excluded any amounts paid on indebtedness of a corporation, which is a member of the affiliated group, owing to another member of the affiliated group.

(II) In making the computation of the aggregate indebtedness, as of the dates set forth in subparagraph (2) above, of the several corporations which were affiliated for the taxable year, there shall be included the indebtedness of all such corporations, except indebtedness of a corporation owing to another corporation which is a member of the affiliated group, regardless of whether the corporations are affiliated on the date on which the determination is being made and regardless of whether consolidated returns were filed for the taxable year within which such date or dates fall.

In answer to the second question, the 10 per cent limitation provided by section 783(b)(1) of the Code, supra (10 per cent of the excess profits tax imposed upon the taxpayer for the taxable year), in the

case of a consolidated return, is to be based upon the consolidated excess profits tax. As explained above, the aggregate indebtedness of the group, excluding amounts owing to other members of the group, must be taken into consideration in determining whether there has been a reduction in indebtedness within the meaning of section 783(b)(2) of the Code, supra. For example, if the M Corporation and the N Corporation file a consolidated return for 1944, and if, as computed under section 783(b)(2) of the Code, supra, the M Corporation has a reduction in its indebtedness (owing outside the affiliated group) but the N Corporation increases its indebtedness (owing outside the affiliated group) by the same or a greater amount, the affiliated group has not reduced its indebtedness and, consequently, no credit for debt retirement is allowable for such year.

REGULATIONS 112, SECTION 35.783–1: Credit for debt retirement.

INTERNAL REVENUE CODE.

Regulations 112 amended. (See T. D. 5442, page 289.)

REGULATIONS 112, SECTION 35.783–2: Election to take certain credit for debt retirement for taxable years beginning after September 1, 1942, and ending before February 25, 1944.

INTERNAL REVENUE CODE.

Regulations 112 amended. (See T. D. 5442, page 289.)

REGULATIONS 112, SECTION 35.783–3: Credit for debt retirement in case of certain successions.

INTERNAL REVENUE CODE.

Regulations 112 amended. (See T. D. 5442, page 289.)

CHAPTER 5.—BOARD OF TAX APPEALS.

SUBCHAPTER B.—COURT REVIEW OF BOARD DECISIONS.

SECTION 1141.—COURTS OF REVIEW.

1945–2–11941
Ct. D. 1623

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

1. VENUE—JURISDICTION—TIMELINESS AND LEGAL EFFECT OF STIPULATION DESIGNATING COURT TO REVIEW TAX COURT DECISION.

Petitioner filed a petition for review with the Circuit Court of Appeals for the Sixth Circuit within the time allowed for that purpose under section 1142 of the Internal Revenue Code, although the Court of Apeals for the District of Columbia was the court of proper

venue under section 1141(b)(1) of the Code inasmuch as petitioner had filed no returns for the taxable years involved. After the expiration of the 3-month period in which a petition for review could be filed, a stipulation was entered into designating the Sixth Circuit as the court to review the decision of The Tax Court, reserving to the Commissioner the right to challenge the timeliness and legal effect of such stipulation. On the Commissioner's motion the petition was dismissed for want of jurisdiction. *Held:* The Circuit Court of Appeals for the Sixth Circuit acquired jurisdiction of the cause under the statute by the timely filing of the petition, and the parties were authorized by section 1141(b)(2) of the Code to stipulate that the review should be had in that court. Section 1141(b)(2) does not by its terms nor by implication place any time limitation upon the filing of the stipulation. On filing such stipulation the cause was then pending in the court having venue, as well as jurisdiction, and the case was improperly dismissed.

2. CASE DISTINGUISHED.

Nash-Breyer Motor Co. v. *Burnet* (283 U. S., 483 [Ct. D. 343, C. B. X-1, 292 (1931)]) distinguished.

3. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Sixth Circuit (141 Fed. (2d), 636), reversed.

SUPREME COURT OF THE UNITED STATES.

Industrial Addition Association, petitioner, v. *Commissioner of Internal Revenue.*
[323 U. S., 310.]

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

[January 2, 1945.]

OPINION.

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

In this case petitioner, deeming itself exempt from income and excess profits taxes, failed to file any tax returns for the years 1932 to 1936 inclusive. The Commissioner assessed petitioner for the taxes for those years, with penalties, and The Tax Court has sustained the assessment as to the income taxes and attendant penalties. Petitioner, within the three months allowed for that purpose by section 1142 of the Internal Revenue Code, sought review of The Tax Court's decision by a petition for review filed with the Court of Appeals for the Sixth Circuit.

By section 1141(a) of the Internal Revenue Code, entitled "Jurisdiction," the Circuit Courts of Appeals and the Court of Appeals for the District of Columbia are given "exclusive jurisdiction to review the decisions" of The Tax Court. Subsection (b)(1), entitled "Venue," provides that "such decisions may be reviewed by the circuit court of appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect to which the liability arises or, if no return was made, then by the United States Court of Appeals for the District of Columbia." Since petitioner filed no return, the Court of Appeals for the District of Columbia was the court of proper venue under this subsection. If petitioner had made a return, it would have been required to file it with a collector whose office was within the sixth circuit, that of the court below; in that event, that court would have been the court of proper venue. The Code provides further, in subsection (b)(2): "Notwithstanding the provisions of paragraph 1, such decisions may be reviewed by any Circuit Court of Appeals * * * which may be designated by the Commissioner and the taxpayer by stipulation in writing."

The Commissioner suggested to petitioner that as it had filed no returns for the years in question and no written stipulation had been entered into as permitted by subsection (b)(2), the Circuit Court of Appeals for the Sixth Circuit was without "jurisdiction." In response to this suggestion, petitioner and the Commissioner, after the expiration of the three months period in which a petition

for review could be filed, entered into such a written stipulation, designating the Court of Appeals for the Sixth Circuit as the court to review the decision of The Tax Court. The stipulation reserved to the Commissioner the right to challenge its timeliness and legal effect.

The Court of Appeals for the Sixth Circuit, on the Commissioner's motion, dismissed the petition for review for want of jurisdiction. (141 Fed. (2d), 636.) We granted certiorari (323 U. S., —), to resolve an asserted conflict of the decision below, with that of the Court of Appeals for the Fifth Circuit in *Wegener* v. *Commissioner* (119 Fed. (2d), 49). The question presented is whether the court below had jurisdiction of the petition for review of the decision of The Tax Court, notwithstanding petitioner's failure to file the stipulation during the three months period, within which review of The Tax Court's decision could be sought.

The use in juxtaposition, in the statute, of the terms "jurisdiction" and "venue" marks a significant distinction. On the one hand, the statute confers power on the circuit courts of appeals generally, to act judicially on petitions for review presented to them—which is "jurisdiction." On the other, such of those courts as are specified by the statute, or the stipulation which it authorizes, are designated as the place where, for convenience of the courts or parties or both, the petition will be heard—which is "venue."[1] Want of jurisdiction, unlike want of venue, may not be cured by consent of the parties; but when the court has jurisdiction, it has power to decide the case brought before it, even though the court having venue is one sitting in another circuit. (*General Investment Co.* v. *Lake Shore Ry.*, 260 U. S., 261, 272–273; *Burnrite Coal Co.* v. *Riggs*, 274 U. S., 208, 211–212; *General Electric Co.* v. *Marvel Co.*, 287 U. S., 430, 434–435; *Neirbo Co.* v. *Bethlehem Corporation*, 308 U. S., 165, 167–168; *Freeman* v. *Bee Machine Co.*, 319 U. S., 448, 453.) The right to have a cause heard in the court of the proper venue may be lost unless seasonably asserted; and in that event, the court of trial having jurisdiction but not the proper venue may render a judgment binding on the parties. (*General Investment Co.* v. *Lake Shore Ry.*, supra, 272; *Commercial Ins. Co.* v. *Consolidated Stone Co.*, 278 U. S., 177, 179; *Freeman* v. *Bee Machine Co.*, supra, 453.) The Government may waive objections to venue, just as any other litigant may (*United States* v. *Hvoslef*, 237 U. S., 1, 12; *Thames & Mersey Ins. Co.* v. *United States*, 237 U. S., 19, 24–25; *Peoria Railway Co.* v. *United States*, 263 U. S., 528, 535–536), and here such waiver, by stipulation, is contemplated by section 1141(b)(2).

We have no reason to suppose that the terms "jurisdiction" and "venue" were used in the statute in other than their usually accepted meaning, and no convincing reason has been advanced why that meaning should not be accepted here. Unless these plain terms are to be disregarded, all the circuit courts of appeals are given jurisdiction to review decisions of The Tax Court upon a petition for review, that is, power to act judicially upon the petition. (*Peoria Railway Co.* v. *United States*, supra, 535–536.) Consequently when in this case petitioner filed its petition with the Court of Appeals for the Sixth Circuit, that court did not lack power to proceed with the cause, although the court of proper venue was the Court of Appeals for the District of Columbia, as prescribed by section 1141(b)(1). The parties were free to waive this defect of venue, by filing the stipulation in compliance with subsection (b)(2), designating the court below as the one to act upon the petition, which was already before it and of which it then had jurisdiction.

The Government urges that the stipulation here did not comply with section 1141(b)(2), since it was not filed within three months of the decision of The Tax Court. But section 1141(b)(2) does not by its terms place any time limitation upon the filing of the stipulation. The Government relies on the three months limitation in section 1142, which is in terms applicable only to the filing of the petition for review. The petition here was filed within three months in a court having jurisdiction, and we see no reason to import into the stipulation provision, section 1141(b)(2), a time limitation which it does not contain.

It is true, as the Government argues, that dismissal for want of the proper venue, of a petition for review pending in a court of appeals, controls the jurisdiction of the court. But in such a case jurisdiction is controlled only by terminating it. Here the case was not dismissed before want of venue was supplied by stipulation in the manner authorized by the statute. This imposed on the court the duty to exercise its jurisdiction in deciding the case.

[1] See *Peoria Railway Co.* v. *United States* (263 U. S., 528, 535–536), where this Court explained the same distinction made in the Urgent Deficiencies Act (38 Stat., 219, 28 U. S. C., sections 41(28), 43).

The Government relies, as did the court below, on our decision in *Nash-Breyer Motor Co.* v. *Burnet* (283 U. S., 483 [Ct. D. 343, C. B. X–1, 292 (1931)]). When that case arose, the provision in the applicable Revenue Act for choice of venue by stipulation of the parties, did not permit them to stipulate for review in any circuit, but limited their choice to two specified circuits. The parties in that case stipulated for review of a decision of the Board of Tax Appeals in a circuit not authorized by the statute, and thus did not conform to the statutory venue requirement. We sustained the action of the court of appeals in dismissing the petition for review on the ground that the court was not bound to exercise its jurisdiction where the proper venue was in another court, saying (page 487): "The restriction on the power of the parties to stipulate as to venue would be meaningless if they could waive it without the consent of the court." In this case the stipulation conforms to the statute, and is without the infirmity found to be fatal in the Nash-Breyer case.

Here the court acquired jurisdiction of the cause under the statute by the timely filing of the petition for review, and the parties were authorized by section 1141(b)(2) to stipulate that the review should be had in that court. On filing the stipulation the cause was then pending in the court having venue, as well as jurisdiction, and the case was improperly dismissed.

Reversed.

CHAPTER 9.—EMPLOYMENT TAXES.

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

SECTION 1621(a).—DEFINITIONS: WAGES.

REGULATIONS 116, SECTION 405.101: Wages. (Also Section 1622; Section 405.201, Regulations 116.) 1945–10–12046 I. T. 3737

INTERNAL REVENUE CODE.

Death benefit payments made to the beneficiaries or to the estates of deceased employees, and payments made to the beneficiaries or to the estates of deceased employees which represent unpaid compensation for services rendered by the decedent, are not wages subject to withholding of income tax at the source under section 1622 of the Internal Revenue Code, as amended.

Advice is requested whether (1) death benefit payments made to the beneficiaries or to the estates of deceased employees, and (2) payments made to the beneficiaries or to the estates of deceased employees which represent unpaid compensation for services rendered by the decedent, constitute wages subject to withholding of income tax at the source under section 1622 of the Internal Revenue Code, as amended.

Section 1621(a) of the Internal Revenue Code provides in part that the term "wages" means all remuneration for services performed by an employee for his employer, and section 1622(a) of the Code provides in part for the deduction and withholding of specified amounts of income tax by every employer making payment of wages.

Withholding of income tax with respect to the payments here under consideration is not believed to be within the intendment of the general scheme of collection of income tax at the source on wages. Under section 1625 of the Code, an employer is required to furnish to each employee a receipt for taxes withheld. If, in instances of the character herein involved, it were held that amounts paid to the beneficiaries or to the estates of deceased employees are subject to withholding

of income tax under section 1622(a) of the Code, the employees' personal representatives would receive the withholding receipts but the beneficiaries or the estates would be entitled, under section 35 of the Code, as amended, to part of the credit for the tax withheld. Furthermore, withholding exemption certificates are filed by the employees with their employers, and the amounts of tax required to be withheld from wages paid are determined by the exemption certificates so filed. The amounts of tax so determined and withheld with respect to wages paid to the beneficiaries or to the estates of deceased employees would bear no relation to the exemptions to which the beneficiaries or the estates are entitled. There is no authority for requiring exemption certificates from beneficiaries or from estates of deceased employees, since such certificates, under section 1622(h)(2) of the Code, as amended, are required to be filed only by employees.

In view of the foregoing, it is held that death benefit payments made to the beneficiaries or to the estates of deceased employees, and payments made to the beneficiaries or to the estates of deceased employees which represent unpaid compensation for services rendered by the decedent, are not wages subject to withholding of income tax at the source under section 1622 of the Internal Revenue Code, as amended.

REGULATIONS 116, SECTION 405.101: Wages.

INTERNAL REVENUE CODE.

Contributions of employers to a health insurance fund. (See I. T. 3738, page 90.)

REGULATIONS 116, SECTION 405.101: Wages. 1945-11-12052
I. T. 3742

INTERNAL REVENUE CODE.

Retroactive wages and overtime compensation paid by an employer to his employees pursuant to section 16(b) of the Fair Labor Standards Act of 1938 (52 Stat., 1060) constitute wages under section 1621(a) of the Internal Revenue Code and are subject to withholding of income tax at the source, irrespective of whether such amounts are paid as the result of a judgment of a court or in accordance with a stipulation or settlement reached by the parties involved. Payments representing liquidated damages made by an employer to his employees pursuant to section 16(b), supra, do not constitute wages and are not subject to withholding of income tax at the source.

Advice is requested whether retroactive wages, overtime compensation, or payments representing liquidated damages paid by an employer to his employees pursuant to section 16(b) of the Fair Labor Standards Act of 1938 (52 Stat., 1060) constitute wages under section 1621(a) of the Internal Revenue Code and are subject to withholding of income tax at the source.

As a result of an order issued by the United States Department of Labor, the employer has determined that he owes "back wages" to a number of his present and former employees for the period July, 1942, through November, 1943. It is assumed that the amounts determined

to be owing to such employees were paid on or after January 1, 1945. Section 16(b) of the Fair Labor Standards Act of 1938 provides as follows:

> Any employer who violates the provisions of section 6 [section 6 relates to minimum wages] or section 7 [section 7 relates to maximum hours] of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

Section 405.1 of Regulations 116 provides in part as follows:

> * * * These regulations apply to all wages (as defined in section 1621) paid on or after January 1, 1945, regardless of when such wages were earned. * * *

The term " wages," as defined in section 1621(a) of the Code, means all remuneration for services performed by an employee for his employer, with certain exceptions not here material. Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them. (Section 405.101 of Regulations 116.)

It is held that payments of retroactive wages and overtime compensation paid by an employer to his employees pursuant to section 16(b) of the Fair Labor Standards Act of 1938, supra, constitute wages under section 1621(a) of the Code and are subject to withholding of income tax at the source, irrespective of whether such amounts are paid as the result of a judgment of a court or in accordance with a stipulation or settlement reached by the parties involved. It is further held that payments representing liquidated damages made by an employer to his employees pursuant to section 16(b) of the Fair Labor Standards Act of 1938, supra, do not constitute wages and are not subject to withholding of income tax at the source.

REGULATIONS 116, SECTION 405.101: Wages. 1945–16–12110
(Also Section 51, Section 29.51–2; Section 1625, I. T. 3755
Section 405.501, Regulations 116.)

INTERNAL REVENUE CODE.

Treatment of occupational expenses in the case of coal miners for the purpose of withholding of income tax and the filing of income tax returns.

Advice is requested whether that part of the remuneration of coal miners which represents occupational expenses is subject to withholding of income tax at the source. Advice is also requested with respect to the amounts an employer should show as total wages on withholding

receipts (Form W–2) for 1945 and subsequent taxable years in the case of coal miners, and whether such miners may use their withholding receipts as Federal income tax returns.

Section 1621(a) of the Internal Revenue Code provides in part as follows:

As used in this subchapter—

(a) WAGES.—The term "wages" means all remuneration * * * for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; * * *

Section 405.101(*c*) of Regulations 116 provides as follows:

(c) TRAVELING AND OTHER EXPENSES.—Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

Section 1625(a) of the Internal Revenue Code provides in part as follows:

(a) REQUIREMENT.—Every employer required to deduct and withhold a tax in respect of the wages of an employee shall furnish to each such employee in respect of his employment during the calendar year, on or before January 31 of the succeeding year * * * a written statement showing the wages paid by the employer to such employee during such calendar year, and the amount of the tax deducted and withheld under this subchapter in respect of such wages.

It is held that amounts representing charges or expenditures for explosives, fuses, cartridge paper, detonating caps, lamps (and batteries and belts for use in connection therewith), smithing service, tools, miners' checks, self-rescuers, and safety clothing, which items are used in mining operations, do not constitute wages subject to withholding of income tax at the source. Such amounts should be deducted from the total remuneration, and the remainder should be entered as wages on withholding receipts for 1945 and subsequent taxable years. However, amounts deducted from the employees' wages for payment of union dues and salaries of check weighmen should be included in the computation of wages.

It is also held that coal miners whose occupational expenses do not constitute wages subject to withholding of income tax at the source may not use their withholding receipts as Federal income tax returns. To allow them to do so would, in effect, permit a double deduction with respect to their occupational expenses, since the amount shown on the withholding receipts would not reflect the amount of such expenses nor the correct income tax liability in cases in which such receipts are used as returns and the tax is determined by use of the tax table in Supplement T, section 400, which makes allowances for deductions, including such expenses. Such taxpayers should file their income tax returns on Form 1040. Where the gross income of a coal miner is less than $5,000 and he elects to make a short-form return on Form 1040, he should include therein the gross amount of his earnings, inclusive of the amount of occupational expenses, and determine the tax by use of the tax table, but if he elects to make a long-form return on Form 1040, he should include the gross amount of his earnings and itemize and deduct his occupational expenses.

SECTION 1622.—INCOME TAX COLLECTED AT SOURCE.

REGULATIONS 116, SECTION 405.201: Requirement of withholding. 1945–24–12194 Mim. 5952

Expanded use of the daily or miscellaneous withholding tax table under the Revenue Act of 1945—Mimeograph 5764 (C. B. 1944, 450) cited.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 3, 1945.

Collectors of Internal Revenue and Others Concerned:

1. The Revenue Act of 1945 provides for certain reductions in the amount of income tax to be withheld at the source on wages. The tables contained in section 1622(c)(1) of the Internal Revenue Code, as amended, have been further amended by section 104(b) of the 1945 Act. Changes affecting the withholding tax tables for payroll periods ending weekly, biweekly, semimonthly, and monthly and for daily or miscellaneous payroll periods, and the percentage method of withholding are fully explained in Circular WT—Revised 1945, entitled "Withholding of Income Tax from Wages."

2. The purpose of this mimeograph is to furnish expanded miscellaneous tables based on the table for a daily or miscellaneous payroll period prescribed by the Revenue Act of 1945. The instructions contained in Mim. 5764 (C. B. 1944, 450) are applicable to such expanded tables published herewith. These tables may be reproduced by collectors for distribution to employers who have payroll periods of either 10 or 28 days and who desire withholding tax tables for those payroll periods. Collectors should exercise care to avoid error in reproducing the tables. The expanded tables are effective *only* for wages paid on or after *January 1, 1946*, in accordance with section 104(e) of the Revenue Act of 1945.

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

JOSEPH D. NUNAN, JR.,
Commissioner.

WITHHOLDING TAX TABLE BASED ON THE REVENUE ACT OF 1945 AND EFFECTIVE FOR WAGES PAID ON AND AFTER JANUARY 1, 1946.

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

And the wages are		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$15.00	17% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$15.00	$17.50	$3.00	0	0	0	0	0	0	0	0	0	0
$17.50	$20.00	3.00	.50	0	0	0	0	0	0	0	0	0
$20.00	$22.50	3.50	1.00	0	0	0	0	0	0	0	0	0
$22.50	$25.00	4.00	1.50	0	0	0	0	0	0	0	0	0
$25.00	$27.50	4.50	2.00	0	0	0	0	0	0	0	0	0
$27.50	$30.00	5.00	2.50	0	0	0	0	0	0	0	0	0
$30.00	$32.50	5.50	2.50	0	0	0	0	0	0	0	0	0
$32.50	$35.00	6.00	3.00	.50	0	0	0	0	0	0	0	0
$35.00	$37.50	6.00	3.50	1.00	0	0	0	0	0	0	0	0
$37.50	$40.00	6.50	4.00	1.50	0	0	0	0	0	0	0	0
$40.00	$42.50	7.00	4.50	2.00	0	0	0	0	0	0	0	0
$42.50	$45.00	7.50	5.00	2.50	0	0	0	0	0	0	0	0
$45.00	$47.50	8.00	5.50	2.50	0	0	0	0	0	0	0	0
$47.50	$50.00	8.50	5.50	3.00	.50	0	0	0	0	0	0	0
$50.00	$52.50	9.00	6.00	3.50	1.00	0	0	0	0	0	0	0
$52.50	$55.00	9.00	6.50	4.00	1.50	0	0	0	0	0	0	0
$55.00	$57.50	9.50	7.00	4.50	2.00	0	0	0	0	0	0	0
$57.50	$60.00	10.00	7.50	5.00	2.00	0	0	0	0	0	0	0
$60.00	$62.50	10.50	8.00	5.50	2.50	0	0	0	0	0	0	0
$62.50	$65.00	11.00	8.50	5.50	3.00	.50	0	0	0	0	0	0
$65.00	$67.50	11.50	8.50	6.00	3.50	1.00	0	0	0	0	0	0
$67.50	$70.00	12.00	9.00	6.50	4.00	1.50	0	0	0	0	0	0
$70.00	$72.50	12.50	9.50	7.00	4.50	2.00	0	0	0	0	0	0
$72.50	$75.00	13.00	10.00	7.50	5.00	2.00	0	0	0	0	0	0
$75.00	$77.50	13.50	10.50	8.00	5.00	2.50	0	0	0	0	0	0
$77.50	$80.00	14.00	11.00	8.50	5.50	3.00	.50	0	0	0	0	0
$80.00	$82.50	14.00	11.50	8.50	6.00	3.50	1.00	0	0	0	0	0
$82.50	$85.00	14.50	12.00	9.00	6.50	4.00	1.50	0	0	0	0	0
$85.00	$87.50	15.00	12.50	9.50	7.00	4.50	1.50	0	0	0	0	0
$87.50	$90.00	15.50	13.00	10.00	7.50	5.00	2.00	0	0	0	0	0
$90.00	$92.50	16.00	13.50	10.50	8.00	5.00	2.50	0	0	0	0	0
$92.50	$95.00	16.50	13.50	11.00	8.00	5.50	3.00	.50	0	0	0	0
$95.00	$97.50	17.00	14.00	11.50	8.50	6.00	3.50	1.00	0	0	0	0
$97.50	$100.00	17.50	14.50	12.00	9.00	6.50	4.00	1.50	0	0	0	0
$100.00	$105.00	18.00	15.50	12.50	9.50	7.00	4.50	2.00	0	0	0	0
$105.00	$110.00	19.00	16.50	13.50	10.50	8.00	5.50	3.00	0	0	0	0
$110.00	$115.00	20.00	17.50	14.50	11.50	9.00	6.00	3.50	1.00	0	0	0
$115.00	$120.00	21.00	18.00	15.50	12.50	9.50	7.00	4.50	2.00	0	0	0
$120.00	$125.00	22.00	19.00	16.50	13.50	10.50	8.00	5.50	2.50	0	0	0
$125.00	$130.00	23.00	20.00	17.00	14.50	11.50	9.00	6.00	3.50	1.00	0	0
$130.00	$135.00	24.00	21.00	18.00	15.50	12.50	9.50	7.00	4.50	2.00	0	0
$135.00	$140.00	25.00	22.00	19.00	16.00	13.50	10.50	8.00	5.50	2.50	0	0
$140.00	$145.00	26.00	23.00	20.00	17.00	14.50	11.50	9.00	6.00	3.50	1.00	0
$145.00	$150.00	26.50	24.00	21.00	18.00	15.00	12.50	9.50	7.00	4.50	2.00	0
$150.00	$155.00	27.50	25.00	22.00	19.00	16.00	13.50	10.50	8.00	5.50	2.50	0
$155.00	$160.00	28.50	25.50	23.00	20.00	17.00	14.50	11.50	8.50	6.00	3.50	1.00
$160.00	$165.00	29.50	26.50	24.00	21.00	18.00	15.00	12.50	9.50	7.00	4.50	2.00
$165.00	$170.00	30.50	27.50	24.50	22.00	19.00	16.00	13.50	10.50	8.00	5.00	2.50
$170.00	$175.00	31.50	28.50	25.50	23.00	20.00	17.00	14.00	11.50	8.50	6.00	3.50
$175.00	$180.00	32.50	29.50	26.50	24.00	21.00	18.00	15.00	12.50	9.50	7.00	4.50
$180.00	$185.00	33.50	30.50	27.50	24.50	22.00	19.00	16.00	13.00	10.50	8.00	5.00
$185.00	$190.00	34.00	31.50	28.50	25.50	23.00	20.00	17.00	14.00	11.50	8.50	6.00
$190.00	$195.00	35.00	32.50	29.50	26.50	23.50	21.00	18.00	15.00	12.50	9.50	7.00
$195.00	$200.00	36.00	33.00	30.50	27.50	24.50	22.00	19.00	16.00	13.00	10.50	7.50
$200.00	$210.00	37.50	34.50	32.00	29.00	26.00	23.00	20.50	17.50	14.50	12.00	9.00
$210.00	$220.00	39.50	36.50	33.50	31.00	28.00	25.00	22.00	19.50	16.50	13.50	11.00
$220.00	$230.00	41.50	38.50	35.50	32.50	30.00	27.00	24.00	21.00	18.50	15.50	12.50
$230.00	$240.00	43.00	40.50	37.50	34.50	31.50	29.00	26.00	23.00	20.50	17.50	14.50
$240.00	$250.00	45.00	42.00	39.50	36.50	33.50	30.50	28.00	25.00	22.00	19.50	16.50
$250.00	$260.00	47.00	44.00	41.00	38.50	35.50	32.50	29.50	27.00	24.00	21.00	18.50
$260.00	$270.00	49.00	46.00	43.00	40.00	37.50	34.50	31.50	29.00	26.00	23.00	20.00
$270.00	$280.00	50.50	48.00	45.00	42.00	39.00	36.50	33.50	30.50	28.00	25.00	22.00
$280.00	$290.00	52.50	49.50	47.00	44.00	41.00	38.00	35.50	32.50	29.50	27.00	24.00
$290.00	$300.00	54.50	51.50	48.50	46.00	43.00	40.00	37.50	34.50	31.50	28.50	26.00
		19 per cent of the excess over $300 plus—										
$300.00 and over		55.50	52.50	49.50	47.00	44.00	41.00	38.00	35.50	32.50	29.50	27.00

WITHHOLDING TAX TABLE BASED ON THE REVENUE ACT OF 1945 AND EFFECTIVE FOR WAGES PAID ON AND AFTER JANUARY 1, 1946.

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

And the wages are		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$42.00	17% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$42.00	$49.00	$8.40	0	0	0	0	0	0	0	0	0	0
$49.00	$56.00	8.40	1.40	0	0	0	0	0	0	0	0	0
$56.00	$63.00	9.80	2.80	0	0	0	0	0	0	0	0	0
$63.00	$70.00	11.20	4.20	0	0	0	0	0	0	0	0	0
$70.00	$77.00	12.60	5.60	0	0	0	0	0	0	0	0	0
$77.00	$84.00	14.00	7.00	0	0	0	0	0	0	0	0	0
$84.00	$91.00	15.40	7.00	0	0	0	0	0	0	0	0	0
$91.00	$98.00	16.80	8.40	1.40	0	0	0	0	0	0	0	0
$98.00	$105.00	16.80	9.80	2.80	0	0	0	0	0	0	0	0
$105.00	$112.00	18.20	11.20	4.20	0	0	0	0	0	0	0	0
$112.00	$119.00	19.60	12.60	5.60	0	0	0	0	0	0	0	0
$119.00	$126.00	21.00	14.00	7.00	0	0	0	0	0	0	0	0
$126.00	$133.00	22.40	15.40	7.00	0	0	0	0	0	0	0	0
$133.00	$140.00	23.80	15.40	8.40	1.40	0	0	0	0	0	0	0
$140.00	$147.00	25.20	16.80	9.80	2.80	0	0	0	0	0	0	0
$147.00	$154.00	25.20	18.20	11.20	4.20	0	0	0	0	0	0	0
$154.00	$161.00	26.60	19.60	12.60	5.60	0	0	0	0	0	0	0
$161.00	$168.00	28.00	21.00	14.00	5.60	0	0	0	0	0	0	0
$168.00	$175.00	29.40	22.40	15.40	7.00	0	0	0	0	0	0	0
$175.00	$182.00	30.80	23.80	15.40	8.40	1.40	0	0	0	0	0	0
$182.00	$189.00	32.20	23.80	16.80	9.80	2.80	0	0	0	0	0	0
$189.00	$196.00	33.60	25.20	18.20	11.20	4.20	0	0	0	0	0	0
$196.00	$203.00	35.00	26.60	19.60	12.60	5.60	0	0	0	0	0	0
$203.00	$210.00	36.40	28.00	21.00	14.00	5.60	0	0	0	0	0	0
$210.00	$217.00	37.80	29.40	22.40	14.00	7.00	0	0	0	0	0	0
$217.00	$224.00	39.20	30.80	23.80	15.40	8.40	1.40	0	0	0	0	0
$224.00	$231.00	39.20	32.20	23.80	16.80	9.80	2.80	0	0	0	0	0
$231.00	$238.00	40.60	33.60	25.20	18.20	11.20	4.20	0	0	0	0	0
$238.00	$245.00	42.00	35.00	26.60	19.60	12.60	4.20	0	0	0	0	0
$245.00	$252.00	43.40	36.40	28.00	21.00	14.00	5.60	0	0	0	0	0
$252.00	$259.00	44.80	37.80	29.40	22.40	14.00	7.00	0	0	0	0	0
$259.00	$266.00	46.20	37.80	30.80	22.40	15.40	8.40	1.40	0	0	0	0
$266.00	$273.00	47.60	39.20	32.20	23.80	16.80	9.80	2.80	0	0	0	0
$273.00	$280.00	49.00	40.60	33.60	25.20	18.20	11.20	4.20	0	0	0	0
$280.00	$294.00	50.40	43.40	35.00	26.60	19.60	12.60	5.60	0	0	0	0
$294.00	$308.00	53.20	46.20	37.80	29.40	22.40	15.40	8.40	0	0	0	0
$308.00	$322.00	56.00	49.00	40.60	32.20	25.20	16.80	9.80	2.80	0	0	0
$322.00	$336.00	58.80	50.40	43.40	35.00	26.60	19.60	12.60	5.60	0	0	0
$336.00	$350.00	61.60	53.20	46.20	37.80	29.40	22.40	15.40	7.00	0	0	0
$350.00	$364.00	64.40	56.00	47.60	40.60	32.20	25.20	16.80	9.80	2.80	0	0
$364.00	$378.00	67.20	58.80	50.40	43.40	35.00	26.60	19.60	12.60	5.60	0	0
$378.00	$392.00	70.00	61.60	53.20	44.80	37.80	29.40	22.40	15.40	7.00	0	0
$392.00	$406.00	72.80	64.40	56.00	47.60	40.60	32.20	25.20	16.80	9.80	2.80	0
$406.00	$420.00	74.20	67.20	58.80	50.40	42.00	35.00	26.60	19.60	12.60	5.60	0
$420.00	$434.00	77.00	70.00	61.60	53.20	44.80	37.80	29.40	22.40	15.40	7.00	0
$434.00	$448.00	79.80	71.40	64.40	56.00	47.60	40.60	32.20	23.80	16.80	9.80	2.80
$448.00	$462.00	82.60	74.20	67.20	58.80	50.40	42.00	35.00	26.60	19.60	12.60	5.60
$462.00	$476.00	85.40	77.00	68.60	61.60	53.20	44.80	37.80	29.40	22.40	14.00	7.00
$476.00	$490.00	88.20	79.80	71.40	64.40	56.00	47.60	39.20	32.20	23.80	16.80	9.80
$490.00	$504.00	91.00	82.60	74.20	67.20	58.80	50.40	42.00	35.00	26.60	19.60	12.60
$504.00	$518.00	93.80	85.40	77.00	68.60	61.60	53.20	44.80	36.40	29.40	22.40	14.00
$518.00	$532.00	95.20	88.20	79.80	71.40	64.40	56.00	47.60	39.20	32.20	23.80	16.80
$532.00	$546.00	98.00	91.00	82.60	74.20	65.80	58.80	50.40	42.00	35.00	26.60	19.60
$546.00	$560.00	100.80	92.40	85.40	77.00	68.60	61.60	53.20	44.80	36.40	29.40	21.00
$560.00	$588.00	105.00	96.60	89.60	81.20	72.80	64.40	57.40	49.00	40.60	33.60	25.20
$588.00	$616.00	110.60	102.20	93.80	86.80	78.40	70.00	61.60	54.60	46.20	37.80	30.80
$616.00	$644.00	116.20	107.80	99.40	91.00	84.00	75.60	67.20	58.80	51.80	43.40	35.00
$644.00	$672.00	120.40	113.40	105.00	96.60	88.20	81.20	72.80	64.40	57.40	49.00	40.60
$672.00	$700.00	126.00	117.60	110.60	102.20	93.80	85.40	78.40	70.00	61.60	54.60	46.20
$700.00	$728.00	131.60	123.20	114.80	107.80	99.40	91.00	82.60	75.60	67.20	58.80	51.80
$728.00	$756.00	137.20	128.80	120.40	112.00	105.00	96.60	88.20	81.20	72.80	64.40	56.00
$756.00	$784.00	141.40	134.40	126.00	117.60	109.20	102.20	93.80	85.40	78.40	70.00	61.60
$784.00	$812.00	147.00	138.60	131.60	123.20	114.80	106.40	99.40	91.00	82.60	75.60	67.20
$812.00	$840.00	152.60	144.20	135.80	128.80	120.40	112.00	105.00	96.60	88.20	79.80	72.80
$840 and over		19 per cent of the excess over $840 plus—										
		155.40	147.00	138.60	131.60	123.20	114.80	106.40	99.40	91.00	82.60	75.60

REGULATIONS 116, SECTION 405.201: Requirement of withholding.

INTERNAL REVENUE CODE.

Amounts distributed to employees of a club from a Christmas fund made up of contributions by club members. (See I. T. 3726, page 63.)

REGULATIONS 116, SECTION 405.201: Requirement of withholding.

INTERNAL REVENUE CODE.

Payments made to beneficiaries or to estates of deceased employees. (See I. T. 3737, page 319.)

REGULATIONS 116, SECTION 405.201: Requirement of withholding.

INTERNAL REVENUE CODE.

Tuition and maintenance stipends paid under Title V of the Social Security Act. (See I. T. 3756, page 64.)

REGULATIONS 116, SECTION 405.205: Right to claim withholding exemptions.

INTERNAL REVENUE CODE.

Number of withholding exemptions allowable to a serviceman's wife who receives a monthly family allowance for herself and two children. (See I. T. 3723, page 122.)

SECTION 1622(i).—INCOME TAX COLLECTED AT SOURCE: OVERLAPPING PAY PERIODS, AND SO FORTH.

REGULATIONS 116, SECTION 405.209: Supplemental wage payments. 1945–3–11955 T. D. 5431

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PART 405.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES.

Amending section 405.209 of Regulations 116, relating to supplemental wage payments.

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

To Collectors of Internal Revenue and Others Concerned:

Section 405.209 of Regulations 116 [Part 405, Title 26, Code of Federal Regulations, 1944 Sup.] is amended by adding at the end thereof the following:

(c) *Vacation allowances.*—Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for

the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the rules applicable with respect to supplemental wage payments shall apply to such vacation allowance.

(This Treasury decision is issued under the authority contained in section 1622 of the Internal Revenue Code (57 Stat., 128; 26 U. S. C., 1940 ed., Sup. III, 1622) and section 3791 of the Internal Revenue Code (53 Stat., 467; 26 U. S. C., 3791).)

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

Approved January 19, 1945.

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

(Filed with the Division of the Federal Register January 20, 1945, 3.44 p. m.)

SECTION 1625.—RECEIPTS.

REGULATIONS 116, SECTION 405.501: Receipts for tax withheld at source on wages. 1945–11–12053 Circular 1798

Reproduction of Form W–2, "Withholding Receipt—1945" (Amendment to Circular 1738 [C. B. 1944, 461].)

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., May 15, 1945.

To Collectors of Internal Revenue and Others Concerned:

Reference is made to the next to the last paragraph of Circular 1738 [C. B. 1944, 461], dated November 17, 1944, which states it is essential that all Forms W–2 for the year 1945 bear serial numbers in black ink in the appropriate space in order to facilitate the handling and matching of documents.

It has been concluded that the serial number is no longer needed on the 1945 withholding tax receipts, and Circular 1738 is, therefore, hereby amended by eliminating the penultimate paragraph thereof.

Correspondence relative to the contents of this circular should refer to its number and to the cymbols A&C: Col.

JOSEPH D. NUNAN, Jr.,
Commissioner.

REGULATION 116, SECTION 405.501: Receipts for tax withheld at source on wages.

INTERNAL REVENUE CODE.

Coal miners whose occupational expenses do not constitute wages subject to withholding of income tax at the source. (See I. T. 3755, page 321.)

REGULATIONS 116, SECTION 405.501: Receipts for tax withheld at source on wages. 1945–15–12100 Circular 1816

Revision of Withholding Receipt, 1945, Form W-2.—Circulars 1715 [unpublished] and 1738 [C. B. 1944, 461] revoked in part.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., July 17, 1945.

Collectors of Internal Revenue and Others Concerned:

1. Withholding Receipt, Form W–2, has been revised, the principal changes being these:

(*a*) the location of the spaces for the name and address of the employer and the employee have been interchanged to facilitate the sorting and handling of forms, it being felt that the benefits of this arrangement outweigh the possible benefit of placing the employee's name in a position permitting the use of window envelopes;

(*b*) the optional form for the employee's income tax return is entirely on one page, the back of the original;

(*c*) the instructions have been amplified and placed on the back of the duplicate; and

(*d*) a special identifying mark has been placed on Form W–2a.

2. A small supply of the revised form is being furnished to permit collectors' employees to become familiar with the form and for use as samples by printers and others who wish to reproduce the form. It is expected that the new forms required for general distribution will be available to collectors about October 1, 1945.

3. Form W–2 may be reproduced, but its reproduction must have official approval. Requests for such approval should be addressed to the Commissioner of Internal Revenue, Attention: A&C: Col: O, Washington 25, D. C., and must include a sample of the proposed reproduction. The following specifications must be met:

(*a*) *Color and quality of paper:* The forms must be printed on buff paper of substantially the same weight and texture, and of quality as good as that used by the Government. The use of wax-coated paper will not be permitted.

(*b*) *Typography:* The reproduction must be printed in black ink, using type not smaller than the corresponding type on the official form and, as nearly as possible, of the same font. A limited rearrangement of the face of the form will be permitted, but the name of the employee must appear at the top of the form and the space for the collector's use must be of the same size and in the same relative position as on the official form. A separate showing of the old age benefit tax deduction will be permitted if clearly indicated as such. However, only one amount of wages will be permitted to be shown, the gross wages before any pay-roll deductions of any nature have been made. No rearrangement of the material on the backs of the original or duplicate will be permitted.

(*c*) *Dimensions:* The official size of the form is 8 inches wide by 3⅔ inches in depth, but the depth may be varied from 3½ to 3¾ inches.

(*d*) *Carbonized forms or "spot carbons"* are not permissible. Interleaved carbon, if used, must be of good quality to preclude smudging.

(*e*) *The Government Printing Office symbol* must be omitted from reproduced forms.

(*f*) *Authorized reproduction:* An approved form must bear the notation "App. B. I. R." and the date of its approval in small type on the bottom margin, left-hand side of the face of the form. Additional approval will not be required for a form previously approved if the only change is in the printing of the employer's name, address, and, if desired, the employer's identification number.

4. Both the revised form and the one it replaces will be acceptable for all purposes for the year 1945, and employers and others who have reproduced the old style form may continue to use it. Commercial printers who reproduce the form in quantity for sale to their customers are urged to adopt the revised form as promptly as possible. On and after August 1, 1945, authorizations will be for the reproduction of the revised form unless it can be shown that work on the old style form, to be submitted as a sample with the request, has progressed to the stage a definite loss would be sustained through its abandonment.

5. The provisions of Circulars 1715 [unpublished] and 1738 [C. B. 1944, 461] and any other instructions inconsistent with the provisions of this circular are hereby revoked.

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

JOSEPH D. NUNAN, Jr.,
Commissioner.

REGULATIONS 116, SECTION 405.501: Receipts for tax withheld at source on wages. 1945–23–12180 Circular 1837

Form W–2, Withholding Statement for 1946.—Rules for reproduction.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., November 13, 1945.

Collectors of Internal Revenue and Others Concerned:

1. Form W–2 for the year 1946 is changed slightly from the revision of June, 1945. To conform to the Revenue Act of 1945, recently enacted, the new revision of Form W–2 is necessary. The principal changes are in the title of the form and in the instructions to the employer on the triplicate copy. The 1946 printing will be made on white paper.

2. Form W–2 for 1946 may be reproduced, but its reproduction must have official approval. Requests for such approval should be addressed to the Commissioner of Internal Revenue, Attention: A&C: Col: O, Washington 25, D. C., and must include a sample of the proposed reproduction. The following specifications must be met:

(*a*) *Color and quality of paper:* The forms must be printed on white paper of substantially the same weight and texture, and of quality as good as that used by the Government. The use of wax-coated paper will not be permitted.

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(*b*) *Typography:* The reproduction must be printed in black ink using type not smaller than the corresponding type on the official form and, as nearly as possible, of the same font. A limited rearrangement of the face of the form will be permitted, but the name of the employee must appear at the top of the form. The space provided for the collector's use may not be reduced in size unless proved necessary, and in no event may the height of such space be reduced more than one-half inch. It must be in the same relative position as on the official form. A separate showing of the old-age benefits tax deduction will be permitted if clearly indicated as such. However, only one amount of wages will be permitted to be shown, the gross wages before any payroll deductions of any nature have been made. No rearrangement of the material on the backs of the original or duplicate will be permitted.

(*c*) *Dimensions:* The official size of the form is 8 inches wide by 3⅔ inches in depth, but the depth may be varied from 3½ to 3¾ inches.

(*d*) *Carbonized forms or "spot carbons"* are not permissible. Interleaved carbon, if used, must be of good quality to preclude smudging.

(*e*) *The Government Printing Office symbol* must be omitted from reproduced forms.

(*f*) *Authorized reproduction:* An approved form must bear the notation "App. B. I. R." and the date of its approval in small type on the bottom margin, left-hand side of the face of the form.

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

JOSEPH D. NUNAN, Jr.,
Commissioner.

SECTION 3670.—PROPERTY SUBJECT TO LIEN.

1945–23–12181
Ct. D. 1651

FEDERAL TAXES—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. LIEN FOR FEDERAL TAXES—PRIORITY—AFTER-ACQUIRED PROPERTY.

In 1941 petitioner bank obtained a judgment in a Pennsylvania State court against an individual against whom the United States had unpaid, judicially established, income tax claims for the years 1920, 1921, and 1922. The trustee of a brewing company, now in bankruptcy, owes the individual a debt for past services as a State court receiver of the bankrupt. The bank seeks to recover on the debt under a lien alleged to have been created by an attachment-execution issued on its State court judgment and served on the trustee in bankruptcy February 21, 1941. The United States claims priority by virtue of a tax lien under sections 3670 and 3671 of the Internal Revenue Code, which both parties admit arose in 1935, five years prior to the taxpayer's services as receiver. *Held:* The tax lien of the United States under sections 3670 and 3671 of the Internal Revenue Code is not limited to property owned by the delinquent when the lien arose, but includes the debt in question which was an obligation for services rendered already existing when the petitioner bank filed the suit resulting in the judgment. The lien applies to property owned by the delinquent at any time during the life of the lien, and thus includes after-acquired property.

2. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Third Circuit (146 Fed. (2d), 831), affirming judgment of the United States District Court, W. D. Pa. (54 Fed. Supp., 11), affirmed.

SUPREME COURT OF THE UNITED STATES.

Glass City Bank of Jeanette, Pa., petitioner, v. *The United States of America.*
[66 S. Ct. 108.]

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

[November 13, 1945.]

OPINION.

Mr. Justice BLACK delivered the opinion of the Court.

In 1941 the petitioner bank obtained a judgment in a Pennsylvania State court against one Frank A. Maddas, for about $19,000. The United States had unpaid, judicially established, income tax claims against Maddas for the years 1920, 1921, and 1922,[1] which exceed $1,000,000. (40 B. T. A., 572; 114 Fed. (2d), 548.) Because of Maddas' past services as a State court receiver of a brewing company, the trustee of that company, now in bankruptcy, owes Maddas $3,228.53. The issue here is whether the bank or the Government may recover on the debt owed to Maddas. The bank claims under a lien alleged to have been created by an attachment-execution issued on its State court judgment and served on the trustee in bandruptcy February 21, 1941. The United States claimed priority, by virtue of a tax lien under 26 U. S. C., sections 3670, 3671,[2] which both parties admit arose in 1935, five years prior to the taxpayer's services as receiver. The contention of the bank in the district court[3] was that the statutory tax lien, which became effective in 1935, did not cover Maddas' claim since it did not exist when the lien arose but only thereafter, and that the Government, therefore, could reach the debt only by garnishment or distraint as provided by other sections of the Internal Revenue Code. The circuit court of appeals concluded that the statutory tax lien did cover after-acquired property and accordingly affirmed the district court's judgment for the United States. (146 Fed. (2d), 831.) We granted certiorari because of statements made in the opinions of other courts which seemed to conflict with the conclusion below. (*United States* v. *Long Island Drug Co.*, 115 Fed. (2d), 983; *United States* v. *Pacific Railroad*, 1 Fed., 97.)

By section 3670, 26 U. S. C., Congress impressed a lien upon "all property and rights to property, whether real or personal, belonging" to a tax delinquent. Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes. Not content with this language, however, Congress also provided that the lien should "continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." (26 U. S. C., section 3671.) These two sections read together indicate that a continuing lien covers property or rights to property in the delinquent's hands at any time prior to expiration. This is confirmed by section 3678, which provides that "whether distraint proceedings have been commenced or not," action to enforce the lien may be instituted against "any property and rights to property, whether real or personal, or to subject any such property and rights to property *owned by the delinquent*, or in which he *has* any right, title or interest, to the payment of such tax." (Italics supplied.) For here is a plain intent to subject to the lien "property owned by the delinquent" when suit is filed, rather than only that owned when the lien arose. Indeed, the meaning of these sections is so plain as to render

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[1] There is also a claim for 1936 taxes which raises different questions that need not be considered here.

[2] SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

Section 3672 provides that the lien shall not be valid against any mortgagee, pledgee, purchaser, or judgment creditor until notice is filed in an office designated by State law or in the office of the clerk of the United States district court. Here such notice was duly filed.

[3] The district court acquired jurisdiction because the indebtedness to Maddas was due from the trustee. The procedure by which that jurisdiction was acquired is sufficiently set forth in the opinions below and need not be repeated here. (54 Fed. Supp., 11; 146 Fed. (2d), 831.)

superfluous a detailed discussion of the legislative history which is consistent with our interpretation.[4]

Furthermore the agencies administering the statute have construed it in the same way. Thus, in 1928 General Counsel Memorandum No. 4715 (C. B. VII-2, 94 [1928]), declared that "a delinquent taxpayer may at any time prior to the expiration of the statutory period of limitation become possessed of property against which the lien may attach, thus making the tax liability enforceable through the lien." Again in Treasury Decision 4275 (C. B. VII-2, 167 [1928]), collectors were admonished to keep on the alert where notice of liens had been filed, so as to extend the period of their effectiveness "whenever it is reasonably possible that the taxpayer may, in the future, acquire property or property rights from which the tax liability may be satisfied." And in *Graves* v. *Commissioner* (12 B. T. A., 124, 133), the Tax Board said that the lien applied, "of course, to all the property that the tax debtor subsequently acquired."

The bank's arguments on behalf of a statutory construction supporting its claims are without merit. We are told that to increase unduly the scope of the Government's lien is unwise. But most of the objections raised would apply not merely to liens that cover after-acquired property, but also with equal force to most other types of liens. At any rate the wisdom of legislation is a question for Congress. We are further told that the tax lien can not attach to Maddas' claim because the law of Pennsylvania, where this obligation arose, does not treat "future earning capacity" as "property or rights to property." But the question of whether the tax lien covers future earning capacity is not before us. For the Government here seeks to reach an already existing obligation for services rendered, which clearly falls within the statutory language. (Cf. *Matter of Rosenberg*, 269 N. Y., 247 [Ct. D. 1069, C. B. XV-1, 258 (1936)].) Moreover, the Congressional meaning is not to be determined by resorting to the local law of Pennsylvania. (*United States* v. *Snyder*, 149 U. S., 210; *Helvering* v. *Stuart*, 317 U. S., 154, 161-162 [Ct. D. 1566, C. B. 1942-2, 198].)

Our conclusion is that the lien applies to property owned by the delinquent at any time during the life of the lien. This is in accord with all the cases that have directly passed upon this question.[5] As previously noted, there are two cases which contain language which might lead to another conclusion. But nothing there said offers any persuasive reason for restricting the scope of the lien.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Dissenting opinion by Mr. Justice RUTLEDGE, in which Mr. Justice FRANKFURTER and Mr. Justice DOUGLAS join.

CHAPTER 38.—MISCELLANEOUS PROVISIONS.

SECTION 3797.—DEFINITIONS.

SECTION 29.3797-2: Association. 1945-16-12111
(Also Section 19.3797-2, Regulations 103.) T. D. 5468

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

Amending section 19.3797-2 of Regulations 103, and section 29.3797-2 of Regulations 111, relating to the definition of association.

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[4] 14 Stat., 98, 107; 15 Stat., 125, 167; 37 Stat., 1016; 45 Stat., 791, 875.

[5] *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States* (135 Fed. (2d), 527 (C. C. A. 9)); *Nelson* v. *United States* (139 Fed. (2d), 162 (C. C. A. 9)); *Investment & Securities Co.* v. *United States* (140 Fed. (2d), 894 (C. C. A. 9)); *United States* v. *Worley* (S. D. Ind.), decided March 8, 1940; *Minnesota Mut. Life Ins. Co.* v. *United States* (47 Fed. (2d), 942, 944 (N. D. Tex.).) See also *United States* v. *Warren E. Co.* (127 Fed. (2d), 134); Matter of Rosenberg, supra.

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

To Collectors of Internal Revenue and Others Concerned:

Section 19.3797-2 of Regulations 103 [Part 19, Title 26, Code of Federal Regulations, 1940 Sup.], and section 29.3797-2 of Regulations 111 [Part 29, Title 26, Code of Federal Regulations, Cum. Sup.] are each amended as follows:

(A) By striking from the fourth sentence of each such section the following: " an 'investment' trust (whether of the fixed or the management type),".

(B) By inserting after the fourth sentence of each such section the following:

An "investment" trust of the type commonly known as a management trust is an association, and a trust of the type commonly known as a fixed investment trust is an association if there is power under the trust agreement to vary the investment of the certificate holders. (See *Commissioner* v. *North American Bond Trust*, 122 Fed. (2d), 545, certiorari denied, 314 U. S., 701.)

(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).)

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

Approved August 9, 1945.

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

(Filed with the Division of the Federal Register August 10, 1945, 11.36 a. m.)

SECTION 3801(d).—MITIGATION OF EFFECT OF LIMITATION AND OTHER PROVISIONS IN INCOME TAX CASES: ASCERTAINMENT OF AMOUNT OF ADJUSTMENT.

SECTION 29.3801(d)-1: Ascertainment of amount of adjustment.

INTERNAL REVENUE CODE.

Regulations 111 amended. (See T. D. 5447, page 251.)

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

1945-12-12063
T. D. 5456

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 472.—TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR.

Treasury Decision 5279 [C. B. 1943, 952], relating to period of time to be disregarded under section 3804 of the Internal Revenue Code in determining whether certain acts are timely performed, amended to provide an increase in the period of time to be disregarded in the case of certain members of the armed forces of the United States.

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

To Collectors of Internal Revenue and Others Concerned:

Treasury Decision 5279 [Part 472, Title 26, Code of Federal Regulations, 1943 Sup.], approved July 10, 1943 [C. B. 1943, 952], as amended by Treasury Decision 5444, approved March 5, 1945 [page 474, this Bulletin], is further amended as follows:

PARAGRAPH 1. Section 472.202(*b*) is amended as follows:

(A) By inserting immediately preceding the parenthetical expression in that part designated "(2)" the following: ", if such last day occurred prior to January 1, 1945."

(B) By redesignating that part now designated "(3)" as "(4)."

(C) By inserting immediately after that part designated "(2)" the following:

> (3) the date on which the return or payment would otherwise become due falls prior to the 15th day of the sixth month following the month in which falls the last day of a period of 91 days or more of continuous service by the individual on sea duty or outside the continental United States, if such last day occurs after December 31, 1944; or

PAR. 2. Section 472.202(*c*) is amended by adding at the end thereof the following sentence:

In the application of this paragraph, if the individual ceases (except by reason of death or incompetency) to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States after December 31, 1944, the 15th day of the *sixth* month shall be substituted for the 15th day of the fourth month in (1) hereof.

PAR. 3. Section 472.203(*c*) is amended by inserting immediately after that part designated "(3)" the following sentence:

In the application of this paragraph, if the individual ceases (except by reason of death or incompetency) to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States after December 31, 1944, the 15th day of the *sixth* month shall be substituted for the 15th day of the fourth month in (1) hereof.

(This Treasury decision is issued under the authority contained in sections 3791 and 3804 of the Internal Revenue Code (53 Stat., 467, 56 Stat., 961; 26 U. S. C., 1940 ed., 3791, 26 U. S. C., 1940 ed., Sup. III, 3804).)

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

Approved June 9, 1945.

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

(Filed with the Division of the Federal Register June 12, 1945, 11.52 a. m.)

B. REVENUE ACT OF 1938.

SUBTITLE B.—GENERAL PROVISIONS.

PART II.—COMPUTATION OF NET INCOME.

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

ARTICLE 22(a)-1: What included in gross income.

REVENUE ACT OF 1938.

Exercise of option to purchase stock received by employee from employer as compensation for services. (See Ct. D. 1633, page 49.)

ARTICLE 22(a)-1: What included in gross income.

REVENUE ACT OF 1938.

Modification of original opinion in *Commissioner* v. *John H. Smith* (Ct. D. 1633, page 49, this Bulletin). (See Ct. D. 1633 (modified), page 52.)

ARTICLE 22(a)-1: What included in gross income.

REVENUE ACT OF 1938.

Exercise of option to purchase stock received by employee from employer as compensation for services. Petition for rehearing in *Commissioner* v. *John H. Smith* (Ct. D. 1633, page 49, this Bulletin) denied. (See Ct. D. 1639, page 52.)

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

ARTICLE 22(b)(4)-1: Interest upon State obligations.

REVENUE ACT OF 1938.

Interest on bonds of the Triborough Bridge Authority. (See Ct. D. 1647, page 65.)

ARTICLE 22(b)(4)-1: Interest upon State obligations. 1945-22-12169
Ct. D. 1648

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

1. GROSS INCOME—EXCLUSIONS—INTEREST UPON OBLIGATIONS OF A STATE OR POLITICAL SUBDIVISION THEREOF.

Income derived by the taxpayer in the years 1937 and 1938 from bonds of the Port of New York Authority was exempt from taxation because it was interest upon obligations of a political subdivision of a State within the meaning of sections 22(b)(4) of the Revenue Acts of 1936 and 1938 and upon obligations issued "on behalf of" a State within the meaning of article 22(b)(4)-1 of Regulations 94 and 101.

2. DECISION AFFIRMED.

Decision of The Tax Court of the United States (3 T. C., 131) affirmed.

3. CERTIORARI DENIED.

Petition for certiorari denied on January 2, 1945.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Commissioner of Internal Revenue, petitioner, v. *Estate of Alexander J. Shamberg, Deceased, Isidor W. Shamberg, as Administrator, respondent.*

[144 Fed. (2d), 998.]

Before AUGUSTUS N. HAND, CHASE, and FRANK, Circuit Judges.

Petition by the Commissioner of Internal Revenue to review a decision of The Tax Court of the United States determining that there are no deficiencies in income taxes of the estate of Alexander J. Shamberg, deceased, for the years 1937 and 1938. Affirmed.

[August 24, 1944.]

OPINION.

AUGUSTUS N. HAND, Circuit Judge: This proceeding involves deficiencies in income taxes assessed against Alexander J. Shamberg by the Commissioner of Internal Revenue for the years 1937 and 1938. Shamberg died during the pendency of a proceeding in The Tax Court to review the assessment and his administrator was substituted as a party. The Tax Court determined that there were no deficiencies and the Commissioner filed this petition to review its decision which a majority of this court holds should be affirmed.

The question presented is whether the interest received by Shamberg in the years 1937 and 1938 on bonds of the Port of New York Authority (hereinafter called the "Authority") known as Interstate Bridge and Tunnel Bonds—Series E, and General and Refunding Bonds—First Series, is subject to income taxes.

According to the view we take, the income from the above bonds, issued in 1931 and 1935 respectively, was exempt from taxation under the provisions of section 22(b)(4)(A) of the Revenue Act of 1936 and the corresponding section, identical in form, of the Revenue Act of 1938. These statutory provisions and the Treasury regulations interpreting them are as follows:

"SEC. 22. GROSS INCOME.

"(a) GENERAL DEFINITION.—'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

"(b) EXCLUSIONS FROM GROSS INCOME.—The following items shall not be included in gross income and shall be exempt from taxation under this title:

* * * * * * *

"(4) TAX-FREE INTEREST.—Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia;"

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

"ART. 22(b)(4)-1. INTEREST UPON STATE OBLIGATIONS.—Interest upon the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia is exempt from the income tax. Obligations issued by or on behalf of the State or Territory or a duly organized political subdivision acting by constituted authorities empowered to issue such obligations, are the obligations of a State or Territory or a political subdivision thereof. Special tax bills issued for special benefits to property, if such tax bills are legally collectible only from owners of the property benefited, are not the obligations of a State, Territory, or political subdivision. The term 'political subdivision,' within the meaning of the exemption, denotes any division of the State or Territory which is a municipal corporation, or to which has been delegated the right to exercise part of the

sovereign power of the State or Territory. As thus defined, a political subdivision of a State or Territory may, for the purpose of exemption, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of a State or Territory."

The provisions of the foregoing article of Regulations 94 were amended in Treasury Regulations 101, promulgated under the Revenue Act of 1938 so that the words "or may not" follow the word "may" in the last sentence.

The applicability of the statutory exemption from income taxes which we have referred to depends upon the nature and activities of the Authority which are set forth in a stipulation by the parties.

The Authority is a body politic and corporate created by a compact made between the States of New York and New Jersey on April 30, 1921, and approved by Congress on August 23, 1921. It is fully owned by the two States and its projects are all operated in the interest of the public without profit to private persons. The compact was induced by the necessity for joint State action in the development of the port of New York which lies partly within the jurisdiction of each State. It created a district to be known as the "Port of New York District" comprised of areas in both States and the waters between them, in which were included about 200 separate municipalities and a population of over 10,000,000.

Article VI of the compact vested the Authority with

"* * * power and authority to purchase, construct, lease and/or operate any terminal or transportation facility within said district; and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure the same by bonds or by mortgages upon any property held or to be held by it * * *"

except that property held by either State or by any of their municipalities should not be taken without the consent of the State or municipality affected. The Authority was to make plans for the development of the district. It was empowered to make recommendations to the States, to intervene in proceedings affecting the commerce of the port and to petition such bodies as the Interstate Commerce Commission as to matters within its jurisdiction.

Article XVIII authorized the Authority, subject to the exercise of the power of Congress, to make rules and regulations relating to navigation and commerce, which rules, however, were to be effective only when concurred in by the legislatures of both States. The States agreed by Article XIX to provide penalties and means of enforcement of the orders and regulations of the Authority. The Authority has made regulations with respect to its bridges and tunnels which have been concurred in by the legislatures of the States, penalties for their violation having been provided by State law and the inferior criminal courts of the States having been given jurisdiction to enforce these penalties.

The powers of the Authority are vested in a board of 12 commissioners—6 from each State, who take an oath of office and may be removed only upon charges and after a hearing. Their actions are binding only after approval by a majority of the commissioners from each State and the Governor of each State has a veto power over the acts of the commissioners from his State.

The plan adopted by the two States, and consented to by Congress in 1922, sets forth the principles upon which the development of the port should proceed, and provides that (section 8):

"The Port of New York Authority is hereby authorized and directed to proceed with the development of the Port of New York in accordance with said comprehensive plan as rapidly as may be economically practicable and is hereby vested with all necessary and appropriate powers not inconsistent with the Constitution of the United States or of either State, to effectuate the same, except the power to levy taxes or assessments. * * * The port authority shall be regarded as the municipal corporate instrumentality of the two States for the purpose of developing the port and effectuating the pledge of the States in the said compact, but it shall have no power to pledge the credit of either State or to impose any obligation upon either State or upon any municipality, except as and when such power is expressly granted by statute, or the consent by any such municipality is given."

Up to the present time the Authority has not applied for any grant of power to pledge the credit of either of the States and has never applied to any municipality for the power to impose any obligation upon it. The Authority is not subject to the debt limiting provisions of the constitution of the two States;

it was created in order to establish an agency with operating power independent of State and municipal debt limitations.

The Authority has constructed various vehicular crossings. They have been the Arthur Kill bridges, the George Washington Bridge, the Bayonne Bridge, the Holland Tunnel and the Lincoln Tunnel.

ARTHUR KILL BRIDGES.

The two States authorized the Authority to build, operate and maintain these two bridges with the necessary approaches across the Arthur Kill, the first between Perth Amboy, N. J., and Tottenville, N. Y., and the second between Elizabeth, N. J., and Howland Hook, N. Y. Each State appropriated $100,000 for preliminary work, but provided that these sums should be returned to the States after the bridges had been fully paid for and the debts incurred therefor amortized out of revenue. The cost of these bridges exceeded $17,000,000, which was financed by the sale of bonds of the Authority to the extent of $14,000,000 and $4,000,000 advanced in equal portions by the two States under an agreement that the State advances should be repaid when the cost of construction of the bridges was paid for and all other debts were amortized. The War Department approved the construction of these bridges in 1925 and they were opened to traffic on June 29, 1928.

GEORGE WASHINGTON BRIDGE.

In 1925 the Authority was authorized by the two States to construct, operate, maintain and own a bridge across the Hudson between Manhattan and Fort Lee, each State appropriating $150,000 for preliminary studies and providing for the repayment as in the case of the Arthur Kill bridges. Construction of this bridge was approved by the War Department in 1926 and it was opened to traffic on October 25, 1931. The Authority also constructed the system of approaches to both termini of the bridge. The termini are maintained by the city of New York and the State of New Jersey respectively and are open to local traffic as well as to bridge traffic without charge. The cost of the bridge was financed by the sale of bonds of the Authority in the amount of $50,000,000, a grant by the Public Works Administration of the Federal Works Agency in amount of $1,490,455, and advances by the two States of $9,800,000, provisions being made, as in the case of the Arthur Kill bridges, for the repayment of the advances by the States.

BAYONNE BRIDGE.

The States also authorized the Authority to construct, maintain, operate and own a bridge across the Kill van Kull between Bayonne, N. J., and Staten Island, each State appropriating $50,000 for preliminary studies with provision for repayment of these advances. Construction was approved by the War Department in 1927 and the bridge was completed in 1931 at a cost of over $13,000,000, which was financed by the sale of bonds of the Authority to the extent of $12,000,000 and by advances by the two States in the amount of $4,100,000 with provision for repayment of the advances as in the case of the other bridges.

Congress granted its consent to the construction of the four bridges above mentioned.

HOLLAND TUNNEL.

The Holland Tunnel was constructed by the two States and operated by them until 1930 through commissions. In that year by concurrent legislation the two States provided that the Holland Tunnel should be conducted and continued as part of the operations of the Authority which are thereby vested with its control, operation and maintenance, the States, however, retaining title. The revenues were to be held by the Authority as agent of the States. The statutes provided that all obligations made or assumed by the Authority in connection with the tunnel should be assumed in its own name and should create no liability of the two States, or either of them. The Authority was authorized to raise funds through the sale of its own bonds, pursuant to which authorization Interstate Bridge and Tunnel Bonds—Series E (one of the two bonds issued involved in this case) were issued in amount of $50,000,000. The proceeds from the sale of these bonds were to repay the States for outlays in connection with the tunnel. The bonds were secured by the tolls from the tunnel.

LINCOLN TUNNEL.

By legislation adopted in 1930 the two States authorized the Authority to report as to an additional tunnel under the Hudson and each State appropriated $200,000 for this purpose. Repayment of these appropriations was not required. The southerly tube of this tunnel was open to traffic in December 1937, and the northerly tube was intended to be completed and opened to traffic in 1943. A system of approaches to the tunnel in New York were built at a cost of $9,-174,000, and in New Jersey at a cost of $20,034,000. The cost of the Lincoln Tunnel through December 31, 1941, exceeded $72,750,000. The initial cost of constructing the first unit of the tunnel was financed by a loan to the Authority of $12,300,000 made by the United States through the Federal Emergency Administration of Public Works. The loan agreement of September 1, 1933, contained the provision inserted at the request of the United States that the officers of the Administration of Public Works should be furnished with opinions both of bond counsel, satisfactory to the Government, and of port authority's general counsel, to the effect that the notes to be issued to the Government were exempt under the Constitution of the United States from all taxation (except inheritance, estate and gift taxes) then or hereafter imposed by the United States or the States of New York and New Jersey. Such opinions were furnished. In 1935 the Authority sold its General and Refunding Bonds First Series (which is the second of the two bond issues involved herein) in the amount of $16,500,000 from the proceeds of which it repaid the loan from the United States. The balance of the cost of the Lincoln Tunnel has been financed by the sale of various issues of general and refunding bonds, from accumulated Authority earnings held in its general reserve fund and from a grant of the United States of $5,391,573.50.

Tolls are charged for the use by vehicles of the bridges and tunnels described above.

OTHER ACTIVITIES.—INLAND TERMINAL BUILDING.

The Authority constructed an Inland Terminal Building between Fifteenth and Sixteenth Streets and Eighth and Ninth Avenues in the Borough of Manhattan, at a cost of $16,000,000, which is used as an office for the Authority and a terminal station for various trunk line railroads and also (because it would not otherwise be self-supporting) to rent out for manufacturing and commercial uses.

Since 1931, the Authority has operated a bus service over one of the Arthur Kill bridges.

The two States have adopted legislation regulating the use by the Authority of its revenues which have been expended as so directed solely for the operating and administration expenses of the Authority and for interest upon and retirement of outstanding debts.

In the compact pursuant to which the Authority was created the States agreed to make annual appropriations (not in excess of $100,000 for each State) for expenses of the Authority until revenues from its operations were sufficient to meet its expenses. These annual appropriations were discontinued in 1934 because the revenues from the bridges, the Holland Tunnel and Inland Terminal had become sufficient.

The States have vested in the Authority the power to make and enforce such rules and regulations as it may deem convenient or necessary for the operation and maintenance of the various bridges and tunnels within its jurisdiction. Penalties were provided for their violation, and the inferior criminal courts of the States were given jurisdiction to enforce such penalties.

The State of New York has enacted legislation giving the Authority jurisdiction over all New York residents, corporations and property owners for the purpose of its investigations or hearings in connection with its planning for port improvement, and also for the purpose of all such other action or powers as it may be empowered to exercise. Such legislation further provided that it should have the power to subpena such persons or corporations, failure to reply being punished in contempt proceedings upon its application to the Supreme Court of New York.

The State of New York has further enacted that the Authority have power to issue orders after hearings requiring obedience of persons subjected to the jurisdiction of the Authority by the statute. The statute further provided that the Authority should have power to enforce its orders by commencing mandamus,

injunction, or other appropriate proceedings in the supreme court of the State against violators.

In the operation of its bridges and tunnels the Authority maintains a uniformed police force, the members of which are designated by statute as regular police and peace officers of both States. The property of the Authority and the bonds and other securities issued by it are exempt from State taxation in both States. It has the power of condemnation, its employees may join the New York State Retirement System and the Authority has been held to be immune from suit. No tax or assessment is levied within the port district by or on behalf of the Authority.

The decedent Shamberg, if alive, would have testified at the hearing that he acquired his bonds upon legal advice that the income was immune from Federal income tax under the Constitution and that it was further exempt from such taxes under existing statutes and regulations.

The final summary appearing in the stipulation shows that the Authority's facilities have been financed through issues of its own bonds and notes to the extent of $205,551,582.82, and that appropriations by the States amounted to $2,856,663.11, Federal grants to $6,450,893.65, and advances by the States to $18,650,000. The Authority's revenues have been derived principally from the operation of its facilities and properties, and of these the main sources are the vehicular crossings.

The Commissioner first argues that the interest on the bonds of the Authority is taxable under the ruling in *Helvering* v. *Gerhardt* (304 U. S., 405 [Ct. D. 1343, C. B. 1938-1, 246]). It is really enough to answer this argument to say that Justice Stone, who wrote the opinion of the majority of the Supreme Court, said in the very last paragraph: "Expressing no opinion whether a Federal tax may be imposed upon the port authority itself with respect to its receipt of income or its other activities, we decide only that the present tax neither precludes nor threatens unreasonably to obstruct any function essential to the continued existence of the State government." The majority of The Tax Court was, therefore, clearly right in concluding that when Justice Stone said, at page 423: "* * * we think it plain that employees of the port authority are not employees of the State or a political subdivision of it within the meaning of the regulation as originally promulgated * * *," he was referring to the regulation which exempted from income tax the compensation of "State officers and employees" for "services rendered in connection with the exercise of an essential governmental function of the State," and in effect saying no more than that the Authority was not exercising "an essential governmental function." We can not see that the decision in *Helvering* v. *Gerhardt* has any bearing upon the issues before us.

It is next argued by the Commissioner that in enacting section 22(b)(4)(A) exempting "interest upon * * * the obligations of * * * a State * * * or any political subdivision thereof * * *," Congress was only excluding from income tax such interest as could not under constitutional doctrines prevailing in 1913, when the exemption Act was originally passed, be lawfully taxed. In support of this the Commissioner quotes the statement of Hon. Cordell Hull, who sponsored the measure in the House, in which he said the exemption was inserted "not desiring to raise any constitutional question or to arouse the antagonism of any of the States." This quotation is relied upon as indicating that Congress intended to limit the scope of the exemption to income thought at the time to be beyond the taxing power. It is argued in this connection that no such institutions as the port authority were then in contemplation of Congress, since the port authority (established in 1921) was the first of such bodies to exist. Doubtless it is true that Congress had no such specific form of State organization in mind, but that adds nothing to the solution of the problem. The only question is whether Congress would have intended the exemption to apply if these new forms of State activity had existed; in other words, what, in view of the general setting, is the reasonable interpretation of the words used. That there was no intention strictly to limit the exemption to what was thought to be beyond the taxing power is shown by the statement of Mr. Hull that it was the purpose of the enactment not only to avoid raising "any constitutional questions" but also to avoid arousing "the antagonism of any of the States." We think this statement involved a much broader purpose than to crystallize the constitutional doctrine of that particular time in the statute. Indeed, the existence of any such purpose is negatived by the fact that the limitations of constitutional power were by no means certain or thought to be certain at the time the Act was passed. It seems to us entirely unreal to limit what we believe was the broad purpose to exempt the bonds of States and their agencies

when engaged in customary governmental activity, particularly when one of the main purposes of the exemption provision was to facilitate the passage of the sixteenth amendment.

The views we have expressed seem quite in accord with the opinion given by Attorney General McReynolds to the Secretary of the Treasury on January 30, 1914, following the adoption of the 1913 exemption (30 Op. Atty. Gen. (1914), page 252), in which the question was raised as to whether certain special districts are "political subdivisions" of the State within the meaning of the proviso. The Attorney General said:

"The term 'political subdivision' is broad and comprehensive and denotes any division of the State made by the proper authorities thereof, acting within their constitutional powers, for the purpose of carrying out a portion of those functions of the State which by long usage and the inherent necessities of government have always been regarded as public. The words 'political' and 'public' are synonymous in this connection. (Dillon Municipal Corporations, 5th ed., section 34.) It is not necessary that such legally constituted 'division' should exercise all the functions of the State of this character. It is sufficient if it be authorized to exercise a portion of them * * *.

"The purposes to which you refer, namely, the improvement of streets and public highways, the provision of sewerage, gas, and lights, the reclamation, drainage, and irrigation of considerable districts of land, are clearly public and have always been so treated."

It is contended that the foregoing opinion is not pertinent to the case at bar because it was directed to the taxability of interest on bonds of assessment districts which possessed the power of taxation, which was said to be "perhaps the most important power possessed by the State." But the real criterion adopted by the Attorney General seems to have been whether the activities of the subdivision were for a public purpose. In this connection he remarked: "A tax can only be laid for a public purpose * * *, and therefore, where the power to levy a tax is given a district by the State, presumptively that district is created for a public use and is exercising a public function"; and he closed by saying: "I desire carefully to refrain from expressing any opinion whether assessment districts might not be created for a purely private purpose so as to bring them within the principles laid down in the South Carolina Dispensary case (199 U. S., 437) rather than within those which governed *United States* v. *Railroad Co.* (17 Wall., 322)." Later, in 1937, Secretary Morgenthau asked for an opinion of the Attorney General as to whether an irrigation district in the State of California was a "political subdivision" of the State within the meaning of an exemption provision contained in the Revenue Act of 1932, as amended by the Revenue Act of 1945, relieving persons who sold articles "for the exclusive use of the United States, any State, * * * or any political subdivision of the foregoing * * *," from excise taxes. He also requested a reconsideration of the opinion of Attorney General McReynolds of January 30, 1914. Attorney General Cummings advised the Secretary in favor of the exemption (38 Op. Atty. Gen., 563) saying that the question apparently turned "upon whether the irrigation district is a 'political subdivision' of the State within the meaning of section 620(3), Title IV, of the Revenue Act of 1932, as amended." He adverted to the fact that the Treasury Department had followed the opinion of Attorney General McReynolds in the administration of the income tax law since 1914, and said:

"The term 'political subdivision' may be used in statutes in more than one sense. It may designate a true governmental subdivision such as a county, township, etc.; or, as held in the Attorney General's opinion under consideration, it may have a broader meaning, denoting any subdivision of the State created for a public purpose although authorized to exercise a portion of the sovereign power of the State only to a limited degree." He concluded as follows: "To attribute at this time to the term 'political subdivision,' as used in the Revenue Act of 1913 and in section 620(3), a meaning different from that stated in the former opinion of the Attorney General would disturb the above-mentioned practice in the administration of the income tax law followed for over 22 years. The reasonable view is that the Congress, which must be presumed to have had knowledge of this administrative practice under the former Act, intended that the term as used in section 620(3) should receive a similar construction.

"I do not feel, therefore, that the Attorney General's former opinion should be disturbed upon the authority of the State decisions to which you refer, and

I suggest that any change in policy should be made only in accordance with legislative direction or judicial decision."

The Commissioner also relies on *South Carolina* v. *United States* (199 U. S., 437) as indicating that the exemption should not be applied to State activities which are not wholly essential to its sovereignty. The argument is based on the claim that the exemption provision must be interpreted in the light of that decision, which it is said governed the extent of the constitutional power to tax at the time when the exemption statute was enacted. We have already said that, in our opinion, the exemption provision was not limited to cases where Federal taxation was constitutionally possible in 1913, but covered a broader field where taxation of obligations was doubtful and subject to contention by the States. But even assuming the Government's interpretation of the exemption provision as merely enacting the constitutional doctrine as of 1913, we do not think that the South Carolina case would permit taxation of such a State agency as the port authority. That decision related only to the power of the Government to impose the usual license taxes upon dispensaries established by the State for the wholesale and retail sale of liquor. It held that such a State agency was subject to the tax, and that the constitutional limitation did not extend to instrumentalities used by the State in carrying on an ordinary private business. This was plainly a commercial business which resulted in one year of a profit of about $500,000 which was divided between the State and local municipalities. Such a holding seems to us far from indicating that it was ever applicable to agencies having customary governmental activities, such as development of roads, bridges and waterways entered upon with no profit motive.

With respect to the analogy drawn by Brewer, J., in the opinion in the above case, to the liability of municipal corporations in tort when they are engaged in private as distinguished from public business, it was merely one of the arguments in support of the result which has since been abandoned as a criterion by the Supreme Court in *Brush* v. *Commissioner* (300 U. S., 352, 362, 373 [Ct. D. 1212, C. B. 1937-1, 217]). Indeed, in *Murray* v. *Wilson Distilling Co.* (213 U. S., 151, 173), decided in 1909, the South Carolina decision was explained upon the ground that a State had no power by legislation in regard to the sale and consumption of liquor to destroy a preexisting right of taxation of the Federal Government. Any claim that the South Carolina decision governs the present case proves too much, for, if it be read as permitting taxation of almost every governmental activity, it would certainly fly in the face of the practice of the Treasury Department for the last 40 years and the opinions of the two Attorney Generals acted upon by the Treasury, since it has never been held, nor is it here contended, that income from such State agencies as irrigation and levee districts is not exempt, although neither of these activities, nor even the existence of the districts, is essential to the State. Here the activities, even though some of them might have been exercised by private corporations under appropriate legislation, are exercised for a public purpose by an agency set up by the States and given many public powers, though not of taxation or control through the suffrages of citizens. It minimizes its public and political character to treat such an agency as a private corporation merely because of the lack of taxing power which is only one of the attributes of sovereignty.

But the regulation we have quoted makes our position still clearer. It defines political subdivision as one "to which has been delegated the right to exercise part of the sovereign power of the State," and while it says it may for the purpose of exemption include "special assessment districts * * * such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of the State," it does not preclude political subdivisions which do not possess the power of taxation but generally exempts interest on: "Obligations issued by or on behalf of the State or Territory or a duly organized political subdivision acting by constituted authorities empowered to issue such obligations."

We think that this regulation covered bonds of such a public body as the Authority, and was within the scope of the statute. When it gave immunity to bonds issued "on behalf of" the State as well as those issued by the State itself, those words certainly meant something in addition to the words "issued by," and what can the added words refer to except bonds issued by a State agency to carry out a public purpose where the latter is not named as obligor on the bonds. We need not claim that this public purpose may be a commercial enterprise for mere profit, as distinguished from a public activity of the traditional sort in which the Authority is engaged. It has many times

been held that bonds issued by municipalities are within the exemption of section 22(b)(4)(A) even though payment is to be made only out of special funds and the credit of the municipalities was not pledged. (*Bryant* v. *Commissioner*, 111 Fed. (2d), 9 (C. C. A. 9) [Ct. D. 1513, C. B. 1941-1, 330]; *Commissioner* v. *Carey-Reed Co.*, 101 Fed. (2d), 602 (C. C. A. 6); *Commissioner* v. *Pontarelli*, 97 Fed. (2d), 793 (C. C. A. 7). Cf. *Brush* v. *Commissioner*, 300 U. S., 352, 371-373.)

Repeated reenactment by Congress of the exemption clause in various revisions of the revenue laws gives further support to the regulation as defining the scope of the statute.

In addition to this, we are dealing with a class of public securities which have in the case of the bonds of the port authority and bonds of numerous other State agencies of like character for years been held exempt under rulings of the Bureau of Internal Revenue. Such rulings were made as to the bonds of the State Highway Commission of Kentucky, the Thousand Island Bridge Authority, the Buffalo and Fort Erie Public Bridge Authority, the Triborough Bridge Authority, the General State Authority of Pennsylvania, and many others, as well as the port authority itself. This should bar the Commissioner's claim. (*Helvering* v. *Griffiths*, 318 U. S., 371, 402 [Ct. D. 1579, C. B. 1943, 353].)

The argument that the exemption does not apply to the Authority because two States, rather than one, created the agency is far from persuasive, and we reject it on the grounds stated by The Tax Court in the majority opinion.

For the foregoing reasons we hold the income derived from the taxpayer's bonds tax-free because it was interest upon obligations of a political subdivision of a State within the meaning of section 22(b)(4) of the Revenue Acts of 1936 and 1938 and upon obligations issued "on behalf of" a State within the meaning of article 22(b)(4)-1 of the Treasury regulations.

Order affirmed.

Dissenting opinion by FRANK, Circuit Judge.

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

ARTICLE 23(c)-2: Federal duties and excise taxes.

REVENUE ACT OF 1938.

Deduction for Federal capital stock tax. G. C. M. 23251 (C. B. 1942-2, 103) modified. (See G. C. M. 24461, page 111.)

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

ARTICLE 23(m)-1: Depletion of mines, oil and gas wells, other natural deposits, and timber; depreciation of improvements. 1945-4-11969 Ct. D. 1626

INCOME TAX—REVENUE ACT OF 1938—DECISION OF SUPREME COURT

1. TRANSFER OF OIL AND GAS PROPERTY—SUBLEASE OR SALE—ALLOWANCE FOR UNRECOVERED COST OF EQUIPMENT—FINALITY OF TAX COURT'S FINDING.

The transfer, for a cash consideration, of all right, title, and interest in an oil and gas lease together with equipment, with retention of a royalty interest, constitutes an absolute sale of the equipment, and the transferor is entitled to an allowance for the unrecovered cost of the equipment transferred. The finding of The Tax Court that the parties intended a cash sale of the equipment is not open for redetermination under *Dobson* v. *Commissioner* (320 U. S., 489 [Ct. D. 1597, C. B. 1944, 56]) and *Wilmington Trust Co.* v. *Helvering* (316 U. S., 164, 167-168 [Ct. D. 1555, C. B. 1942-1, 225]).

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Tenth Circuit (141 Fed. (2d), 641), reversed.

SUPREME COURT OF THE UNITED STATES.

W. G. Choate, petitioner, v. *Commissioner of Internal Revenue.*

[324 U. S., 1.]

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

[January 29, 1945.]

OPINION.

Mr. Justice DOUGLAS delivered the opinion of the Court.

In 1936 Choate and Hogan, a partnership of which the petitioner was a member, acquired an oil and gas lease. They drilled six producing wells on the leased land and operated the property until August, 1938. At that time they sold to Sylva Oil Co. for a cash consideration of $110,000 all their right, title and interest in the lease "together with all wells and the equipment thereof, including pumps, casing, piping, tanks, lease house, and all other personal property on or used in connection" with the premises. But they expressly reserved to themselves "⅛ of the 8/8ths of all oil and gas and casinghead gas which may be produced and saved" from the land. Thereafter Sylva Oil Co. drilled additional wells and operated the lease. Choate and Hogan in their partnership return for 1938 reported the transaction as a sale. Respondent in his deficiency notice ruled that the transaction constituted a sublease. The Tax Court took the same view, holding that the partners must look to depletion for the return of their capital. It held that the principle of recovery by depletion was applicable where a royalty interest was retained and that a cash bonus was to be regarded as in the nature of an advance royalty. It held, however, that there had been an absolute sale of the equipment, that its cost was not recoverable by depletion, and that the partners were entitled to an allowance for the unrecovered cost of the equipment transferred. The Commissioner challenged the latter ruling—in the Circuit Court of Appeals for the Tenth Circuit as respects Choate, in the Circuit Court of Appeals for the Fifth Circuit as respects Hogan. The Commissioner won in the Tenth Circuit (141 Fed. (2d), 641) and lost in the Fifth. (*Hogan* v. *Commissioner*, 141 Fed. (2d), 92.) It was to resolve that conflict that we granted the petition in the present case limited to that single question.

The Commissioner makes an elaborate argument based on the assumption that there was no sale of the equipment. The assumption is that after the partnership transferred its interest in the lease its investment was no longer in the leasehold and equipment as such but was an economic interest in an oil producing enterprise—an interest which is depletable since it is measured by the production of oil. But there are two difficulties with that argument. In the first place, we find nothing in the Revenue Act of 1938 (52 Stat., 447), or in the Treasury regulations which provides for depletion of equipment used in the operation of oil and gas wells. A deduction is allowed for depreciation by section 23(l) which permits a "reasonable allowance for the exhaustion, wear and tear of property used in the trade or business." And see Treasury Regulations 101, article 23(m)–18. Section 23(m) provides that in the case of "mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case" may be taken as a deduction. And see Treasury Regulations 101, article 23(m)–10. Depletion is applicable to wasting assets—to the exhaustion of natural resources, not of property used in a business. See 4 Mertens, Law of Federal Income Taxation (1942), section 24.02. That distinction between depletion and depreciation runs through the basis provisions of the Act. See section 111(a), section 113 (a) and (b), section 114 (a) and (b). And the history of the depletion provisions indeed makes clear that only intangible drilling and development costs, not costs represented by physical property, are returnable by way of depletion. (See *United States* v. *Dakota-Montana Oil Co.*, 288 U. S., 459; 4 Mertens, *op. cit.*, section 24.48; Treasury Regulations 101, article 23(m)–16(*a*).) In the second place The Tax Court found that the parties intended a cash sale of the equipment. That question is argued here as if it were open for redetermination by us. It is not. It is the kind of issue reserved for The Tax Court under *Dobson* v. *Com-*

missioner (320 U. S., 480 [Ct. D. 1597, C. B. 1944, 56] and *Wilmington Co.* v. *Helvering* (316 U. S., 164 167-168 [Ct. D. 1555, C. B. 1942-1, 225]). Once a sale of the equipment is conceded, it is not denied that petitioner is entitled to an allowance for the unrecovered cost of the equipment transferred. (Section 111(a), section 113 (a) and (b).) No question is presented concerning the allocation of a portion of the purchase price to the equipment.

Reversed.

SECTION 27(a).—CORPORATION DIVIDENDS PAID CREDIT: DEFINITION IN GENERAL.

ARTICLE 27(a)-3: Amounts used or irrevocably set aside to pay or to retire indebtedness.

REVENUE ACT OF 1938.

Regulations 101 amended. (See T. D. 5460, page 260.)

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING.

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

ARTICLE 42-1: When included in gross income.

REVENUE ACT OF 1938.

Amount payable, pursuant to employment contract, to employee's beneficiaries upon death of employee. I. T. 3315 (C. B. 1939-2, 164) revoked. (See I. T. 3708, page 129.)

ARTICLE 42-1: When included in gross income. 1945-8-12022
(Also Section 115, Article 115-1.) Ct. D. 1638

INCOME TAX—REVENUE ACT OF 1938—DECISION OF SUPREME COURT.

1. INCOME—DIVIDENDS DECLARED PRIOR TO, BUT PAYABLE SUBSEQUENT TO, DECEDENT'S DEATH—NOT TAXABLE AS INCOME TO DECEDENT—FEDERAL LAW CONTROLLING AS TO MEANING OF "ACCRUED."

Dividends declared prior to the death of a decedent on the cash receipts basis which by the corporate resolutions were payable and paid to stockholders of record on dates subsequent to the decedent's death do not accrue as income, under section 42 of the Revenue Act of 1938, on the date of their declaration. The stockholder can acquire no interest in a dividend amounting to an accrual under that section before the amount of the dividend and the distributee are determined. Federal law rather than State law governs as to the meaning of the word "accrued" in section 42 of such Act.

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Second Circuit (144 Fed. (2d), 756), reversing decision of the United States Board of Tax Appeals (45 B. T. A., 517), reversed.

SUPREME COURT OF THE UNITED STATES.

Estate of Henry W. Putnam; Guaranty Trust Co. of New York, Executor, petitioner, v. *Commissioner of Internal Revenue.*

[324 U. S., 393.]

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

[March 26, 1945.]

OPINION.

Mr. Justice REED delivered the opinion of the Court.

This case brings here for review a judgment which applies section 42, Revenue Act of 1938,[1] so as to "accrue" corporate dividends on the date of their declaration rather than the later record or payment dates. The result is that the dividends are taxable as income to a decedent taxpayer instead of to his estate.

Certiorari was granted[2] because of a conflict in conclusion between *Tar Products* v. *Commissioner* (130 Fed. (2d), 866) and this case as to the date of accrual of corporate dividends. The resolution of this conflict is complicated by further conflicts between the decision below and those in other circuits as to whether the governing rule is to be drawn from Federal or State law. (*Helvering* v. *McGlue's Estate*, 119 Fed. (2d), 167, 171; *Commissioner* v. *Cohen*, 121 Fed. (2d), 348, 349.)

The decedent, Henry W. Putnam, died on March 30, 1938. Prior to his death several corporations in which he owned stock declared dividends which by the resolutions were payable and were paid to stockholders of record on dates which were subsequent to his death. Each of these dividends, aggregating in all $24,051.75, was held by the Commissioner to constitute income to the decedent under the provisions of section 42. The Board of Tax Appeals decided that the time of accrual depends upon the varying State decisions as to when a corporate debt arises upon a declaration of dividend with a provision for its payment to stockholders of record on some future date. (45 B. T. A., 517.) This resulted in an agreement in part with the Commissioner's determination.

The Circuit Court of Appeals was of the view that Federal law controlled the disposition of the controversy and that the dividend accrued on its declaration. (*Commissioner* v. *Guaranty Trust Co., etc.*, 144 Fed. (2d), 756.)

We think the Federal law controls. A Federal Revenue Act applicable throughout the Nation fixes liability on the decedent taxpayer under section 42 if the dividend is "accrued." The meaning of that word in this section should be uniform unless Congress has shown an intention to permit its meaning to be varied by State law. (*Burnet* v. *Harmel*, 287 U. S., 103, 110 [Ct. D. 611, C. B. XI–2, 210 (1932)]; *Palmer* v. *Bender*, 287 U. S., 551, 555 [Ct. D. 611, C. B. XII–1, 235 (1933)]; *United States* v. *Pelzer*, 312 U. S., 399, 402–403 [Ct. D. 1495, C. B. 1941–1, 441].) Section 42 lays down the test of accrual for the taxation of a decedent's income and the definition of the meaning and extent of that test is a Federal responsibility. The present problem is closely akin to that resolved in *Lyeth* v. *Hoey* (305 U. S., 188, 193 [Ct. D. 1370, C. B. 1938–2, 208]). In that case an heir received a sum in settlement of litigation over a will. Its taxability as income under the Federal statute depended upon the meaning of the statutory exemption "acquired by inheritance." The law of the testator's domicile held sums paid as will compromises were not inheritances. Acting on the principle that in the interest of uniformity exemptions under Federal statutes should be determined by Federal courts, we reached a contrary Federal rule. The same principle leads to our conclusion in this case.[3]

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[1] 52 Stat., 447, 473, section 42:

"The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period."

[2] 323 U. S., —. (Judicial Code, section 240(a), as amended.)

[3] The Government calls attention to the conflict in State decisions as to the event which vests title according to State law to a corporate dividend. Some specify the declaration and some compliance with the requirement of being a stockholder of record on a subsequent date.

Declaration date: *Ford* v. *Snook* (205 App. Div., 194, 196, affirmed 240 N. Y., 624); *Beattie* v. *Gedney* (99 N. J. Eq., 207); *Western Sec. Co.* v. *Silver King Con. Min. Co.* (57 Utah, 88, 113); 27 Georgetown L. J., 74; 38 Harv. L. Rev., 245.

We recently examined the Congressional purpose in the enactment of section 42. (*Helvering* v. *Enright*, 312 U. S., 636 [Ct. D. 1500, C. B. 1941–1, 353].) That purpose was to cover into income the "accruals" theretofore unreported as income of a decedent taxpayer who reported on a cash basis. By "accrual" the income so accrued became subject to income tax as decedent's income. These "accruals" had theretofore escaped taxation as the income of decedent, because no cash was received during decedent's life. Moreover, such payments were held not to be the income of decedent's estate on the theory that the "accrual" was a part of the corpus of the estate at death and therefore the estate's subsequent receipt of the "accruals" as cash was not income to the estate. (*Helvering* v. *Enright*, supra, page 639.) In the instant case there is no avoidance of income taxes such as section 42 was designed to prevent. If the dividend does not "accrue" to decedent on the date of declaration so as to be taxable as income to him, it will appear as an item of income in the income tax return of the estate or of the stockholder who owns the stock on the record date.[4] Taxwise, it may be important upon whom the tax falls as the sum assessed may vary according to the tax bracket of the taxpayer. This result, however, is apart from the purpose of Congress in enacting section 42 and is not significant in the interpretation of the section.[5]

We assume that decedent was a taxpayer on the cash receipts basis. (Compare 144 Fed. (2d), 756, 757.[6]) Our inquiry leads us only to a decision as to whether a dividend accrues as income on its declaration with a subsequent record date, not to whether it accrues on its record date or its payment date. A declaration of a dividend to stockholders of record on the date of the resolution but payable in the future is not involved. This Court has suggested that a tax be deemed to accrue as a charge against a taxpayer when events "occur which fix the amount of the tax and determine the liability of the taxpayer to

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Record date: *Smith* v. *Taecker* (133 Cal. App., 351); *Richter & Co.* v. *Light* (97 Conn., 364); *Ford* v. *Ford Manufacturing Co.* (222 Ill. App., 76, 84); *Nutter* v. *Andrews* (246 Mass., 224).

Accrual under section 42, however, is not dependent upon these varying concepts of when dividends vest. Despite possible difference between State and Federal income taxation of dividend items, the presumed Congressional purpose to have the National Revenue Acts uniformly administered leads to a Federal interpretation of accruals under section 42.

Such inconsistency would not occur if the Federal accrual date under section 42 is held eventually to be the same for taxpayers on the accrued and cash basis. (Cf. *Avery* v. *Commissioner*, 292 U. S., 210 [Ct. D. 828, C. B. XIII–1, 131 (1934)]; *Tar Products* v. *Commissioner* (130 Fed. (2d), 866.)

[4] Respondent argues for the judgment below on the ground that the dividends could not properly be treated as income of the estate when received, since the receipt of the dividends in cash by the estate was merely a conversion into money of one of the assets of the estate, citing *Vanderbilt* v. *Commissioner* (11 B. T. A., 291); *Nichols* v. *United States* (64 Ct. Cl., 241); Treasury Regulations 80, article 13. The truth or error of this position depends upon whether those dividends are income, by virtue of the accrual provision of section 42, to the decedent. If they are income to the decedent, they can not be income also to the estate. If they are not income to the decedent, they are income to the estate. The Vanderbilt and Nichols cases were apparently decided on the theory that the items in controversy constituted income to the decedent and assets of the estate for estate tax purposes and therefore could not later be income to the estate. The regulation does not purport to direct the return as corpus of the estate of dividends declared but with a record date subsequent to the stockholder's death. Neither do the present regulations. (Treasury Regulations 105, section 81.13; cf. *United States* v. *Phellis*, 257 U. S., 156, 171 [Ct. D. 19, T. D. 3270, C. B. 5, 37 (1921)].)

Congress has modified section 42 by an amendment which is inapplicable to this case. (Revenue Act of 1942, section 134, 56 Stat., 798, 830; H. Rept. No. 2333, Seventy-seventh Congress, second session, section 125, page 83 [C. B. 1942–2, 372]; S. Rept. 1631, Seventy-seventh Congress, second session, section 135, page 100 [C. B. 1942–2, 504].)

[5] A reference to dividends appears in the legislative history but casts no light on the problem of the event which accrues a corporate dividend. (See H. R. 7835, Seventy-third Congress, second session, printed with Senate amendments, March 28 (calendar day, April 13), 1934 (C. B. 1939–1 (Part 2), page 629), amendment 27; section 43, Revenue Act, 1934, 48 Stat., 694; section 43, Revenue Act of 1938, 52 Stat., 473.)

[6] Therefore the construction of accrued according to the taxpayer's method of accounting, which is directed in section 48(c) (52 Stat., 476), is not of use. (*Helvering* v. *Enright*, 312 U. S., 636, 644 [Ct. D. 1500, C. B. 1941–1, 353].) *Avery* v. *Commissioner* (292 U. S., 210) [Ct. D. 828, C. B. XIII–1, 131 (1934)] holds that dividends of a living taxpayer on the cash basis would not become his income on mere declaration but only when "received," that is, unqualifiedly made subject to the stockholder's demand as by check. "Received" in the section there under consideration was the word designating taxability as income of sums actually or constructively collected, including dividends, as it is in the section of the statute here involved. This rule has been continuously applied.

(See *Mason* v. *Routzahn*, 275 U. S., 175, 178 [T. D. 4131, C. B. VII–1, 194 (1928)]; Treasury Regulations 65, article 1541; Treasury Regulations 101, article 42–3; Treasury Regulations 111, section 29.42–3; 53 Harv. L. Rev., 853; 2 Mertens, Federal Income Taxation, 17.)

See *Tar Products* v. *Commissioner* (130 Fed. (2d), 866) for an instance of the application of this rule to a taxpayer on the accrual basis. Compare Treasury Regulations 94, articles 115–1 and 22(a)(1) for appraisal of position of those regulations as to date when dividends are received by a taxpayer. (*American Light & Traction Co.*, 3 T. C., 1048.)

pay it." (*United States* v. *Anderson*, 269 U. S., 422, 441 [T. D. 3839, C. B. V–1, 179 (1926)].) It has said also that accrual imports "that it is the *right* to receive and not the actual receipt that determines the inclusion of the amount in gross income." (*Spring City Co.* v. *Commissioner*, 292 U. S., 182, 184 [Ct. D. 829, C. B. XIII–1, 281 (1934)].) The declaration of the dividends here in question fixes their amount but does not determine the distributee. He can not be known with certainty until the record date. Nor does the stockholder have the right to receive payment upon the declaration. The words of the corporate resolution which arranges for the payment from the stock record of a certain day determines the earliest time for possible receipt.

Under the income tax Acts no stockholder has a separate and divisible taxable interest in the assets of a corporation even though those assets have been increased by earnings. Earnings, before declaration of dividends, while increasing the value of his stock, have never been treated as an event to mark taxable income to the stockholder. Mere declaration of a dividend does not alter the stockholder's interest in the corporate assets. If no other factors were involved in value except earnings and dividends, the value of the stock would advance *pari passu* with earnings and the declaration of a dividend with a subsequent record date for payment would not affect the stock's value. (*United States* v. *Phellis*, 257 U. S., 156, 171 [Ct. D. 19, T. D. 3270, C. B. 5, 37 (1921)]. See Schabacker, Stock Market, 353.) The stockholder can acquire no interest in a dividend, amounting to an accrual under section 42, before the amount of the dividend and the distributee is determined.

In applying to the present dividends our description of accruals under section 42 as "assets of decedents, earned during their life and unreported as income, which on a cash return, would appear in the estate returns," [7] the court of appeals may have treated the words "earned during" the decedent's life as though they included, prior to a declaration of dividends, the proportionate part of corporate earnings attributable to decedent's stock. If so, it is a more extended meaning than was intended since stock does not earn an identifiable separate taxable share of corporate profits for its owner before the corporation makes those profits available to the stockholder. It is not the earnings of a corporation but the separation of those earnings by a completed dividend which assigns a part of those earnings to a stockholder. The price a stockholder would receive on a stock sale after declaration and before the record date would reflect corporate earnings but would not reflect the declaration or nondeclaration of a dividend. As the same value would be in the stock with or without the declaration, the price would be the same. Only an ex-dividend sale would affect price.

For the earnings of a corporation to pass into the earnings of its stockholder, so as to be subject to accrual to the stockholder under section 42, something more than a declaration of dividends with a subsequent record date to identify the distributee is required. Such a declaration leaves the identity of the recipient at large. Such uncertainty destroys any conception of accrued as involving a right to receive or an obligation to pay, elements which we think are essential for accruals under our decisions.[8]

Reversed.

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

ARTICLE 43–2: When charges deductible.

REVENUE ACT OF 1938.

Amounts paid under the Fair Labor Standards Act of 1938 as restitution for deficiencies in wages for prior years. I. T. 3563 (C. B. 1942–2, 115) modified. (See I. T. 3746, page 141.)

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[7] 312 U. S., at 644–645; 144 Fed. (2d), at 758.

[8] This accords with the original holding of the Board of Tax Appeals on this question in *Estate of G. Percy McGlue* (41 B. T. A., 1186, 1193). After that case was reversed on the law of New York, *Helvering* v. *McGlue* (119 Fed. (2d), 167), the Board followed the circuit court decisions. (*Estate of Lewis Cass Ledyard, Jr.*, 44 B. T. A., 1056, 1065.) Recently The Tax Court has held that a taxpayer on the accrual basis should account for a dividend when received. (*American Light & Traction Co.* v. *Commissioner*, 3 T. C., 1048.)

ARTICLE 43–2: When charges deductible.

REVENUE ACT OF 1938.

Deduction for Federal capital stock tax. G. C. M. 23251 (C. B. 1942–2, 103) modified. (See G. C. M. 24461, page 111.)

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

SECTION 112(b).—RECOGNITION OF GAIN OR LOSS: EXCHANGES SOLELY IN KIND.

ARTICLE 112(b)(7)–4: Treatment of gain.

REVENUE ACT OF 1938.

Basis for determining "earnings and profits" available for distribution as liquidating dividends by a corporation which had acquired securities in exchange for its stock in a tax-free transaction. (See Ct. D. 1637, below.)

SECTION 115.—DISTRIBUTIONS BY CORPORATIONS.

ARTICLE 115–1: Dividends.

REVENUE ACT OF 1938.

Dividends declared prior to death but not payable until after death. (See Ct. D. 1638, page 345.)

ARTICLE 115–3: Earnings or profits. 1945–8–12023
(Also Section 112(b), Article 112(b)(7)–4.) Ct. D. 1637

INCOME TAX—REVENUE ACT OF 1938—SECOND REVENUE ACT OF 1940—DECISION OF SUPREME COURT.

1. DISTRIBUTIONS BY CORPORATIONS—LIQUIDATING DIVIDENDS—EARNINGS AND PROFITS—RECOGNITION OF GAIN OR LOSS—BASIS.

In computing the amount of "earnings and profits" distributed in December, 1938, as liquidating dividends by a corporation which had acquired securities in exchange for its stock in a tax-free transaction, the basis of such property for the purposes of section 112(b)(7)(E) of the Revenue Act of 1938 is its cost to the transferors rather than its market value at the time of acquisition.

2. REGULATIONS SUSTAINED.

The provisions of article 115–3 of Regulations 101 that gains and losses are to be brought into earnings and profits at the time and "to the extent" that they are recognized under section 112 are reasonable and a valid exercise of the rule-making power, and are decisive of this issue. Section 501(a) of the Second Revenue Act of 1940, enacted to "clarify the law" by enacting the substance of the regulation, has no retroactive effect on the liability of these taxpayers, and the conclusion of the circuit court that it is unconstitutional is not warranted.

3. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Ninth Circuit (143 Fed. (2d), 162), reversing decision of The Tax Court of the United States (1 T. C., 640), reversed.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. *Elliott H. Wheeler et al., Executors of the Estate of John H. Wheeler, Deceased, et al.*

[324 U. S., 542.]

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

[March 26, 1945.]

OPINION.

Mr. Justice JACKSON delivered the opinion of the Court.

The Circuit Court of Appeals for the Ninth Circuit has held section 501(a) of the Second Revenue Act of 1940 to be unconstitutional.[1] This of course called for grant of certiorari.[2]

Since our problem is not computation of a tax, the facts relevant to the issues in the five cases, consolidated on appeal, may be shortly stated. In 1925, John H. Wheeler and his wife, Frances, organized under the laws of California the John H. Wheeler Co. Then and thereafter they transferred an assortment of securities to it in exchange for shares of its common stock. The securities had cost them $304,683.49 and at transfer had a fair market value of $491,800. In exchange the Wheelers received 4,918 shares with a par value of $100 each. No gain by them was recognized for income-tax purposes by reason of the exchange. (Cf. Internal Revenue Code section 112(b)(5).)

For purposes of determining its income-tax liability on subsequent disposition of the securities, the corporation was obliged to and did use as a cost base the cost of the securities to the transferors, $304,684.49. (Cf. Internal Revenue Code section 113(a)(8).) But for its corporate accounting the corporation set up a cost of $491,800, market value at the time of acquisition in exchange for common stock of equal par value. The whole question in this case is which of these bases is to be used to compute, pursuant to section 112(b)(7)(E) of the Revenue Act of 1938 (52 Stat., 447, 488), the amount of "earnings and profits" distributed as liquidating dividends. The Act of 1938, to induce corporate liquidations, permitted a qualified stockholder to elect postponement of a portion of the gain realized on a December, 1938, liquidation and to be taxed, as for a dividend, on "so much of the gain as is not in excess of his ratable share of the earnings and profits of the corporation * * *." If the market-value basis is used for the securities acquired from the Wheelers and later sold, the operations of the company showed a deficit on November 30, 1938, when the books were closed. If the cost-to-transferors basis is used, "earnings and profits" were distributed to respondents, the stockholders, in the amount of $132,813.48, as computed by the Commissioner.[3]

After considering the applicability of section 112(b)(7), the stockholders duly dissolved the corporation and distributed its assets during December, 1938. They elected to be taxed on the gains on their shares pursuant to section 112(b)(7), and they reported, of course, according to the higher or market-value basis for the securities acquired and disposed of by the company. The Commissioner asserted a deficiency based on the lower cost to the transferors. In explaining his determination he relied on section 501(a) of the Second Revenue Act of 1940 (54 Stat., 974, 1004), which provides that earnings and profits on the sale or other disposition of property shall be determined by using the adjusted basis for determining gains and by recognizing such gains to the extent that they are recognized for computing net income, and on section 501(c), which makes the provisions of section 501(a) applicable to prior years.

The Tax Court sustained the Commissioner.[4] It held section 501(a) of the Act of 1940 a "complete answer" to taxpayers' contention, and it overruled their claim that if the section was applicable to increase their 1938 liability it was retroactive in contravention of the fifth amendment to the Constitution. The Circuit Court of Appeals agreed that the section was applicable, but held that such retroactivity rendered it unconstitutional.

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[1] 143 Fed. (2d), 162.
[2] — U. S., —.
[3] This was slightly modified by The Tax Court in an aspect not material here.
[4] 1 T. C., 640.

Although the term "earnings and profits" has long been in the Revenue Acts, in connection with the definition of dividends, it has never been defined by the statutes[5] (except in so far as section 501(a) of the Second Act of 1940 has now done so). But under the Revenue Act of 1934 and succeeding Acts, the Commissioner dealt by regulation with that portion of the problem of definition relevant here. Article 115-3 of Treasury Regulations 101, promulgated under the 1938 Act, provided in part as follows: "Gains and losses within the purview of section 112 or corresponding provisions of prior Acts are brought into the earnings and profits at the time and to the extent such gains and losses are recognized under that section."[6] This regulation, if valid, disposes of the controversy, for when the corporation sold its securities acquired from the Wheelers it realized gain, based on transferor's cost, which was fully recognized under section 112.

The only reason to doubt the validity of the regulation is found in certain decisions of the Board of Tax Appeals and lower courts, mentioned in The Tax Court's opinion. Despite these adverse decisions, however, the Commissioner persisted in applying the regulation. The question was never reviewed here. Before it was finally judicially considered, Congress enacted section 501 of the Second Revenue Act of 1940, as the committee reports show,[7] to "clarify the law" by enacting the substance of the regulation. But if the regulation itself was valid and effective, the clarifying amendment of 1940 added nothing to the liability of these taxpayers, and even though The Tax Court relied on it rather than on the regulation, no question of retroactivity is presented.

We think the regulation is reasonable and a valid exercise of the rule-making power. The taxpayers are insisting on using as a base for tax purposes a figure that in itself had no relation to taxation. It was no doubt permissible and perhaps the correct accounting, for determining earned surplus for dividends and such corporate purposes, for the corporation to set up its books on the market value of its property at the time of acquisition, which determined the value of the stock it issued. But "earnings and profits" in the tax sense, although it does not correspond exactly to taxable income, does not necessarily follow corporate accounting concepts, either.[8] Congress has determined that in certain types of transaction the economic changes are not definitive enough to be given tax consequences, and has clearly provided that gains and losses on such transactions shall not be recognized for income-tax liability but shall be taken account of later. (Sections 112, 113.) It is sensible to carry through the theory in determining the tax effect of such transactions on earnings and profits. (Compare *Commissioner* v. *Sansome*, 60 Fed. (2d), 931 [Ct. D. 607, C. B. XI-2, 175 (1932)], and see S. Rept. No. 2156, Seventy-fourth Congress, second session, page 19 [C. B. 1939-1 (Part 1), 678]; H. R. Rept. No. 2894, Seventy-sixth Congress, third session, page 41 [C. B. 1940-2, 498].) Indeed, Congress appears to have provided for this result in the statute itself (section 111(c) of the 1938 Act), which declares: "In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized *for the purposes of this title*, shall be determined under the provisions of section 112."[9] In this case, to be sure, there was no question of recognition of gain or loss to the corporation at the time of the exchange with the Wheelers, because it was issuing its own stock and so realized no gain or loss. But to recognize the increment in value as affecting earnings and profits would no more harmonize with the taxless character of the transaction than to treat a realized gain as doing so. The same policy which carries over the transferor's basis for purposes of the corporation's income tax (section 113(a)(8)) requires carrying it over for determining the taxability of its distributions, as the Commissioner's regulation directs: gains and losses are to be brought into earnings and profits at the time and "to the extent" that they are recognized under section 112. Finally, no doubt of the reasonableness of the rule can linger in the presence of section 501(a), by which Congress has indicated its express approval of the principle

[5] See Paul, Selected Studies in Federal Taxation (Second Series, 1938), 149, 155 *et seq.*

[6] The provision appears in Regulations 94, article 115-3, under the Act of 1936; Regulations 86, article 115-1, under the Act of 1934; and in Regulations 103, section 19.115-3, and Regulations 111, section 29.115-3, under the Internal Revenue Code.

[7] See H. R. Rept. No. 2894, Seventy-sixth Congress, third session, page 41 [C. B. 1940-2, 498]; S. Rept. No. 2114, Seventy-sixth Congress, third session, page 22 [C. B. 1940-2, 528].

[8] See 1 Mertens, Law of Federal Income Taxation (1942), section 9.33.

[9] [Italics supplied.] See Paul, Selected Studies in Federal Taxation (Second edition), 193-195.

that the basis for determining earnings and profits shall be the basis for determining gain.

We therefore think that on principles often reiterated [10] the regulation is valid and decisive of this issue. There is no necessity to predicate the determination of deficiency on the 1940 amendment. The 1940 amendment consequently has no retroactive effect on the liability of these taxpayers and the conclusion of the court of appeals that it is unconstitutional is not warranted. The judgment of the court of appeals is reversed and that of The Tax Court is affirmed.

Reversed.

Mr. Justice ROBERTS is of opinion the judgment should be affirmed for the reasons stated by the circuit court of appeals (143 Fed. (2d), 162).

SECTION 117.—CAPITAL GAINS AND LOSSES.

ARTICLE 117–4: Determination of period for which capital assets are held.

REVENUE ACT OF 1938.

Effect upon holding period of intervention of holidays or less than full business days between date of purchase or sale of a security and date of payment and delivery. I. T. 3287 (C. B. 1939–1 (Part 1), 138) amplified. (See I. T. 3705, page 174.)

SUPPLEMENT E.—ESTATES AND TRUSTS.

SECTION 162.—NET INCOME.

ARTICLE 162–1: Income of estates and trusts.

REVENUE ACT OF 1938.

Distributions of estate income to residuary legatees during the period of administration or settlement of the estate. G. C. M. 22034 (C. B. 1940–1, 90) modified. (See G. C. M. 24749, page 237.)

[10] *Boske* v. *Comingore* (177 U. S., 459, 470); *Brewster* v. *Gage* (280 U. S., 327, 336 [Ct. D. 148, C. B. IX–1, 274 (1930)]; *United States* v. *Kirby Lumber Co.* (284 U. S., 1, 3 [Ct. D. 420, C. B. X–2, 356 (1931)]); *Fawcus Machine Co.* v. *United States* (282 U. S., 375, 378 [Ct. D. 278, C. B. X–1, 424 (1931)]). It may also be noted that the regulation has the support of the doctrine that reenactment of the statute without disapproval of the regulations thereunder gives them added sanction. (*United States* v. *Dakota-Montana Oil Co.*, 288 U. S., 459, 466 [Ct. D. 655, C. B. XII–1, 243 (1933)]; *Helvering* v. *Winmill*, 305 U. S., 79, 83 [Ct. D. 1365, C. B. 1938–2, 212]; *Helvering* v. *Griffiths*, 318 U. S., 371, 395, 397 [Ct. D. 1579, C. B. 1943, 353].)

INCOME TAX RULINGS.—PART II.

REVENUE ACTS OF 1937 AND 1936.

SUBTITLE B.—GENERAL PROVISIONS.

PART II.—COMPUTATION OF NET INCOME.

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

ARTICLE 22(b)(4)-1: Interest upon State obligations.

REVENUE ACT OF 1936.

Interest on bonds of the Port of New York Authority. (See Ct. D. 1648, page 335.)

SECTION 23(e).—DEDUCTIONS FROM GROSS INCOME: LOSSES BY INDIVIDUALS.

ARTICLE 23(e)-4: Shrinkage in value of stocks. 1945-23-12182
Ct. D. 1652

INCOME TAX—REVENUE ACT OF 1936—DECISION OF SUPREME COURT.

1. GROSS INCOME—DEDUCTION—STOCK LOSSES—RECEIVERSHIP—TEST FOR DETERMINING YEAR IN WHICH STOCK BECAME WORTHLESS—REVERSAL OF JUDGMENT OF TAX COURT NOT REQUIRED.

The stipulation before The Tax Court disclosed the following facts: The corporation had serious losses over a period of years, its liabilities greatly exceeded its assets, receivers were appointed in 1932, it terminated operations and all the assets of its principal subsidiary were sold at bankruptcy sale in 1933, and a stockholders' derivative suit, instituted by taxpayer and other stockholders in 1932 against the corporation and some of its officers and stockholders, was settled in 1937 by payment of an amount in full settlement of plaintiffs' claims and the cause of action. The taxpayer claimed a deduction in 1937 in the amount of the difference between the purchase price of the stock and the amount received pursuant to the settlement, which claim was denied on the ground that the stock had not become worthless during 1937. *Held:* In determining the year in which stock becomes worthless, within the meaning of section 23(e) of the Revenue Act of 1936, the standard is a flexible, practical one, varying according to the circumstances of each case, and the taxpayer's attitude and conduct are not the decisive factor. The Tax Court, using such practical test in this case, found the stipulated facts "insufficient to establish that the stock had any value at the beginning of 1937 and became worthless during that year," that the suit, while constituting an asset of the corporation until settled in 1937, had not been shown to have any substantial value, and that the evidence showed that the stock was worthless prior to that year. The Tax Court's inferences and conclusions on this factual matter are not so unreasonable from an evidentiary standpoint as to require reversal of its judgment.

2. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Second Circuit (146 Fed. (2d), 553), affirming memorandum opinion of The Tax Court, affirmed.

SUPREME COURT OF THE UNITED STATES.

Lillian Boehm, petitioner, v. *Commissioner of Internal Revenue.*

[66 S. Ct., 120.]

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

[November 13, 1945.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

We are met here with the problem of whether The Tax Court properly found that certain corporate stock did not become worthless in 1937, thereby precluding the petitioning taxpayer from claiming a deductible loss in that year under section 23(e) of the Revenue Act of 1936.[1]

The facts, which are stipulated, show that the taxpayer in 1929 bought 1,100 shares of class A stock of the Hartman Corporation for $32,440. This corporation had been formed to acquire the capital stock of an Illinois corporation, and its affiliates, engaged in the business of selling furniture, carpets and household goods.

In April, 1932, the Hartman Corporation sent its stockholders a letter reporting that the current business depression had caused shrinkage of sales, decline in worth of assets[2] and unprecedented credit and corporate losses. Another letter sent the following month informed them that business had not shown any improvement although counteracting measures were being taken. Then on June 16, 1932, a Federal court in Illinois appointed equity receivers upon the allegations of a creditor, which were admitted to be true by the Hartman Corporation, that the company had sustained large liquidating and operating losses from 1930 to 1932.[3]

Subsequently, on December 16, 1932, a stockholders' derivative action, the so-called Graham suit, was instituted in a New York court against the Hartman Corporation and nine members of its board of directors, some of whom were also officers. This suit was brought by the taxpayer and eight others on behalf of themselves as stockholders[4] and on behalf of the corporation and all other stockholders who might join with them in the suit. The defendants were charged with waste, extravagance, mismanagement, neglect and fraudulent violation of their duties as officers and directors, "to the great damage, loss and prejudice of the corporation and its stockholders." The plaintiffs sought (1) to compel the defendants to account to the corporation for their official conduct, (2) to compel the defendants to pay to the corporation's treasury the amount of loss resulting from their alleged wrongful acts, (3) to secure from the corporation suitable allowance for counsel fees and other costs incurred in the suit and (4) to secure such other relief as might be just, equitable and proper.

The Hartman Corporation ceased operations under the receivers on May 26, 1933, when a new company, Hartman's Inc., bought at a bankruptcy sale all of the assets of Hartman Corporation's subsidiary company for $501,000. The stock of the new company was issued to the subsidiary's creditors. Stockholders of Hartman Corporation were also given the right to subscribe to the stock and debentures of the new company, but the taxpayer did not exercise that right.

The receivers filed their first report in the Federal court on August 10, 1934, in which it appeared that Hartman Corporation had outstanding claims of $707,430.67 and assets of only $39,593.13 in cash and the pending Graham suit. It does not appear whether the suit was listed as having any value. The identical situation was apparent in the second report, filed on July 11, 1935, except that the cash assets had fallen to $27,192.51. A 4 per cent dividend to creditors was also approved at that time. On September 30, 1937, the final report was made.

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[1] 49 Stat., 1648, 1659; 26 U. S. C., section 23(e).

[2] The balance sheet as of December 31, 1931, which accompanied this letter, showed assets and liabilities of $15,401,097.97 and a total net worth of $9,410,659.50.

[3] The creditor's bill of complaint stated that Hartman Corporation and its subsidiaries in 1931 sustained losses of $761,648 from closing stores and losses of $1,150,000 from necessary liquidation. It was further alleged that the corporation sustained operating losses in 1930 in the amount of $1,830,000; in 1931, $2,076,266; from January, 1932, to June 16, 1932, $400,000. After stating that the company was being operated at a great financial loss and that it was unable to meet and pay its obligations, the bill concluded by alleging that the assets and properties were of great value and that if they were administered through a receivership they would be sufficient to pay all of the corporation's liabilities, leaving a surplus for the stockholders.

[4] These nine plaintiffs represented 4,407 of the approximately 60,000 class A shares outstanding and 115½ of the more than 335,000 class B shares outstanding.

Outstanding claims of $630,574.57 were then reported; the sole assets was cash in the amount of $1,909.94, which was then distributed to creditors after deduction of receivership costs.

In the meantime the Graham suit was slowly progressing. From 1933 to 1936, inclusive, extensive examinations were made of certain defendants, the plaintiffs expending some $2,800 in connection therewith exclusive of counsel fees. But the case never reached trial. On February 27, 1937, a settlement was consummated whereby the defendants paid the taxpayer and her eight co-plaintiffs the sum of $50,000 in full settlement and discharge of their claims and the cause of action. The taxpayer's share of the settlement, after payment of expenses, amounted to $12,500.

The taxpayer had tried unsuccessfully in her 1934 income tax return to claim a deduction from gross income in the amount of $32,302 as a loss due to the worthlessness of her 1,100 shares of stock. The Commissioner denied the deduction on the ground that the stock had not become worthless during 1934; apparently no appeal was taken from this determination. Then in 1937 the taxpayer claimed a deduction from gross income in the amount of $19,940, being the difference between the $32,440 purchase price of the stock and the $12,500 received pursuant to the settlement. The Commissioner again denied the deduction, this time on the ground that the stock had not become worthless during 1937. The Tax Court sustained his action and the court below affirmed as to this point.[5] (146 Fed. (2d), 553.) We granted certiorari because of an alleged inconsistency with *Smith* v. *Helvering* (141 Fed. (2d), 529) (App. D. C.), as to the proper test to be used in determining the year in which a deductible loss is sustained.

Section 23(e) of the Revenue Act of 1936, like its identical counterparts in many preceding Revenue Acts, provides that in computing net income for income tax purposes there shall be allowed as deductions "losses sustained during the taxable year and not compensated for by insurance or otherwise." Treasury regulations, in effect prior to and at the time of the adoption of the 1936 Act and repeated thereafter, have consistently interpreted section 23(e) to mean that deductible losses "must be evidenced by closed and completed transactions, fixed by identifiable events, bona fide and actually sustained during the taxable period for which allowed."[6] Such regulations, being "long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received Congressional approval and have the effect of law." (*Helvering* v. *Winmill*, 305 U. S., 79, 83 [Ct. D. 1365, C. B. 1938-2, 212].)

First. The taxpayer claims that a subjective rather than an objective test is to be employed in determining whether corporate stock became worthless during a particular year within the meaning of section 23(e). This subjective test is said to depend upon the taxpayer's reasonable and honest belief as to worthlessness, supported by the taxpayer's overt acts and conduct in connection therewith.

But the plain language of the statute and of the Treasury interpretations having the force of law repels the use of such a subjective factor as the controlling or sole criterion. Section 23(e) itself speaks of losses "sustained during the taxable year." The regulations in turn refer to losses "actually sustained during the taxable period," as fixed by "identifiable events."[7] Such unmistakable phraseology compels the conclusion that a loss, to be deductible under section 23(e), must have been sustained *in fact* during the taxable year. And a determination of whether a loss was in fact sustained in a particular year can not fairly be made by confining the trier of facts to an examination of the taxpayer's beliefs and actions. Such an issue of necessity requires a practical approach, all pertinent facts and circumstances being open to inspection and consideration regardless of their objective or subjective nature. As this Court said in *Lucas* v. *American Code Co.* (280 U. S., 445, 449 [Ct. D. 168, C. B. IX-1, 314 (1930)]), "no definite legal test is provided by the statute for the

[5] The Commissioner also included in the taxpayer's 1937 gross income the $12,500 received in the settlement and The Tax Court sustained his action. But the court below reversed, holding that the $12,500 must be regarded as a capital item in reduction of loss rather than as income. This point is not now before us.

[6] Treasury Regulations 94, article 23(e)-1, under the Revenue Act of 1936. Identical language is contained in Regulations 86, article 23(e)-1, under the Revenue Act of 1934; Regulations 101, article 23(e)-1, under the Revenue Act of 1938; Regulations 103, section 19.23(e)-1, under the Internal Revenue Code; and Regulations 111, section 29.23(e)-1, under the Internal Revenue Code.

[7] Treasury Regulations 94, article 23(e)-4, further makes clear that only losses in fact are deductible. Losses on stock due to shrinkage of value are allowable only to the extent "actually suffered when the stock is disposed of." And if, before being disposed of, the stock becomes worthless, its cost or other basis "is deductible by the owner for the taxable year in which the stock became worthless, provided a satisfactory showing is made of its worthlessness."

determination of the year in which the loss is to be deducted. The general requirement that losses be deducted in the year in which they are sustained calls for a practical, not a legal, test."

The standard for determining the year for deduction of a loss is thus a flexible, practical one, varying according to the circumstances of each case. The taxpayer's attitude and conduct are not to be ignored, but to codify them as the decisive factor in every case is to surround the clear language of section 23(e) and the Treasury interpretations with an atmosphere of unreality and to impose grave obstacles to efficient tax administration.

Second. The taxpayer contends that even under the practical, realistic test the stipulated facts demonstrate as a matter of law that the stock of the Hartman Corporation did not become worthless until 1937, when the stockholders' suit was settled. Hence it is claimed that The Tax Court erred in concluding that there was not a deductible loss in 1937 within the meaning of section 23(e).

But the question of whether particular corporate stock did or did not become worthless during a given taxable year is purely a question of fact to be determined in the first instance by The Tax Court, the basic fact-finding and inference-making body. The circumstance that the facts in a particular case may be stipulated or undisputed does not make this issue any less factual in nature. The Tax Court is entitled to draw whatever inferences and conclusions it deems reasonable from such facts. And an appellate court is limited, under familiar doctrines, to a consideration of whether the decision of The Tax Court is "in accordance with law." (26 U. S. C., section 1141(c)(1).) If it is in accordance, it is immaterial that different inferences and conclusions might fairly be drawn from the undisputed facts. (*Commissioner* v. *Scottish American Co.*, 323 U. S., 119 [Ct. D. 1619, C. B. 1944, 340].)

Here it was the burden of the taxpayer to establish the fact that there was a deductible loss in 1937. (*Burnet* v. *Houston*, 283 U. S., 223, 227 [Ct. D. 328, C. B. X-1, 343 (1931)].) This burden was sought to be carried by means of the stipulation of facts. But The Tax Court, using the practical test previously discussed, found the stipulated facts "insufficient to establish that the stock had any value at the beginning of 1937 and became worthless during that year." It felt that such evidence "clearly shows that the stock was worthless prior to that year."

We are unable to say that The Tax Court's inferences and conclusions on this factual matter are so unreasonable from an evidentiary standpoint as to require a reversal of its judgment. The stipulation shows a succession of "identifiable events," occurring long before 1937, to justify the conclusion that the stock was worthless prior to the taxable year. The serious losses over a period of years, the receivership, the receivers' reports, the excess of liabilities over assets, the termination of operations and the bankruptcy sale of the assets of the principal subsidiary all lend credence to The Tax Court's judgment.[8] While the stockholders' suit was prosecuted against defendants of admitted "financial responsibility" and constituted an asset of the corporation until settled in 1937, The Tax Court felt that no substantial value to the suit had been shown. There was no evidence in the stipulation of the merits of the suit, the probability of recovery or any assurance of collection of an amount sufficient to pay the creditors' claims of more than $630,000 and to provide a sufficient surplus for stockholders so as to give any real value to their stock. The mere fact that the defendants were financially responsible does not necessarily inject any recognizable value into the suit from the stockholders' viewpoint. Hence it was reasonable to conclude that all value had departed from the stock prior to 1937 and that there was nothing left except a claim for damages against third parties for destruction of that value.

The taxpayer points to the consequences of error and other difficulties confronting one who in good faith tries to choose the proper year in which to claim a deduction. But these difficulties are inherent under the statute as now framed. Any desired remedy for such a situation, of course, lies with Congress rather than with the courts. It is beyond the judicial power to distort facts or to disregard legislative intent in order to provide equitable relief in a particular situation.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

[8] See, in general, 5 Mertens, Law of Federal Income Taxation, sections 28.65 to 28.69; Lynch, "Losses Resulting From Stock Becoming Worthless—Deductibility Under Federal Income Tax Laws" (8 Fordham L. Rev., 199).

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING.

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

ARTICLE 42-1: When included in gross income. 1945-13-12076
I. T. 3747

REVENUE ACT OF 1936.

Accrual under the provisions of section 602 of the Revenue Act of 1936 of reimbursements of taxes with respect to floor stocks held on January 6, 1936.
I. T. 3057 (C. B. 1937-1, 93) modified.

In *Dumari Textile Co., Inc.*, v. *Commissioner* (47 B. T. A., 639, affirmed, 142 Fed. (2d), 897), it was held that a payment made under section 602 of the Revenue Act of 1936, representing reimbursement of processing tax burden borne by the taxpayer, accrued on June 22, 1936, the date on which the statute was enacted, rather than in 1938, the year in which a claim for reimbursement was allowed and paid. In I. T. 3057 (C. B. 1937-1, 93) it was held, with respect to such a payment, that if the taxpayer's returns were filed on the accrual basis, the amount of the payment should not be accrued until allowance of the claim.

In view of the withdrawal of nonacquiescence (C. B. 1942-2, 24) in the decision of the Board of Tax Appeals (now The Tax Court) in the Dumari case and substitution of acquiescence (page 3, this Bulletin), and in view of the fact that I. T. 3057, supra, is in conflict with that decision, I. T. 3057 is modified to the extent of such conflict.

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

SECTION 112(c).—RECOGNITION OF GAIN OR LOSS: GAIN FROM EXCHANGES NOT SOLELY IN KIND.

ARTICLE 112(c)-1: Receipt of other property or money in tax-free exchange not connected with corporate reorganization. 1945-11-12058
Ct. D. 1641
(Also Section 112(g), Article 112(g)-4.)

INCOME TAX—REVENUE ACT OF 1936—DECISION OF SUPREME COURT.

1. PROCEDURE—STATUTORY PERIOD FOR FILING PETITION FOR WRIT OF CERTIORARI—"ORDER FOR MANDATE" MAY BE DEEMED "JUDGMENT."

The "Order for Mandate" in the Circuit Court of Appeals for the Second Circuit may properly be deemed the "Judgment" for the purpose of determining the statutory period in which petition for certiorari may be filed under section 8(a) of the Judiciary Act of February 13, 1925 (43 Stat., 936, 940, 28 U. S. C., section 350).

2. RECAPITALIZATION—DISTRIBUTION OF CASH—TAXABLE AS DIVIDEND AND NOT AS CAPITAL GAIN.

Pursuant to a plan of recapitalization of a corporation, the taxpayer exchanged his preferred stock in the corporation for other preferred stock and common stock of the same corporation and cash, with a resulting gain in excess of the cash received. The recapitalization had been proposed because the corporation, after charging against its surplus account nontaxable stock dividends distributed in earlier years, which under State law prevented it from paying dividends, had incurred a book deficit in that account. For corporate tax purposes at least, earnings and profits exceeding the distributed cash had been earned at the time of the recapitalization. *Held:* The distribution of cash was from earnings and profits, "has the effect of the distribution of a taxable dividend" under section 112(c)(2) of the Revenue Act of 1936, and is taxable as a dividend and not as a capital gain. The distribution does not have the effect of a "partial liquidation" under section 115(i) of that Act. The definition of a "partial liquidation" under section 115(i) is specifically limited to use in section 115.

3. STOCK DIVIDENDS—EFFECT ON EARNINGS AND PROFITS.

The earnings and profits of a corporation for Federal income tax purposes are not reduced by the distribution of nontaxable stock dividends. The corporation's treatment of such dividends or the consequences under State law do not alter the character of the transactions which bring them within the Federal income tax.

4. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Second Circuit (144 Fed. (2d), 272), reversing decision of The Tax Court of the United States (1 T. C., 478), reversed.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. *Estate of Edward T. Bedford, Title Guarantee & Trust Co., executor.*

[325 U. S., 283.]

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

[May 21, 1945.]

OPINION.

Mr. Justice FRANKFURTER delivered the opinion of the Court.

At the threshold, the jurisdiction of the Court is challenged on the ground that the petition for the writ of certiorari was not filed within three months after "entry" of the "judgment" below as required by the Judiciary Act of February 13, 1925.[1]

The steps by which the case came here are these. On August 8, 1944, the Circuit Court of Appeals for the Second Circuit filed a document entitled "Opinion"; on the same day the clerk made a docket entry reading, "Order reversed, A. N. Hand, *C. J.*"; on August 29, 1944, a document entitled "Order for Mandate" was filed, and the mandate issued that day; on November 29, 1944, the petition for writ of certiorari was filed. The petition was filed too late if the "Opinion," as respondent contends, constitutes the "judgment." It was filed in time, if the "Order for Mandate" may properly be deemed the "judgment." The issue was ably pressed before us, and, since it concerns our power to review cases coming from what is perhaps the busiest circuit, it calls for more than summary treatment.

Even long continued practice can not alter the limits within which Congress has bound the appellate jurisdiction of this Court. (See *Dept. of Banking* v. *Pink*, 317 U. S., 264.) But such practice may be decisive in interpreting procedural

[1] SEC. 8. (a) That no writ of error, appeal, or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree, excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months: *Provided*, That for good cause shown either of such periods for a writ of certiorari may be extended not exceeding 60 days by a Justice of the Supreme Court. (43 Stat., 936, 940; 28 U. S. C., section 350.)

ways which, as a matter of dialectic or abstract analysis, may appear dubious. We are naturally impressed by the common understanding that in the Circuit Court of Appeals for the Second Circuit the so-called "Order for Mandate" is deemed the judgment. (Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States (1936), section 384.) We have taken and decided as a matter of course a considerable number of cases in which certiorari was sought within three months after entry of the "Order for Mandate," but not within three months after the "Opinion."[2] This practical understanding of the controlling significance, for appellate purposes, of the "Order for Mandate" is supported and certainly not contradicted by all that is conveyed by the "Opinion" and "Order for Mandate" and the rules of the lower court.

It does not detract from the "Opinion" as an opinion that in its heading it gives as dates "Argued January 6, 1944 Decided August 8, 1944," and that it concludes with "The order of The Tax Court is reversed." The same or similar phrases are commonly employed in opinions of this Court without changing their character as opinions. Nor do like phrases in the opinions of the other circuit courts of appeals turn them into judgments, since in all other circuits judgment orders are separately filed. In spite of its title, the "Order for Mandate" on its face fulfills the function of such a judgment order. It recites that "it is now hereby ordered, adjudged, and decreed that the order of said The Tax Court of the United States be and it hereby is reversed.

"It is further ordered that a Mandate issue to the said The Tax Court of the United States in accordance with this decree.

ALEXANDER M. BELL,
Clerk.
By A. DANIEL FUSARO,
Deputy Clerk."

This language plainly imports that this is the judgment and that it is then being rendered. Nor does the fact that the order was prepared by the clerk and bears his signature detract from its quality as a judgment. A judgment "is the act of the court" (*Ex parte Morgan*, 114 U. S., 174, 175), even though a clerk does all of the ministerial acts, as here, in conformity with his court's standing instructions.

The rules of the court below governing opinions, rehearings, issuance of mandate and stay of mandate are invoked to show that the "Opinion" is the appealable "judgment." These rules, like other rules, are not phrased with such fastidious precision as to make of all the parts a perfect harmony. But while substantial debating points may be taken,[3] nothing in these rules contradicts the natural meaning yielded by the terms of the "Opinion" and the "Order of Mandate," as reflected in the practice of the Second Circuit and in our own, which treats not the "Opinion" but the "Order for Mandate" as the order of judgment. The rules would have to be far less artistic than they are to warrant us in holding that the circuit court of appeals has consistently misinterpreted some of its own rules. Whether the announcement of an opinion and its entry in the docket amounts to a judgment for purposes of appeal or whether that must await some later formal act, ought not to be decided on nice-spun argumentation in disregard of the judicial habits of the court whose judgment is called into question, of the bar practicing before it, of the clerk who embodies its procedural traditions, as well as in conflict with the assumption of the reviewing court.

[2] During the 1941, 1942, and 1943 terms, this Court entertained reviews and affirmed judgments of the Circuit Court of Appeals for the Second Circuit in not less than 10 such cases: *Commercial Corporation* v. *New York Barge Corporation* (314 U. S., 104); *New York* v. *United States* (315 U. S., 510); *Mother Lode Co.* v. *Commissioner* (317 U. S., 222); *Smith* v. *Shaughnessy* (318 U. S., 176); *Helvering* v. *Griffiths* (318 U. S., 371); *Emil* v. *Hanley* (318 U. S., 515); *Fisher Co.* v. *Witmark & Sons* (318 U. S., 643); *Equitable Society* v. *Commissioner* (321 U. S., 560); *Medo Corporation* v. *Labor Board* (321 U. S., 678); *United States ex rel. Brensilber* v. *Bausch & Lomb Optical Co.* (320 U. S., 711) (equally divided court).

[3] Respondent argues that the rules of the court below, with respect to the opinions of the court, rehearings, issuance of mandate, and stay of mandate, show that the "opinion" is meant to constitute the court's judgment. But these rules compute time, with respect to filing of petitions for rehearing and for issuance of mandate, not from entry of a "judgment" but from the "filing of the opinion of this court." Some difficulty is raised because rule 27 refuses a rehearing "unless a judge who concurred in the judgment desires it." Also respondent finds it paradoxical to "stay" the court's mandate under rule 30 when the mandate is customarily issued on the same day the "Order for Mandate" is filed. And respondent argues that the court could not have meant to confer upon its clerk discretion to hold up, for varying lengths of time, the rendering of a judgment until fees have been paid by the prevailing party. In this case the "Order for Mandate" and issuance of the mandate were delayed for 21 days, and were not entered within 15 days from the filing of the opinion which rule 30 requires; the time has been variously extended in other cases.

But now that the existing practice has revealed abstract disharmonies, if not difficulties, the circuit court of appeals will doubtless establish a more tidy system for meeting the technical requirements for review here. The normal time for entering a judgment, as the starting point for determining whether review will be sought or whether there has been acquiescence in a judgment, should be fixed. The uncertainties inherent in litigation should not be needlessly prolonged. The entry of the "Order for Mandate," which in the Second Circuit begins the running of the period for appeal, is apparently variable and vagrant. In these days of rapid communication, the statutory allowance of three months is more than ample for an unsuccessful litigant to determine whether to seek further review. So long a period ought not to be extended by delay in entering a judgment nor should the burden of securing such entry be put upon the successful litigant. There are bound to be diversities in the modes of rendering and recording judgments of the 48 systems of State courts. Uniformity in the entry of judgment among the 11 circuits forming the single Federal judicature ought to be capable of achievement without loss to the geographic flexibility of the system.

This brings us to the merits, which involve the validity of an income tax deficiency assessment for 1937. The case is this. The estate of Edward T. Bedford, who died May 21, 1931, included 3,000 shares of cumulative preferred stock (par value $100) of Abercrombie & Fitch Co. Pursuant to a plan of recapitalization respondent, as executor of the estate, in 1937 exchanged those shares for 3,500 shares of cumulative preferred stock (par value $75), 1,500 shares of common stock (par value $1), and $45,240 in cash (on the basis of $15.08 for each of the old preferred shares). The recapitalization had been proposed because the company, after charging against its surplus account stock dividends totaling $844,100, distributed in 1920, 1928, and 1930, had incurred a book deficit in that account of $399,771.87. Because of this deficit, the company, under applicable State law, was unable to pay dividends although for the fiscal year ending January 31, 1937, it had net earnings of $309,073.70.

By comparing the fair market value of the old preferred shares at the date of Bedford's death with the market value of the new stock and cash received the gain to his estate was $139,740. Admittedly the recapitalization was a reorganization (section 112(g)(1)(D) of the Revenue Act of 1936, 49 Stat., 1648, 1681, 26 U. S. C., section 112(g)(1)(E)), so that only the cash received, but none of the stock, is taxable. (Sections 112(b)(3), 112(c)(1), 49 Stat., 1648, 1679, 1680, 26 U. S. S., sections 112(b)(3), 112(c)(1).) The sole issue is whether the cash $45,240, is taxable as a dividend, or merely as a capital gain to the extent of 40 per cent. The Tax Court sustained the determination of the Commissioner that the cash was taxable as a dividend (1 T. C., 478), but was reversed by the circuit court of appeals. (144 Fed. (2d), 272.) On a showing of importance to the administration of the Revenue Acts, we granted certiorari. (— U. S., —.)

The precise question is whether the distribution of cash in this recapitalization "has the effect of the distribution of a taxable dividend" under section 112(c)(2) of the Revenue Act of 1936 and as such is fully taxable, or is taxable only at the rate of 40 per cent as a capital gain under section 112(c)(1) of that Act. The relevant provisions read:

"(c) GAIN FROM EXCHANGES NOT SOLELY IN KIND.—(1) If an exchange would be within the provisions of subsection (b), (1), (2), (3), or (5) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property. (2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) of this subsection but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property."

The history of this legislation is not illuminating. Section 112(c)(2) originated in section 203(d)(2) of the Revenue Act of 1924 (43 Stat., 253, 257). But the reports of the Congressional committees merely use the language of the section to explain it. (H. Rept. No. 179, Sixty-eighth Congress, first session, pages 14–15 [C. B. 1939–1 (Part 2), 241]; S. Rept. No. 398, Sixty-eighth Congress, first session, pages 15–16 [C. B. 1939–1 (Part 2), 266].) Nor does the applicable Treasury regulation add anything; it repeats substantially the committee reports.

(Treasury Regulations 94, article 112(g)-4.) We are thrown back upon the legislative language for ascertaining the meaning which will best accord with the aims of the language, the practical administration of the law and relevant judicial construction.

Although Abercrombie & Fitch showed a book deficit in the surplus account because the earlier stock dividends had been charged against it, the parties agree that for corporate tax purposes at least earnings and profits exceeding the distributed cash had been earned at the time of the recapitalization. That cash therefore came out of earnings and profits and such a distribution would normally be considered a taxable dividend (see section 115(a)),[4] and has so been treated by the courts in seemingly similar situations. It has been ruled in a series of cases that where the stock of one corporation was exchanged for the stock of another and cash and then distributed, such distributions out of earnings and profits had the effect of a distribution of a taxable dividend under section 112(c)(2). (*Commissioner* v. *Owens*, 69 Fed. (2d), 597; *Commissioner* v. *Forhan Realty Corporation*, 75 Fed. (2d), 268; *Rose* v. *Little Inv. Co.*, 86 Fed. (2d), 50; *Love* v. *Commissioner*, 113 Fed. (2d), 236; *Campbell* v. *United States*, 144 Fed. (2d), 177.) The Tax Court has reached the same result, that is, has treated the distribution as a taxable dividend, in the case of the recapitalization of a single corporation. (*McCord* v. *Commissioner*, 31 B. T. A., 342, 344; *J. Weingarten, Inc.*, v. *Commissioner*, 44 B. T. A., 798, 808–809; *Knapp Monarch Co.* v. *Commissioner*, 1 T. C., 59, 69–70, affirmed on other grounds, 139 Fed. (2d), 863.) We can not distinguish the two situations and find no implication in the statute restricting section 112(c)(2) to taxation as a dividend only in the case of an exchange of stock and assets of two corporations.

Respondent, however, claims that this distribution more nearly has the effect of a "partial liquidation" as defined in section 115(i).[5] But the classifications of section 115, which governs "Distributions of Corporations" apart from reorganizations, were adopted for another purpose. They do not apply to a situation arising within section 112. The definition of a "partial liquidation" in section 115(i) is specifically limited to use in section 115. To attempt to carry it over to section 112 would distort its purpose. That limitation is not true of section 115(a) which defines "dividend" for the purpose of the whole title. Accordingly, this definition is infused into section 112(c)(2). Under section 115(a) a distribution out of accumulated earnings and profits is a "dividend," thus confirming the conclusion that a distribution of earnings and profits has the "effect of the distribution of a taxable dividend" under section 112(c)(2).

Recapitalization does not alter the "effect." Although the capital of a company is reduced, the cash received is a distribution of earnings and profits and as such falls within the Federal tax. That the company's treatment of its stock dividends may bring consequences under State law requiring a capital reduction does not alter the character of the transactions which bring them within the Federal income tax. Recapitalization is one of the forms of reorganization under section 112(g)(1)(D). It can not therefore be urged as a reason for taking the transaction out of the requirements of section 112 and forcing it into the mold of section 115. The reduction of capital brings section 112 into operation and does not give immunity from the requirements of section 112(c)(2).

Treating the matter as a problem of statutory construction for our independent judgment, we hold that a distribution, pursuant to a reorganization, of earnings and profits "has the effect of a distribution of a taxable dividend" within section 112(c)(2). As is true of other teasing questions of construction raised by technical provisions of Revenue Acts the matter is not wholly free from doubt. But these doubts would have to be stronger than they are to displace the informed views of The Tax Court. And if the case can be reduced to its own particular circumstances rather than turn on a generalizing principle we should feel bound to apply *Dobson* v. *Commissioner* (320 U. S., 489 [Ct. D. 1597, C. B. 1944, 56]), and sustain The Tax Court.

Reversed.

[4] (a) DEFINITION OF DIVIDEND.—The term "dividend" when used in this title (except in section 203(a)(3) and section 207(c)(1), relating to insurance companies) means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

[5] (i) DEFINITION OF PARTIAL LIQUIDATION.—As used in this section the term "amounts distributed in partial liquidation" means a distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

SECTION 112(f).—RECOGNITION OF GAIN OR LOSS: INVOLUNTARY CONVERSION.

ARTICLE 112(f)-2: Replacement funds. 1945-24-12199
Ct. D. 1655

INCOME TAX—REVENUE ACTS OF 1932, 1934, AND 1936—DECISION OF COURT.

1. RECOGNITION OF GAIN OR LOSS—CONDEMNATION AWARD—REPLACEMENT FUND.

An award granted to the taxpayer upon condemnation of real property in 1931 was paid in installments in 1932, 1935, and 1936. The taxpayer set up as a liability on its books an account entitled "Replacement fund," to which it credited the full amount of the award received in each year, and in 1932 and 1937 applied to the Commissioner for permission to establish such a fund, in accordance with article 580, Regulations 77, neither of which applications was acted upon by the Commissioner. Out of the payments received the taxpayer purchased "similar property" and real estate mortgages. *Held:* Article 580 of Regulations 77, requiring the taxpayer to obtain permission to establish a replacement fund, is within the power conferred by section 112(f) of the Revenue Acts of 1932, 1934, and 1936. Since the taxpayer did not receive such permission, it is entitled to exemption only so far as it in fact expended the money in buying similar property. The purchase of real estate mortgages does not of itself serve the purpose of the statute and regulations, as money lent on mortgages is not the equivalent of real property.

2. GAIN OR LOSS—RECOVERY OF BASIS—AWARD SPREAD OVER MORE THAN ONE YEAR.

No part of the award received in 1936 for property condemned in 1931 is exempt under section 112(f) of the Revenue Act of 1936, where the total amount invested in similar property in 1936 and prior years was less than the basis of the property and the basis had been entirely recovered in a prior year.

3. DECISION AFFIRMED IN PART AND REVERSED IN PART.

Decision of The Tax Court of the United States (2 T. C., 38) affirmed upon taxpayer's appeal and reversed upon Commissioner's appeal.

4. CERTIORARI DENIED.

Petition for certiorari denied October 15, 1945.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Winter Realty & Construction Co., petitioner, v. *Commissioner of Internal Revenue, respondent.*

Commissioner of Internal Revenue, petitioner, v. *Winter Realty & Construction Co., respondent.*

[149 Fed. (2d), 567.]

On cross petitions to review an order of The Tax Court of the United States, assessing a deficiency in income tax against the taxpayer for the years 1932, 1935, and 1936, and a deficiency in excess profits tax for the years 1935 and 1936.

Before L. HAND, SHAW, and CHASE, Circuit Judges.

[May 7, 1945.]

OPINION.

L. HAND, Circuit Judge: Both parties appeal from an order of The Tax Court which assessed a deficiency against the taxpayer in its income tax for the years 1932, 1935 and 1936; and an additional deficiency in excess profits tax for the years, 1935 and 1936. The question involves the proper construction of section

112(f) of the Revenue Acts of 1932, 1934 and 1936. The first question is as to how much of an award granted to the taxpayer upon condemnation of certain real property was "expended in the acquisition of other property similar * * * to the property" condemned, "or in the establishment of a replacement fund." The second question is whether, when an award is paid in installments, spread over more than one year, a taxpayer is entitled to exemption as to all of any installment "expended" in any given year in acquiring "similar property," regardless of what he may have so expended in the past. The taxpayer owned real property in Flushing, N. Y., which the city condemned on November 4, 1931, and the "basis" of which was $136,564.83. The net amount of the award, paid in installments and after considerable litigation, was as follows: in 1932—$160,292.81; in 1935—$125,735.57; and in 1936—$101,116.25. The first of these sums the taxpayer deposited in its bank account when paid; an account on which it drew for its general needs, and in which it deposited its current receipts. Out of the first payment it invested $15,000 in 1932 in the purchase of a mortgage on real estate, and $45,713.94 in buying "similar property." The Commissioner taxed as "gain" in 1932, the difference—$23,527.98—between the amount so received in that year, and the "basis." In 1935 the taxpayer invested the whole of the installment of that year in mortgages on real property; all of which the Commissioner taxed as "gain," because the "basis" had been fully restored by the first installment. In 1936 the taxpayer invested out of the award of that year, $50,000 in mortgages, and the balance—$51,116.25—in "similar property." The Commissioner assessed the whole payment of 1936 as "gain" because the total of all the sums invested in "similar property"—$45,713.94 plus $51,116.25—had not equaled the "basis"—$136,564.84.

In closing its books for the year 1932, the taxpayer set up on the liability side of its ledger an account, entitled "Replacement fund," to which it credited the full amount of the award received in that year. In 1935 it added to this item upon its ledger the award received in that year; and so it did in 1936. In 1932 its vice president and manager, after reading the regulation regarding the establishment of replacement funds, quoted in the margin,[1] went to the office of the collector, procured the prescribed form in triplicate, filled it out and mailed it to the official in the Brooklyn office to whom he had been told to send it. Later, the taxpayer made several inquiries at the same office about this application, but could learn nothing; apparently, although received, it had been lost, and it never has been found. In making its return for the year 1932 on March 15, 1933, the taxpayer enclosed a letter calling attention to the fact that "there has been set up a figure headed 'replacement fund.' This figure represents 60 per cent of the city's appraisal * * * it is the intention * * * upon receipt of the balance of the award * * * to replace same in property in similar or related in service, or use of the property so converted." The Commissioner never took any action upon this letter. On February 3, 1937, the taxpayer filed a second application, upon the form prescribed for the purpose, for "permission" to "establish a replacement fund"; but the Commissioner never acted upon this application either. The Tax Court held that the attempt to set up a "replacement fund" failed; that the mortgages were not "similar property or property related in service or use"; but it allowed the sum of $51,116.25 invested in real estate in 1936 as an exemption because it had been invested in that year in "similar property or property related in service or use." This last ruling is the basis of the Commissioner's appeal; the taxpayer appeals from the rulings against it.

Everyone agrees as to the purpose of section 112(f); indeed, it would be impossible to mistake it. An owner, whose property is taken involuntarily, but

[1] ART. 580. REPLACEMENT FUNDS.—In any case where the taxpayer elects to replace or restore the converted property but it is not practicable to do so immediately, he may obtain permission to establish a replacement fund in his accounts in which part or all of the compensation so received shall be held, without deduction for the payment of any mortgage. In such a case the taxpayer should make application to the Commissioner on Form 1114 for permission to establish such a replacement fund, and in his application should recite all the facts relating to the transaction and declare that he will proceed as expeditiously as possible to replace or restore such property. The taxpayer will be required to furnish a bond with such surety as the Commissioner may require in an amount not in excess of double the estimated additional income taxes which would be payable if no replacement fund were established. (See section 1126 of the Revenue Act of 1926.) The estimated additional taxes, for the amount of which the claimant is required to furnish security, should be computed at the rates at which the claimant would have been obliged to pay, taking into consideration the remainder of his net income and resolving against him all matters in dispute affecting the amount of the tax. Only surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds will be approved as sureties. The application should be executed in triplicate, so that the Commissioner, the applicant, and the surety or depositary may each have a copy.

who has become entitled to compensation, should not be treated as having "realized" a taxable "gain," provided he at once puts the proceeds to a similar use. Such an owner will often find himself in a difficult predicament in cases where the property is of a kind not easily replaced, and where he can not therefore immediately purchase a substitute. This the statute recognizes by providing that in such a case he may "establish" a "replacement fund," an option which is however subject to regulation by the Commissioner who in fact regulated it by article 580 of Regulations 77, already quoted. By this he requires an owner who wishes to "establish" such a "fund" to get "permission" which he is to obtain by filing an application in which he declares that he will replace the property as soon as possible—the prescribed form requires a date to be fixed—and, when that has been approved, by posting a bond to secure the tax "which would be payable if no replacement fund were established." The form of the "fund" is not prescribed, and, arguendo, we may assume that entries upon the owner's books, such as the taxpayer here carried, if supported by bank deposits, or mortgages, would be permissible. For example, the regulation reads: "he may obtain permission to establish a replacement fund in his accounts in which * * * the compensation * * * shall be held." The taxpayer challenges the validity of this regulation, but it appears to us to be within the power conferred by the statute. The purpose of the privilege was to avoid forcing an owner to a hasty, perhaps an impossible, investment, but it did not give him an indefinite time. Even though his failure to find "similar property" were not due to any fault of his, there must come an end and at the end he would be taxed as though the property had been voluntarily "converted." We can not see how the regulation could have realized this with greater freedom to the owner and yet with that minimum of security to the Treasury, which was certainly demanded; it allows the owner to keep his "fund" in whatever form he finds most convenient and profitable, and only demands of him adequate assurance of his good faith and eventual performance. We do not mean that another regulation might not have been equally lawful: the Commissioner might have secured the tax by a rigid control over the form of the "fund," or by requiring that he should consent to any withdrawals. But it was his function, not ours, to decide what was on the whole the most desirable method; and the form which he did choose has survived many recensions of the statute. We have no doubt that it is valid.

Since the taxpayer at bar did not get permission, it became entitled to the exemption only so far as it in fact "expended" the money in buying "similar property"; for the Commissioner's inaction, however negligent, was certainly not a performance of the condition, and the Commissioner could not be estopped. A taxpayer who has to deal with a sluggish and inert official is always in a trying position and has just ground for complaint; but that does not discharge him of whatever duties are lawfully imposed upon him as a condition of his privileges; and, indeed, in the case at bar the taxpayer itself was not a model of diligence and care. That the mortgages of themselves would not serve without the Commissioner's permission is plain; Congress meant to suspend the tax only when an owner, forced out of one investment, found an equivalent investment, and money lent on mortgage is not the equivalent of real property, either as to its management, as to the security which it affords, or as to the return obtained from it. We affirm the order upon the taxpayer's appeal.

Upon the Commissioner's appeal the question is whether the sum invested in 1936 in "similar property," shall be exempted from the taxable "gain" in that year; and that in turn depends upon the meaning of the concluding words of section 112(f): "If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended." The taxpayer argues, and The Tax Court agreed, that since the sum mentioned was "expended" in buying "similar property," the "gain" which could be "recognized" must not be "in excess of" what was left of the installment of 1936—$50,000. The Commissioner replies that the exemption begins only after all those parts of the award which have been "expended" in the purchase of "similar property" have been marshaled against the "basis"; and it seems to us that this is an inescapable conclusion. Obviously, an owner who receives a single award, of which he "expends" a part in the purchase of "similar property," may not exempt any part of the "gain" by allocating against the "basis" that part which he does not so "expend," and against "gain" that which he does. To do so would defeat the whole purpose of the exemption, which, as we have said, was to exempt an owner from taxes upon increases in the value of his property which he is forced to "realize" as "gains." It is a corollary that he must do what he can to restore his position to what it was originally; and,

so far as he does not, he will be regarded as content with the "realization" of the increase. If an award be made in several installments paid in the same year, the result is the same. An owner who does not "expend" the first installment in the purchase of "similar property," but does so "expend" a later one, may not marshal the first against his "basis" and assert that he had "expended" all the "gain" in the purchase of "similar property."

The distinction taken by The Tax Court was that the installments spread over different taxable years must be separately computed, because the tax for each year stands alone. Hence, all money "expended" upon "similar property" in any year, if it be a "gain," is entitled to the exemption; and it makes no difference that in earlier years the owner has not "expended" upon "similar property" an amount equal to the "basis." We agree of course, that the tax for every year must be separately assessed; but that does not mean that in computing the tax we may not look to what has happened in earlier years. For example, if the price of property is paid in successive yearly installments, the earlier installments are first taken to amortize the "basis," and it is only after that has been done, that any "gain" arises. (Section 111(d) and section 44(b) of Title 26, U. S. C.) If The Tax Court is right, by a simple expedient an owner can exempt his "gains" up to the amount of the "basis," and yet avail himself of that amount of the award for any purpose he may wish. All he need do is to use as he wishes the first installment up to the amount of the "basis," and invest the later installments in "similar property." It seems to us to need no argument to prove that that extends the privilege beyond its purpose.

The practical difficulties in application which the taxpayer suggests, do not exist. We take as the example the situation which it puts in its reply brief: the condemnation of property whose "basis" was $35,000, for an award of $150,000, paid $50,000 in each of three years. How it asks shall the "gain" be taxed? Let us assume that no part of the first installment is invested in "similar property," but that the whole of the second installment is so invested. The owner will be taxed in the first year upon his "gain"—$15,000—and in the second year upon $35,000. All the installment for that year is "gain," and must be taxed unless exempted; and it will not all be exempted, because out of the first installment an amount equal to the "basis" was not invested in "similar property." To allow the owner to invoke the exemption before that has been done, has, as we have shown, the effect of freeing the "gain" up to the amount of the "basis" from the condition which is the presupposition of the privilege. In the case just put, the extent to which the third installment shall be taxed will depend upon how far it is invested in "similar property"; the whole "basis" having been amortized for the purposes of exemption, no deduction will be necessary. We need hardly labor the improbability that Congress should have meant to make the exemption depend upon whether an award, payable in installments, happens to be spread over more than a single year.

It is quite true that in *Wilmore S. S. Co.* v. *Commissioner* (78 Fed. (2d), 667) a majority of this court decided the opposite. The owner's steamer had been torpedoed in 1917; it recovered $1,750,000 of insurance money, which was about $400,000 above the "basis"; and upon the "gain" so "realized" it then paid the tax. The value of the steamer had been $2,400,000, and in 1928 the Mixed Claims Commission awarded an added $650,000, upon $312,157.20 of which the Commissioner taxed it as a "recognizable gain." The owner asserted that it had in 1928 "expended" this part of the award upon other vessels which were "similar property," and that section 112(f) protected it; but the Commissioner and a majority of the Board of Tax Appeals held that the "gain" was not exempt. In this court, however, although the Board had passed upon the point now at issue, the brief of the Commissioner did not press it.[2] It is true that we spoke of the Commissioner's ruling as "erroneous" in disallowing the exemption because the owner had "established" no "replacement fund," but we were making use of that ruling only as evidence that he had thought that the award of 1928 had been in fact "expended" upon the new vessels; one of the issues before us and that upon which we split. Although we can not deny that the decision

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[2] The only three points it contained were headed as follows:

"I. The money received under the award was not received directly from the casualty in 1917 as a matter of right but came to the taxpayer as *damages*, which were collected by its Government and remitted to it."

"II. The casualty was complete and final in 1917 and there was no conversion of the ship into this fund in the tax year 1928."

"III. The money received from the award was not used in the manner specified by the statute and hence can not be tax free thereunder."

did embrace a ruling contrary to that which we are now making, we do not regard it as having the same force as though it had deliberately overruled an objection pressed upon us at the time.

Order affirmed upon the taxpayer's appeal.

Order reversed upon the Commissioner's appeal.

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

ARTICLE 112(g)-4: Exchanges in reorganization for stock or securities and other property or money.

REVENUE ACT OF 1936.

Distribution of cash pursuant to a recapitalization which was a reorganization. (See Ct. D. 1641, page 357.)

INCOME TAX RULINGS.—PART III.

REVENUE ACTS OF 1935 AND 1934 OR PRIOR ACTS.

SUBTITLE B.—GENERAL PROVISIONS.

PART II.—COMPUTATION OF NET INCOME.

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

ARTICLE 22(b)(4)-1: Interest upon State obligations. 1945-24-12191 I. T. 3772

REVENUE ACTS OF 1926 AND 1928.

Revocation of I. T. 3572 (C. B. 1942-2, 187).

In I. T. 2666 (C. B. XI-2, 69 (1932)) it was held that interest on bonds issued by corporations formed under the act of the Legislature of Indiana which was approved on March 10, 1927, for the purpose of financing the acquisition of school sites and the erection of school buildings in the case of a specified class of private school corporations of the State, was exempt from Federal income tax. That ruling was revoked by I. T. 3572 (C. B. 1942-2, 187) for the reason that it was thought to be contrary in principle to the decision in *Helvering* v. *Mountain Producers Corporation* (303 U. S., 376, Ct. D. 1321, C. B. 1938-1, 343).

Upon reconsideration of the question and in view of the decisions in *Estate of Alexander J. Shamberg* v. *Commissioner* (3 T. C., 131, acquiescence, page 6, this Bulletin, affirmed, 144 Fed. (2d), 998, Ct. D. 1648, page 335, this Bulletin, certiorari denied, 323 U. S., 792) and *Estate of Caroline White* v. *Commissioner* (3 T. C., 156, acquiescence, page 7, this Bulletin, affirmed, 144 Fed. (2d), 1019, Ct. D. 1647, page 65, this Bulletin, certiorari denied, 323 U. S., 792), it has been decided to follow the principle of those cases with respect to interest on bonds of the type referred to in I. T. 2666 and I. T. 3572, supra. It is held, therefore, that such interest is exempt from Federal income tax.

In view of the foregoing, I. T. 3572, supra, is revoked and I. T. 2666, supra, is reinstated.

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

ARTICLE 23(a)-1: Business expenses.

REVENUE ACT OF 1921.

Contributions to the M Civic Federation which supplies a tax information service. I. T. 1281 (C. B. I-1, 118 (1922)) modified. (See I. T. 3735, page 89.)

PART V.—RETURNS AND PAYMENT OF TAX.

SECTION 52.—CORPORATION RETURNS.

ARTICLE 52–1: Corporation returns. 1945–1–11923
I. T. 3704

REVENUE ACTS OF 1918 AND 1924.

I. T. 2299 (C. B. V–2, 121 (1926)) is modified to reinstate the position taken in O. D. 476 (C. B. 2, 222 (1920)), in conformity with the recommendation contained in G. C. M. 24423 (page 145, this Bulletin).

SUBTITLE C.—SUPPLEMENTAL PROVISIONS.

SUPPLEMENT B.—COMPUTATION OF NET INCOME.

SECTION 112(f).—RECOGNITION OF GAIN OR LOSS: INVOLUNTARY CONVERSIONS.

ARTICLE 112(f)–2: Replacement funds.

REVENUE ACTS OF 1932 AND 1934.

Replacement fund account created with respect to a condemnation award without obtaining permission of Commissioner. (See Ct. D. 1655, page 362.)

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX.

SECTION 142.—FIDUCIARY RETURNS.

ARTICLE 142–1: Fiduciary returns. 1945–8–12024
I. T. 3730

REVENUE ACT OF 1921.

I. T. 1540 (C. B. I–2, 178 (1922)) is modified pursuant to the recommendation in G. C. M. 24617 (page 235, this Bulletin).

ARTICLE 142–1: Fiduciary returns.

REVENUE ACT OF 1926.

Bankrupt partnership estates. G. C. M. 8488 (C. B. X–1, 270 (1931)) modified. (See G. C. M. 24617, page 235.)

EMPLOYMENT TAX RULINGS.

INTERNAL REVENUE CODE.

CHAPTER 9, SUBCHAPTER A.—FEDERAL INSURANCE CONTRIBUTIONS ACT.

SECTION 1400: Rate of tax. 1945–3–11956
REGULATIONS 106, SECTION 402.302: Rates and computation of employees' tax. T. D. 5430
(Also Section 1400; Regulations 106, Section 402.402.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PART 402.—EMPLOYEES' TAX AND THE EMPLOYERS' TAX UNDER THE FEDERAL INSURANCE CONTRIBUTIONS ACT.

Regulations 106 amended to conform to Public Law 495 (Seventy-eighth Congress), postponing until January 1, 1946, the increase in rates of the taxes under the Federal Insurance Contributions Act.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 106 [Part 402, Title 26, Code of Federal Regulations, Cum. Sup.], relating to the employees' tax and the employers' tax under the Federal Insurance Contributions Act (Subchapter A, Chapter 9, Internal Revenue Code), to Public Law 495 (Seventy-eighth Congress), approved December 16, 1944, such regulations are amended as follows:

PARAGRAPH 1. Immediately preceding section 402.301, relating to measure of employees' tax, the following is inserted:

PUBLIC LAW 495 (SEVENTY-EIGHTH CONGRESS), APPROVED DECEMBER 16, 1944.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) clauses (1), (2), (3), and (4) of section 1400 of the Federal Insurance Contributions Act (section 1400 of the Internal Revenue Code, relating to the rate of tax on employees) are amended to read as follows:

"(1) With respect to wages received during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, and 1945, the rate shall be 1 per centum.

"(2) With respect to wages received during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

"(3) With respect to wages received after December 31, 1948, the rate shall be 3 per centum."

* * * * * * *

PAR. 2. Section 402.302, as amended by Treasury Decision 5345, approved March 14, 1944 [C. B. 1944, 543], relating to rates and computation of employees' tax, 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, 1941, 1942, 1943, 1944, and 1945	1
For the calendar years 1946, 1947, and 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 1945 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, 1946, 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 1946 (the year in which the wages are received), and not at the 1 per cent rate which is in effect for the calendar year 1945 (the year in which the services were performed).

PAR. 3. Immediately preceding section 402.401, relating to measure of employers' tax, the following is inserted:

PUBLIC LAW 495 (SEVENTY-EIGHTH CONGRESS), APPROVED DECEMBER 16, 1944.

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

* * * * * * *

(b) Clauses (1), (2), (3), and (4) of section 1410 of the Federal Insurance Contributions Act (section 1410 of the Internal Revenue Code, relating to the rate of tax on employers) are amended to read as follows:

"(1) With respect to wages paid during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, and 1945, the rate shall be 1 per centum.

"(2) With respect to wages paid during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

"(3) With respect to wages paid after December 31, 1948, the rate shall be 3 per centum."

PAR. 4. Section 402.402, as amended by Treasury Decision 5345, relating to rates and computation of employers' tax, 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, 1941, 1942, 1943, 1944, and 1945	1
For the calendar years 1946, 1947, and 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. 5. The last paragraph of section 402.705, as amended by Treasury Decision 5345, relating to special refunds of employees' tax on wages over $3,000, is further amended to read as follows:

Example. Employee A receives taxable wages in the amount of $2,000 from each of his employers, X, Y, and Z, for services performed during the calendar year 1945, or a total of $6,000 for such year. The first $2,000 of such wages is paid during the calendar year 1945 by employer X, who deducts employees' tax in the amount of $20 from A's wages and pays such tax to the collector. The second $2,000 of such wages is paid during the calendar year 1945 by employer Y, who pays employees' tax in the amount of $20 to the collector *without deducting such tax from A's wages.* Employer Z pays $1,000 of such wages to A during the calendar year 1945 and $1,000 during the calendar year 1946. The rate of such tax for the year 1945 is 1 per cent and the rate for 1946 is 2½ per cent. Employer Z deducts employees' tax in the amount of $35 from such wages ($10 during 1945 and $25 during 1946) and pays such tax to the collector. Thus, employees' tax in the total amount of $55 is deducted from A's wages and paid to a collector. The amount of employees' tax with respect to the first $3,000 of such wages is $30. A may file a claim for refund of $25.

(This Treasury decision is issued under the authority contained in section 1429 of the Internal Revenue Code (53 Stat., 178; 26 U. S. C., 1940 ed., 1429) and Public Law 495 (Seventy-eighth Congress), approved December 16, 1944.)

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

Approved January 17, 1945.

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

(Filed with the Division of the Federal Register January 18, 1945, 11.39 a. m.)

SECTION 1400: Rate of tax.
REGULATIONS 106, SECTION 402.402: Rates and computation of employers' tax.

Increase in rates of taxes postponed until January 1, 1946, regulations amended. (See T. D. 5430, page 369.)

SECTION 1410: Rate of tax.
REGULATIONS 106, SECTION 402.403: When employers' tax attaches.

Treatment of wages for pay period ended within calendar quarter or year, when paid after close of such quarter or year. (See Mim. 5796, page 379.)

SECTION 1426: Definitions. 1945-19-12143
REGULATIONS 106, SECTION 402.204: Who are employees. Mim. 5925
(Also Subchapter C (Federal Unemployment Tax Act), Section 1607; Regulations 107, Section 403.204.)

Status, for employment tax purposes, of commission agents who operate bulk plants for oil companies.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., September 14, 1945.

Collectors of Internal Revenue and Others Concerned:

1. In the cases of *The Texas Co.* v. *Higgins* (C. C. A. 2 (1941), 118 Fed. (2d), 636) and *Indian Refining Co.* v. *Dallman* (C. C. A. 7 (1941), 119 Fed. (2d), 417), two bulk plant agents were held not to be employees of such companies with respect to services performed by them in the operation of bulk plants of the companies.

2. Similar decisions were made in the cases of *American Oil Co.* v. *Fly* (C. C. A. 5 (1943), 135 Fed. (2d), 491) and *Orange State Oil Co.* v. *Fahs* (C. C. A. 5 (1943), 138 Fed. (2d), 743), *Glenn* v. *Standard Oil Co.* (C. C. A. 6 (1945), 148 Fed. (2d), 51) and *Gulf Oil Corporation* v. *United States* (U. S. D. C. W. Pa. (1944), 57 Fed. Supp., 376).

CASE OF THE TEXAS CO. v. HIGGINS.

3. The facts upon which The Texas Co. case was decided disclose that the company is engaged in the oil business in many States and uses "distributors" (bulk plant agents) as part of its outlet. The distributor contracted with the company to sell its petroleum products as consigned to him and to account for the proceeds when collected; to sell such products at prices set by the company; to bear all expenses except freight and taxes on the products consigned; to furnish his own trucks and other equipment, which must conform with the company's standards; and at his expense to hire and pay the wages of all necessary assistants, over whom he assumed full control and responsibility and for whose acts he was to indemnify the company if necessary. He was to remit daily all his collections without deduction, receiving commissions from the company upon his sales in accordance with a fixed schedule.

4. The contract could be terminated by either party on five days' notice and the company could buy out the plant at the amount the distributor had invested in it. In accordance with the contract, the distributor built and operated a distributing station at one place in which he invested $33,000 and another station at a second place in which he invested $30,000. He conducted both stations under the name "X Oil Company." At one station he had four assistants whom he hired and discharged at his pleasure and whose wages, hours, and working conditions he determined. He paid all expenses arising from the operation of the stations; the telephone and bank account were in his name; he did some local advertising; he did not report to the company the salaries he paid; and he fixed the hours and days during which the plants should be open. He purchased his trucks and cars without consulting the company; he kept his own records, which were, however, audited by the company's examiners; and he was not responsible for customers' accounts except in so far as they exceeded the credit which the company fixed for each customer. The company gave the distributor a manual setting out in much detail its admonitions as to the proper way to operate one of its "bulk stations." However, the court found that the distributor was not required to observe the admonitions.

CASE OF AMERICAN OIL CO. v. FLY.

5. In the case of the American Oil Co., three forms of contracts were considered covering the operations of corporate, partnership, and individual distributors conducting bulk plants. The contracts differ in some details but are in agreement in substance. Under the terms of the contracts the company is to furnish its products for distribution, at a wholesale storage and distributing station belonging to the company which includes storage tanks, warehouses, switch tracks, driveways, and other facilities and equipment, to be maintained at the company's expense. The products sent to the distributors are to be selected by the company; the prices to the distributors are fixed by the company, delivered to the station in carload lots; and the products remain the property of the company until sold. The distributors are to furnish at their own expense delivery trucks, tanks, and other equipment and bear all expenses of operating them, and of unloading and distributing the products, including all expense of the bulk plant operations.

6. The distributors are to carry liability insurance to protect both the company and themselves. They agree to pay on demand at prices fixed by the company for all commodities delivered to them which they have sold; and to use their best efforts to sell and distribute the largest possible quantity, for cash, or at their own risk on credit, except that the company may in writing select customers it is willing to credit, to whom the distributors may sell, reporting each such sale and taking credit as though cash had been remitted. The proceeds of other sales are to be remitted to or deposited to the credit of the company as directed, and accounts of all sales are to be kept subject to inspection as may be required by the company. The distributors have no right to bind the company by any contract, or assign or delegate their duties without the consent of the company. They may employ others to assist them who are stated to be their agents and employees and not those of the company, and subject solely to their direction and control.

7. The distributors are compensated by the named commissions per gallon and per pound allowed in settlement with the company. The contracts are for territories not specifically defined and for an indefinite period cancelable by either party on one day's notice. Each distributor controls his own hours and methods of work, and sells to such persons as he can profitably reach at prices he can afford to quote. State and municipal permits and licenses for operating the bulk plant are taken out and paid for by the company. The motor carrier permits are taken out and paid for by the distributors.

CASE OF GLENN v. STANDARD OIL CO.

8. The facts upon which the Standard Oil Co. case was decided disclose that the company carries on business in several States, distributing its products through commission agents in charge of its bulk distributing plants. The company and such commission agents entered into written contracts, subject to immediate cancellation by either party, under which the agents agreed to act for the company in the sale of its products on a commission basis, in designated areas, receiving, as their entire compensation therefor, specified commissions on the sales.

9. The company owns all the real estate on which the distributing plants are located, as well as the tanks situated thereon, and the stations bear its name. All products delivered to the agent by the company were also its property, for which the agent was required to account at regular intervals, by inventory reports. Cash receipts were deposited daily by the agent in the local bank in the name of the company, and the company would thereafter remit the commissions to the agents at regular intervals. Certain customers approved by the company could buy on credit. Agents who sold to other customers on credit assumed liability for their failure to pay their accounts. The agents were required to purchase their own delivery trucks, upon which the company placed its own tanks, with its name painted thereon. In addition, the agents purchased, at their own expense, such office equipment and trucks as they considered necessary to operate properly; they also employed and paid all the truck drivers and other employees required to carry on the business. The company had nothing to say about the persons so employed by the agents; it was not consulted and

its approval was neither required nor obtained. Hours of work for such employees, vacation periods, compensation, right of discharge, and rules respecting their employment, were matters exclusively within the control of the commission agents.

10. The company fixed the sales prices of its products and the agents generally conformed therewith. But in cases where, for any reason, they sold at prices lower than those fixed by the company, they took a reduction in the amount of their commission. The company furnished the agents with a rule book, entitled "Rules for Operation of Bulk Plants," which detailed safety measures, provisions for the care of the company's funds, repair and maintenance of its property, and methods for successful operation of the business. In addition, the company mailed to the commission agents, from time to time, certain circular letters dealing with the proper operation of the business, and, on various occasions, held sales conferences, which the agents were asked to attend. Twice a year an auditor employed by the company visited the stations and inspected the operations and methods of doing business, but gave no orders or instructions. The agents kept, at their own expense, the books relating to the operation of the plants, which were retained by them when the contract relationship with the company was terminated.

11. The agents had an investment in the business, ranging from a minimum of $2,000 to a maximum of $60,000. Operations of the agents ranged from small commissions up to commissions of $31,000 per year. There was no requirement respecting the amount of time that the agents would give to the business. Some agents gave full time to the operation of the company's bulk plants; others gave it merely supervisory attention, devoting not more than an hour, or even less, each day, and spent most of their time managing other businesses, or in other gainful occupations. Each agent operated the bulk plant in such a way as in his opinion would produce the greatest volume of sales, paying his own expenses, keeping his own books, hiring and discharging his own employees, and devoting as much or as little time to the business as was commensurate with its size and his other interests.

POSITION OF BUREAU.

12. In conformity with these decisions, the Bureau will regard all bulk plant agents who operate under circumstances substantially similar to those present in the cited cases as independent contractors, and not as employees for Federal employment tax purposes. Any such bulk plant agent who hires, pays, and controls employees on his own behalf is the employer of such employees for Federal employment tax purposes. The ruling stated above, namely, that bulk plant agents are not employees, is restricted to cases in which the facts, as in the decisions cited above, do not disclose such control or right of control over details and means of operation as is sufficient to establish the relationship of employer and employee. If doubt exists in a particular case, such case should be referred to the Bureau.

13. Correspondence relating to this mimeograph should refer to its number and the symbols A&C:RR.

JOSEPH D. NUNAN, Jr.,
Commissioner.

SECTION 1426: Definitions. 1945-23-12183
REGULATIONS 106, SECTION 402.215: Religious, charitable, scientific, literary, and educational organizations and community chests. Ct. D. 1650
(Also Social Security Act, Section 811; Regulations 91, Article 12.)

SOCIAL SECURITY TAX—SOCIAL SECURITY ACT—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. EXEMPT CORPORATIONS—SCIENTIFIC OR EDUCATIONAL ORGANIZATION.

The Better Business Bureau of Washington, D. C., Inc., organized as a nonprofit corporation for the "mutual welfare, protection and improvement of business methods among merchants" and others, and for the securing of the "educational and scientific advancement of business methods" so that merchants might "successfully and profitably conduct their business," is not exempt from social security taxes as a corporation organized and operated exclusively for scientific or educational purposes within the meaning of section 811(b)(8) of the Social Security Act and section 1426(b)(8) of the Internal Revenue Code. Its activities are largely animated by this commercial purpose and its efforts are directed fundamentally to ends other than scientific or educational.

2. DECISION AFFIRMED.

Decision of the United States Court of Appeals for the District of Columbia (148 Fed. (2d), 14) affirmed.

SUPREME COURT OF THE UNITED STATES.

Better Business Bureau of Washington, D. C., Inc., petitioner, v. United States of America.

[66 S. Ct., 112.]

On writ of certiorari to the United States Court of Appeals for the District of Columbia.

[November 13, 1945.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

Here our consideration is directed to the question of whether the petitioner, the Better Business Bureau of Washington, D. C., Inc., is exempt from social security taxes as a corporation organized and operated exclusively for scientific or educational purposes within the meaning of section 811(b)(8) of the Social Security Act.[1]

From the stipulated statement of facts it appears that petitioner was organized in 1920 as a nonprofit corporation under the laws of the District of Columbia. It has no shares of stock and no part of its earnings inures to the benefit of any private shareholder or individual. Its officers are elected annually from its membership; they have merely nominal duties and are paid no salary. Only the managing director and a small number of employees are paid. Membership is open to "any person, firm, corporation or association interested in better business ethics" as may be elected by the board of trustees and pay "voluntary subscriptions" or dues.

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[1] 49 Stat., 620, 639, 42 U. S. C., section 1011(b): "The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except—

* * * * * * *

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

An amendment to this definition, not here relevant, was added in 1939. The entire definition has been incorporated into section 1426(b)(8) of the Internal Revenue Code

The charter of petitioner states that "the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as 'An Act to prevent fraudulent advertising in the District of Columbia.'"

In carrying out its charter provisions, petitioner divides its work roughly into five subdivisions:

(1) Prevention of fraud by informing and warning members and the general public of the plans and schemes of various types of swindlers.

(2) Fighting fraud by bringing general and abstract fraudulent practices to the attention of the public.

(3) Elevation of business standards by showing and convincing merchants that the application of "the doctrine of caveat emptor is not good business" and by showing and convincing them that misleading advertising, extravagant claims and price comparisons are not good business.

(4) Education of consumers to be intelligent buyers.

(5) Cooperation with various governmental agencies interested in law enforcement.

Information which the petitioner compiles is available to anyone without charge and is communicated to the members and the public by means of the radio, newspapers, bulletins, meetings and interviews. This information is also exchanged with the approximately 85 other better business bureaus in the United States.

After paying the social security taxes for the calendar years 1937 to 1941, inclusive, petitioner filed claims for refunds, which were disallowed. This suit to recover the taxes paid was then filed by petitioner in the district court, which granted a motion for summary judgment for the United States. The court below affirmed the judgment (148 Fed. (2d), 14), and we granted certiorari, the Tenth Circuit Court of Appeals having reached a contrary result in *Jones* v. *Better Business Bureau of Oklahoma City* (123 Fed. (2d), 767).

Petitioner claims that it qualifies as a corporation "organized and operated exclusively for * * * scientific * * * or educational purposes * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual" within the meaning of section 811(b)(8) of the Social Security Act and hence is exempt from payment of social security taxes. No serious assertion is made, however, that petitioner is devoted exclusively to scientific purposes. The basic contention is that all of its purposes and activities are directed toward the education of business men and the general public. Merchants are taught to conduct their businesses honestly, while consumers are taught to avoid being victimized and to purchase goods intelligently. We join with the courts below in rejecting this contention.

It has been urged that a liberal construction should be applied to this exemption from taxation under the Social Security Act in favor of religious, charitable and educational institutions. (Cf. *Trinidad* v. *Sagrada Orden*, 263 U. S., 578 [T. D. 3548, C. B. III–1, 270 (1924)]; *Helvering* v. *Bliss*, 293 U. S., 144 [Ct. D. 884, C. B. XIII–2, 191 (1934)].) But it is unnecessary to decide that issue here. (Cf. *Hassett* v. *Associated Hospital Service Corporation*, 125 Fed. (2d), 611 (C. C. A. 1).) Even the most liberal of constructions does not mean that statutory words and phrases are to be given unusual or tortured meanings unjustified by legislative intent or that express limitations on such an exemption are to be ignored. Petitioner's contention, however, demands precisely that type of statutory treatment. Hence it can not prevail.

In this instance, in order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes. It thus becomes unnecessary to determine the correctness of

the educational characterization of petitioner's operations, it being apparent beyond dispute that an important if not the primary pursuit of petitioner's organization is to promote not only an ethical but also a profitable business community. The exemption is therefore unavailable to petitioner.

The commercial hue permeating petitioner's organization is reflected in its corporate title and in the charter provisions dedicating petitioner to the promotion of the "mutual welfare, protection and improvement of business methods among merchants" and others and to the securing of the "educational and scientific advancements of business methods" so that merchants might "successfully and profitably conduct their business." Petitioner's activities are largely animated by this commercial purpose. Unethical business practices and fraudulent merchandising schemes are investigated, exposed and destroyed. Such efforts to cleanse the business system of dishonest practices are highly commendable and may even serve incidentally to educate certain persons. But they are directed fundamentally to ends other than that of education. Any claim that education is the sole aim of petitioner's organization is thereby destroyed. (See *Better Business Bureau* v. *District Unemployment Compensation Board*, 34 A. 2d, 614 (D. C. Mun. App.).)

The legislative history of section 811(b)(8) of the Social Security Act confirms the conclusion that petitioner is not exempt under that section. This provision was drawn almost verbatim from section 101(6) of the Internal Revenue Code, dealing with exemptions from income taxation. And Congress has made it clear, from its committee reports, that it meant to include within section 811(b)(8) only those organizations exempt from the income tax under section 101(6).[2] Significantly, however, Congress did not write into the Social Security Act certain other exemptions embodied in the income tax provisions, especially the exemption in section 101(7) of "business leagues, chambers of commerce, real-estate boards, or boards of trade." Petitioner closely resembles such organizations and has, indeed, secured an exemption from the income tax under section 101(7) as a "business league."[3] Thus Congress has made, for income tax exemption purposes, an unmistakable demarcation between corporations organized and operated exclusively for educational purposes and those organizations in the nature of business leagues and the like. Its manifest desire to include only the former within the meaning of section 811(b)(8) of the Social Security Act prevents us from construing the language of that section to include an organization like petitioner.

Moreover, in amending the Social Security Act in 1939, Congress created certain new exemptions by providing, *inter alia*, that an organization exempt from income taxes under any of the subdivisions of section 101 of the Internal Revenue Code was also exempt from social security taxes as to those employees receiving no more than $45 in a calendar quarter.[4] The Congressional committee reports referred specifically to "business leagues, chambers of commerce, real estate boards, [and] boards of trade" as being included among those organizations exempt from income taxes and affected by this new partial exemption from social security taxes.[5] The inescapable inference from this is that such organizations, of which petitioner is an example, remain subject to social security taxes as to higher paid employees. No contention has been made that any of petitioner's employees are within the low-paid category.

Finally, a Treasury regulation[6] defining an educational organization as "one designed primarily for the improvement or development of the capabilities of

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[2] "The organizations which will be exempt from such [social security] taxes are churches, schools, colleges, and other educational institutions not operated for private profit, the Y. M. C. A., the Y. W. C. A., the Y. M. H. A., the Salvation Army, and other organizations which are exempt from income tax under section 101(6) of the Revenue Act of 1932." (H. Rept. No. 615, Seventy-fourth Congress, first session, page 33; S. Rept. No. 628, Seventy-fourth Congress, first session, page 45.)

[3] Petitioner states that it was incorporated under the provision of the District of Columbia Code relating to educational and scientific institutions and it asserts that if it were another type of institution it would have been required to incorporate under some other code provision. But petitioner's classification for incorporation purposes has no more relevance for purposes of exemption from social security taxes than it has for purposes of income tax exemption, as to which petitioner has been classified as a business league rather than as an educational or scientific institution.

[4] 53 Stat., 1360, 1374, 1384; 42 U. S. C., section 409(b)(10); 26 U. S. C., section 1426(b)(10).

[5] H. Rept. No. 728 (Seventy-sixth Congress, first session), pages 47–48; S. Rept. No. 734 (Seventy-sixth Congress, first session), page 57. Educational institutions of the type already exempt under section 811 (b) (8) were not mentioned in this respect.

[6] Article 101(6)–1 of Treasury Regulations 86.

the individual" for purposes of section 101(6) of the Internal Revenue Code was in effect at the time when Congress used that section in framing section 811(b)(8) of the Social Security Act. An identical definition has been promulgated under section 811(b)(8) and petitioner admittedly does not meet its terms.[7] Under the circumstances the administrative definition is "highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in the drafting of the statute." (*White* v. *Winchester Club*, 315 U. S., 32, 41 [Ct. D. 1538, C. B. 1942–1, 272].) It lends persuasive weight to the conclusion we have reached.

For the foregoing reasons the judgment of the court below is

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

SECTION 1430: Other laws applicable.
REGULATIONS 106, SECTION 402.602: When to report wages.

Treatment of wages for pay period ended within calendar quarter or year, when paid after close of such quarter or year. (See Mim. 5796, page 379.)

CHAPTER 9, SUBCHAPTER C.—FEDERAL UNEMPLOYMENT TAX ACT.

SECTION 1600: Rate of tax.
REGULATIONS 107, SECTION 403.304: When wages are paid.

Treatment of wages for pay period ended within calendar quarter or year, when paid after close of such quarter or year. (See Mim. 5796, page 379.)

SECTION 1607: Definitions.
REGULATIONS 107, SECTION 403.204: Who are employees.

Bulk plant operators. (See Mim. 5925, page 371.)

SECTION 1610: Other laws applicable.
REGULATIONS 107, SECTION 403.502: When to report wages.

Treatment of wages for pay period ended within calendar quarter or year, when paid after close of such quarter or year. (See Mim. 5796, page 379.)

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[7] Article 12 of Treasury Regulations 91; section 402.215 of Treasury Regulations 106. The definition further states that "under exceptional circumstances" an educational organization "may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features." No "exceptional circumstances" are apparent in petitioner's case and, moreover, neither exceptional category fits the petitioner.

TAXES UNDER THE SOCIAL SECURITY ACT.

TITLE VIII.—TAXES WITH RESPECT TO EMPLOYMENT.

SECTION 801: Income tax on employees. 1945–2–11944
REGULATIONS 91, ARTICLE 203: When employees' tax attaches. Mim. 5796
(Also Section 804; Regulations 91, Article 303; also Subchapter A (Federal Insurance Contributions Act), Sections 1410 and 1430; Regulations 106, Sections 402.403 and 402.602; and Subchapter C (Federal Unemployment Tax Act), Sections 1600 and 1610; Regulations 107, Sections 403.304 and 403.502.)

Employment taxes—Treatment of wages for pay period ended within calendar quarter or year, when paid after close of such quarter or year.
S. S. T. 227 (C. B. 1937–2, 368) revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 28, 1944.

Collectors of Internal Revenue and Others Concerned:

1. Each employer of one or more employees is required under the Federal Insurance Contributions Act to report the wages of such employees on a quarterly return on Form SS–1a. Each "employer" of eight or more employees, as defined in the Federal Unemployment Tax Act, is required under that Act to report the wages of such employees on an annual return on Form 940. Numerous inquiries have been received as to the proper time to report such wages when they are paid after the close of a tax-return period (calendar quarter or year) for a pay-roll period which ended in such tax-return period. Many pay-roll periods end, for example, on December 31 of a calendar year, but the employees do not receive their wages until the following year.

2. The general rule is that wages shall be reported in the tax return for the period in which they are actually paid unless they were constructively paid in a prior tax-return period, in which case such wages shall be reported only in the return for such prior period. (Section 402.602 of Regulations 106 and section 403.502 of Regulations 107.) Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition. (Section 402.403 of Regulations 106 and section 403.304 of Regulations 107.)

3. In S. S. T. 227 (C. B. 1937-2, 368), the Bureau of Internal Revenue ruled that constructive payments of wages are made under the following circumstances:

It is stated that the wages of the employees of the M Company for a particular pay-roll period are credited to the employees' accounts at the termination of such period. However, actual payment of the wages is deferred until the following month because of the impossibility of preparing the entire pay roll in time for payment on the last day of the month in which the wages are earned. The employees, however, have the unrestricted right to demand and receive payment of such wages at the time credited to their accounts and at any time thereafter.

4. Reconsideration of the ruling published as S. S. T. 227 results in the conclusion that such ruling is erroneous, and it is hereby revoked. It was stated in such ruling that payment of the wages is deferred "because of the impossibility of preparing the entire pay roll in time for payment on the last day of the month in which the wages are earned." The impossibility of preparing the entire pay roll in time for payment on the last day of the month imposes a "substantial limitation or restriction as to the time or manner of payment," and effectively nullifies the employer's policy of paying wages on demand at the end of the month. Under these circumstances the wages are not "paid," for Federal employment tax purposes, until the following month, and there is no constructive payment in the month in which the wages were earned.

5. When checks in payment of wages are prepared and mailed on or before the last day of a tax-return period, and the employer thus has done all in his power to pay the wages, actual payment of such wages will be deemed to have been made on or before such last day. In other cases in which an employer customarily pays, and is prepared to pay, his employees on a certain day, constructive payment of wages will be deemed to have been made to any employee who did not actually receive his wages on that day due to absence or other causes not within the employer's control.

6. Correspondence relating to this mimeograph should refer to its number and to the symbols A&C:RR.

GEO. J. SCHOENEMAN,
Acting Commissioner.

SECTION 804: Excise tax on employers.
REGULATIONS 91, ARTICLE 303: When employers' tax attaches.

Constructive payment and receipt of wages. (See Mim. 5796, page 379.)

SECTION 811: Definitions.
REGULATIONS 91, ARTICLE 12: Religious, charitable, scientific, literary, and educational organizations and community chests.

Employment tax status of better business bureau. (See Ct. D. 1650, page 375.)

MISCELLANEOUS TAX RULINGS.

ESTATE TAX.

INTERNAL REVENUE CODE.

1945-12-12064
T. D. 5455

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 82.—TAXATION PURSUANT TO TREATIES—CANADA.

Regulations relating to estate tax pursuant to convention between the United States and Canada, proclaimed by the President of the United States on March 6, 1945.

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

To Collectors of Internal Revenue and Others Concerned:

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SECTION 82.1. INTRODUCTORY.—The proclamation of the President of the United States, containing the text of the convention between the United States and Canada relating to Federal estate taxes and Dominion succession duties (hereinafter referred to as the convention), is set forth below:

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas a convention between the United States of America and Canada for the avoidance of double taxation and the prevention of fiscal evasion in the case of estate taxes and succession duties was signed by their respective plenipotentiaries at Ottawa on the 8th day of June, one thousand nine hundred forty-four, the original of which convention is word for word as follows:

The Government of the United States of America and the Government of Canada, being desirous of avoiding double taxation and of preventing fiscal evasion in the case of estate taxes and succession duties, have decided to conclude a convention and for that purpose have appointed as their plenipotentiaries:

Ray Atherton, Ambassador Extraordinary and Plenipotentiary of the United States of America at Ottawa, for the United States of America; and W. L. MacKenzie King, Secretary of State for External Affairs, and Colin W. G. Gibson, Minister of National Revenue, for Canada.

Who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

ARTICLE I.

1. The taxes referred to in this convention are:

(*a*) for the United States of America; the Federal estate taxes;

(*b*) for Canada; the taxes imposed under the Dominion Succession Duty Act.

2. In the event of appreciable changes in the fiscal laws of either contracting State, the competent authorities of the contracting States will consult together.

ARTICLE II.

1. Real property situated in Canada shall be exempt from the application of the taxes imposed by the United States of America.

2. Real property situated in the United States of America shall be exempt from the application of the taxes imposed by Canada.

3. The question whether rights relating to or secured by real property are to be considered as real property for the purposes of this convention shall be determined in accordance with the laws of the contracting State imposing the tax.

ARTICLE III.

1. Shares in a corporation organized in or under the laws of the United States of America, of any of the States or Territories of the United States of America, or of the District of Columbia, shall be deemed to be property situated within the United States of America.

2. Shares in a corporation organized in or under the laws of Canada, or of any of the Provinces or Territories of Canada, shall be deemed to be property situated within Canada.

3. This article shall not be construed as limiting the liability of the estate of any person not domiciled in Canada or of any citizen of the United States of America, under the estate tax laws of the United States of America.

ARTICLE IV.

1. The situs of property shall be determined in accordance with the laws of the contracting State imposing the tax, except as otherwise provided in this convention.

2. Allowance for debts shall be determined in accordance with the laws of the contracting State imposing the tax.

3. Domicile shall be determined in accordance with the laws of the contracting State imposing the tax.

ARTICLE V.

1. In the case of a decedent who at the time of his death was a citizen of, or domiciled in, the United States of America, the United States of America may include in the gross estate any property (other than real property) situated in Canada as though this convention had not come into effect.

2. In the case of a decedent (other than a citizen of the United States of America) who at the time of his death was domiciled in Canada, the United States of America shall, in imposing the taxes to which this convention relates:

(*a*) take into account only property situated in the United States of America; and

(*b*) allow as an exemption an amount which bears the same ratio to the personal exemption allowed in the case of a decedent who was at the time of his death a citizen of, or domiciled in, the United States of America as the value of the property of such decedent situated in the United States of America bears to the value of the property included in the entire gross estate of the decedent.

3. In the case of a decedent who at the time of his death was domiciled in Canada, Canada may include in the gross estate any property (other than real property) situated in the United States of America as though this convention had not come into effect.

4. In the case of a decedent who at the time of his death was domiciled in the United States of America, Canada shall, in imposing the taxes to which this convention relates:

(*a*) take into account only property situated in Canada; and

(*b*) allow as an exemption an amount which bears the same ratio to the personal exemption allowed in the case of a decedent who was at the time of his death domiciled in Canada as the value of the property of such decedent situated in Canada bears to the entire value of the property, wherever situated.

ARTICLE VI.

1. In the case of a decedent who at the time of his death was a citizen of or domiciled in the United States of America, the United States of America shall impose the estate taxes to which this convention relates upon the following conditions:

(*a*) In respect of property situated in Canada which, for the purpose of estate taxes, is included in the gross estate, less such property as is specifically deducted therefrom (either because of transfer for public, charitable, educational, religious or similar uses or because the property has been previously taxed under provisions of law relating to property previously taxed), there shall be allowed against the estate taxes a credit for Canadian succession taxes in respect of the property situated in Canada, the situs of such property being determined in accordance with the laws of Canada, subject to the provisions of this convention.

(*b*) The portion of the Canadian succession taxes to be allowed as a credit against United States estate taxes shall be an amount which bears the same ratio to the total Canadian succession taxes as the value of the property situated in Canada and with respect to which estate taxes are imposed by the United States of America bears to the total value of the property with respect to which succession taxes are imposed by Canada.

(*c*) The credit in any such case shall not exceed an amount which bears the same ratio to such estate taxes, computed without the credit provided for herein, as the value of the property situated in Canada and not excluded or deducted from the gross estate as provided in (*a*) bears to the value of the entire gross estate.

(*d*) The values referred to in (*c*) are the values determined by the United States of America for the purpose of estate taxes.

(*e*) The credit provided for herein shall apply after the application of section 813 (b) of the Internal Revenue Code, as amended by the Revenue Act of 1942.

2. In the case of a decedent who at the time of his death was domiciled in Canada, Canada shall impose the succession taxes to which this convention relates upon the following conditions:

(*a*) In respect of property situated in the United States of America which, for the purpose of succession taxes, is included in the gross estate, less such property as is specifically deducted therefrom (because of transfer for charitable, educational, religious or similar uses), there shall be allowed against the succession taxes a credit for United States estate taxes in respect of the property situated in the United States of America, the situs of such property being determined in accordance with the laws of the United States of America, subject to the provisions of this convention.

(*b*) The portion of the United States estate taxes to be allowed as a credit against Canadian succession taxes shall be an amount which bears the same ratio to the total United States estate taxes as the value of the property situated in the United States of America and with respect to which succession taxes are imposed by Canada bears to the total value of the property with respect to which estate taxes are imposed by the United States of America.

(*c*) The credit in any such case shall not exceed an amount which bears the same ratio to such succession taxes, computed without the credit provided for herein, as the value of the property situated in the United States of America and not excluded or deducted from the gross estate as provided in (*a*) bears to the entire value of the property, wherever situated.

(*d*) The values referred to in (*c*) are the values determined by Canada for the purpose of succession taxes.

3. (*a*) The credit referred to in this article may be allowed by the United States of America if claim therefor is filed within the periods provided in section 813(b) of the Internal Revenue Code, as amended.

(*b*) The credit referred to in this article may be allowed by Canada if claim therefor is filed within the period provided by subsection 4 of section 35 of the Dominion Succession Duty Act relating to refund of overpayment.

(*c*) A refund based on the credit may be made if a claim therefor is filed within the respective periods above provided.

(*d*) Any refund based on the provisions of this article or any other provisions of this convention shall be made without interest.

ARTICLE VII.

1. With a view to the prevention of fiscal evasion each of the contracting States undertakes to furnish to the other contracting State as provided in the succeeding articles of this convention, the information which its competent authorities have at their disposal or are in a position to obtain under its revenue laws in so far as such information may be of use to the authorities of the other contracting State in the assessment of the taxes to which this convention relates.

2. The information to be furnished under this article, whether in the ordinary course or on request, may be exchanged directly between the competent authorities of the two contracting States.

ARTICLE VIII.

1. The Commissioner shall notify the Minister as soon as practicable when the Commissioner ascertains that in the case of:

(*a*) a decedent, any part of whose estate is subject to the Federal estate tax laws, there is property of such decedent situated in Canada;

(*b*) a decedent domiciled in Canada, any part of whose estate is subject to the Dominion Succession Duty Act, there is property of such decedent situated in the United States of America.

2. The Minister shall notify the Commissioner as soon as practicable when the Minister ascertains that in the case of:

(*a*) a decedent, any part of whose estate is subject to the Dominion Succession Duty Act, there is property of such decedent situated in the United States of America;

(*b*) a decedent domiciled in the United States of America, any part of whose estate is subject to the Federal estate tax laws, there is property of such decedent situated in Canada.

ARTICLE IX.

1. If the Minister deems it necessary to obtain the cooperation of the Commissioner in determination of the succession tax liability of any person, the Commissioner may, upon request, furnish the Minister such information bearing upon the matter as the Commissioner is entitled to obtain under the revenue laws of the United States of America.

2. If the Commissioner deems it necessary to obtain the cooperation of the Minister in the determination of the estate tax liability of any person, the Minister may, upon request, furnish the Commissioner such information bearing upon the matter as the Minister is entitled to obtain under the revenue laws of Canada.

ARTICLE X.

The competent authorities of the contracting States may:

(*a*) prescribe regulations to carry into effect this convention within the respective States and rules with respect to the exchange of information;

(*b*) if doubt arises, settle questions of interpretation or application of this convention by mutual agreement;

(*c*) communicate with each other directly for the purpose of giving effect to the provisions of this convention.

ARTICLE XI.

If any fiduciary or beneficiary can show that double taxation has resulted or may result in respect of the taxes to which this convention relates, such fiduciary or beneficiary shall be entitled to lodge a claim or protest with the State of citizenship or domicile of such fiduciary or beneficiary, or, if a corporation or other entity, with the State in which created or organized. If the claim or protest should be deemed worthy of consideration, the competent authority of such State may consult with the competent authority of the other State to determine whether the alleged double taxation exists or may occur and if so whether it may be avoided in accordance with the terms of this convention.

ARTICLE XII.

The provisions of this convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

ARTICLE XIII.

1. As used in this convention:

(*a*) The term "Minister" means the Minister of National Revenue of Canada or his duly authorized representative.

(*b*) The term "Commissioner" means the Commissioner of Internal Revenue of the United States of America, or his duly authorized representative.

(*c*) The term "competent authority" or "competent authorities" means the Commissioner and the Minister and their duly authorized representatives.

2. When used in a geographical sense:

(*a*) The term "United States of America" includes only the States, the Territory of Alaska, the Territory of Hawaii, and the District of Columbia.

(*b*) The term "Canada" means the Provinces, the Territories and Sable Island.

ARTICLE XIV

1. This convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This convention shall be deemed to have come into effect on the 14th day of June, 1941. It shall continue in effect for a period of five years from that date and indefinitely after that period, but may be terminated by either of the contracting States at the end of the 5-year period or at any time thereafter provided that at least six months prior notice of termination has been given.

Done in duplicate, at Ottawa, this 8th day of June, 1944.

[SEAL.]

RAY ATHERTON.
W. L. MACKENZIE KING.
COLIN GIBSON.

And whereas the said convention has been ratified on both parts, and the instruments of ratification of the two Governments were exchanged at Washington on the 6th day of February, one thousand nine hundred forty-five;

And whereas it is provided in Article XIV of the said convention that the convention shall be deemed to have come into effect on the 14th day of June, one thousand nine hundred forty-one;

NOW, THEREFORE, be it known that I, FRANKLIN D. ROOSEVELT, President of the United States of America, do hereby proclaim and make public the said convention to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America, and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof, the said convention being deemed to have come into effect on the 14th day of June, one thousand nine hundred forty-one.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this 6th day of March in the year of our Lord one thousand nine hundred forty-five, and of the independence of the United States of America the one hundred sixty-ninth.

[SEAL.] FRANKLIN D. ROOSEVELT.

By the President:

JOSEPH C. GREW,
Acting Secretary of State.

Section 3791 of the Internal Revenue Code provides as follows:

(a) AUTHORIZATION.—
(1) IN GENERAL.—* * * the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.
(2) IN CASE OF CHANGE IN LAW.—The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.
(b) RETROACTIVITY OF REGULATIONS OR RULINGS.—The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury decision, relating to the internal revenue laws, shall be applied without retroactive effect.

SEC. 82.2. SCOPE OF REGULATIONS.—These regulations pertain to the application of the Federal estate taxes as modified under the provisions of the convention in cases of decedents dying on or after June 14, 1941, who were domiciled in either the United States or Canada, or who were citizens of the United States. These regulations also pertain to related administrative matters and to the furnishing of information by the tax authorities of each country to such authorities of the other country which may be useful in the determination and enforcement of the Federal estate taxes and the Dominion succession duties.

The provisions of the convention are restricted to the estate taxes imposed by the Federal Government and the succession duties imposed by the Dominion Government, and do not comprehend estate, inheritance, legacy, or succession taxes imposed by any State, Territory, the District of Columbia, or possession of the United States or death duties imposed by any Province or Territory of Canada. (Paragraph 1 of Article I of the convention.) The credit against the Federal estate tax, authorized by section 813(b) of the Internal Revenue Code, as amended, for estate, inheritance, legacy, or succession taxes paid any State, Territory, the District of Columbia, or possession of the United States, is not affected. (Paragraph 1(*e*) of Article VI of the convention.)

SEC. 82.3. DOMICILE AND CITIZENSHIP.—Determinations with respect to the decedent's domicile and citizenship at time of death are required in order to ascertain whether the estate is within the scope of the convention, and if so, such determinations are necessary for two further purposes, i. e., first, in order to ascertain the property that may be included in the application of the tax, and, second, in order to ascertain the credit for death duties authorized by the convention. For such purposes, domicile and citizenship shall be determined in accordance with the laws of the contracting country which imposes the tax by reason of the decedent's being domiciled therein or a citizen thereof. (Paragraph 3 of Article III, paragraph 3 of Article IV, and paragraphs 1 and 2 of Article VI of the convention.) Where in a particular case only one of the contracting countries asserts tax by reason of the decedent's being domiciled therein, the other contracting country

is bound by such determination of domicile for all purposes of the convention, and will not, for instance, in the imposition of its tax on the basis of situs of property disregard the situs rules established by Article III by contending that the decedent was domiciled in a third country.

For the purpose of determining whether the decedent was domiciled in either the United States or Canada at time of death, the United States includes the States thereof, the Territory of Alaska, the Territory of Hawaii, and the District of Columbia, and Canada includes the Provinces and Territories thereof and Sable Island. (Paragraph 2 of Article XIII of the convention.)

SEC. 82.4. SITUS OF PROPERTY.—The determination of the situs of property is necessary for two purposes, i. e., first, in order to ascertain the property that may be included in the application of the tax if jurisdiction is based upon situs of property within the country, and, second, in order to ascertain the credit for death duties authorized by the convention since the crediting country only allows such credit with respect to property situated in the other country which is party to the convention. For such purposes, and subject to the provisions of the convention explained in the next paragraph, the situs of property shall be determined in accordance with the laws of the contracting country which imposes the tax by reason of situs of property therein or which imposes the tax for which credit is allowed by the other contracting country. (Paragraph 1 of Article IV, and paragraphs 1(*a*) and 2(*a*) of Article VI of the convention.)

The situs rules of both countries have been changed by the convention with respect to shares of stock in American and Canadian corporations. (Article III of the convention.) Under the convention, in the case of the estate of a decedent domiciled in either the United States or Canada at time of death, or in the case of the estate of a decedent who was a citizen of the United States at time of death, shares of the capital stock of a corporation organized in or under the laws of the United States, a State or Territory of the United States, or the District of Columbia, are deemed situated only in the United States, and shares of the capital stock of a corporation organized in or under the laws of Canada, or a Province or Territory of Canada, are deemed situated only in Canada. Thus in such a case shares of stock of a Canadian corporation are not regarded as situated in the United States even if the stock certificates are located in the United States, and shares of stock of an American corporation are not regarded as situated in Canada even if the stock certificates and the transfer registry are located in Canada.

The convention does not change the situs rules in cases of estates of decedents not citizens of the United States and not domiciled in either country, and accordingly in such cases, for the purposes of the Federal estate tax shares of stock of Canadian corporations are regarded as situated in the United States if the stock certificates are located in the United States.

Both the United States and Canada exempt real property situated outside the taxing country, and the convention confirms such rules in so far as real property situated in the United States or Canada is concerned. The convention provides that the question whether rights relating to or secured by real property are to be considered as realty or

personalty will be determined in accordance with the laws of the contracting country imposing the tax. (Article II of the convention.)

For the purpose of determining whether property is situated in either the United States or Canada, the United States includes the States thereof, the Territory of Alaska, the Territory of Hawaii, and the District of Columbia, and Canada includes the Provinces and Territories thereof and Sable Island. (Paragraph 2 of Article XIII of the convention.)

SEC. 82.5. TAXATION ON BASIS OF DOMICILE OR CITIZENSHIP.—In the case of the estate of a decedent domiciled in or a citizen of the United States at time of death, the United States will continue to include in the gross estate and subject to the Federal estate tax any property situated in Canada, other than real property, and the convention makes no change in this respect, except as to the credit provided in paragraph 1 of Article VI of the convention. (Paragraph 1 of Article V of the convention.) In the case of the estate of a decedent domiciled in Canada at time of death, Canada will continue to include in the gross estate and subject to the Dominion succession duties any property situated in the United States, other than real property, and the convention makes no change in this respect, except as to the credit provided in paragraph 2 of Article VI of the convention. (Paragraph 3 of Article V of the convention.)

SEC. 82.6. TAXATION ON BASIS OF SITUS OF PROPERTY.—In the case of the estate of a decedent who at time of death (on or after June 14, 1941) was domiciled in Canada and not a citizen of the United States, in imposing the Federal estate tax, the United States shall:

(*a*) Take into account only property situated in the United States, and

(*b*) Allow for each specific exemption an amount not less than that proportion of the specific exemption authorized for the estate of a decedent domiciled in the United States which the value of the property situated in the United States bears to the value of the entire gross estate wherever situated. (Paragraph 2 of Article V of the convention.)

The restriction relative to taking into account property situated outside the United States, set forth in (*a*) above, refers to what may be included for the purpose of fixing the rate of tax, and does not refer to what is included in the gross estate and utilized in ascertaining the proportionate specific exemption prescribed in (*b*) above and also utilized in ascertaining the proportionate deductions for administration expenses, debts, etc., prescribed in section 81.52 of Treasury Regulations 105 and section 861(a)(1) of the Internal Revenue Code. The restriction set forth in (*a*) above merely confirms existing practice and does not change the imposition of the Federal estate taxes. The convention expressly provides that allowance for debts shall be determined in accordance with the laws of the contracting State imposing the tax. (Paragraph 2 of Article IV of the convention.)

In the case of a decedent dying after October 21, 1942, the amount of the specific exemption will not be less than the $2,000 provided by statute. (Article XII of the convention.)

In computing the net estate for the purpose of the basic estate tax, the amount of the specific exemption is (*a*) that proportion of $100,000

which the value of the property situated in the United States bears to the value of the entire gross estate wherever situated, or (*b*) $2,000, if the decedent died after October 21, 1942, and such latter amount is the greater.

In computing the net estate for the purpose of the additional estate tax, the amount of the specific exemption is (*a*) if the decedent died after October 21, 1942, that proportion of $60,000 which the value of the property situated in the United States bears to the value of the entire gross estate wherever situated, or $2,000, whichever is the greater, or (*b*) if the decedent died before October 22, 1942, that proportion of $40,000 which the value of the property situated in the United States bears to the value of the entire gross estate wherever situated.

For example, if the decedent, domiciled in Canada at time of death and not a citizen of the United States, died on July 1, 1944, leaving a gross estate (other than real property outside the United States) of $500,000, of which $100,000 is situated in the United States, the amount of the specific exemption for the purpose of the basic tax is $\frac{100,000}{500,000} \times \$100,000 = \$20,000$, and the amount of the specific exemption for the purpose of the additional tax is $\frac{100,000}{500,000} \times \$30,000 = \$12,000$.

If the Federal estate tax is imposed upon the basis of situs of property in the case of a decedent dying on or after June 14, 1941, who at the time of death was domiciled in Canada, supplemental Form 706b should be substituted for Schedule R of the estate tax return, Form 706.

Any claim for refund of estate tax based upon exclusion of shares of stock of a Canadian corporation or upon increased specific exemption should be made on Form 843, with Supplemental Form 706b attached, and must be filed within three years after such tax was paid. Any refund of tax resulting from the application of the convention bears no interest. (Paragraph 3(*d*) of Article VI of the convention.)

SEC. 82.7. CREDIT FOR CANADIAN SUCCESSION DUTIES.—In the case of the estate of a decedent who at time of death was domiciled in or a citizen of the United States, credit is authorized against the Federal estate taxes for Dominion succession duties paid with respect to property situated in Canada and subjected to such taxes by both countries. (Paragraph 1 of Article VI of the convention.)

If at the time the Federal estate tax return is filed, the Dominion succession duties have not been determined and paid, credit therefor may be entered on the return in an estimated amount. However, before credit for Dominion succession duties is finally allowed, the representative of the estate must submit a statement by an authorized Dominion succession duty official certifying the total amount of the Dominion succession duties, without addition of any interest or penalties, that such duties were computed in accordance with limitations provided in the convention and that the amount thereof has been paid, together with the date of payment. No credit is allowable with respect to any such interest or penalty. An itemized list of property situated in Canada and subjected to Dominion succession duties, disclosing values, must be shown. The certificate shall also show whether

(1) a claim for refund of such duties or any part thereof is pending, and (2) whether a refund thereof has been authorized. If any refund or claim for refund is involved, the date, amount, and description of the property affected shall be shown. The Commissioner may require the submission of any additional proof as is deemed necessary to establish the right to the credit.

If subsequent to the allowance of credit for Dominion succession duties, a refund is made of any such succession duties, then the person to whom the refund is made is required to advise the Commissioner thereof and pay any further Federal estate tax resulting from any reduction in the credit.

The convention limits the imposition of the Dominion succession duties, in the case of a decedent domiciled in the United States, by permitting only property situated in Canada to be taken into account in determining the tax rate. (Paragraph 4(*a*) of Article V of the convention.) Thus, in such a case, Canada no longer fixes the "initial rate" of duty by reference to the total value of the property situated both inside and outside of Canada. This limitation is not applicable to the case of a decedent who was a citizen of the United States domiciled outside the United States. The convention changes the application of the Dominion succession duties imposed upon the basis of situs of property, in the case of a decedent domiciled in or a citizen of the United States, by excluding from situs in Canada shares of the capital stock of any corporation organized in or under the laws of the United States, any of the States or Territories of the United States, or the District of Columbia, regardless of such other factors as the location of the transfer registry or the location of the stock certificates. The convention also changes the application of the Dominion succession duties imposed upon the basis of situs of property, in the case of a decedent domiciled in or a citizen of the United States, by including as situated in Canada shares of the capital stock of any corporation organized in or under the laws of Canada or any of the Provinces or Territories of Canada, regardless of such other factors as the location of the transfer registry or the location of the stock certificates. (Article III of the convention.)

The credit is limited to the amount of the Dominion succession duties attributable to property situated in Canada and subjected to Federal estate taxes. (Paragraph 1(*b*) of Article VI of the convention.) The credit is also limited to the amount of the Federal estate taxes attributable to property situated in Canada and subjected to Canadian succession duties. (Paragraph 1(*c*) of Article VI of the convention.) Property subjected to Federal estate tax does not include any real property situated in Canada. Furthermore, it does not include any property previously taxed or any property specifically bequeathed or transferred for public, charitable, educational, religious, or similar uses, and with respect to which a deduction is allowed for Federal estate tax purposes. (Paragraph 1(*a*) of Article VI of the convention.)

If only a part of the property of a particular succession upon which Dominion succession duty is imposed constitutes Canadian property subjected to the Federal estate tax, only the portion of such Dominion succession duty attributable to such part may be included in the total Dominion succession duties for which credit is allowable. Such portion of the Dominion succession duty is the amount (*a*) which bears

the same ratio to (*b*) the amount of the Dominion succession duty imposed upon the particular succession (without allowance of credit, if any, for Federal estate tax) that (*c*) the value of the part of the succession which constitutes Canadian property subjected to Federal estate tax bears to (*d*) the value of the entire property of the succession subjected to Dominion succession duty. The values used in this proportion are the values determined for the purpose of the Dominion succession duty. The amount of the Dominion succession duties for which credit is allowable must be converted into United States money.

The amount of the credit is limited to the proportion of the Federal estate tax (computed without allowance of credit for Canadian succession duties) which the value of the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax bears to the value of the gross estate. For the purpose of this proportion, the "Federal estate tax" refers to the amount of the tax after allowance of credit for State inheritance or similar taxes authorized by section 813(b) of the Internal Revenue Code but before the allowance of credit for Canadian succession duties. If Federal gift tax is involved, see the explanation following the first example in this section. For the purpose of this proportion the "property situated in Canada and subjected to both Dominion succession duties and Federal estate tax" and the "gross estate" do not include any real property situated in Canada, and also do not include any property previously taxed or any property specifically bequeathed or transferred for public, charitable, educational, religious, or similar uses, and with respect to which a deduction is allowed for Federal estate tax purposes. The values used in this proportion are the values determined for the purpose of the Federal estate tax. (Paragraph 1(*d*) of Article VI of the convention.)

While in most instances the country which imposes the tax on the basis of the decedent's domicile in that country allows a credit for the tax imposed by the other country on the basis of situs of property therein, both countries will allow credits in the case of a decedent who was a citizen of the United States domiciled in Canada. However, in such case credit allowed by each country is restricted to the part of the tax attributable to property situated in the other country.

Credit for Dominion succession duties can not be allowed unless claim therefor is made within four years after the estate tax return is filed, or within such further period as is provided by section 813(b) of the Internal Revenue Code, as amended, relative to credit for State inheritance taxes, in the case of a petition filed with The Tax Court or in the case of an extension of time for the payment of tax. Any refund of tax resulting from the application of the convention bears no interest. (Paragraph 3 of Article VI of the convention.)

For computation of the estate tax with credit for Dominion succession duties, Form 706c should be used as a supplement to the estate tax return, Form 706. Any claim for refund based upon credit for Dominion succession duties should be filed on Form 843, with supplemental Form 706c attached.

Example (illustrating the operation of both limitations, but not involving credit for Federal gift tax). Decedent was at time of death domiciled in and a citizen of the United States, and his widow and daughter are the beneficiaries under his will. The value of the

gross estate for the purpose of the Federal estate tax (in United States money) is $180,000, consisting of stocks of Canadian corporations, $50,000, and of other property, $130,000. The amount of the Federal estate tax without allowance of credit for Dominion succession duties is $20,140. The value in Canadian money of the widow's succession subjected to the Dominion succession duty is $500,000, consisting of Canadian real property, $460,000, and stocks of Canadian corporations, $40,000. The amount of the Dominion succession duty imposed upon the widow's succession is $79,433 in Canadian money. The value in Canadian money of the daughter's succession subjected to the Dominion succession duty is $15,000, consisting entirely of stocks of Canadian corporations. The amount of the Dominion succession duty imposed upon the daughter's succession is $1,215 in Canadian money. In computing the Dominion succession duties, no property situated outside Canada is taken into account in determining the tax rates. Computations are shown below:

Computation of portion of Dominion succession duty imposed upon widow's succession attributable to property subjected to Federal estate tax—

1. Amount of Dominion succession duty imposed upon the succession	$79,433.00
2. Value of property situated in Canada and subjected to both Dominion succession duty and Federal estate tax	40,000.00
3. Total value of property subjected to Dominion succession duty	500,000.00
4. Amount of Dominion succession duty attributable to item 2 (proportion of item 1 that item 2 bears to item 3)	6,354.64

Total Dominion succession duties for which credit is allowable—

1. For widow's succession	$6,354.64
2. For daughter's succession	1,215.00
3. Total	7,569.64

The amount of item 3 converted into United States money equals $6,881.49.

Computation of estate tax with credit for Canadian succession duties (values and amounts in United States money)—

1. Federal estate tax without allowance of credit for Dominion succession duties		$20,140.00
2. Dominion succession duties attributable to Canadian property subjected to Federal estate tax	$6,881.49	
3. Value of property situated in Canada and subjected to both Dominion succession duties and Federal estate tax	50,000.00	
4. Value of gross estate	180,000.00	
5. Federal estate tax attributable to Canadian property subjected to Dominion succession duties (proportion of item 1 that item 3 bears to item 4)	5,594.44	
6. Credit for Dominion succession duties (item 2, or item 5, if the latter item is the smaller)		5,594.44
7. Net Federal estate tax (item 1 minus item 6)		14,545.56

Under the convention the credit for Canadian succession duties is subordinated to the credit for State inheritance and similar taxes authorized by section 813(b) of the Internal Revenue Code, but is accorded priority over the credit, if any, for Federal gift tax. (Paragraph 1(*e*) of Article VI of the convention.) Consequently if credit for Federal gift tax is involved it will be necessary to allocate the credit for Canadian succession duties against the basic and additional estate taxes, and, if present, against the defense tax. The computations and allocations of the credits described in the remaining paragraphs of this section are only applicable to cases involving gift tax credits (which it is anticipated will rarely occur).

If the decedent died after October 21, 1942, the amount of the credit for Canadian succession duties allocated against the basic tax is (*a*) the amount of the Dominion succession duties attributable to the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax, or (*b*) the proportion of the difference between the gross basic estate tax and the credit for State inheritance or similar taxes which the value of the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax bears to the value of the gross estate, if (*b*) is the smaller. In such case the amount of the credit for Canadian succession duties allocated against the additional estate tax is (*a*) the excess of the amount of the Dominion succession duties attributable to the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax over the amount of the credit for Canadian succession duties allocated against the basic estate tax, or (*b*) the proportion of the gross additional estate tax which the value of the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax bears to the value of the gross estate, if (*b*) is the smaller.

If the decedent died on or before October 21, 1942, the Internal Revenue Code provides that credit for gift tax allocated against the basic tax be given priority over the credit for State inheritance or similar taxes. Accordingly, in such a case the amount of the credit for Canadian succession duties allocated against the basic tax is (*a*) the amount of the Dominion succession duties attributable to the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax, or (*b*) the proportion of the difference between the gross basic estate tax and the total amount of the credits for both State inheritance or similar taxes and Federal gift tax allocated against such basic tax which the value of the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax bears to the value of the gross estate, if (*b*) is the smaller. As no credit for State inheritance or similar taxes is allowed against the additional estate tax, the credit for Canadian succession duties allocated against the additional estate tax is given priority over the gift tax credit. In such case the amount of the credit for Canadian succession duties allocated against the additional estate tax is (*a*) the excess of the amount of the Dominion succession duties attributable to the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax over the amount of the credit for Canadian succession duties allocated against the basic estate tax, or (*b*) the proportion of the gross additional estate tax which the value of the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax bears to the value of the gross estate, if (*b*) is the smaller. If the decedent died before September 21, 1941, the amount of the credit allocated against the defense tax is (*a*) the excess of the amount of the Dominion succession duties attributable to the property situated in Canada and subjected to both Dominion succession duties and Federal estate tax over the total amount of the credits for Canadian succession duties allocated against the basic and additional estate taxes, or (*b*) the proportion of the gross defense tax which the value of the property situated in Canada and subjected to both Dominion succession duties

and Federal estate tax bears to the value of the gross estate, if (*b*) is the smaller.

If the decedent died after October 21, 1942, any credit for gift tax against the basic tax can not exceed the proportion of the gross basic tax less credits for State inheritance or similar taxes and for Canadian succession duties which the value of the included gift taxed bears to the entire gross estate, unless the gift tax was imposed by the Revenue Act of 1924, as amended, in which case the entire amount is allowable. Any credit for gift tax allocated against the additional estate tax can not exceed the proportion of the gross additional tax less credit for Canadian succession duties which the value of the included gift taxed bears to the entire gross estate, and furthermore can not exceed the difference between the total amount of the gift tax and the gift tax credit allowed against the basic estate tax. No credit is allowable against the additional estate tax for gift tax imposed by the Revenue Act of 1924, as amended.

If the decedent died on or before October 21, 1942, any credit for gift tax allocated against the basic estate tax can not exceed the proportion of the gross basic tax which the value of the included gift taxed bears to the entire gross estate unless the gift tax was imposed by the Revenue Act of 1924, as amended, in which case the entire amount is allowable as a credit. Any credit for gift tax allocated against the additional estate tax can not exceed the proportion of the gross additional estate tax less credit for Canadian succession duties which the value of the included gift taxed bears to the entire gross estate, and furthermore can not exceed the difference between the total amount of the gift tax and the gift tax credit allowed against the basic estate tax. No credit is allowable against the additional estate tax for gift tax imposed by the Revenue Act of 1924, as amended. Thus, in allocating the proportion of the credit for Canadian succession duties against the additional estate tax in such a case, such credit is given priority over credit for gift tax.

Example (involving the allocation of credits for both the Canadian succession duties and Federal gift tax). Decedent was domiciled in and a citizen of the United States at time of death, July 1, 1944. The value of the gross estate is $200,000, and the amount of the deductions in addition to the specific exemptions is $10,000. Gift tax of $12,000 had been paid by the decedent on $75,000 of the property. The amount of the Dominion succession duties attributable to property (valued at $50,000) situated in Canada and subjected to both Dominion succession duties and Federal estate tax is $9,175 in United States money.

The computations for this example are set forth below:

A. Federal estate taxes attributable to property subjected to Canadian succession duties.

1. Basic estate tax less credit for State inheritance or estate tax	$260
2. Additional estate tax	28,400
3. Value of property situated in Canada and subjected to both Dominion succession duties and Federal estate tax	50,000
4. Value of gross estate	200,000
5. Amount of basic estate tax attributable to item 3 (proportion of item 1 that item 3 bears to item 4)	65
6. Amount of additional estate tax attributable to item 3 (proportion of item 2 that item 3 bears to item 4)	7,100

B. Computation of estate tax.

1. Gross basic tax	$1,300.00	
2. Credit for State inheritance or estate tax	1,040.00	
3. Gross basic tax less credit for State inheritance or estate tax (item 1 minus item 2)	260.00	
4. Credit for Canadian succession duties ($9,175 or item 5 of A, if the latter is the smaller)	65.00	
5. Gross basic tax less credits for items 2 and 4 (item 3 less item 4)	195.00	
6. Credit for gift tax (proportion of item 5 that value of gift bears to value of gross estate)	73.13	
7. Net basic tax (item 5 less item 6)		$121.87
8. Total gross taxes (basic and additional)	$29,700.00	
9. Gross basic tax	1,300.00	
10. Gross additional tax (item 8 minus item 9)	28,400.00	
11. Credit for Canadian succession duties (amount of (*a*) excess of $9,175 over item 4 above, or (*b*) item 6 of A, if the latter is the smaller)	7,100.00	
12. Gross additional tax less credit for Canadian succession duties (item 10 minus item 11)	21,300.00	
13. Credit for gift tax (amount of (*a*) proportion of item 12 that value of gift bears to value of gross estate or (*b*) the difference between amount of gift tax and item 6 if the latter is the smaller)	7,987.50	
14. Net additional tax (item 12 minus item 13)		13,312.50
15. Total estate tax payable (item 7 plus item 14)		13,434.37

SEC. 82.8. INFORMATION FURNISHED BY EACH CONTRACTING COUNTRY TO THE OTHER.—In order to prevent evasion and to facilitate administration the United States and Canada will furnish each other such information as its competent authorities have at their disposal or are in a position to obtain under its revenue laws which may be of use in the assessment of the Federal estate taxes and Dominion succession duties. Such information may be exchanged directly between the competent authorities of the two countries. (Article VII of the convention.) The term " competent authorities " means the Commissioner of Internal Revenue of the United States or his duly authorized representative, and the Minister of National Revenue of Canada or his duly authorized representative. (Paragraph 1 of Article XIII of the convention.)

The Commissioner will notify the Minister as soon as practicable when the Commissioner ascertains that there is property situated in Canada in the case of an estate subject to the Federal estate tax, and that there is property situated in the United States in the case of a decedent domiciled in Canada whose estate is subject to the Dominion succession duty. The Minister will notify the Commissioner as soon as practicable when the Minister ascertains that there is property situated in the United States in the case of an estate subject to the Dominion succession duties and that there is property situated in Canada in the case of a decedent domiciled in the United States whose estate is subject to the Federal estate tax. (Article VIII of the convention.) The competent authority in each country will furnish specific information requested by the competent authority of the other country relative to

Federal estate taxes or Dominion succession duties which may be obtained under the revenue laws. (Article IX of the convention.)

If subsequent to the allowance by one of the contracting States of a credit authorized by Article VI of the convention a refund of tax is made by the other contracting State, the latter shall promptly advise the former thereof.

SEC. 82.9. DOUBTFUL QUESTIONS.—If doubt arises the competent authorities of the United States and Canada are authorized to settle questions of interpretation or application of the convention by mutual agreement, and are authorized to communicate with each other directly for the purpose of giving effect to the provisions of the convention. (Article X of the convention.)

SEC. 82.10. PROTESTS BY INTERESTED PERSONS.—If a fiduciary or beneficiary can show that double taxation has resulted or may result with respect to the Federal estate taxes and the Dominion succession duties, such fiduciary or beneficiary is entitled to file a protest with the country of his citizenship or domicile, and in the discretion of the competent authority of such country (either the United States or Canada) the competent authority of the other country may be consulted in order to determine whether the alleged double taxation exists or may occur, and if so, whether it may be avoided in accordance with the convention. (Article XI of the convention.)

Under the authority of Article X of the convention and section 3791 of the Internal Revenue Code (53 Stat., 467, 26 U. S. C., 1940 ed., 3791) and pursuant to the provisions of the convention and Chapter 3 of the Internal Revenue Code (53 Stat., 119, 26 U. S. C., 1940 ed., 800 et seq.), the foregoing regulations are hereby prescribed.

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

Approved May 31, 1945.

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

(Filed with the Division of the Federal Register June 1, 1945, 4.16 p. m.)

INTERNAL REVENUE CODE.

CHAPTER 3.

1945–12–12065
Mim. 5872

Estate tax procedure under death duty convention between the United States and Canada.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., June 5, 1945.

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

The convention between the United States and Canada, relating to death duties (ratifications exchanged on February 6, 1945, and proclaimed by the President of the United States on March 6, 1945), is

applicable to estates of decedents, dying on or after June 14, 1941, who at time of death were domiciled in either country or who at time of death were citizens of the United States. It affords estates relief from double taxation, and provides the two Governments with means for reciprocal administrative assistance in preventing tax evasions.

The scope of the convention is restricted to the estate taxes imposed by the Federal Government and the succession duties imposed by the Dominion Government. and does not comprehend estate, inheritance, legacy, or succession taxes imposed by any State, Territory, the District of Columbia, or possession of the United States or death duties imposed by any Province or Territory of Canada.

The convention requires the contracting country which asserts tax by reason of the decedent's being domiciled therein or a citizen thereof to allow a credit for the tax asserted by the other contracting country with respect to property situated in such other country. Both the United States and Canada impose tax by reason of the decedent's being domiciled in the country, but the United States is the only one of the two contracting countries which imposes tax by reason of the decedent's being a citizen of the country. In cases not taxed upon the basis of domicile or citizenship both countries impose tax upon the basis of property situated in the taxing country. In addition to the provision authorizing the credit, the convention provides for uniform treatment by both countries with respect to (*a*) the situs of shares of stocks of Canadian and American corporations, (*b*) a prorated specific exemption, and (*c*) a prohibition against fixing the tax rate by taking into account property not subjected to the tax and not situated in the taxing country.

The text of the convention and regulations issued pursuant thereto are set forth in Treasury Decision 5455, approved on May 31, 1945 [page 381, this Bulletin].

For convenience in the administration of the convention, decedents' estates are classified in two categories—(1) estates taxed on the basis of situs of property, and (2) estates taxed on the basis of domicile or citizenship. In considering the effect of the convention on the Federal estate tax, in the first category (estates of residents of Canada not citizens of the United States) exclusion of Canadian stocks and the allowance of a prorated specific exemption are the dominant features, and in the second category (estates of residents or citizens of the United States) allowance of credit against the Federal estate tax for the Dominion succession duties paid with respect to property situated in Canada is the dominant feature.

For cases in the first category, Form 706b, "Computations of Net Estates," has been provided as a supplement to the estate tax return, Form 706. This supplemental form constitutes a part of the return, is to be substituted for Schedule R, and should be inserted in lieu of sheet XIX. For cases in the second category, Form 706c, "Computation of Estate Tax with Credit for Canadian Succession Duties," has been provided as a supplement to the estate tax return, Form 706. This supplemental form constitutes a part of the return and should be inserted immediately after sheet XX thereof. If credit for Canadian succession duties is claimed at the time the estate tax return is filed, the amount entered at item 7 of Form 706c is the amount of the estate tax as determined by the representative of the estate instead of the

last item, denominated "Total Estate Tax Payable," under "Computation of Tax," on sheet XX of Form 706, and the amount of such item 7 is the amount to be assessed and paid. Form 706d, "Certification of Dominion Succession Duties for Credit against Federal Estate Taxes," is required for cases within the aforementioned second category. Form 706d should be executed by the representative of the estate and forwarded to the Canadian Revenue Department for certification. Accompanying each form are instructions explaining its use.

The offices of the internal revenue agents in charge will advise the representatives of estates of any requirements pursuant to the provisions of the convention in cases pending before those offices. The representatives of estates of previously closed cases should file claims for refunds of any overpayments of estate taxes resulting from the provisions of the convention. Any claim for refund of tax based upon the provisions of the convention should be filed with the appropriate collector of internal revenue on Form 843 with supplemental Form 706b or 706c, whichever is applicable, attached thereto in duplicate.

Correspondence relative to the contents of this mimeograph should refer to its number and to the symbols MT:ET.

JOSEPH D. NUNAN, Jr.,
Commissioner.

SECTION 811.—GROSS ESTATE—TRANSFERS IN CONTEMPLATION OF DEATH.

REGULATIONS 105, SECTION 81.16: Transfers in contemplation of death. 1945–13–12077 Ct. D. 1644

ESTATE TAX—REVENUE ACT OF 1926, AS AMENDED—DECISION OF SUPREME COURT.

1. GROSS ESTATE—TRANSFERS INTENDED TO TAKE EFFECT IN POSSESSION OR ENJOYMENT AT OR AFTER DEATH—INSURANCE AND ANNUITY CONTRACTS.

The decedent purchased a single premium contract and at the same time a single premium annuity contract, both contracts designating his wife as the owner or purchaser and the decedent as the insured or annuitant. The contracts provided that the wife should have the usual incidents of ownership and that, in the event the wife should predecease the decedent, all the enumerated powers were to vest in the decedent to the extent that such powers had not otherwise been exercised by the wife. The decedent retained not only the right to semiannual payments under the annuity contract, but also a contingent reversionary interest in the entire proceeds of both contracts, which interest he possessed at the time of his death. *Held:* These two contracts, which must be considered together, contain none of the true elements of insurance risk, and the proceeds of the contracts are includible in the decedent's gross estate as a transfer intended to take effect in possession or enjoyment at or after the decedent's death, under the provisions of section 302(c) of the Revenue Act of 1926, as amended by section 811(c) of the Internal Revenue Code.

2. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Second Circuit (144 Fed. (2d), 373), affirming decision of the District Court, S. D. New York (52 Fed. Supp., 704), affirmed.

SUPREME COURT OF THE UNITED STATES.

Beatrice L. Goldstone and Eugene L. Bondy, Executors of the Estate of Morris L. Goldstone, Deceased, petitioners, v. *The United States of America.*

[325 U. S., 687.]

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

[June 11, 1945.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

The question here is whether the proceeds of certain contracts payable upon the death of the decedent to his wife are includible in his gross estate for estate tax purposes under section 302(c) of the Revenue Act of 1926, as amended, Internal Revenue Code, section 811(c).[1]

On June 29, 1933, the Equitable Life Assurance Society of the United States issued two contracts for which the decedent paid sums aggregating $26,500:

(1) The first contract, for which the decedent paid a single premium of $14,357.08, insured the decedent's life for $18,928, payable upon death to his wife or, if she predeceased him, to their daughters. If all the beneficiaries predeceased the decedent, the proceeds of the contract were to be paid to his executors or administrators. In lieu of a physical examination in connection with the issuance of this contract, decedent was required to purchase a second or an annuity contract.

(2) Under the annuity contract, the decedent paid a single premium of $12,142.92. The contract provided for semiannual payments of $386.51 to be made to the decedent during his lifetime and for payment of $6,071.46 to his wife upon his death or, if she predeceased him, to their daughters or, if they were dead, to his estate.

By the terms of each contract the wife had the unrestricted right to assign it, to borrow money on it, to receive dividends, to change the beneficiaries and to surrender the contract and obtain the surrender value thereof. The contracts designated her as the "Owner" or "Purchaser," the decedent being called the "Insured" or "Annuitant." In the event that the wife should predecease the decedent, the contracts provided that all of the enumerated powers were to vest in the decedent to the extent that such powers had not otherwise been exercised by the wife.

The decedent was 63 years old when the contracts were issued. He died nearly five years later, on February 23, 1938, survived by his wife and daughters. His wife had not surrendered, assigned or alienated either contract prior to his death. The Equitable Life Assurance Society thereupon paid the widow $6,071.46 under the annuity contract, $18,928 under the life contract and $182.24 as accumulated dividends, making a total of $25,181.70.

On these facts the Commissioner of Internal Revenue determined that the proceeds of the two contracts were includible in decedent's estate for estate tax purposes. The petitioners, as executors of the estate, were assessed a deficiency of $5,376.11. After paying that amount they filed a claim for refund. The claim was rejected. They then brought this suit for refund. The district court sustained the action of the Commissioner and dismissed the complaint. (52 Fed. Supp., 704.) The Second Circuit Court of Appeals affirmed this judgment. (144 Fed. (2d), 373.) An apparent conflict of authority among lower courts on the question presented led us to grant certiorari.[2]

[1] The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death * * *.

[2] The judgment below is stated by the United States to be inconsistent with the result reached in *Lloyd's Estate* v. *Commissioner* (141 Fed. (2d), 758 (C. C. A. 3)) and to be in harmony with *Bailey* v. *United States* (31 Fed. Supp., 778 (Ct. Cls.)). The United States also claims that the result below is inconsistent with the same court's prior affirmance of *Estate of Ballard* v. *Commissioner* (47 B. T. A., 784, affirmed, 138 Fed. (2d), 512 (C. C. A. 2)). In view of the manner of our disposition of the instant case, however, we have no occasion to determine whether these asserted conflicts exist or whether the decision here necessarily controls the factual situations presented in these other cases. **[As amended by order of the Court on June 18, 1945.]**

Helvering v. *Le Gierse* (312 U. S., 531 [Ct. D. 1491, C. B. 1941–1, 430]) makes it plain that these two contracts, which must be considered together, contain none of the true elements of insurance risk. Section 302(g) of the Act, relating to amounts receivable "as insurance under policies taken out by the decedent upon his own life," is therefore inapplicable. The sole question, then, is whether the proceeds of the contracts are includible in the decedent's gross estate under section 302(c) as the subject of a transfer intended to take effect in possession or enjoyment at or after the decedent's death. That question we answer in the affirmative.

Section 302(c), as demonstrated by *Helvering* v. *Hallock* (309 U. S., 106 [Ct. D. 1440, C. B. 1940–1, 223]), reaches all *inter vivos* transfers which may be resorted to, as a substitute for a will, in making dispositions of property operative at death. It thus sweeps into the gross estate all property the ultimate possession or enjoyment of which is held in suspense until the moment of the decedent's death or thereafter. (*Fidelity-Philadelphia Trust Co.* v. *Rothensies*, 324 U. S., 108, 111 [Ct. D. 1630, page 406, this Bulletin]). In so doing, section 302(c) pierces all the verbiage of "unwitty diversities of the law of property." (*Helvering* v. *Hallock*, supra, 118.) Testamentary dispositions of an *inter vivos* nature can not escape the force of this section by hiding behind legal niceties contained in devices and forms created by conveyancers.

In this instance the decedent carefully procured the issuance of two contracts in his wife's name without possessing for a measureable period most of the usual attributes of ownership over the contracts. But this procedure does not conceal the fact that decedent used these contracts as a means of effecting a transfer of approximately $25,000 of his estate to the natural objects of his bounty. Nor does it negative the fact that this *inter vivos* transfer possessed all the indicia of a testamentary disposition. There was, in other words, a "transfer of property procured through expenditures by the decedent with the purpose, effected at his death, of having it pass to another." (*Chase National Bank* v. *United States*, 278 U. S., 327, 337 [Ct. D. 40, C. B. VIII–1, 308 (1929)].) Section 302(c) must therefore be brought to bear.

The decedent, in making disposition of $25,000 of his property through these two contracts, retained a valuable interest in that amount which was not extinguished until he died. He retained not only the right to semiannual payments under the annuity contract but also a contingent reversionary interest in the entire proceeds of both contracts. Had he survived his wife he could have exercised the attributes of ownership over the contracts, changing the beneficiaries or surrendering the contracts as he saw fit. If he had survived both his wife and his daughters the proceeds of the two contracts would automatically have been payable to his estate when he died. Thus the ultimate disposition of the proceeds of the contracts was suspended until the moment of decedent's death. Only then did the respective interests of the wife and daughters become fixed; only then were their interests freed from the contingency of the decedent's survival. His death was the decisive fact that terminated all of his potential rights and insured the complete ripening of the wife's interests. The transfer of the proceeds of the contracts having been effectuated finally and definitely at the decedent's death, as in the Hallock case, section 302(c) requires that those proceeds be included within the decedent's gross estate.

This conclusion is unaltered by the fact that the wife had the unrestricted power during the decedent's lifetime to exercise many important incidents of ownership over the contracts, including the power to terminate the decedent's reversionary interest in the proceeds. Whatever the likelihood of the exercise of this power, it is a fact that the wife did not change the beneficiaries or surrender the contracts so as to destroy decedent's reversionary interest. The string that the decedent retained over the proceeds of the contracts until the moment of his death was no less real or significant because of the wife's unused power to sever it at any time.

The essential element in this case, therefore, is the decedent's possession of a reversionary interest at the time of his death, delaying until then the determination of the ultimate possession or enjoyment of the property. The existence of such an interest constitutes an important incident of ownership sufficient by itself to support the imposition of the estate tax. (*Helvering* v. *Hallock*, supra.) The indefeasibility of that interest prior to death or the decedent's possession of other powers of ownership is unnecessary and indecisive of estate tax liability.

The disappearance of a decedent's reversionary interest, together with the resulting estate tax liability, prior to death through events beyond the decedent's

control is a possibility in many situations such as the one in issue.[3] Likewise a reversionary interest may become vested prior to a decedent's death because of the occurrence of other events beyond the realm of the decedent's volition and unconnected in any way with his death. But the imposition and computation of the estate tax are based upon the interests in actual existence at the time of the decedent's death. It follows that only those events that actually occurred prior to that moment can be considered in determining the existence and value of the taxable interests. Events that might have but failed to take place so as to erase a decedent's reversionary interest must be ignored; such unrealized possibilities, if significant at all, only add to the remoteness of the reversionary interest.

In our view of the case we need not consider the alternative argument urged by the United States to the effect that the specific amendments to section 302(c) are also applicable since the decedent actually received an annual return from the contracts for a period which did not in fact end before his death. Nor do we reach any questions of valuation of the decedent's reversionary interest such as those which were decided in *Fidelity-Philadelphia Trust Co.* v. *Rothensies*, supra, and *Commissioner* v. *Estate of Field* (324 U. S., 113 [Ct. D. 1631, page 408, this Bulletin]).

Affirmed.

Dissenting opinion by Mr. Justice ROBERTS, in which Mr. Justice DOUGLAS joins.

REGULATIONS 105, SECTION 81.24: Property subject to power of appointment by decedent. 1945-3-11961 T. D. 5434

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 81.—REGULATIONS RELATING TO ESTATE TAX.

Section 81.24 of Regulations 105 amended to conform to Public Law 511 (Seventy-eighth Congress, second session [page 542, 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 [Part 81, Title 26, Code of Federal Regulations, Cum. Sup.] to Public law 511, approved December 20, 1944 (Seventy-eighth Congress, second session [page 542, this Bulletin]) such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately after section 505 of the Revenue Act of 1943, which was inserted by Treasury Decision 5351, approved March 27, 1944 [C. B. 1944, 579], and preceding section 302(f) of the Revenue Act of 1926 (as originally enacted), as set forth preceding section 81.24, the following:

PUBLIC LAW 511 (SEVENTY-EIGHTH CONGRESS, SECOND SESSION), APPROVED DECEMBER 20, 1944.

Be it enacted 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 amended by striking out "January 1, 1945" wherever it appears and inserting in lieu thereof "July 1, 1945" * * *.

[3] Thus, in *Fidelity-Philadelphia Trust Co.* v. *Rothensies* (324 U. S., 108 [Ct. D. 1630, page 406, this Bulletin]), the decedent's contingent power of appointment was exercisable only if her two daughters died before her and left no surviving descendants. If the daughters died first but left surviving descendants, it would be certain before the decedent's death that her power of appointment would be nugatory. But such a contingency did not happen. At the time when the decedent died there was still the possibility that her power of appointment might be effective. The fact that the power of appointment might have been destroyed prior to the decedent's death did not prevent the imposition of the estate tax. The decedent's death was still the decisive factor which enlarged and matured the interests of the daughters. [As amended by order of the Court on June 18, 1945.]

PAR. 2. Section 81.24(*b*), added by Treasury Decision 5239, approved March 10, 1943 [C. B. 1943, 1081], and as amended by Treasury Decision 5283, approved July 12, 1943 [C. B. 1943, 1114], and Treasury Decision 5351, approved March 27, 1944 [supra], is further amended as follows:

(A) By striking out "December 31, 1944" wherever it appears and by inserting in lieu thereof "June 30, 1945."

(B) By striking from the first sentence of paragraph (3) "(as amended by section 505 of the Revenue Act of 1943)" and by inserting in lieu thereof "(as amended by Public Law 511 (Seventy-eighth Congress), approved December 20, 1944)."

(C) By striking out "January 1, 1945" wherever it appears and by inserting in lieu thereof "July 1, 1945."

(This Treasury decision is issued under the authority contained in section 3791 of the Internal Revenue Code (53 Stat., 467, 26 U. S. C., 1940 ed., 3791) and Public Law 511 (Seventy-eighth Congress), approved December 20, 1944.)

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

Approved February 2, 1945.

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

(Filed with the Division of the Federal Register February 3, 1945, 12.42 p. m.)

REGULATIONS 105, SECTION 81.24: Property subject to power of appointment by decedent. 1945–17–12122 T. D. 5470

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 81.—REGULATIONS RELATING TO ESTATE TAX.

Regulations 105 amended to conform to Public Law 95 (Seventy-ninth Congress [page 530, 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 [Part 81, Title 26, Code of Federal Regulations, Cum. Sup.] to Public Law 95 (Seventy-ninth Congress), approved June 29, 1945 [page 530, this Bulletin], such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately after Public Law 511 (Seventy-eighth Congress), which was inserted by Treasury Decision 5434, approved February 2, 1945 [page 401, this Bulletin], 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 95 (SEVENTY-NINTH CONGRESS), APPROVED JUNE 29, 1945.

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 amended by striking out "July 1, 1945" wherever it appears and inserting in lieu thereof "July 1, 1946" * * *.

PAR. 2. Section 81.24(*b*), added by Treasury Decision 5239, approved March 10, 1943 [C. B. 1943, 1081], and as amended by Treasury Decision 5283, approved July 12, 1943 [C. B. 1943, 1114], Treasury Decision 5351, approved March 27, 1944 [C. B. 1944, 579], and Treasury Decision 5434, approved February 2, 1945 [supra], is further amended as follows:

(A) By striking out "June 30, 1945" wherever it appears and by inserting in lieu thereof "June 30, 1946."

(B) By striking from the first sentence of paragraph (3), "(as amended by Public Law 511 (Seventy-eighth Congress), approved December 20, 1944)" and by inserting in lieu thereof "(as amended by Public Law 95 (Seventy-ninth Congress), approved June 29, 1945)."

(C) By striking out "July 1, 1945" wherever it appears and by inserting in lieu thereof "July 1, 1946."

(This Treasury decision is issued under the authority contained in section 3791 of the Internal Revenue Code (53 Stat., 467, 26 U. S. C., 1940 ed., 3791) and Public Law 95 (Seventy-ninth Congress), approved June 29, 1945.)

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

Approved August 14, 1945.

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

(Filed with the Division of the Federal Register August 17, 1945, 11.29 a. m.)

TITLE III.—ESTATE TAX. (1926)

SECTION 302.—GROSS ESTATE—TRANSFERS BY DECEDENT IN HIS LIFETIME.

REGULATIONS 80 (1937), ARTICLE 16: Transfers in contemplation of death. 1945–4–11971 Ct. D. 1629

ESTATE TAX—REVENUE ACT OF 1926, AS AMENDED—DECISION OF SUPREME COURT.

1. GROSS ESTATE—ESTATE OF INCOMPETENT PERSON—TRANSFERS MADE IN CONTEMPLATION OF DEATH—LEGAL EFFECT OF ALLOWANCES MADE BY STATE COURT TO DESCENDANTS AND COLLATERALS OF DECEDENT.

The granting of allowances to the descendants of an incompetent by the Supreme Court of New York acting as the representative of the State is, in legal effect, the act of the incompetent and the motive is hers. Accordingly, in the instant case, such allowances, except as to an amount representing payments which the decedent, when competent, had regularly made to her daughters, fall within the sweep of section 302(c) of the Revenue Act of 1926, as amended, and are includible in her gross estate as transfers made in contemplation of death. Allowances to needy collaterals were, in effect, current payments for support and are not includible in the decedent's gross estate as transfers made in contemplation of death.

2. DECISION REVERSED IN PART.

Decision of the United States Circuit Court of Appeals, Second Circuit (142 Fed. (2d), 599), affirming decision of the District Court, W. D. N. Y. (43 Fed. Supp., 790), reversed in part.

SUPREME COURT OF THE UNITED STATES.

City Bank Farmers Trust Co., formerly known as The Farmers Loan & Trust Co., as Administrator, etc., petitioner, v. *George T. McGowan, Collector of Internal Revenue for the Twenty-eighth Collection District, New York.*

[323 U. S., 594.]

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

[January 29, 1945.]

OPINION.

Mr. Justice ROBERTS delivered the opinion of the Court.

This case presents an issue of importance arising under section 302(c) of the Revenue Act of 1926, as amended,[1] which requires inclusion, in the gross taxable estate of a decedent, of any interest in property of which the "decedent has at any time made a transfer * * * in contemplation of * * * his death, * * *." More specifically, the inquiry is whether the section reaches allowances out of the income of an incompetent person.

Helen Hall Vail died in 1935 intestate. For nine years she had been incurably insane. In 1926 an adjudication of incompetency was entered by the Supreme Court of the State of New York, and a committee was appointed to care for her property, which consisted of income-producing realty and personalty. In addition, she was in receipt of the income of a trust. During the period of five years prior to the adjudication her annual income from all sources had averaged $300,000. She was over 70 years of age but in good physical health. She had a living daughter and three grandsons, children of a deceased daughter. Application was made to the court to make allowances out of income to Mrs. Vail's issue and to a brother and sisters. The court referred the matter to a referee before whom it was shown that she had, over a period of years, allowed each of her daughters $6,000, and one of her sisters $500, per annum, and had made gifts to her daughters, but not with regularity. As she was confined in an institution, her total needs, including maintenance and taxes, did not exceed $50,000 per annum. Accumulated income in the hands of the committee amounted to over $750,000.

The court, on the basis of the referee's report, entered an order which, after reciting that Mrs. Vail had made no will, that the daughter and grandchildren, or their issue, would, upon her death, be her only heirs at law and next of kin, and the only persons entitled to share in her estate, and that, if she were in possession of her mental faculties, "she would desire that the allowance hereinafter fixed be made * * *, and would make such allowance to such persons out of her property," directed the committee to pay yearly, in quarterly installments, $50,000 to the living daughter and $50,000 to the guardian of the children of the deceased daughter, $2,000 each to all but one of the brother and sisters; and $3,000 to the remaining sister.

Some six years later an application was made for an increase in the allowance. The matter was again referred for hearing and, on the coming in of the referee's report showing that accumulated income in Mrs. Vail's account had increased to over $1,000,000, that income had averaged, for over five years, approximately $395,000 per annum, and, after paying allowances and all expenses, the surplus averaged about $191,000 a year, the court made an order reciting that she was then 77 years of age and incurable, enumerated the issue who would be entitled to her estate at death, that she had no will, and that if she were competent she would have desired that the sums named in the earlier decree be augmented, raised the allowances to the daughters and to the grandchildren collectively to $75,000, retroactive to the date of the original order. It was never claimed, and is not contended, that the next of kin needed any such allowances for their maintenance and support in their station in life. It is conceded that the brother and sisters to whom allowances were made were destitute and in need of maintenance.

At Mrs. Vail's death the allowances theretofore paid totaled $1,377,836.67. The Commissioner of Internal Revenue included the sum in the decedent's gross estate and determined a deficiency. The petitioner, as administrator, paid the sum demanded, claimed a refund and, on denial, instituted this action in the district court. That court, upon consideration of the record of the proceedings in the Supreme Court of New York, found that the total of the allowances was

[1] Internal Revenue Code, section 811(c) (26 U. S. C., section 811(c)).

properly included in the decedent's gross estate, except so much as represented annual payments to the daughter and the grandchildren's guardian of $6,000 each and $500 per annum of the gifts to collaterals, and entered judgment accordingly.[2] The Circuit Court of Appeals, by a divided court, affirmed the judgment.[3] We granted certiorari.

The Supreme Court of New York is empowered by statute to act as representative of the State, as *parens patriae*, in caring for the persons and the estates of its incompetent citizens. That court may grant allowances out of income only if it determines that the incompetent would probably have granted such allowances himself had he been sane. The court does not, in any proper sense, act as the incompetent's agent. In the exercise of the power the primary consideration is that the incompetent's property shall not be wasted but preserved against the possibility of restoration to sanity. On these propositions the parties are in accord.

The petitioner urges that the present case is not within the terms of the statute and that, in enacting section 302, Congress did not contemplate any such contingency as that here involved. It insists that Mrs. Vail made no transfer but, if any was made, the court made it; that she had and could have no motive in respect of the gift. In addition, it urges that, under the State law, the court's control over the estate ceases at the incompetent's death, and the court can not make a will for her or in any wise interfere with the devolution of her estate. Hence, it concludes that to suggest the court sanctioned transfers of a testamentary character is to assume that it exceeded its powers. Such an assumption, so petitioner says, ought not to be indulged. On the contrary, it should be presumed that the court acted within its granted powers; that is, authorized transfers *inter vivos*, with no testamentary motive.

The Government, on the other hand, takes the position that nothing in the law of New York, and no authority cited by the petitioner, precludes the State court from making an allowance in contemplation of death if, upon the record made, the court, placing itself in the incompetent's position on the supposition that she were sane and competent, concludes that she would have made the transfers. And, it adds, that what was done by the Supreme Court in this case was not appealed and is now beyond correction, if erroneous, and that the records and orders evince an understanding that the certainty of continuance of disability until death, the fact of intestacy, and the natural expectations of the distributees under the intestate laws were prevalent factors in moving the court to make the orders in question, and characterize the court's action as taken in contemplation of death. The Government says that, as the court was required to, and did, act as the decedent would have acted if competent, this case is not outside the terms of section 302(c) but, on the contrary, in contemplation of law, the decedent did make the transfers in question.

The issue is a narrow one. Literally Mrs. Vail neither made the transfers nor did she have any motive with respect to them. But a court stood in her place and unquestionably had the function of effectuating a transfer of her property and of determining what motive or purpose would have actuated her had she been competent to act. It seems to us that it is sticking in the bark to say that, in the circumstances, the transfers are not within the section because Congress did not add a phrase to the effect that where a court made the transfer, acting in lieu of the incompetent owner, such a transfer should be governed by the statute.

We hold, therefore, that where, as in New York, the court is to substitute itself as nearly as may be for the incompetent, and to act upon the same motives and considerations as would have moved her, the transfer is, in legal effect, her act and the motive is hers.

This being so, the only remaining question is whether the proof was sufficient to overcome the presumption arising from the Commissioner's determination that the transfers were made in contemplation of death. The applicable test is that stated in *United State* v. *Wells* (283 U. S., 102 [Ct. D. 340, C. B. X-1, 475 (1931)]). This is whether the thought of death is the impelling cause of the transfer. As respects the descendants of Mrs. Vail, it would seem clear enough that there was no dominant motive for the transfer other than the thought that, as they would inherit her estate, and as there was a large accumulation of unneeded income, they might as well receive substantial portions now as await her death to enjoy their inheritance. The fact that these beneficiaries did not stand in need of the money, the fact that the increase granted at the second hearing was

[2] 43 Fed. Supp., 790.
[3] 142 Fed. (2d), 599.

made retroactive, and that the past installments were paid in a lump sum, the arguments of counsel in both hearings that the only reason for granting the allowances to Mrs. Vail's descendants was that they inevitably would divide her estate amongst them, and the recitals of the court orders, to which reference has been made, all go to confirm, rather than to undermine the Commissioner's determination.

We think the district court was right in holding that, to the extent of $6,000 per annum, which was the sum Mrs. Vail, when competent, had regularly allowed each of her daughters, the transfers fall without the terms of section 302(c), but that the balance of the payments to her descendants falls within its sweep.

A different question is presented respecting the allowances to collaterals. It appears that they were in need of funds for their maintenance and support, and it is obvious that no payments to them could be on account of any share of their sister's intestate estate. The allowances have the color of current payments for support and they were authorized because the court concluded that, if sane and cognizant of the situation, Mrs. Vail would have made them. These considerations lead to the conclusion that the Commissioner's determination concerning them is rebutted and that they should not have been included in the decedent's gross estate. To the extent indicated the judgment of the circuit court of appeals is reversed.

So ordered.

SECTION 302(c).—TRANSFERS BY DECEDENT IN HIS LIFETIME.

REGULATIONS 80, ARTICLE 15: Transfers during life. 1945–5–11981 Ct. D. 1630

ESTATE TAX—REVENUE ACT OF 1926—DECISION OF SUPREME COURT.

1. GROSS ESTATE—TRANSFERS IN TRUST—INTENDED TO TAKE EFFECT IN POSSESSION OR ENJOYMENT AT OR AFTER DEATH.

The decedent transferred property in trust, retaining a life estate in trust income, at her death such income to be paid to her daughters for their lives. Trust corpus was to be paid to surviving descendants of the daughters, or, if none, to such persons as the settlor might appoint by will, and, in default of such appointment, to certain named charities. *Held:* Until the moment of her death or until an undetermined time thereafter the decedent held a string or contingent power of appointment over the total corpus of the trust. The transfer therefore was one intended to take effect in possession or enjoyment at or after death within the meaning of section 302(c) of the Revenue Act of 1926, and the value of the entire corpus of the trust is includible in the decedent's gross estate for Federal estate tax purposes.

2. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Third Circuit (142 Fed. (2d), 838), affirmed.

SUPREME COURT OF THE UNITED STATES.

Fidelity-Philadelphia Trust Co. and Robert A. Workman, Executors of the Estate of Anna C. Stinson, Deceased, petitioners, v. *Walter J. Rothensies, Individually and as Collector of Internal Revenue for the First District of Pennsylvania.*

[324 U. S., 108.]

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

[February 5, 1945.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

Our attention here is directed toward the proper valuation for Federal estate tax purposes of the corpus of an *inter vivos* trust where the transfer was intended to take effect in possession or enjoyment at or after death and where the settlor retained a life estate in the trust income and a reversionary interest in the corpus.

On March 26, 1928, the decedent, Anna C. Stinson of Bryn Mawr, Pa., transferred certain property in trust, the value of which at the time of her death was $84,443.49. The income of the trust was to be paid to the settlor during her life and at her death to her daughters (aged 12 and 10 at the time of the creation of the trust) during their respective lives. At the death of each daughter, the corpus supporting her share of the income was to be paid to her descendants. If either daughter died without leaving surviving descendants, the corpus of her share was to be added to the share of the other daughter or of the surviving descendants of the other daughter. But if both daughters died without leaving surviving descendants, the corpus was to be paid to such persons as the settlor might appoint by will. In default of such appointment, the corpus was to go to certain named charities.

The decedent exercised the power of appointment in a will made in 1930. She died in 1934 at the age of 51, leaving two unmarried daughters. The latter have subsequently married and both have children.

The Commissioner determined that this arrangement was a transfer in trust intended to take effect in possession or enjoyment at or after death within the meaning of section 302(c) of the Revenue Act of 1926 (44 Stat., 9, 70), and that the net value of all the property comprising the corpus of the trust should be included in the decedent's gross estate for estate tax purposes. The executors, however, denied that the transfer fell within the meaning of section 302(c); they further claimed that even if section 302(c) did apply the value of the life estates of the settlor's daughters and the value of the remainders to their surviving descendants should be deducted from the value of the trust assets for tax purposes.

The executors paid a tax on the full value of the trust assets and filed this claim for refund of the tax. The district court denied recovery and the court below affirmed. (142 Fed. (2d), 838.) Conflict with *Field's Estate* v. *Commissioner* (144 Fed. (2d), 62) led us to grant certiorari limited to the question of whether the entire value of the corpus of the trust at the time of decedent's death should have been included in the decedent's gross estate.

The courts below, utilizing the principles set forth in *Klein* v. *United States* (283 U. S., 231 [Ct. D. 333, C. B. X–1, 462 (1931)]) and *Helvering* v. *Hallock* (309 U. S., 106 [Ct. D. 1440, C. B. 1940–1, 223]), correctly held that the decedent's transfer in trust in 1928 was one intended to take effect in possession or enjoyment at or after death within the meaning of section 302(c) of the Revenue Act of 1926, prior to the amendments of 1931 and 1932. While the matter of valuation was not argued and was not directly in issue in those cases, the inescapable consequence of the principles enunciated there and in the dissenting opinion in *Helvering* v. *St. Louis Union Trust Co.* (296 U. S., 39, 46 [Ct. D. 1044, C. B. XIV–2, 337 (1935)]), is to include the entire trust corpus in the gross estate of the decedent under these circumstances.

Section 302(c) itself provides for the inclusion within the gross estate of property "to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death." As we said in *Helvering* v. *Hallock*, supra, 110, 111, this provision "deals with property not technically passing at death but with interests theretofore created. The taxable event is a transfer *inter vivos*. But the measure of the tax is the value of the transferred property at the time when death brings it into enjoyment." (Cf. *Reinecke* v. *Northern Trust Co.*, 278 U. S., 339, 347 [T. D. 4261, C. B. VIII–1, 305 (1929)].) The taxable gross estate, in other words, must include those property interests the ultimate possession or enjoyment of which is held in suspense until the moment of the grantor's death or thereafter.

Tested by that standard, the entire corpus of the trust should have been included in the decedent's gross estate and an estate tax levied on its net value at the date of decedent's death. The ultimate disposition of all the trust property was suspended during the life of the decedent. Only at or after her death was it certain whether the property would be distributed under the power of appointment or as provided in the trust instrument. The life estates of the daughters were contingent upon their surviving their mother and took effect in enjoyment only at the death of the latter. The remainder interests of the descendants of the daughters were contingent upon their surviving both the decedent and the daughters and took effect in possession only after the death of the decedent. Thus until the moment of her death or until an undetermined time thereafter the decedent held a string or contingent power of appointment over the total corpus of the trust. The retention of such a string, which might have resulted in altering completely the plan contemplated by the trust instrument for the transmission of decedent's property, subjected the value of the entire corpus to estate tax liability.

It is fruitless to speculate on the probabilities of the property being distributed under the contingent power of appointment. Indeed, such speculation is irrelevant to the measurement of estate tax liability. The application of this tax does not depend upon "elusive and subtle casuistries." (*Helvering* v. *Hallock*, supra, 118.) No more should the measure of the tax depend upon conjectures as to the propinquity or certainty of the decedent's reversionary interests. It is enough if he retains some contingent interest in the property until his death or thereafter, delaying until then the ripening of full dominion over the property by the beneficiaries. The value of the property subject to the contingency, rather than the actuarial or theoretical value of the possibility of the occurrence of the contingency, is the measure of the tax. That value is demonstrated by the consequences that would flow in this instance from the decedent's survival of her daughters and any of the latter's surviving descendants.

We are not concerned here with determining whether the values of any property interests or intervening estates not affected by the decedent's death and not subject to the contingent power of appointment should be deducted from the value of the corpus. The value of the life estate retained by the decedent obviously can not be deducted. And the life estates of the daughters and the remainder interests of their surviving descendants were all subject to divestment by the contingent power of appointment and were freed from this contingency only at or after the decedent's death. There is thus no basis for deducting their values as suggested by petitioners.

Affirmed.

Mr. Justice DOUGLAS, concurring.

The district court found that this trust was "intended to take effect in possession or enjoyment at or after" the death of the decedent. The circuit court of appeals agreed. Certiorari was not granted on that question but only on the question whether the entire value of the corpus of the trust at the time of decedent's death should be included in her gross estate. So in this case, as in *Commissioner* v. *Field*, No. 578, decided this day [Ct. D. 1631, below, this Bulletin], we are not faced with the question whether *May* v. *Heiner* (281 U. S., 238 [Ct. D. 186, C. B. IX-1, 382 (1930)]) should survive *Helvering* v. *Hallock* (309 U. S., 106). On the findings of the district court, it is plain that the entire corpus must be included in decedent's gross estate by virtue of section 302(c) of the 1926 Act unless the value of the life estate must be deducted. The value of the life estate deducted in the Hallock case was the life estate in the settlor's wife. It was excluded because it took effect in possession or enjoyment when the trust was created. The life estate which the decedent reserved to herself is obviously in a different category. It is not an "outstanding life estate" within the meaning of Treasury Regulations 80, article 17.

I would rest the decision there and reserve judgment on the other questions adverted to in the opinion of the Court.

REGULATIONS 80, ARTICLE 15: Transfers during life. 1945-5-11982 Ct. D. 1631

ESTATE TAX—REVENUE ACT OF 1926—DECISION OF SUPREME COURT.

1. GROSS ESTATE—TRANSFERS IN TRUST—INTENDED TO TAKE EFFECT IN POSSESSION OR ENJOYMENT AT OR AFTER DEATH.

The decedent transferred property in trust, the trust being limited in duration to the lives of decedent's two nieces, but, if both nieces should die before the decedent, the corpus was to be paid to the decedent rather than to the beneficiaries named in the trust instrument. If decedent should die prior to the termination of the trust, leaving issue, the property was to be held in trust for the children or their issue, subject to decedent's right to reduce or cancel the amount of the gifts; trust income to be paid to named beneficiaries for life and upon their deaths the corpus to such beneficiaries' issue surviving; if none, to the issue of the decedent surviving; or, if none, then to decedent's brother or sister or their issue. *Held:* The decedent having retained a string attached to all the property until death severed it, the entire corpus was swept into the gross estate and was taxable accordingly under the provisions of section 302(c) of the Revenue Act of 1926.

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Second Circuit (144 Fed. (2d), 62), reversing decision of The Tax Court (2 T. C., 21), reversed.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. Estate of Lester Field, Deceased, Barnett Hollander, Temporary Administrator and Executor.

[324 U. S., 113.]

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

[February 5, 1945.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

This is a companion case to *Fidelity-Philadelphia Trust Co.* v. *Rothensies*, No. 263, decided this day [Ct. D. 1630, page 406, this Bulletin]. It too presents a question as to the proper valuation of the corpus of an *inter vivos* trust under section 302(c) of the Revenue Act of 1926 (44 Stat., 9, 70.)

On June 8, 1922, the decedent transferred to a trustee certain assets valued at the date of his death at the sum of $157,452.82. The material portions of the trust provided:

1. The trust was to continue for the joint lives of two nieces and the life of the survivor of them unless terminated earlier under 4, *infra*.

2. The income was to be paid to the decedent for his life unless the trust terminated before his death.

3. If the decedent died prior to the termination of the trust leaving issue, the trust property was to be held in trust for the children or their issue, subject to decedent's right to reduce or cancel the amounts of the gifts by will or written instrument. Provisions were also made for a $150,000 trust for the widow which is not in issue in this case.

4. During the continuance of the trusts the income was to be paid to the beneficiary named and upon the death of the beneficiary during the continuance of the trust the corpus was to be paid to the beneficiary's issue surviving, but if there be none, to the issue of the decedent surviving; if none, then to decedent's brother or sister or their issue.

5. Upon termination of the trust before the death of the decedent the corpus was to be paid over to decedent.

6. Upon termination of the trust after the death of the decedent but during the existence of any trust the corpus was to be paid to the life beneficiary.

The decedent at no time had any issue. At his death in 1937 at the age of 52, he was survived by the two nieces whose lives were to measure the maximum life of the trust. These nieces were then aged 18 and 25 respectively. He was also survived by his widow, a sister and issue of a deceased brother.

The Tax Court held that the entire amount of $157,452.82 was includible in the gross estate for purposes of the estate tax. (2 T. C., 21.) But the court below reversed and remanded the case to The Tax Court with directions to include in the gross estate only $24,930.76—the value at the time of decedent's death of a remainder in the sum of $157,452.82 payable at all events upon the death of the survivor of two females, aged 18 and 25 respectively. (144 Fed. (2d), 62.)

The error of the court below is self-evident from our discussion in the Fidelity-Philadelphia Trust Co. case. The trust here was limited in duration to the lives of the decedent's two nieces. But if both nieces died before the decedent, the corpus would have been paid to the decedent rather than to the beneficiaries named in the trust instrument (in this instance the decedent's sister and the issue of his deceased brother). Thus until decedent's death it was uncertain whether any of the corpus would pass to the beneficiaries or whether it would revert to the decedent. Decedent retaining a string attached to all the property until death severed it, the entire corpus was swept into the gross estate and was taxable accordingly.

There is no basis evident for deducting the value of the corpus for the period of the life expectancies of the two measuring lives, as was done by the court

below. The estate tax is not based on the value of the reversionary interest of the decedent at the time of his death but on the value at the time of his death of the property to which that reversionary interest relates. It makes no difference how vested may be the remainder interests in the corpus or how remote or uncertain may be the decedent's reversionary interest. If the corpus does not shed the possibility of reversion until at or after the decedent's death, the value of the entire corpus on the date of death is taxable.

Reversed.

Mr. Justice DOUGLAS, concurring.

If the trust gave a life estate to the decedent and the remainder to his children, section 302(c) of the 1926 Act would not require the payment of a tax under the rule of *May* v. *Heiner* (281 U. S., 238 [Ct. D. 186, C. B. IX–1, 382 (1930)]); *Burnet* v. *Northern Trust Co.* (283 U. S., 782); *McCormick* v. *Burnet* (283 U. S., 784); and *Hasset* v. *Welch* (303 U. S., 303 [Ct. D. 1317, C. B. 1938–1, 490]). The theory of *May* v. *Heiner* was that under those circumstances no interest in the property passed from the grantor to the remainderman on the grantor's death, since the title of the remainderman had been definitely fixed by the trust deed. We need not determine whether the rule of *May* v. *Heiner* should survive *Helvering* v. *Hallock* (309 U. S., 106 [Ct. D. 1440, C. B. 1940–1, 223]). (See Paul, Federal Estate and Gift Taxation (1942), section 7.15.) For in this case the grantor retained the right to reduce or cancel by will or written instrument the interests of the children; and the corpus would have been returned to the grantor if he survived his nieces. Hence it seems plain that the gifts over would take effect in possession or enjoyment only at or after the death of the grantor.

SECTION 319.—LIMITATION PERIOD FOR FILING REFUND CLAIMS.

REGULATIONS 80 (1937), ARTICLE 99: Claim for refund. 1945–4–11972 Ct. D. 1628

ESTATE TAX—REVENUE ACT OF 1926, AS AMENDED—DECISION OF SUPREME COURT.

1. CLAIM FOR REFUND—STATUTE OF LIMITATIONS—ADVANCE PAYMENT OF ESTIMATED TAX CONSIDERED IN NATURE OF CASH BOND.

An advance payment of estimated Federal estate taxes set aside by the collector of internal revenue in a special suspense account is not held as taxes duly collected but is held as a deposit made in the nature of a cash bond for the payment of taxes thereafter found to be due. A claim for refund filed more than three years after such payment but within three years after the Commissioner's determination and assessment of the total net tax due, is not barred by the statute of limitations prescribed by section 319(b) of the Revenue Act of 1926, as amended by section 810(a) of the Revenue Act of 1932.

2. DECISION REVERSED.

Decision of the Court of Claims (53 Fed. Supp., 722) (1944) reversed.

SUPREME COURT OF THE UNITED STATES.

Lena Rosenman and the National City Bank of New York, a Corporation, as Executors of the Last Will and Testament of Louis Rosenman, Deceased, petitioners, v. *The United States.*

[323 U. S., 658.]

On writ of certiorari to the Court of Claims.

[January 29, 1945.]

OPINION.

Mr. Justice FRANKFURTER delivered the opinion of the Court.

This is an action upon a claim for refund of a Federal estate tax, and the specific question before us is whether the claim was asserted too late. The matter is governed by section 319(b) of the Revenue Act of 1926 (44 Stat., 9,

84), as amended by section 810(a) of the Revenue Act of 1932 (47 Stat., 169, 282, 26 U. S. C., section 910), reading as follows:

"All claims for the refunding of the tax imposed by this title alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax. The amount of the refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the refund."

Petitioners are executors of the will of Louis Rosenman, who died on December 25, 1933. Under appropriate statutory authority, the Commissioner of Internal Revenue extended the time for filing the estate tax return to February 25, 1935. But there was no extension of the time for payment of the tax which became due one year after the decedent's death, on December 25, 1934. The day before, petitioners delivered to the collector of internal revenue a check for $120,000, the purpose of which was thus defined in a letter of transmittal: "We are delivering to you herewith, by messenger, an estate check payable to your order, for $120,000, as a payment on account of the Federal estate tax. * * *. This payment is made under protest and duress, and solely for the purpose of avoiding penalties and interest, since it is contended by the executors that not all of this sum is legally or lawfully due." This amount was placed by the collector in a suspense account to the credit of the estate. In the books of the collector the suspense account concerns moneys received in connection with Federal estate taxes and other miscellaneous taxes if, as here, no assessment for taxes is outstanding at the time. On February 25, 1935, petitioners filed their estate tax return according to which there was due from the estate $80,224.24. On March 28, 1935, the collector advised petitioners that $80,224.24 of the $120,000 to their credit in the suspense account had been applied in satisfaction of the amount of the tax assessed under their return. On the basis of this notice, petitioners, on March 26, 1938, filed a claim for $39,775.76, the balance between the $120,000 paid by them under protest and the assessed tax of $80,224.24.

Upon completion, after nearly three years, of the audit of the return, the Commissioner determined that the total net tax due was $128,759.08. No appeal to the Board of Tax Appeals having been taken, a deficiency of $48,534.84 was assessed. The collector thereupon applied the balance of $39,775.76 standing to the credit of petitioners in the suspense account in partial satisfaction of this deficiency, and on April 22, 1938, petitioners paid to the collector the additional amount of $10,497.34, which covered the remainder of the deficiency plus interest. The Commissioner then rejected the petitioners' claim for refund filed in March of that year. On May 20, 1940, petitioners filed with the collector a claim, based on additional deductions, for refund of $24,717.12. The claim was rejected on the ground, so far as now relevant, that the tax claimed to have been illegally exacted had been paid more than three years prior to the filing of the claim, except as to the amount of $10,497.34 paid by petitioners in 1938. Petitioners brought this suit in the Court of Claims which held that recovery for the amount here in dispute was barred by statute (53 Fed. Supp., 722). To resolve an asserted conflict of decisions in the lower courts we brought the case here. (323 U. S., —.)

Claims for tax refunds must conform strictly to the requirements of Congress. A claim for refund of an estate tax "alleged to have been erroneously or illegally assessed or collected must be presented to the Commissioner within three years next after the payment of such tax." On the face of it, this requirement is couched in ordinary English, and since no extraneous relevant aids to construction have been called to our attention Congress has evidently meant what these words ordinarily convey. The claim is for refund of a tax "alleged to have been erroneously or illegally assessed or collected," and the claim must have been filed "after the payment of such tax," that is, within three years after payment of a tax which according to the claim was erroneously or illegally collected. The crux of the matter is the alleged illegal assessment or collection, and "payment of such tax" plainly presupposes challenged action by the taxing officials.

The action here complained of was the assessment of a deficiency by the Commissioner in April, 1938. Before that time there were no taxes "erroneously or illegally assessed or collected" for the collection of which petitioners could have filed a claim for refund. The amount then demanded as a deficiency by the Commissioner was, so the petitioners claimed, erroneously assessed. It is

this erroneous assessment that gave rise to a claim for refund. Not until then was there such a claim as could start the time running for presenting the claim. In any responsible sense payment was then made by the application of the balance credited to the petitioners in the suspense account and by the additional payment of $10,497.34 on April 22, 1938. Both these events occurred within three years of May 20, 1940, when the petitioners' present claim was filed.

But the Government contends "payment of such tax" was made on December 24, 1934, when petitioners transferred to the collector a check for $120,000. This stopped the running of penalties and interest, says the Government, and therefore is to be treated as a payment by the parties. But on December 24, 1934, the taxpayer did not discharge what he deemed a liability nor pay one that was asserted. There was merely an interim arrangement to cover whatever contingencies the future might define. The tax obligation did not become defined until April, 1938. And this is the practical construction which the Government has placed upon such arrangements. The Government does not consider such advances of estimated taxes as tax payments. They are, as it were, payments in escrow. They are set aside, as we have noted, in special suspense accounts established for depositing money received when no assessment is then outstanding against the taxpayer. The receipt by the Government of moneys under such an arrangement carries no more significance than would the giving of a surety bond. Money in these accounts is held not as taxes duly collected are held but as a deposit made in the nature of a cash bond for the payment of taxes thereafter found to be due. (See Ruling of the Comptroller General, A–48307, April 14, 1933.) * * * Accordingly, where taxpayers have sued for interest on the "overpayment" of moneys received under similar conditions, the Government has insisted that the arrangement was merely a "deposit" and not a "payment" interest on which is due from the Government if there is an excess beyond the amount of the tax eventually assessed. (See *Busser* v. *United States*, 130 Fed. (2d), 537, 538; *Atlantic Oil Producing Co.* v. *United States*, 35 Fed. Supp., 766; *Moses* v. *United States*, 28 Fed. Supp., 817; *Chicago Title & Trust Co.* v. *United States*, 45 Fed. Supp., 323; *Estate of Rogers* v. *Commissioner* * * *.) If it is not payment in order to relieve the Government from paying interest, it can not be payment to bar suit by the taxpayer for its illegal retention. It will not do to treat the same transaction as payment and not as payment, whichever favors the Government. (See *United States* v. *Wurts*, 303 U. S., 414 [Ct. D. 1325, C. B. 1938–1, 329].)

Exaction of interest from the Government requires statutory authority, and it merely carries out the true nature of an arrangement such as this to treat it as an estimated deposit and not as a payment which, if in excess of what should properly have been exacted, entitled the taxpayer to interest as the return on the use that the Government has had of moneys that should not have been exacted. (We need not here consider the effect of the Current Tax Payment Act of 1943, section 4(d), 57 Stat., 126, 140.) On the other hand, by allowing such a deposit arrangement, the Government safeguards collection of the assessment of whatever amount tax officials may eventually find owing from a taxpayer, while the taxpayer in turn is saved the danger of penalties on an assessment made, as in this case, years after a fairly estimated return has been filed. The construction which in our view the statute compels safeguards the interests of the Government, interprets a business transaction according to its tenor, and avoids gratuitous resentment in the relations between Treasury and taxpayer.

Reversed.

GIFT TAX.

INTERNAL REVENUE CODE.

REGULATIONS 108, SECTION 86.2: Transfers reached. 1945–4–11970 T. D. 5437

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 86.—GIFT TAX UNDER CHAPTER 4 OF INTERNAL REVENUE CODE, AS AMENDED.

Section 86.2 of Regulations 108 amended to conform to Public Law 511 (Seventy-eighth Congress, second session), 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 108 [Part 86, Title 26, Code of Federal Regulations, Cum. Sup.] to Public Law 511, approved December 20, 1944 (Seventy-eighth Congress, second session), such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately after section 505 of the Revenue Act of 1943, which was inserted by Treasury Decision 5366, approved May 5, 1944 [C. B. 1944, 583], and preceding section 86.1, the following:

PUBLIC LAW 511 (SEVENTY-EIGHTH CONGRESS, SECOND SESSION), APPROVED DECEMBER 20, 1944.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That * * * section 452(c) of the Revenue Act of 1942 is amended to read as follows:

" (c) RELEASE BEFORE JULY 1, 1945.—

" (1) A release of a power to appoint before July 1, 1945, 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 1945 and to that part of the calendar year 1945 prior to July 1, 1945."

PAR. 2. Section 86.2(*b*), as amended by Treasury Decision 5366, approved May 5, 1944, is further amended as follows:

(A) By striking out " January 1, 1945 " wherever it appears and by inserting in lieu thereof " July 1, 1945."

(B) By striking out " as amended by section 505 of the Revenue Act of 1943 " wherever it appears and by inserting in lieu thereof " as amended by Public Law 511 (Seventy-eighth Congress), approved December 20, 1944."

(This Treasury decision is issued under the authority contained in sections 1000(c), 1029, and 3791 of the Internal Revenue Code (56 Stat., 952; 53 Stat., 157. 467; 26 U. S. C., 1940 ed., 1000(c), 1029, 3791), and Public Law 511 (Seventy-eighth Congress), approved December 20, 1944.)

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

Approved February 3, 1945.

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

(Filed with the Division of the Federal Register February 5, 1945, 11.37 a. m.)

REGULATIONS 108, SECTION 86.2: Transfers reached. 1945–17–12124
T. D. 5471

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 86.—GIFT TAX UNDER CHAPTER 4 OF INTERNAL REVENUE CODE, AS AMENDED.

Regulations 108 amended to conform to Public Law 95 (Seventy-ninth Congress [page 530, 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 108 [Part 86, Title 26, Code of Federal Regulations, Cum. Sup.] to Public Law 95 (Seventy-ninth Congress), approved June 29, 1945 [page 530, this Bulletin], such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately after Public Law 511 (Seventy-eighth Congress), which was inserted by Treasury Decision 5437, approved February 3, 1945 [page 413, this Bulletin], and preceding section 86.1, the following:

PUBLIC LAW 95 (SEVENTY-NINTH CONGRESS), APPROVED JUNE 29, 1945.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That * * * section 452(c) of the Revenue Act of 1942 is amended to read as follows:

"(c) RELEASE BEFORE JULY 1, 1946.—

"(1) A release of a power to appoint before July 1, 1946, 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 1946 and to that part of the calendar year 1946 prior to July 1, 1946."

PAR. 2. Section 86.2(*b*), as amended by Treasury Decision 5366, approved May 5, 1944 [C. B. 1944, 583], and Treasury Decision 5437, approved February 3, 1945 [supra], is further amended as follows:

(A) By striking out "July 1, 1945" wherever it appears and by inserting in lieu thereof "July 1, 1946."

(B) By striking out "as amended by Public Law 511 (Seventy-eighth Congress), approved December 20, 1944" wherever it appears and by inserting in lieu thereof "as amended by Public Law 95 (Seventy-ninth Congress), approved June 29, 1945."

(This Treasury decision is issued under the authority contained in sections 1000(c), 1029, and 3791 of the Internal Revenue Code (56 Stat., 952, 53 Stat., 157, 467; 26 U. S. C., 1940 ed., 1000(c), 1029, 3791), and Public Law 95 (Seventy-ninth Congress), approved June 29, 1945.)

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

Approved August 14, 1945.

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

(Filed with the Division of the Federal Register August 17, 1945, 11.29 a. m.)

REGULATIONS 79 (1936), ARTICLE 3: Cessation of donor's dominion and control. 1945–17–12123 T. D. 5469

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 85.—GIFT TAX UNDER THE REVENUE ACT OF 1932, AS AMENDED.

Regulations 79 (1936 Edition) amended to conform to section 2 of Public Law 95 (Seventy-ninth Congress [page 530, this Bulletin]), relating to certain discretionary trusts.

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 79 (1936 Edition) [Part 85, Title 26, Code of Federal Regulations] to section 2 of Public Law 95 (Seventy-ninth Congress), approved June 29, 1945 [page 530, this Bulletin], such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately after section 502(c) of the Revenue Act of 1943, which was inserted by Treasury Decision 5365, approved May 5, 1944 [C. B. 1944, 585], and preceding article 1 [section 85.1 of such Title 26] the following:

PUBLIC LAW 95 (SEVENTY-NINTH CONGRESS), APPROVED JUNE 29, 1945.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * * * *

SEC. 2. Section 501(c) of the Revenue Act of 1932 as added by section 502(b) of the Revenue Act of 1943, relating to certain discretionary trusts, is amended by striking out the words "on or after January 1, 1939, and" and inserting in lieu thereof the words "on or after June 7, 1932, and".

PAR. 2. Article 3 [section 85.3 of such Title 26], as amended by Treasury Decision 5010, approved September 19, 1940 [C. B. 1940–2, 293], and Treasury Decision 5365, approved May 5, 1944 [supra], is further amended by changing the phrase in the first sentence of the last paragraph "the relinquishment by the grantor on or after January 1, 1939, and prior to January 1, 1940" to read "the relinquishment by the grantor on or after June 7, 1932, and prior to January 1, 1940."

(This Treasury decision is issued under the authority contained in sections 501 and 520 of the Revenue Act of 1932 (47 Stat., 245, 259), approved June 6, 1932, section 502 of the Revenue Act of 1943 (Public Law 235, Seventy-eighth Congress [C. B. 1944, 756]), enacted February 25, 1944, and section 2 of Public Law 95 (Seventy-ninth Congress), approved June 29, 1945.)

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

Approved August 14, 1945.

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

(Filed with the Division of the Federal Register August 17, 1945, 11.29 a. m.)

TITLE III.—GIFT TAX. (1932)

SECTIONS 501 AND 503.

REGULATIONS 79 (1936), ARTICLE 8: Transfers for a consideration in money or money's worth. 1945-6-11995 Ct. D. 1634

GIFT TAX—REVENUE ACT OF 1932—DECISION OF SUPREME COURT.

1. TRANSFER OF STOCK—DONATIVE INTENT—CONSIDERATION—ENTIRE VALUE OF STOCK TRANSFERRED IN CONSIDERATION OF MARRIAGE AND LOSS OF INCOME TAXABLE AS GIFT.

The transfer of stock from the taxpayer to his intended wife, pursuant to an antenuptial agreement, in consideration of marriage and to compensate her for the loss of income from trusts set up by her former husband, is subject to the gift tax imposed by section 501(a) of the Revenue Act of 1932 upon the whole value of the stock transferred. Sections 501 and 503 should not be separated in application, a donative intent is not essential, and where a transfer is not made in the ordinary course of business it is subject to gift tax to the extent that it is not made "for an adequate and full consideration in money or money's worth." The quoted phrase aims to reach those transfers which are withdrawn from the donor's estate and requires consideration which must benefit the donor. Neither detriment to the donee nor the inducement of marriage satisfy the requirements of section 503.

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Sixth Circuit (144 Fed. (2d), 78), reversing decision of The Tax Court of the United States (2 T. C., 876), reversed.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. *William H. Wemyss.*

[324 U. S., 303.]

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

[March 5, 1945.]

OPINION.

Mr. Justice FRANKFURTER delivered the opinion of the Court.

In 1939 taxpayer proposed marriage to Mrs. More, a widow with one child. Her deceased husband had set up two trusts, one half the income of which was for the benefit of Mrs. More and the other half for that of the child with provision that, in the event of Mrs. More's remarriage, her part of the income ceased and went to the child. The corpus of the two trusts consisted of stock which brought to Mrs. More from the death of her first husband to her remarriage, about five years later, an average income of $5,484 a year. On Mrs. More's unwillingness to suffer loss of her trust income through remarriage the parties on May 24, 1939, entered upon an agreement whereby taxpayer transferred to Mrs. More a block of shares of stock. Within a month they married. The Commissioner ruled that the transfer of this stock, the value of which, $149,456.13, taxpayer does not controvert, was subject to the Federal gift tax, sections 501 and 503 of the Revenue Act of 1932 (47 Stat., 169, 245, 247, 26 U. S. C., sections 1000, 1002). Accordingly, he assessed a deficiency which The Tax Court upheld (2 T. C., 876), but the Circuit Court of Appeals reversed The Tax Court (144 Fed. (2d), 78). We granted certiorari to settle uncertainties in tax administration engendered by seemingly conflicting decisions. (323 U. S., —.)

The answer to our problem turns on the proper application of sections 501(a) and 503 supra to the immediate facts. These provisions are as follows:

"SEC. 501. IMPOSITION OF TAX.

"(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual * * * of property by gift."

"SEC. 503. TRANSFERS FOR LESS THAN ADEQUATE AND FULL CONSIDERATION.

"Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this title, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year."

In view of the major rôle which The Tax Court plays in Federal tax litigation, it becomes important to consider how that court dealt with this problem. Fusing, as it were, sections 501 and 503, The Tax Court read them as not being limited by any common law technical notions about "consideration." And so, while recognizing that marriage was of course a valuable consideration to support a contract, The Tax Court did not deem marriage to satisfy the requirement of section 503 in that it was not a consideration reducible to money value. Accordingly, the Court found the whole value of the stock transferred to Mrs. More taxable under the statute and the relevant Treasury Regulations 79 (1936 ed.), article 8: "A consideration not reducible to a money value, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift." In the alternative, The Tax Court was of the view that if Mrs. More's loss of her trust income rather than the marriage was consideration for the taxpayer's transfer of his stock to her, he is not relieved from the tax because he did not receive any money's worth from Mrs. More's relinquishment of her trust income, and, in any event, the actual value of her interest in the trust, subject to fluctuations of its stock earnings, was not proved. One member of The Tax Court dissented, deeming that the gift tax legislation invoked ordinary contract conceptions of "consideration."

The Circuit Court of Appeals rejected this line of reasoning. It found in the marriage agreement an arm's length bargain and an absence of "donative intent" which it deemed essential: "A donative intent followed by a donative act is essential to constitute a gift; and no strained and artificial construction of a supplementary statute should be indulged to tax as a gift a transfer actually lacking donative intent." (144 Fed. (2d), 78, 82.)

Sections 501 and 503 are not disparate provisions. Congress directed them to the same purpose, and they should not be separated in application. Had Congress taxed "gifts" *simpliciter*, it would be appropriate to assume that the term was used in its colloquial sense, and a search for "donative intent" would be indicated. But Congress intended to use the term "gifts" in its broadest and most comprehensive sense. (H. Rept. No. 708, Seventy-second Congress, first session, page 27 [C. B. 1939–1 (Part 2), 457]; S. Rept. No. 665, Seventy-second Congress, first session, page 39 [C. B. 1939–1 (Part 2), 496]; cf. *Smith* v. *Shaughnessy*, 318 U. S., 176 [Ct. D. 1575, C. B. 1943, 1144]; *Robinette* v. *Helvering*, 318 U. S., 184 [Ct. D. 1574, C. B. 1943, 1141].) Congress chose not to require an ascertainment of what too often is an elusive state of mind. For purposes of the gift tax it not only dispensed with the test of "donative intent." It formulated a much more workable external test, that where "property is transferred for less than an adequate and full consideration in money or money's worth," the excess in such money value "shall, for the purpose of the tax imposed by this title, be deemed a gift * * *." And Treasury regulations have emphasized that common law considerations were not embodied in the gift tax.[1]

To reinforce the evident desire of Congress to hit all the protean arrangements which the wit of man can devise that are not business transactions within the meaning of ordinary speech, the Treasury regulations make clear that no genuine business transaction comes within the purport of the gift tax by excluding "a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is *bona fide*, at arm's length, and free from any donative intent)." (Treasury Regulations 79 (1936 ed.), article 8.) Thus on finding that a transfer in the circumstances of a particular case is not made in the ordinary course of business, the transfer becomes subject to the gift tax to the extent that it is not made "for an adequate and full consideration in money or money's worth." (See 2 Paul, Federal Estate and Gift Taxation (1942), page 1113.)

The Tax Court in effect found the transfer of the stock to Mrs. More was not made at arm's length in the ordinary course of business. It noted that the

[1] Treasury Regulations 79 (1936 ed.), article 1: "IMPOSITION OF TAX.—* * * The tax is not limited in its imposition to transfers of property without a valuable consideration, which at common law are treated as gifts, but extends to sales and exchanges for less than an adequate and full consideration in money or money's worth."

inducement was marriage, took account of the discrepancy between what she got and what she gave up, and also of the benefit that her marriage settlement brought to her son. These were considerations The Tax Court could justifiably heed, and heeding, decide as it did. Its conclusion on the issue before it was no less to be respected than were the issues which we deemed it was entitled to decide as it did in *Dobson* v. *Commissioner* (320 U. S., 489 [Ct. D. 1597 [C. B. 1944, 56]), *Commissioner* v. *Heininger* (320 U. S., 467 [Ct. D. 1596 [C. B. 1944, 484]), *Commissioner* v. *Scottish American Co.* (323 U. S., 119 [Ct. D. 1619 [C. B. 1944, 340]).

If we are to isolate as an independently reviewable question of law the view of The Tax Court that money consideration must benefit the donor to relieve a transfer by him from being a gift, we think The Tax Court was correct. (See *Commissioner* v. *Bristol*, 121 Fed. (2d), 129.) To be sure, the Revenue Act of 1932 does not spell out a requirement of benefit to the transferor to afford relief from the gift tax. Its forerunner, section 320 of the 1924 Act (43 Stat., 253, 314), was more explicit in that it provided that the excess of the transfer over "the consideration received shall * * * be deemed a gift." It will hardly be suggested, however, that in reimposing the gift tax in 1932 Congress meant to exclude transfers that would have been taxed under the 1924 Act. The section taxing as gifts transfers that are not made for "adequate and full [money] consideration" aims to reach those transfers which are withdrawn from the donor's estate. To allow detriment to the donee to satisfy the requirement of "adequate and full consideration" would violate the purpose of the statute and open wide the door for evasion of the gift tax. (See 2 Paul, supra at 1114.)

Reversed.

Mr. Justice Roberts dissents.

Regulations 79 (1936), Article 8: Transfers for a consideration in money or money's worth.

1945–6–11996
Ct. D. 1635

GIFT TAX—REVENUE ACT OF 1932—DECISION OF SUPREME COURT.

1. Transfer of Property in Trust—Relinquishment of Dower and Other Marital Rights as Consideration.

The establishment by taxpayer of an irrevocable inter vivos trust for the benefit of his wife, pursuant to an antenuptial agreement whereby the wife released her dower and other marital rights in consideration for the creation of the trust, is subject to the gift tax imposed by section 501(a) of the Revenue Act of 1932. Such release does not constitute an "adequate and full consideration in money or money's worth" within the meaning of section 503 of that Act. The quoted phrase, also used in the estate tax law, is to be construed alike in both the gift and estate tax laws as excluding relinquishment of dower and other marital rights, since the two laws are in pari materia. The amendment to the estate tax in section 804 of the Revenue Act of 1932, specifically excluding such relinquishment from the meaning of the quoted phrase, was merely clarifying and a cautious redundancy.

2. Decision Affirmed.

Decision of the United States Circuit Court of Appeals, Fifth Circuit (142 Fed. (2d), 651), reversing decision of the District Court, S. D. Florida (51 Fed. Supp., 120), affirmed.

Supreme Court of the United States.

Charles E. Merrill, petitioner, v. *John L. Fahs, United States Collector of Internal Revenue for the District of Florida.*

[324 U. S., 308.]

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

[March 5, 1945.]

OPINION.

Mr. Justice Frankfurter delivered the opinion of the Court.

This is a companion case to *Commissioner* v. *Wemyss*, No. 629, just decided [Ct. D. 1634, page 416, this Bulletin].

On March 7, 1939, taxpayer, the petitioner, made an antenuptial agreement with Kinta Desmare. Taxpayer, a resident of Florida, had been twice married and had three children and two grandchildren. He was a man of large resources, with cash and securities worth more than $5,000,000, and Florida real estate valued at $135,000. Miss Desmare's assets were negligible. By the arrangement entered into the day before their marriage, taxpayer agreed to set up within 90 days after marriage an irrevocable trust for $300,000, the provisions of which were to conform to Miss Desmare's wishes. The taxpayer was also to provide in his will for two additional trusts, one, likewise in the amount of $300,000, to contain the same limitations as the *inter vivos* trust, and the other, also in the amount of $300,000, for the benefit of their surviving children. In return Miss Desmare released all rights that she might acquire as wife or widow in taxpayer's property, both real and personal, excepting the right to maintenance and support. The inducements for this agreement were stated to be the contemplated marriage, desire to make fair requital for the release of marital rights, freedom for the taxpayer to make appropriate provisions for his children and other dependents, the uncertainty surrounding his financial future and marital tranquillity. That such an antenuptial agreement is enforceable in Florida is not disputed (*North* v. *Ringling*, 149 Fla., 739), nor that Florida gives a wife an inchoate interest in all the husband's property, contingent during his life but absolute upon death. (Florida Statutes (1941), section 731.34; *Smith* v. *Hines*, 10 Fla., 258; *Henderson* v. *Usher*, 125 Fla., 709.) The parties married, and the agreement was fully carried out.

On their gift tax return for 1939, both reported the creation of the trust but claimed that no tax was due. The Commissioner, however, determined a deficiency of $99,000 in taxpayer's return in relation to the transfer of the $300,000. Upon the Commissioner's rejection of the taxpayer's claim for refund of the assessment paid by him, the present suit against the collector was filed. The district court sustained the taxpayer (51 Fed. Supp., 120), but was reversed by the Circuit Court of Appeals for the Fifth Circuit, one judge dissenting. (142 Fed. (2d), 651.) We granted certiorari in connection with *Commissioner* v. *Wemyss*, supra, and heard the two cases together. (323 U. S., —.)

This case, unlike the Wemyss case, does not come here by way of The Tax Court. No aid can therefore be drawn from a prior determination by the tribunal specially entrusted with tax adjudications. (See Griswold, The Need for a Court of Tax Appeals (1944), 57 Harv. L. Rev., 1153, 1173.) But like the Wemyss case, this case turns on the proper application of section 503 of the Revenue Act of 1932 (47 Stat., 169, 247, 26 U. S. C., section 1002). In the interest of clarity we reprint it here: "Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this title, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year." Taxpayer claims that Miss Desmare's relinquishment of her marital rights constituted "adequate and full consideration in money or money's worth." The collector, relying on the construction of a like phrase in the estate tax, contends that release of marital rights does not furnish such "adequate and full consideration."

We put to one side the argument that in any event Miss Desmare's contingent interest in her husband's property had too many variables to be reducible to dollars and cents, and that any attempt to translate it into "money's worth" was "mere speculation bearing the delusive appearance of accuracy." (*Humes* v. *United States*, 276 U. S., 487, 494 [T. D. 4185, C. B. VII–2, 378 (1928)].) We shall go at once to the main issue.

The guiding light is what was said in *Estate of Sanford* v. *Commissioner* (308 U. S., 39, 44 [Ct. D. 1426, C. B. 1939–2, 340]): "The gift tax was supplementary to the estate tax. The two are in *pari materia* and must be construed together." The phrase on the meaning of which decision must largely turn—that is, transfers for other than "an adequate and full consideration in money or money's worth"—came into the gift tax by way of estate tax provisions. It first appeared in the Revenue Act of 1926. Section 303(a)(1) of that Act (44 Stat., 9, 72) allowed deductions from the value of the gross estate of claims against the estate to the extent that they were *bona fide* and incurred "for an adequate and full consideration in money or money's worth." It is important to note that the language of previous Acts which made the test "fair consideration" was thus changed after courts had given "fair consideration" an expansive construction.

The first modern estate tax law had included in the gross estate transfers in contemplation of, or intended to take effect in possession or enjoyment at, death, except "a bona fide sale for a fair consideration in money or money's worth."

(Section 202(b), Revenue Act of 1916, 39 Stat., 756, 777.) Dower rights and other marital property rights were intended to be included in the gross estate, since they were considered merely an expectation, and in 1918 Congress specifically included them. (Section 402(b), 40 Stat., 1057, 1097.) This provision was for the purpose of clarifying the existing law. (H. Rept. No. 767, Sixty-fifth Congress, second session, page 21 [C. B. 1939–1 (Part 2), 86].) In 1924 Congress limited deductible claims against an estate to those supported by "a fair consideration in money or money's worth" (section 303(a)(1); 43 Stat., 253, 305), employing the same standard applied to transfers in contemplation of death (H. Rept. No. 179, Sixty-eighth Congress, first session, pages 28, 66 [C. B. 1939–1 (Part 2), 241]). Similar language was used in the gift tax, first imposed by the 1924 Act, by providing, "Where property is sold or exchanged for less than a fair consideration in money or money's worth" the excess shall be deemed a gift. (Section 320, 43 Stat., 253, 314.)

The two types of tax thus followed a similar course, like problems and purposes being expressed in like language. In this situation, courts held that "fair consideration" included relinquishment of dower rights. (*Ferguson* v. *Dickson*, 300 Fed., 961; and see *McCaughn* v. *Carver*, 19 Fed. (2d), 126; *Stubblefield* v. *United States*, 6 Fed. Supp., 440.) Congress was thus led, as we have indicated, to substitute in the 1926 Revenue Act, the words "adequate and full consideration" in order to narrow the scope of tax exemptions. (See *Taft* v. *Commissioner*, 304 U. S., 351, 356 [Ct. D. 1346, C. B. 1938–1, 510].) When the gift tax was reenacted in 1932 Revenue Act, the restrictive phrase "adequate and full consideration" as found in the estate tax was taken over by the draftsman.

To be sure, in the 1932 Act Congress specifically provided that relinquishment of marital rights for purposes of the estate tax shall not constitute "consideration in money or money's worth." The committees of Congress reported that if the value of relinquished marital interests "may, in whole or in part, constitute a consideration for an otherwise taxable transfer (as has been held so), or an otherwise unallowable deduction from the gross estate, the effect produced amounts to a subversion of the legislative intent * * *." (H. Rept. No. 708, Seventy-second Congress, first session, page 47 [C. B. 1939–1 (Part 2), 457]; S. Rept. No. 665, Seventy-second Congress, first session, page 50 [C. B. 1939–1 (Part 2), 496].) Plainly, the explicitness was one of cautious redundancy to prevent "subversion of the legislative intent." Without this specific provision, Congress undoubtedly intended the requirement of "adequate and full consideration" to exclude relinquishment of dower and other marital rights with respect to the estate tax. (*Commissioner* v. *Bristol*, 121 Fed. (2d), 129; *Sheets* v. *Commissioner*, 95 Fed. (2d), 727.)

We believe that there is every reason for giving the same words in the gift tax the same reading. Correlation of the gift tax and the estate tax still requires legislative intervention. (*Commissioner* v. *Prouty*, 115 Fed. (2d), 331, 337; Warren, Correlation of Gift and Estate Taxes (1941), 55 Harv. L. Rev., 1; Griswold, A Plan for the Coordination of the Income, Estate and Gift Tax Provisions (1942), 56 Harv. L. Rev., 337.) But to interpret the same phrases in the two taxes concerning the same subject matter in different ways where obvious reasons do not compel divergent treatment is to introduce another and needless complexity into this already irksome situation. Here strong reasons urge identical construction. To hold otherwise would encourage tax avoidance. (*Commissioner* v. *Bristol*, supra at 136; 2 Paul, Estate and Gift Taxation (1942), 1118.) And it would not fulfill the purpose of the gift tax in discouraging family settlements so as to avoid high income surtaxes. (H. Rept. No. 708, Seventy-second Congress, first session, page 28; S. Rept. No. 665, Seventy-second Congress, first session, page 40.) There is thus every reason in this case to construe the provisions of both taxes harmoniously. (*Estate of Sanford* v. *Commissioner*, supra.[1])

Affirmed.

Mr. Justice ROBERTS dissents.

Dissenting opinion by Mr. Justice REED, in which the CHIEF JUSTICE and Mr. Justice DOUGLAS join.

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[1] Treasury Regulations 79 (1936 ed.), article 8, is inapplicable. To find that the transaction was "made in the ordinary course of business" is to attribute to the Treasury a strange use of English.

SECTION 504.—NET GIFTS. (1932)

REGULATIONS 79 (1936), ARTICLE 11: Future interests in property. 1945–4–11973 Ct. D. 1627

GIFT TAX—REVENUE ACT OF 1932—DECISION OF SUPREME COURT.

1. NET GIFTS—FUTURE INTERESTS IN PROPERTY—TRUSTS FOR BENEFIT OF MINOR GRANDCHILDREN.

Irrevocable trusts were created by the taxpayers providing for "the personal comfort, support, maintenance, and welfare" of minor grandchildren. At the time the trusts were created, the parents of each child were fully able to provide for and educate him, and would probably continue so until the child's majority. Except upon certain contingencies, the income was to be accumulated, each beneficiary to receive 25 per cent of corpus and accumulations at age 25, 33⅓ per cent at age 30, and the remainder at age 35. The trustees could not act in any case to apply corpus or income for support, maintenance, and education of the beneficiary until necessity arose. *Held:* Enjoyment of the gifts was contingent upon the occurrence of future events not only uncertain but improbable of occurrence, and the gifts consequently were of "future interests in property" within the meaning of section 504(b) of the Revenue Act of 1932 and article 11 of Regulations 79 (1936 ed.).

2. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Fifth Circuit (141 Fed. (2d), 419) (1944), affirming decision of The Tax Court of the United States (1 T. C., 1036) (1943), affirmed.

SUPREME COURT OF THE UNITED STATES.

Ella F. Fondren, and the Estate of W. W. Fondren, Deceased, et al., petitioners, v. *Commissioner of Internal Revenue.*

[324 U. S., 18.]

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

[January 29, 1945.]

OPINION.

Mr. Justice RUTLEDGE delivered the opinion of the Court.

In 1935, 1936, and 1937 petitioner, Ella F. Fondren, and her husband, since deceased, created seven separate irrevocable trusts, each in favor of a grandchild of tender years; and each of them made gifts to each trust of corporate stock having the fair market value of $5,975. The donors made gift tax returns for 1937, claiming the statutory exclusion of $5,000 for each gift, and accordingly reported taxable gifts for each trust of $975. Gift taxes were paid on this basis.

The Commissioner made deficiency assessments, disallowing the exclusions on the ground that the gifts were of "future interests in property" within the meaning of the Revenue Act of 1932 (ch. 209, 47 Stat., 169) and Treasury Regulations 79 (1936 ed.).[1] The Tax Court upheld the Commissioner, the cases being consolidated for hearing and decision. (1 T. C., 1036.) The Circuit Court of Appeals affirmed The Tax Court's decision, one judge dissenting. (141 Fed. (2d), 419.) Certiorari was granted (323 U. S., —), because of the importance of the question

[1] The statute is as follows:

"SEC. 504. NET GIFTS.

"(a) GENERAL DEFINITION.—The term 'net gifts' means the total amount of gifts made during the calendar year, less the deductions provided in section 505.

"(b) GIFTS LESS THAN $5,000.—In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first $5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year."

The pertinent part of the regulation is quoted in the text below.

as affecting the taxability of gifts made for the benefit of minor children and because of alleged or apparent conflict with decisions of other courts.[2]

The sole issue is whether the gifts were of "future interests" within the meaning of the statute and the regulation. The latter provides:

"ART. 11. * * * 'Future interests' is a legal term, and includes reversions, remainders, and *other interests or estates*, whether vested or contingent, and whether or not supported by a particular interest or estate, *which are limited to commence in use, possession, or enjoyment at some future date or time.* * * *" [Emphasis [italics] added.]

Upon the facts the issue turns on whether the interests acquired by the minor beneficiaries were "limited to commence in use, possession, or enjoyment at some future date or time." (*Ryerson* v. *United States*, 312 U. S., 405 [Ct. D. 1496, C. B. 1941–1, 443]; *United States* v. *Pelzer*, 312 U. S., 399 [Ct. D. 1495, C. B. 1941–1, 441].)

Under these decisions it is not enough to bring the exclusion into force that the donee has vested rights. In addition he must have the right presently to use, possess or enjoy the property. These terms are not words of art, like "fee" in the law of seizin (*United States* v. *Pelzer*, supra at 403), but connote the right to substantial present economic benefit. The question is of time, not when title vests, but when enjoyment begins. Whatever puts the barrier of a substantial period between the will of the beneficiary or donee now to enjoy what has been given him and that enjoyment makes the gift one of a future interest within the meaning of the regulation.

Accordingly, it has been held that if the income of a trust is required to be distributed periodically, as annually, but distribution of the corpus is deferred, the gift of the income is one of a present interest, that of the corpus one *in futuro*. (*Fisher* v. *Commissioner*, 132 Fed. (2d), 383; *Sensenbrenner* v. *Commissioner*, 134 Fed. (2d), 883.) *A fortiori*, if income is to be accumulated and paid over with the corpus at a later time, the entire gift is of a future interest,[3] although upon specified contingency some portion or all of the fund may be paid over earlier.[4] The contingency may be the exercise of the trustee's discretion, either absolute or contingent.[5] It may also be the need of the beneficiary, not existing when the trust or gift takes effect legally, but arising later upon anticipated though unexpected conditions, either to create a duty in the trustee to pay over or to permit him to do so in his discretion.[6]

In the light of these principles and decisions, it is necessary to consider the terms of the trusts and the circumstances in which the gifts were made. The trust instruments were substantially uniform except for variations in the names of the beneficiaries and, in case of death, their successors in interest. The trusts were irrevocable, the donors retaining no beneficial interest in the estates. Each instrument named the donor, W. W. Fondren, as trustee, and Ella F. Fondren, the other donor, as successor trustee. They reserved the rights as donors to remove any trustee, except Mr. Fondren, and to name successor trustees. Subject to these reservations and the directions set forth below, the trustee was given substantially complete control.

The trusts' stated purpose was "to provide for the personal comfort, support, maintenance, and welfare" of the grandchildren. But from the explicit recitals of the instruments,[7] as well as the evidence, including a stipulation, it is clear that the parents of each child were so situated that, when the gifts were made,

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[2] The petition alleged conflict with *Smith* v. *Commissioner* (131 Fed. (2d), 254) (C. C. A. 8); *Sensenbrenner* v. *Commissioner* (134 Fed. (2d), 883) (C. C. A. 7); and *Kinney* v. *Anglim* (43 Fed. Supp., 431) (N. D. Calif.). Cf. also *Disston* v. *Commissioner* (144 Fed. (2d), 115) (C. C. A. 3). The decision, one judge dissenting, overruled the prior decision in *Commissioner* v. *Taylor* (122 Fed. (2d), 714, certiorari denied, 314 U. S., 699). A petition for writ of certiorari was filed in the Disston case on October 12, 1944, and now is pending.

[3] *Welch* v. *Paine* (120 Fed. (2d), 141); *Commissioner* v. *Taylor* (122 Fed. (2d), 714, 715, certiorari denied, 314 U. S., 699); *Commissioner* v. *Brandegee* (123 Fed. (2d), 58); *Commissioner* v. *Phillips' Estate* (126 Fed. (2d), 851); *Commissioner* v. *Gardner* (127 Fed. (2d), 929); *Welch* v. *Paine* (130 Fed. (2d), 990); *Commissioner* v. *Wells* (132 Fed. (2d), 405); *French* v. *Commissioner* (138 Fed. (2d), 254); *Roberts* v. *Commissioner* (143 Fed. (2d), 657); *Howe* v. *United States* (142 Fed. (2d), 310); *Hutchings-Sealy Nat. Bank* v. *Commissioner* (141 Fed. (2d), 422); *Helvering* v. *Blair* (121 Fed. (2d), 945).

[4] *Ibid.*

[5] *Welch* v. *Paine* (120 Fed. (2d), 141); *Commissioner* v. *Taylor* (122 Fed. (2d), 714, 715, certiorari denied, 314 U. S., 699); *Commissioner* v. *Brandegee* (123 Fed. (2d), 58); *Commissioner* v. *Phillips' Estate* (126 Fed. (2d), 851); *Commissioner* v. *Gardner* (127 Fed. (2d), 929); *Winterbotham* v. *Commissioner* (46 B. T. A., 972); cf. *Ryerson* v. *United States* (312 U. S., 405, 408).

[6] Cf. authorities cited note 3 supra.

[7] Cf. the recitals quoted in the text below.

they were fully able to provide for and educate him. And, from the same recitals, it is clear there was little reason to believe that any parent would not continue so until the child's majority. Accordingly, in each instance, the trust was to continue until the child should attain the age of 35. Hence also the income was to be accumulated, except upon the contingencies specified below, and each beneficiary was to receive 25 per cent of the corpus and accumulations at age 25, 33⅓ per cent at age 30, and the remainder at age 35.

Aware of the uncertainties of our world, however, the donors directed in article 3:

"* * * [T]he trustee shall provide for the support, maintenance and education of our said grandson, using only the income of said estate for the purpose if it be sufficient. If it be necessary to use any of the corpus of the estate for that purpose *and in the judgment of the trustee it is best to do so*, said trustee *may make advancements out of the corpus* of said trust estate for such purpose for the benefit of our said grandson.

"It is contemplated, however, that our said grandson will have other adequate and sufficient means of support, and that it will not be necessary to use either the income or the corpus of the trust estate hereby created to properly provide for his education, maintenance and support; and, if the income from the trust estate be not needed for these purposes, then all of the income from said trust estate not so needed shall be by the trustee passed to capital account of said trust estate, and shall be and become a part of said trust estate, it being our hope that all of the earnings and income of said trust estate during the period of this trust may be used to augment the trust estate and be delivered to our said grandson at the periods herein provided for. *It is expressly provided, however, that our said grandson shall be properly maintained*, educated and supported, and *if it be necessary to use all of the income and even all of the corpus* of the trust estate hereby created and all augmentations thereof, *it shall be the duty of the trustee to see that this obligation shall be properly and reasonably discharged.* * * *" [Emphasis [Italics] added.]

In view of the apparently conflicting terms of this article for use of the corpus, the exact scope of the trustee's discretion is by no means clear. But this need not be determined. Whether the disposition is in his judgment entirely, as the first clause indicates, or under the second is so only with reference to how much of the fund may be needed,[8] the trustee can not act in any case to apply corpus or income for the support, maintenance and education of the beneficiary until necessity arises.

Under the particular facts, this requirement is important in two respects. It is, as petitioners urge, a limitation upon the trustee's discretion. His power is not unconfined. Even though the existence and amount of need may be in the first instance for his determination, it does not follow that, need existing, the trustee arbitrarily could refuse to make the application. The case therefore is not one in which present enjoyment is dependent upon an exercise of the trustee's absolute discretion.

But this does not show, as petitioners seem to think, that the minor beneficiaries had, at the moment of the gift, a present right of enjoyment. It rather shows the contrary—that their right was not absolute and immediate, but was conditioned, during minority and afterward until the times specified for distribution, upon a contingency which might never arise. That contingency, by the explicit terms of the trust, was the existence of need which was then nonexistent and, in the stated contemplation of the donors, was not likely to occur in the future, at any rate during the child's minority. The circumstances surrounding the donors and the donees confirm these recitals. The case is one therefore in which the gift, if presently vested, made enjoyment contingent upon the occurrence of future events, not only uncertain, but by the recitals of the instrument itself improbable of occurrence. The gifts consequently were of "future interests in property" within the meaning of section 504(b).

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[8] Petitioner presents the case as if no discretion whatever were vested in the trustee as to making the payments over. However, in the first provision for use of the corpus such use is authorized "if it be necessary * * * and in the judgment of the trustee it is best to do so"; in the other provision the duty imposed, "if it be necessary to use all of the income and even all of the corpus," is one "to see that this obligation shall be properly and reasonably discharged." If the first clause limits the second, the trustee's discretion is bounded only by what he thinks "it is best to do," and in any event under the latter his duty is only to see that the obligation is "properly and reasonably" discharged. Presumably also the trustee would have some room for judgment on whether particular circumstances would amount to necessity and particular measures would be required to meet it.

Petitioners' contrary argument, apart from the misconception that legal vesting of the interest without more satisfies the statute,[9] rests chiefly upon considerations arising from the legislative history and from the fact that gifts for the benefit of children under legal disability to manage their own property must make provision for its control by trustees or otherwise.

Special stress is placed on the fact that each gift was made to or for the benefit of a specifically named beneficiary then in esse and for a definite amount. As the Pelzer opinion noted (312 U. S., at 403), the committee reports recommending the legislation stated: "The exemption being available only in so far as the donees are ascertainable, the denial of the exemption in the case of gifts of future interests is dictated by the apprehended difficulty, *in many instances*, of determining the number of eventual donees and the values of their respective gifts."[10] [Emphasis [Italics] added.] And in the Pelzer case the Court found that the gift involved these difficulties, as well as postponement of enjoyment to the happening of a future uncertain event, since the right of enjoyment was contingent in any event upon the beneficiaries' surviving the 10-year period specified for accumulation of income. (312 U. S., at 404.)

Both conclusions would seem applicable in this case, the chief difference being that the period of postponement, which the beneficiaries must survive before enjoyment begins, is indefinite rather than for a specified time. That is true in any case where the length of the period is governed by a contingency. But the regulation, adopted almost in the language of the committee reports,[11] does not limit the denial of the exemption to instances where the deferment of enjoyment is at all events for a period which is definite and certain. (Cf. *Commissioner* v. *Glos*, 123 Fed. (2d), 548, 550.) Clearly the statute is not to be applied differently, to grant or deny the exemption, if there is postponement, merely because in one case the period is under any eventuality for a certain, specified length of time, whereas in another it is of uncertain or indefinite length. The important thing is the certainty of postponement, not certainty of the length of its duration.

Furthermore, if there is postponement, the exemption is denied whether or not the administrative difficulties anticipated in the committee reports inhere in the particular gift. (*Commissioner* v. *Glos*, supra; *Welch* v. *Paine*, 120 Fed. (2d), 141.) Those reports specifically state these difficulties are present "in many instances." But they also state that "the term 'future interests in property' refers to *any* interest or estate, whether vested or contingent, limited to commence in possession or enjoyment at a future date."[12] They thus contemplate, as does the regulation framed in similar terms, vested as well as contingent interests and estates. And there is nothing to indicate that gifts to specified donees in esse and in definite amounts are to be excluded from the denial, if by the terms of the gift enjoyment is deferred to a future time. Again, the crucial thing is postponement of enjoyment, not the fact that the beneficiary is specified and in esse or that the amount of the gift is definite and certain.[13]

The considerations, which petitioners advance to support their position, from the minority of the beneficiaries and their consequent legal disability to manage and control their property are intermingled with others relating to the motives of the donors in making the gifts. It is said that their purpose was to provide for the "comfort, support, maintenance and welfare," including education, of the grandchildren; that the latter were incapable of taking over the management

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[9] Several of petitioners' statements of their contentions ignore the contingency upon which enjoyment is deferred in this case, namely the occurrence at some future time of the need or necessity of the beneficiary which would bring the trustee's power or duty to provide for support or maintenance from the trust fund into play. It is not necessary to note these contentions specifically further than to say, in addition to what has been said already, that they assume as the answer to it the very issue in the case.

[10] H. Rept. No. 708, Seventy-second Congress, first session, 29 [C. B. 1939-1 (Part 2), 457]; S. Rept. No. 665, Seventy-second Congress, first session, 41 [C. B. 1939-1 (Part 2), 496].

[11] Cf. text at note 12 infra.

[12] Cf. note 10 supra.

[13] The absence of these factors is relevant as showing the more clearly that postponement exists and therefore the exemption does not apply. Their presence does not show that there is no postponement or that the exemption applies. The administrative difficulties relating to these matters "in many instances" were reasons for denying the exemption. They do not and were not intended to encompass the full scope of the denial. As the statute extended the exemption, "in the specified amount, to all gifts, whether large or small, 'made to any person'" (*Helvering* v. *Hutchings*, 312 U. S., 393, 397 [Ct. D. 1493, C. B. 1941-1, 438]), so it denied the exemption to all gifts, whether large or small, vested or contingent, made to any person, whether specified and in esse or ascertainable only in the future, and whether for a specific or a presently unascertainable amount, if the gift is one of a "future interest in property," that is, one as to which enjoyment is postponed to some future time.

and control of the property; that accordingly it was necessary for some arrangement to be made for vesting this power in trustees or others capable of exercising it; that the trustees were given no power to withhold either income or corpus in case of need; and consequently the whole fund became available to the beneficiary for his maintenance "immediately upon the consummation of the gift," so that he was vested at once with the right of present enjoyment as fully as any child of tender years could be and in no way differently, taking account of his disability, than any owner of property by title in fee simple.

So far as the argument turns on the motive of the donors, it may be answered that the statute and the regulation make no such test. If motive has bearing, it is only by reason of its effect upon the element of time and whatever relation may be given, by the particular terms of the gift, to it and the disclosing of a purpose to provide for or against immediate enjoyment. The statute in this respect purports to make no distinction between gifts to minors and gifts to adults. If there is deferment in either case the exemption is denied. Consequently in this case the donors' laudable desire to make provision for their grandchildren in case of future need can not nullify the deferment which the recited absence of present need, coupled with the terms of the trust, brought about. Again, contingency of need in the future is not identical with the fact of need presently existing. And a gift effective only for the former situation is not effective, for purposes of relief from the tax, as if the latter were specified, whether the donee is an adult or a minor.

Upon the facts, furthermore, the trusts hardly can be taken as designed primarily for the periods covered by the children's minority. They did not terminate with the ending of that period. The graduated scale of payments, beginning at age 25 and ending at 35, together with the prohibition of payment earlier except in case of necessity, shows principal concern for a period of adult life. And, from the fact that this would be the period when the grandchildren normally would be assuming family responsibilities of their own, the inference well might be drawn that the chief purpose was to give aid and some security in that time. The contingent provision, in case of earlier need, can not be taken therefore to represent the donors' primary concern as expressed in the instruments. (Cf. *Fisher* v. *Commissioner*, 132 Fed. (2d), 383, 386.) But, whether so or not, in the particular circumstances that need was but a contingency to be realized, if at all, in the future. And, until realized, the contingency stood squarely in the way of any child's receiving a single dollar from the fund.

Finally it is urged that unless these gifts are to be taken as conferring the right to immediate enjoyment, no gift for the benefit of a child of tender years can be so regarded since in any such case "some competent person must be the primary judge as to the necessity and extent of reasonable requirements of the beneficiary." The argument is appealing, in so far as it seeks to avoid imputing to Congress the intention to "penalize gifts to minors merely because the legal disability of their years precludes them for a time from receiving their income in hand currently." (Cf. *Disston* v. *Commissioner*, 144 Fed. (2d), 115, 119.) But we think it is not applicable in the facts of this case, since by the terms of the trusts and the facts recited in the instruments none of the fund, whether income or corpus, could be applied immediately for the child's use or enjoyment.

It does not follow, as petitioners say, that if the exemption does not apply in this case it can apply in no other made for a minor's benefit. Whenever provision is made for immediate application of the fund for such a purpose, whether of income or of corpus, the exemption applies. Whether, in the case of a gift requiring such an application of the income, but providing for retention of a corpus no more than reasonably sufficient to produce the income required for this purpose and to insure its continued payment during minority, the donation would fall within the exemption, as to corpus as well as income, is a question not presented on this record and therefore not determined.

The regulation has received the construction now reaffirmed with substantial consistency. The statute, with the meaning thus settled, has been reenacted by Congress.[14] The construction should be followed until Congress sees fit to change it.

The judgment is affirmed.

[14] Congress withdrew the exclusion, as to gifts in trust, in the Revenue Act of 1938 (ch. 289, 52 Stat., 447), section 505, amending section 504(b) of the 1932 Act. But it was restored, though reduced to $3,000, by the Revenue Act of 1942 (ch. 619, 56 Stat., 798), section 454.

REGULATIONS 79 (1936), ARTICLE 11: Future interests in property. 1945-12-12067 Ct. D. 1642

GIFT TAX—REVENUE ACT OF 1932—DECISION OF SUPREME COURT.

1. GIFTS IN TRUST—FUTURE INTERESTS IN PROPERTY.

The taxpayer in 1936 created a spendthrift trust for the benefit of his children, some of whom were minors; in 1937 he added to the corpus of the trust, and in 1938 he created another like trust for their benefit. The trust instruments provided that the net income of each trust was to be accumulated during the minority of the beneficiary, with discretion in the trustees to apply such income as might be necessary for maintenance, education, and support of the minor, and to invade the corpus upon certain contingencies; that after minority the income was to be paid to each beneficiary during his lifetime, and he was to receive a portion of the corpus upon reaching the age of 45 years; that upon his death either before or after reaching that age, the remainder of the trust was to be divided among his then living descendants; and that if there should be no living descendants, the remainder was to be divided among taxpayer's other children and their descendants. *Held:* The gifts in trust were gifts of "future interests in property" within the meaning of section 504(b) of the Revenue Act of 1932.

2. COMPUTATION OF TAX—STATUTE OF LIMITATIONS.

The adjustment of net gifts for 1936 in computing 1937 and 1938 tax liability is not barred by the statute of limitations. Section 517(a) of the Revenue Act of 1932 does not bar adjustment of the net gift figure for the purpose of computing gift tax liability, but simply prevents assessment and collection of a tax for a year barred by the statute. The statute does not purport to preclude an examination into events of prior years for the purpose of correctly determining gift tax liability for years which are still open, but requires determination of the true and correct aggregate of net gifts for previous years.

3. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Third Circuit (144 Fed. (2d), 115), reversing memorandum opinion of The Tax Court, reversed.

SUPREME COURT OF THE UNITED STATES.

Commissioner of Internal Revenue, petitioner, v. *William D. Disston.*

[325 U. S., 442.]

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

[June 4, 1945.]

OPINION.

Mr. Justice RUTLEDGE delivered the opinion of the Court.

This case like *Fondren* v. *Commissioner* (324 U. S. — [Ct. D. 1627, page 421, this Bulletin]), presents questions whether certain gifts to minors are gifts of "future interests in property," within the meaning of the Revenue Act of 1932 (ch. 209, 47 Stat., 169).

In 1936 the respondent, William D. Disston, created a trust for the benefit of each of his five children, three of whom were then minors. The total of his gifts that year was $71,952. The Commissioner allowed an exemption of $5,000 on each gift for the children and on one to his wife. The taxpayer also was allowed the specific exemption of $40,000 provided by section 505 of the Revenue Act of 1932, as amended by section 301(b) of the Revenue Act of 1935. The net gifts for 1936 accordingly were computed to be $1,952, upon which a tax was assessed and paid.

In 1937 the taxpayer added to the corpus of the trust securities valued at $25,000, of which $5,000 was allocated to each child's interest, including the three

who were still minors. In 1938 he created another trust for his five children, the corpus consisting of undeveloped land worth $38,581. Two of the children still were minors.

The two trusts were identical in all respects now material. The principal was divided into five equal shares, one for each child. The trusts were of the spendthrift variety. All shares of the corpus and income were to be free from "anticipation, assignment, pledge, or obligations of beneficiaries," as well as execution or attachment. The shares of the minors alone are now involved. Hence the nature of the trust as applicable to them only need be considered.

The taxpayer's son, William L. Disston, was 19 in 1936 when the first trust was created. As to his share the trustees were directed, in the second article, "to accumulate the net income therefrom for the benefit of William L. Disston until he reaches the age of 21 years, at which time to pay over to him all accumulated income, and thereafter to pay over to him in not less than quarterly installments the entire net income derived therefrom during his lifetime; provided, however, that upon his reaching the age of 45 years one-half of the principal of his share shall be paid over to him free and discharged of all trusts; and upon further trust upon his death whether before or after reaching the age of 45 years, to divide the principal of his share, or such portion thereof as is then held by the trustees, among his then living descendants * * * in such amount as he shall by will appoint, and in default of such appointment, to divide the same equally per stirpes," with provision for division among the taxpayer's other children and their descendants if no descendant of the beneficiary should then be living. The article contains a proviso that if the taxpayer's son should die before reaching 45, the son may appoint to his spouse for a period no longer than her life not more than one-half of the income from his share of the corpus.

Identical provisions were made for the two minor daughters, except that they were to obtain only one-third of the corpus at age 45 and could appoint to their spouses only one-third of the income.

A subsequent paragraph provided that the trustees should hold the minors' shares during their respective minorities, "and during such time shall apply such income therefrom as may be necessary for the education, comfort and support of the respective minors, and shall accumulate for each minor until he or she reaches the age of 21 years, all income not so needed. The foregoing clause shall apply to minor children of the settlor irrespective of the direction heretofore set forth to accumulate all income for such minors."

In addition the fourth article, which defined the trustees' powers, authorized them "[t]o apply the income to which any beneficiary shall be entitled hereunder for the maintenance, education, and support of such beneficiary should he or she by reason of age, illness, or any other cause in the opinion of the trustees be incapable of dispensing it. Payment by the trustees to the parent of any minor * * * shall be sufficient acquittance and discharge to the trustees for such payment or payments."

Finally, the trustees were authorized to invade the corpus in an emergency: "To expend out of the share of principal from which any beneficiary may be receiving income under this deed of trust such sums as trustees may consider to be for the best interests of such beneficiaries during illness or emergency of any kind; provided, however, that in no case shall such expenditures of principal exceed in the aggregate 10 per cent (10%) of the value of such share of principal. * * *"

In operation the 1938 trust of unimproved realty had produced no net income to the time the case came before The Tax Court. Most of the 1936 income of the first trust, $288 for each minor, was paid to the mother of the beneficiaries. In 1937 partial payments of income, $94 per minor child, were made. The beneficiaries' mother returned other checks to the corporate trustee in 1937, and one of the individual trustees, an adult child of the taxpayer, directed the corporate trustee thereafter to accumulate the income of the minors. No further payments of income were made to any child prior to his becoming of age.

In determining the taxpayer's gift tax for 1937 the Commissioner disallowed three $5,000 exclusions from the net gifts for that year on the ground that the gifts to the three minor children were gifts of future interests. For 1938 the Commissioner disallowed two $5,000 exclusions on the ground that the gifts made that year to the two children who were still minors were gifts of future interests.

In computing the gift tax for 1937 and 1938 it was necessary for the Commissioner to compute the aggregate sum of the net gifts for the preceding years.[1] The Commissioner, in determining the net gifts made for this purpose by the 1936 trust, adjusted the exclusions which he had allowed in 1936 to the extent of $5,000 for each of the three minors. The period of limitations for assessment and collection of 1936 gift taxes had run.[2]

The Tax Court upheld the Commissioner, but the court of appeals reversed, holding no future interests arose as a result of the gifts to the minors. Consequently it was unnecessary for the court of appeals to consider whether the statute of limitations barred readjustment of the net gift figure for 1936 or simply barred collection of any further gift taxes for that year.

The guiding principles were outlined recently in *Fondren* v. *Commissioner* (324 U. S., —). Gifts of "future interests," within the meaning of section 504(b), to any person are not excluded from the computation of net gifts to the extent of the first $5,000 in value, as are present interests. Treasury Regulations 79 (1936 ed.), article 11, defines "future interests" as interests "limited to commence in use, possession, or enjoyment at some future date or time. * * *" The definition has been approved repeatedly. (Cf. *Ryerson* v. *United States*, 312 U. S., 405 [Ct. D. 1496, C. B. 1941–1, 443]; *United States* v. *Pelzer*, 312 U. S., 399 [Ct. D. 1495, C. B. 1941–1, 441]; *Fondren* v. *Commissioner*, 324 U. S.,—.)

Clearly the corpus of the trusts falls within the definition. Distribution to William L. Disston, for example, has no relation to his reaching his majority, which he has now attained. He must live to attain the age of 45 to enable him to receive one-half of the corpus. If he does not reach that age, his estate receives no part of the principal. The recipients are an undetermined group designated in the trust provision, among whom the beneficiary has a limited power of appointment. At the time of the gifts in 1936–1938 it was unknown who in fact would receive this one-half interest. Obviously the enjoyment was postponed.

As to the other half in William L. Disston's share, it likewise was unknown who would enjoy the corpus. One thing only was known, that the named child could not enjoy it. He would continue to receive the income from it for his life, but the principal was not given to him. The possibility that in an emergency the trustees might invade the corpus to the extent of 10 per cent for his benefit did not confer a present interest in that part of the principal. The emergency by definition was extraordinary, something that might or might not occur at some indefinite future time. No present, certain and continuous enjoyment was contemplated, nor did it materialize. What has been said of the one minor is true of the others.

The question must be determined whether the trusts provided for a present interest in the trust income, or some definable portion of it. The first direction of each trust is to accumulate the net income until the minor reaches 21. If that were all, it would again be clear that a future interest was created by the postponement of enjoyment. A later paragraph directs the trustees, however, "to apply * * * such income therefrom as may be necessary for the education, comfort and support of the respective minors" and to accumulate the remainder.

Respondent urges that this case differs from the Fondren case in that there the trust instrument showed that it was not contemplated that the income would be needed for education and support; and the trustee was directed to accumulate the income unless no other funds were available for such purposes, whereas here there is nothing in the trust instrument to indicate such an intent. In fact, respondent argues, the trust instrument means that the trustees *must* apply an amount of the income sufficient to provide for education, comfort and support, even though the minor is amply cared for by his parents, his own efforts, or other sources of revenue, citing 1 Scott, Trusts, section 128.4 and other authorities. When faced with the fact that the history of the trust's administration shows a practical construction by the trustees that support money need not automatically

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[1] The formula results in a progressive rate of gift taxation, not limited to progression within the calendar year, but extending over the life of the donor. The computation formula is set forth in section 502 of the Revenue Act of 1932:

"The tax for each calendar year shall be an amount equal to the excess of—

"(1) a tax, computed in accordance with the Rate Schedule hereinafter set forth, on the aggregate sum of the net gifts for such calendar year and for each of the preceding calendar years, over

"(2) a tax, computed in accordance with the Rate Schedule, on the aggregate sum of the net gifts for each of the preceding calendar years."

[2] See section 517(a) of the Revenue Act of 1932.

be paid over, respondent urges that the terms of the trust and the nature of the interest granted can not be varied by what was subsequently done in administration.

The language of the trust instruments directs that the income be accumulated during minority. The subsequent provision for payments for maintenance and support may be said to indicate a departure from the policy of accumulation only when necessary, in the reasonable discretion of the trustees. If that is the appropriate interpretation of the trust instruments, then little difference from the Fondren case is involved. Even in its practical working, the trustees did not find the necessary prerequisites for a steady application of all or any ascertainable part of the income for education, support and maintenance.

But, even though the trustees were under a duty to apply the income for support, irrespective of outside sources of revenue, there is always the question how much, if any, of the income can actually be applied for the permitted purposes. The existence of a duty so to apply the income gives no clue to the amount that will be needed for that purpose, or the requirements for maintenance, education and support that were foreseeable at the time the gifts were made. In the absence of some indication from the face of the trust or surrounding circumstances that a steady flow of some ascertainable portion of income to the minor would be required, there is no basis for a conclusion that there is a gift of anything other than for the future. The taxpayer claiming the exclusion must assume the burden of showing that the value of what he claims is other than a future interest. (Cf. *New Colonial Co.* v. *Helvering*, 292 U. S., 435 [Ct. D. 841, C. B. XIII–1, 194 (1934)].) That burden has not been satisfied in this case.

The question remains whether the adjustment of net gifts for 1936 in computing 1937 and 1938 tax liability is barred by the statute of limitations. As has been noted, section 502 requires utilization of "the aggregate sum of the net gifts for each of the preceding calendar years" in the formula for computing gift tax liability. Section 517(a) does not purport to bar adjustment of the net gift figure for that purpose, but simply prevents assessment and collection of a tax for a year barred by the statute. The statute does not purport to preclude an examination into events of prior years for the purpose of correctly determining gift tax liability for years which are still open. The Tax Court and Treasury regulations have construed section 517(a) as requiring determination of the true and correct aggregate of net gifts for previous years.[3] The construction is in accord with the statutory language.

Accordingly, the judgment is

Reversed.

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[3] The pertinent Treasury Regulations 79, article 5, provides: "* * * By the words 'aggregate sum of the net gifts for each of the preceding calendar years' (aside from the amount of the specific exemption deductible) is meant the true and correct aggregate of such net gifts, not necessarily that returned for such years and in respect to which tax was paid. * * *" See also *Winterbotham* v. *Commissioner* (46 B. T. A., 972); *Wallerstein* v. *Commissioner* (2 T. C., 542); *Roberts* v. *Commissioner* (2 T. C., 679).

CAPITAL STOCK TAX.

INTERNAL REVENUE CODE.

SECTION 1200: Capital stock tax. 1945–3–11957
REGULATIONS 64 (1943), SECTION 137.72: Return by domestic corporation. C. S. T. 13

A new taxable entity is not created upon the conversion of a State bank into a national bank, pursuant to section 35, Title 12, United States Code, and in such cases only one Federal capital stock tax return is required for the entire taxable year.
S. T. 732 (C. B. XIII–1, 448 (1934)) revoked.

In S. T. 732 (C. B. XIII–1, 448 (1934)) it was held that where a State bank is converted into a national bank during a taxable year ending June 30, a new taxable entity is created and both banks are subject to the capital stock tax and required to file returns for such year under section 215(a) of the National Industrial Recovery Act.

In G. C. M. 24423 (page 145, this Bulletin) it was held that a new taxable entity is not created upon the conversion of a State bank into a national bank, pursuant to section 35, Title 12, United States Code, and in such cases only one Federal income tax return is required for the entire taxable year.

The conclusion reached in G. C. M. 24423, supra, is also applicable to capital stock tax returns for years ending June 30 filed under the provisions of section 1200 of the Internal Revenue Code and under corresponding provisions of prior Acts.

Since the conclusion reached in S. T. 732, supra, is contrary to that in G. C. M. 24423, S. T. 732 is revoked.

MANUFACTURERS' EXCISE TAXES.

INTERNAL REVENUE CODE.

SECTION 3403(c), AS AMENDED BY SECTION 544(b) OF THE REVENUE ACT OF 1941.—AUTOMOBILES, ETC., PARTS OR ACCESSORIES.

REGULATIONS 46 (1940), SECTION 316.4: Who is a manufacturer. (Also Section 316.55.) 1945–9–12037 S. T. 932

Circumstances under which a person may be regarded as a manufacturer or producer, within the meaning of section 3403 of the Internal Revenue Code, as amended, and accordingly liable for tax under that section in connection with the sale of rebuilt or reconditioned automobile parts and accessories.—Persons engaged in business of rebuilding and repairmen distinguished.

Advice is requested as to the circumstances under which a person may be regarded as a manufacturer or producer, within the meaning of section 3403 of the Internal Revenue Code, as amended, and accordingly liable for tax under that section, in connection with the sale of rebuilt or reconditioned automobile parts and accessories.

Section 3403(c), as amended, imposes a tax of 5 per cent of the price for which parts or accessories (other than tires and inner tubes and radios) for any of the articles enumerated in subsection (a) or (b) of section 3403 are sold by the manufacturer, producer, or importer.

The mere disassembling, cleaning, and reassembling (with any necessary replacement of worn parts with tax-paid parts) performed in reconditioning used automobile fuel pumps, water pumps, carburetors, distributors, shock absorbers, windshield wiper motors, brake shoes, clutch disks, voltage regulators, etc., do not incur manufacturers' excise tax under section 3403 of the Code regardless of by whom performed. However, any new taxable parts produced or erroneously purchased tax-free for use as replacements in reconditioning such units are subject to tax when used by the reconditioner.

The manufacturers' excise tax applies to the rebuilder's sale from his stock on hand of (*a*) rebuilt batteries, (*b*) rebabbited or machined connecting rods, (*c*) rebuilt clutch assemblies, (*d*) resurfaced clutch plates, (*e*) rewound armatures, (*f*) reassembled generators containing armatures rewound by the reassembler, (*g*) remetalized crankshafts, (*h*) motors in which the cylinders are machined, (*i*) shock absorbers in which some of the parts are machined, and (*j*) similar items in which machining, rewinding, or comparable operations are performed.

In distinguishing between persons engaged in the business of rebuilding and mere repairmen, where a repair shop operator merely disassembles, cleans, and reassembles unserviceable units taken in exchange from a car owner (including in the job any machining or replacing of parts which is necessary) and the repair shop operator uses such rebuilt unit as a replacement of the next unserviceable unit which a car owner brings to his shop, no tax liability is incurred. On the other hand, a person who is engaged in the business of rebuilding automobile parts to be placed in stock for resale is liable for the tax.

Where a rebuilder does not supply his customer with units already rebuilt and in his stock in exchange for any unserviceable units accepted by him for rebuilding, but merely rebuilds and returns to his customer a number of units equivalent to the number received from such customer which he finds are capable of being rebuilt, he incurs no tax liability on such rebuilt units, provided he did not acquire title to the unserviceable units and did not sell the rebuilt units, but instead charged only for his labor and any replacement materials supplied.

In cases where a rebuilder sells units from stock and takes an old part in exchange, the amount allowed or, in the absence of a definite allowance, the fair value of such used article must be included in the sale price of the taxable rebuilt article in computing the tax.

ELECTRICAL ENERGY TAX.

SECTION 3411, AS AMENDED.

REGULATIONS 46, SECTION 316.190: Scope of tax. 1945–19–12145
S. T. 933

Sales of electrical energy to religious organizations for use in monasteries, parsonages, and convents of such organizations, and to educational, religious, or charitable institutions for use in homes, dormitories, or living quarters maintained by such institutions, are considered sales for domestic consumption and are subject to the tax imposed by section 3411 of the Internal Revenue Code, as amended.

Advice is requested whether electrical energy sold to religious organizations for use in monasteries, parsonages, and convents of such organizations, and to educational, religious, or charitable institutions for use in homes, dormitories, or living quarters, are subject to tax under section 3411 of the Internal Revenue Code, as amended. That section provides in part as follows:

(a) There shall be imposed upon electrical energy sold *for domestic or commercial consumption* * * * a tax * * * to be paid by the vendor under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe. [Italics supplied.]

Section 316.190 of Regulations 46, as added by Treasury Decision 5099 (C. B. 1941–2, 267), reads in part as follows:

* * * However, electrical energy is subject to tax if sold for consumption * * * in domestic phases, such as in dormitories or living quarters maintained by educational institutions, churches, charitable institutions, or others.

The taxability of sales of electrical energy is determined by the type or nature of the consumption and not by the kind of organization consuming the electrical energy or the purpose for which the organization is maintained. (S. T. 909, C. B. 1940–2, 309.)

In view of the foregoing, it is held that sales of electrical energy to religious organizations for use in monasteries, parsonages, and convents of such organizations, and to educational, religious, or charitable institutions for use in homes, dormitories, or living quarters maintained by such institutions, are considered sales for domestic consumption and are subject to the tax imposed by section 3411 of the Internal Revenue Code, as amended.

MANUFACTURERS' EXCISE TAXES. (1932)

SECTION 619.—SALE PRICE.

REGULATIONS 46 (1932), ARTICLE 10: Charges for coverings, containers, etc. 1945–3–11958 Ct. D. 1625

MANUFACTURERS' EXCISE TAX—REVENUE ACT OF 1932—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT.

1. TAX ON TOILET PREPARATIONS—ADVERTISING AND SELLING EXPENSES INCLUDIBLE IN TAX BASE.

Advertising and selling expenses incurred by a manufacturer from October 1, 1936, to June 30, 1939, are not to be excluded from the selling price in computing the excise tax imposed by section 603 of the Revenue Act of 1932 and section 3401 of the Internal Revenue Code. The inclusion of such expenses in the tax base is plainly warranted by the language of section 619(a) of the Revenue Act of 1932.

2. DECISION AFFIRMED.

Decision of the United States Circuit Court of Appeals, Eighth Circuit (1944) (141 Fed. (2d), 380), reversing decision of the District Court, Southern District Iowa, Central Division (1943) (52 Fed. Supp., 292), affirmed.

SUPREME COURT OF THE UNITED STATES.

The F. W. Fitch Co., a Corporation, petitioner, v. *United States of America.*
[323 U. S., 582.]

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

[January 15, 1945.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

Section 603 of the Revenue Act of 1932 (ch. 209, 47 Stat., 169, 261, Internal Revenue Code section 3401) imposes on toilet preparations sold by manufacturers or producers an excise tax equivalent to stated percentages "of the price for which so sold." Petitioner was subject to this tax from October 1, 1936, to June 30, 1939, and has sought a refund of a portion of the tax paid on the ground that its selling and advertising expenses should have been excluded from the selling prices in computing the tax. The district court after trial upheld this claim and awarded a refund (52 Fed. Supp., 292), but the court below reversed that judgment (141 Fed. (2d), 380). The alleged conflict with the decisions of the Circuit Court of Appeals for the Seventh Circuit in *Campana Corporation* v. *Harrison* (114 Fed. (2d), 400) and *Campana Corporation* v. *Harrison* (135 Fed. (2d), 334) led us to grant certiorari.

The controversy here centers about section 619(a) of the Act, which provides for the inclusion and exclusion of certain items in computing the selling price for purposes of the tax levied by section 603 as well as various other sections. Section 619(a) states that, in computing the sales price,

"* * * there shall be included any charge for coverings and containers of whatever nature, and any charge incident to placing the article in condition packed ready for shipment, but there shall be excluded the amount of tax imposed by this title, whether or not stated as a separate charge. A transportation, delivery, insurance, installation, or other charge (not required by the foregoing sentence to be included) shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations."

Petitioner contends that advertising and selling expenses fall within the term "other charge" appearing in the last sentence of section 619(a) and hence are excludible in determining the selling price for tax purposes. This claim, however, is refuted by both the spirit and the letter of this statutory provision.

Congress sought in the Revenue Act of 1932 to use the manufacturer's or wholesaler's selling price, rather than the retail price, as the measure of the

excise taxes imposed by section 603. (75 Congressional Record, 11383, 11657.) Section 619(a) was designed to lay down specific rules for determining this selling price, especially in relation to costs incurred after the article itself had been manufactured. It provides for the use of the manufacturer's or producer's f. o. b. price at the factory or place of production. In essence, all manufacturing and other charges incurred prior to the actual shipment of an article and reflected separately or otherwise in the f. o. b. wholesale price are to be included in the sale price underlying the tax, while all charges incurred subsequent thereto are to be excluded. Hence any additional charge which a purchaser would not be required to pay if he accepted delivery of the article at the factory or place of production may be so excluded. (See H. Rept. No. 708, Seventy-second Congress, first session, page 37 [C. B. 1939–1 (Part 2), 457]; S. Rept. No. 665, Part 3, Seventy-second Congress, first session, page 3 [C. B. 1939–1 (Part 2), 496]; House Conference Report No. 1492, Seventy-second Congress, first session, page 22 [C. B. 1939–1 (Part 2), 539].)

Advertising and selling expenses incurred by a manufacturer such as petitioner clearly fall within the class of charges which Congress intended to be included in the tax base. Regardless of whether we consider such expenses technically as manufacturing costs, it is obvious that they are incurred prior to the actual shipment of articles to wholesale purchasers and that they enter into the composition of the wholesale selling price. Even if the purchaser accepts delivery at the factory, he pays for the advertising and selling expenses. Thus they must be included in the taxable sales price.

The inclusion of these expenses is plainly warranted by the language of section 619(a). Preshipment charges relative to coverings, containers and placing an article in condition for shipment are specifically included in the determination of the selling price. But a subsequent "transportation, delivery, insurance, installation, or other charge" is to be excluded if properly established. In the setting of this case, no rule of reason or grammar justifies placing advertising and selling expenses within the meaning of this exclusionary sentence.

To begin with, advertising and selling expenses are obviously not comparable to the specified charges for transportation, delivery, insurance or installation—all of which are incurred subsequent to the preparation of an article for shipment and are not included in the manufacturer's f. o. b. selling price. Hence advertising and selling expenses can not be encompassed by the term "other charge" unless that term be taken to include charges entirely dissimilar to those specified. This term, however, was understood by its framers to mean "like charges" or "similar charges" to those specifically enumerated in the same sentence. (H. Rept. No. 708, Seventy-second Congress, first session, page 37; S. Rept. No. 665, Part 3, Seventy-second Congress, first session, page 3; House Conference Report No. 1492, Seventy-second Congress, first session, page 22.) When this fact is added to the general intent of Congress to include all costs or charges incurred prior to shipment, the applicability of the *ejusdem generis* rule to the term "other charge" becomes clear. This rule, which appropriately may be invoked here since it does not conflict with the general purpose of the statute (compare *S. E. C.* v. *Joiner Corporation*, 320 U. S., 344, 350, 351, with *Smith* v. *Davis*, 323 U. S., —), limits the "other charge" to expenses similar in character to those incurred for transportation, delivery, insurance and installation. Since advertising and selling expenses arise prior to shipment and are necessarily components of the f. o. b. selling price, the term "other charge" can not cover them.[1] They must be included in the tax base. Such has been the consistent administrative construction of the statute (G. C. M. 21114, C. B. 1939–1 [Part 1], 351, 353.) And such is the result made necessary by the accepted rules of statutory construction.[2]

It is argued that this conclusion results in a discrimination against a manufacturer who indulges in his own advertising and selling campaigns in favor of one whose products are advertised by his customers and that Congress could

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[1] The parenthetical matter following the term "other charge" in the last sentence of section 619(a)—"(not required by the foregoing sentence to be included)"—is not significant in this case. It serves simply to provide that, to the extent that the provisions for inclusion and exclusion may overlap, the former shall control.

[2] Section 3(a) of the Revenue Act of 1939 (53 Stat., 862, 863, Internal Revenue Code section 3401) excluded from the sale price "a transportation, delivery, insurance, or other charge, *and the wholesaler's salesmen's commissions and costs and expenses of advertising and selling.*" [Italics added.] Section 3(b) made this amendment prospective only and hence section 3(a) can not be taken as a Congressional declaration that the advertising and selling expenses were intended to be excluded from the selling price under the Revenue Act of 1932. On the contrary, the very fact that Congress found it necessary in 1939 to exclude such expenses specifically is persuasive evidence that prior thereto advertising and selling expenses were not meant to be excluded.

not have intended such a discrimination. But this discrimination, to the extent that it may exist, is an unavoidable consequence of an excise tax based on the wholesale selling price. Such cost factors as labor, materials and advertising naturally vary among competing maunfacturers; different costs and different methods of doing business in turn may cause the wholesale selling prices to lack uniformity. And if these prices are taxed without adjustment for differing cost factors, tax inequalities, and discriminations inevitably result. But where, as here, a flat tax is placed on the wholesale selling prices and no statutory provisions are made for relief from the resulting natural tax inequalities, courts are powerless to supply it themselves by imputing to Congress an unexpressed intent to achieve tax uniformity among maufacturers selling at wholesale.[3]

Finally, petitioner urges that section 619(b) must also be considered in order to ascertain the true Congressional intent and in order to give section 619(a) its proper construction. But section 619(b) merely provides that where the manufacturer sells at retail, on consignment or otherwise than through an arm's length transaction, the tax shall be based upon a figure determined by the Commissioner with reference to the prices at which similar articles are sold in the ordinary course of trade. Inasmuch as petitioner's sales were made at wholesale, section 619(b) has no direct application to this case. But it does serve to emphasize the failure of Congress to make similar provisions for tax equalization under section 619(a) where the manufacturer's sales are at wholesale. It can not, however, vary the plain intent and language of section 619(a) and Congressional statements [4] relating to the desirability of eliminating discriminations against manufacturers making retail sales can not be taken as evidence of a desire to prevent the natural inequalities that result when a tax is placed on the wholesale selling price.

Affirmed.

Mr. Justice ROBERTS is of opinion that the judgment should be affirmed.

RETAILERS' EXCISE TAXES.

REGULATIONS 51 (1941), SECTION 320.23: Sales for resale. 1945–18–12135 T. D. 5475

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 320.—RETAILERS' EXCISE TAXES.

Sales by retailers of articles for resale at retail.—Regulations 51 amended.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 51 [Part 320, Title 26, Code of Federal Regulations, 1941 Sup.] as last amended by Treasury Decision 5353, approved March 31, 1944 [C. B. 1944, 597], are hereby further amended by inserting immediately after section 320.22 the following:

SALES FOR RESALE.

SEC. 320.23. SALES FOR RESALE.—All sales of taxable articles by persons engaged in the business of selling such articles at retail are presumed to be sales at retail, unless the character of a sale as a sale for resale is evidenced either

[3] Congress has subsequently realized that the excise tax on the wholesale selling price created tax inequalities among manufacturers. In section 552 of the Revenue Act of 1941 (55 Stat., 687, 718), Congress substituted a retail excise tax for the manufacturer's excise tax on toilet preparations. The reasons assigned for the change were that under the earlier law "evasion is substantial and inequitable competitive situations are created." (H. Rept. No. 1040, Seventy-seventh Congress, first session, page 33 [C. B. 1941–2, 413].)

[4] See H. Rept. No. 708 (Seventy-second Congress, first session, pages 32–33 [C. B. 1939–1 Part 2), 457]; 75 Congressional Record, 5693, 5694.

(1) by a "retailers' exemption certificate" furnished by the purchaser in the form outlined herein, or (2) by equivalent proof of exemption.

The following is the prescribed form of retailers' exemption certificate:

RETAILERS' EXEMPTION CERTIFICATE.

_____, 19__.
(Date.)

The undersigned purchaser hereby certifies that he is engaged under the name of _____, located
(Name under which purchaser operates.)
at _____, in selling at retail articles subject to
(Address.)
retailers' excise tax; that the article or articles specified and fully identified in the accompanying order, or on the reverse side hereof, are purchased from _____ for resale; and that
(Name of vendor.)
the retailers' excise tax payable in respect of retail sales of luggage, etc., under section 1651 of the Internal Revenue Code, and in respect of retail sales of jewelry, etc., furs, and toilet preparations under sections 2400, 2401, and 2402, respectively, and for the war period under section 1650, will be reported in returns filed by the undersigned with the collector of internal revenue at_____
_____.

The undersigned understands that he must be prepared to establish by competent evidence that the articles were actually purchased for the purpose stated and that the tax due thereon was paid to the Government.

It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than $10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

_____,
(Name.)

_____
(Address.)

The proof of exemption considered equivalent to a "retailers' exemption certificate" is not restricted to any particular form, but must be in writing and show the name under which the purchaser is engaged in business, his business address, his intention to resell the articles at retail and pay tax thereon, and the collector of internal revenue to whom the tax will be paid.

Where the certificate of exemption or equivalent proof, as outlined above, is not procured by the retailer from the purchaser prior to or at the time the retailer files his return for the month in which the sale for resale is made, the retailer must include the tax on such sale in such return. However, if the certificate or equivalent proof is later obtained, a claim on Form 843 for refund of the tax may be filed by the retailer or he may take credit upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313. (See section 320.76.)

If it is impracticable to furnish a separate certificate or equivalent proof for each purchase order, a single certificate, or equivalent proof, covering all sales between given dates (the period not to exceed a month) will be acceptable.

The certificates of exemption or equivalent proof and proper records of invoices, orders, etc., relative to tax-free sales must be retained by the vendor selling for resale as provided in section 320.72 and must be readily accessible for inspection by internal revenue officers.

Notwithstanding that an exemption certificate or equivalent proof with respect to any sale is obtained by the vendor, the latter shall be liable for the tax if in fact the sale is at retail.

The provisions of this section apply to sales of toilet preparations in all cases except sales to operators of beauty parlors, etc. For special provisions relating to tax-free sales of toilet preparations to operators of beauty parlors, etc., see section 320.52.

(This Treasury decision is issued pursuant to the authority contained in sections 2410 and 3791 of the Internal Revenue Code (55 Stat., 720, 53 Stat., 467; 26 U. S. C., 1941 ed., 2410, 3791).)

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

Approved August 31, 1945.

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

(Filed with the Division of the Federal Register September 4, 1945, 3.23 p. m.)

INTERNAL REVENUE CODE.

REGULATIONS 51, SECTIONS 320.33 AND 320.37. 1945–19–12144
T. D. 5479

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 320.—RETAILERS' EXCISE TAXES.

Mechanical pencils.—Regulations 51 amended.

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 51 [Part 320, Title 26, Code of Federal Regulations, 1941 Sup.], relating to retailers' excise taxes under Chapters 9A and 19 of the Internal Revenue Code, to Public Law 180 (Seventy-ninth Congress, first session), approved August 11, 1945 [page 540, this Bulletin], such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding section 320.30, the following:

PUBLIC LAW 180 (SEVENTY-NINTH CONGRESS, FIRST SESSION), APPROVED AUGUST 11, 1945.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2400 of the Internal Revenue Code (relating to the retailers' excise tax on jewelry, etc.) is amended by striking out "to a fountain pen or smokers' pipe if the only parts of the pen or the pipe" and inserting in lieu thereof "to a fountain pen, mechanical pencil, or smokers' pipe if the only parts of the pen, the pencil, or the pipe".

SEC. 2. The amendment made by this Act shall take effect on the first day of the first month which begins more than ten days after the date of the enactment of this Act.

PAR. 2. Section 320.33, as amended by Treasury Decision 5353, approved March 31, 1944 [C. B. 1944, 597], is further amended by changing the second and third sentences of the last paragraph thereof to read as follows:

If, in the case of a fountain pen sold on or after October 1, 1941, a smokers' pipe sold on or after November 1, 1942, or a mechanical pencil sold on or after September 1, 1945, the only parts which consist of precious metals are essential parts not used for ornamental purposes, such fountain pen, smokers' pipe, or mechanical pencil is not subject to the tax. Such essential parts of a fountain pen are the pen point, lever, clip, and the plain narrow band or bands

placed on the cap for the purpose of preventing the cap from splitting or expanding. Such essential part of a smokers' pipe is the plain narrow band or bands placed on the shank of the pipe to prevent the shank from splitting. Such essential parts of a mechanical pencil are the tapered point holding the lead for writing, the clip, and the plain narrow band or bands placed on the barrel or cap, or both, for the purpose of preventing such part or parts from splitting or expanding. The tax will attach if the band or bands on a fountain pen, mechanical pencil, or smokers' pipe consist of precious metals or imitations thereof and have a combined width of more than three-eighths of an inch, or if the fountain pen, mechanical pencil, or smokers' pipe has any parts other than the essential parts enumerated above which are made of, or ornamented, mounted or fitted with, precious metals or imitations thereof.

PAR. 3. Section 320.37, as amended by Treasury Decision 5353, is further amended by changing the last sentence of the first paragraph thereof to read as follows:

For exemptions in the case of certain kinds of fountain pens, mechanical pencils, smokers' pipes, and watches, see sections 320.33 and 320.34.

(This Treasury decision is issued pursuant to the authority contained in sections 2410 and 3791 of the Internal Revenue Code (55 Stat., 720, 53 Stat., 467; 26 U. S. C., 1940 ed., and Supp. IV, 2410, 3791).)

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

Approved September 24, 1945.

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

(Filed with the Division of the Federal Register September 24, 1945, 2.18 p. m.)

SECTION 2402, AS ADDED BY SECTION 552 OF THE REVENUE ACT OF 1941, AND AMENDED BY SECTION 302 OF THE REVENUE ACT OF 1943.

REGULATIONS 51, SECTION 320.50: Scope of tax. 1945–5–11984
Mim. 5828

Articles taxable as toilet preparations, under section 2402 of the Internal Revenue Code, as added by section 552 of the Revenue Act of 1941, and amended by section 302 of the Revenue Act of 1943.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., February 14, 1945.

To Collectors of Internal Revenue and Others Concerned:

Attention is called to the retailers' tax on toilet preparations, etc. (increased from the rate of 10 to 20 per cent, effective April 1, 1944), applicable to sales of such articles for use rather than for resale by the purchasers.

Many questions have been asked as to the types of articles to which this tax applies. In order that collectors may inform the retailers concerned, as nearly as possible, of the scope of the tax, there are listed below those articles which the Bureau has held taxable when sold at retail. However, this list should be considered merely illustrative instead of all-inclusive. In any case where the taxability of a particular article is in question, a sample of the product or the manufacturer's quantitative formula, together with labels and other advertising matter showing the purposes for which it is to be used, should be submitted to the Bureau for a ruling thereon.

TOILET PREPARATIONS SUBJECT TO 20 PER CENT TAX ON RETAIL SELLING PRICE.

After shave creams.
After shave lotions.
After shave powders.
Anti-perspirants.
Anointing oils (for infants or adults).
Aromatic cachous (sen sen and similar aromatic pellets).
Astringents (after shave, anti-perspirants, etc.).
Baby oils.
Baby powders.
Bandoline.
Bath crystals.
Bath oil (sulphonated oil water softener, usually scented).
Bath milk (wetting agent water softener, usually scented).
Bath powder.
Bath salts (chemical water softener, usually scented).
Bay rum.
Beauty creams, mask preparations, etc.
Bleach creams (including freckle remover).
Bleach lotions (including freckle remover).
Body powders.
Breath sweeteners (except candy, chewing gum, life savers, etc.).
Brilliantine.
Bubble baths.
Cleansing creams (including those for removing stains from the skin).
Cleansing lotions (including those for removing stains from the skin).
Cold creams.
Colognes.
Compact refills.
Cosmetic stocking preparations.
Cuticle softeners and removers.
Dandruff remedies.
Dandruff removers.
Deodorants.
Depilatories (except abrasive articles).
Dusting powders.
Eyebrow pencils.
Eyelash mascara.
Eyeshadows.
Eyewashes (only if represented to beautify the eyes).
Face creams.
Face lotions.
Face packs.
Face powders.
Finger wave lotions.
Freckle removers.
Foot powders.
Grease paints.
Glycerine and rose water.
Hair bleaches.
Hair dressings.
Hair dyes.
Hair lacquers (sprayed on the hair after shampoo, to reflect light).
Hair lotions.
Hair oils.
Hair pomades.
Hair restoratives.
Hair rinses.
Hair straighteners.
Hair tints.
Hair tonics.
Hand creams.
Hand lotions.
Henna.
Lash and brow dyes.
Lavender water.
Leg make-up.
Lip pomade (colored or scented).
Lipstick.
Lipstick refills.
Liquid lip color.
Liquid face powder.
Manicure preparations.
Mascara.
Massage creams.
Mittens (containing toilet powder).
Mustache wax.
Nail bleaches,
Nail enamels.
Nail enamel removers.
Nail lacquers.
Nail polishes (paste, powder, or liquid).
Nail whitener.
Pancake make-up.
Perfumes.
Peroxide (of 10 volumes or more).
Permanent waving creams or lotions.
Petroleum jelly (if scent or color added).
Plucking creams (for use after plucking hair).
Polish removers (nail polish removers).
Pomades for the hair.
Pore cleansers (other than soap).
Protective creams (having toilet claims or used as skin creams or anti-perspirants).
Powder (including baby, bath, body, dusting, powder base, foot, sachet, and talcum).
Powder mitts (containing powder).
Rock salt bath crystals.
Rose water and glycerine.
Rouges.
Sachets (containing sachet powder or aroma producing materials).
Scalp lotions (for dry, oily or falling hair, dandruff, mange, etc.).
Sen sen (aromatic cachous).
Shampoos (containing 5 per cent or less of soap or saponaceous matter).

TOILET PREPARATIONS SUBJECT TO 20 PER CENT TAX ON RETAIL SELLING PRICE—Continued.

Shampoos (regardless of soap content, used also to bleach, dye, tint, or add luster to the hair).
Skin bleaches (including freckle remover).
Skin creams.
Skin fresheners.
Skin lotions.
Skin whiteners.
Sunburn preventives.
Suntan oil.
Theatrical make-up.
Toilet creams.
Toilet lanolin.
Toilet powders (including after shave, baby, bath, body, dusting, foot, sachet and talcum powder).
Toilet water.
Vanishing creams.
Waveset (paste, powder, or lotion).
Water softeners (perfumed and having toilet claims).
Witch hazel.

Any correspondence in reference to this mimeograph should refer to the symbols MT: ST.

JOSEPH D. NUNAN, Jr.,
Commissioner.

REGULATIONS 51, SECTION 320.50: Scope of tax. 1945–15–12101
Mim. 5893

Taxability of shampoos under section 2402 of the Internal Revenue Code, as added by section 552 of the Revenue Act of 1941, and amended by section 302 of the Revenue Act of 1943.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., July 14, 1945.

To Collectors of Internal Revenue and Others Concerned:

Attention is called to the application of the retailers' excise tax on toilet preparations, etc. (increased from the rate of 10 to 20 per cent, effective April 1, 1944), to sales at retail of shampoos.

Any shampoo (1) containing 5 per cent or less of saponaceous matter, regardless of advertising claims, or (2) containing more than 5 per cent saponaceous matter but designated or recommended as a hair tonic or dressing, or for waving, bleaching, dyeing, tinting, or otherwise imparting an artificial appearance to the hair, is subject to the tax when sold at retail.

In order that collectors may inform retailers concerned whether certain shampoos are subject to the tax there are listed below those shampoos which have been held not subject to the tax by this office, based upon chemical analyses and other information furnished by the manufacturers or distributors showing that the products contain more than 5 per cent saponaceous matter and indicating that they are recommended in advertising matter solely for cleansing purposes. Any change in advertising matter to the effect that one of these shampoos is to be used for toilet purposes other than cleansing the hair and scalp will render retail sales of the product subject to the tax on and after the date of such change, regardless of the amount of saponaceous matter in the product.

Shampoos not taxable on the basis of information furnished.

Product.	Manufacturer or distributor.
Admiracion Oil Shampoo Treatment	Admiracion Laboratories.
Admiracion Foamy Shampoo	Do.
All-Purpose White Kreem Shampoo	W. G. Shelton Co., Inc.
Almay Tar Shampoo	Almay, Incorporated.
Almay Sulphonated Oil Shampoo (Perfumed, Unscented, and with Tar).	Do.
Amami Camomile for Blondes (Shampoo)	Amami Distributors, Inc.
Amami for Gray Hair (Shampoo)	Do.
Amami Plain (Shampoo)	Do.
Apex Vegetable Oil Shampoo	Apex News & Hair Co., Inc.
Ardena Soapless Oil Shampoo	Elizabeth Arden Sales Corporation.
Barcelona Castile Shampoo	Barcelona Sales Co., Inc.
Breck Ph8 Lather Oil Shampoo	John H. Breck, Inc.
Breck Lacene Shampoo	Do.
Breck Shampoo Regular	Do.
Canthrox Shampoo	Consolidated Royal Chemical Corporation.
Camomile Shampoo	Yardley of London, Inc.
Castile Shampoo	John T. Stanley & Co., Inc.
Castile Soap Shampoo	Ogilvie Sisters.
Conti Castile Shampoo	Conti Products Corporation.
Cocoanut Oil Shampoo	John T. Stanley & Co., Inc.
Co-Op Soapless Shampoo	National Cooperatives, Inc.
Daggett & Ramsdell Perfect Shampoo	Stanco Distributors, Inc.
Dandruff Remover Shampoo	W. G. Shelton Co., Inc.
Dara Soapless Shampoo	Dara Products.
Detergent Lathering Shampoo	W. G. Shelton Co., Inc.
Drene Shampoo	Procter & Gamble Distributing Co.
Drene with Hair Conditioning Action (Shampoo).	Do.
Drezma Shampoo	Drezma, Inc.
Dr. Ellis Vegetable Oil Shampoo	Dr. Ellis Sales Co., Inc.
Edna Wallace Hopper's Fruity Shampoo	American Home Products Corporation.
Empress Lathering Oil Shampoo	The National Mineral Co.
Fitch's Dandruff Remover Shampoo	The F. W. Fitch Co.
Fitch's New Process Oil Shampoo	Do.
Fitch's Saponified Coconut Oil Shampoo	Do.
"42" Eucalyptus Oil Shampoo	"42" Products, Ltd.
Four Penny Shampoo	Four Penny Products Co.
Glo-Ver Beauty Soap Shampoo	H. Clay Glover Co., Inc.
H. Q. Z. Liquid Shampoo	H. Q. Z. Distributors, Inc.
Halo Shampoo	Colgate-Palmolive-Peet Co.
Helene Curtis Cream Shampoo	The National Mineral Co.
Helene Curtis Duchess Soapless Oil (Shampoo).	Do.
Helene Curtis Duchess Lathering Oil Shampoo.	Do.
Helene Curtis Full-O-Foam (Shampoo)	Do.
Helene Curtis Tru-Art Lather Shampoo	Do.
Helene Curtis Tru-Art Medicated Shampoo	Do.
Helene Curtis Milky Shampoo	Do.
Herbex G. O. S. Shampoo	Parker Herbex Corporation.
Herbex Oil Shampoo	Do.
Hi-Hat Pine Tar Shampoo	Hi-Hat Co.
Jo-Cur Vegetable Oil Shampoo	Affiliated Products, Inc.
Kreml (Shampoo)	R. B. Semler Co.
Kubak Shampoo	Consolidated Royal Chemical Corporation.

Shampoos not taxable on the basis of information furnished—Continued.

Product.	Manufacturer or distributor.
L. B. Foaming Shampoo	L. B. Laboratories, Inc.
Laco Shampoo	Laco Products, Inc.
LaJac Cocoanut Oil Shampoo	Keystone Laboratories, Inc.
LaJac Pine Tar Shampoo	Do.
Laricuse Shampoo	Godefroy Manufacturing Co.
Lathering Oil Shampoo	W. G. Shelton Co., Inc.
Latherless Shampoo (Pine Aroma)	Ogilvie Sisters.
Lemon Shampoo	John T. Stanley & Co., Inc.
Lentheric Shampoo	Lentheric, Inc.
Lucky Tiger Magic Shampoo	Lucky Tiger Manufacturing Co.
Lucky Tiger Oil Shampoo	Do.
Lucky Tiger Beauty Oil Shampoo	Do.
Mahdeen Shampoo	The Mahdeen Co.
Marchand Castile Shampoo	Charles Marchand Co.
Mar-O-Oil Shampoo	Marrow's, Inc.
Mar-O-Oil Super Foamy Shampoo	Do.
Mulsified Coconut Oil Shampoo	The R. L. Watkins Co., Division of Sterling Drug, Inc.
Naminoo Oil Shampoo	The National Mineral Co.
Natural Cocoanut Oil Shampoo	Darboux Toiletries.
Nourishine Soap Shampoo	Nourishine Sales Co.
Old House Shampoo	Schieffelin & Co.
Old House Castile Shampoo	Do.
Old House Pine Tar Shampoo	Do.
Olive Oil Shampoo	John T. Stanley & Co., Inc.
Opal Cocoanut Oil Shampoo	Darboux Toiletries.
Packers Shampoo with Pine Tar	Packers Tar Soap, Inc.
Packers Shampoo with Olive Oil	Do.
Palmolive Shampoo	Colgate-Palmolive-Peet Co.
Pinaud Liquid Shampoo	Pinaud, Inc.
Rap-I-Dol Conditioning Shampoo	Rapidol Distributing Corporation.
Shampene (Shampoo)	The Odell Co., Inc.
Sheen-Tone Cream Shampoo	Primrose House, Inc.
Siroil Shampoo Soap	Siroil Laboratories, Inc.
Soap Shampoo	W. G. Shelton Co., Inc.
Soy Bean Oil Shampoo	Allen B. Wrisley Co.
Tar Shampoo	John T. Stanley & Co., Inc.
Tender Age Shampoo and Skin Cleanser	Nyal Company.
Van Ess Shampoo	Whitehall Pharmacal Co.
Wildroot Cocoanut Oil Shampoo	Wildroot Company, Inc.
Wildroot Taroleum Shampoo	Do.
Woodbury Cocoanut Oil Castile Shampoo	The Andrew Jergens Co.
Zeno Fluff Shampoo	Raymond Laboratories.

The following products are taxable either because they (1) contain not more than 5 per cent of saponaceous matter, or (2) are designated or recommended on labels or in other advertising matter for one or more of the toilet purposes set forth in paragraph 2 of this mimeograph, as well as for cleansing purposes:

Product.	Manufacturer or distributor.
Amami Henna Shampoo	Amami Distributors, Inc.
Blondex Shampoo	Swedish Shampoo Laboratories.
"569" Hair Lightener Shampoo	The House of Lechler.
Golden Shampoo	Nestle-Le Mur Co.
Helene Curtis Cold Wave Shampoo Neutralizer.	The National Mineral Co.
Henna Shampoo	Nestle-Le Mur Co.
Henna Shampoo	John T. Stanley & Co., Inc.
Henna Shampoo	Yardley of London, Inc.
Henna Shampoo Powder	Ogilvie Sisters.
Hennafoam Gleam Shampoo	The Hennafoam Co.
Jordeau Rinseless Shampoo	Jean Jordeau, Inc.
Minipoo Dry Shampoo	Annette Jennings, Inc.
Raymonde's Presoftening Shampoo	Raymond Laboratories, Inc.
Scalp-Glo Shampoo	John T. Stanley & Co., Inc.
Shalee Presoftening Shampoo	Raymond Laboratories, Inc.
Tintz Color Shampoo Soap (In all the Various Shades).	Tintz Company.

Any correspondence in reference to this mimeograph should refer to the symbols MT: ST.

WM. T. SHERWOOD,
Acting Commissioner.

MISCELLANEOUS EXCISE TAXES.

INTERNAL REVENUE CODE.

TELEPHONE, TELEGRAPH, RADIO AND CABLE FACILITIES.

SECTIONS 3465 AND 3466, AS AMENDED.

REGULATIONS 42 (1942), SECTION 130.45: Services utilized in the collection of news for or dissemination of news through the public press, news ticker services, or radio broadcasting. 1945–24–12195 M. T. 23

Taxability by reason of their administrative nature of certain messages sent by or to newspapers or press associations. S. T. 646 [C. B. XII–1, 422 (1933)] amplified.

Advice is requested whether certain messages sent by or to newspapers or press associations fall within the scope of "administrative messages," as used in S. T. 646 (C. B. XII–1, 422 (1933)), and are taxable under section 3465 of the Internal Revenue Code.

S. T. 646, supra, provides that the exemption under section 3466(b) of the Code, relating, among other things, to payments received from any person for services or facilities used in the collection of news for the public press, does not apply to messages of an administrative nature.

It is held that "administrative messages" include messages to correspondents relating to assignments for gathering and reporting news items for publication, as well as similar messages sent by correspondents to newspapers or press associations, and that charges therefor are not exempt from tax imposed by section 3465 of the Internal Revenue Code, as amended. Also subject to tax as administrative messages are messages which relate to hotel accommodations for reporters on assignment and messages transmitting funds to correspondents.

TAX ON TRANSPORTATION OF PROPERTY.

SECTION 3475, AS ADDED BY SECTION 620 OF THE REVENUE ACT OF 1942.

REGULATIONS 113, SECTION 143.30: Transportation of property beyond the boundaries of the United States. 1945–12–12066 Mim. 5877

Tax on the transportation of property—Shipments consigned to Army and Navy officers at port of exportation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., June 8, 1945.

Collectors of Internal Revenue and Others Concerned:

The tax imposed under section 3475(a) of the Internal Revenue Code on the transportation of property does not apply to shipments to a foreign destination or to a possession of the United States when

made in accordance with the provisions outlined in Subpart E of Regulations 113.

In view of the presumption that shipments consigned to Army and Navy officers at port of exportation are ultimately exported and the obvious difficulty on the part of shippers in procuring proof of exportation in such cases, the Bureau, at the request of the War and Navy Departments, held that the filing of Forms 798 and 799 would not be required with respect to shipments consigned to Army or Navy officers charged with the duty of receiving such shipments at a port of exportation.

Due to changes in procurement policies, the War and Navy Departments amended their procurement regulations, effective respectively as of June 1, 1944, and August 15, 1944, so as to require the inclusion of the transportation tax in the price fixed by a prime contract or related subcontract in respect of export shipments to be made on commercial bills of lading, even though consigned to an Army or Navy officer at the port of exportation.

Accordingly, export shipments made on commercial bills of lading and consigned to an Army or Navy officer at a port of exportation are not exempt from the transportation tax, where made pursuant to a prime contract entered into with the War Department on or after June 1, 1944, or a prime contract entered into with the Navy Department on or after August 15, 1944, including in either case a subcontract related to the prime contract. In such case, the transportation tax applies to the shipment, and a Temporary Exemption Certificate, Form 798, may not be filed in lieu of payment of tax.

However, the exemption allowable in respect of export shipments still applies to shipments under commercial bills of lading consigned to an Army or Navy officer at the port of exportation, where the shipment is made pursuant to a prime contract entered into on a tax exclusive basis by the War and Navy Departments prior to the effective dates of the above-mentioned amendments of their procurement regulations, and applies also to any subcontract (regardless of date) related to such prime contract, provided the subcontract is likewise made on a tax exclusive basis. As to such prime contracts and subcontracts, the person paying the transportation charges may, in lieu of payment of the tax, file with the carrier an exemption certificate on Form 798, provided the Form 798 is modified by entering across the bottom thereof, the following statement:

> Shipped under prime contract No. _____ dated _____, which excludes transportation tax.

Where the shipment is made under a subcontract, only the number and date of the prime contract need be entered on the modified Form 798.

The filing of a Certificate of Exportation, Form 799, will not be required where a modified Form 798 is filed pursuant to the provisions of this mimeograph.

So much of paragraph No. 3 of the instructions on Forms 798 and 799 (revised February, 1944) as is inconsistent herewith is revoked, as of the date of this mimeograph.

The provisions of this mimeograph do not affect the exemption applicable to amounts paid for the transportation of property shipped on a United States Government bill of lading.

This mimeograph shall be effective as of the date of issue.

All correspondence in reference to this mimeograph should refer to the symbols MT:M.

JOSEPH D. NUNAN, Jr.,
Commissioner.

ADMISSIONS TAX.

SECTION 1700(a), AS AMENDED.

1945–7–12007
Mim. 5843

Tax on admissions to athletic games and other affairs conducted by schools.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 21, 1945.

Collectors of Internal Revenue and Others Concerned:

Section 1700(a) of the Internal Revenue Code, as amended by section 541 of the Revenue Act of 1941 and further amended by section 302 of the Revenue Act of 1943, imposes a tax of 1 cent for each 5 cents or major fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription. The tax is to be paid by the person paying for admission. It is provided that no tax shall be imposed on the amount paid for the admission of a child under 12 years of age if the amount paid is less than 10 cents.

In many cases schools collect from students an activity fee or other charge in return for which the students receive season books or tickets covering admission to athletic games or other affairs at the schools. The student fees represent amounts paid for admission by season ticket or subscription and are subject to tax at the rate of 1 cent for each 5 cents or major fraction thereof. If the student fee covers subscription to the school paper, or other privileges in addition to admissions, the charge applicable to the admissions and the charge applicable to the school paper, etc., may be separated and the tax collected only on the charge for admissions.

Section 1700(a) of the Code, as amended, provides that in the case of persons (except bona fide employees, municipal officers on official business, children under 12 years of age, members of the military or naval forces of the United States when in uniform, members of the military or naval forces of any of the United Nations when in uniform, and members of the Civilian Conservation Corps when in uniform) admitted free or at reduced rates to any place at any time when and under circumstances under which an admission charge is made to other persons, an equivalent tax shall be collected based on the price so charged to such other persons for the same or similar accommodations, to be paid by the person so admitted.

Students admitted to affairs held at, or conducted by, the school which they attend, and students of schools competing in any athletic game or tournament, regardless of where held, are not admitted "under circumstances under which" other persons are admitted and

if admitted free are not liable for tax or if admitted at reduced rates are liable for tax on the reduced price, except that an admission charge of less than 10 cents for a child under 12 years of age is not subject to tax.

Students of schools, other than those specifically mentioned in the preceding paragraph, admitted free or at reduced rates are liable for tax based on the regular established price of admission to the public for the same or similar accommodations, whether or not the students are seated in a separate section. Children under 12 years of age are liable for tax on the amount actually paid by them for admission, except that if the amount paid is less than 10 cents no tax applies.

Coaches, members of a band, and other persons admitted free to a place solely for the purpose of performing special duties in connection with the event are not liable for tax.

Members of the faculty admitted free to affairs held at, or conducted by, the school at which they are employed or to athletic games or tournaments in which such school is competing are not liable for tax, and if admitted at reduced rates are liable for tax on the reduced price.

The provisions of this mimeograph shall apply with respect to any admissions on and after the date thereof, and revoke as of such date any previous rulings inconsistent with this mimeograph, including Mimeograph 5289, dated November 22, 1941.

All correspondence in reference to this mimeograph should refer to the symbols MT : M.

JOSEPH D. NUNAN, Jr.,
Commissioner.

SUGAR ACT OF 1937.

SECTION 402.—TAX ON THE MANUFACTURE OF SUGAR.

REGULATIONS 99 (1937), ARTICLE 200: Effective date. 1945–1–11924 Ct. D. 1622

MANUFACTURERS' EXCISE TAX—SUGAR ACT OF 1937—DECISION OF COURT.

TAX ON MANUFACTURE OF SUGAR—EFFECTIVE DATE OF THE ACT.

Sugar manufactured on September 1, 1937, was subject to the tax imposed by section 402 of Title IV of the Sugar Act of 1937, which Act was signed by the President on September 1, 1937. Section 402(c) of that Act pertains principally to the requirements for making and filing returns, and the provision therein relating to the effective date of the tax is not sufficient, in itself, to overcome the effect and purpose of section 406, which specifically prescribes the effective date of the imposition of the tax.

COURT OF CLAIMS OF THE UNITED STATES.

The American Sugar Refining Co. v. *The United States.*
[56 Fed. Supp., 988.]

[October 2, 1944.]

OPINION.

Plaintiff seeks to recover $15,571.92 excise tax, and interest thereon, paid November 30, 1937, on sugar manufactured on September 1, 1937. This tax was paid under section 402 of the Sugar Act of 1937, approved September 1, 1937 (50 Stat., 903), and the regulation of the Commissioner thereunder. The question presented is whether the tax was due in respect of sugar manufactured on September 1, the plaintiff contending that section 402 did not become effective until September 2, 1937.

SPECIAL FINDINGS OF FACT.

1. Plaintiff is a New Jersey corporation with its office and principal place of business at 120 Wall Street, in the city and State of New York.

2. On November 30, 1937, the plaintiff, under protest, filed with the collector of internal revenue for the second district of New York its "Monthly Return of Manufacturer of Manufactured Sugar" for the month of September, 1937, disclosing the sale or use during that month of 5,228,142 pounds of manufactured sugar and a resulting tax liability of $25,066.58. That tax was paid by the plaintiff to the collector of internal revenue on November 30, 1937. Of the total amount of tax paid, the sum of $15,571.92 is with respect to sugar manufactured on September 1, 1937, amounting to 2,985,317 pounds.

3. On November 30, 1939, the plaintiff filed with the appropriate collector of internal revenue a claim for refund in amount of $15,571.92, asserting the following grounds therefor:

"The sum for which claim is made was paid with respect to sugar manufactured on September 1, 1937, and the collection thereof is not provided for and is illegal and in direct contravention of the provisions of the Sugar Act of 1937. The effective date of Title IV of said Sugar Act was September 1, 1937, the date of enactment of said Act, and it was specifically provided in said Act that the manufacturer should file a return and pay the tax with respect to manufactured sugar manufactured *after* the effective date of said title. Accordingly, manufactured sugar manufactured on September 1, 1937, was not subject to the tax imposed by said Act."

4. On December 11, 1939, the Commissioner of Internal Revenue notified the plaintiff by registered mail that its claim for refund was thereby rejected. That letter read as follows:

"Reference is made to your claim, filed on Form 843, for refund of $15,571.92, tax alleged to have been erroneously paid under the provisions of section 402

of the Sugar Act of 1937 (superseded March 1, 1939, by section 3490 of the Internal Revenue Code), with respect to sugar manufactured on September 1, 1937, and reported on your Form 1 (Sugar) filed for the month of September, 1937.

"You state that the sum for which claim is made was paid with respect to sugar manufactured on September 1, 1937, and the collection thereof is not provided for and is illegal and in direct contravention of the provisions of the Sugar Act of 1937. You state, further, that the effective date of Title IV of said Act was September 1, 1937, the date of enactment of said Act, and it was specifically provided in said Act that the manufacturer should file a return and pay the tax with respect to manufactured sugar manufactured after the effective date of said title. You, therefore, request refund of the amount of tax paid with respect to the sugar manufactured on September 1, 1937.

"The tax imposed under the provisions of section 402 of the Sugar Act of 1937 became effective on the first moment of September, 1937. In this connection see article 200 of Regulations 99.

"Since your claim is based on tax paid with respect to sugar manufactured after the first moment of September, 1937, it was properly paid. Accordingly, your claim is hereby rejected in full."

5. Various and numerous daily newspapers, financial journals, and other publications issued under date of September 2, 1937, contained news items which stated that the President had signed the Sugar Act of 1937 late in the evening or night of September 1, 1937.

The official copy of the Sugar Act of 1937 on file in the Department of State does not disclose the hour of September 1, 1937, on which the President signed that Act. Diligent search has failed to disclose any evidence whatsoever as to the hour of September 1, 1937, when the President signed such Act.

CONCLUSION OF LAW.

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is not entitled to recover, and the petition is therefore dismissed.

Judgment is rendered against plaintiff for the cost of printing the record herein, the amount thereof to be entered by the clerk and collected by him according to law.

OPINION.

LITTLETON, Judge, delivered the opinion of the court.

The excise tax provisions of Title IV of the Sugar Act, approved September 1, 1937, pertinent to the question whether plaintiff was liable for the tax imposed on sugar manufactured on September 1, 1937, are as follows:

"SEC. 402. (a) Upon manufactured sugar manufactured in the United States, there shall be levied, collected and paid a tax, to be paid by the manufacturer at the following rates:

"(1) On all manufactured sugar testing by the polariscope ninety-two sugar degrees, 0.465 cent per pound, and for each additional sugar degree * * *, 0.00875 cent per pound additional and fractions of a degree in proportion.

"(2) On all manufactured sugar testing by the polariscope less than ninety-two sugar degrees, 0.5144 cent per pound of the total sugars therein.

* * * * * * *

"(c) The manufacturer shall file on the last day of each month a return and pay the tax with respect to manufactured sugar manufactured after the effective date of this title (1) which has been sold, or used in the production of other articles, by the manufacturer during the preceding month (if the tax has not already been paid) and (2) which has not been so sold or used within twelve months ending during the preceding calendar month, after it was manufactured (if the tax has not already been paid): *Provided*, That the first return and payment of the tax shall not be due until the last day of the second month following the month in which this title takes effect.

* * * * * * *

"SEC. 403. (a) In addition to any other tax or duty imposed by law, there shall be imposed, under such regulations as the Commissioner of Customs shall pre-

scribe, with the approval of the Secretary of the Treasury, a tax upon articles imported or brought into the United States as follows:

"(1) On all manufactured sugar testing by the polariscope ninety-two sugar degrees, 0.465 cent per pound, and for each additional sugar degree shown by the polariscopic test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

"(2) On all manufactured sugar testing by the polariscope less than ninety-two sugar degrees 0.5144 cent per pound of the total sugars therein;

"(3) On all articles composed in chief value of manufactured sugar 0.5144 cent per pound of the total sugars therein.

"(b) Such tax shall be levied, assessed, collected, and paid in the same manner as a duty imposed by the Tariff Act of 1930, and shall be treated for the purposes of all provisions of law relating to the customs revenue as a duty imposed by such Act, except that for the purposes of section 336 and 350 of such Act (the so-called flexible-tariff and trade-agreements provisions) such tax shall not be considered a duty or import restriction, and except that no preference with respect to such tax shall be accorded any articles imported or brought into the United States.

"SEC. 405. (a) * * *

"(b) * * *

"(c) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe such rules and regulations as may be necessary to carry out all provisions of this title except section 403.

* * * * * * *

"SEC. 406. The provisions of this title shall become effective on the date of enactment of this Act."

Section 401, the first section of Title IV, related to definitions, and section 404 related to exportation, livestock feed, and distillation.

Treasury Regulations 99, approved by the Secretary of the Treasury and promulgated under section 402 of the Sugar Act of 1937 provided:

"ART. 200. EFFECTIVE DATE.—The tax is effective with respect to the manufacture of manufactured sugar from the first moment of September 1, 1937, the date of enactment of the Sugar Act of 1937.

* * * * * * *

"ART. 205. WHEN THE TAX ATTACHES.—(*a*) The tax attaches upon the completion of that process of manufacturing the direct result of which is manufactured sugar. If the completion of the manufacturing process takes place during the period the tax is in effect, the tax attaches, notwithstanding that some part of the manufacturing process took place before such period.

* * * * * * *

"ART. 504. RECORDS.—(*a*) *Inventory.*—Every manufacturer of manufactured sugar shall make an itemized inventory of all manufactured sugar held by him, as of the first moment of September 1, 1937. A separate inventory shall be made for each factory, refinery, or other place where such person holds or manufactures manufactured sugar, and a copy of such inventory shall be retained on the premises.

"(*b*) *Manufacturing records.*—Every person who on and after September 1, 1937, manufactures manufactured sugar shall keep an accurate record of the manufacturing done by him. A separate record shall be kept at and for each place where the manufacturing is done.

* * * * * * *

"In pursuance of the provisions of section 405(c) of the Act and other provisions of the internal revenue laws, the foregoing regulations are hereby prescribed."

Treasury Decision 49160, approved by the Secretary of the Treasury (72 Treasury Decisions, Bureau of Customs), promulgated pursuant to section 403, Sugar Act of 1937, provided:

* * * * * * *

"Pursuant to the authority contained in section 403(a) of the Sugar Act of 1937 (Public, No. 414—Seventy-fifth Congress, approved September 1, 1937), the following regulations are hereby promulgated * * *.

* * * * * * *

"(b) *Effective date.*—The import compensating taxes prescribed by section 403 are applicable to manufactured sugar and articles composed in chief value of

manufactured sugar entered for consumption or withdrawn from warehouse for consumption after the opening of business on September 1, 1937.

* * * * * * *

In view of all the pertinent language of the Act, its apparent purpose, and the interpretive regulations of the Treasury thereunder, we are of opinion that plaintiff's contention that the excise tax imposed by section 402(a) on manufactured sugar was by section 402(c) made effective on September 2, 1937, can not be sustained.

At the outset plaintiff is confronted with the well-established rule that in case of ambiguity or doubt as to the exact meaning of a statute the contemporaneous interpretation or construction thereof by the executive department charged with its administration and enforcement is entitled to great weight, is highly persuasive of the Congressional intent, and should not be disturbed except for the most cogent reasons. Upon consideration of the Act as a whole, in the light of its apparent purpose, we think the interpretation thereof by the Treasury was reasonable, and that plaintiff has not overcome this interpretation by the argument that the ordinary meaning of the phrase "sugar manufactured after the effective date of this Act" means sugar manufactured on and after the day following the date of approval of the Act, and that Congress probably intended by such language to give manufacturers one day within which to appropriately adjust their prices. The language relied upon might mean what plaintiff contends, but whether it does or not depends upon its setting and context. Under plaintiff's argument there is a conflict between subsection (c) of section 402 and section 406 as to the time of imposition of the tax, the latter providing that all the provisions of Title IV shall become effective on the date of enactment of the Act, and that date was September 1, 1937. Plaintiff contends, however, that the specific language of subsection (c) must control over the general language of section 406, and that "if the specific language of section 402(c) were not controlling and given effect, it would be rendered meaningless." In the circumstances we think the rule with reference to specific and general language is not applicable here, nor do we think that a holding that section 406 is controlling as to the time of imposition of the tax renders the mentioned language of subsection (c) meaningless. Reasonably and properly interpreted, both may be reconciled and given full effect according to their apparent purpose. It is well established that this should be done wherever possible. It is admitted that the provisions of section 406 apply to the tax on manufactured sugar as well as imported sugar; it is also admitted that under the language of this section the imposition of the tax on both manufactured and imported sugar became effective from the first moment of September 1, 1937. No reason is shown why Congress would have wished to make a distinction between the time of imposition of the tax on the domestic manufacturer of sugar and on imported sugar. The obvious purpose of the Act was to raise revenue, and the purpose of imposing the tax upon imported sugar was to maintain a parity between the sugar derived from both sources and not to subject either to an unequal burden. In view of this, is the language of subsection (c) of section 402 relied upon sufficient, in itself, to overcome the effect and purpose of section 406? We think not. Subsection (c) of section 402 was not specifically directed to the imposition of the tax by subsection (a) of that section, but was dealing with and directed to the making of monthly returns and payment of the tax so imposed in the months following the date on which the Act became effective. In the drafting of that section the mind of Congress was apparently on these matters, rather than on the matter of the levy or imposition of the tax, and the language used, i. e., that "The manufacturer shall file on the last day of each month a return and pay the tax with respect to manufactured sugar manufactured after the effective date of this title (I) which has been sold, * * *," doubtless had reference to sugar manufactured after the Act. (See *Mutual Life Insurance Co. of New York* v. *Hurni Packing Co.*, 263 U. S., 167, 174, 175.) This interpretation which the Treasury gave to the section is a reasonable one, and gives the subsection full effect as to its subject matter. (Compare *Tasty Baking Co., a Corporation*, v. *The United States*, 93 C. Cls., 667, 674.) On the other hand, section 406, while perhaps general as to some matters, was more specific as to the effective date of the imposition of the tax under subsection (a) of section 402 than was subsection (c). Section 406 must therefore control.

The petition must therefore be dismissed. It is so ordered.

MADDEN, Judge; WHITAKER, Judge; and WHALEY, Chief Justice, concur.
JONES, Judge, took no part in the decision of this case.

STAMP TAXES.

INTERNAL REVENUE CODE.

SECTIONS 1802(b) AND 3481, AS AMENDED.—CAPITAL STOCK (AND SIMILAR INTERESTS)—SALES AND TRANSFERS.

REGULATIONS 71 (1941), SECTION 113.33: Sales and transfers subject to tax. (Also Section 113.63.) 1945–6–11997 M. T. 22

The rule announced in M. T. 20 (C. B. 1944, 649) will be applied only to transfers of securities made on and after May 25, 1944, the date of publication of that ruling in the Internal Revenue Bulletin.

In M. T. 20, published in Cumulative Bulletin 1944, page 649, it was held that—

The admission of a new partner into the M Partnership effected a change in the ownership of the securities carried on the partnership's books and a transfer of legal title thereto which is subject to stamp tax under sections 1802(b) and 3481 of the Internal Revenue Code, as amended. (Syllabus.)

Section 3791(b) of the Internal Revenue Code provides in part that the Commissioner, with the approval of the Secretary, may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect.

Under the authority of section 3791(b) of the Internal Revenue Code, it is held that the rule announced in M. T. 20, supra, shall be applied only with respect to such transfers made on and after May 25, 1944, the date of publication of M. T. 20 in the Internal Revenue Bulletin.

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

Approved.

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

TAXES ON OLEOMARGARINE, ETC.

INTERNAL REVENUE CODE.

REGULATIONS 9 (1936), ARTICLE 27: Bonds. 1945–4–11977
T. D. 5439

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 310.—TAXES ON OLEOMARGARINE, ADULTERATED BUTTER, AND PROCESS OR RENOVATED BUTTER.

Oleomargarine, adulterated butter, and process or renovated butter bonds, Regulations 9 amended.

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 9 (revised April, 1936) [Part 310, Title 26, Code of Federal Regulations], but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4886, approved February 11, 1939 [C. B. 1939–1 (Part 1), 396] [note, Part 310, Title 26, Code of Federal Regulations, Cum. Sup.], are amended as follows:

Article 27 [section 310.27, Title 26, Code of Federal Regulations] is amended by changing paragraph (*a*) thereof to read as follows:

(*a*) *Execution.*—Before commencing business a manufacturer shall furnish the collector with a bond which meets with his approval. Bonds shall be executed in duplicate on Form 214. Both copies shall be forwarded to the collector, who will retain the original and forward the duplicate to the Commissioner. Bonds may be executed with individual or corporate sureties or supported by Government securities.

(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).)

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

Approved February 20, 1945.

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

(Filed with the Division of the Federal Register February 21, 1945, 11.20 a. m.)

WITHDRAWAL OF OLEOMARGARINE, ETC., FROM FACTORIES, FREE OF TAX, FOR USE OF THE UNITED STATES.

REGULATIONS 34 (1928). 1945–5–11985
T. D. 5440

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 450.—WITHDRAWAL OF OLEOMARGARINE, PLAYING CARDS, TOBACCO, SNUFF, CIGARS, AND CIGARETTES, FROM FACTORIES, FREE OF TAX, FOR USE OF THE UNITED STATES.

Regulations 34 amended to include filled cheese.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., February 27, 1945.

To Collectors of Internal Revenue and Others Concerned:

Regulations 34 (revised January, 1928 [Part 450, Title 26, Code of Federal Regulations], but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4884, approved February 11, 1939 [C. B. 1939–1 (Part 1), 395] [Note, Title 26, Code of Federal Regulations, Cum. Sup., page 5875], are amended as follows:

PARAGRAPH 1. The caption immediately following the title "REGULATIONS No. 34, REVISED" is amended to read as follows:

REGULATIONS GOVERNING THE WITHDRAWAL OF OLEOMARGARINE, FILLED CHEESE, PLAYING CARDS, TOBACCO, SNUFF, CIGARS, AND CIGARETTES, FROM FACTORIES, FREE OF TAX, FOR USE OF THE UNITED STATES, UNDER SECTION 3464, REVISED STATUTES, AND SECTION 3331, INTERNAL REVENUE CODE.

PAR. 2. Immediately preceding the paragraph [section 450.0 of such Title 26] preceding article 1 [section 450.1 of such Title 26] there is inserted the following:

SEC. 3331. EXEMPTION FROM TAX OF DOMESTIC GOODS PURCHASED FOR THE UNITED STATES. (INTERNAL REVENUE CODE.)

The privilege existing by provision of law on December 1, 1873 or thereafter of purchasing supplies of goods imported from foreign countries for the use of the United States, duty free, shall be extended, under such regulations as the Secretary may prescribe, to all articles of domestic production which are subject to tax by the provisions of this subtitle.

PAR. 3. The first sentence of the paragraph [section 450.0 of such Title 26] immediately preceding article 1 [section 450.1 of such Title 26] is amended by inserting "filled cheese" after "oleomargarine,".

PAR. 4. The first sentence of article 2 [section 450.2 of such Title 26] is amended by inserting "filled cheese" after "oleomargarine,".

PAR. 5. Article 5 [section 450.5 of such Title 26] is amended by adding a new subparagraph at the end thereof, as follows:

(*d*) Filled cheese withdrawn free of tax for use of the United States must be packed and labeled as the statute requires. (Sec. 2352(b), Internal Revenue Code.) Each statutory package shall, in addition to the markings otherwise required, have legibly and durably marked, stamped, or branded thereon the statement "For use of U. S. Government," together with the number of permit and the date thereof, the letters and figures therein to correspond in size and style with the markings required by section 2352(b)(1) of the Internal Revenue Code.

PAR. 6. The second sentence of the second paragraph of article 8(*a*) [section 450.8(a) of such Title 26] is amended by inserting ", filled cheese," after the word " oleomargarine."

(This Treasury decision is issued under the authority contained in section 3331 of the Internal Revenue Code (53 Stat., 403, 26 U. S. C., 3331).)

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

(Filed with the Division of the Federal Register February 28, 1945. 9.49 a. m.)

TAXES RELATING TO MACHINE GUNS AND CERTAIN OTHER FIREARMS.

INTERNAL REVENUE CODE.

REGULATIONS 88 (1941), SECTIONS 319.5 AND 319.23: Rates of tax. 1945–19–12148 T. D. 5481

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 319.—TAXES RELATING TO MACHINE GUNS AND CERTAIN OTHER FIREARMS.

Small-game guns—Regulations 88 amended.

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 88 (1941 edition) [Part 319, Title 26, Code of Federal Regulations, 1941 Sup.], Dealing with taxes relating to machine guns and certain other firearms, to Public Law 177 (Seventy-ninth Congress, first session [page 539, this Bulletin]), approved August 11, 1945, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately preceding the quotation of section 3261(a), which is one of the statutory quotations appearing before section 319.3, the following:

PUBLIC LAW 177 (SEVENTY-NINTH CONGRESS, FIRST SESSION), APPROVED AUGUST 11, 1945.

* * * * * * *

SEC. 2. Section 3260(a) of the Internal Revenue Code is amended by striking out " *Provided,* That manufacturers and dealers in guns with two attached barrels from which only a single discharge can be made from either barrel without manual reloading shall pay the following taxes: Manufacturers, $25 per year; dealers, $1 per year." and inserting in lieu thereof the following: " *Provided,* That manufacturers and dealers in guns with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, guns designed to be held in one hand when fired and having a barrel twelve inches or more in length from which only a single discharge can be made without manual reloading, or guns of both types, shall pay the following taxes: Manufacturers, $25 per year; dealers, $1 per year."

SEC. 3. * * *

(b) The amendment made by section 2 of this Act shall apply with respect to any tax within the scope thereof payable under section 3260(a) of the Internal Revenue Code for any taxable period commencing on or after July 1, 1945.

PAR. 2. The first paragraph of section 319.5 is amended to read as follows:

SEC. 319.5. RATES OF TAX.—The special taxes are as follows:

Class 1. Importers or manufacturers of "firearms" as defined (see section 319.1(*a*)), except manufacturers in class 2	$500
Class 2. Prior to July 1, 1945, manufacturers whose production of "firearms" (see section 319.1(*a*)) is limited to guns with two attached barrels, 12 inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, and on and after July 1, 1945, manufacturers of "firearms" whose production is limited to guns with two attached barrels, 12 inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, or guns designed to be held in one hand when fired and having a barrel 12 inches or more in length from which only a single discharge can be made without manual reloading, or guns of both types	25
Class 3. Pawnbrokers, except those in class 5	300
Class 4. Dealers, other than pawnbrokers, except those in class 5	200
Class 5. Prior to July 1, 1945, dealers, including pawnbrokers, whose dealing in "firearms" (see section 319.1(*a*)) is limited to guns with two attached barrels, 12 inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, and, on and after July 1, 1945, dealers, including pawnbrokers, whose dealing in "firearms" is limited to guns with two attached barrels, 12 inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, or guns designed to be held in one hand when fired, and having a barrel 12 inches or more in length from which only a single discharge can be made without manual reloading, or guns of both types	1

PAR. 3. There is inserted immediately preceding the quotation of section 2722(a), which appears immediately before section 319.22, the following:

PUBLIC LAW 177 (SEVENTY-NINTH CONGRESS, FIRST SESSION), APPROVED AUGUST 11, 1945.

* * * That section 2720(a) of the Internal Revenue Code is amended to read as follows:

"(a) RATE.—There shall be levied, collected, and paid upon firearms transferred in the continental United States a tax at the rate of $200 for each firearm: *Provided*, That the transfer tax on any gun with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, or any gun designed to be held in one hand when fired and having a barrel twelve inches or more in length from which only a single discharge can be made without manual reloading shall be at the rate of $1. The tax imposed by this section shall be in addition to any import duty imposed on such firearm."

* * * * * * *

SEC. 3. (a) The amendment made by the first section of this Act shall apply with respect to any transfer within the scope thereof made on or after July 1, 1945.

* * * * * * *

PAR. 4. Section 319.23 is amended to read as follows:

SEC. 319.23. RATE OF TAX.—The transfer tax to be levied, collected, and paid with respect to all articles within the term "firearm" (see section 319.1(*a*)) transferred in the continental United States is at the rate of $200 for each firearm, except that prior to July 1, 1945, the rate of tax is $1 upon the transfer of any gun with two attached barrels, 12 inches or more but less than 18 (16 in the case of rifles of .22 caliber or less) inches in length, from which only a single discharge can be made from either barrel without manual reloading, and, on and after July 1, 1945, the rate of tax is $1 upon the transfer of any gun with two attached barrels, 12 inches or more but less than 18 (16 in the case of rifles of

.22 caliber or less) inches in length, from which only a single discharge can be made from either barrel without manual reloading, or any gun designed to be held in one hand when fired and having a barrel 12 inches or more but less than 18 (16 in the case of rifles of .22 caliber or less) inches in length, from which only a single discharge can be made without manual reloading. In every case the tax shall be paid by the transferor.

(This Treasury decision is issued under the authority contained in sections 2732 and 3791 of the Internal Revenue Code (53 Stat., 294, 467; 26 U. S. C., 2732, 3791).)

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

Approved October 3, 1945.

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

(Filed with the Division of the Federal Register October 4, 1945, 11.38 a. m.)

INTERNAL REVENUE CODE.

SECTION 3261.

REGULATIONS 88 (1941), SECTION 319.31: Registration of firearms. 1945–21–12160 Mim. 5937

Registration of firearms as defined in section 2733 of the Internal Revenue Code sent or brought into the United States by members of the armed forces.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., October 15, 1945.

Collectors of Internal Revenue and Others Concerned:

During the latter part of 1943, pursuant to conferences of representatives of the State, War, Navy, and Post Office Departments, the Bureau of Customs and this Bureau, Army and Navy personnel were permitted to bring or send into the United States captured enemy equipment, including firearms as defined in section 2733 (a) and (b) of the Internal Revenue Code.

Bureau of Customs circular letter dated October 22, 1943, provided that firearms coming within the above sections of the Code would be released to the importer when the required certificate from his commanding officer accompanied the firearm, and after execution of Form 6 (Firearms), in duplicate, under oath. It further provided that where such firearm was sent in the mail to a friend or relative for holding until the owner's return, the addressee, prior to the receipt of the firearm, should execute Form 6 (Firearms), indicating that the form was executed on behalf of the actual owner, and that if such firearm was sent in the mails to a friend or relative as a gift, the addressee, prior to the release of the firearm, should execute Form 6 (Firearms) as importer. Form 6 (Firearms) was to be endorsed by the proper customs officer to show that the firearm mentioned was released as a trophy of war, after which the form in duplicate was to be sent to the Commissioner of Internal Revenue.

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However, the Navy Department on November 30, 1944, and the War Department on May 28, 1945, issued directives forbidding shipment to the United States, after such dates, of firearms of the automatic type (or component parts), such as machine guns, submachine guns, or any type gun in which a number of shots or bullets may be discharged with one continuous pull of the trigger.

Due to the great volume of mail received from overseas, it has been physically impossible for the Bureau of Customs to examine more than a small percentage of all packages and to comply with the procedure as set forth in its letter of October 22, 1943. Therefore, an unknown number of these firearms have been imported with or without officers' certificates, and due to a lack of knowledge of the registration requirements, the possessors of the firearms, in most instances, have not executed Form 6 (Firearms).

The duty and responsibility of investigating, preventing, and detecting violations with respect to firearms as defined in section 2733 (a) and (b) of the Code rests with the Alcohol Tax Unit of the Bureau of Internal Revenue (Treasury Decision 5067, dated August 29, 1941 [C. B. 1941–2, 366]).

Where you receive a request for permission to register a firearm, either on Form 1 (Firearms) or Form 6 (Firearms), you should ascertain whether the firearm is a trophy of war. If the firearm is a trophy of war, registration should not be accepted, but you should have the applicant furnish (1) his name and address, (2) a description of the firearm, and (3) information as to the place where the firearm is ordinarily kept. The applicant should then be advised that this information will be furnished to the nearest district supervisor or investigator in charge of the Alcohol Tax Unit, whereupon an investigator will call upon the prospective registrant regarding the matter. The information secured should be forwarded to the district supervisor or investigator in charge at the earliest practicable date.

Instances will arise where a firearm is held in customs custody awaiting the receipt, from the addressee, of a properly executed Form 6 (Firearms), in order that the certificate of release may be inserted thereon. The addressee may inadvertently forward the Form 6 (Firearms) to your office. If it is shown thereon by which collector of customs it was furnished it will be appropriate for you to forward the said form to such collector. On the other hand, if this information is not available, the form should be returned to the addressee with the suggestion that it be forwarded to the collector of customs from whom it was received.

Firearms which have previously been registered on Form 6 (Firearms) as trophies of war should not again be registered on Form 1 (Firearms).

Correspondence relative to this mimeograph should refer to the number thereof and symbols MT : M.

WM. T. SHERWOOD,
Acting Commissioner.

MISCELLANEOUS RULINGS.

SECTION 3466 OF THE REVISED STATUTES.

1945–2–11943
Ct. D. 1624

FEDERAL TAXES—REVISED STATUTES—DECISION OF SUPREME COURT.

STATE PROCEEDING—GENERAL ASSIGNMENT FOR BENEFIT OF CREDITORS—PRIORITY OF CLAIM OF UNITED STATES OVER LANDLORD'S LIEN AND MUNICIPAL TAX LIEN.

In a State proceeding under a general assignment for benefit of creditors section 3466 of the Revised Statutes (31 U. S. C., sec. 191) gives priority to a claim of the United States for unpaid Federal unemployment compensation taxes and a debt arising out of a Federal Housing Administration transaction over a landlord's lien for six months' rent due and to become due and a municipal tax lien for unpaid personal property taxes. No decision as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency or voluntary assignment is necessary since the asserted liens of the landlord and the municipality were not sufficiently specific and perfected on the date of the voluntary assignment to cast any serious doubt on the priority of the claim of the United States. A State court's characterization of a lien as specific and perfected, however conclusive as a matter of State law, can not operate by itself to impair or supersede a long-standing Congressional declaration of priority.

SUPREME COURT OF THE UNITED STATES.

The United States of America, petitioner, v. *Waddill, Holland & Flinn, Inc., et al.*

[323 U. S., 353.]

On writ of certiorari to the Supreme Court of Appeals of Virginia.

[January 2, 1945.]

OPINION.

Mr. Justice MURPHY delivered the opinion of the Court.

The issue here is whether, in a State proceeding under a general assignment for benefit of creditors, section 3466 of the Revised Statutes (31 U. S. C., section 191), gives priority to a claim of the United States over a landlord's lien and a municipal tax lien.

Mrs. Oeland Roman, the assignor, operated a restaurant in Danville, Va., on premises leased from respondent Waddill, Holland & Flinn, Inc. On June 19, 1941, she executed a general deed of assignment to a trustee for the benefit of creditors, specifically conveying all personal property, fixtures and equipment used by her in the conduct of the restaurant and located on the premises. This property remained on the premises until sold by the trustee on July 12, 1941. After deduction of appropriate administrative expenses, a sum of $1,407.29 remained. Four creditors claimed priority of payment from this amount.

(1) The United States claimed the sum of $1,559.63, plus interest, representing certain unpaid Federal unemployment compensation taxes and a debt arising out of a Federal Housing Administration transaction.

(2) The Virginia Unemployment Compensation Commission made a tax claim of $66.38, plus interest. The commission's claim, however, was conceded to be subordinate to that of the United States and need not be further considered here.

(3) The city of Danville claimed $300.55 as personal property taxes still unpaid. On July 2, 1941, the city collector distrained on all of the property on the leased premises.

(4) The landlord, Waddill, Holland & Flinn, Inc., claimed $1,500 for six months' rent due and to become due. The assignor's lease from this firm ran for five years beginning January 1, 1937, at a monthly rental of $250. On July 1, 1941, 12 days after the deed of assignment was executed, the firm obtained the issuance of a distress warrant for 3⅗ months' past due rent and an attachment for 2⅖ months' future installments of rent. On the same day, the firm levied the warrant and attachment on the assignor's property located on the leased premises.

The trustee under the general assignment filed a petition in the Corporation Court of Danville, reciting the various claims and requesting advice as to the proper distribution. That court held that the landlord was entitled to priority in payment over the claims of the United States and the Virginia Unemployment Compensation Commission but that its claim was subordinate to that of the city of Danville for taxes in the sum of $222.31. On appeal by the United States, the Supreme Court of Appeals of Virginia affirmed this order of distribution. (182 Va., 351, 28 S. E. (2d), 741.) We granted certiorari because of the importance of the problems raised and because of asserted conflict with this Court's decisions in *New York* v. *Maclay* (288 U. S., 290), and *United States* v. *Texas* (314 U. S., 480).

Section 3466 of the Revised Statutes provides in pertinent part that "the debts due to the United States shall be first satisfied" whenever any person indebted to the United States is insolvent or, "not having sufficient property to pay all his debts, makes a voluntary assignment thereof." We hold that this statute clearly subordinates the claims of both the landlord and the municipality to that of the United States. The judgment of the court below must accordingly be reversed.

The words of section 3466 are broad and sweeping and, on their face, admit of no exception to the priority of claims of the United States. (*Thelusson* v. *Smith*, 2 Wheat., 396, 425; *United States* v. *Texas*, supra, 484.) But this Court in the past has recognized that certain exceptions could be read into this statute. The question has not been expressly decided, however, as to whether the priority of the United States might be defeated by a specific and perfected lien upon the property at the time of the insolvency or voluntary assignment. (*Conard* v. *Atlantic Insurance Co.*, 1 Pet., 386, 441, 444; *Brent* v. *Bank of Washington*, 10 Pet., 596, 611, 612; *Spokane County* v. *United States*, 279 U. S., 80, 95 [C. B. XIII–1, 274 (1929)]; *United States* v. *Knott*, 298 U. S., 544, 551; *New York* v. *Maclay*, supra, 293, 294; *United States* v. *Texas*, supra, 485, 486.) It is within this suggested exception that the landlord and the municipality seek to bring themselves. Once again, however, we do not reach a decision as to whether such an exception is permissible for we do not believe that the asserted liens of the landlord and the municipality were sufficiently specific and perfected on the date of the voluntary assignment to cast any serious doubt on the priority of the claim of the United States.

The landlord rests its claim upon certain provisions of the Virginia Code of 1936. Sections 5519 and 5523 authorize a landlord to levy distress for six months' rent upon "any goods of the lessee * * * found on the premises, or which may have been removed therefrom not more than 30 days * * * for not more than six months' rent if the premises are in a city or town." Section 5524 provides that the goods of the tenant on leased premises in a city or town may not be removed by a lienor or purchaser, nor taken under legal process, save "on the terms of paying to the person entitled to the rent so much as is in arrear, and securing to him so much as is to become due," not to exceed six months' rent. Other sections provide for officers making the distress under warrant from a justice, founded upon an affidavit of the person claiming the rent, and for such officers to make returns of their actions and proceedings upon such warrants. Provisions are also made for legal proceedings looking toward the possession and sale of the property to satisfy the debt.

The Supreme Court of Appeals of Virginia has here held that these sections "give the landlord a lien which is fixed and specific, and not one which is merely inchoate, and that such a lien exists independent of the right of distress or attachment, which are merely remedies for enforcing it." (182 Va., at 363, 28 S. E. (2d), at 746.) It has also held that such a lien "relates back to the beginning of the tenancy" (182 Va., at 364, 28 S. E. (2d), at 746), thus giving it force and effect on date of the voluntary assignment. These interpretations of the Virginia statutes, as propositions of State law, are binding. But it is a matter of Federal law as to whether a lien created by State statute is sufficiently spe-

cific and perfected to raise questions as to the applicability of the priority given the claims of the United States by an Act of Congress. If the priority of the United States is ever to be displaced by a local statutory lien, Federal courts must be free to examine the lien's actual legal effect upon the parties. A State court's characterization of a lien as specific and perfected, however conclusive as a matter of State law, can not operate by itself to impair or supersede a long-standing Congressional declaration of priority. (*Field* v. *United States*, 9 Pet., 182, 201; *United States* v. *Oklahoma*, 261 U. S., 253, 260; *Spokane County* v. *United States*, supra, 90.)

Tested by its legal effect under Virginia law, the landlord's lien in this instance appeared to serve "merely as a *caveat* of a more perfect lien to come." (*New York* v. *Maclay*, supra, 294.) As of the date of the voluntary assignment, it was neither specific nor perfected. It gave the landlord only a general power over unspecified property rather than an actual interest in a definitive portion or portions thereof.

Specificity was clearly lacking as to the lien on June 19, 1941, the date of the assignment. On that day it was still uncertain whether the landlord would ever assert and insist upon its statutory lien. Until that was done it was impossible to determine the particular six months' rent, or a proportion thereof, upon which the lien was based. The lien did not relate to any particular six months' rent but could attach only for the rent which might be due at or after the time when the lien was asserted. (*Wades* v. *Figgatt*, 75 Va., 575, 582.) And if it were asserted at a time when the tenancy had terminated or would terminate within six months of the date to which rent had been fully paid, the lien could only cover less than six months' rent. Conceivably the amount of rent due or to become due was uncertain on the day of the assignment. The landlord may have been mistaken as to the rental rate or as to payments previously made and the tenant may have been entitled to a set-off. (See *Allen* v. *Hart*, 18 Gratt. (59 Va.), 722, 737; *Hancock* v. *Whitehall, &c. Co.*, 100 Va., 443, 447.) Moreover, while the lien legally attached to all such property as might be on the premises when the lien was asserted or within 30 days prior to distraint, the landlord could distrain goods only to the extent necessary to satisfy the rent justly believed to be due, the tenant possessing an action for damages for excessive distraint. (Virginia Code, section 5783; *Fishburne* v. *Engeldove*, 91 Va., 548; *Gurfein* v. *Howell*, 142 Va., 197.) Thus until the extent of the lien was made known by the landlord and until some steps had been taken to distrain or attach sufficient property to satisfy the lien, it was impossible to specify the goods actually and properly subject to the lien. Some of the goods on the premises may have been subject to mortgages or liens which attached before the goods were brought on the premises, in which case the landlord's lien would be inferior. (Virginia Code, section 5523.) And if other goods were removed after the date of the voluntary assignment but more than 30 days before the distraint or attachment, the right of distraint and attachment as to those goods would disappear. (Virginia Code, section 5523; *Dime Deposit Bank* v. *Wescott*, 113 Va., 567.) These factors compel the conclusion that neither the rent secured by the lien nor the property subject to the lien was sufficiently specific and ascertainable on the day of the voluntary assignment to fall within the terms of the suggested exception.

Nor was the statutory lien perfected as a matter of actual fact, regardless of how complete it may have been as a matter of State law. The tenant was divested of neither title nor possession by the silent existence of the landlord's statutory lien on the date of the assignment. Only after the lien was actually asserted and an attachment or a distraint levied, enabling the landlord to satisfy his claim out of the seized goods, could it be argued that such goods severed themselves from the general and free assets of the tenant from which the claims of the United States were entitled to priority of payment. Prior to that time, the lien operated to do no more than prevent the removal of goods from the premises by certain classes of persons (Virginia Code, section 5524), and give the landlord priority in distribution under State law provided that the goods remained on the premises. Such a potential, inchoate lien could not disturb the clear command of section 3466 of the Revised Statutes. Something more than a "*caveat* of a more perfect lien to come" was necessary.

The lien of the city of Danville stands in no better position in so far as the claim of the United States is concerned. The municipality contends that it assessed taxes on specific items of furniture and equipment pursuant to annual levies made by the city council and that a lien attached to such property on Janu-

ary 1, 1941, by operation of State law. It claims that this lien attached before the claim of the United States was acquired and hence had priority.

Under Virginia law, however, a municipal tax confers a lien on personal property which enables the city to follow it wherever it may be taken only if the assessment is specifically made on such property. (*Drewry* v. *Baugh & Sons*, 150 Va., 394, 400, 401; *Chambers* v. *Higgins*, 169 Va., 345, 351, 352.) The Corporation Court of Danville recognized that the city had not made such an assessment in this case since it held that assessment of the furniture and equipment as a unit was sufficient to satisfy this rule "so long as they remained on the premises where the owner's business was conducted." It realized that if this property unit were separated or removed from the premises different results would follow. Unless and until distraint was levied, which in this case occurred 13 days after the voluntary assignment, it was uncertain whether the furniture and equipment would remain intact as a unit on the premises and hence be subject to the tax lien. If such property had been removed, distraint could then have been levied on other undetermined property of the tenant. At least until actual distraint, therefore, there was no certainty as to the property subject to the lien and no transfer of title or possession relative to any property. Such a lien can not be said to be so explicit and perfected on the date of the voluntary assignment as to fall within the claimed exception to the priority of the United States.

Reversed.

Mr. JUSTICE JACKSON is of opinion that the judgment should be affirmed for the reasons stated by the Supreme Court of Appeals of Virginia.

SECTION 161 OF THE REVISED STATUTES.

REGULATIONS 12, ARTICLE 80: Contents not to be disclosed without permission. 1945–2–11942 T. D. 5428

Public inspection of Record 21, "Record of Seizure and Sale of Real Estate."—Article 80, Regulations 12, amended.

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

To Collectors of Internal Revenue and Others Concerned:

Article 80 of Regulations 12, revised October 1, 1920, which article was amended by Treasury Decision 4640, approved April 29, 1936 [C. B. XV–1, 495 (1936)], is further amended as follows:

(A) By changing the period at the end of the first paragraph thereof to a colon and inserting thereafter the following:

Provided, That Record 21, "Record of seizure and sale of real estate," maintained in offices of collectors of internal revenue, shall be open for public inspection in such offices, and a certified or uncertified copy of any such record covering particular property will be furnished by the collector upon application to him and payment of a fee of $1.

(B) By striking from the second paragraph the opening words "Internal-revenue officers are hereby prohibited" and inserting in lieu thereof the words "Except as otherwise provided in the preceding paragraph internal-revenue officers are hereby prohibited."

(This Treasury decision is issued under the authority contained in section 161 of the Revised Statutes of the United States; 5 U. S. C., 22.)

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

Approved January 11, 1945.

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

(Filed with the Division of the Federal Register January 12, 1945, 3.39 p. m.)

TITLE VII.—REFUNDS OF AMOUNTS COLLECTED UNDER THE AGRICULTURAL ADJUSTMENT ACT. (1936)

REGULATIONS 96, ARTICLE 601: Claim form prescribed. 1945–11–12057 Ct. D. 1640

PROCESSING TAX—REVENUE ACT OF 1936—DECISION OF SUPREME COURT.

1. CLAIMS FOR REFUND—PROCEDURAL REQUIREMENTS—EVIDENCE INSUFFICIENT TO ESTABLISH WAIVER OF REQUIREMENTS AS TO FORM.

Petitioner and Niagara company had the same officers, employees, and majority stockholder, a joint bank account, and a common set of books, although the respective transactions of the two companies were entered in separate accounts on the books. After invalidation of the processing tax, three claims for refund were filed, but not on the required forms, stating the name of the claimant as Niagara and/or petitioner. While these claims were still undetermined, Niagara filed a claim in due form on its own behalf alone. Thereafter, petitioner for itself alone filed on the required form a claim, designated "Amendment to Claim," which failed to give the information required by the form and the regulations, containing merely an apportionment between the two companies of the three earlier claims, which claim was denied. In connection with the claim filed by Niagara the Commissioner's representative wrote a letter to petitioner requesting an examination of certain books. The petitioner contends that the Commissioner through his agents waived the formal requirements of his regulations by investigating the merits of the petitioner's claim, the evidence of waiver resting largely upon the above letter. *Held:* The evidence is insufficient to establish that the Commissioner waived the requirements of his regulations by examining the facts of petitioner's claim in order to determine the merits. While such requirements may be waived, the "showing should be unmistakable that the Commissioner has in fact seen fit to dispense with his formal requirements and to examine the merits of the claim." In view of the confusing identity of interest of the two companies it is not unreasonable to attribute to Niagara's claim, and not to petitioner's, the request of the Commissioner's representative for an examination of the books. The protection of the revenue authorizes the Commissioner to demand information in a particular form, and he is entitled to insist that the form be observed so as to advise him expeditiously and accurately of the true nature of the claim.

2. DECISION AFFIRMED.

Decision of the Circuit Court of Appeals, Second Circuit (144 Fed. (2d), 469), affirming The Tax Court's dismissal of the proceeding (1 T. C., 1031), affirmed.

SUPREME COURT OF THE UNITED STATES.

Angelus Milling Co., petitioner, v. *Commissioner of Internal Revenue.*
[325 U. S., 293.]

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

[May 21, 1945.]

OPINION.

Mr. Justice FRANKFURTER delivered the opinion of the Court.

This is a suit under Title VII of the Revenue Act of 1936 (49 Stat., 1648, 1747, 7 U. S. C., section 644 *et seq.*), for a refund of processing taxes paid under the Agricultural Adjustment Act of 1933. The problem of the case derives from the procedural requirements of a claim for such a refund.

The petitioner, Angelus Milling Co., known until June, 1933, as the Middleport Flour Mills, Inc., was a processor of wheat, with its principal office in Niagara

Falls, N. Y. During the years for which the refund is claimed—1933 to 1936—its processing operations were closely connected with those of the Niagara Falls Milling Co. The two companies had the same officers, employees, and majority stockholder, and a joint bank account. They also had a common set of books, but the respective transactions of the two companies—purchases, costs of manufacture, sales—were entered in their separate accounts on the books. Between July 9, 1933, and January 31, 1935, the companies filed joint processing tax returns. Between February 1, 1935, and November 30, 1935, Niagara filed returns in its name on behalf of itself and petitioner.

After *United States* v. *Butler* (297 U. S., 1 [Ct. D. 1070, C. B. XV–1, 421 (1936)]) invalidated the processing tax, three claims were filed with the Commissioner on June 22, 1936, all stating the name of the taxpayer and claimant as "Niagara Falls Milling Co., Inc., and/or Middleport Flour Mills, Inc." Each of these claims is for only part of the period during which the tax was paid, and their total is $434,045.27. Admittedly the form of these claims did not satisfy the requirements of the statute [1] or the authorized Treasury regulations.[2] They were filed on an old Form 843 and not on the required Form P. T. 79. While these claims were still undetermined, Niagara, on June 30, 1937, filed a claim in the sum of $436,231.73. This claim was in due form but was filed by Niagara on its own behalf alone. Thereafter, on August 15, 1938, petitioner filed a claim, designated "Amendment to Claim," for itself alone for the refund of $145,839.12. While this claim was submitted on Form P. T. 79, it failed to give the information required by the form and the regulations, containing merely an apportionment between Angelus and Niagara of the three earlier claims. An attached affidavit stated that this claim "was originally filed on the 22d day of June, 1936, in the name of the Niagara Falls Milling Co. and/or Middleport Flour Mills, Inc." The Commissioner, on May 23, 1941, denied this claim.

To review this disallowance, petitioner brought proceedings in the United States Processing Tax Board of Review. A motion to dismiss, because of a fatal defect in the claim, was denied by the Board, but the Commissioner in his answer stood on his ground that the Board was without jurisdiction to entertain the proceedings. At this stage in the litigation Congress abolished the Processing Tax Board of Review and transferred its jurisdiction to the present Tax Court. That court granted the Commissioner's renewed motion to dismiss (1 T. C., 1031), and the Circuit Court of Appeals for the Second Circuit affirmed. (144 Fed. (2d), 469.) We brought the case here (— U. S., —), because conflict was urged with the decision in *United States* v. *Memphis Cotton Oil Co.* (288 U. S., 62 [Ct. D. 626, C. B. XII–1, 307 (1933)]).[3]

Petitioner's claim for recovering processing taxes paid by it was properly rejected by the Commissioner if it did not satisfy the conditions which Congress directly and through the rule-making power given to the Treasury laid down as a prerequisite for such refund. In so far as Congress has made explicit statutory requirements, they must be observed and are beyond the dispensing power of Treasury officials. (*Tucker* v. *Alexander*, 275 U. S., 228, 231–232 [T. D. 3973, C. B. VI–1, 287 (1927)]; *United States* v. *Memphis Cotton Oil Co.*, 288 U. S., 62, 71; *United States* v. *Garbutt Oil Co.*, 302 U. S., 528, 533 [Ct. D. 1301, C. B. 1938–1. 370].) Without needless elaboration, we conclude that there is nothing in what Congress has explicitly commanded to bar the claim. The effective administration of these modern complicated revenue measures inescapably leads Congress to authorize detailed administrative regulations by the Commissioner of Internal Revenue. He may insist upon full compliance with his regulations. (See *United States* v. *Memphis Cotton Oil Co.*, supra at 71; *Commissioner* v. *Lane-Wells Co.*, 321 U. S., 219, 223–224 [Ct. D. 1602, C. B. 1944, 539].) It is hardly contended that the confusing series of petitioner's claims which we have summarized, whether singly or in conjunction, obeyed the regulations. For such default the

[1] Section 903 of Title VII of the 1936 Revenue Act (49 Stat., 1648, 1747) requires that no refund be made or allowed "unless * * * a claim for refund has been filed * * * in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. All evidence relied upon in support of such claim shall be clearly set forth under oath."

[2] The applicable regulations provide for the making of claims on prescribed forms, presentation of the grounds urged, and submission of evidence, etc. (Treasury Regulations 96, articles 201, 202, 601, 603, 605, 606.) The only information furnished in these claims is the name and address of the joint claimants, and a statement of the dates and amounts of the tax payments made by the Niagara Milling Co.

[3] After we granted certiorari in this case, the same question of timeliness as to filing of the petition emerged as is raised in *Commissioner* v. *Estate of Bedford*, No. 710, decided this day [Ct. D. 1641, page 351, this Bulletin]. The decision in the Bedford case governs this.

Commissioner could have rejected the claims out of hand. He did not do that, and by what he did do he has given rise to the contention that he waived the requirement of his regulations. The basis of this claim of waiver is that the Commissioner through his agents dispensed with the formal requirements of a claim by investigating its merits.

Candor does not permit one to say that the power of the Commissioner to waive defects in claims for refund is a subject made crystal-clear by the authorities. The question has been somewhat complicated by cases involving amendments of claim. Thus, in *United States* v. *Memphis Cotton Oil Co.*, supra, a claimant's amendment was allowed because filed before his original claim was rejected on formal grounds. According to what was there said there can be no amendment after a rejection though the Commissioner had examined the claimant's books and tentatively found an overpayment. (See *Edwards* v. *Malley*, 109 Fed. (2d), 640; 10 Mertens, Law of Federal Income Taxation (1942), section 58.19.) It smacks too much of the strangling niceties of common law pleading to find no existing claim to which a curative amendment may be attached, although there has been an examination of the merits, simply because of the prior rejection of a formally defective claim and yet find waiver of a formal defect merely because an examination of the merits by the Commissioner manifests consideration of the claim.

Treasury regulations are calculated to avoid dilatory, careless, and wasteful fiscal administration by barring incomplete or confusing claims. (*Tucker* v. *Alexander*, supra at 231; *Commissioner* v. *Lane-Wells Co.*, supra at 223–224.) But Congress has given the Treasury this rule-making power for self-protection and not for self-imprisonment. If the Commissioner chooses not to stand on his own formal or detailed requirements, it would be making an empty abstraction, and not a practical safeguard, of a regulation to allow the Commissioner to invoke technical objections after he has investigated the merits of a claim and taken action upon it. Even tax administration does not as a matter of principle preclude considerations of fairness.

Since, however, the tight net which the Treasury regulations fashion is for the protection of the revenue, courts should not unduly help disobedient refund claimants to slip through it. The showing should be unmistakable that the Commissioner has in fact seen fit to dispense with his formal requirements and to examine the merits of the claim. It is not enough that in some roundabout way the facts supporting the claim may have reached him. The Commissioner's attention should have been focused on the merits of the particular dispute. The evidence should be clear that the Commissioner understood the specific claim that was made even though there was a departure from form in its submission. We do not think that the petitioner has made out such a case here.

The evidence of waiver largely rests upon a letter from a general deputy collector requesting an examination of certain books, and upon affidavits of two accountants, one an officer of the company, to the effect that the Commissioner examined petitioner's books in order to consider the claim. We agree with The Tax Court that the evidence is insufficient to establish waiver. The letter from the general deputy collector requesting petitioner's president to allow examination of the " records of the Middleport Flour Mills, Inc., and Angelus Flour Mills, Inc." was in connection with the claim which had been filed by the Niagara Milling Co. In view of the confusing identity of interest of the two companies, it is not unreasonable to attribute this inquiry, as did The Tax Court, to Niagara's claim and not to petitioner's. For similar reasons, the affidavits regarding the purpose of the Commissioner's representatives bear interpretation of a like significance.

In the Memphis Cotton Oil case, where an amendment was allowed out of time, the Deputy Commissioner, after an audit of the taxpayer's books, notified the taxpayer in writing that its refund claims had been considered and that its taxes had been readjusted in accordance with a proven overassessment. Similar evidence of preoccupation by the Commissioner with the particular claim and controversy has been offered in cases where waiver was recognized. (See, *e. g.*, *United States* v. *Elgin Nat. Watch Co.*, 66 Fed. (2d), 344; *United States* v. *Humble Oil & Refining Co.*, 69 Fed. (2d), 214; *Weihman* v. *United States*, 4 Fed. Supp., 155.) To be sure, it is not essential for the establishment of a waiver that the Commissioner communicate his ruling on the merits to the taxpayer. But in the absence of such explicitness the implication that formal requirements were dispensed with should not be tenuously argumentative. No more than that can be squeezed out of the materials in this record. Thus it is claimed that the Commissioner offered a refund, subject to offsets, to the Niagara Falls Milling Co. But this rather confirms the indication the Commissioner was bent on Niagara's claim. The

Commissioner may have acquired knowledge of petitioner's affairs but only by the way, incidentally to his investigation of Niagara's claims. Petitioner has failed to sustain his burden of showing that the Commissioner, by examining the facts of petitioner's claim in order to determine the merits, dispensed with the exactions of the regulations.

An additional argument of the petitioner need not detain us long. It urges that taking the claims filed by Niagara and petitioner together, they furnish all the data required by the regulations. But it is not enough that somewhere under the Commissioner's roof is the information which might enable him to pass on a claim for refund. The protection of the revenue authorizes the Commissioner to demand information in a particular form, and he is entitled to insist that the form be observed so as to advise him expeditiously and accurately of the true nature of the claim.

Affirmed.

Mr. Justice DOUGLAS dissents.

SECTION 907.—EVIDENCE AND PRESUMPTIONS.

REGULATIONS 96, ARTICLE 605: Evidence as to margins. 1945–5–11983 Ct. D. 1632

PROCESSING TAX—AGRICULTURAL ADJUSTMENT ACT OF 1933—REVENUE ACT OF 1936—DECISION OF SUPREME COURT.

1. SUIT—RECOVERY OF SUGAR PROCESSING TAXES—STATUTORY PRIMA FACIE EVIDENCE AND PRESUMPTION.

In a suit for recovery of sugar processing taxes paid under the Agricultural Adjustment Act of 1933, as amended, the presumption under section 907 of the Revenue Act of 1936, to the effect that the taxpayer bore the burden of the tax to the extent that its "average margin" for the tax period was lower than for the base period, is fully rebutted when the Commissioner presents evidence tending to show that in certain instances the claimant's selling prices included the tax. However, with the presumption thus removed from the case, the margins remain as evidence and might afford a rational basis for refund. The case must therefore be remanded to The Tax Court for a weighing of the evidence apart from any question as to a presumption. The statutory method of making a prima facie case is exclusive, and margin evidence with respect to the taxpayer's experience in 1936, after the termination of the base period, can not be used in connection therewith. However, such evidence is admissible for whatever probative value it might independently have.

2. JUDGMENT MODIFIED AND CAUSE REMANDED.

Judgment of the United States Circuit Court of Appeals, Fifth Circuit (140 Fed. (2d), 768), modified and cause remanded to the Circuit Court of Appeals with directions to remand to The Tax Court.

SUPREME COURT OF THE UNITED STATES.

Webre Steib Co., Ltd., petitioner, v. *Commissioner of Internal Revenue.*
[324 U. S., 164.]

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

[February 12, 1945.]

OPINION.

Mr. Justice JACKSON delivered the opinion of the Court.

This is a proceeding brought for recovery of sugar processing taxes paid under the Agricultural Adjustment Act of 1933. The Commissioner having denied in entirety the taxpayer's claim for $8,169.97, the total tax paid by it, taxpayer petitioned for review by the Processing Tax Board of Review, as provided by

statute (49 Stat., 1749). The Board awarded refund in the amount of $3,655.82, and motions for rehearing made by both parties were denied by The Tax Court, which had succeeded to the jurisdiction of the Processing Tax Board of Review. (56 Stat., 798.) On appeal, the Court of Appeals for the Fifth Circuit reversed and held that the claim should be denied. (140 Fed. (2d), 768.) We took the case to review questions of application of the "prima facie evidence" and "presumption" sections of Title VII, Revenue Act of 1936, on which there was conflict in the circuits. (*Commissioner* v. *Bain Peanut Co.*, 134 Fed. (2d), 853, certiorari granted, 320 U. S., 721, dismissed on motion of petitioner, 321 U. S., 800; *Helvering* v. *Insular Sugar Refining Corporation*, 141 Fed. (2d), 713; cf. *E. Regensburg & Sons* v. *Helvering*, 130 Fed. (2d), 507.)

A new administrative procedure for recovery of taxes paid under the Agricultural Adjustment Act was provided by Title VII of the Revenue Act of 1936 (sections 901–917, 49 Stat. 1747, 7 U. S. C., sections 644–659), repealing sections 21 (d), (e), and (g) of the 1935 amendments to the Agricultural Adjustment Act (49 Stat., 771–773). The provisions were reviewed at length and their constitutionality upheld in *Anniston Mfg. Co.* v. *Davis* (301 U. S., 337 [Ct. D. 1234, C. B. 1937–1, 485]). In outline, so far as relevant to this case, they are as follows: The claimant is required to prove that he bore the burden of the tax. Section 902. Average "margins" per unit of the commodity processed, consisting of the difference between cost of the commodity (plus tax paid, if any) and gross sales value of the articles resulting from the processing, are to be computed for the tax period and a base period; the base period is the period two years preceding imposition of the tax and the six months thereafter (February to July, 1936). (Sections 907 (b), (c).) If the margins for the tax period are lower than those for the base period, it is "prima facie evidence" that, to that extent, the claimant bore the burden of the tax; if they are not lower, it is "prima facie evidence" that none of the burden was borne by the claimant. (Section 907(a).) But this "presumption" may be rebutted either by the claimant or by the Commissioner, by proof of "the actual extent" to which the claimant shifted the tax to others. Such proof may include, but is not limited to, certain types of evidence described by the statute. (Section 907(e).)

For our purposes the material facts must be gleaned from the findings and memorandum of the Board of Review and a stipulation filed by the parties in the court of appeals.

Petitioner is a grower and purchaser of sugarcane, which it processes into direct-consumption sugar and edible molasses.[1] It operates during the months of October, November, and December of each year. The tax went into effect on June 8, 1934, and petitioner paid taxes until November 8, 1935, so that it paid processing taxes—$7,067.12 on sugar and $1,102.85 on molasses—for the months of October, November and December 1934 and October and November 1935. Its average statutory margin for this period was $.01192, and the total number of units processed was 2,256,676 pounds of sugar. Petitioner's base period consisted only of the two years prior to the tax because it did no processing in the six months February to July 1936. Its average statutory margin per unit for the base period was $.01354. Thus the margin during the tax period was $.00162 per unit lower than that during the base period, creating "prima facie evidence" that petitioner had borne the tax to the extent of $3,655.82, the amount of refund allowed by the Board. Petitioner contends that this amount should have been increased by including in the margins its first processing after invalidation of the Agricultural Adjustment Act, which was its processing of the 1936 crop, October 1936 to January 1937. The average margin per unit for this period, computed as for the base period, was $.01582, or $.00228 more than the base-period margin.

Evidence that the tax was not borne by petitioner was as follows: Universal increases in the sale price of sugar were effected on the date of imposition of the processing tax in the amount of $.55 per hundred pounds, to cover the amount of the tax. All of the accounts stated between petitioner and its broker, E. A. Rainold, Inc., respecting sales of molasses made through that broker, included the processing tax as a separate item and as an addition to the sale price of the article. "An account sale, typical of all such accounts, respecting the sale of sugar, made through its said broker" bore the notation, "Golden Ridge, 100 Pkts. 10,000# @3.71¢ $371.00. F. O. B. Pltn. Tax Pd. Tax

[1] This processing was subjected to tax by the Act of May 9, 1934 (ch. 263, 48 Stat., 670), amending the Agricultural Adjustment Act. See especially section 9(d)(6) (A) and (B) of the Act as amended (7 U. S. C., section 609(d)(6) (A), (B)).

0.526¢," $.526 being the prevailing rate of processing tax at the time the particular account was rendered. A letter from the broker Rainold to petitioner, dated January 17, 1936, contained the following: "According to memorandum you furnished us on processing tax you paid on 298,017 pounds of sugar, and we have accounted to you for there [three] cars of 800 pockets and part car of 300 pockets and when we get paid for balance of this part car, or 500 pockets, it will total 3,200 pockets or 320,000# on which the processing tax was included in the price. Therefore you have not paid any more tax than you collected and these sugars in warehouse here and elsewhere, that is Chicago, or [are] really tax free."

On the foregoing facts the Board of Review found that "The extent to which the processing tax [was] paid and borne by the petitioner and not shifted to others in any manner whatsoever is $3,655.82," and it awarded refund in that amount. This award was based, the circuit court of appeals thought, "upon the theory that the claimant had established facts sufficient to invoke the statutory presumption that it had borne the burden of the tax" to that extent. In the view of the court of appeals, however, the evidence "clearly was sufficient to dissolve the presumption, and since there was no other proof to support any refund, the claim should have been disallowed in its entirety."

Our first question is whether the Board was entitled to base an award upon the statutory "prima facie evidence" or "presumption," or whether the Government's evidence removed the presumption from the case as a matter of law. For, although the Board did not state how it arrived at its award, it seems likely that it relied upon the prima facie evidence provisions and not upon a weighing of the evidence; petitioner does not assign error to the contrary, although it contends that the evidence supports the Board's award.

The statute, unfortunately, is beset by the ambiguity and the imprecision of definition which are not uncommon with respect to presumptions. But the difficulties of the subject will not excuse us from the duty to apply as best we may a statute Congress has seen fit to enact. At one point its speaks only of "prima facie evidence" and at another it refers to the prior section as creating a "presumption." "Prima facie evidence" alone might be taken to signify only a permissive inference, indicating that the Commissioner or the courts might, if they saw fit, permit a recovery solely on the basis of the margin evidence. (See *Crane* v. *Morris*, 6 Pet., 598, 621; *Bailey* v. *Alabama*, 219 U. S., 219, 234; 9 Wigmore on Evidence (3d ed. 1940), section 2494.) But the statute's later use of the word "presumption" and the careful detail with which the margin evidence and rebuttal evidence are described argue against such an interpretation, as does the legislative background. A committee report on Title VII, explaining the necessity for amending the existing refund provisions, stated: "It has been contended that while that section [section 21(d) of the Agricultural Adjustment Act] states the conditions under which the Commissioner may deny a refund of taxes paid, it does not establish affirmatively any conditions, compliance with which will enable the claimant to secure a refund." (S. Rept. 2156, Seventy-fourth Congress, second session, page 33 [C. B. 1939–1 (Part 2), 678].) From this it seems clear that the new provision was meant to prescribe a minimum of proof which would require refund in the absence of opposing evidence. Therefore the inference arising from the margin evidence must be a compelled one.

The statute does not tell, however, on what event the existence of the presumed fact must cease to be assumed by the trier. Does the presumption cease to operate as soon as the Commissioner has met the burden of going forward with evidence to show shifting of the tax, or does it place on him the burden of proof? The Government and the court below, taking the former view, support it with the contention that "It is never the function of a rebuttable presumption to shift the burden of proof." (*Commissioner* v. *Bain Peanut Co.*, 134 Fed. (2d), 853, 857.) It is unnecessary for us to take so broad a ground, even if it is correct.[2] Dealing only with the particular presumption now before us, we find nothing to indicate that Congress attached exceptional probative value to the margin evidence, or that it desired for any other reason to tilt the scales sharply against the Com-

[2] But see, e. g., *Morrison* v. *California* (291 U. S., 82, 88–91); *Page* v. *Phelps* (108 Conn., 572); *Weber* v. *Chicago, R. I. & Pac. R. Co.* (175 Iowa, 358); *Bond* v. *St. Louis-San Francisco Ry. Co.* (315 Mo., 987); *Holzheimer* v. *Lit Brothers* (262 Pa., 150); Morgan, Instructing the Jury upon Presumptions and Burden of Proof (1933) (47 Harv. L. Rev., 59, 77–83); Some Observations Concerning Presumptions (1931) (44 Harv. L. Rev., 906); Bohlen, Studies in the Law of Torts (1926) (636, 637, 648–653); American Law Institute, Model Code of Evidence, rule 703.

missioner rather than merely to even them somewhat in behalf of claimants. There is, for example, no reason to suppose that the Commissioner is better able than the processor to prove where the tax burden fell. On the other hand, the special problem here of preventing unjust enrichment, added to the usual strict examination of claims against the Government, convinces that Congress probably intended to leave the burden of proof on the claimant. (Cf. *United States* v. *Jefferson Electric Mfg. Co.*, 291 U. S., 386 [Ct. D. 803, C. B. XIII–1, 393 (1934)].)

In the absence of any clearer statement in the statute, therefore, we think the presumption is given adequate effect if the burden is placed on the Commissioner of going forward with evidence sufficient to support a finding that the claimant did not absorb the tax. Once such evidence is presented, the presumption becomes inoperative and the issue is to be determined as if there had never been a presumption. The statute declares, however, that the presumption may be rebutted by proof of "the actual extent" to which the burden of the tax was shifted. This language appears to mean that the presumption may be rebutted pro tanto, and not necessarily all at once or not at all. Thus it does not cease to operate on introduction of evidence merely sufficient to support a finding that some of the tax was shifted. It must be evidence sufficient to support a finding that the entire tax was shifted. Short of that, the presumption is not eliminated but only diminished to the extent that the rebuttal evidence will support a contradictory finding. (See *E. Regensburg & Sons* v. *Helvering*, 130 Fed. (2d), 507, 509.) When the margins are unfavorable to the taxpayer and favorable to the Commissioner, it is unnecessary, of course, to place a burden of going forward with evidence on the claimant, for he has that burden anyway, as well as the burden of proof. Whether this means that the statute's language making the presumption operate in favor of the Commissioner is superfluous, or that in such a case the presumption must be given a different effect than when in favor of the claimant, we do not now decide. (Cf. *E. Regensburg & Sons* v. *Helvering*, supra.)

On the view we take of the statute, the proof introduced by the Commissioner made the presumption inoperative. We certainly could not say that, viewed by itself, the Commissioner's evidence would not permit a finding that petitioner shifted the entire burden of the tax. It tended to show that in all dealings with its broker the petitioner added the amount of the tax to the sale price and itemized it separately. That this was true as to all sales of molasses seems to be conceded. It was also true, or so it might be found, as to a substantial part of the sugar sales and therefore inferentially as to all such sales. Petitioner raises some question as to the proper inference to be drawn from the sugar account and the broker's letter quoted above. But at least the broker's remarks that "the processing tax was included in the price" and "Therefore you have not paid any more tax than you collected" are unmistakable in their meaning. All of this evidence is among the kinds expressly mentioned by the statute as tending to rebut the presumption. More important, the statute appears specifically to provide that introduction of any evidence of his particular kind shall be sufficient to rebut the entire presumption. It states that the presumption may be rebutted by proof that the claimant modified sales contracts to reflect the initiation, termination, or change in amount of the tax, or "at any such time" changed the sale price of the article, or "at any time" billed the tax as a separate item, or indicated "by any writing" that the sale price included the amount of the tax. It then declares, "but the claimant may establish that such acts * * * do not represent his practice at other times." (Section 907(e)(2).) This seems clearly to mean that when any examples of the named practices are proved, it may be inferred that they represent the uniform practice of the claimant and the burden becomes his to prove that they do not. Since the Commissioner proved that not only in a few cases but in a great number the tax was indicated in writing to be included in the sale price, we think there is no doubt that he fully rebutted the presumption within the meaning of the statute.

The second question is whether, with the presumption out of the case, there is evidence from which The Tax Court would be entitled to award a refund to petitioner in any amount. The court below, although it remanded the cause, apparently meant for it to be dismissed, for it said, "since there was no other proof to support any refund, the claim should have been disallowed in its entirety." Literally, of course, this can not be true, for the margin evidence remained in the case for whatever it might be worth apart from the presumption. With this the Government agrees, and it concedes that, unless we can say that the evidence would not rationally support a finding in favor of petitioner, the case must go back to The Tax Court for decision on the evidence rather than

on the presumption. We must determine whether there is evidence which is legally sufficient for administrative action, but we may not weigh it. (*Dobson* v. *Commissioner*, 320 U. S., 489 [Ct. D. 1597, C. B. 1944, 56].)

The fact that margins for the tax period are lower than those for the base period has some logical tendency to establish that the burden of the tax was borne by the processor. (See *Anniston Mfg. Co.* v. *Davis*, 301 U. S., 337, 354.) There are, to be sure, other and conflicting inferences which may also be drawn. As the margins are defined, the drop might be due to a decline in the demand for the processed goods, or to a decrease in the yield of the raw commodity, or to an increase in the price of the raw commodity. But we have no basis for saying that the margin thus defined does not tend to be comparatively stable and that a fall coincident with imposition of a tax would not more likely reflect the tax than a change in other factors. We suppose the taking of average margins over a base period has some tendency to produce that result. And The Tax Court's special experience might support such an inference. (Cf *Dobson* v. *Commissioner*, supra.) Congress apparently believed that the rational connection was strong enough to justify basing a finding of absorption on the margin evidence alone. For, as we have seen, Congress intended that in a case where the margins were favorable to the claimant and no other evidence was introduced the claimant should be entitled to a refund, and there appears no reason of convenience or policy which would lead to such a rule in the absence of rational connection. For all these reasons we think a finding of absorption which was based solely on the margin comparisons would not be irrational.

Nor is the Commissioner's evidence so conclusive as to deprive the margin evidence of all significance. It permits but does not require a finding that petitioner had a uniform practice of billing the tax as a separate item. Even though such a practice be inferred, there is no evidence to show how far petitioner succeeded in its effort to pass the tax on, except for the evidence that there was a general rise in the market on a date some months before petitioner's processing began. The margins are some evidence that the price may not have responded continuously to the effort to shift the tax. The fact may be that neither side's evidence goes very far toward demonstrating where the burden of the tax fell;[3] the inquiry is at best a difficult one. But we do not think it can be said that the record is devoid of rational support for a finding that petitioner absorbed some of the tax. Accordingly we must remand the case for a weighing of the evidence, including, of course, such further evidence as that court may think it proper to receive in view of the way in which the case has been tried. In doing so we intimate no opinion, of course, as to whether petitioner has sustained the burden of proof placed upon it by the statute.

Since the case must go back, it is necessary to pass upon a further question raised by petitioner. Petitioner, as we have noted, was not processing during the six months, February to July 1936, designated by the statute for computing margins after the tax period. For such a case the statute provides: "If during any part of such period the claimant was not in business * * * the average prices paid or received by representative concerns engaged in a similar business and similarly circumstanced may with the approval of the Commissioner, where necessary for a fair comparison, be substituted in making the necessary computation." (Section 907(c).) Contending that there were no similarily circumstanced concerns, petitioner sought to use the figures of a later period, that of its own 1936 production, in computing the base-period margins, which would have made those margins higher. We think the Board and the court below were correct in holding that the statutory method of making a prima facie case is exclusive and that the 1936 evidence might not be so used. The statute's restrictions, however, have reference only to the presumption; they do not exclude other evidence generally relevant on the issue of whether the tax burden was shifted. The 1936 experience, though it could not help petitioner to create a favorable presumption, was entitled to be given whatever probative value it might independently have had and, subject to the usual principles of admissibility, was therefore admissible. (*Anniston Mfg. Co.* v. *Davis*, 301 U. S., 337, 355–356.)

The judgment below is modified and the cause is remanded to the Circuit Court of Appeals with directions to remand to The Tax Court for proceedings in conformity with this opinion.

Dissenting opinion by Mr. Justice RUTLEDGE, in which Mr. Justice BLACK concurs.

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[3] See Johnson, AAA Refunds: A Study in Tax Incidence (1937) (37 Col. L. Rev., 910).

SALARY STABILIZATION.

1945–3–11962
T. D. 5435

TITLE 29—LABOR.—CHAPTER VIII, PART 1002.—STABILIZATION OF SALARIES.

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

To Collectors of Internal Revenue and Others Concerned:

Treasury Decision 5295 [Part 1002, Title 29, Code of Federal Regulations] [C. B. 1943, 1193], relating to the stabilization of salaries under the Act of October 2, 1942, is amended as follows:

PARAGRAPH 1. Subparagraph (*a*) of section 1002.28 is amended to read as follows:

(*a*) Section 5(a) of the Act provides in effect that the President shall prescribe the extent to which any salary payment made in contravention of regulations promulgated under the Act shall be disregarded by executive departments and other governmental agencies in determining the costs or expenses of any employer for the purpose of any other law or regulation. Paragraph (*a*) of section 4001.15 of the General Regulations, as amended, provides in effect that if any salary payment is determined by the Commissioner to have been made by an employer in contravention of the Act or the regulations, rulings, or orders promulgated thereunder, the entire amount of such payment shall be certified to and disregarded by the executive departments and all other agencies of the Government (except as provided in paragraph (*b*) and paragraph (*c*) of such section) for the purposes of:

(1) Determining costs or expenses of any employer for the purpose of any law or regulation, either heretofore or hereafter enacted or promulgated, including the Emergency Price Control Act of 1942, or any maximum price regulation thereof.

(2) Calculating deductions under the revenue laws of the United States.

(3) Determining costs or expenses under any contract made by or on behalf of the United States.

Paragraph (*b*) of section 4001.15 of the General Regulations, as amended, provides in effect that the Commissioner is authorized, in any case in which it has been found that an employer has made wage or salary payments in contravention of the Act, to determine, in the light of such extenuating circumstances as are found to be present in each case and all other pertinent considerations: (1) An amount, less than the full amount prescribed in (*a*) above, which shall be disregarded by the executive departments and other agencies of the Government, and (2) the particular departments or other agencies of the Government by which the amount shall be disregarded, and to certify such amounts to such agencies. Paragraph (*c*) of section 4001.15 of the General Regulations, as amended, provides in effect that any such determination by the Commissioner shall be conclusive and the executive departments and the other agencies of the Government which receive such certifications shall disregard the amount thus certified in determining the employer's costs or expenses for the purpose of any law or regulation including the Emergency Price Control Act of 1942 or any maximum price regulation thereunder; or for the purpose of calculating deductions under the revenue laws of the United States; or for the purpose of determining costs or expenses of any contract made by or on behalf of the United States.

PAR. 2. Subparagraph (*b*) of section 1002.28 is amended to read as follows:

(*b*) In the case of salaries decreased in contravention of the Act, the amount to be disregarded may, under paragraph (*a*) of this section, be the entire amount of the salary actually paid or accrued by the employer at the reduced rate. Thus, if, for example, on November 1, 1942, a weekly salary rate of $100 has been unjustifiably reduced to $50 for the remainder of the calendar year 1942, the amount to be disregarded under paragraph (*a*) of this section may be the total amount of salary paid at the weekly rate of $50.

PAR. 3. Subparagraph (*c*) of section 1002.28 is amended to read as follows:

(*c*) In the case of salaries increased in contravention of the Act, the amount to be disregarded may, under paragraph (*a*) of this section, be the entire amount of the salary actually paid or accrued by the employer at the increased rate and not merely an amount representing an increase in such salary. Thus, if, for example, on November 1, 1942, a weekly salary rate of $100 is unjustifiably increased to $150 for the remainder of 1942, then the amount of salary to be disregarded for purposes of paragraph (*a*) of this section may be the total amount paid at the weekly rate of $150. Also, if, for example, on February 1, 1943, a weekly salary rate of $100 is increased to $150 without prior required approval, but is restored to $100 on June 1, 1943, after formal disapproval by the Commissioner or regional officer, then the amount of salary to be disregarded for purposes of paragraph (*a*) of this section may be the total amount at the weekly rate of $150. Neither in the cases described in this paragraph nor in the case described in paragraph (*b*) of this section are the total amounts paid at the weekly rate of $100 to be disregarded for purposes of paragraph (*a*) of this section. (See section 1002.30, relating to salary allowances under section 23(a) of the Code.)

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

Approved February 2, 1945.

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

(Filed with the Division of the Federal Register February 3, 1945, 12.42 p. m.)

1945–7–12014
T. D. 5450

TITLE 29—LABOR.—CHAPTER VIII, PART 1002.—STABILIZATION OF SALARIES.

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

To Collectors of Internal Revenue and Others Concerned:

Treasury Decision 5295 [C. B. 1943, 1193] [Part 1002, Title 29, Code of Federal Regulations], relating to the stabilization of salaries under the Act of October 2, 1942, is amended as follows:

Section 1002.37, as added by Treasury Decision 5416 [C. B. 1944, 717] [9 F. R. 13195], is amended to read as follows:

SUBMISSION OF REPORT.—If, upon review of the report of investigation, the head of the regional office believes that the salary payment was made in contravention, he shall submit a report, in detail, to the Commissioner, together with the original report of investigation. The employer, if he so desires, may have a conference in the regional office prior to the submission of the report to the Commissioner.

GEO. J. SCHOENEMAN,
Acting Commissioner of Internal Revenue.

Approved April 5, 1945.

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

(Filed with the Division of the Federal Register April 7, 1945, 11.36 a. m.)

1945–14–12087
T. D. 5462

TITLE 29—LABOR.—CHAPTER VIII, PART 1002.—STABILIZATION OF SALARIES.

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

To Collectors of Internal Revenue and Others Concerned:

Treasury Decision 5295 [C. B. 1943, 1193] [Part 1002, Title 29, Code of Federal Regulations], relating to the stabilization of salaries under the Act of October 2, 1942, is amended, for fiscal and calendar years ending subsequent to December 31, 1943, as follows:

Subdivision (4) of the third paragraph of section 1002.14, as added by the second paragraph of paragraph 4 of Treasury Decision 5406 [C. B. 1944, 715] (9 F. R., 11837), is amended to read as follows:

(4) (*a*) If the employer has, prior to October 3, 1942, customarily paid bonuses on a fixed percentage basis or had entered into a contractual agreement prior to that date to pay bonuses on a fixed percentage basis, the employer may pay a bonus determined in accordance with such custom or agreement, provided no change has been made in either the percentage or method of determining the bonus fund, and no change has been made in the percentage or method of determining the amount payable to each employee.

(*b*) If the employer had, prior to October 3, 1942, customarily paid bonuses out of a fund based on a fixed percentage of profits, sales or the like, the employer may, without prior approval, pay a bonus determined in accordance with such custom provided no change has been made in either the percentage or method of determining the bonus fund, and no change has been made in the basis of determining the amount payable to each employee.

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

Approved July 9, 1945.

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

(Filed with the Division of the Federal Register July 11, 1945, 10.08 a. m.)

MISCELLANEOUS.

INTERNAL REVENUE CODE.

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

1945–2–11946
T. D. 5429

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 472.—TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR.

Section 472.102(*b*) of Treasury Decision 5279 [C. B. 1943, 952], specifying certain acts with respect to which a period of time may be disregarded under section 3804 of the Internal Revenue Code, amended to include the relinquishment by the grantor of power to change the disposition of certain trust property as provided in section 1000(e) of the Code.

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

To Collectors of Internal Revenue and Others Concerned:

Section 472.102(*b*) of Treasury Decision 5279 [Part 472, Title 26, Code of Federal Regulations, 1943 Sup.], approved July 10, 1943 [C. B. 1943, 952], as amended by Treasury Decision 5293, approved August 30, 1943 [C. B. 1943, 977], is further amended by inserting at the end thereof the following:

(11) Relinquishment by the grantor, as provided in section 1000(e), of power to change the disposition of the property in certain trusts described in such section or the income therefrom.

(This Treasury decision is issued under the authority contained in sections 3791 and 3804 of the Internal Revenue Code (53 Stat., 467, 56 Stat., 961; 26 U. S. C., 1940 ed., 3791, 26 U. S. C., 1940 ed., Sup. III, 3804).)

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

Approved January 16, 1945.

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

(Filed with the Division of the Federal Register January 17, 1945, 11.02 a. m.)

1945–6–11998
T. D. 5444

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 472.—TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF WAR.

Section 472.102(*b*) of Treasury Decision 5279 [C. B. 1943, 952], specifying certain acts with respect to which a period of time may be disregarded under section 3804 of the Internal Revenue Code, amended to include the election referred to in section 112(b)(7)(C) and (D) of the Code.

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

To Collectors of Internal Revenue and Others Concerned:

Section 472.102(*b*) of Treasury Decision 5279 [Part 472, Title 26, Code of Federal Regulations, 1943 Sup.], approved July 10, 1943 [C. B. 1943, 952], as amended by Treasury Decision 5429, approved January 16, 1945 [page 474, this Bulletin], is further amended by inserting at the end thereof the following:

(12) In the case of the written election of the shareholder (other than a corporation), the filing required by section 112(b)(7)(D) within 30 days after the adoption of the plan of liquidation, but only if the 80 per cent requirement of section 112(b)(7)(C)(i) is satisfied by the filing of elections which are timely without regard to this provision of these regulations.

(This Treasury decision is issued under the authority contained in sections 3791 and 3804 of the Internal Revenue Code (53 Stat., 467, 56 Stat., 961; 26 U. S. C., 1940 ed., 3791, 26 U. S. C., 1940 ed., Sup. III, 3804).)

GEO. J. SCHOENEMAN,
Acting Commissioner of Internal Revenue.

Approved March 5, 1945.

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

(Filed with the Division of the Federal Register March 5, 1945, 4.11 p. m.)

SECTION 511 OF THE MERCHANT MARINE ACT, 1936, AS AMENDED.

1945-6-11999
T. D. 5445

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER A, PART 32.—ESTABLISHMENT OF CONSTRUCTION RESERVE FUNDS.

TITLE 46—SHIPPING.—CHAPTER II—UNITED STATES MARITIME COMMISSION.—PART 287.—(GENERAL ORDER 38 REVISED, SUPP. I).

Amendment of revised regulations under section 511 of the Merchant Marine Act, 1936, as amended.

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

UNITED STATES MARITIME COMMISSION,
Washington 25, D. C.

To Officers and Employees of the Treasury Department, the United States Maritime Commission, and Others Concerned:

In order to conform regulations filed with the Division of the Federal Register January 29, 1944, and designated as Treasury Decision 5330 [C. B. 1944, 720], and as General Order 38 Revised of the United States Maritime Commission [Part 32, Title 26, and Part 287, Title 46, Code of Federal Regulations, 1944 Supp.], to the Act ap-

proved December 23, 1944 (Public Law 552, Seventy-eighth Congress), such regulations are hereby amended as follows:

PARAGRAPH 1. Section 32.0 is amended by inserting immediately following the quotation of section 511 of the Merchant Marine Act, 1936, as amended, the following:

The Act approved December 23, 1944 (Public Law 552, Seventy-eighth Congress), provides:

That the first sentence of section 511(c) of the Merchant Marine Act, 1936, as amended, is amended to read as follows:

"(c) In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then—

"(1) if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, or

"(2) in case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and prior to January 1, 1944, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, if the taxpayer so elects prior to March 31, 1945, or prior to the expiration of sixty days after the receipt of the payment or indemnity, whichever is later, and in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury,

no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. If an election is made under subdivision (2) and if computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election."

SEC. 2. Section 511 of the Merchant Marine Act, 1936, as amended, is amended by adding at the end thereof a new subsection to read as follows:

"(n) The terms 'contract for the construction' and 'construction contract', as used in this section, shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement between such taxpayer and the Commission with respect to such construction and containing provisions deemed necessary or advisable by the Commission to carry out the purposes and policy of this section."

PAR. 2. Section 32.1 is amended by inserting immediately following subparagraph (*h*) a new subparagraph, as follows:

(*i*) The terms "contract," "contract for the construction," and "construction contract," shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement between such taxpayer and the Commission with respect to such construction and containing provisions deemed necessary or advisable by the Commission to carry out the purposes and policy of the statute.

PAR. 3. Section 32.12 is amended to read as follows:

SEC. 32.12. ELECTION.—(*a*) *General.*—As a prerequisite to nonrecognition of gain on the sale or loss of a vessel, or a part interest therein as provided by the statute, the taxpayer, after establishing a construction reserve fund, must make an election with respect to such vessel or share therein.

Deposit of an amount equal to the net proceeds of the sale or loss of the vessel or of the taxpayer's interest therein must be made within the period specified in section 32.15 of these regulations and may not be delayed beyond the specified period to await the execution or filing of a statement of election.

(b) *Manner of election.*—(1) *General.*—Except in cases of certain Government payments covered by paragraph (2) an election shall be made in accordance with this paragraph: The election shall be made in the taxpayer's income tax return, or in case of a partnership in the partnership return of income, for the taxable year in which the gain is realized. The election shall be shown by a statement to that effect, submitted as a part of, and attached to, the return. The statement, which need not be on any prescribed form, shall set forth a computation of the amount of the realized gain, the identity of the vessel, the nature and extent of the taxpayer's interest therein, whether such vessel was sold or lost and the date of sale or loss, the full sale price or full amount of indemnity, and the amount and date of each payment thereof, the basis for tax purposes and any other data affecting the determination of the realized gain.

(2) *Certain Government payments.*—In case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and prior to January 1, 1944, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, the taxpayer may make his election by filing notice thereof with the Commissioner of Internal Revenue, Washington 25, D. C., prior to March 31, 1945, or prior to the expiration of 60 days after receipt of the payment or indemnity, whichever is later. The taxpayer should file a copy of the notice with the Secretary, United States Maritime Commission, Washington 25, D. C. The form of the notice of election, which form shall be prepared by the taxpayer, shall be substantially as follows:

ELECTION RELATIVE TO NONRECOGNITION OF GAIN UNDER SECTION 511(c)(2), MERCHANT MARINE ACT, 1936.

Pursuant to the provisions of section 511 of the Merchant Marine Act, 1936, as amended by the Act approved December 23, 1944 (Public Law 552, Seventy-eighth Congress), notice is hereby given that the undersigned taxpayer elects that gain in respect of the sale to the United States, or indemnification received from the United States on account of the loss, of the vessel named below or share therein shall not be recognized. The circumstances involved in the computation of such gain are as follows:

Name and other identification of vessel _____
Nature and extent of the taxpayer's interest in the vessel _____
_____
Nature of disposition, i. e., sale or loss _____
Date of disposition _____
Full sale price or full amount of indemnity received by taxpayer _____
_____
Amount and date of each payment of sale price or indemnity received by taxpayer _____
Amount and date of each previous deposit of such payments in construction reserve fund _____
Identification of each check or other instrument by which payment made to taxpayer _____
Tax basis of taxpayer's interest in vessel _____
Any other data affecting the determination of the realized gain _____
_____
Amount of gain (submit computation) _____

_____
(Name of taxpayer.)

By _____
(Authorized representative.)

_____
(Date of execution.)

PAR. 4. Section 32.18 is amended by striking out the second sentence of the next to the last paragraph thereof and inserting in lieu of such sentence the following:

Subject to the provisions of this section, a new vessel may be built by or for the taxpayer, or may be acquired after it is built.

PAR. 5. Section 32.22 is amended by adding at the end thereof another paragraph, reading as follows:

If an election is made under subdivision (c) (2) of section 511, as amended, and section 32.12(*b*) (2) of these regulations, and if computation or recomputation in accordance therewith is otherwise allowable but is prevented, on the date of filing of notice of such election, or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election. If as the result of such computation or recomputation an overpayment is disclosed, a claim for refund on Form 843 should also be filed within such six months' period.

GEO. J. SCHOENEMAN,
Acting Commissioner of Internal Revenue.
JOSEPH J. O'CONNELL, JR.,
Acting Secretary of the Treasury.

By order of the United States Maritime Commission.

A. J. WILLIAMS,
Secretary.

MARCH 6, 1945.

(Filed with the Division of the Federal Register March 7, 1945, 11.13 a. m.)

ALCOHOL TAX.

INTERNAL REVENUE CODE.

1945–7–12013
T. D. 5449

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

To District Supervisors and Others Concerned:

By virtue of and pursuant to the provisions of sections 3740 and 3170 of the Internal Revenue Code and section 161 of the Revised Statutes (U. S. C., Title 5, section 22), Treasury Decision No. 4632 [C. B. XV–2, 527 (1936)] (Part 171, Subpart B, of Title 26 of the Code of Federal Regulations), prescribed under the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939–1 (Part 1), 396], approved February 11, 1939 (26 CFR, 1939 Supp., page 1599), is hereby amended by inserting at the end of section 1 (26 CFR, section 171.2) a new paragraph, lettered (*j*), reading as follows:

(*j*) AUTHORIZATION AND SANCTION OF SUITS.—The authorizing and sanctioning of suits for the recovery of taxes, fines, penalties, and forfeitures alleged to have been incurred under the internal revenue laws relating to the taxation, exportation, manufacture, possession, or use of, or traffic in, distilled spirits, fermented liquors, denatured alcohol, and other such liquors and liquids.

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

Approved March 29, 1945.

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

(Filed with the Division of the Federal Register April 2, 1945, 10.51 a. m.)

1945–24–12197
T. D. 5485

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. The Act of November 5, 1945 (Public Law 210, Seventy-ninth Congress), amends Part II of Subchapter C of Chapter 26 of the Internal Revenue Code by adding at the end thereof the following new section:

SEC. 3126. EMERGENCY PRODUCTION OF SUGARS AND SIRUPS IN INDUSTRIAL ALCOHOL PLANTS.

(a) IN GENERAL.—Notwithstanding the provisions of sections 2819 and 3122, and of any other law, until July 1, 1946, sugars and sirups from potatoes and from high moisture or damaged grain may be produced in industrial alcohol plants simultaneously with, or alternately with, the production of alcohol.

(b) REGULATIONS.—The Commissioner, with the approval of the Secretary, is authorized to prescribe regulations to carry out the provisions of this section.

2. Pursuant to the foregoing provisions of law and sections 3105, 3124(a), and 3176, Internal Revenue Code, Article V of Regulations 3 (26 CFR, Part 182) is amended by adding after section 182.7 the following new section:

SEC. 182.7½. EMERGENCY PRODUCTION OF SUGARS AND SIRUPS IN INDUSTRIAL ALCOHOL PLANTS.—Notwithstanding the provisions of section 182.7, or other provisions of these regulations, until July 1, 1946, sugars and sirups from potatoes and from high moisture or damaged grain may be produced in industrial alcohol plants simultaneously with, or alternately with, the production of alcohol. Any proprietor of an industrial alcohol plant intending to produce such sugars and sirups shall submit in accordance with these regulations a supplemental application, Form 1431, to cover the use of the premises for that purpose until July 1, 1946. The application shall include a statement of the equipment and the process to be used in producing such sugars and sirups and shall be accompanied by an appropriate consent of surety, Form 1533, executed in accordance with these regulations. Upon approval of such application, the district supervisor shall issue an amended permit, Form 1433, to allow use of the premises in accordance with the supplemental application. The proprietor shall prepare each month and attach to his monthly report on Form 1442 a separate report showing all potatoes and high moisture or damaged grain used daily in the production of sugars and sirups by pounds and the quantity in pounds of sugars and sirups produced and removed each day from the premises. This report shall be deemed a part of Form 1442. All such materials received on the premises shall be reported in the regular material summaries of Forms 1442 and 1452–B and upon their use under this section, shall be reported at a special line in the summaries as transferred for use in the production of sugars and sirups. All containers of sugars and sirups removed from the premises must be labeled to show the nature of the contents and the name and address of the manufacturer. The operations authorized herein shall be conducted in a manner consistent with the provisions of these regulations. This section shall cease to be in force and effect after June 30, 1946. (*; Sec. 3126, I. R. C.)

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

Approved December 13, 1945.

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

(Filed with the Division of the Federal Register December 13, 1945, 4.19 p. m.)

REGULATIONS 15, SECTIONS 190.9 AND 190.177. 1945–21–12162
T. D. 5482

TITLE 26—INTERNAL REVENUE.—CHAPTER I, PART 190.—RECTIFICATION OF SPIRITS AND WINES.*

Amending Regulations 15.

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

To District Supervisors and Others Concerned:

Pursuant to sections 2801, 2813, 3176, and 3250(1), Internal Revenue Code (U. S. C., Title 26, sections 2801, 2813, 3176, and 3250(1)), Regulations 15 (26 CFR, Part 190) is hereby amended as follows:

NOTE.—The asterisk (*) at the end of sections refers to sections 2801(e)(1) and 3176, Internal Revenue Code.

ARTICLE V.—PRODUCTS UNFIT FOR BEVERAGE USE.

Section 190.9 is amended to read as follows:

SEC. 190.9. PROHIBITED MANUFACTURE OR STORAGE.—None of the products specified in section 190.5 may be manufactured or stored at a rectifying plant except as specifically provided herein. While rectifiers may use flavors and flavoring extracts on which drawback of tax on the spirits used therein has been allowed under section 3250(1), Internal Revenue Code, and Regulations 29 issued pursuant thereto, the premises used for manufacturing the flavors or flavoring extracts, if contiguous to the rectifying premises, must be completely separated from the rectifying premises by solid unbroken partitions and the two premises must not have means of communication with each other within the building. The rectifier may not transfer distilled spirits from the rectifying plant to the flavoring extract manufacturing premises or from the flavoring extract plant premises to the rectifying plant notwithstanding that the two premises may be owned and operated by the same person. Distilled spirits used at the flavoring extract manufacturing premises must be received direct from the vendor and all records governing the receipt and use of distilled spirits and other ingredients in the manufacture of flavoring extracts must be kept on the flavoring extract manufacturing premises and not on the rectifying premises. Where flavors or flavoring extracts are manufactured on premises of the rectifying plant, they must be used exclusively in the manufacture of taxable products and no drawback or tax may be claimed thereon. Nonalcoholic grenadine, or grenadine containing less than one-half of 1 per cent of alcohol by volume and sufficient sugar to render it wholly unfit for use for beverage purposes, or other such flavoring materials, may not be manufactured on the premises of a rectifying plant unless they are to be used by the rectifier in making his taxable products. (*; Sec. 3250(1), I. R. C.

ARTICLE XXVI.—GAUGING AND DUMPING SPIRITS FOR RECTIFICATION.

Section 190.177 is amended to read as follows:

SEC. 190.177. APPLICATION, FORM 122.—When the rectifier desires to dump spirits for rectification, he will carefully gauge each package and prepare Form 122, in duplicate, giving a complete description of the packages and making application for permission to dump the spirits, except that where spirits are transferred to the rectifying plant directly upon taxpayment from a contiguous distillery or internal revenue bonded warehouse or a distillery or internal revenue bonded warehouse located in the immediate vicinity of the rectifying plant and owned by the proprietor of the rectifying plant or a subsidiary and dumped for rectification within three days after receipt, the withdrawal gauge will be considered as satisfying the requirement that the spirits shall be gauged when dumped for rectification. The supervisor will determine from all the circumstances in each case whether the distillery or warehouse and the rectifying plant are in the immediate vicinity. Where the spirits are so dumped on the withdrawal gauge, details of such gauge will be copied on Form 122 and in addition thereto, if the rectifying plant is equipped with processing tanks mounted on scales, the spirits may be dumped and gauged by weight in such processing tanks. In such case, the composite proof and proof gallons determined by such gauge shall also be reported on Form 122. The difference in proof gallons between the withdrawal (taxpayment regauge) and such tank gauge shall also be reported on Form 122. If the spirits are to be drawn from the storage tank, the rectifier will likewise execute Form 122 giving all the information applicable. Each Form 122 will 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. (*; Sec. 2813, I. R. C.)

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

Approved November 1, 1945.

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

(Filed with the Division of the Federal Register November 2, 1945, 12.08 p. m.)

REGULATIONS 15, SECTIONS 190.177, 190.190, 190.276, 190.326, 190.341, 190.353, 190.408, 190.409, 190.410, 190.411, 190.414.

1945–14–12088
T. D. 5463

TITLE 26—INTERNAL REVENUE.—CHAPTER I, PART 190.—RECTIFICATION OF SPIRITS AND WINES.*

Amending Regulations 15.

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

To District Supervisors and Others Concerned:

Pursuant to sections 2801, 2813, 2861, 2871, and 3176, Internal Revenue Code (U. S. C., Title 26, Secs. 2801, 2813, 2861, 2871, and 3176), Regulations 15 (26 CFR, Part 190) is hereby amended as follows:

ARTICLE XXVI.—GAUGING AND DUMPING SPIRITS FOR RECTIFICATION.

Section 190.177 is amended to read as follows:

SEC. 190.177. APPLICATION, FORM 122.—When the rectifier desires to dump spirits for rectification he will carefully gauge each package and prepare Form 122, in duplicate, giving a complete description of the packages and making application for permission to dump the same, except that where spirits are transferred to the rectifying plant, directly upon tax-payment, from a contiguous distillery or internal revenue bonded warehouse and dumped for rectification within three days after receipt, the withdrawal gauge will be considered as satisfying the requirement that the spirits shall be gauged when dumped for rectification. Where the spirits are so dumped on the withdrawal gauge, the details of such gauge will be copied on Form 122, and, in addition thereto, if the rectifying plant is equipped with processing tanks mounted on scales, the spirits may be dumped and gauged by weight in such processing tanks. In such case, the composite proof and proof gallons determined by such gauge shall also be reported on Form 122. The difference in proof gallons between the withdrawal (tax-payment regauge) and such gauge shall also be reported on Form 122. If the spirits are to be drawn from a storage tank the rectifier will likewise execute Form 122, giving all the information applicable. Each Form 122 will 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. (*; Sec. 2813, I. R. C.)

Section 190.190 is amended to read as follows:

SEC. 190.190. ENTIRE PACKAGE TO BE DUMPED.—A portion of a package may not be dumped for rectification. Where it is desired to rectify a quantity of spirits less than a full package, the entire package must be dumped into a processing tank or receptacle and the quantity which it is desired to rectify at that time must be removed from such tank or receptacle to another processing tank for rectification. The first processing tank or receptacle into which the full package was dumped will be labeled to show the kind of spirits and the serial number and date of the Form 122 pursuant to which such spirits were dumped. Where small quantities of rum, sherry wine, or other liquors are to be used for flavoring purposes from time to time, a statement to that effect shall be made on Form 122 covering the gauge and dumping of the packages, unless the entire quantity is to be used within 10 days from the date of dumping. No larger quantities of liquor to be used for flavoring purposes shall be dumped than necessary for a reasonable period, except that not less than an entire original package (barrel or keg) may be dumped. No liquors except small quantities of those used for flavoring and similar purposes shall be retained in processing tanks or receptacles for an indefinite period.*

*Issued under authority of sections 2801 and 3176, Internal Revenue Code.

ARTICLE XXX.—GAUGE, RETURN, AND TAX-PAYMENT OF RECTIFIED SPIRITS.

Section 190.276 is amended, by adding a new section designated section 190.276(a), to read as follows:

SEC. 190.276(a). ADJUSTMENT OF PROOF.—The proof of rectified spirits shall be adjusted to a whole degree of proof in accordance with the provisions of the Gauging Manual (26 CFR, Part 186) preparatory to filling barrels or bottles. Adjusting the proof to tenths of a degree, either above or below the whole or complete degree, will not be permitted: *Provided*, That when spirits are being prepared for bottling and are to be bottled and labeled in tenths of a degree of proof, such as 86.6, the proof of the spirits shall be adjusted to such tenths of a degree of proof. The proof in each instance shall be verified as to accuracy by the Government officer. (*; Sec. 2861, I. R. C.)

ARTICLE XXXI.—BOTTLING OF RECTIFIED SPIRITS AND PRODUCTS.

Section 190.326 is amended to read as follows:

SEC. 190.326. LIQUOR BOTTLES.—The proprietor of a rectifying plant must comply with the provisions of Regulations 13 (26 CFR, Part 175), respecting the use of liquor bottles and other containers for rectified and unrectified products. Marked liquor bottles may not be used for packaging wines containing 24 per cent or less of alcohol by volume, or products manufactured with such wines, unless such products contain distilled spirits other than those used in fortifying the wine. Bottles must be filled as nearly as possible to conform to the amount stated on the stamp, label or bottle, to be contained therein, but in no event may the amount of spirits contained in any bottle due to the lack of uniformity of the bottles, vary more than 2 per cent from the amount stated to be contained therein and, further, in such case there shall be substantially as many bottles overfilled as there are bottles underfilled for each lot of spirits bottled as reported on Form 230 or 237. (*; Sec. 2871, I. R. C.)

ARTICLE XXXIV.—BOTTLING OF UNRECTIFIED SPIRITS AND WINES.

Section 190.341 is amended to read as follows:

SEC. 190.341. GAUGE.—When preparing application for the dumping of spirits for bottling without rectification, the rectifier will enter in the space provided therefor on Form 230 the details of the withdrawal gauge for tax-payment. An actual gauge of the spirits dumped will, however, be made in the bottling tank after they have been reduced to bottling proof, where such reduction is permissible, and before they are released by the Government officer for bottling, and the details of such gauge will be entered in the space provided therefor on the form. Where spirits are to be bottled from the original package, as provided in section 190.347, the details of the withdrawal gauge for tax-payment will likewise be entered on Form 230 at the time the application is prepared, but an actual gauge will be made before the bottling begins and the details of such gauge will also be entered on the form. The proof of spirits shall be adjusted to a whole degree of proof in accordance with the provisions of the Gauging Manual (26 CFR, Part 186) preparatory to filling bottles. Adjusting the proof to tenths of a degree, either above or below the whole or complete degree, will not be permitted: *Provided*, That when spirits are being prepared for bottling and are to be bottled and labeled in tenths of a degree of proof, such as 86.6, the proof of the spirits shall be adjusted to such tenths of a degree of proof. The restoration to the original proof and volume of rectified spirits upon which the rectification tax has been paid, by the addition of water, preparatory to bottling, shall not be deemed a reduction in proof or an increase in volume within the meaning of section 2801(b) of the Internal Revenue Code. The proof in each instance shall be verified as to accuracy by the Government officer. (*; Sec. 2801(b), I. R. C.)

Section 190.353 is amended to read as follows:

SEC. 190.353. REDUCTION OF SPIRITS.—Processing tanks may not be used for the dumping and reducing of spirits to be bottled without rectification. Spirits may be reduced to bottling proof in dumping and reducing tanks provided for the purpose or in the bottling tanks prior to the commencement of bottling. The reduction in proof or the increasing in volume of rectified spirits on which the rectification tax has been paid is, however, prohibited by law, unless the spirits are again rectified and the rectification tax again paid thereon. However, the

restoration to the original proof and volume of rectified spirits upon which the rectification tax has been paid, by the addition of water, preparatory to bottling, shall not be deemed a reduction in proof or an increase in volume within the meaning of section 2801(b) of the Internal Revenue Code. Section 2801(b) of the Internal Revenue Code is not applicable to the reduction of imported spirits rectified abroad, or spirits rectified in Puerto Rico, the Virgin Islands, or the Philippine Islands, or of domestically rectified spirits exempt from rectification tax. (*; Sec. 2801(b), I. R. C.)

ARTICLE XXXVI.—LABELS ON BOTTLES OF DISTILLED SPIRITS.

Section 190.408 is amended to read as follows:

SEC. 190.408. COMPARISON OF LABELS WITH CONTENTS OF BOTTLING TANK.—Before releasing spirits from bottling tanks for bottling, the Government officer will require the rectifier to submit to him the label he proposes to use for the spirits in the bottling tank, together with the certificate of label approval or the certificate of label exemption, as the case may be, and in the case of imported spirits the certificate of origin, age, and class and type referred to in section 190.407, and he will compare such label with the label affixed to such certificate to see that they agree in every respect except for the differences allowed by the certificate. He will then compare such label with Forms 122 and 237, and Form 27B–Supplemental describing the formula, for rectified products, and with Form 230 as to products being bottled without rectification, to determine whether the label to be used corresponds in every respect with the spirits in the bottling tank, including age, class and type, and proof. In making this determination he will take into consideration the kind of spirits, the proof of distillation, the kind of cooperage in which the spirits were stored, and whether the spirits were treated with oak chips, etc., as disclosed by the marks and brands on the packages and entered on Form 122 or Form 230, as the case may be. If the label and spirits agree in every respect, the Government officer will attach the label securely to the copy of Form 237 or Form 230 to be attached to the bottling tank and release the spirits for bottling. If the label and spirits do not agree in every respect, the Government officer will withhold the release of the spirits for bottling until the rectifier submits to him a label and a certificate of label approval or exemption, as the case may be, correctly describing the spirits to be bottled. (*; Sec. 505, 49 Stat., 1965; 27 U. S. C., Sup., 205.)

Section 190.409 is amended to read as follows:

SEC. 190.409. ADDITIONAL LABEL REQUIREMENTS.—Officers assigned to rectifying plants will also see that all labels affixed to containers of distilled spirits subject to the provisions of Regulations 13 (26 CFR, Part 175) conform to the requirements of such regulations. The methods prescribed in section 190.408 will be followed in making such determinations. (*; Sec. 2871, I. R. C.)

Section 190.410 is amended to read as follows:

SEC. 190.410. TESTS OF BOTTLED SPIRITS.—Officers assigned to rectifying plants will, at frequent, irregular intervals during the process of bottling, test and examine the bottled spirits to determine (*a*) whether the label attached is identical with the label verified by the Government officer under section 190.408; (*b*) whether the bottled spirits agree in proof with the data on the label; and (*c*) whether the quantity agrees with the data on the label, stamp or bottle, subject to the limitation prescribed by section 190.326. The test as to proof will be made by the use of standard gauging instruments in accordance with the provisions of the Gauging Manual (26 CFR, Part 186). The test as to quantity will be made (*a*) by the utilization of a glass graduate standardized at 60 degrees Fahrenheit to be provided by the rectifier, or (*b*) by weighing a given number of empty bottles and reweighing the same bottles after filling. The net contents will be computed in accordance with the provisions of the Gauging Manual (26 CFR, Part 186). If the contents do not agree as to quantity (subject to the limitation of section 190.326) or as to proof (subject to a normal drop in proof occurring during bottling operations not to exceed three-tenths of a degree), with the respective data on the label, stamp or bottle, the Government officer will withhold release of the bottled spirits and require the rectifier to rebottle, recondition, or relabel the spirits in such manner that the labels will correctly describe the contents. However, the proof at the beginning of the bottling operations shall always be set exactly as provided in sections 190.276(*a*) and 190.341.*

Section 190.411 is amended to read as follows:

SEC. 190.411. RECTIFIER'S RESPONSIBILITY.—Notwithstanding that Government officers assigned to rectifying plants are required to verify labeling data, full responsibility rests upon the rectifier to see that the labeling of all spirits and wines bottled or packaged at his plant is in conformity with the requirements of the Federal Alcohol Administration Act and regulations issued thereunder, and Regulations 13 (26 CFR, Part 175).*

ARTICLE XXXVII.—MARKING AND BRANDING.

Section 190.414 is amended to read as follows:

SEC. 190.414. PACKAGES OF DISTILLED SPIRITS.—The gross weight, tare, and net weight shall be cut upon the stave to the left of the bung stave of each barrel or similar container of distilled spirits in the order named, beginning in the middle of such stave and and extending toward the Government head. In addition to the serial number, each such container shall also have marked on the Government head thereof the kind of spirits, the wine gallons, proof, and proof gallons, the date of filling, the number of the approved formula under which rectified, and the name (or trade name or style), location (city or town and State), and 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. (*; Sec. 2861, I. R. C.)

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

Approved July 11, 1945.

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

(Filed with the Division of thee Federal Register July 12, 1945, 4.19 p. m.)

REGULATIONS 23, SECTIONS 181.3, 181.13, AND 181.15. 1945–23–12184
T. D. 5484

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:

Pursuant to sections 3176, 3250(j)(1)(3), and 3791, Internal Revenue Code (U. S. C., Title 26, sections 3176, 3250(j)(1)(3), and 3791), Regulations 23 (26 CFR, Part 181) is hereby amended as follows:

ARTICLE III.—DEFINITIONS.

Section 181.3(*g*) is amended to read as follows:

SEC. 181.3. (*g*) "Still" shall mean any apparatus designed, intended, actually used, or capable of being used for separating alcoholic or spirituous vapors, or alcohol or spirituous solutions, or alcohol or spirits, from alcohol or spirituous solutions or mixtures, but shall not include stills used for laboratory purposes or stills used for distilling water or other nonalcoholic materials, where the cubic capacity of such stills is 1 gallon or less.

Section 181.3(*i*) is amended to read as follows:

SEC. 181.3. (*i*) "Worm" or "condenser" shall mean any apparatus designed, intended, actually used, or capable of being used when connected with a still, for condensing or liquefying alcoholic or spirituous vapors, but shall not include worms or condensers to be used with laboratory stills or stills used for distilling water or other nonalcoholic materials, where the cubic capacity of such stills is 1 gallon or less. (Secs. 3176, 3250(j)(1)(3), and 3791, I. R. C.)

ARTICLE IV.—MANUFACTURE, TAX-PAYMENT, SALE, REMOVAL, AND REGISTRATION OF STILLS OR WORMS OR CONDENSERS.

Section 181.13(*a*) is amended to read as follows:

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, and special tax as manufacturer of stills and tax on the still or worm or condenser, incurred by the manufacturer, unless such presumption as to any still or worm or condenser intended for domestic use only, shall be removed by filing satisfactory evidence as hereinafter provided showing that the same will not be used for distilling as defined by section 181.12.

Section 181.15(*a*) is amended to read as follows:

SEC. 181.15. REGISTRY OF STILLS.—(*a*) *Registration with district supervisor.*—Every person having in his possession, custody, or under his control, any still or distilling apparatus set up, shall register the same with the district supervisor of the district in which such still or distilling apparatus is located, except where such stills have heretofore been registered and no change in ownership, possession, custody, control, or location has occurred since such registry. This requirement applies to all stills (as defined by section 181.3) set up, except retorts for the production of wood alcohol and as provided by section 181.15(*d*). This registry of stills shall be made on Form 26, in triplicate, with the district supervisor. The specific information required by the instructions on Form 26 will be entered in the space provided therefor. One copy of each registration of stills on Form 26 will be retained by the district supervisor, one copy will be returned to the registrant, and the remaining copy will be forwarded immediately to the Commissioner. The approved copy of Form 26, returned to the registrant by the supervisor, shall be retained on the premises where the still is set up for examination by visiting internal revenue officers.

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

Approved November 19, 1945.

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

(Filed with the Division of the Federal Register November 20, 1945, 11.30 a. m.)

1945–23–12185
Ct. D. 1649

ALCOHOL TAX—FEDERAL ALCOHOL ADMINISTRATION ACT—DECISION OF SUPREME COURT.

1. MOTION FOR RECONSIDERATION—JUDICIAL REVIEW.

A motion for reconsideration of an order of the district supervisor of the Alcohol Tax Unit, as permitted by Treasury regulations, which order annulled a permit to operate a wholesale liquor business under the Federal Liquor Administration Act (49 Stat., 977) and denied petitioner's applications for an importer's and a new wholesaler's

permit, is not a prerequisite to the judicial review specifically provided by Congress under section 4(h) of such Act.

2. DECISION REVERSED.

Decision of the United States Circuit Court of Appeals, Tenth Circuit (147 Fed. (2d), 547), reversed.

SUPREME COURT OF THE UNITED STATES.

Forest E. Levers, Administrator, etc., petitioner, v. *A. V. Anderson, District Supervisor, Alcohol Tax Unit.*

[66 S. Ct., 72.]

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

[November 5, 1945.]

OPINION.

Mr. Justice BLACK delivered the opinion of the Court.

The petitioner's permit to operate a wholesale liquor business under the Federal Alcohol Administration Act (49 Stat., 977) was annulled by an order of the district supervisor of the Alcohol Tax Unit of the Bureau of Internal Revenue of the United States. At the same time the supervisor denied petitioner's applications for an importer's and a new wholesaler's permit. The supervisor was duly authorized to act in these matters.[1] Section 4(h) of the Act authorizes an applicant or permittee to appeal to the circuit court of appeals within 60 days after the entry of orders denying or annulling the permits. A petition for appeal was filed within 60 days. The circuit court of appeals dismissed the appeal (147 Fed. (2d), 547), on the ground that petitioner had failed to exhaust his administrative remedies since he had not first filed a motion for reconsideration of the supervisor's order as permitted by Treasury regulations (26 C. F. R. Cum. Supp., 182.255), reading in part as follows:[2]

"(a) * * * Within 20 days after an order is made by the Commissioner or district supervisor revoking a basic permit, the permittee may file an application with such Commissioner or district supervisor, for a reconsideration of such order, on one or more of the following grounds:

"(1) The order is contrary to law, or

"(2) It [Is] not supported by the evidence, or

"(3) Because of newly discovered evidence which the permittee with due diligence, was unable to produce at the hearing."

We thought the question involved important and granted certiorari.

Whatever might be the case in other circumstances, it is clear that where as here judicial review is provided in the Act itself, the petitioner's right of appeal to the courts is to be determined by looking to the statute, the valid regulations promulgated pursuant to it and proven administrative practice throwing light upon their meaning. In construing the Act, however, we must be mindful of the "long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." (*Myers* v. *Bethlehem Shipbuilding Corporation,* 303 U. S., 41, 50–51.) But this rule does not automatically require that judicial review must always be denied where rehearing is authorized but not sought. This is shown by our past decisions,[3] from which we see no reason to depart. Govern-

[1] 53 Stat., 561; 54 Stat., 1231; 54 Stat., 230, 231; Treasury Order No. 30 (26 C. F. R. Cum. Supp., 174.1a, 5 Fed. Reg., 2212); Treasury Decision 4982 [C. B. 1940–2, 426] (26 C. F. R. Cum. Supp., 174.4c, 5 Fed. Reg., 2549).

[2] The circuit court of appeals also referred to the petitioner's failure to take an appeal to the Deputy Commissioner of Internal Revenue, as allowed by amended Treasury regulation 182.257. That regulation provides that: "Appeal to the Commissioner is not required. However, the Commissioner may, in his discretion, in order to insure uniformity of administrative action, entertain an appeal, after review and reconsideration as provided in section 182.255, from an order of revocation of a basic permit by a district supervisor, if filed with the Commissioner within 10 days of the date of the final order." The Government concedes that the first sentence of this regulation, "Appeal to the Commissioner is not required," was added to the regulation as it originally stood for "the deliberate object of making it unnecessary for a party to appeal to the Commissioner before going to court." Under these circumstances we do not discuss it further. Cf. *Peoria Braumeister Co.* v. *Yellowley* (123 Fed. (2d), 637); *Leebern* v. *United States* (124 Fed. (2d), 505), both decided before the first sentence was added.

[3] *United States* v. *Abilene & Southern Ry. Co.* (265 U. S., 274, 280–282); *Prendergast* v. *New York Tel. Co.* (262 U. S., 43, 48–49).

ment counsel, appearing for respondent, do not defend the dismissal of petitioner's appeal on such a sweeping assumption. On the contrary, they assert that motions for rehearing before the same tribunal that enters an order are under normal circumstances mere formalities which waste the time of litigants and tribunals, tend unnecessarily to prolong the administrative process, and delay or embarrass enforcement of orders which have all the characteristics of finality essential to appealable orders.

But Gvernment counsel insist that the rehearing here involved is far more than a formality, and that we should therefore read the Act and regulations as if these barred judicial review prior to an application for a rehearing.[4] Of course we recognize that in a particular administrative pattern new opportunities to challenge afforded by the motion for rehearing may subject an order to such critical administrative review as to reduce it to the level of a "mere preliminary or procedural" status, thereby divesting it of those qualities of administrative finality essential to invocation of judicial review. (*Federal Power Commission* v. *Metropolitan Edison Co.*, 304 U. S., 375, 384–385.) But we do not think that is the case here.

The orders here challenged were entered after a hearing and they were "of a definitive character dealing with the merits of a proceeding." (*Federal Power Commission* v. *Metropolitan Edison Co.*, supra, 384.) The evidence was taken before, and the findings of fact were made by, a hearing commissioner before whom petitioner was represented by counsel. These findings were then approved by the district supervisor who entered the order. True the findings were approved and the order was made by the district supervisor without an opportunity to petitioner to except to his adverse findings of fact or to present oral argument to him. And a rehearing *if granted* would have afforded petitioner for the first time an opportunity to see and except to adverse findings of fact and *might* also have given it a chance to present oral argument to the officer who made the order. But the regulations only provide that the supervisor "may hear the application" for a rehearing.[5] No other language of the regulations, and no satisfactory proof of publicly established practice under them, persuades us that the "may" means must, or that the supervisors were required to hear oral argument. Thus, despite the fact that the regulations permit a stay pending the motion, there is no assurance that a rehearing will be granted, so as to afford an opportunity to except to fact findings or argue orally before the supervisor. Consequently, whatever weight such factors might be accorded in determining administrative finality of the order is absent here.

Our conclusion is that the motion is in its effect so much like the normal, formal type of motion for rehearing that we can not read into the Act an intention to make it a prerequisite to the judicial review specifically provided by Congress. Whether the circuit court of appeals was possessed of power to exercise a discretion to stay its review until an application was made to the supervisor to grant a rehearing is a question which was not decided and upon which we express no opinion. (See *United States* v. *Abilene & Southern Ry. Co.*, supra, 282.)

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

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[4] This has been expressly done in several statutes. See for example 49 Stat., 860; 52 Stat., 831. Of course the mere fact that the regulations might bar judicial review is not conclusive, for the court will consider whether these are consistent with the legislative intent.

[5] The only relevant provision (26 C. F. R. Cum. Supp., 182.255) reads:

"(b) * * * The Commissioner or district supervisor, with whom such application is filed, may hear the application on a date and at a place to be fixed by him. The Commissioner or district supervisor, as the case may be, after hearing such application, may either affirm the order of revocation previously made, or may vacate and set aside such order and dismiss the proceedings or order a new hearing of the evidence before a designated hearing officer."

DISTILLED SPIRITS.

INTERNAL REVENUE CODE.

REGULATIONS 6, SECTION 188.64: Losses and gains in bottling to be tax-paid. 1945–17–12125 T. D. 5472

TITLE 26—INTERNAL REVENUE.—CHAPTER I, PART 188.—BOTTLING OF DISTILLED SPIRITS IN BOND.

Amending Regulations 6.

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

To District Supervisors and Others Concerned:

Pursuant to sections 2800, 2903, 2904, 3172, 3176, and 3640, Internal Revenue Code, section 188.64 of Regulations 6 (26 CFR, Part 188) is hereby amended to read as follows:

SEC. 188.64. LOSSES IN BOTTLING TO BE TAX-PAID.—All losses sustained in the process of bottling, on distilled spirits bottled before tax-payment, must be tax-paid. When Forms 1516 have been audited, the district supervisor shall prepare notice on Form 1607, "Notice of Tax Due on Losses of Spirits Bottled in Bond," in triplicate, for each internal revenue bonded warehouse, showing thereon the total losses in bottling for the month upon which tax is due. The original copy thereof will be forwarded to the proprietor of the internal revenue bonded warehouse on whose premises the bottling-in-bond department is situated, and one copy will be transmitted to the proper collector of internal revenue. The third copy of the notice will be filed in the district supervisor's office. If the taxpayer does not within 30 days from date of such notice pay the tax due, the collector shall enter the amount for assessment on his current Distilled Spirits List. At the end of 60 days from the date of the notice, the district supervisor shall ascertain from the collector whether the amount of the tax due has been paid or assessed, and appropriate notations will be entered on the retained copy of the form. (*; Secs. 2800, as amended, 3172, 3640, I. R. C.)

This regulation shall take effect from and after the date of filing with the Division of the Federal Register.

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

Approved August 20, 1945.

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

(Filed with the Division of the Federal Register August 21, 1945, 11.38 a. m.)

NOTE.—The asterisk at the end of sections refers to sections 2903, 2904, and 3176 of the Internal Revenue Code.

REGULATIONS 6, SECTIONS 188.56, 188.70, AND 188.72. 1945–14–12089
T. D. 5464

TITLE 26—INTERNAL REVENUE.—CHAPTER I, PART 188.—BOTTLING OF DISTILLED SPIRITS IN BOND.*

Amending Regulations 6.

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

To District Supervisors and Others Concerned:

Pursuant to sections 2871, 2903, 2904, 2905, and 3176, Internal Revenue Code, Regulations 6 (26 CFR, Part 188) is hereby amended as follows:

Section 188.56 is amended to read as follows:

SEC. 188.56. BOTTLING CONDUCTED UNDER SUPERVISION OF STOREKEEPER-GAUGER.—The entire operation of bottling spirits in bond, including the withdrawal of the spirits from the packages, the effacement and obliteration of every mark, brand, and stamp on the packages emptied, the straining of the spirits and their reduction by the addition of pure water to the proof required by law, the filling and stamping of the bottles and the casing of the bottles, and the immediate removal of the cases from the bottling-in-bond department upon the completion of bottling of each lot will be performed by the proprietor of the warehouse under the immediate supervision of the storekeeper-gauger: *Provided*, That the storekeeper-gauger shall determine the proof of the spirits in the tank after reduction and prior to release for bottling, and make appropriate entries on Form 1515. The proof of the spirits shall be adjusted to a whole degree of proof in accordance with the provisions of the Gauging Manual (26 CFR, Part 186) preparatory to filling bottles. Adjusting the proof to tenths of a degree, either above or below the whole or complete degree, will not be permitted: *Provided*, That when spirits are being prepared for bottling in bond for export and are to be bottled and labeled in tenths of a degree of proof, such as 86.6, the proof of the spirits shall be adjusted to such tenths of a degree of proof. The proof in each instance shall be verified as to accuracy by the Government officer. The proof will be determined in accordance with the rules stated in the Gauging Manual (26 CFR, Part 186). While the storekeeper-gauger is charged with the duty of requiring compliance with the provisions of the law and regulations by the persons engaged in the various operations of bottling the spirits, his failure in any instance will not relieve the proprietor of the warehouse from responsibility.*

Section 188.70 is amended to read as follows:

SEC. 188.70. LIQUOR BOTTLES.—The proprietor must comply with the provisions of Regulations 13 (26 CFR, Part 175), respecting the use of properly marked liquor bottles. Spirits may be bottled in bond for domestic purposes in the following-sized bottles and no others: 1 quart, ⅘ quart, 1 pint, ½ pint, ⅛ pint, 1/10 pint, and, in the case of brandy, 1/16 pint. Bottles must be filled as nearly as possible to conform to the amount stated on the stamp, label or bottle, to be contained therein, but in no event may the amount of spirits contained in any bottle, due to the lack of uniformity of the bottles, vary more than 2 per cent from the amount stated to be contained therein and, further, in such case there shall be substantially as many bottles overfilled as there are bottles underfilled for each lot of spirits bottled as reported on Form 1515. (*; Sec. 2871, I. R. C.)

(*a*) *Bottles for export.*—Distilled spirits may be bottled in bond for export in the following-sized bottles and no others: 1 quart, ⅘ quart, 1 pint, ½ pint, and less than ½ pint. Bottles of less than one-half pint capacity may be of the size desired. Liquor bottles as defined in Regulations 13 (26 CFR, Part 175) may be used but will not be required in bottling distilled spirits in bond for export. (*; Secs. 2871, 2905, I. R. C.)

*Issued under authority of sections 2903, 2904, and 3176, Internal Revenue Code.

Sections 188.72(*b*), 188.72(*c*), 188.72(*d*), and 188.72(*e*) are amended to read as follows:

SEC. 188.72(*b*). COMPARISON OF LABELS WITH CONTENTS OF BOTTLING TANK.—Before releasing spirits from bottling tanks for bottling, the Government officer will require the proprietor to submit to him the label he proposes to use for the spirits in the bottling tank, together with the certificate of label approval or the certificate of label exemption, as the case may be, and he will compare such label with the label affixed to such certificate to see that they agree in every respect except for the differences allowed by the certificate. He will then compare such label with Form 1515 to determine whether the label to be used corresponds in every respect with the spirits in the bottling tank, including age, class and type, and proof. In making this determination he will take into consideration the kind of spirits, the proof of distillation, the kind of cooperage in which the spirits were stored, and whether the spirits were treated with oak chips, etc., as disclosed by the marks and brands on the packages and entered on Form 1515. If the label and spirits agree in every respect, the Government officer will attach the label securely to the copy of Form 1515 to be attached to the bottling tank and release the spirits for bottling. If the label and spirits do not agree in every respect, the Government officer will withhold the release of the spirits for bottling until the proprietor submits to him a label and a certificate of label approval or exemption, as the case may be, correctly describing the spirits to be bottled.

SEC. 188.72(*c*). ADDITIONAL LABEL REQUIREMENTS.—Officers assigned to bottling-in-bond departments of internal revenue bonded warehouses will also see that all labels affixed to containers of distilled spirits subject to the provisions of Regulations 13 (26 CFR, Part 175) conform to the requirements of such regulations. The methods prescribed in section 188.72(*b*) will be followed in making such determinations.

SEC. 188.72(*d*). TESTS OF BOTTLED SPIRITS.—Officers assigned to bottling-in-bond departments will, at frequent, irregular intervals during the process of bottling, test and examine the bottled spirits to determine (*a*) whether the label attached is identical with the label verified by the Government officer under section 188.72(*b*); (*b*) whether the bottled spirits agree in proof with the data on the label and stamp; and (*c*) whether the quantity agrees with the data on the label, stamp or bottle, subject to the limitation prescribed by section 188.70. The test as to proof will be made by the use of standard gauging instruments in accordance with the provisions of the Gauging Manual (26 CFR, Part 186). The test as to quantity will be made (*a*) by the utilization of a glass graduate standardized at 60 degrees Fahrenheit to be provided by the proprietor or (*b*) by weighing a given number of empty bottles and reweighing the same bottles after filling. The net contents will be computed in accordance with the provisions of the Gauging Manual (26 CFR, Part 186). If the contents do not agree as to quantity (subject to the limitation of section 188.70) or as to proof (subject to a normal drop in proof occurring during bottling operations not to exceed three-tenths of a degree) with the respective data on the label, stamp or bottle, the Government officer will withhold release of the bottled spirits and require the proprietor to rebottle, recondition (where permissible), or relabel the spirits in such manner that the label will correctly describe the contents. However, the proof at the beginning of the bottling operations shall always be set exactly as provided in section 188.56.

SEC. 188.72(*e*). PROPRIETOR'S RESPONSIBILITY.—Notwithstanding that Government officers assigned to bottling-in-bond departments of internal revenue bonded warehouses are required to verify labeling data, full responsibility rests upon the proprietor to see that the labeling of all spirits bottled at his plant is in conformity with the requirements of the Federal Alcohol Administration Act and regulations issued thereunder, and Regulations 13 (26 CFR, Part 175). (*; Sec. 2871, I. R. C.; Sec. 505, 49 Stat., 1965; 27 U. S. C., Sup., 205.)

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

Approved July 11, 1945.

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

(Filed with the Division of the Federal Register July 12, 1945, 4.19 p. m.)

REGULATIONS 11, SECTIONS 189.65, 189.79, 189.91, 189.116, 189.117, 189.118, 189.119.

1945–14–12090
T. D. 5465

TITLE 26—INTERNAL REVENUE.—CHAPTER I, PART 189.—BOTTLING OF TAX-PAID DISTILLED SPIRITS.*

Amending Regulations 11.

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

To District Supervisors and Others Concerned:

Pursuant to sections 2801(b), 2803, 2871, and 3176, Internal Revenue Code (U. S. C., Title 26, Secs. 2801(b), 2803, 2871, and 3176), Regulations 11 (26 CFR, Part 189) is hereby amended as follows:

ARTICLE XIX.—DUMPING AND BOTTLING.

Section 189.65 is amended to read as follows:

SEC. 189.65. APPLICATION, FORM 230.—Proprietors of tax-paid bottling houses desiring to bottle tax-paid spirits will execute application on Form 230, in duplicate, giving all of the data called for by the form as indicated by the headings of the columns and lines and the instructions printed thereon. The proprietor will enter on Form 230 the details of the withdrawal gauge for tax-payment when packages of spirits are to be dumped for bottling, or when liqueurs or cordials are authorized to be bottled from the original packages as provided in section 189.78. An actual gauge of the spirits will, however, be made in either case before the bottling begins. The proof of spirits shall be adjusted to a whole degree of proof in accordance with the provisions of the Gauging Manual (26 CFR, Part 186) preparatory to bottling. Adjusting the proof to tenths of a degree, either above or below the whole or complete degree, will not be permitted: *Provided*, That when spirits are being prepared for bottling and are to be bottled and labeled in tenths of a degree of proof, such as 86.6, the proof of the spirits shall be adjusted to such tenths of a degree of proof. The proof in each instance shall be verified as to accuracy by the Government officer. The proprietor will enter the details of his gauge on Form 230, as provided in sections 189.77 and 189.78. Each Form 230 will 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. A separate application on Form 230 must be prepared for each lot of tax-paid spirits to be bottled.*

Section 189.79 is amended to read as follows:

SEC. 189.79. REDUCTION OF TAX-PAID RECTIFIED SPIRITS PROHIBITED.—The reduction in proof or the increasing in volume, at a tax-paid bottling house, of rectified spirits on which the rectification tax has been paid is prohibited by law. However, the restoration to the original proof and volume of rectified spirits upon which the rectification tax has been paid, by the addition of water, preparatory to bottling, shall not be deemed a reduction in proof or an increase in volume within the meaning of section 2801(b) of the Internal Revenue Code. Liqueurs and cordials upon which the tax imposed by section 3030(a) of the Internal Revenue Code has been paid, may not be reduced in proof or increased in volume, nor may wines be increased in volume or in taxable grade, at a tax-paid bottling house. Section 2801(b) of the Internal Revenue Code is not applicable to the reduction of imported spirits rectified abroad, or of spirits rectified in Puerto Rico, the Virgin Islands, or the Philippine Islands, or of domestically rectified spirits exempt from rectification tax. (*; Sec. 2801(b), I. R. C.)

Section 189.91 is amended to read as follows:

SEC. 189.91. LIQUOR BOTTLES.—The proprietor of a tax-paid bottling house must comply with the provisions of Regulations 13 (26 CFR, Part 175), respecting the

*Issued under authority of sections 2803, 2871, and 3176, Internal Revenue Code.

use of liquor bottles and other containers for rectified and unrectified products. Marked liquor bottles may not be used for packaging wines containing 24 per cent or less of alcohol by volume, or products manufactured with such wines, unless such products contain distilled spirits other than those used in fortifying the wine. Bottles must be filled as nearly as possible to conform to the amount stated on the stamp, label or bottle, to be contained therein, but in no event may the amount of spirits contained in any bottle, due to the lack of uniformity of the bottles, vary more than 2 per cent from the amount stated to be contained therein and, further, in such case there shall be substantially as many bottles overfilled as there are bottles underfilled for each lot of spirits bottled as reported on Form 1515.*

ARTICLE XXI.—LABELS ON BOTTLES OF DISTILLED SPIRITS.

Section 189.116 is amended to read as follows:

SEC. 189.116. COMPARISON OF LABELS WITH CONTENTS OF BOTTLING TANK.—Before releasing spirits from bottling tanks for bottling, the Government officer will require the proprietor of the tax-paid bottling house to submit to him the label he proposes to use for the spirits in the bottling tank, together with the certificate of label approval or the certificate of label exemption, as the case may be, and in the case of imported spirits the certificate of origin, age, and class and type referred to in section 189.115, and he will compare such label with the label affixed to such certificate to see that they agree in every respect except for the differences allowed by the certificate. He will then compare such label with Form 230 to determine whether the label to be used corresponds in every respect with the spirits in the bottling tank, including age, class and type, and proof. In making this determination he will take into consideration the kind of spirits, the proof of distillation, the kind of cooperage in which the spirits were stored, and whether the spirits were treated with oak chips, etc., as disclosed by the marks and brands on the packages and entered on Form 230. If the label and spirits agree in every respect, the Government officer will attach the label securely to the copy of Form 230 to be attached to the bottling tank and release the spirits for bottling. If the label and spirits do not agree in every respect, the Government officer will withhold the release of the spirits for bottling until the proprietor submits to him a label and a certificate of label approval or exemption, as the case may be, correctly describing the spirits to be bottled. (*; Sec. 505, 49 Stat., 1965; 27 U. S. C., Sup., 205.)

Section 189.117 is amended to read as follows:

SEC. 189.117. ADDITIONAL LABEL REQUIREMENTS.—Officers assigned to tax-paid bottling houses will also see that all labels affixed to containers of distilled spirits subject to the provisions of Regulations 13 (26 CFR, Part 175) conform to the requirements of such regulations. The methods prescribed in section 189.116 will be followed in making such determinations.*

Section 189.118 is amended to read as follows:

SEC. 189.118. TESTS OF BOTTLED SPIRITS.—Officers assigned to tax-paid bottling houses will, at frequent, irregular intervals during the process of bottling, test and examine the bottled spirits to determine (*a*) whether the label attached is identical with the label verified by the Government officer under section 189.116; (*b*) whether the bottled spirits agree in proof with the data on the label; and (*c*) whether the quantity agrees with the data on the label, stamp or bottle, subject to the limitation prescribed by section 189.91. The test as to proof will be made by the use of standard gauging instruments in accordance with the provisions of the Gauging Mannual (26 CFR, Part 186). The test as to quantity will be made (*a*) by the utilization of a glass graduate standardized at 60 degrees Fahrenheit to be provided by the proprietor or (*b*) by weighing a given number of empty bottles and reweighing the same bottles after filling. The net contents will be computed in accordance with the provisions of the Gauging Manual (26 CFR, Part 186). If the contents do not agree as to quantity (subject to the limitation of section 189.91) or as to proof (subject to a normal drop in proof occurring during bottling operations not to exceed three-tenths of a degree) with the respective data on the label, stamp or bottle, the Government officer will withhold the release of the bottled spirits and require the proprietor to rebottle, recondition (where permissible), or relabel the spirits in such manner that the label will correctly describe the contnts. Howvr, th proof at the

beginning of the bottling operations shall always be set exactly as provided in section 189.65.*

Section 189.119 is amended to read as follows:

SEC. 189.119. PROPRIETOR'S RESPONSIBILITY.—Notwithstanding that Government officers assigned to tax-paid bottling houses are required to verify labeling data, full responsibility rests upon the proprietor to see that the labeling of all spirits bottled at his plant is in conformity with the requirements of the Federal Alcohol Administration Act and reglulations issued thereunder, and Regulations 13 (26 CFR, Part 175).*

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

Approved July 11, 1945.

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

(Filed with the Division of the Federal Register July 12, 1945, 4.20 p. m.)

SECTIONS 3250(*l*)(3) AND 4041(a).

REGULATIONS 29, SECTION 197.24: Supporting data. 1945–15–12104
T. D. 5467

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 Collectors of Internal Revenue, District Supervisors, and Others Concerned:

Pursuant to sections 3250(l)(3) and 4041(a), Internal Revenue Code, section 197.24(*c*) of Regulations 29 (26 CFR, Part 197) is hereby amended by adding at the end thereof two new paragraphs numbered (3) and (4) reading as follows:

(3) The procedure prescribed in paragraph (2) will govern the filing of quantitative formulas for nonbeverage products to be manufactured prior to April 1, 1946. Manufacturers intending to file drawback claims covering distilled spirits used in the manufacture of nonbeverage products produced on and after April 1, 1946, shall submit new quantitative formulas covering all such preparations direct to the Deputy Commissioner, Alcohol Tax Unit, Washington 25, D. C., on or before January 1, 1946, on Form No. 1678, in triplicate; except that quantitative formulas need not be submitted if the products are medicinal preparations, tinctures, or fluid extracts produced under formulas prescribed by the United States Pharmacopeia, the National Formulary, or the American Institute of Homeopathy, and such products are identified in the supporting data by name and followed by the letters "U. S. P.," "N. F.," or "A. I. H.," as the case may be. In the case of food products, such as preserved fruits, cakes, buns, soups, etc., it will be sufficient if the formulas therefor show the quantity of proof gallons of distilled spirits used in the production of a given quantity of finished product. A new series of numbers will be given the new formulas commencing with No. 1 and continuing thereafter in numerical sequence. Amended or revised formulas will be considered as new formulas and serially numbered accordingly. Manufacturers claiming drawback on distilled spirits used in nonbeverage products produced during the period from January 1, 1946, to March 31, 1946, inclusive, for which quantitative formulas have not been filed under these regulations, will observe the procedure prescribed in paragraph (2), and if such products are to be manufactured on or after April 1, 1946, new formulas therefor shall be submitted on Form No. 1678 in accordance with this paragraph.

(4) On and after April 1, 1946, formulas for nonbeverage products shall be submitted to the Deputy Commissioner, Alcohol Tax Unit, Washington 25, D. C., before or at the time of manufacture of the products. Upon receipt by the Deputy Commissioner, the formulas will be examined and if found to be medicines, medicinal preparations, food products, flavors or flavoring extracts which are unfit for beverage purposes, they will be approved. If the formulas do not meet the requirements of the law for drawback products, they will be disapproved. No drawback will be allowed on distilled spirits used in a disapproved product, unless such product is later used in the manufacture of an approved nonbeverage product. One copy of each formula will be retained by the Deputy Commissioner, one copy returned to the manufacturer, and one copy will be sent to the district supervisor for filing. The formulas returned to manufacturers shall be filed in serial order by the manufacturer and made available for examination by internal revenue officers in the investigation of drawback claims. The copies sent to district supervisors shall likewise be filed in serial order, available for examination by drawback audit clerks and laboratory chemists.

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

Approved August 6, 1945.

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

(Filed with the Division of the Federal Register August 7, 1945, 11.17 a. m.)

1945–19–12146
T. D. 5477

TITLE 26—INTERNAL REVENUE.—CHAPTER I, PART 186.—GAUGING MANUAL.

Amending the Gauging Manual.

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

To District Supervisors and Others Concerned:

Pursuant to the provisions of sections 2808 and 3176, Internal Revenue Code, the Gauging Manual, approved November 21, 1938 (section 186, Title 26, CFR), is hereby amended as follows:

Paragraph 13(a) is amended to read as follows:

PAR. 13. (a) The proof of alcohol in receiving cisterns of industrial alcohol plants and the proof of spirits in cisterns of distilleries shall be adjusted to a whole or complete degree of proof before being removed therefrom: *Provided*, That the proof of alcohol transferred by pipe line from receiving cisterns of industrial alcohol plants to industrial alcohol bonded warehouses or denaturing plants, and the proof of spirits transferred by pipe line from cistern rooms of fruit distilleries to fortifying rooms of bonded wineries need not be so adjusted. The proof of alcohol or other spirits at industrial alcohol bonded warehouses, bottling-in-bond departments of internal revenue bonded warehouses, rectifying plants, and tax-paid bottling houses shall be adjusted to a whole degree of proof preparatory to filling containers such as tank cars, barrels, drums, or bottles. Adjusting the proof to tenths of a degree, either above or below the whole or complete degree, will not be permitted: *Provided*, That when tax-paid spirits at rectifying plants and tax-paid bottling houses and untax-paid spirits for bottling in bond for export at bottling-in-bond departments of internal revenue bonded warehouses are being prepared for bottling and are to be bottled and labeled in tenths of a degree of proof, such as 86.6, the proof of the spirits shall be adjusted to such tenths of a degree of proof. The restoration to the original proof and volume of rectified spirits upon which the rectification tax has been paid, by the addition of water, preparatory to bottling, shall not be deemed a reduction in

proof or an increase in volume within the meaning of section 2801(b) of the Internal Revenue Code.

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

Approved September 19, 1945.

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

(Filed with the Division of the Federal Register September 19, 1945, 3.56 p. m.)

GAUGING MANUAL (1938), PARAGRAPHS 13, 60. 1945–14–12091
T. D. 5466

TITLE 26—INTERNAL REVENUE.—CHAPTER I, PART 186.—GAUGING MANUAL.

Amending the Gauging Manual.

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

To District Supervisors and Others Concerned:

Pursuant to the provisions of sections 2808 and 3176, Internal Revenue Code, the Gauging Manual, approved November 21, 1938 (section 186, Title 26, CFR), is hereby amended as follows:

Paragraph 13(a) is amended to read as follows:

PAR. 13. (a) The proof of alcohol in receiving cisterns of industrial alcohol plants and the proof of spirits in cisterns of distilleries shall be adjusted to a whole or complete degree of proof before being removed therefrom. The proof of alcohol or other spirits at industrial alcohol bonded warehouses, bottling-in-bond departments of internal revenue bonded warehouses, rectifying plants, and tax-paid bottling houses shall be adjusted to a whole degree of proof preparatory to filling containers such as tank cars, barrels, drums, or bottles. Adjusting the proof to tenths of a degree, either above or below the whole or complete degree, will not be permitted: *Provided*, That when tax-paid spirits at rectifying plants and tax-paid bottling houses and untax-paid spirits for bottling in bond for export at bottling-in-bond departments of internal revenue bonded warehouses are being prepared for bottling and are to be bottled and labeled in tenths of a degree of proof, such as 86.6, the proof of the spirits shall be adjusted to such tenths of a degree of proof. The restoration to the original proof and volume of rectified spirits upon which the rectification tax has been paid, by the addition of water, preparatory to bottling, shall not be deemed a reduction in proof or an increase in volume within the meaning of section 2801(b) of the Internal Revenue Code.

Paragraph 60 is amended by the addition of a new subparagraph, lettered (k), reading as follows:

PAR. 60. (k) Where spirits are quick-aged, by any process, in packages at any time prior to tax-payment, the letters "Q. A." will be burned, cut, or stenciled upon the head of the package when such quick-aging is completed.

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

Approved July 11, 1945.

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

(Filed with the Division of the Federal Register July 12, 1945, 4.19 p. m.)

OLEOMARGARINE.[a]

1945–1–11925
MS. 282

Schedule of oleomargarine produced and materials used during the month of November, 1944, as compared with November, 1943.

	November, 1944.	November, 1943.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 52,808,592	[2] 50,555,025
Total withdrawn tax-paid	51,936,662	48,158,248
Ingredient schedule of uncolored oleomargarine:		
Butter culture		34
Butter flavor	1,888	231
Citric acid	549	5
Corn oil	848,424	1,229,970
Cottonseed flakes		45,915
Cottonseed oil	22,709,775	25,711,983
Cottonseed stearine	234	8,010
Derivative of glycerine	86,030	88,295
Diacetyl	77	103
Estearine	8,937	
Lecithin	61,153	49,942
Milk	9,218,963	8,810,258
Monostearine	43,098	38,129
Neutral lard	711,529	905,177
Oleo oil	623,023	1,114,279
Oleo stearine	228,058	278,063
Oleo stock	56,285	99,202
Peanut oil	603,496	346,250
Salt	1,622,480	1,622,240
Soda (benzoate of)	33,235	30,124
Soya bean oil	17,125,978	11,387,938
Soya bean stearine	12,108	
Tallow		25,220
Vitamin concentrate	9,744	10,487
Total	54,005,064	51,801,855
Total production of colored oleomargarine	[3] 2,463,049	1,860,315
Total withdrawn tax-paid	1,893,420	855,305
Ingredient schedule of colored oleomargarine:		
Butter flavor	6	3
Color	1,985	2,022
Corn oil	1,701	7,497
Cottonseed oil	608,099	483,922
Derivative of glycerine	1,826	2,005
Diacetyl	8	1
Estearine	183	
Lecithin	1,235	918
Milk	362,925	305,319
Monostearine	1,630	986
Neutral lard	51,674	45,490
Oleo oil	37,634	81,691
Oleo stock	400	1,763
Peanut oil	400	5,025
Salt	80,965	63,346
Soda (benzoate of)	1,183	907
Soya bean oil	1,286,533	887,028
Vitamin concentrate	366	404
Total	2,438,753	1,883,327

[a] All figures are subject to revision until published in the Commissioner's annual report.
[1] Of the amount produced, 5,621 pounds were reworked.
[2] Of the amount produced, 4,468 pounds were reworked.
[3] Of the amount produced, 9,003 pounds were reworked.

1945-4-11976
MS. 283

Schedule of oleomargarine produced and materials used during the month of December, 1944, as compared with December, 1943.

	December, 1944.	December, 1943.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 49,413,585	[2] 37,794,844
Total withdrawn tax-paid	50,237,466	39,573,554
Ingredient schedule of uncolored oleomargarine:		
Butter culture		43
Butter flavor	1,933	192
Citric acid	243	1
Corn oil	1,011,630	930,363
Cottonseed oil	21,521,723	20,208,619
Cottonseed stearine	45	11,570
Derivative of glycerine	87,356	66,497
Diacetyl	99	75
Estearine	7,798	
Lecithin	57,881	39,449
Milk	8,773,283	6,559,417
Monostearine	35,692	34,287
Neutral lard	634,173	674,030
Oleo oil	562,340	757,338
Oleo stearine	215,476	205,350
Oleo stock	85,366	49,587
Peanut oil	440,119	441,279
Salt	1,560,966	1,190,732
Soda (benzoate of)	29,923	24,794
Soya bean oil	15,612,513	7,355,094
Soya bean stearine	2,922	
Soya flakes		42,928
Tallow		14,657
Vitamin concentrate	8,364	7,770
Total	50,649,845	38,664,072
Total production of colored oleomargarine	3,010,200	11,946,908
Total withdrawn tax-paid	2,169,948	1,752,125
Ingredient schedule of colored oleomargarine:		
Butter flavor	23	79
Color	5,043	20,480
Corn oil	2,368	11,180
Cottonseed oil	826,715	578,730
Cottonseed flakes		82
Derivative of glycerine	2,814	11,741
Diacetyl	4	11
Estearine	184	
Lecithin	1,819	3,989
Milk	517,211	1,862,886
Monostearine	1,645	4,828
Neutral lard	52,243	103,359
Oleo oil	30,645	134,982
Oleo stearine	1,500	
Oleo stock	15,950	127,392
Peanut oil	401	3,180
Salt	98,333	414,141
Soda (benzoate of)	1,585	10,074
Soya bean oil	1,481,371	8,761,935
Soya flakes	400	
Vitamin concentrate	350	2,879
Total	3,040,604	12,051,048

[1] Of the amount produced, 9,727 pounds were reworked.
[2] Of the amount produced, 7,354 pounds were reworked.

1945–5–11986
MS. 284

Schedule of oleomargarine produced and materials used during the month of January, 1945, as compared with January, 1944.

	January, 1945.	January, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 55,868,112	[2] 43,807,839
Total withdrawn tax-paid	56,856,676	43,730,190
Ingredient schedule of uncolored oleomargarine:		
Butter culture		17
Butter flavor	492	137
Citric acid	173	1
Color	7	
Corn oil	835,428	885,517
Cottonseed oil	25,221,499	21,598,844
Cottonseed stearine		8,013
Derivative of glycerine	89,838	79,946
Diacetyl	83	76
Estearine	8,707	
Lecithin	68,302	44,171
Milk	9,977,203	7,627,511
Monostearine	62,879	33,513
Neutral lard	752,886	635,380
Oleo oil	638,931	659,067
Oleo stearine	187,889	296,786
Oleo stock	120,386	61,836
Peanut oil	1,473,891	1,200,213
Salt	1,691,050	1,387,844
Soda (benzoate of)	34,535	27,852
Soya bean oil	16,097,824	10,307,488
Soya bean stearine	9,318	
Soya flakes	2,945	5,106
Sunflower oil	6,040	
Tallow		22,630
Vitamin concentrate	8,633	8,856
Total	57,288,939	44,890,804
Total production of colored oleomargarine	3,462,079	11,425,439
Total withdrawn tax-paid	2,573,255	1,038,336
Ingredient schedule of colored oleomargarine:		
Butter flavor	15	123
Color	34,206	6,630
Corn oil	6,216	1,097
Cottonseed oil	1,109,307	554,496
Derivative of glycerine	2,969	19,679
Diacetyl	16	14
Estearine	225	
Lecithin	3,393	3,647
Milk	559,965	1,782,246
Monostearine	6,541	5,342
Neutral lard	94,933	437,087
Oleo oil	87,003	412,967
Oleo stock	23,650	360,848
Peanut oil	12,666	4,887
Salt	105,281	392,075
Soda (benzoate of)	3,027	7,421
Soya bean oil	1,453,344	7,493,806
Soya flakes	3,570	8,814
Vitamin concentrate	436	1,929
Total	3,506,763	11,493,108

[1] Of the amount produced, 36,902 pounds were reworked.
[2] Of the amount produced, 11,608 pounds were reworked.

1945–7–12009
MS. 285

Schedule of oleomargarine produced and materials used during the month of February, 1945, as compared with February, 1944.

	February, 1945.	February, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 47, 772, 532	[2] 41, 277, 078
Total withdrawn tax-paid	48, 491, 204	40, 655, 993
Ingredient schedule of uncolored oleomargarine:		
Butter culture	31	25
Butter flavor	381	950
Citric acid	188	112
Corn oil	879, 384	786, 006
Cottonseed oil	22, 949, 725	18, 558, 204
Cottonseed stearine		356
Derivative of glycerine	92, 374	70, 446
Diacetyl	74	85
Estearine	7, 318	8, 345
Lecithin	58, 531	39, 438
Milk	8, 410, 107	7, 292, 566
Monostearine	33, 548	26, 096
Neutral lard	590, 526	697, 205
Oleo oil	695, 037	805, 411
Oleo stearine	216, 482	251, 919
Oleo stock	63, 057	77, 603
Peanut oil	1, 056, 283	1, 655, 505
Salt	1, 477, 582	1, 221, 330
Soda (benzoate of)	29, 382	25, 464
Soya bean oil	12, 411, 151	9, 755, 357
Soya bean stearine	1, 512	
Soya flakes	366	994, 130
Tallow		42, 532
Vitamin concentrate	10, 273	7, 558
Total	48, 983, 312	42, 316, 733
Total production of colored oleomargarine	3, 979, 779	15, 943, 554
Total withdrawn tax-paid	2, 556, 871	1, 243, 385
Ingredient schedule of colored oleomargarine:		
Butter flavor	21	192
Citric acid		6
Color	4, 967	10, 613
Corn oil	8, 007	1, 532
Cottonseed oil	1. 498, 576	521, 350
Derivative of glycerine	4, 348	20, 701
Diacetyl	16	25
Estearine	235	1, 670
Lecithin	2, 679	5, 781
Milk	660, 292	2, 491, 609
Monostearine	1, 292	8; 436
Neutral lard	104, 065	302, 959
Oleo oil	92, 800	394, 373
Oleo stearine	209	7, 120
Oleo stock	21, 750	204, 977
Peanut oil	7, 303	14, 459
Salt	131, 231	535, 040
Soda (benzoate of)	1, 542	10, 577
Soya bean oil	1. 471, 311	11, 438, 531
Soya flakes	2, 880	15, 000
Vitamin concentrate	615	2, 831
Total	4, 014, 139	15, 987, 882

[1] Of the amount produced, 3,349 pounds were reworked.
[2] Of the amount produced, 8,980 pounds were reworked.

1945–9–12038
MS. 286

Schedule of oleomargarine produced and materials used during the month of March, 1945, as compared with March, 1944.

	March, 1945.	March, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 47, 318, 832	[2] 39, 413, 912
Total withdrawn tax-paid	48, 118, 312	40, 075, 225
Ingredient schedule of uncolored oleomargarine:		
Butter culture		8
Butter flavor	1, 005	1, 527
Citric acid	353	73
Corn oil	884, 175	1, 066, 528
Cottonseed oil	22, 826, 313	18, 138, 884
Cottonseed stearine		3, 028
Derivative of glycerine	92, 731	62, 059
Diacetyl	65	84
Estearine	7, 508	8, 766
Lecithin	54, 924	37, 997
Milk	8, 266, 582	6, 839, 622
Monostearine	29, 452	28, 466
Neutral lard	624, 731	597, 712
Lard flakes		1, 235
Oleo oil	767, 419	838, 289
Oleo stearine	141, 220	289, 282
Oleo stock	72, 773	26, 137
Peanut oil	639, 688	1, 209, 039
Salt	1, 443, 583	1, 290, 669
Soda (benzoate of)	28, 482	23, 966
Soya bean oil	12, 368, 669	10, 024, 656
Soya bean stearine	1, 856	
Soya flakes	1, 491	39, 460
Tallow		46, 312
Vitamin concentrate	8, 370	7, 421
Total	48, 201, 330	40, 581, 214
Total production of colored oleomargarine	[3] 7, 568, 046	[4] 18, 444, 287
Total withdrawn tax-paid	2, 343. 512	1, 239. 893
Ingredient schedule of colored oleomargarine:		
Butter flavor	155	521
Citric acid		13
Color	5, 933	9, 578
Corn oil	13, 447	1. 240
Cottonseed oil	1, 659, 287	851, 907
Derivative of glycerine	6, 394	20, 560
Diacetyl	29	24
Estearine	119	1, 323
Lecithin	4, 115	4, 683
Milk	1, 253, 049	2, 825, 597
Monostearine	7, 059	5, 943
Neutral lard	222, 454	370, 257
Lard flakes		166
Oleo oil	397, 348	465, 465
Oleo stearine	1, 306	
Oleo stock	54, 000	189, 670
Peanut oil	2, 681	5. 032
Salt	261, 446	618. 583
Soda (benzoate of)	5, 101	12, 550
Soya bean oil	3, 762, 359	13, 025, 772
Soya bean stearine		7, 655
Soya flakes	2, 659	14, 300
Vitamin concentrate	1, 043	2, 972
Total	7, 659, 984	18, 433, 811

[1] Of the amount produced, 19,446 pounds were reworked.
[2] Of the amount produced, 6,938 pounds were reworked.
[3] Of the amount produced, 36 pounds were reworked.
[4] Of the amount produced, 376 pounds were reworked.

1945–11–12054
MS. 287

Schedule of oleomargarine produced and materials used during the month of April, 1945, as compared with April, 1944.

	April, 1945.	April, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 46, 367, 061	[2] 35, 427, 571
Total withdrawn tax-paid	44, 700, 514	33, 838, 494
Ingredient schedule of uncolored oleomargarine:		
Butter culture		8
Butter flavor	624	211
Citric acid	193	2
Corn oil	772, 096	1, 486, 871
Coto flakes	3, 600	
Cottonseed oil	24, 720, 893	14, 954, 995
Derivative of glycerine	76, 102	55, 856
Diacetyl	76	69
Estearine	8, 695	6, 505
Lecithin	55, 239	38, 335
Milk	7, 973, 792	6, 256, 647
Monostearine	42, 135	29, 434
Neutral lard	354, 404	533. 254
Oleo oil	497, 321	629, 366
Oleo stearine	233, 060	311, 836
Oleo stock	28, 928	49, 877
Peanut oil	494, 955	632, 039
Salt	1, 427, 114	1, 121, 974
Soda (benzoate of)	30, 662	24, 108
Soya bean oil	10, 518, 647	10, 291, 900
Soya bean stearine	1, 596	
Tallow		16, 030
Vitamin concentrate	11, 720	6, 929
Total	47, 251, 852	36, 446, 246
Total production of colored oleomargarine	9, 282, 616	[3] 9, 427, 570
Total withdrawn tax-paid	2, 131, 237	1, 318, 370
Ingredient schedule of colored oleomargarine:		
Butter flavor	43	112
Color	6, 087	5, 049
Corn oil	3, 665	11, 582
Cottonseed oil	1, 103, 071	542, 195
Derivative of glycerine	8, 638	15, 528
Diacetyl	25	14
Estearine	953	292
Lecithin	4, 080	2, 045
Milk	1, 514, 513	1, 438, 643
Monostearine	5, 147	1, 682
Neutral lard	236, 069	445, 942
Lard flakes		22, 212
Oleo oil	570, 183	743, 508
Oleo stearine	5, 744	
Oleo stock	14, 500	264, 719
Peanut oil	108	3, 212
Salt	301, 997	308, 056
Soda (benzoate of)	6, 166	3, 879
Soya bean oil	5, 487, 302	5, 612, 638
Soya bean stearine		5, 780
Soya flakes	12, 474	13, 100
Vitamin concentrate	1, 314	1, 600
Total	9, 282, 079	9, 441, 788

[1] Of the amount produced, 8,100 pounds were reworked.
[2] Of the amount produced, 1,910 pounds were reworked.
[3] Of the amount produced, 44 pounds were reworked.

1945–13–12078
MS. 288

Schedule of oleomargarine produced and materials used during the month of May, 1945, as compared with May, 1944.

	May, 1945.	May, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 42,985,126	[2] 30,071,318
Total withdrawn tax-paid	40,048,678	30,834,215
Ingredient schedule of uncolored oleomargarine:		
Butter culture		6
Butter flavor	269	132
Citric acid	179	2
Corn oil	808,410	1,036,300
Cottonseed oil	22,501,430	13,342,597
Cottonseed stearine	72	
Derivative of glycerine	77,164	46,123
Diacetyl	82	71
Estearine	6,226	6,791
Lecithin	48,870	32,775
Milk	7,502,092	5,264,941
Monostearine	34,302	26,985
Neutral lard	233,644	439,507
Oleo oil	314,538	446,069
Oleo stearine	212,819	297,448
Oleo stock	24,966	44,061
Peanut oil	325,943	245,318
Salt	1,347,442	968,371
Soda (benzoate of)	27,950	18,956
Soya bean oil	10,556,862	8,667,149
Soya bean stearine	672	
Vitamin concentrate	9,226	6,461
Total	44,033,158	30,890,063
Total production of colored oleomargarine	11,339,645	[3] 14,408,209
Total withdrawn tax-paid	1,428,033	1,011,384
Ingredient schedule of colored oleomargarine:		
Butter flavor	168	114
Color	7,907	8,423
Corn oil	4,647	649
Cottonseed oil	503,302	385,654
Cottonseed flakes	6,478	60
Derivative of glycerine	12,098	18,458
Diacetyl	24	23
Estearine	1,569	242
Lecithin	5,650	3,851
Milk	1,900,809	2,155,835
Monostearine	8,562	3,560
Neutral lard	347,014	455,006
Lard flakes		49,991
Oleo oil	731,809	1,209,414
Oleo stearine	643	
Oleo stock	124,500	211,443
Peanut oil	1,348	408
Salt	382,539	503,326
Soda (benzoate of)	8,457	8,796
Soya bean oil	7,421,847	9,350,917
Soya flakes	4,177	5,400
Vitamin concentrate	2,681	3,085
Total	11,476,229	14,374,655

[1] Of the amount produced, 2,692 pounds were reworked.
[2] Of the amount produced, 5,085 pounds were reworked.
[3] Of the amount produced, 768 pounds were reworked.

1945–16–12112
MS. 289

Schedule of oleomargarine produced and materials used during the month of June, 1945, as compared with June, 1944.

	June, 1945.	June, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 35,043,447	[2] 25,709,530
Total withdrawn tax-paid	30,450,372	26,103,430
Ingredient schedule of uncolored oleomargarine:		
Butter culture		12
Butter flavor	237	230
Citric acid	121	103
Corn oil	622,474	763,916
Cottonseed flakes	3,755	
Cottonseed oil	19,295,015	11,135,626
Cottonseed stearine		15,457
Derivative of glycerine	67,324	38,900
Diacetyl	53	34
Estearine	5,117	6,846
Lecithin	37,618	27,520
Milk	6,046,167	4,560,969
Monostearine	26,271	23,930
Neutral lard	152,864	321,870
Oleo oil	198,829	452,961
Oleo stearine	76,239	270,606
Oleo stock	22,070	43,462
Peanut oil	258,109	256,840
Salt	1,031,121	764,978
Soda (benzoate of)	24,437	17,108
Soya bean oil	7,856,600	7,677,109
Soya bean stearine	448	
Tallow	1,800	
Vitamin concentrate	7,017	4,960
Total	35,733,686	26,383,437
Total production of colored oleomargarine	[3] 13,577,988	[4] 14,481,120
Total withdrawn tax-paid	932,208	894,438
Ingredient schedule of colored oleomargarine:		
Butter flavor	276	178
Color	7,735	8,520
Corn oil	923	559
Cottonseed flakes	8,035	
Cottonseed oil	520,602	345,899
Derivative of glycerine	13,152	14,532
Diacetyl	25	39
Estearine	1,981	1,707
Lecithin	5,658	5,282
Linseed oil		224,250
Milk	2,301,395	2,278,445
Monostearine	10,238	9,741
Neutral lard	243,664	259,439
Lard flakes		18,807
Oleo oil	442,454	650,717
Oleo stearine	712	507
Oleo stock	133,600	118,520
Peanut oil	434	241
Salt	448,820	477,543
Soda (benzoate of)	8,536	9,953
Soya bean oil	9,626,818	10,087,327
Soya flakes	4,950	9,600
Vitamin concentrate	2,027	2,808
Total	13,782,035	14,524,614

[1] Of the amount produced, 1,217 pounds were reworked.
[2] Of the amount produced, 22,295 pounds were reworked.
[3] Of the amount produced, 24 pounds were reworked.
[4] Of the amount produced, 32 pounds were reworked.

1945–17–12126
MS. 290

Schedule of oleomargarine produced and materials used during the month of July, 1945, as compared with July, 1944.

	July, 1945.	July, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 41,069,118	[2] 26,858,608
Total withdrawn tax-paid	36,617,996	27,121,004
Ingredient schedule of uncolored oleomargarine:		
Butter culture	95	
Butter flavor	2,528	1,027
Citric acid	116	2
Corn oil	886,261	484,995
Cottonseed flakes	24,873	
Cottonseed oil	21,375,829	10,579,678
Cottonseed stearine	63	
Derivative of glycerine	73,962	39,399
Diacetyl	64	69
Estearine	6,830	5,140
Lecithin	48,235	29,829
Milk	7,040,890	4,815,158
Monostearine	35,076	28,441
Neutral lard	150,264	475,927
Oleo oil	216,706	497,716
Oleo stearine	189,402	248,446
Oleo stock	15,456	61,942
Peanut oil	420,783	1,332,423
Salt	1,253,986	756,891
Soda (benzoate of)	26,547	20,049
Soya bean oil	10,148,832	8,164,382
Soya bean stearine	588	
Soya flakes		26,360
Tallow	8,100	
Vitamin concentrate	8,002	4,911
Total	41,933,488	27,572,785
Total production of colored oleomargarine	[3] 12,623,762	[4] 7,861,740
Total withdrawn tax-paid	1,227,997	1,000,238
Ingredient schedule of colored oleomargarine:		
Butter flavor	170	58
Color	5,327	4,887
Corn oil	1,573	1,235
Cottonseed flakes	4,390	
Cottonseed oil	606,505	330,834
Derivative of glycerine	17,377	6,197
Diacetyl	12	62
Estearine	3,442	345
Lecithin	5,183	3,173
Linseed oil		188,968
Milk	2,091,639	1,301,468
Monostearine	6,674	5,338
Neutral lard	202,725	155,120
Lard flakes		8
Oleo oil	445,739	254,188
Oleo stearine	923	
Oleo stock	123,400	68,089
Peanut oil	3,696	8,508
Salt	420,868	235,538
Soda (benzoate of)	9,232	4,952
Soya bean oil	8,798,723	5,397,083
Soya flakes	7,082	9,200
Vitamin concentrate	1,722	1,187
Total	12,756,402	7,976,438

[1] Of the amount produced, 2,882 pounds were reworked.
[2] Of the amount produced, 65,194 pounds were reworked.
[3] Of the amount produced, 60 pounds were reworked.
[4] Of the amount produced, 768 pounds were reworked.

1945–19–12147
MS. 291

Schedule of oleomargarine produced and materials used during the month of August, 1945, as compared with August, 1944.

	August, 1945.	August, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 38, 169, 587	[2] 33, 263, 077
Total withdrawn tax-paid	38, 758, 791	33, 285, 071
Ingredient schedule of uncolored oleomargarine:		
Butter culture	16	
Butter flavor	227	1, 839
Citric acid	97	297
Color	50	
Corn oil	759, 413	868, 479
Cottonseed oil	19, 629, 406	13, 372, 490
Cottonseed stearine	99	
Derivative of glycerine	64, 979	54, 148
Diacetyl	61	65
Estearine	11, 100	8, 164
Lecithin	46, 080	35, 634
Milk	6, 434, 873	5, 961, 295
Monostearine	33, 832	32, 063
Neutral lard	128, 095	434, 926
Lard flakes		8
Oleo oil	197, 238	496, 361
Oleo stearine	159, 209	216, 572
Oleo stock	18, 990	45, 998
Peanut oil	621, 414	1, 503, 744
Salt	1, 184, 649	1, 682, 893
Soda (benzoate of)	25, 850	24, 793
Soya bean oil	9, 532, 908	10, 112, 735
Soya bean stearine	924	
Soya flakes		5, 400
Sunflower oil		856
Tallow	2, 475	
Vitamin concentrate	9, 261	5, 545
Total	38, 861, 246	34, 864, 305
Total production of colored oleomargarine	12, 029, 890	4, 401, 603
Total withdrawn tax-paid	1, 026, 644	1, 067, 832
Ingredient schedule of colored oleomargarine:		
Butter flavor	752	4
Color	7, 569	3, 690
Corn oil	403	1, 707
Cottonseed oil	493, 094	382, 705
Cottonseed flakes	3, 770	
Derivative of glycerine	14, 769	3, 353
Diacetyl	42	28
Estearine	4, 347	207
Lecithin	3, 820	8, 253
Milk	2, 001, 898	722, 988
Monostearine	8, 524	3, 206
Neutral lard	292, 145	87, 987
Oleo oil	625, 078	209, 704
Oleo stearine	691	
Oleo stock	187, 100	400
Peanut oil	44, 048	3, 247
Salt	427, 480	146, 496
Soda (benzoate of)	8, 869	2, 531
Soya bean oil	8, 120, 349	2, 885, 064
Soya flakes	9, 717	16, 000
Vitamin concentrate	1, 872	1, 525
Total	12, 256, 337	4, 479, 095

[1] Of the amount produced, 3,146 pounds were reworked.
[2] Of the amount produced, 14,000 pounds were reworked.

1945–22–12170
MS. 292

Schedule of oleomargarine produced and materials used during the month of September, 1945, as compared with September, 1944.

	September, 1945.	September, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 33, 765, 520	[2] 48, 821, 030
Total withdrawn tax-paid	33, 781, 790	47, 409, 234
Ingredient schedule of uncolored oleomargarine:		
Butter flavor	587	243
Citric acid	84	454
Corn oil	583, 285	1, 264, 082
Cottonseed oil	17, 283, 442	19, 234, 547
Derivative of glycerine	64, 069	85, 069
Diacetyl	45	100
Estearine	8, 206	10, 266
Lecithin	41, 701	45, 925
Milk	5, 734, 113	8, 581, 427
Monostearine	26, 505	39, 817
Neutral lard	75, 428	648, 419
Oleo oil	198, 666	652, 127
Oleo stearine	199, 564	229, 209
Oleo stock	16, 280	36, 941
Peanut oil	753, 688	1, 851, 923
Salt	1, 039, 243	1, 543, 518
Soda (benzoate of)	22, 389	30, 122
Soya bean oil	8, 506, 004	15, 647, 792
Soya bean stearine	3, 024	----------
Tallow	1, 800	----------
Vitamin concentrate	7, 041	8, 151
Total	34, 565, 164	49, 910, 137
Total production of colored oleomargarine	10, 866, 848	[3] 2, 262, 028
Total withdrawn tax-paid	774, 270	1, 364, 000
Ingredient schedule of colored oleomargarine:		
Butter flavor	228	11
Color	8, 327	1, 465
Corn oil	602	1, 260
Cottonseed oil	524, 222	393, 993
Cottonseed flakes	6, 266	----------
Derivative of glycerine	15, 501	2, 197
Diacetyl	45	4
Estearine	209	162
Lecithin	4, 383	1, 044
Milk	1, 808, 389	366, 269
Monostearine	10, 474	1, 483
Neutral lard	203, 064	80, 623
Oleo oil	395, 655	81, 830
Oleo stock	157, 925	6, 109
Peanut oil	11, 413	2, 842
Salt	374, 647	72, 685
Soda (benzoate of)	7, 665	1, 221
Soya bean oil	7, 504, 413	1, 235, 732
Vitamin concentrate	1, 402	360
Total	11, 034, 830	2, 249, 290

[1] Of the amount produced, 8,474 pounds were reworked.
[2] Of the amount produced, 27,723 pounds were reworked.
[3] Of the amount produced, 17,334 pounds were reworked.

1945–24–12196
MS. 293

Schedule of oleomargarine produced and materials used during the month of October, 1945, as compared with October, 1944.

	October, 1945.	October, 1944.
	Pounds.	*Pounds.*
Total production of uncolored oleomargarine	[1] 45,724,888	[2] 53,742,919
Total withdrawn tax-paid	44,069,240	54,726,412
Ingredient schedule of uncolored oleomargarine:		
Butter culture	11	
Butter flavor	665	294
Citric acid	99	297
Corn oil	826,984	951,826
Cottonseed flakes	2,450	
Cottonseed oil	17,700,259	23,055,508
Cottonseed stearine	747	
Derivative of glycerine	83,932	88,236
Diacetyl	58	65
Estearine	11,506	9,917
Lecithin	56,182	62,608
Milk	7,778,960	9,631,623
Monostearine	32,910	41,784
Neutral lard	155,481	724,697
Oleo oil	303,652	724,331
Oleo stearine	298,563	214,944
Oleo stock	19,000	56,053
Peanut oil	1,723,401	1,318,109
Salt	1,382,948	1,695,307
Soda (benzoate of)	29,237	34,211
Soya bean oil	16,124,213	16,234,796
Soya bean stearine	1,224	9,057
Tallow	3,600	
Vitamin concentrate	7,846	9,316
Total	46,543,928	55,462,979
Total production of colored oleomargarine	[3] 3,995,345	[4] 3,438,986
Total withdrawn tax-paid	2,368,759	1,769,518
Ingredient schedule of colored oleomargarine:		
Butter flavor	22	8
Color	2,366	2,291
Corn oil	67	1,051
Cottonseed oil	950,205	460,588
Derivative of glycerine	5,764	2,723
Diacetyl	9	20
Estearine	555	189
Lecithin	1,784	1,356
Milk	634,786	575,948
Monostearine	2,235	2,274
Neutral lard	31,331	77,986
Oleo oil	40,981	59,432
Oleo stock	17,600	4,749
Peanut oil	11,287	2,544
Salt	128,582	117,171
Soda (benzoate of)	2,019	1,526
Soya bean oil	2,203,372	2,187,993
Soya flakes		6,100
Vitamin concentrate	328	434
Total	4,033,873	3,504,383

[1] Of the amount produced, 16,834 pounds were reworked.
[2] Of the amount produced, 24,669 pounds were reworked.
[3] Of the amound produced, 180 pounds were reworked.
[4] Of the amount produced, 5,700 pounds were reworked.

CIGARS, TOBACCO, AND CIGARETTES.

INTERNAL REVENUE CODE.

1945–4–11974
T. D. 5438

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 142.—TAX-FREE WITHDRAWALS OF CIGARS FROM CUSTOMS BONDED WAREHOUSES, CLASS 6.

Regulations relating to the withdrawal of cigars from customs bonded manufacturing warehouses, class 6, without payment of internal revenue tax, for shipment to the Territories of the United States for the use of members of the military and naval forces therein, or for export to foreign countries or shipment to possessions of the United States.

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

To Collectors of Internal Revenue and Others Concerned:

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SECTION 142.0. SCOPE OF REGULATIONS.—These regulations relate to the withdrawal without payment of tax from customs bonded manufacturing warehouses, class 6, for shipment to Territories of the United States for the use of members of the military and naval forces therein or 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 these regulations may not be recovered. However, these regulations are exclusive only with respect to the withdrawal of cigars for shipment to a Territory of the United States for the use of the armed forces of the United States. They are not exclusive as to withdrawals for export to foreign countries or shipment to some possessions of the United States, which withdrawals may be accomplished in accordance with customs regulations and procedure regardless of these regulations. These regulations do 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. 142.1. DEFINITIONS.—As used in these regulations—

(*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 these regulations 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 these regulations, 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) SHIPMENTS 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.

SEC. 142.2. SHIPMENT AND USE RESTRICTED.—The withdrawal of cigars under these regulations without payment of tax may be made only for shipment to the Territories of Alaska and Hawaii, and then only for the use of members of the military and naval forces therein, or for export to foreign countries or shipment to possessions of the United States. Withdrawals for the use of the military or naval forces in such Territories without payment of tax are authorized only until the President proclaims that hostilities in the present war have terminated.

SEC. 142.3. 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 these regulations, 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 indorsement 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. 142.4. PACKING, MARKING, OR BRANDING.—Cigars when withdrawn under these regulations shall be put up in packages of the same sizes and descriptions as prescribed by the law and regulations for like cigars removed for domestic consumption. Each box or package of cigars shall have affixed in place of the internal revenue stamp a label, which label shall be yellow in color and on which shall be printed in red the following legend:

> FREE OF TAX—For use only of United States military or naval forces in Alaska and Hawaii, or for use outside the jurisdiction of the internal revenue laws of the United States.

SEC. 142.5. SHIPPING CONTAINERS.—Each shipping container in which cigars are to be withdrawn under these regulations shall be plainly numbered by the manufacturer, the number to be a consecutive one of a series adopted by the manufacturer for withdrawals under these regulations, to begin 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. 142.6. APPLICATION FOR WITHDRAWAL.—An application on internal revenue Form 550, appropriately modified, shall be filed for each shipment intended to be withdrawn under these regulations. Such application shall be executed and filed in triplicate by the manufacturer with the collector. Each application shall bear a serial number, such number to be a consecutive one of a series adopted by the manufacturer for withdrawals under these regulations, to begin 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 each copy of the application, forward the original and two 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. 142.7. 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 these regulations, 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 these regulations. The packing of the shipping containers shall be under the supervision of the customs officer who will see that the number required by these regulations is properly inscribed on each shipping container.

Cigars withdrawn under these regulations 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 shall be subject to seizure by and forfeiture to the United States.

SEC. 142.8. 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, the other copy forwarded immediately to the collector and the original delivered to the manufacturer to go forward with the shipment and be disposed of as hereinafter prescribed.

SEC. 142.9. 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 these regulations, 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. 142.10. 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 indorsement the original 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 indorsement of the change, shall forward the original 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 of the application to the manufacturer.

SEC. 142.11. WITHDRAWAL OF SHIPMENT AND DISPOSITION OF THE ORIGINAL APPLICATION, FORM 550.—After the shipment has been released for withdrawal, the manufacturer shall enter on the original 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 of the application shall then be disposed of by the manufacturer as hereinafter prescribed.

(*a*) *Shipments other than by parcel post.*—If the shipment is to be made directly to the consignee outside of the continental United States, the original of the application on Form 550 shall be forwarded by the manufacturer directly to the consignee. If the shipment is made to an Army port of embarkation or Navy supply depot for transshipment outside of the United States, the original Form 550 shall be forwarded by the manufacturer to the Army port transportation officer or Navy supply officer, as the case may be.

The manufacturer shall insert on the back of the original Form 550 immediately preceding the "Certificate of Mailing by Parcel Post" a "Certificate of Receipt" as follows:

CERTIFICATE OF RECEIPT.

I hereby certify that the cigars herein described, except for the discrepancies noted below, were delivered to me for shipment or delivery only for consumption or use beyond the jurisdiction of the internal revenue laws of the United States, or for delivery to a Territory of the United States for the use of the military or naval forces therein. Discrepancies:

(Date.) (Name and Title or Rank.)

Upon receipt and verification of the shipment, the consignee to whom the original Form 550 was forwarded by the manufacturer shall execute the "Certificate of Receipt" appearing thereon, noting any discrepancies in the shipment, and return the executed form to the manufacturer, who shall immediately file the form with the collector.

(*b*) *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. 142.12. 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.)

SEC. 142.13. TAX LIABILITY.—The responsibility for the delivery to the consignee of cigars withdrawn under these regulations 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 these regulations.

SEC. 142.14. CREDIT FOR SHIPMENT.—Upon receipt of the original of the application on Form 550 with the prescribed "Certificate of Receipt" or "Certificate of Mailing by Parcel Post" properly executed 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. 142.15. 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 these regula-

tions, and, accordingly, any person withdrawing, possessing, using, or delivering any such cigars otherwise than as authorized by these regulations may be subject to the penalties prescribed by these sections of the Code.

(This Treasury decision is issued under the authority contained in section 2135(a)(1) of the Internal Revenue Code (53 Stat., 467), as amended by Act approved March 23, 1943 (57 Stat., 42).)

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

W. R. JOHNSON,
Commissioner of Customs.

Approved February 7, 1945.

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

(Filed with the Division of the Federal Register February 8, 1945, 3.41 p. m.)

TOBACCO.[1]

1945–1–11926
T. 127

Statement of manufactured tobacco produced, by classes, during the month of October, 1944, as compared with October, 1943.

	October, 1944.	October, 1943.
	Pounds.	*Pounds.*
Plug	5,365,182	4,911,425
Twist	609,813	514,506
Fine-cut chewing	347,590	434,177
Scrap chewing	5,014,670	4,631,362
Smoking	15,490,617	15,410,346
Snuff	3,808,835	3,446,700
Total	30,636,707	29,348,516

1945–3–11959
T. 128

Statement of manufactured tobacco produced, by classes, during the month of November, 1944, as compared with November, 1943.

	November, 1944.	November, 1943.
	Pounds.	*Pounds.*
Plug	5,687,205	5,079,942
Twist	566,641	529,551
Fine-cut chewing	370,628	380,720
Scrap chewing	4,720,304	4,852,374
Smoking	16,973,140	16,108,384
Snuff	3,849,754	3,460,438
Total	32,167,672	30,411,409

[1] All figures are subject to revision until published in the Commissioner's annual report.

1945–5–11988
T. 131

Statement of manufactured tobacco produced, by classes, during the month of December, 1944, as compared with December, 1943.

	December, 1944.	December, 1943.
	Pounds.	*Pounds.*
Plug	4, 776, 167	4, 386, 912
Twist	499, 483	515, 376
Fine-cut chewing	341, 326	373, 915
Scrap chewing	4, 207, 457	4, 683, 830
Smoking	13, 933, 506	12, 602, 942
Snuff	3, 280, 915	3, 721, 467
Total	27, 038, 854	26, 284, 442

1945–7–12008
T. 134

Statement of manufactured tobacco produced, by classes, during the month of January, 1945, as compared with January, 1944.

	January, 1945.	January, 1944.
	Pounds.	*Pounds.*
Plug	5, 114, 500	5, 077, 707
Twist	582, 209	510, 977
Fine-cut chewing	372, 858	318, 155
Scrap chewing	4, 531, 854	4, 472, 919
Smoking	15, 095, 743	11, 017, 793
Snuff	4, 072, 336	3, 675, 853
Total	29, 769, 500	25, 073, 404

1945–9–12040
T. 137

Statement of manufactured tobacco produced, by classes, during the month of February, 1945, as compared with February, 1944.

	February, 1945.	February, 1944.
	Pounds.	*Pounds.*
Plug	4, 449, 921	4, 858, 037
Twist	525, 779	497, 905
Fine-cut chewing	309, 283	318, 691
Scrap chewing	4, 216, 235	4, 119, 432
Smoking	13, 404, 196	8, 845, 477
Snuff	3, 516, 038	3, 648, 699
Total	26, 421, 452	22, 288, 241

1945–11–12055
T. 138

Statement of manufactured tobacco produced, by classes, during the month of March, 1945, as compared with March, 1944.

	March, 1945.	March, 1944.
	Pounds.	*Pounds.*
Plug	5,416,450	5,494,937
Twist	623,617	587,988
Fine-cut chewing	329,565	339,916
Scrap chewing	4,563,782	4,195,522
Smoking	14,757,583	8,379,982
Snuff	4,213,834	3,923,227
Total	29,904,831	22,921,572

1945–13–12079
T. 140

Statement of manufactured tobacco produced, by classes, during the month of April, 1945, as compared with April, 1944.

	April, 1945.	April, 1944
	Pounds.	*Pounds.*
Plug	5,011,197	4,705,651
Twist	573,735	514,031
Fine-cut chewing	323,266	310,987
Scrap chewing	4,267,572	3,681,513
Smoking	13,769,160	8,352,361
Snuff	3,875,655	3,338,222
Total	27,820,585	20,902,765

1945–15–12102
T. 142

Statement of manufactured tobacco produced, by classes, during the month of May, 1945, as compared with May, 1944.

	May, 1945.	May, 1944.
	Pounds.	*Pounds.*
Plug	5,273,854	5,217,499
Twist	605,646	561,392
Fine-cut chewing	328,988	364,631
Scrap chewing	4,383,421	4,322,793
Smoking	15,106,068	10,720,235
Snuff	4,075,991	3,675,102
Total	29,773,968	24,861,652

1945–17–12127
T.144

Statement of manufactured tobacco produced, by classes, during the month of June, 1945, as compared with June, 1944.

	June, 1945.	June, 1944.
	Pounds.	*Pounds.*
Plug	5,059,509	5,405,576
Twist	605,435	530,636
Fine-cut chewing	332,676	370,721
Scrap chewing	4,311,156	4,507,552
Smoking	14,819,595	9,834,733
Snuff	3,400,291	3,198,609
Total	28,528,662	23,847,827

1945–18–12136
T. 146

Statement of manufactured tobacco produced, by classes, during the month of July, 1945, as compared with July, 1944.

	July, 1945	July, 1944
	Pounds	*Pounds*
Plug	5,019,181	4,682,872
Twist	523,208	480,477
Fine-cut chewing	300,903	288,351
Scrap chewing	4,094,374	4,187,257
Smoking	13,185,155	10,092,064
Snuff	3,153,392	3,122,070
Total	26,276,213	22,853,091

1945–21–12158
T. 148

Statement of manufactured tobacco produced, by classes, during the month of August, 1945, as compared with August, 1944.

	August, 1945.	August, 1944.
	Pounds.	*Pounds.*
Plug	5,719,615	5,495,596
Twist	622,838	564,315
Fine-cut chewing	360,466	373,777
Scrap chewing	4,271,022	5,046,581
Smoking	15,401,148	13,290,287
Snuff	3,673,962	3,207,187
Total	30,049,051	27,977,743

1945–23–12186
T. 150

Statement of manufactured tobacco produced, by classes, during the month of September, 1945, as compared with September, 1944.

	September, 1945.	September, 1944.
	Pounds.	*Pounds.*
Plug	5, 197, 740	4, 889, 859
Twist	546, 502	543, 295
Fine-cut chewing	337, 707	349, 030
Scrap chewing	3, 515, 998	4, 406, 634
Smoking	14, 670, 098	12, 944, 209
Snuff	3, 461, 814	3, 231, 225
Total	27, 729, 859	26, 364, 252

CIGARETTES.[a]

1945–3–11960
T. 129

Preliminary statement of cigarettes removed for consumption during the months of July, August, September, and October, 1944, as compared with removals for similar months of 1943.

Removals.	July, 1943.[1]	July, 1944.[1]	August, 1943.[1]	August, 1944.[1]
	Number.	*Number.*	*Number.*	*Number.*
Tax-paid	23, 085, 845, 263	20, 269, 038, 137	23, 925, 892, 204	22, 431, 061, 447
Tax-free	3, 446, 207, 320	5, 578, 248, 280	3, 699, 466, 906	6, 668, 976, 778
Totals	26, 532, 052, 583	25, 847, 286, 417	27, 625, 359, 110	29, 100, 038, 225

Removals.	September, 1943.[1]	September, 1944.[1]	October, 1943.	October, 1944.
	Number.	*Number.*	*Number.*	*Number.*
Tax-paid	22, 311, 269, 408	19, 774, 410, 713	23, 206, 648, 457	20, 368, 761, 893
Tax-free	4, 660, 186, 027	7, 844, 178, 650	4, 463, 356, 648	8, 678, 353, 502
Totals	26, 971, 455, 435	27, 618, 589, 363	27, 670, 005, 105	29, 047, 115, 395

[1] Revised.

1945–4–11975
T. 130

Preliminary statement of small cigarettes removed for consumption during the month of November, 1944, as compared with removals for the same month of 1943.

Removals.	November, 1943.	November, 1944.
	Number.	*Number.*
Tax-paid	24, 619, 813, 795	20, 461, 868, 518
Tax-free	2, 930, 454, 315	9, 358, 727, 298
Totals	27, 550, 268, 110	29, 820, 595, 816

[a] All figures are subject to revision until published in the Commissioner's annual report.

1945–5–11987
T. 132

Preliminary statement of small cigarettes removed for consumption during the month of December, 1944, as compared with removals for the same month of 1943.

Removals.	December, 1943.	December, 1944.
	Number.	*Number.*
Tax-paid	22, 913, 388, 396	17, 387, 713, 573
Tax-free	3, 206, 074, 046	8, 803, 414, 780
Totals	26, 119, 462, 442	26, 191, 128, 353

1945–6–12000
T. 133

Preliminary statement of small cigarettes removed for consumption during the month of January, 1945, as compared with removals for the same month of 1944.

Removals.	January, 1945.	January, 1944.
	Number.	*Number.*
Tax-paid	20, 419, 938, 567	18, 214, 776, 104
Tax-free	9, 507, 809, 960	5, 241, 660, 573
Totals	29, 927, 748, 527	23, 456, 436, 677

1945–8–12026
T. 135

Preliminary statement of small cigarettes removed for consumption during the month of February, 1945, as compared with removals for the same month of 1944.

Removals.	February, 1945.	February, 1944.
	Number.	*Number.*
Tax-paid	16, 705, 096, 685	18, 184, 696. 980
Tax-free	10, 087, 711, 834	6, 560, 346, 098
Totals	26, 792. 808, 519	24, 745, 043, 078

1945–9–12039
T. 136

Preliminary statement of small cigarettes removed for consumption during the month of March, 1945, as compared with removals for the same month of 1944.

Removals.	March, 1945.	March, 1944.
	Number.	*Number.*
Tax-paid	18, 164. 656, 588	19, 955, 661, 500
Tax-free	11, 598, 367, 919	6, 181, 291, 303
Totals	29, 763, 024, 507	26, 136, 952, 803

1945–11–12056
T. 139

Preliminary statement of small cigarettes removed for consumption during the month of April, 1945, as compared with removals for the same month of 1944.

Removals.	April, 1945.	April, 1944.
	Number.	*Number.*
Tax-paid	17, 512, 345, 384	18, 495, 854, 238
Tax-free	9. 501, 979, 892	5, 375, 143, 660
Totals	27, 014, 325, 276	23, 870, 997, 898

1945–13–12080
T. 141

Preliminary statement of small cigarettes removed for consumption during the month of May, 1945, as compared with removals for the same month of 1944.

Removals.	May, 1945.	May, 1944.
	Number.	*Number.*
Tax-paid	21, 165, 728, 692	21, 579, 425, 336
Tax-free	8, 838, 859, 454	6, 857, 371, 180
Totals	30, 004, 588, 146	28, 436, 796, 516

1945–15–12103
T. 143

Preliminary statement of small cigarettes removed for consumption during the month of June, 1945, as compared with removals for the same month of 1944.

Removals.	June, 1945.	June, 1944.
	Number.	*Number.*
Tax-paid	24, 166, 650, 170	20, 729, 533, 747
Tax-free	4, 843, 475, 292	6, 855, 641, 948
Totals	29, 010, 125, 462	27, 585, 175, 695

1945–17–12130
T. 145

Preliminary statement of small cigarettes removed for consumption during the month of July, 1945, as compared with removals for the same month of 1944.

Removals.	July, 1945.	July, 1944.
	Number.	*Number.*
Tax-paid	22, 313, 479, 818	20, 269, 038, 137
Tax-free	3, 202, 143, 085	5, 578, 248, 280
Totals	25, 515, 622, 903	25, 847, 286, 417

1945–20–12152
T. 147

Preliminary statement of small cigarettes removed for consumption during the month of August, 1945, as compared with removals for the same month of 1944.

Removals.	August, 1945.	August, 1944.
	Number.	*Number.*
Tax-paid	27, 743, 027, 100	22, 431, 061, 447
Tax-free	2, 058, 545, 762	6, 668, 976, 778
Totals	29, 801, 572, 862	29, 100, 038, 225

1945–21–12159
T. 149

Preliminary statement of small cigarettes removed for consumption during the month of September, 1945, as compared with removals for the same month of 1944.

Removals.	September, 1945.	September, 1944.
	Number.	*Number.*
Tax-paid	26, 724, 028, 164	19, 774, 410, 713
Tax-free	801, 804, 065	7, 844, 178, 650
Totals	27, 525, 832, 229	27, 618, 589, 363

1945–23–12188
T. 151

Preliminary statement of small cigarettes removed for consumption during the month of October, 1945, as compared with removals for the same month of 1944.

Removals.	October, 1945.	October, 1944.
	Number.	*Number.*
Tax-paid	31, 258, 887, 532	20, 368, 761, 893
Tax-free	1, 269, 318, 346	8, 678, 353, 502
Totals	32, 528, 205, 878	29, 047, 115, 395

MISCELLANEOUS.

1945–8–12025

Double taxation.—Convention and protocol between the United States of America and the French Republic—Signed at Paris July 25, 1939; ratification advised by the Senate of the United States of America December 6, 1944; ratified by the President of the United States of America December 15, 1944; ratified by the President of the Provisional Government of the French Republic December 29, 1944; ratifications exchanged at Paris December 30, 1944; proclaimed by the President of the United States of America January 5, 1945; effective January 1, 1945.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA—A PROCLAMATION.

Whereas a convention and an accompanying protocol between the United States of America and the French Republic for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance in the case of income and other taxes were signed by their respective plenipotentiaries at Paris on the 25th day of July, 1939, the originals of which convention and protocol, being in the English and French languages, are word for word as follows:

CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE ESTABLISHMENT OF RULES OF RECIPROCAL ADMINISTRATIVE ASSISTANCE IN THE CASE OF INCOME AND OTHER TAXES.

The President of the United States of America and the President of the French Republic, being desirous of avoiding double taxation and of establishing rules of reciprocal administrative assistance in the case of income and other taxes, have decided to conclude a convention and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America:

Mr. William Christian Bullitt, Ambassador Extraordinary and Plenipotentiary of the United States of America to France;

The President of the French Republic:

M. Georges Bonnet, Member of the Chamber of Deputies, Minister for Foreign Affairs,

who, having communicated to one another their full powers found in good and due form, have agreed upon the following articles:

TITLE I. DOUBLE TAXATION.

ARTICLE 1.

The taxes referred to in this convention are:

(a) In the case of the United States of America:
The Federal income taxes, including surtaxes and excess-profits taxes;

(b) In the case of France:
(1) The real estate tax;
(2) The industrial and commercial profits tax;
(3) The annual tax on undistributed profits;
(4) The agricultural profits tax;
(5) The tax on salaries, allowances and emoluments, wages, pensions and annuities;
(6) The professional profits tax;
(7) The tax on income from securities and movable capital;
(8) The general income tax.

ARTICLE 2.

Income from real property, including income from agricultural undertakings, shall be taxable only in the State in which such real property is situated.

ARTICLE 3.

An enterprise of one of the contracting States is not subject to taxation by the other contracting State in respect of its industrial and commercial profits except in respect of such profits allocable to its permanent establishment in the latter State.

No account shall be taken, in determining the tax in one of the contracting States, of the purchase of merchandise effected therein by an enterprise of the other State for the purpose of supplying establishments maintained by such enterprise in the latter State.

The competent authorities of the two contracting States may lay down rules by agreement for the apportionment of industrial and commercial profits.

The term "industrial and commercial profits" shall not include the following:

(*a*) Income from real property;

(*b*) Income from mortgages, from public funds, securities (including mortgage bonds), loans, deposits and current accounts;

(*c*) Dividends and other income from shares in a corporation;

(*d*) Rentals or royalties arising from leasing personal property or from any interest in such property, including rentals or royalties for the use of, or for the privilege of using, patents, copyrights, secret processes and formulae, goodwill, trade marks, trade brands, franchises and other like property;

(*e*) Profit or loss from the sale or exchange of capital assets.

Subject to the provisions of this convention the income referred to in paragraphs (*a*), (*b*), (*c*), (*d*), and (*e*) shall be taxed separately or together with industrial and commercial profits in accordance with the laws of the contracting States.

ARTICLE 4.

American enterprises having permanent establishments in France are required to submit to the French fiscal administration the same declarations and the same justifications, with respect to such establishments, as French enterprises.

The French fiscal administration has the right, within the provisions of its national legislation and subject to the measures of appeal provided in such legislation, to make such corrections in the declaration of profits realized in France as may be necessary to show the exact amount of such profits.

The same principle applies mutatis mutandis to French enterprises having permanent establishments in the United States.

ARTICLE 5.

When an American enterprise, by reason of its participation in the management or capital of a French enterprise, makes or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with a third enterprise, any profits which should normally have appeared in the balance sheet of the French enterprise, but which have been in this manner, diverted to the American enterprise, are, subject to the measures of appeal applicable in the case of the tax on industrial and commercial profits, incorporated in the taxable profits of the French enterprise.

The same principle applies mutatis mutandis, in the event that profits are diverted from an American enterprise to a French enterprise.

ARTICLE 6.

Income derived by navigation enterprises of one of the contracting States from the operation of ships documented under the laws of that State shall continue to benefit in the other State by the reciprocal tax exemptions accorded by the exchange of notes of June 11 and July 8, 1927,[1] between the United States of America and France.

Income which an enterprise of one of the contracting States derives from the operation of aircraft registered in that State shall be exempt from taxation in the other State.

ARTICLE 7.

Royalties from real property or in respect of the operation of mines, quarries or other natural resources shall be taxable only in the contracting State in which such property, mines, quarries or other natural resources are situated.

[1] [Executive Agreement Series 12; 47 Stat. 2604.]

Royalties derived from within one of the contracting States by a resident or by a corporation or other entity of the other contracting State as consideration for the right to use copyrights, patents, secret processes and formulae, trade marks and other analogous rights shall be exempt from taxation in the former State, provided such resident, corporation or other entity does not have a permanent establishment there.

ARTICLE 8.

Wages, salaries and similar compensation and pensions paid by one of the contracting States or by a political subdivision thereof to individuals residing in the other State shall be exempt from taxation in the latter State.

Private pensions and life annuities derived from within one of the contracting States and paid to individuals residing in the other contracting State shall be exempt from taxation in the former State.

ARTICLE 9.

Income from labor or personal services shall be taxable only in the State in which the taxpayer carries on his personal activity.

This provision does not apply to the income referred to in article 8.

ARTICLE 10.

Income from the exercise of a liberal profession shall be taxable only in the State in which the professional activity is exercised.

There is the exercise of a liberal profession in one of the two contracting States only when the professional activity has a fixed center in that country.

ARTICLE 11.

Gains derived in one of the contracting States from the sale or exchange of stocks, securities or commodities by a resident or a corporation or other entity of the other contracting State shall be exempt from taxation in the former State, provided such resident or corporation or other entity has no permanent establishment in the former State.

ARTICLE 12.

Students from one of the contracting States residing in the other contracting State exclusively for the purpose of study shall not be taxable by the latter State in respect of remittances received from within the former State for the purpose of their maintenance or studies.

ARTICLE 13.

In the calculation of taxes established in one of the contracting States on the use of property or increment of property of an enterprise of the other State, account shall be taken only of that portion of the capital situated or employed and allocable to a permanent establishment within the former State.

The foregoing provision shall apply to the French "patente" tax and the United States capital stock tax even though these two taxes have not been referred to in article 1 of the present convention.

In the application of the present article navigation enterprises of one of the contracting States, enjoying in the other State the benefits of article 6 of the present convention, shall not be considered as having a permanent establishment in the latter State in so far as shipping activities are concerned.

ARTICLE 14.

It is agreed that double taxation shall be avoided in the following manner:

A—*As regards the United States of America:*

Notwithstanding any other provision of this convention, the United States of America in determining the income and excess-profits taxes, including all surtaxes, of its citizens, or residents, or corporations, may include in the basis upon which such taxes are imposed, all items of income taxable under the revenue laws of the United States of America, as though this convention had not come into effect. The United States of America shall, however, deduct from the taxes thus computed the amount of French income tax paid. This deduction shall be made in accordance with the benefits and limitations of section 131 of the United States Internal Revenue Code relating to credit for foreign taxes.

B—*As regards France:*

(*a*) Schedular taxes.

Income from securities, debts and trusts having its source in the United States of America shall be subject in France to the tax on income from securities; but this tax shall be reduced by the amount of the tax already paid in the United States of America on the same income. In consideration of the fiscal regime to which the legislation of the United States of America subjects the income of nonresident aliens and foreign corporations or other entities, the deduction of the tax paid in the United States of America shall be effected in a lump sum through a reduction of 12 in the rate of the tax established by the French law.

The income other than that indicated in the preceding paragraph shall not be subject to any schedular tax in France when, according to this convention, it is taxable in the United States of America.

(*b*) General tax on revenue.

Notwithstanding any other provision of the present convention, the general income tax can be determined according to all the elements of taxable income as imposed by French fiscal legislation.

However, the provisions of the first paragraph of article 114 of the French Code on direct taxation relative to the taxation of aliens domiciled or resident in France shall continue to be applied.

ARTICLE 15.

In derogation of article 3 of the decree of December 6, 1872, American corporations which maintain in France permanent establishments shall be liable to the tax on income from securities on three-fourths of the profits actually derived from such establishments, the industrial and commercial profits being determined in accordance with articles 3 and 4 of this convention.

The remaining one-fourth shall, in all cases, be taken as the basis of the annual tax on undistributed profits applicable to the same corporation.

ARTICLE 16.

An American corporation shall not be subject to the obligations prescribed by article 3 of the decree of December 6, 1872, by reason of any participation in the management or in the capital of, or any other relations with, a French corporation. In such case, the tax on income from securities continues to be levied, in conformity with French legislation, on the dividends, interest and all other distributions made by the French enterprise; but it is moreover collectible, if the occasion arises, and subject to the measures of appeal applicable in the case of the tax on income from securities, with respect to the profits which the American corporation derives from the French corporation under the conditions prescribed in article 5.

ARTICLE 17.

The American corporations subject to the provisions of article 3 of the decree of December 6, 1872, who were not placed under the special regime established by articles 5 and 6 of the convention for the avoidance of double income taxation between the United States of America and France, signed April 27, 1932 [C. B. XIV-2, 535 (1935)],[1] may, during a new period of six months from the date of the entry into force of the present convention, exercise with reference to past years, the option provided in those two articles under the conditions which they prescribe.

Moreover, the American corporations contemplated in the third paragraph of article 10 of the convention of April 27, 1932, may be admitted to benefit from the provisions of that paragraph, when the tax has not yet been paid, if the latter was not found to be payable, prior to May 1, 1930, by a definitive judicial decision or if such decision has been the subject of an appeal in cassation.

ARTICLE 18.

Any United States income tax liability remaining unpaid as at the effective date of this convention for years beginning prior to January 1, 1936, of any individuals resident of France (other than a citizen of the United States of America) or of a French corporation may be adjusted by the Commissioner of Internal Revenue of the United States of America, on the basis of the provisions of the United States Revenue Act of 1936. However, no adjustment will be made more

[1] [Treaty Series 885; 49 Stat. 3145.]

than two years subsequent to the effective date of this convention unless the taxpayer files a request with the Commissioner of Internal Revenue prior to such date.

ARTICLE 19.

Notwithstanding any other provision of this convention, in order to avoid double taxation on public servants, employees of one of the contracting States being citizens of that State and remunerated by it, who have been received by the other State to perform services in such State shall be exempt in their principal place of residence from direct and personal taxes whether National, State or local.

Such employees who own real property in the State in which they perform services shall not benefit from the above exemptions with respect to the taxes levied on such real property. Employees who engage in any private gainful occupation in such State shall not be entitled to any exemption under this article.

TITLE II—FISCAL ASSISTANCE.

ARTICLE 20.

With a view to the more effective imposition of the taxes to which the present convention relates, the contracting States undertake, on condition of reciprocity, to furnish information of a fiscal nature which the authorities of each State concerned have at their disposal, or are in a position to obtain under their own laws, that may be of use to the authorities of the other State in the assessment of the said taxes.

Such information shall be exchanged between the competent authorities of the contracting States in the ordinary course or on request.

ARTICLE 21.

In accordance with the preceding article, the competent authorities of the United States of America will transmit to the competent authorities of France, as regards any person, corporation or other entity (other than a citizen, corporation or other entity of the United States of America) having an address in France and deriving from sources within the United States of America rents, dividends, interest, royalties, income from trusts, wages, salaries, pensions, annuities, or other fixed or determinable periodical income, the name and address of such person, corporation or other entity as well as the amount of such income.

The competent authorities of France will transmit to the competent authorities of the United States of America, as regards any person, corporation or other entity (other than a citizen, corporation or other entity of France) having an address in the United States of America and deriving from sources within France rents, dividends, interest, royalties, income from trusts, wages, salaries, pensions, annuities, or other fixed or determinable periodical income, the name and address of such person, corporation or other entity as well as the amount of such income.

The information relating to each year will be transmitted as soon as possible after December 31.

ARTICLE 22.

The competent authorities of each of the contracting States shall be entitled to obtain, through diplomatic channels, from the competent authorities of the other contracting State, except with respect to citizens, corporations or other entities of the State to which applicaion is made, particulars in concrete cases necessary for the establishment of the taxes to which the present convention relates.

However, the competent authorities of each State shall not be prevented from transmitting to the competent authorities of the other State information relating to their own nationals (citizens, corporations or other entities) if they deem it opportune for the prevention of fiscal evasion.

ARTICLE 23.

Each contracting State undertakes to lend assistance and support in the collection of the taxes to which the present convention relates, together with interest, costs, and additions to the taxes and fines not being of a penal character according to the laws of the State requested, in the cases where the taxes are definitively due according to the laws of the State making the application.

In the case of an application for enforcement of taxes, revenue claims of each of the contracting States which have been finally determined shall be accepted for enforcement by the State to which application is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

The application shall be accompanied by such documents as are required by the laws of the State making the application, to establish that the taxes have been finally determined.

If the revenue claim has not been finally determined, the State to which application is made may, at the request of the State making the application, take such measures of conservancy as are authorized by the laws of the former State for the enforcement of its own taxes.

The assistance provided for in this article shall not be accorded with respect to the citizens, corporations or other entities of the State to which application is made.

ARTICLE 24.

In no case shall the provisions of article 22 relating to particulars in concrete cases, or of article 23 relating to mutual assistance in the collection of taxes, be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State, or to supply particulars which are not procurable under the law of the State to which application is made, or that of the State making application.

The State to which application is made for information or assistance shall comply as soon as possible with the request addressed to it. Nevertheless, such State may refuse to comply with the request for reasons of public policy or if compliance would involve violation of a business, industrial or trade secret. In such case it shall inform, as soon as possible, the State making the application.

ARTICLE 25.

Any taxpayer who shows proof that the action of the revenue authorities of the contracting States has resulted in double taxation in his case in respect of any of the taxes to which the present convention relates, shall be entitled to lodge a claim with the State of which he is a citizen or, if the taxpayer is a corporation or other entity, with the State in which it is created or organized. Should the claim be upheld, the competent authority of such State may come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation in question.

ARTICLE 26.

The competent authorities of the two contracting States may prescribe regulations necessary to interpret and carry out the provisions of this convention. With respect to the provisions of this convention relating to exchange of information and mutual assistance in the collection of taxes, such authorities may, by common agreement, prescribe rules concerning matters of procedure, forms of application and replies thereto, rates of conversion of currencies, transfer of sums collected, minimum amounts subject to collection, payment of costs of collection, and related matters.

TITLE III—GENERAL PROVISIONS.

ARTICLE 27.

The present convention shall be ratified, in the case of the United States of America by the President, by and with the advice and consent of the Senate, and in the case of France, by the President of the French Republic with the consent of the Parliament.

This convention shall become effective on the 1st day of January following the exchange of the instruments of ratification.

The convention shall remain in force for a period of five years and indefinitely thereafter but may be terminated by either contracting State at the end of the 5-year period or at any time thereafter, provided six months' prior notice of termination has been given, the termination to become effective on the 1st day of January following the expiration of the 6-month period.

Upon the coming into effect of this convention, the convention for the avoidance of double income taxation between the United States of America and France, signed April 27, 1932, shall terminate.

Done at Paris, in duplicate, in the English and French languages, this 25th day of July, 1939.

[SEAL] WILLIAM C. BULLITT.

PROTOCOL.

At the moment of signing the present convention for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance in the case of income and other taxes, the undersigned plenipotentiaries have agreed that the following provisions shall form an integral part of the convention:

I.

The present convention is concluded with reference to American and French law in force on the day of its signature.

Accordingly, if these laws are appreciably modified the competent authorities of the two States will consult together.

II.

The income from real property referred to in article 2 of the present convention shall include profits from the sale or exchange of the said property, but shall not include interest on mortgages or obligations secured by the said property.

III.

As used in this convention:

(*a*) The term "permanent establishment" includes branches, mines and oil wells, plantations, factories, workshops, stores, purchasing and selling and other offices, agencies, warehouses, and other fixed places of business but does not include a subsidiary corporation.

When an enterprise of one of the contracting States carries on business in the other State through an employee or agent, established there, who has general authority to negotiate and conclude contracts or has a stock of merchandise from which he regularly fills orders which he receives, this enterprise shall be deemed to have a permanent establishment in the latter State. But the fact that an enterprise of one of the contracting States has business dealings in the other State through a bona fide commission agent or broker shall not be held to mean that such enterprise has a permanent establishment in the latter State.

Insurance enterprises shall be considered as having a permanent establishment in one of the States as soon as they receive premiums from or insure risks in the territory of that State.

(*b*) The term "enterprise" includes every form of undertaking whether carried on by an individual, partnership, corporation, or any other entity.

(*c*) The term "enterprise of one of the contracting States" means, as the case may be, "United States enterprise" or "French enterprise."

(*d*) The term "United States enterprise" means an enterprise carried on in the United States of America by a resident of the United States of America or by a United States corporation or other entity.

The term "United States corporation or other entity" means a partnership, corporation or other entity created or organized in the United States of America or under the law of the United States of America or of any State or Territory of the United States of America.

(*e*) The term "French enterprise" is defined in the same manner, mutatis mutandis, as the term "United States enterprise."

IV.

The term "life annuities" referred to in article 8 of this convention means a stated sum payable periodically at stated times during life, or during a specified number of years to the person who has paid the premiums or a gross sum for such an obligation.

V.

Citizens and corporations or other entities of one of the contracting States within the other contracting State shall not be subjected as regards the taxes referred to in the present convention, to the payment of higher taxes than are imposed upon the citizens or corporations or other entities of such latter State.

VI.

The provisions of the present convention shall not be construed to restrict in any manner any exemption, deduction, credit, allowance, or other advantage accorded by the laws of one of the contracting States in the determination of the tax imposed by such State.

VII.

Documents and information contained therein, transmitted under the provisions of this convention by one of the contracting States to the other contracting State shall not be published, revealed or disclosed to any person except to the extent permitted under the laws of the latter State with respect to similar documents or information.

VIII.

As used in this convention the term "competent authority" or "competent authorities" means, in the case of the United States of America, the Secretary of the Treasury and in the case of France, the Minister of Finance.

IX.

The term "United States of America" as used in this convention in a geographic sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

X.

The term "France," when used in a geographic sense, indicates continental France, exclusive of Algeria and the Colonies.

XI.

Should any difficulty or doubt arise as to the interpretation or application of the present convention, or its relationship to conventions between one of the contracting States and any other State, the competent authorities of the contracting States may settle the quesion by mutual agreement.

Done in duplicate at Paris, this 25th day of July, 1939.

WILLIAM C. BULLITT.

And whereas the said convention and protocol have been ratified on both parts, and the instruments of ratification of the two Governments were exchanged at Paris on the 30th day of December, 1944;

And whereas it is provided in article 27 of the said convention that the convention shall become effective on the 1st day of January following the exchange of the instruments of ratification;

Now, therefore, be it known that I, FRANKLIN D. ROOSEVELT, President of the United States of America, do hereby proclaim and make public the said convention and protocol to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof on and from the 1st day of January, 1945.

In testimony whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this 5th day of January in the year of our Lord, one thousand nine hundred forty-five, [SEAL] and of the Independence of the United States of America the one hundred sixty-ninth.

FRANKLIN D. ROOSEVELT.

By the President:

E. R. STETTINIUS, Jr.,
Secretary of State.

LEGISLATION.

1945–7–12012

H. R. 1429. PUBLIC LAW 21, SEVENTY-NINTH CONGRESS [CHAPTER 36, FIRST SESSION].

An Act To permit the Administrator, War Shipping Administration, and the United States Maritime Commission, during the national emergency, to pay the tax imposed under section 1410 of the Internal Revenue Code without regard to the $3,000 limitation in section 1426(a)(1) of the Internal Revenue Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 1426(i) of the Internal Revenue Code is amended by adding at the end thereof the following: "The Administrator, War Shipping Administration, and the United States Maritime Commission, and their agents or persons acting on their behalf or for their account, may, for convenience of administration, make payments of the tax imposed under section 1410 without regard to the $3,000 limitation in section 1426(a)(1), but they shall not be required to obtain a refund of the tax paid under section 1410 of the Internal Revenue Code on that part of the remuneration of seamen in their employ not included in wages by reason of section 1426(a)(1) of the Internal Revenue Code."

(b) The amendments made by this Act shall be effective as if made by section 1(b)(1) of the Act entitled "An Act to amend and clarify certain provisions of law relating to functions of the War Shipping Administration, and for other purposes," approved March 24, 1943 (Public Law 17, Seventy-eighth Congress; 57 Stat. 45).

Approved March 24, 1945.

1945–14–12092

H. J. RES. 206. PUBLIC LAW 95, SEVENTY-NINTH CONGRESS [CHAPTER 200, FIRST SESSION].

Joint Resolution Extending the time for the release of powers of appointment for the purposes of certain provisions of the Internal Revenue Code.

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 amended by striking out "July 1, 1945" wherever it appears and inserting in lieu thereof "July 1, 1946"; and section 452(c) of the Revenue Act of 1942 is amended to read as follows:

(c) RELEASE BEFORE JULY 1, 1946.—

(1) A release of a power to appoint before July 1, 1946, 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 1946 and to that part of the calendar year 1946 prior to July 1, 1946.

SEC. 2. Section 501(c) of the Revenue Act of 1932 as added by section 502(b) of the Revenue Act of 1943, relating to certain discretionary trusts, is amended by striking out the words "on or after January 1, 1939, and" and inserting in lieu thereof the words "on or after June 7, 1932, and".

Approved June 29, 1945.

1945–14–12093

H. R. 3395. PUBLIC LAW 104, SEVENTY-NINTH CONGRESS [CHAPTER 210, FIRST SESSION].

An Act To extend through December 31, 1945, the termination date under the Renegotiation Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (h) of the Renegotiation Act (relating to the termination date) is amended to read as follows:

(h) This section shall apply only with respect to profits derived from contracts with the Departments and subcontracts which are determined under regulations prescribed by the Board to be reasonably allocable to performance prior to the close of the termination date. Notwithstanding the method of accounting employed by the contractor in keeping his books, profits determined to be so allocable shall be considered as having been received or accrued not later than the termination date. For the purposes of this subsection, the term "termination date" means whichever of the following dates first occurs—

(1) December 31, 1945; or

(2) the date proclaimed by the President as the date of the termination of hostilities in the present war; or

(3) the date specified in a concurrent resolution of the two Houses of Congress as the date of the termination of hostilities in the present war.

SEC. 2. TERMINATION OF REPRICING OF WAR CONTRACTS.

Section 802(b) of the Revenue Act of 1943 (relating to repricing of war contracts) is amended to read as follows:

(b) Section 801 shall not apply to any contract with a Department or any subcontract made after (1) the date proclaimed by the President as the date of the termination of hostilities in the present war, or (2) the date specified in a concurrent resolution of the two Houses of Congress as the date of such termination, or (3) December 31, 1945, whichever date is the earlier.

Approved June 30, 1945.

1945–14–12094

H. J. RES. 184. PUBLIC LAW 105, SEVENTY-NINTH CONGRESS [CHAPTER 211, FIRST SESSION].

Joint Resolution To continue the temporary increases in postal rates on first-class matter, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1001(a), as amended (relating to temporary increase in first-class postage rate), of the Revenue Act of 1932, and section 2, as amended (authorizing the President to modify certain postage rates), of the Act entitled "An Act to extend the gasoline tax for one year, to modify postage rates on mail matter, and for other purposes", approved June 16, 1933, are further amended by striking out "July 1, 1945" wherever appearing therein and inserting in lieu thereof "July 1, 1947", and

by striking out "June 30, 1945" wherever appearing therein and inserting in lieu thereof "June 30, 1947".

SEC. 2. Section 732(d) of the Internal Revenue Code is amended to read as follows:

(d) REVIEW BY SPECIAL DIVISION OF BOARD.—The determinations and redeterminations by any division of the Board involving any question arising under section 721(a)(2)(C) or section 722 with respect to any taxable year shall be reviewed by a special division of the Board which shall be constituted by the Chairman and consist of not less than three members of the Board. The decisions of such special division shall not be reviewable by the Board, and shall be deemed decisions of the Board.

Approved June 30, 1945.

TAX ADJUSTMENT ACT OF 1945.

1945–16–12113

H. R. 3633. PUBLIC LAW 172, SEVENTY-NINTH CONGRESS [CHAPTER 340, FIRST SESSION].

An Act To facilitate reconversion, 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 "Tax Adjustment Act of 1945".

SEC. 2. INCREASE IN EXCESS-PROFITS TAX SPECIFIC EXEMPTION.

(a) IN GENERAL.—Section 710(b)(1) of the Internal Revenue Code is amended to read as follows:

"(1) SPECIFIC EXEMPTION.—A specific exemption of $25,000, except that in the case of a taxable year beginning in 1945 and ending in 1946, the specific exemption shall be an amount equal to the sum of (A) an amount which bears the same relation to $10,000 which the number of days in such taxable year prior to January 1, 1946, bears to the total number of days in such taxable year and (B) an amount which bears the same relation to $25,000 which the number of days in such taxable year after December 31, 1945, bears to the total number of days in such taxable year; and in the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter, a specific exemption of $50,000;"

(b) RETURN REQUIREMENT.—Section 729(b)(2) of the Internal Revenue Code is amended by striking out "$10,000 or, in the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter, is not greater than $50,000" and inserting in lieu thereof "the specific exemption provided in section 710(b)(1)".

(c) CONSOLIDATED RETURNS.—Section 141(c) of the Internal Revenue Code is amended by striking out "of $10,000" and inserting in lieu thereof "as".

(d) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by this section shall be applicable to taxable years beginning after December 31, 1945, and to taxable years beginning in 1945 and ending in 1946.

SEC. 3. CHANGES IN PROVISIONS RELATING TO POSTWAR REFUND OF EXCESS-PROFITS TAX.

(a) The first sentence of section 780(a) of the Internal Revenue Code is amended by striking out the words "the date of cessation of hostilities in the present war" and substituting in lieu thereof the following: "December 31, 1943".

(b) Section 780(b) of the Internal Revenue Code is amended by striking out the words "three months before the date of maturity of bonds for such year under subsection (c)" and inserting in lieu thereof the following: "July 1, 1945".

(c) Section 789(c) of the Internal Revenue Code is amended (1) by inserting in the last sentence after the words "to which this section applies" the following:

" shall be payable at the option of the owner on or after January 1, 1946, and ", and (2) by striking out the last two lines from the table at the end thereof.

(d) Section 781(a) of the Internal Revenue Code is amended by striking out the words " three months before the date of maturity of the bonds for such year " and inserting in lieu thereof the following: " July 1, 1945 ".

(e) The last sentence of section 781(b) of the Internal Revenue Code is amended by striking out the words " the time of the maturity of bonds issued with respect to such taxable year " and substituting in lieu thereof the following: " January 1, 1946 ".

(f) Section 781(c) of the Internal Revenue Code is amended to read as follows:

"(c) TAX PAYMENTS AFTER CUT-OFF DATE.—In the case of a payment of the tax imposed by this subchapter shown on the return for any taxable year for which a credit is provided in section 780(a), or the payment of a deficiency in respect of such tax for any such taxable year, on or after July 1, 1945, the amount of the credit under section 780(a) for such taxable year attributable to such payment shall be paid the taxpayer in cash. No interest for the period after December 31, 1945, shall be assessed or collected on that portion of the tax or deficiency so paid equal to the credit under section 780(a) attributable to such payment. If after January 1, 1946, there is any credit under section 780(a) remaining in favor of the taxpayer attributable to any taxable year for which a credit is provided in section 780(a), such remainder shall be paid to the taxpayer in cash. No amount of any payment made under this subsection to a taxpayer shall be included in gross income."

(g) Section 783 of the Internal Revenue Code is amended by inserting at the end thereof the following new subsection:

"(e) TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1943.—The provisions of this section shall not apply to taxable years beginning after December 31, 1943."

(h) Subchapter E of Chapter 2 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"SEC. 784. TEN PER CENTUM CREDIT AGAINST EXCESS PROFITS TAX.

"(a) ALLOWANCE.—Against the tax imposed by this subchapter for any taxable year beginning after December 31, 1943, there shall be allowed as a credit an amount equal to 10 per centum of such tax.

"(b) SPECIAL INTEREST PROVISION.—No interest shall be allowed or paid upon any overpayment of tax resulting from the application of subsection (a) to a taxable year ending before December 31, 1945, unless, in the return made for such taxable year, the taxpayer claims a credit under such subsection."

SEC. 4. EXTENSIONS OF TIME FOR PAYMENT OF TAXES BY CORPORATIONS EXPECTING CARRY-BACKS, AND TENTATIVE CARRY-BACK ADJUSTMENTS.

(a) Chapter 37 of the Internal Revenue Code is amended by adding at the end thereof the following new sections:

"SEC. 3779. EXTENSIONS OF TIME FOR PAYMENT OF TAXES BY CORPORATIONS EXPECTING CARRY-BACKS.

"(a) IN GENERAL.—If a corporation, in any taxable year ending on or after September 30, 1945, files with the collector a statement, as provided in subsection (b), with respect to an expected net operating loss carry-back or unused excess profits credit carry-back from such taxable year, the time for payment of all or part of any tax imposed by chapter 1 or 2 for the taxable year immediately preceding such taxable year shall be extended, to the extent and subject to the conditions and limitations hereinafter provided in this section.

"(b) CONTENTS OF STATEMENT.—The statement with respect to an expected carry-back referred to in subsection (a) of this section shall be sworn to in the manner prescribed by section 52 in the case of a return and shall be filed at such time and in such manner and form as the Commissioner, with the approval of the Secretary, may by regulations prescribe. Such statement shall set forth that the corporation expects to have a net operating loss carry-back, as provided in section 122(b), or an unused excess profits credit carry-back, as provided in section 710(c)(3), from the taxable year in which such statement

is made, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

"(1) the estimated amount of the expected net operating loss or unused excess profits credit;

"(2) the reasons, facts, and circumstances which cause the corporation to expect such net operating loss or unused excess profits credits;

"(3) the amount of the reduction, attributable to the expected carry-back, in the aggregate of the taxes previously determined for all taxable years affected by the carry-back prior to the taxable year of the expected loss or unused credit; such taxes previously determined being ascertained in accordance with the method prescribed in section 3801(d); and such reduction being determined by applying the expected carry-back in the manner provided by law to the items on the basis of which such taxes were determined but such reduction being decreased by the amount of any credits under section 780 properly allocable to such reduction;

"(4) the tax or taxes and the amount thereof the time for payment of which is to be extended; and

"(5) such other information for the purpose of carrying out the provisions of this section as may be required by such regulations.

The collector shall, upon request, furnish a receipt for any statement filed, which shall set forth the date of such filing.

"(c) AMOUNT TO WHICH EXTENSION RELATES AND INSTALLMENT PAYMENTS.—The amount the time for payment of which may be extended under subsection (a) with respect to any tax shall not exceed the amount of such tax shown on the return, increased by any amount assessed as a deficiency (or as interest or additions to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to the date of such filing, and the total amount of the taxes the time for payment of which may be extended shall not exceed the amount stated under clause (3) of subsection (b). For the purposes of this subsection, an amount shall not be considered as required to be paid unless shown on the return or assessed as a deficiency (or as interest or addition to the tax), and an amount assessed as a deficiency (or as interest or additions to the tax) shall be considered to be required to be paid prior to the date of filing of the statement if the tenth day after notice and demand for its payment occurs prior to such date. If an extension of time under this section relates to only a part of a tax, the time for payment of the remainder shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in four equal instalments as provided in section 56(b).

"(d) PERIOD OF EXTENSION.—The extension of time for payment provided in this section shall expire—

"(1) on the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss or unused excess profits credit, or

"(2) if an application for tentative carry-back adjustment provided in section 3780 with respect to such loss or unused credit is filed before the expiration of the period prescribed in clause (1), on the date on which notice is mailed by registered mail by the Commissioner to the taxpayer that such application is allowed or disallowed in whole or in part.

"(e) REVISED STATEMENTS.—Each statement filed under subsection (a) with respect to any taxable year shall be in lieu of the last statement previously filed with respect to such year. If the amount the time for payment of which is extended under a statement filed is less than the amount under the last statement previously filed the extension of time shall be terminated as to the difference between the two amounts.

"(f) TERMINATION BY COMMISSIONER.—The Commissioner is not required to make any examination of the statement, but he may make such examination thereof as he deems necessary and practicable. The Commissioner shall terminate the extension as to any part of the amount to which it relates which he deems should be terminated because, upon such examination, he believes that, as of the time such examination is made, all or any part of the statement clearly is in a material respect erroneous or unreasonable.

"(g) PAYMENTS ON TERMINATION.—If an extension of time is terminated under subsection (e) or (f) with respect to any amount, then—

"(1) no further extension of time shall be made under this section with respect to such amount, and

"(2) the time for payment of such amount shall be considered to be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected to pay the tax in four equal instalments as provided in section 56(b).

"(h) JEOPARDY.—If the Commissioner believes that collection of the amount to which an extension under this section relates is in jeopardy, he shall immediately terminate such extension and notice and demand shall be made by the collector for payment of such amount.

"(i) INTEREST.—In the case of an amount the time for payment of which has been extended, there shall be collected as part of such amount interest from the dates on which payments would have been required if there had been no extension and the taxpayer had elected to pay the tax in four equal instalments as provided in section 56(b)—

"(1) upon so much of such amount as is satisfied under section 3780(b) by applying or crediting thereto, within the period of extension, a decrease in tax determined in connection with an application under section 3780(a), interest at the rate of 3 per centum per annum to the date of such satisfaction, except that on so much of such satisfied amount as is not in excess of the amount of the deficiencies assessed under section 3780(b) and which is not so satisfied, the rate shall be 6 per centum per annum; and

"(2) upon the remainder of the amount the time for payment of which has been extended, interest at the rate of 6 per centum per annum to the date such amount is paid.

If the Commissioner determines that during the period of extension credit or refund of an overpayment has been allowed or made, or a deficiency assessed, affecting the amount to which the extension relates and that the taxpayer could not have taken such overpayment or deficiency into account in the statement or a revised statement, appropriate adjustment shall be made in the interest.

"SEC. 3780. TENTATIVE CARRY-BACK ADJUSTMENTS.

"(a) APPLICATION FOR ADJUSTMENT.—A taxpayer may file an application for a tentative carry-back adjustment of the taxes for prior taxable years affected by a net operating loss carry-back, provided in section 122(b), or an unused excess profits credit carry-back, provided in section 710(c)(3), from any taxable year ending on or after September 30, 1945. The application shall be verified in the manner prescribed by section 51 or section 52 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss or unused excess profits credit from which the carry-back results and within a period of twelve months from the end of such taxable year, in the manner and form required by regulations prescribed by the Commissioner with the approval of the Secretary. The application shall set forth, in such detail and with such supporting data and explanation as such regulations shall require—

"(1) the amount of the net operating loss or unused excess profits credit;

"(2) the amount of the tax previously determined for each prior taxable year affected by such carry-back; the tax previously determined being ascertained in accordance with the method prescribed in section 3801(d);

"(3) the amount of increase or decrease in each such tax, attributable to such carry-back; such increase or decrease being determined by applying the carry-back in the manner provided by law to the items on the basis of which such taxes were determined. If an application under section 124(j) for tentative adjustment of tax with respect to amortization has been previously filed but such adjustment has not been previously determined, then for the purposes of this section the assessments, applications, credits, and refunds provided for in section 124(k) shall be considered as having previously been made upon the basis of such application under section 124(j);

"(4) the amount by which the aggregate of such decreases exceeds the aggregate of such increases;

"(5) the unpaid amount of each such tax, not including any amount required to be shown under paragraph (6);

"(6) the amount, with respect to each tax for the taxable year immediately preceding the taxable year of such loss or unused credit, as to which an extension of time for payment under section 3779 is in effect; and

"(7) such other information for the purposes of carrying out the provisions of this section as may be required by such regulations.

An application under this subsection shall not constitute a claim for credit or refund.

"(b) ALLOWANCE OF ADJUSTMENTS.—Within a period of ninety days from the date on which an application for a tentative carry-back adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss or unused excess profits credit from which such carry-back results, whichever is the later, the Commissoner shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the increase or decrease in each tax attributable to such carry-back upon the basis of the application and the examination, except that the Commissoner may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such ninety-day period or material omissions. Each such increase shall be deemed determined as a deficiency and shall be assessed, without regard to the restrictions on assessment in section 272. Each such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 3779 is in effect) and any remainder shall be credited—

"(1) against the deficiencies (and additions to the tax) assessed under this subsection,

"(2) against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss or unused excess profits credit the time for payment of which tax is extended under section 3779, and

any remainder shall, within such ninety-day period, be either credited against any income, war profits, or excess profits tax or instalment thereof then due from the taxpayer, or refunded to the taxpayer. The application, credit or refund of a decrease determined under this subsection shall be deemed a credit or refund of an overpayment within the meaning of sections 781(b) and 3807(b)(1).

"(c) ASSESSMENT OF ERRONEOUS ALLOWANCES.—If the Commissioner determines that the amount applied, credited or refunded under subsection (b) is in excess of the overassessment attributable to the carry-back with respect to which such amount was applied, credited or refunded, he may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of the return, as provided in section 272(f). Upon making such assessment, the Commissioner shall schedule as an overassessment the decrease in any other tax resulting from the adjustments reflected in the computation of the deficiency.

"SEC. 3781. EXTENSION OF TIME AND TENTATIVE CARRY-BACK AND AMORTIZATION ADJUSTMENTS IN THE CASE OF CONSOLIDATED RETURNS.

"If the corporation seeking an extension of time under section 3779, a tentative carry-back adjustment under section 3780, or a tentative adjustment with respect to an amortization deduction under section 124 (j) and (k), made or was required to make a consolidated return, either for the taxable year within which the net operating loss or the unused excess profits credit arises or within which the election is made to terminate the amortization period, or for a preceding taxable year affected by such loss, credit, or election, the provisions of such sections shall apply 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."

(b) Section 294 of the Internal Revenue Code is amended by adding at the end thereof the following new subsection:

"(e) SUBSTANTIAL OVERSTATEMENT OF EXPECTED CARRY-BACKS.—If the time for payment of any tax or taxes for any taxable year is extended under section 3779, there shall be added to such tax or taxes an amount equal to 5 per centum of the penalty portion, if any, of the amount to which such extension relates, unless the taxpayer establishes to the satisfaction of the Commissioner that, as of the end of the taxable year in which such extension was made, there was reasonable cause to expect there would be no such penalty portion. The penalty portion shall be the excess of the amount to which such extension

relates which is not paid by the end of the taxable year in which such extension is made over 125 per centum of the amount to which such extension relates which is satisfied by applying thereto a decrease in tax in respect of an application under section 3780(a) less any amounts assessed in respect of such application which are not so satisfied."

(c) Section 3777 of the Internal Revenue Code is amended by adding at the end thereof the following new subsection:

"(c) TENTATIVE CARRY-BACK ADJUSTMENTS.—Any credit or refund allowed or made under section 3780(b) shall be made without regard to the provisions of subsection (a). In any such case, if the credit or refund, reduced by any deficiency in such tax thereafter assessed and by deficiencies in any other tax resulting from adjustments reflected in the determination of the credit or refund, is in excess of $75,000, there shall be submitted to such committee a report containing the matter specified in subsection (a) at such time after the making of the credit or refund as the Commissioner shall determine the correct amount of the tax."

SEC. 5. PERIOD OF LIMITATION IN CASE OF CARRY-BACKS.

(a) Section 322(b)(5) of the Internal Revenue Code is amended by striking the words "or of a carry-back" where they appear in subparagraph (B) thereof, and by striking the last sentence and inserting in lieu thereof the following: "If the claim for credit or refund relates to an overpayment on account of the effect that the deductibility of such a debt or loss has on the application to the taxpayer of a carry-back, the period shall be either seven years from the date prescribed by law for filing the return for the year of the net operating loss or the unused excess profits credit which results in such carry-back or the period prescribed in paragraph (6), whichever expires the later. In the case of a claim described in this paragraph the amount of the credit or refund may exceed the portion of the tax paid within the period prescribed in paragraph (2) or (3), whichever is applicable, to the extent of the amount of the overpayment attributable to the deductibility of items described in this paragraph."

(b) Section 322(b) of the Internal Revenue Code is amended by inserting immediately following paragraph (5) the following new paragraph:

"(6) SPECIAL PERIOD OF LIMITATION WITH RESPECT TO NET OPERATING LOSS CARRY-BACKS AND UNUSED EXCESS PROFITS CREDIT CARRY-BACKS.—If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry-back or to an unused excess profits credit carry-back, in lieu of the three-year period of limitation prescribed in paragraph (1), the period shall be that period which ends with the expiration of the three-year period prescribed in paragraph (1) or the period prescribed in paragraph (3), whichever expires later, within which claim for credit or refund may be filed with respect to the taxable year of the net operating loss or the unused excess profits credit which results in such carry-back. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in paragraph (2) or (3), whichever is applicable, to the extent of the amount of the overpayment attributable to such carry-back."

(c) Section 322(d) of the Internal Revenue Code is amended by striking the period at the end thereof and inserting in lieu thereof the following: "; or (3), if such portion was not paid within the period described in clause (1), but the notice of deficiency was mailed within the period prescribed in subsection (b)(6) for the filing of a claim for credit or refund of an overpayment attributable to a carry-back, or such a claim was filed, that such portion does not exceed the amount of the overpayment attributable to a carry-back".

(d) Section 322 of the Internal Revenue Code is amended by inserting immediately following subsection (f) the following new subsection:

"(g) OVERPAYMENTS ATTRIBUTABLE TO NET OPERATING LOSS CARRY-BACKS AND UNUSED EXCESS PROFITS CREDIT CARRY-BACKS.—If the allowance of a credit or refund of an overpayment of tax attributable to a net operating loss carry-back or to an unused excess profits credit carry-back is otherwise prevented by the operation of any law or rule of law other than section 3761, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subsection (b)(6). If the allowance of an application, credit or refund of a decrease in tax determined under section 3780(b) is otherwise prevented by the operation of any law or rule of law other than section

3761, such application, credit or refund may be allowed or made if application for a tentative carry-back adjustment is made within the period provided in section 3780(a). In the case of any such claim for credit or refund or any such application for a tentative carry-back adjustment, the determination by any court, including The Tax Court of the United States, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction and the unused excess profits credit adjustment, and the effect of such deduction or adjustment, to the extent that such deduction or adjustment is affected by a carry-back which was not in issue in such proceeding."

(e) Section 276 of the Internal Revenue Code is amended by inserting immediately following subsection (c) the following new subsection:

"(d) NET OPERATING LOSS CARRY-BACKS AND UNUSED EXCESS PROFITS CREDIT CARRY-BACKS.—A deficiency attributable to the application to the taxpayer of a net operating loss carry-back or an unused excess profits credit carry-back, including deficiencies which may be assessed pursuant to the provisions of section 3780 (b) and (c), may be assessed at any time prior to the expiration of the period within which a deficiency may be assessed with respect to the taxable year of the claimed net operating loss or unused excess profits credit resulting in such carry-back."

(f) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to all taxable years beginning after December 31, 1940, except that the amendment made by subsection (d) shall not be applicable to any taxable year with respect to which the taxpayer and the Commissioner have entered into a closing agreement under the provisions of section 3760, prior to the date of enactment of this Act, in any case in which it is expressly provided in such closing agreement that the tax liability for such taxable year is not to be affected by a net operating loss carry-back or by an unused excess profits credit carry-back.

SEC. 6. INTEREST IN CONNECTION WITH CARRY-BACKS.

(a) Section 292 of the Internal Revenue Code is amended by adding at the end thereof the following new subsection:

"(c) DEFICIENCY RESULTING FROM CARRY-BACK AND RELATED MATTERS.—If any part of a deficiency is determined by the Commissioner to be attributable (A) to a carry-back to which an overpayment described in section 3771(e), or a decrease determined under section 3780(b), in any other tax is attributable, or (B) to an error in the amount or effect of a carry-back which resulted in a credit or refund of an overpayment with interest computed pursuant to section 3771(e), or in a decrease determined under section 3780(b), no interest shall be assessed or paid under subsection (a) with respect to such part of the deficiency for any period during which interest was not allowed with respect to such overpayment or for a period prior to the application of such decrease."

(b) Section 3771(e) of the Internal Revenue Code is amended by substituting a semicolon for the period at the end thereof and adding the following: "nor for any period beginning with the date of filing of an application under section 3780(a) relating to such part of the overpayment and ending with the last date the Commissioner's determination is required to be made under section 3780(b); nor, in case an application is made under section 3780(a), for any period before the first day of the month immediately following the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss or unused excess profits credit, or before the date on which the return is filed, whichever is later."

SEC. 7. TENTATIVE ADJUSTMENTS WITH RESPECT TO AMORTIZATION DEDUCTIONS.

Section 124 of the Internal Revenue Code is amended by inserting at the end thereof the following new subsections:

"(j) APPLICATION FOR TENTATIVE ADJUSTMENT.—Any taxpayer who has filed a statement of election as prescribed in paragraph (4) of subsection (d) may, within ninety days from the date such statement is filed, or within ninety days from the date of enactment of this Act, whichever is the later, file an application for tentative adjustment with respect to the taxes for taxable years prior to the taxable year in which such application is filed which are to be computed as required by paragraph (4) of subsection (d) as the result of such election. Such appli-

cation shall be verified in the manner prescribed by section 51 or section 52 in the case of a return of such taxpayer and shall be made in such manner and form as shall be required by regulations prescribed by the Commissioner with the approval of the Secretary, and shall set forth, in such detail and with such supporting data and explanation as such regulations shall require, the recomputation of such taxes required in paragraph (4) of subsection (d) except that the tax for each taxable year to be recomputed shall be the tax for such year previously determined, ascertained in accordance with the method prescribed in section 3801(d). If an application under section 3780(a) for tentative carry-back adjustment has been previously filed, but such adjustment has not been previously determined, then for the purpose of subsection (j) and (k), the assessments, applications, credits, and refunds provided in section 3780(b) shall be considered as having been previously made upon the basis of such application under section 3780(a). Such recomputation of tax shall be made on the basis of the items on the basis of which the tax to be recomputed was determined. Such application shall also set forth the unpaid amount of each tax recomputed and such other information for the purpose of carrying out the provisions of subsections (j) and (k) as may be required by such regulations. An application under this subsection shall not constitute a claim for credit or refund.

"(k) ALLOWANCE OF ADJUSTMENT.—Within a period of ninety days from the filing of an application under subsection (j), the Commissioner shall make, to the extent he deems practical in such period, a limited examination of the application for omissions and errors of computation, and shall determine the amount of the increase or decrease in each tax to which such application relates, on the basis of the application and the examination, except that the Commissioner may disallow, without further action, any application which he finds contains material omissions, or errors of computation which he deems cannot be corrected by him within such ninety-day period. Each increase shall be deemed determined as a deficiency and assessed, without regard to the restrictions on assessment in section 272. Each decrease shall be applied against any unpaid amount of the tax decreased, and any remainder shall be credited against the deficiencies (and interest or additions to the tax) assessed under this subsection, and any remainder shall, within such ninety-day period, be either credited against any other income, war profits, or excess profits tax, or instalment thereof, due from the taxpayer, or refunded to the taxpayer. The application, credit, or refund of a decrease determined under this subsection shall be deemed a credit or refund of an overpayment within the meaning of section 781(b)."

Approved July 31, 1945.

1945–17–12128

H. R. 122. PUBLIC LAW 177, SEVENTY-NINTH CONGRESS [CHAPTER 364, FIRST SESSION].

An Act To amend sections 2720(a) and 3260(a) of the Internal Revenue Code relating to the transfer tax, and the tax of manufacturers and dealers, in the case of certain small-game guns.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2720(a) of the Internal Revenue Code is amended to read as follows:

(a) RATE.—There shall be levied, collected, and paid upon firearms transferred in the continental United States a tax at the rate of $200 for each firearm: *Provided*, That the transfer tax on any gun with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, or any gun designed to be held in one hand when fired and having a barrel twelve inches or more in length from which only a single discharge can be made without manual reloading, shall be at the rate of $1. The tax imposed by this section shall be in addition to any import duty imposed on such firearm.

SEC. 2. Section 3260(a) of the Internal Revenue Code is amended by striking out "*Provided*, That manufacturers and dealers in guns with two attached barrels from which only a single discharge can be made from either barrel without manual reloading shall pay the fol-

lowing taxes: Manufacturers, $25 per year; dealers, $1 per year." and inserting in lieu thereof the following: "*Provided*, That manufacturers and dealers in guns with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, guns designed to be held in one hand when fired and having a barrel twelve inches or more in length from which only a single discharge can be made without manual reloading, or guns of both types, shall pay the following taxes: Manufacturers, $25 per year; dealers, $1 per year."

SEC. 3. (a) The amendment made by the first section of this Act shall apply with respect to any transfer within the scope thereof made on or after July 1, 1945.

(b) The amendment made by section 2 of this Act shall apply with respect to any tax within the scope thereof payable under section 3260(a) of the Internal Revenue Code for any taxable period commencing on or after July 1, 1945.

Approved August 11, 1945.

1945–17–12129

H. R. 3239. PUBLIC LAW 180, SEVENTY-NINTH CONGRESS [CHAPTER 367, FIRST SESSION].

An Act To exempt certain mechanical pencils having precious metals as essential parts from the tax with respect to jewelry, and so forth.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2400 of the Internal Revenue Code (relating to the retailers' excise tax on jewelry, etc.) is amended by striking out " to a fountain pen or smokers' pipe if the only parts of the pen or the pipe " and inserting in lieu thereof " to a fountain pen, mechanical pencil, or smokers' pipe if the only parts of the pen, the pencil, or the pipe ".

SEC. 2. The amendment made by this Act shall take effect on the first day of the first month which begins more than ten days after the date of the enactment of this Act.

Approved August 11, 1945.

1945–22–12171

H. R. 2690. PUBLIC LAW 201, SEVENTY-NINTH CONGRESS [CHAPTER 433, FIRST SESSION].

An Act To amend the Bonneville Project Act.

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

* * * * * * *

SEC. 7. (a) Section 1426 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"(j) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATOR.—The term 'employment' shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be 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 performing service for the Administrator, but shall not include any service performed by such a laborer, mechanic, or workman, to whom the

Act of May 29, 1939 (46 Stat. 493), as amended, applies. The term 'wages' means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection."

* * * * * * *

(c) Section 1606 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"(e) The legislature of any State may, with respect to service to be 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 performing service for the Bonneville Power Administrator (hereinafter called the Administrator), require the Administrator, who for the purposes of this subsection is designated an instrumentality of the United States, and any such employee, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Board under section 1603 and to comply otherwise with such law. Such permission is subject to the conditions imposed by subsection (b) of this section upon permission to State legislatures to require contributions from instrumentalities of the United States. The Administrator is authorized and directed to comply with the provisions of any applicable State unemployment compensation law on behalf of the United States as the employer of individuals whose service constitutes employment under such law by reason of this subsection."

(d) Section 1607 of the Internal Revenue Code, as amended, is amended by adding at the end thereof the following new subsection:

"(m) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATOR.—The term 'employment' shall include such service as is determined by the Bonneville Power Administrator (hereinafter called the Administrator) to be 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 performing service for the Administrator. The term 'wages' means, with respect to service which constitutes employment by reason of this subsection, such amount of remuneration as is determined (subject to the provisions of this section) by the Administrator to be paid for such service. The Administrator is authorized and directed to comply with the provisions of the internal revenue laws on behalf of the United States as the employer of individuals whose service constitutes employment by reason of this subsection."

Approved October 23, 1945.

1945-22-12172

S. J. RES. 100. PUBLIC LAW 210, SEVENTY-NINTH CONGRESS [CHAPTER 446, FIRST SESSION].

Joint Resolution permitting alcohol plants to produce sugars or sirups simultaneously with the production of alcohol until July 1, 1946.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That part II of subchapter C of chapter 26 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

SEC. 3126. EMERGENCY PRODUCTION OF SUGARS AND SIRUPS IN INDUSTRIAL ALCOHOL PLANTS.

(a) IN GENERAL.—Notwithstanding the provisions of sections 2819 and 3122, and of any other law, until July 1, 1946, sugars and sirups from potatoes and from high moisture or damaged grain may be produced in industrial alcohol plants simultaneously with, or alternately with, the production of alcohol.

(b) REGULATIONS.—The Commissioner, with the approval of the Secretary, is authorized to prescribe regulations to carry out the provisions of this section.

Approved November 5, 1945.

1945–1–11927

H. R. 5564. PUBLIC LAW 495, SEVENTY-EIGHTH CONGRESS [CHAPTER 600, SECOND SESSION].

An Act To fix the rate of tax under the Federal Insurance Contributions Act on employer and employees for the calendar year 1945.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) clauses (1), (2), (3), and (4) of section 1400 of the Federal Insurance Contributions Act (section 1400 of the Internal Revenue Code, relating to the rate of tax on employees) are amended to read as follows:

(1) With respect to wages received during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, and 1945, the rate shall be 1 per centum.

(2) With respect to wages received during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(3) With respect to wages received after December 31, 1948, the rate shall be 3 per centum.

(b) Clauses (1), (2), (3), and (4) of section 1410 of the Federal Insurance Contributions Act (section 1410 of the Internal Revenue Code, relating to the rate of tax on employers) are amended to read as follows:

(1) With respect to wages paid during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, and 1945, the rate shall be 1 per centum.

(2) With respect to wages paid during the calendar years 1946, 1947, and 1948, the rate shall be 2½ per centum.

(3) With respect to wages paid after December 31, 1948, the rate shall be 3 per centum.

Approved December 16, 1944.

1945–1–11928

H. R. 5543. PUBLIC LAW 511, SEVENTY-EIGHTH CONGRESS [CHAPTER 616, SECOND SESSION].

An Act Extending the time for the release of powers of appointment for the purposes of certain provisions of the Internal Revenue Code, 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 403(d)(3) of the Revenue Act of 1942 (relating to the release of certain powers of appointment) is amended by striking out "January 1, 1945" wherever it appears and inserting in lieu thereof "July 1, 1945"; and section 452(c) of the Revenue Act of 1942 is amended to read as follows:

(c) RELEASE BEFORE JULY 1, 1945.—

(1) A release of a power to appoint before July 1, 1945, 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 1945 and to that part of the calendar year 1945 prior to July 1, 1945.

SEC. 2. (a) Section 162(d)(1)(B) of the Revenue Act of 1942 (relating to employees' trusts) is amended to read as follows:

(B) such a plan shall be considered as satisfying the requirements of section 165(a) (3), (4), (5), and (6) for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending June 30, 1945, if the provisions thereof satisfy such requirements

by June 30, 1945, and if by that time all provisions of such plan which are necessary to satisfy such requirements are in effect and have been made effective for all purposes with respect to the portion of such period after December 31, 1943.

(b) Section 162(d)(2) of the Revenue Act of 1942 (relating to employees' trusts) is amended to read as follows:

(2) A stock bonus, pension, profit-sharing, or annuity plan—

(A) put into effect after September 1, 1942, and prior to January 1, 1945, shall be considered as satisfying the requirements of section 165(a)(3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with June 30, 1945, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the portion of such period after December 31, 1943;

(B) put into effect after December 31, 1944, shall be considered as satisfying the requirements of section 165(a)(3), (4), (5), and (6) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period.

SEC. 3. 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, 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, 1945. In the case of such a claim filed on or before December 31, 1945, 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 such 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 December 20, 1944.

1945–1–11930

H. R. 5565. PUBLIC LAW 541, SEVENTY-EIGHTH CONGRESS [CHAPTER 672, SECOND SESSION].

An Act To authorize collectors of internal revenue to receive certain checks and money orders in payment of taxes and for revenue stamps.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3656 of the Internal Revenue Code (relating to payment of taxes by check) is amended to read as follows:

SEC. 3656. PAYMENT BY CHECK AND MONEY ORDERS.

(a) CERTIFIED, CASHIERS', AND TREASURERS' CHECKS AND MONEY ORDER.—

(1) AUTHORITY TO RECEIVE.—It shall be lawful for collectors to receive for internal revenue taxes or in payment of stamps to be used in payment of internal revenue taxes certified, cashiers' and treasurers' checks drawn on National and State banks and trust companies, and United States postal, bank, express, and telegraph money orders, during such time and

under such regulations as the Commissioner, with the approval of the Secretary, may prescribe.

(2) DISCHARGE OF LIABILITY.—

(A) Check Duly Paid.—No person who may be indebted to the United States on account of internal revenue taxes or stamps used or to be used in payment of internal revenue taxes who shall have tendered a certified, cashier's, or treasurer's check or money order as provisional payment therefor, in accordance with the terms of this subsection, shall be released from the obligation to make ultimate payment thereof until such certified, cashier's, or treasurer's check or money order so received has been duly paid.

(B) Check Unpaid.—If any such check or money order so received is not duly paid the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of the bank on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

(b) OTHER CHECKS.—

(1) AUTHORITY TO RECEIVE.—Collectors may receive checks in addition to those specified in subsection (a) in payment of taxes other than those payable by stamp during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe.

(2) ULTIMATE LIABILITY.—If a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

Approved December 22, 1944.

1945–1–11931

H. R. 4968. PUBLIC LAW 552, SEVENTY-EIGHTH CONGRESS [CHAPTER 714, SECOND SESSION].

An Act To amend section 511(c) of the Merchant Marine Act, 1936, as amended, relative to deposit of vessel proceeds received from the United States in certain cases, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 511(c) of the Merchant Marine Act, 1936, as amended, is amended to read as follows:

(c) In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then—

(1) if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, or

(2) in case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and prior to January 1, 1944, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, if the taxpayer so elects prior to March 31, 1945, or prior to the expiration of sixty days after the receipt of the payment or indemnity, whichever is later, and in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury,

no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. If an election is made under subdivision (2) and if

computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election.

SEC. 2. Section 511 of the Merchant Marine Act, 1936, as amended, is amended by adding at the end thereof a new subsection to read as follows:

(n) The terms "contract for the construction" and "construction contract", as used in this section, shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement between such taxpayer and the Commission with respect to such construction and containing provisions deemed necessary or advisable by the Commission to carry out the purposes and policy of this section.

Approved December 23, 1944.

CONCURRENT RESOLUTION.

1945–16–12116

H. CON. RES. 50, SEVENTY-NINTH CONGRESS, FIRST SESSION.

Resolved by the House of Representatives (the Senate concurring), That in the public interest Congress hereby declares that by the reenactment, in the various revenue Acts beginning with the Revenue Act of 1918, of the provisions of section 23 of the Internal Revenue Code and of the corresponding sections of prior revenue Acts allowing a deduction for ordinary and necessary business expenses, and by the enactment of the provisions of section 711(b)(1) of the Internal Revenue Code relating to the deduction for intangible drilling and development costs in the case of oil and gas wells, the Congress has recognized and approved the provisions of section 29.23(m)–16 of Treasury Regulations 111 and the corresponding provisions of prior Treasury Regulations granting the option to deduct as expenses such intangible drilling and development costs.

Passed the House of Representatives June 19, 1945.

Agreed to by the Senate July 21 (legislative day, July 9), 1945.

REVENUE ACT OF 1945.

1945–23–12187

H. R. 4309. PUBLIC LAW 214, SEVENTY-NINTH CONGRESS [CHAPTER 453, FIRST SESSION].

An Act To reduce taxation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) SHORT TITLE.—This Act may be cited as the "Revenue Act of 1945".

(b) ACT AMENDATORY OF INTERNAL REVENUE CODE.—Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a chapter, subchapter, title, supplement, section, subsection, subdivision, paragraph, subparagraph, or clause, the reference shall be considered to be made to a provision of the Internal Revenue Code.

(c) MEANING OF TERMS USED.—Except as otherwise expressly provided, terms used in this Act shall have the same meaning as when used in the Internal Revenue Code.

TITLE I—INCOME AND EXCESS PROFITS TAX.

Part I—Individual Income Taxes.

SEC. 101. REDUCTION IN NORMAL TAX AND SURTAX ON INDIVIDUALS.

(a) REDUCTION IN NORMAL TAX ON INDIVIDUALS.—Section 11 (relating to the normal tax on individuals) is amended to read as follows:

"SEC. 11. NORMAL TAX ON INDIVIDUALS.

"There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax determined by computing a tentative normal tax of 3 per centum of the amount of the net income in excess of the credits against net income provided in section 25, and by reducing such tentative normal tax by 5 per centum thereof. For alternative tax which may be elected if adjusted gross income is less than $5,000, see Supplement T."

(b) REDUCTION IN SURTAX ON INDIVIDUALS.—Section 12(b) (relating to the rate of surtax on individuals) is amended to read as follows:

"(b) RATES OF SURTAX.—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax determined by computing a tentative surtax under the following table, and by reducing such tentative surtax by 5 per centum thereof:

"If the surtax net income is:	The tentative surtax shall be:
Not over $2,000	17% of the surtax net income.
Over $2,000 but not over $4,000	$340, plus 19% of excess over $2,000.
Over $4,000 but not over $6,000	$720, plus 23% of excess over $4,000.
Over $6,000 but not over $8,000	$1,180, plus 27% of excess over $6,000.
Over $8,000 but not over $10,000	$1,720, plus 31% of excess over $8,000.

"If the surtax net income is—Con.	The tentative surtax shall be—Con.
Over $10,000 but not over $12,000	$2,340, plus 35% of excess over $10,000.
Over $12,000 but not over $14,000	$3,040, plus 40% of excess over $12,000.
Over $14,000 but not over $16,000	$3,840, plus 44% of excess over $14,000.
Over $16,000 but not over $18,000	$4,720, plus 47% of excess over $16,000.
Over $18,000 but not over $20,000	$5,660, plus 50% of excess over $18,000.
Over $20,000 but not over $22,000	$6,660, plus 53% of excess over $20,000.
Over $22,000 but not over $26,000	$7,720, plus 56% of excess over $22,000.
Over $26,000 but not over $32,000	$9,960, plus 59% of excess over $26,000.
Over $32,000 but not over $38,000	$13,500, plus 62% of excess over $32,000.
Over $38,000 but not over $44,000	$17,220, plus 66% of excess over $38,000.
Over $44,000 but not over $50,000	$21,180, plus 69% of excess over $44,000.
Over $50,000 but not over $60,000	$25,320, plus 72% of excess over $50,000.
Over $60,000 but not over $70,000	$32,520, plus 75% of excess over $60,000.
Over $70,000 but not over $80,000	$40,020, plus 78% of excess over $70,000.
Over $80,000 but not over $90,000	$47,820, plus 81% of excess over $80,000.
Over $90,000 but not over $100,000	$55,920, plus 84% of excess over $90,000.
Over $100,000 but not over $150,000	$64,320, plus 86% of excess over $100,000.
Over $150,000 but not over $200,000	$107,320, plus 87% of excess over $150,000.
Over $200,000	$150,820, plus 88% of excess over $200,000."

(c) LIMITATION ON TAX.—Section 12(g) (relating to the 90 per centum limitation) is amended by striking out "90 per centum" and inserting in lieu thereof "85½ per centum".

(d) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by this section shall be applicable to taxable years beginning after December 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see section 131.

SEC. 102. ALLOWANCE OF SAME EXEMPTIONS FOR NORMAL TAX AS FOR SURTAX.

(a) IN GENERAL.—So much of section 25(b) (relating to credits for surtax) as precedes paragraph (2) thereof is amended to read 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:

"(A) An exemption of $500 for the taxpayer;

"(B) An exemption of $500 for the spouse of the taxpayer if—

"(i) a joint return is made by the taxpayer and his spouse under section 51, in which case the aggregate exemption of the spouses under subparagraph (A) and this subparagraph shall be $1,000, or

"(ii) a separate return is made by the taxpayer, and his spouse has no gross income for the calendar year in which the taxable year of the taxpayer begins and is not the dependent of another taxpayer;

"(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."

(b) TECHNICAL AMENDMENTS.—

(1) Section 23(x) (relating to the deduction for medical expenses) is amended by striking out "surtax" wherever appearing therein.

(2) Section 25(a)(3) (relating to the normal tax exemption) is repealed.

(3) Section 47(e) (relating to the reduction of certain credits against net income) is amended to read as follows:

"(e) REDUCTION OF CREDITS AGAINST NET INCOME.—In the case of a return made for a fractional part of a year under section 146(a)(1), the exemptions provided in section 25(b) shall be reduced to amounts which bear the same ratio to the full exemptions so provided as the number of months in the period for which return is made bears to twelve months."

(4) Section 58(a)(1) (relating to the requirement of a declaration of estimated tax) is amended by striking out "surtax".

(5) Section 143(a)(2) (relating to credits against net income in the case of interest on tax-free covenant bonds) is amended by striking out "normal tax exemption provided in section 25(a)(3) and the surtax".

(6) Section 163(a)(1) (relating to credits of estates and trusts against net income) is amended to read as follows:

"(1) For the purpose of the normal tax and the surtax, an estate shall be allowed, in lieu of the exemptions under section 25(b)(1), a credit of $500 against net income, and a trust shall be allowed, in lieu of the exemptions under section 25(b)(1), a credit of $100 against net income."

(7) Section 214 (relating to credits of nonresident aliens against net income) is amended to read as follows:

"SEC. 214. CREDITS AGAINST NET INCOME.

"In the case of a nonresident alien individual who is not a resident of a contiguous country, only one exemption under section 25(b) shall be allowed."

(8) Section 215(b) (relating to credits of nonresident aliens against net income in case of tax withheld at source) is amended by striking out the words "normal tax exemption and the surtax exemptions" and by inserting in lieu thereof "the exemptions under section 25(b)",

(9) Section 251(f) (relating to credits against net income in the case of citizens entitled to the benefits of section 251) is amended to read as follows:

"(f) CREDITS AGAINST NET INCOME.—A citizen of the United States entitled to the benefits of this section shall be allowed only one exemption under section 25(b)."

(10) Section 401 (defining "surtax exemption" for the purposes of Supplement T) is amended to read as follows:

"SEC. 401. DEFINITION OF 'EXEMPTION'.

"As used in the table in section 400, the term 'number of exemptions' means the number of the exemptions allowed under section 25(b) as credits against net income for the purpose of the normal tax and the surtax imposed by sections 11 and 12."

(c) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments and repeals made by this section shall be applicable with respect to taxable years beginning after December 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see section 131.

SEC. 103. INDIVIDUALS WITH ADJUSTED GROSS INCOMES OF LESS THAN $5,000.

(a) IN GENERAL.—The tax table (including the note at the foot of such table) in section 400 (relating to optional tax on individuals with adjusted gross incomes of less than $5,000) is amended to read as follows:

If the adjusted gross income is—		And the number of exemptions is—			
At least	But less than	1	2	3	4 or more
		The tax shall be—			
$0	$550	$0	$0	$0	$0
550	575	1	0	0	0
575	600	5	0	0	0
600	625	10	0	0	0
625	650	14	0	0	0
650	675	18	0	0	0
675	700	23	0	0	0
700	725	27	0	0	0
725	750	31	0	0	0
750	775	35	0	0	0
775	800	40	0	0	0
800	825	44	0	0	0
825	850	48	0	0	0
850	875	52	0	0	0
875	900	57	0	0	0
900	925	61	0	0	0
925	950	65	0	0	0
950	975	70	0	0	0
975	1,000	74	0	0	0
1,000	1,025	78	0	0	0
1,025	1,050	82	0	0	0
1,050	1,075	87	0	0	0
1,075	1,100	91	0	0	0
1,100	1,125	95	0	0	0
1,125	1,150	100	5	0	0
1,150	1,175	104	9	0	0
1,175	1,200	108	13	0	0
1,200	1,225	112	17	0	0
1,225	1,250	117	22	0	0
1,250	1,275	121	26	0	0
1,275	1,300	125	30	0	0
1,300	1,325	129	34	0	0
1,325	1,350	134	39	0	0
1,350	1,375	138	43	0	0
1,375	1,400	142	47	0	0
1,400	1,425	147	52	0	0
1,425	1,450	151	56	0	0
1,450	1,475	155	60	0	0
1,475	1,500	159	64	0	0
1,500	1,525	164	69	0	0
1,525	1,550	168	73	0	0
1,550	1,575	172	77	0	0
1,575	1,600	176	81	0	0
1,600	1,625	181	86	0	0
1,625	1,650	185	90	0	0
1,650	1,675	189	94	0	0
1,675	1,700	194	99	4	0
1,700	1,725	198	103	8	0
1,725	1,750	202	107	12	0
1,750	1,775	206	111	16	0
1,775	1,800	211	116	21	0
1,800	1,825	215	120	25	0
1,825	1,850	219	124	29	0
1,850	1,875	223	128	33	0
1,875	1,900	228	133	38	0
1,900	1,925	232	137	42	0
1,925	1,950	236	141	46	0
1,950	1,975	241	146	51	0
1,975	2,000	245	150	55	0
2,000	2,025	249	154	59	0
2,025	2,050	253	158	63	0
2,050	2,075	258	163	68	0
2,075	2,100	262	167	72	0
2,100	2,125	266	171	76	0
2,125	2,150	271	176	81	0
2,150	2,175	275	180	85	0
2,175	2,200	279	184	89	0

If the adjusted gross income is—		And the number of exemptions is—								
At least	But less than	1	2	3	4	5	6	7	8	9 or more
		The tax shall be—								
$2,200	$2,225	$283	$188	$93	$0	$0	$0	$0	$0	$0
2,225	2,250	288	193	98	3	0	0	0	0	0
2,250	2,275	292	197	102	7	0	0	0	0	0
2,275	2,300	296	201	106	11	0	0	0	0	0
2,300	2,325	300	205	110	15	0	0	0	0	0
2,325	2,350	305	210	115	20	0	0	0	0	0
2,350	2,375	309	214	119	24	0	0	0	0	0
2,375	2,400	313	218	123	28	0	0	0	0	0
2,400	2,425	318	223	128	33	0	0	0	0	0
2,425	2,450	322	227	132	37	0	0	0	0	0
2,450	2,475	326	231	136	41	0	0	0	0	0
2,475	2,500	330	235	140	45	0	0	0	0	0
2,500	2,525	335	240	145	50	0	0	0	0	0
2,525	2,550	339	244	149	54	0	0	0	0	0
2,550	2,575	343	248	153	58	0	0	0	0	0
2,575	2,600	347	252	157	62	0	0	0	0	0
2,600	2,625	352	257	162	67	0	0	0	0	0
2,625	2,650	356	261	166	71	0	0	0	0	0
2,650	2,675	360	265	170	75	0	0	0	0	0
2,675	2,700	365	270	175	80	0	0	0	0	0
2,700	2,725	369	274	179	84	0	0	0	0	0
2,725	2,750	373	278	183	88	0	0	0	0	0
2,750	2,775	377	282	187	92	0	0	0	0	0
2,775	2,800	382	287	192	97	2	0	0	0	0
2,800	2,825	387	291	196	101	6	0	0	0	0
2,825	2,850	391	295	200	105	10	0	0	0	0
2,850	2,875	396	299	204	109	14	0	0	0	0
2,875	2,900	401	304	209	114	19	0	0	0	0
2,900	2,925	405	308	213	118	23	0	0	0	0
2,925	2,950	410	312	217	122	27	0	0	0	0
2,950	2,975	415	317	222	127	32	0	0	0	0
2,975	3,000	419	321	226	131	36	0	0	0	0
3,000	3,050	427	327	232	137	42	0	0	0	0
3,050	3,100	436	336	241	146	51	0	0	0	0
3,100	3,150	445	344	249	154	59	0	0	0	0
3,150	3,200	455	353	258	163	68	0	0	0	0
3,200	3,250	464	361	266	171	76	0	0	0	0
3,250	3,300	474	370	275	180	85	0	0	0	0
3,300	3,350	483	379	284	189	94	0	0	0	0
3,350	3,400	492	388	292	197	102	7	0	0	0
3,400	3,450	502	397	301	206	111	16	0	0	0
3,450	3,500	511	407	309	214	119	24	0	0	0
3,500	3,550	521	416	318	223	128	33	0	0	0
3,550	3,600	530	425	326	231	136	41	0	0	0
3,600	3,650	539	435	335	240	145	50	0	0	0
3,650	3,700	549	444	343	248	153	58	0	0	0
3,700	3,750	558	454	352	257	162	67	0	0	0
3,750	3,800	568	463	361	266	171	76	0	0	0
3,800	3,850	577	472	369	274	179	84	0	0	0
3,850	3,900	586	482	378	283	188	93	0	0	0
3,900	3,950	596	491	387	291	196	101	6	0	0
3,950	4,000	605	501	396	300	205	110	15	0	0
4,000	4,050	615	510	406	308	213	118	23	0	0
4,050	4,100	624	520	415	317	222	127	32	0	0
4,100	4,150	633	529	424	325	230	135	40	0	0
4,150	4,200	643	538	434	334	230	144	49	0	0
4,200	4,250	652	548	443	342	247	152	57	0	0
4,250	4,300	662	557	453	351	256	161	66	0	0
4,300	4,350	671	567	462	360	265	170	75	0	0
4,350	4,400	680	576	471	368	273	178	83	0	0
4,400	4,450	690	585	481	377	282	187	92	0	0
4,450	4,500	699	595	490	386	290	195	100	5	0
4,500	4,550	709	604	500	395	299	204	109	14	0
4,550	4,600	718	614	509	405	307	212	117	22	0
4,600	4,650	727	623	518	414	316	221	126	31	0
4,650	4,700	737	632	528	423	324	230	134	39	0
4,700	4,750	746	642	537	433	333	238	143	48	0
4,750	4,800	756	651	547	442	342	247	152	57	0
4,800	4,850	765	661	556	452	350	255	160	65	0
4,850	4,900	774	670	565	461	359	264	169	74	0
4,900	4,950	784	679	575	470	367	272	177	82	0
4,950	5,000	793	689	584	480	376	281	186	91	0

(b) TAXABLE YEARS TO WHICH APPLICABLE.—The amendment made by this section shall be applicable with respect to taxable years beginning after December 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see section 131.

SEC. 104. REDUCTION IN WITHHOLDING OF TAX AT SOURCE ON WAGES.

(a) PERCENTAGE METHOD.—

(1) IN GENERAL.—Section 1622(a) (relating to the percentage method of withholding) is amended by striking out paragraph (1) thereof, by inserting "17 per centum" in lieu of "18 per centum" in paragraph (2), by inserting "19 per centum" in lieu of "19.8 per centum" in paragraph (3), and by renumbering paragraphs (2) and (3) as (1) and (2) respectively.

(2) TECHNICAL AMENDMENT.—Section 1622(b)(1) (percentage method withholding table) is amended by striking out "18 per centum" in the last column of the table therein, and inserting in lieu thereof "17 per centum".

(b) WAGE BRACKET WITHHOLDING.—The tables contained in section 1622(c)(1) (relating to wage bracket withholding) are amended to read as follows:

If the pay-roll period with respect to an employee is weekly.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$11	17% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$11	$12	$2.00	.10	0	0	0	0	0	0	0	0	0
$12	$13	2.10	.30	0	0	0	0	0	0	0	0	0
$13	$14	2.30	.50	0	0	0	0	0	0	0	0	0
$14	$15	2.50	.70	0	0	0	0	0	0	0	0	0
$15	$16	2.70	.80	0	0	0	0	0	0	0	0	0
$16	$17	2.80	1.00	0	0	0	0	0	0	0	0	0
$17	$18	3.00	1.20	0	0	0	0	0	0	0	0	0
$18	$19	3.20	1.30	0	0	0	0	0	0	0	0	0
$19	$20	3.30	1.50	0	0	0	0	0	0	0	0	0
$20	$21	3.50	1.70	0	0	0	0	0	0	0	0	0
$21	$22	3.70	1.80	0	0	0	0	0	0	0	0	0
$22	$23	3.80	2.00	.20	0	0	0	0	0	0	0	0
$23	$24	4.00	2.20	.40	0	0	0	0	0	0	0	0
$24	$25	4.20	2.40	.50	0	0	0	0	0	0	0	0
$25	$26	4.40	2.50	.70	0	0	0	0	0	0	0	0
$26	$27	4.50	2.70	.90	0	0	0	0	0	0	0	0
$27	$28	4.70	2.90	1.00	0	0	0	0	0	0	0	0
$28	$29	4.90	3.00	1.20	0	0	0	0	0	0	0	0
$29	$30	5.00	3.20	1.40	0	0	0	0	0	0	0	0
$30	$31	5.20	3.40	1.60	0	0	0	0	0	0	0	0
$31	$32	5.40	3.60	1.70	0	0	0	0	0	0	0	0
$32	$33	5.60	3.70	1.90	.10	0	0	0	0	0	0	0
$33	$34	5.70	3.90	2.10	.20	0	0	0	0	0	0	0
$34	$35	5.90	4.10	2.20	.40	0	0	0	0	0	0	0
$35	$36	6.10	4.20	2.40	.60	0	0	0	0	0	0	0
$36	$37	6.20	4.40	2.60	.80	0	0	0	0	0	0	0
$37	$38	6.40	4.60	2.80	.90	0	0	0	0	0	0	0
$38	$39	6.60	4.80	2.90	1.10	0	0	0	0	0	0	0
$39	$40	6.80	4.90	3.10	1.30	0	0	0	0	0	0	0
$40	$41	6.90	5.10	3.30	1.40	0	0	0	0	0	0	0
$41	$42	7.10	5.30	3.40	1.60	0	0	0	0	0	0	0
$42	$43	7.30	5.40	3.60	1.80	0	0	0	0	0	0	0
$43	$44	7.40	5.60	3.80	2.00	.10	0	0	0	0	0	0
$44	$45	7.60	5.80	4.00	2.10	.30	0	0	0	0	0	0
$45	$46	7.80	6.00	4.10	2.30	.50	0	0	0	0	0	0
$46	$47	8.00	6.10	4.30	2.50	.60	0	0	0	0	0	0
$47	$48	8.20	6.30	4.50	2.60	.80	0	0	0	0	0	0
$48	$49	8.40	6.50	4.60	2.80	1.00	0	0	0	0	0	0
$49	$50	8.60	6.60	4.80	3.00	1.20	0	0	0	0	0	0
$50	$51	8.80	6.80	5.00	3.20	1.30	0	0	0	0	0	0
$51	$52	8.90	7.00	5.20	3.30	1.50	0	0	0	0	0	0
$52	$53	9.10	7.20	5.30	3.50	1.70	0	0	0	0	0	0
$53	$54	9.30	7.30	5.50	3.70	1.80	0	0	0	0	0	0
$54	$55	9.50	7.50	5.70	3.80	2.00	.20	0	0	0	0	0
$55	$56	9.70	7.70	5.80	4.00	2.20	.40	0	0	0	0	0
$56	$57	9.90	7.90	6.00	4.20	2.40	.50	0	0	0	0	0
$57	$58	10.10	8.10	6.20	4.40	2.50	.70	0	0	0	0	0
$58	$59	10.30	8.30	6.30	4.50	2.70	.90	0	0	0	0	0
$59	$60	10.50	8.40	6.50	4.70	2.90	1.00	0	0	0	0	0
$60	$62	10.70	8.70	6.80	5.00	3.10	1.30	0	0	0	0	0

If the pay-roll period with respect to an employee is weekly—Continued.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$62	$64	$11.10	$9.10	$7.10	$5.30	$3.50	$1.60	$0	$0	$0	$0	$0
$64	$66	11.50	9.50	7.50	5.60	3.80	2.00	.20	0	0	0	0
$66	$68	11.90	9.90	7.80	6.00	4.10	2.30	.50	0	0	0	0
$68	$70	12.20	10.20	8.20	6.30	4.50	2.70	.80	0	0	0	0
$70	$72	12.60	10.60	8.60	6.70	4.80	3.00	1.20	0	0	0	0
$72	$74	13.00	11.00	9.00	7.00	5.20	3.30	1.50	0	0	0	0
$74	$76	13.40	11.40	9.40	7.30	5.50	3.70	1.90	0	0	0	0
$76	$78	13.70	11.70	9.70	7.70	5.90	4.00	2.20	.40	0	0	0
$78	$80	14.10	12.10	10.10	8.10	6.20	4.40	2.50	.70	0	0	0
$80	$82	14.50	12.50	10.50	8.50	6.50	4.70	2.90	1.10	0	0	0
$82	$84	14.90	12.90	10.90	8.80	6.90	5.10	3.20	1.40	0	0	0
$84	$86	15.30	13.20	11.20	9.20	7.20	5.40	3.60	1.70	0	0	0
$86	$88	15.60	13.60	11.60	9.60	7.60	5.70	3.90	2.10	.30	0	0
$88	$90	16.00	14.00	12.00	10.00	8.00	6.10	4.30	2.40	.60	0	0
$90	$92	16.40	14.40	12.40	10.40	8.30	6.40	4.60	2.80	.90	0	0
$92	$94	16.80	14.70	12.70	10.70	8.70	6.80	4.90	3.10	1.30	0	0
$94	$96	17.10	15.10	13.10	11.10	9.10	7.10	5.30	3.50	1.60	0	0
$96	$98	17.50	15.50	13.50	11.50	9.50	7.50	5.60	3.80	2.00	.10	0
$98	$100	17.90	15.90	13.90	11.90	9.90	7.80	6.00	4.10	2.30	.50	0
$100	$105	18.50	16.50	14.50	12.50	10.50	8.50	6.60	4.70	2.90	1.10	0
$105	$110	19.50	17.50	15.50	13.50	11.40	9.40	7.40	5.60	3.80	1.90	.10
$110	$115	20.40	18.40	16.40	14.40	12.40	10.40	8.40	6.40	4.60	2.80	1.00
$115	$120	21.40	19.40	17.30	15.30	13.30	11.30	9.30	7.30	5.50	3.70	1.80
$120	$125	22.30	20.30	18.30	16.30	14.30	12.30	10.30	8.20	6.30	4.50	2.70
$125	$130	23.20	21.20	19.20	17.20	15.20	13.20	11.20	9.20	7.20	5.40	3.50
$130	$135	24.20	22.20	20.20	18.20	16.20	14.10	12.10	10.10	8.10	6.20	4.40
$135	$140	25.10	23.10	21.10	19.10	17.10	15.10	13.10	11.10	9.10	7.10	5.20
$140	$145	26.10	24.10	22.00	20.00	18.00	16.00	14.00	12.00	10.00	8.00	6.10
$145	$150	27.00	25.00	23.00	21.00	19.00	17.00	15.00	12.90	10.90	8.90	7.00
$150	$160	28.40	26.40	24.40	22.40	20.40	18.40	16.40	14.40	12.30	10.30	8.30
$160	$170	30.30	28.30	26.30	24.30	22.30	20.30	18.20	16.20	14.20	12.20	10.20
$170	$180	32.20	30.20	28.20	26.20	24.10	22.10	20.10	18.10	16.10	14.10	12.10
$180	$190	34.10	32.10	30.00	28.00	26.00	24.00	22.00	20.00	18.00	16.00	14.00
$190	$200	35.90	33.90	31.90	29.90	27.90	25.90	23.90	21.90	19.90	17.90	15.80
		19 per cent of the excess over $200 plus—										
$200 and over		36.90	34.90	32.90	30.90	28.80	26.80	24.80	22.80	20.80	18.80	16.80

If the pay-roll period with respect to an employee is biweekly.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$20	17% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$20	$22	$3.60	0	0	0	0	0	0	0	0	0	0
$22	$24	3.90	.30	0	0	0	0	0	0	0	0	0
$24	$26	4.30	.60	0	0	0	0	0	0	0	0	0
$26	$28	4.60	1.00	0	0	0	0	0	0	0	0	0
$28	$30	5.00	1.30	0	0	0	0	0	0	0	0	0
$30	$32	5.30	1.60	0	0	0	0	0	0	0	0	0
$32	$34	5.60	2.00	0	0	0	0	0	0	0	0	0
$34	$36	6.00	2.30	0	0	0	0	0	0	0	0	0
$36	$38	6.30	2.70	0	0	0	0	0	0	0	0	0
$38	$40	6.70	3.00	0	0	0	0	0	0	0	0	0
$40	$42	7.00	3.40	0	0	0	0	0	0	0	0	0
$42	$44	7.40	3.70	0	0	0	0	0	0	0	0	0
$44	$46	7.70	4.00	.40	0	0	0	0	0	0	0	0
$46	$48	8.00	4.40	.70	0	0	0	0	0	0	0	0
$48	$50	8.40	4.70	1.10	0	0	0	0	0	0	0	0
$50	$52	8.70	5.10	1.40	0	0	0	0	0	0	0	0
$52	$54	9.10	5.40	1.80	0	0	0	0	0	0	0	0
$54	$56	9.40	5.80	2.10	0	0	0	0	0	0	0	0

If the pay-roll period with respect to an employee is biweekly—Continued.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$56	$58	$9.70	$6.10	$2.40	$0	$0	$0	$0	$0	$0	$0	$0
$58	$60	10.10	6.40	2.80	0	0	0	0	0	0	0	0
$60	$62	10.40	6.80	3.10	0	0	0	0	0	0	0	0
$62	$64	10.80	7.10	3.50	0	0	0	0	0	0	0	0
$64	$66	11.10	7.50	3.80	.20	0	0	0	0	0	0	0
$66	$68	11.50	7.80	4.10	.50	0	0	0	0	0	0	0
$68	$70	11.80	8.10	4.50	.80	0	0	0	0	0	0	0
$70	$72	12.10	8.50	4.80	1.20	0	0	0	0	0	0	0
$72	$74	12.50	8.80	5.20	1.50	0	0	0	0	0	0	0
$74	$76	12.80	9.20	5.50	1.90	0	0	0	0	0	0	0
$76	$78	13.20	9.50	5.90	2.20	0	0	0	0	0	0	0
$78	$80	13.50	9.90	6.20	2.50	0	0	0	0	0	0	0
$80	$82	13.90	10.20	6.50	2.90	0	0	0	0	0	0	0
$82	$84	14.20	10.50	6.90	3.20	0	0	0	0	0	0	0
$84	$86	14.50	10.90	7.20	3.60	0	0	0	0	0	0	0
$86	$88	14.90	11.20	7.60	3.90	.30	0	0	0	0	0	0
$88	$90	15.30	11.60	7.90	4.30	.60	0	0	0	0	0	0
$90	$92	15.60	11.90	8.30	4.60	.90	0	0	0	0	0	0
$92	$94	16.00	12.20	8.60	4.90	1.30	0	0	0	0	0	0
$94	$96	16.40	12.60	8.90	5.30	1.60	0	0	0	0	0	0
$96	$98	16.80	12.90	9.30	5.60	2.00	0	0	0	0	0	0
$98	$100	17.20	13.30	9.60	6.00	2.30	0	0	0	0	0	0
$100	$102	17.50	13.60	10.00	6.30	2.70	0	0	0	0	0	0
$102	$104	17.90	14.00	10.30	6.70	3.00	0	0	0	0	0	0
$104	$106	18.30	14.30	10.60	7.00	3.30	0	0	0	0	0	0
$106	$108	18.70	14.60	11.00	7.30	3.70	0	0	0	0	0	0
$108	$110	19.00	15.00	11.30	7.70	4.00	.40	0	0	0	0	0
$110	$112	19.40	15.40	11.70	8.00	4.40	.70	0	0	0	0	0
$112	$114	19.80	15.80	12.00	8.40	4.70	1.10	0	0	0	0	0
$114	$116	20.20	16.20	12.40	8.70	5.00	1.40	0	0	0	0	0
$116	$118	20.50	16.50	12.70	9.00	5.40	1.70	0	0	0	0	0
$118	$120	20.90	16.90	13.00	9.40	5.70	2.10	0	0	0	0	0
$120	$124	21.50	17.50	13.60	9.90	6.20	2.60	0	0	0	0	0
$124	$128	22.20	18.20	14.20	10.60	6.90	3.30	0	0	0	0	0
$128	$132	23.00	19.00	15.00	11.30	7.60	4.00	.30	0	0	0	0
$132	$136	23.70	19.70	15.70	12.00	8.30	4.60	1.00	0	0	0	0
$136	$140	24.50	20.50	16.50	12.60	9.00	5.30	1.70	0	0	0	0
$140	$144	25.20	21.20	17.20	13.30	9.70	6.00	2.40	0	0	0	0
$144	$148	26.00	22.00	18.00	14.00	10.40	6.70	3.00	0	0	0	0
$148	$152	26.80	22.70	18.70	14.70	11.00	7.40	3.70	.10	0	0	0
$152	$156	27.50	23.50	19.50	15.40	11.70	8.10	4.40	.80	0	0	0
$156	$160	28.30	24.20	20.20	16.20	12.40	8.70	5.10	1.40	0	0	0
$160	$164	29.00	25.00	21.00	16.90	13.10	9.40	5.80	2.10	0	0	0
$164	$168	29.80	25.70	21.70	17.70	13.80	10.10	6.50	2.80	0	0	0
$168	$172	30.50	26.50	22.50	18.40	14.50	10.80	7.10	3.50	0	0	0
$172	$176	31.30	27.20	23.20	19.20	15.20	11.50	7.80	4.20	.50	0	0
$176	$180	32.00	28.00	24.00	20.00	15.90	12.20	8.50	4.90	1.20	0	0
$180	$184	32.80	28.70	24.70	20.70	16.70	12.90	9.20	5.50	1.90	0	0
$184	$188	33.50	29.50	25.50	21.50	17.40	13.50	9.90	6.20	2.60	0	0
$188	$192	34.30	30.30	26.20	22.20	18.20	14.20	10.60	6.90	3.30	0	0
$192	$196	35.00	31.00	27.00	23.00	19.00	14.90	11.30	7.60	3.90	.30	0
$196	$200	35.80	31.80	27.70	23.70	19.70	15.70	11.90	8.30	4.60	1.00	0
$200	$210	37.10	33.10	29.10	25.00	21.00	17.00	13.10	9.50	5.80	2.20	0
$210	$220	39.00	35.00	30.90	26.90	22.90	18.90	14.90	11.20	7.50	3.90	.20
$220	$230	40.90	36.80	32.80	28.80	24.80	20.80	16.70	12.90	9.20	5.60	1.90
$230	$240	42.70	38.70	34.70	30.70	26.70	22.60	18.60	14.60	11.00	7.30	3.60
$240	$250	44.60	40.60	36.60	32.60	28.50	24.50	20.50	16.50	12.70	9.00	5.40
$250	$260	46.50	42.50	38.50	34.40	30.40	26.40	22.40	18.40	14.40	10.70	7.10
$260	$270	48.40	44.40	40.30	36.30	32.30	28.30	24.30	20.20	16.20	12.40	8.80
$270	$280	50.30	46.20	42.20	38.20	34.20	30.20	26.10	22.10	18.10	14.10	10.50
$280	$290	52.10	48.10	44.10	40.10	36.10	32.00	28.00	24.00	20.00	16.00	12.20
$290	$300	54.00	50.00	46.00	42.00	37.90	33.90	29.90	25.90	21.90	17.90	13.90
$300	$320	56.80	52.80	48.80	44.80	40.80	36.70	32.70	28.70	24.70	20.70	16.70
$320	$340	60.60	56.60	52.60	48.50	44.50	40.50	36.50	32.50	28.50	24.40	20.40
$340	$360	64.40	60.40	56.30	52.30	48.30	44.30	40.30	36.20	32.20	28.20	24.20
$360	$380	68.10	64.10	60.10	56.10	52.10	48.00	44.00	40.00	36.00	32.00	27.90
$380	$400	71.90	67.90	63.90	59.80	55.80	51.80	47.80	43.80	39.70	35.70	31.70
		19 per cent of the excess over $400 plus—										
$400 and over		73.80	69.80	65.70	61.70	57.70	53.70	49.70	45.60	41.60	37.60	33.60

If the pay-roll period with respect to an employee is semimonthly.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$22	17% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$22	$24	$3.90	0	0	0	0	0	0	0	0	0	0
$24	$26	4.30	.30	0	0	0	0	0	0	0	0	0
$26	$28	4.60	.70	0	0	0	0	0	0	0	0	0
$28	$30	5.00	1.00	0	0	0	0	0	0	0	0	0
$30	$32	5.30	1.30	0	0	0	0	0	0	0	0	0
$32	$34	5.60	1.70	0	0	0	0	0	0	0	0	0
$34	$36	6.00	2.00	0	0	0	0	0	0	0	0	0
$36	$38	6.30	2.40	0	0	0	0	0	0	0	0	0
$38	$40	6.70	2.70	0	0	0	0	0	0	0	0	0
$40	$42	7.00	3.10	0	0	0	0	0	0	0	0	0
$42	$44	7.40	3.40	0	0	0	0	0	0	0	0	0
$44	$46	7.70	3.70	0	0	0	0	0	0	0	0	0
$46	$48	8.00	4.10	.10	0	0	0	0	0	0	0	0
$48	$50	8.40	4.40	.50	0	0	0	0	0	0	0	0
$50	$52	8.70	4.80	.80	0	0	0	0	0	0	0	0
$52	$54	9.10	5.10	1.10	0	0	0	0	0	0	0	0
$54	$56	9.40	5.40	1.50	0	0	0	0	0	0	0	0
$56	$58	9.70	5.80	1.80	0	0	0	0	0	0	0	0
$58	$60	10.10	6.10	2.20	0	0	0	0	0	0	0	0
$60	$62	10.40	6.50	2.50	0	0	0	0	0	0	0	0
$62	$64	10.80	6.80	2.90	0	0	0	0	0	0	0	0
$64	$66	11.10	7.20	3.20	0	0	0	0	0	0	0	0
$66	$68	11.50	7.50	3.50	0	0	0	0	0	0	0	0
$68	$70	11.80	7.80	3.90	0	0	0	0	0	0	0	0
$70	$72	12.10	8.20	4.20	.30	0	0	0	0	0	0	0
$72	$74	12.50	8.50	4.60	.60	0	0	0	0	0	0	0
$74	$76	12.80	8.90	4.90	1.00	0	0	0	0	0	0	0
$76	$78	13.20	9.20	5.30	1.30	0	0	0	0	0	0	0
$78	$80	13.50	9.60	5.60	1.60	0	0	0	0	0	0	0
$80	$82	13.90	9.90	5.90	2.00	0	0	0	0	0	0	0
$82	$84	14.20	10.20	6.30	2.30	0	0	0	0	0	0	0
$84	$86	14.50	10.60	6.60	2.70	0	0	0	0	0	0	0
$86	$88	14.90	10.90	7.00	3.00	0	0	0	0	0	0	0
$88	$90	15.20	11.30	7.30	3.30	0	0	0	0	0	0	0
$90	$92	15.60	11.60	7.60	3.70	0	0	0	0	0	0	0
$92	$94	15.90	11.90	8.00	4.00	.10	0	0	0	0	0	0
$94	$96	16.30	12.30	8.30	4.40	.40	0	0	0	0	0	0
$96	$98	16.70	12.60	8.70	4.70	.80	0	0	0	0	0	0
$98	$100	17.00	13.00	9.00	5.10	1.10	0	0	0	0	0	0
$100	$102	17.40	13.30	9.40	5.40	1.40	0	0	0	0	0	0
$102	$104	17.80	13.70	9.70	5.70	1.80	0	0	0	0	0	0
$104	$106	18.20	14.00	10.00	6.10	2.10	0	0	0	0	0	0
$106	$108	18.50	14.30	10.40	6.40	2.50	0	0	0	0	0	0
$108	$110	18.90	14.70	10.70	6.80	2.80	0	0	0	0	0	0
$110	$112	19.30	15.00	11.10	7.10	3.10	0	0	0	0	0	0
$112	$114	19.70	15.40	11.40	7.40	3.50	0	0	0	0	0	0
$114	$116	20.00	15.70	11.70	7.80	3.80	0	0	0	0	0	0
$116	$118	20.40	16.10	12.10	8.10	4.20	.20	0	0	0	0	0
$118	$120	20.80	16.40	12.40	8.50	4.50	.60	0	0	0	0	0
$120	$124	21.40	17.00	12.90	9.00	5.00	1.10	0	0	0	0	0
$124	$128	22.10	17.80	13.60	9.70	5.70	1.80	0	0	0	0	0
$128	$132	22.90	18.50	14.30	10.40	6.40	2.40	0	0	0	0	0
$132	$136	23.60	19.30	15.00	11.00	7.10	3.10	0	0	0	0	0
$136	$140	24.40	20.00	15.70	11.70	7.80	3.80	0	0	0	0	0
$140	$144	25.10	20.80	16.40	12.40	8.40	4.50	.50	0	0	0	0
$144	$148	25.90	21.50	17.20	13.10	9.10	5.20	1.20	0	0	0	0
$148	$152	26.60	22.30	17.90	13.80	9.80	5.90	1.90	0	0	0	0
$152	$156	27.40	23.00	18.70	14.50	10.50	6.50	2.60	0	0	0	0
$156	$160	28.10	23.80	19.40	15.10	11.20	7.20	3.30	0	0	0	0
$160	$164	28.90	24.50	20.20	15.80	11.90	7.90	4.00	0	0	0	0
$164	$168	29.60	25.30	20.90	16.60	12.60	8.60	4.60	.70	0	0	0
$168	$172	30.40	26.00	21.70	17.30	13.20	9.30	5.30	1.40	0	0	0
$172	$176	31.10	26.80	22.40	18.10	13.90	10.00	6.00	2.00	0	0	0
$176	$180	31.90	27.50	23.20	18.80	14.60	10.60	6.70	2.70	0	0	0
$180	$184	32.60	28.30	23.90	19.60	15.30	11.30	7.40	3.40	0	0	0
$184	$188	33.40	29.00	24.70	20.30	16.00	12.00	8.10	4.10	.10	0	0
$188	$192	34.20	29.80	25.40	21.10	16.70	12.70	8.70	4.80	.80	0	0
$192	$196	34.90	30.60	26.20	21.80	17.50	13.40	9.40	5.50	1.50	0	0
$196	$200	35.70	31.30	27.00	22.60	18.20	14.10	10.10	6.10	2.20	0	0
$200	$210	37.00	32.60	28.30	23.90	19.60	15.30	11.30	7.30	3.40	0	0
$210	$220	38.90	34.50	30.10	25.80	21.40	17.10	13.00	9.10	5.10	1.10	0
$220	$230	40.70	36.40	32.00	27.70	23.30	19.00	14.70	10.80	6.80	2.90	0
$230	$240	42.60	38.30	33.90	29.60	25.20	20.80	16.50	12.50	8.50	4.60	.60
$240	$250	44.50	40.10	35.80	31.40	27.10	22.70	18.40	14.20	10.20	6.30	2.30
$250	$260	46.40	42.00	37.70	33.30	29.00	24.60	20.30	15.90	11.90	8.00	4.00
$260	$270	48.30	43.90	39.50	35.20	30.80	26.50	22.10	17.80	13.60	9.70	5.70
$270	$280	50.10	45.80	41.40	37.10	32.70	28.40	24.00	19.70	15.40	11.40	7.40

If the pay-roll period with respect to an employee is semimonthly—Continued.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$280	$290	$52.00	$47.70	$43.30	$39.00	$34.60	$30.20	$25.90	$21.50	$17.20	$13.10	$9.20
$290	$300	53.90	49.60	45.20	40.80	36.50	32.10	27.80	23.40	19.10	14.80	10.90
$300	$320	56.70	52.40	48.00	43.70	39.30	35.00	30.60	26.20	21.90	17.50	13.40
$320	$340	60.50	56.10	51.80	47.40	43.10	38.70	34.40	30.00	25.70	21.30	16.90
$340	$360	64.20	59.90	55.50	51.20	46.80	42.50	38.10	33.80	29.40	25.10	20.70
$360	$380	68.00	63.70	59.30	54.90	50.60	46.20	41.90	37.50	33.20	28.80	24.50
$380	$400	71.80	67.40	63.10	58.70	54.40	50.00	45.60	41.30	36.90	32.60	28.20
$400	$420	75.50	71.20	66.80	62.50	58.10	53.80	49.40	45.10	40.70	36.30	32.00
$420	$440	79.30	74.90	70.60	66.20	61.90	57.50	53.20	48.80	44.50	40.10	35.80
$440	$460	83.10	78.70	74.30	70.00	65.60	61.30	56.90	52.60	48.20	43.90	39.50
$460	$480	86.80	82.50	78.10	73.80	69.40	65.00	60.70	56.30	52.00	47.60	43.30
$480	$500	90.60	86.20	81.90	77.50	73.20	68.80	64.50	60.10	55.70	51.40	47.00
		19 per cent of the excess over $500 plus—										
$500 and over		92.50	88.10	83.80	79.40	75.10	70.70	66.30	62.00	57.60	53.30	48.90

If the pay-roll period with respect to an employee is monthly.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$44	17% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$44	$48	$7.90	0	0	0	0	0	0	0	0	0	0
$48	$52	8.60	.60	0	0	0	0	0	0	0	0	0
$52	$56	9.20	1.30	0	0	0	0	0	0	0	0	0
$56	$60	9.90	2.00	0	0	0	0	0	0	0	0	0
$60	$64	10.60	2.70	0	0	0	0	0	0	0	0	0
$64	$68	11.30	3.40	0	0	0	0	0	0	0	0	0
$68	$72	12.00	4.10	0	0	0	0	0	0	0	0	0
$72	$76	12.70	4.70	0	0	0	0	0	0	0	0	0
$76	$80	13.30	5.40	0	0	0	0	0	0	0	0	0
$80	$84	14.00	6.10	0	0	0	0	0	0	0	0	0
$84	$88	14.70	6.80	0	0	0	0	0	0	0	0	0
$88	$92	15.40	7.50	0	0	0	0	0	0	0	0	0
$92	$96	16.10	8.20	.20	0	0	0	0	0	0	0	0
$96	$100	16.80	8.80	.90	0	0	0	0	0	0	0	0
$100	$104	17.40	9.50	1.60	0	0	0	0	0	0	0	0
$104	$108	18.10	10.20	2.30	0	0	0	0	0	0	0	0
$108	$112	18.80	10.90	3.00	0	0	0	0	0	0	0	0
$112	$116	19.50	11.60	3.70	0	0	0	0	0	0	0	0
$116	$120	20.20	12.30	4.30	0	0	0	0	0	0	0	0
$120	$124	20.90	12.90	5.00	0	0	0	0	0	0	0	0
$124	$128	21.50	13.60	5.70	0	0	0	0	0	0	0	0
$128	$132	22.20	14.30	6.40	0	0	0	0	0	0	0	0
$132	$136	22.90	15.00	7.10	0	0	0	0	0	0	0	0
$136	$140	23.60	15.70	7.80	0	0	0	0	0	0	0	0
$140	$144	24.30	16.40	8.40	.50	0	0	0	0	0	0	0
$144	$148	25.00	17.00	9.10	1.20	0	0	0	0	0	0	0
$148	$152	25.70	17.70	9.80	1.90	0	0	0	0	0	0	0
$152	$156	26.30	18.40	10.50	2.60	0	0	0	0	0	0	0
$156	$160	27.00	19.10	11.20	3.30	0	0	0	0	0	0	0
$160	$164	27.70	19.80	11.90	4.00	0	0	0	0	0	0	0
$164	$168	28.40	20.50	12.60	4.60	0	0	0	0	0	0	0
$168	$172	29.10	21.20	13.20	5.30	0	0	0	0	0	0	0
$172	$176	29.80	21.80	13.90	6.00	0	0	0	0	0	0	0
$176	$180	30.40	22.50	14.60	6.70	0	0	0	0	0	0	0
$180	$184	31.10	23.20	15.30	7.40	0	0	0	0	0	0	0
$184	$188	31.80	23.90	16.00	8.10	.10	0	0	0	0	0	0
$188	$192	32.60	24.60	16.70	8.70	.80	0	0	0	0	0	0
$192	$196	33.30	25.30	17.30	9.40	1.50	0	0	0	0	0	0
$196	$200	34.10	25.90	18.00	10.10	2.20	0	0	0	0	0	0
$200	$204	34.80	26.60	18.70	10.80	2.90	0	0	0	0	0	0
$204	$208	35.60	27.30	19.40	11.50	3.60	0	0	0	0	0	0

If the pay-roll period with respect to an employee is monthly—Continued.

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$208	$212	$36.30	$28.00	$20.10	$12.20	$4.20	$0	$0	$0	$0	$0	$0
$212	$216	37.10	28.70	20.80	12.80	4.90	0	0	0	0	0	0
$216	$220	37.80	29.40	21.40	13.50	5.60	0	0	0	0	0	0
$220	$224	38.60	30.00	22.10	14.20	6.30	0	0	0	0	0	0
$224	$228	39.30	30.70	22.80	14.90	7.00	0	0	0	0	0	0
$228	$232	40.10	31.40	23.50	15.60	7.70	0	0	0	0	0	0
$232	$236	40.80	32.10	24.20	16.30	8.30	.40	0	0	0	0	0
$236	$240	41.60	32.90	24.90	16.90	9.00	1.10	0	0	0	0	0
$240	$248	42.70	34.00	25.90	18.00	10.10	2.10	0	0	0	0	0
$248	$256	44.20	35.50	27.30	19.30	11.40	3.50	0	0	0	0	0
$256	$264	45.70	37.00	28.60	20.70	12.80	4.90	0	0	0	0	0
$264	$272	47.20	38.50	30.00	22.10	14.20	6.20	0	0	0	0	0
$272	$280	48.70	40.00	31.40	23.40	15.50	7.60	0	0	0	0	0
$280	$288	50.20	41.50	32.80	24.80	16.90	9.00	1.10	0	0	0	0
$288	$296	51.80	43.00	34.30	26.20	18.30	10.30	2.40	0	0	0	0
$296	$304	53.30	44.50	35.80	27.60	19.60	11.70	3.80	0	0	0	0
$304	$312	54.80	46.10	37.30	28.90	21.00	13.10	5.20	0	0	0	0
$312	$320	56.30	47.60	38.90	30.30	22.40	14.50	6.50	0	0	0	0
$320	$328	57.80	49.10	40.40	31.70	23.70	15.80	7.90	0	0	0	0
$328	$336	59.30	50.60	41.90	33.20	25.10	17.20	9.30	1.40	0	0	0
$336	$344	60.80	52.10	43.40	34.70	26.50	18.60	10.60	2.70	0	0	0
$344	$352	62.30	53.60	44.90	36.20	27.80	19.90	12.00	4.10	0	0	0
$352	$360	63.80	55.10	46.40	37.70	29.20	21.30	13.40	5.50	0	0	0
$360	$368	65.30	56.60	47.90	39.20	30.60	22.70	14.70	6.80	0	0	0
$368	$376	66.80	58.10	49.40	40.70	32.00	24.00	16.10	8.20	.30	0	0
$376	$384	68.30	59.60	50.90	42.20	33.50	25.40	17.50	9.60	1.60	0	0
$384	$392	69.80	61.10	52.40	43.70	35.00	26.80	18.80	10.90	3.00	0	0
$392	$400	71.30	62.60	53.90	45.20	36.50	28.10	20.20	12.30	4.40	0	0
$400	$420	73.90	65.20	56.50	47.80	39.10	30.50	22.60	14.70	6.80	0	0
$420	$440	77.70	69.00	60.30	51.60	42.90	34.20	26.00	18.10	10.20	2.30	0
$440	$460	81.50	72.80	64.10	55.30	46.60	37.90	29.50	21.50	13.60	5.70	0
$460	$480	85.20	76.50	67.80	59.10	50.40	41.70	33.00	25.00	17.00	9.10	1.20
$480	$500	89.00	80.30	71.60	62.90	54.20	45.50	36.70	28.40	20.50	12.50	4.60
$500	$520	92.80	84.10	75.30	66.60	57.90	49.20	40.50	31.80	23.90	16.00	8.00
$520	$540	96.50	87.80	79.10	70.40	61.70	53.00	44.30	35.60	27.30	19.40	11.50
$540	$560	100.30	91.60	82.90	74.20	65.50	56.70	48.00	39.30	30.70	22.80	14.90
$560	$580	104.00	95.30	86.60	77.90	69.20	60.50	51.80	43.10	34.40	26.20	18.30
$580	$600	107.80	99.10	90.40	81.70	73.00	64.30	55.60	46.90	38.10	29.60	21.70
$600	$640	113.40	104.70	96.00	87.30	78.60	69.90	61.20	52.50	43.80	35.10	26.90
$640	$680	121.00	112.30	103.60	94.80	86.10	77.40	68.70	60.00	51.30	42.60	33.90
$680	$720	128.50	119.80	111.10	102.40	93.70	85.00	76.20	67.50	58.80	50.10	41.40
$720	$760	136.00	127.30	118.60	109.90	101.20	92.50	83.80	75.10	66.40	57.60	48.90
$760	$800	143.50	134.80	126.10	117.40	108.70	100.00	91.30	82.60	73.90	65.20	56.50
$800	$840	151.10	142.40	133.70	124.90	116.20	107.50	98.80	90.10	81.40	72.70	64.00
$840	$880	158.60	149.90	141.20	132.50	123.80	115.10	106.30	97.60	88.90	80.20	71.50
$880	$920	166.10	157.40	148.70	140.00	131.30	122.60	113.90	105.20	96.50	87.70	79.00
$920	$960	173.60	164.90	156.20	147.50	138.80	130.10	121.40	112.70	104.00	95.30	86.60
$960	$1,000	181.20	172.50	163.80	155.00	146.30	137.60	128.90	120.20	111.50	102.80	94.10
		19 per cent of the excess over $1,000 plus—										
$1,000 and over		184.90	176.20	167.50	158.80	150.10	141.40	132.70	124.00	115.30	106.60	97.90

If the pay-roll period with respect to an employee is a daily pay-roll period or a miscellaneous pay-roll period.

And the wages divided by the number of days in such period are—		And the number of withholding exemptions claimed is—										
		0	1	2	3	4	5	6	7	8	9	10 or more
At least	But less than	The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period										
$0	$1.50	17% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$1.50	$1.75	$0.30	0	0	0	0	0	0	0	0	0	0
$1.75	$2.00	.30	.05	0	0	0	0	0	0	0	0	0
$2.00	$2.25	.35	.10	0	0	0	0	0	0	0	0	0
$2.25	$2.50	.40	.15	0	0	0	0	0	0	0	0	0
$2.50	$2.75	.45	.20	0	0	0	0	0	0	0	0	0
$2.75	$3.00	.50	.25	0	0	0	0	0	0	0	0	0
$3.00	$3.25	.55	.25	0	0	0	0	0	0	0	0	0
$3.25	$3.50	.60	.30	.05	0	0	0	0	0	0	0	0
$3.50	$3.75	.60	.35	.10	0	0	0	0	0	0	0	0
$3.75	$4.00	.65	.40	.15	0	0	0	0	0	0	0	0
$4.00	$4.25	.70	.45	.20	0	0	0	0	0	0	0	0
$4.25	$4.50	.75	.50	.25	0	0	0	0	0	0	0	0
$4.50	$4.75	.80	.55	.25	0	0	0	0	0	0	0	0
$4.75	$5.00	.85	.55	.30	.05	0	0	0	0	0	0	0
$5.00	$5.25	.90	.60	.35	.10	0	0	0	0	0	0	0
$5.25	$5.50	.90	.65	.40	.15	0	0	0	0	0	0	0
$5.50	$5.75	.95	.70	.45	.20	0	0	0	0	0	0	0
$5.75	$6.00	1.00	.75	.50	.20	0	0	0	0	0	0	0
$6.00	$6.25	1.05	.80	.55	.25	0	0	0	0	0	0	0
$6.25	$6.50	1.10	.85	.55	.30	.05	0	0	0	0	0	0
$6.50	$6.75	1.15	.85	.60	.35	.10	0	0	0	0	0	0
$6.75	$7.00	1.20	.90	.65	.40	.15	0	0	0	0	0	0
$7.00	$7.25	1.25	.95	.70	.45	.20	0	0	0	0	0	0
$7.25	$7.50	1.30	1.00	.75	.50	.20	0	0	0	0	0	0
$7.50	$7.75	1.35	1.05	.80	.50	.25	0	0	0	0	0	0
$7.75	$8.00	1.40	1.10	.85	.55	.30	.05	0	0	0	0	0
$8.00	$8.25	1.40	1.15	.85	.60	.35	.10	0	0	0	0	0
$8.25	$8.50	1.45	1.20	.90	.65	.40	.15	0	0	0	0	0
$8.50	$8.75	1.50	1.25	.95	.70	.45	.15	0	0	0	0	0
$8.75	$9.00	1.55	1.30	1.00	.75	.50	.20	0	0	0	0	0
$9.00	$9.25	1.60	1.35	1.05	.80	.50	.25	0	0	0	0	0
$9.25	$9.50	1.65	1.35	1.10	.80	.55	.30	.05	0	0	0	0
$9.50	$9.75	1.70	1.40	1.15	.85	.60	.35	.10	0	0	0	0
$9.75	$10.00	1.75	1.45	1.20	.90	.65	.40	.15	0	0	0	0
$10.00	$10.50	1.80	1.55	1.25	.95	.70	.45	.20	0	0	0	0
$10.50	$11.00	1.90	1.65	1.35	1.05	.80	.55	.30	0	0	0	0
$11.00	$11.50	2.00	1.75	1.45	1.15	.90	.60	.35	.10	0	0	0
$11.50	$12.00	2.10	1.80	1.55	1.25	.95	.70	.45	.20	0	0	0
$12.00	$12.50	2.20	1.90	1.65	1.35	1.05	.80	.55	.25	0	0	0
$12.50	$13.00	2.30	2.00	1.70	1.45	1.15	.90	.60	.35	.10	0	0
$13.00	$13.50	2.40	2.10	1.80	1.55	1.25	.95	.70	.45	.20	0	0
$13.50	$14.00	2.50	2.20	1.90	1.60	1.35	1.05	.80	.55	.25	0	0
$14.00	$14.50	2.60	2.30	2.00	1.70	1.45	1.15	.90	.60	.35	.10	0
$14.50	$15.00	2.65	2.40	2.10	1.80	1.50	1.25	.95	.70	.45	.20	0
$15.00	$15.50	2.75	2.50	2.20	1.90	1.60	1.35	1.05	.80	.55	.25	0
$15.50	$16.00	2.85	2.55	2.30	2.00	1.70	1.45	1.15	.85	.60	.35	.10
$16.00	$16.50	2.95	2.65	2.40	2.10	1.80	1.50	1.25	.95	.70	.45	.20
$16.50	$17.00	3.05	2.75	2.45	2.20	1.90	1.60	1.35	1.05	.80	.50	.25
$17.00	$17.50	3.15	2.85	2.55	2.30	2.00	1.70	1.40	1.15	.85	.60	.35
$17.50	$18.00	3.25	2.95	2.65	2.40	2.10	1.80	1.50	1.25	.95	.70	.45
$18.00	$18.50	3.35	3.05	2.75	2.45	2.20	1.90	1.60	1.30	1.05	.80	.50
$18.50	$19.00	3.40	3.15	2.85	2.55	2.30	2.00	1.70	1.40	1.15	.85	.60
$19.00	$19.50	3.50	3.25	2.95	2.65	2.35	2.10	1.80	1.50	1.25	.95	.70
$19.50	$20.00	3.60	3.30	3.05	2.75	2.45	2.20	1.90	1.60	1.30	1.05	.75
$20.00	$21.00	3.75	3.45	3.20	2.90	2.60	2.30	2.05	1.75	1.45	1.20	.90
$21.00	$22.00	3.95	3.65	3.35	3.10	2.80	2.50	2.20	1.95	1.65	1.35	1.10
$22.00	$23.00	4.15	3.85	3.55	3.25	3.00	2.70	2.40	2.10	1.85	1.55	1.25
$23.00	$24.00	4.30	4.05	3.75	3.45	3.15	2.90	2.60	2.30	2.05	1.75	1.45
$24.00	$25.00	4.50	4.20	3.95	3.65	3.35	3.05	2.80	2.50	2.20	1.95	1.65
$25.00	$26.00	4.70	4.40	4.10	3.85	3.55	3.25	2.95	2.70	2.40	2.10	1.85
$26.00	$27.00	4.90	4.60	4.30	4.00	3.75	3.45	3.15	2.90	2.60	2.30	2.00
$27.00	$28.00	5.05	4.80	4.50	4.20	3.90	3.65	3.35	3.05	2.80	2.50	2.20
$28.00	$29.00	5.25	4.95	4.70	4.40	4.10	3.80	3.55	3.25	2.95	2.70	2.40
$29.00	$30.00	5.45	5.15	4.85	4.60	4.30	4.00	3.75	3.45	3.15	2.85	2.60
		19 per cent of the excess over $30 plus—										
$30.00 and over		5.55	5.25	4.95	4.70	4.40	4.10	3.80	3.55	3.25	2.95	2.70

(c) TECHNICAL AMENDMENT.—Section 1622(h)(1)(C) (relating to exemptions for withholding) is amended by striking out the words "a surtax exemption under section 25(b)(3)" and by inserting in lieu thereof "an exemption under section 25(b)(1)(C)".

(d) WITHHOLDING STATEMENTS.—

(1) Section 1625(a) (relating to withholding receipts) is amended by inserting after "required to deduct and withhold a tax in respect of the wages of an employee" the following: ", or who would have been so required if the employee had claimed no more than one withholding exemption,".

(2) Section 1626 (a) and (b) (relating to penalties in connection with withholding receipts) are amended (A) by striking out "in respect of tax withheld pursuant to this subchapter" in each of such subsections, and (B) by striking out "receipt" wherever appearing therein and inserting in lieu thereof "statement".

(e) EFFECTIVE DATE.—The amendments made by this section shall be applicable only with respect to wages paid on or after January 1, 1946.

Part II—Corporation Taxes.

SEC. 121. DECREASE IN CORPORATION SURTAX.

(a) IN GENERAL.—Section 15(b) (relating to the corporation surtax) is amended to read as follows:

"(b) IMPOSITION OF TAX.—There shall be levied, collected, and paid for each taxable year upon the corporation surtax net income of every corporation (except a Western Hemisphere trade corporation as defined in section 109, and except a corporation subject to a tax imposed by section 231(a), Supplement G or Supplement Q) a surtax as follows:

"(1) Surtax net incomes not over $25,000.—Upon corporation surtax net incomes not over $25,000, 6 per centum of the amount thereof.

"(2) Surtax net incomes over $25,000 but not over $50,000.—Upon corporation surtax net incomes over $25,000, but not over $50,000, $1,500 plus 22 per centum of the amount of the corporation surtax net income over $25,000.

"(3) Surtax net incomes over $50,000.—Upon corporation surtax net incomes over $50,000, 14 per centum of the corporation surtax net income."

(b) MUTUAL INSURANCE COMPANIES OTHER THAN LIFE OR MARINE.—

(1) Section 207(a)(1)(B) (relating to surtax on mutual insurance companies, other than life or marine) is amended to read as follows:

"(B) Surtax.—A surtax on the corporation surtax net income, computed at the rates provided in section 15(b), except that if the corporation surtax net income is not more than $6,000 the surtax shall be 12 per centum of the amount by which the corporation surtax net income exceeds $3,000."

(2) Section 207(a)(3)(B) (relating to surtax on interinsurers or reciprocal underwriters) is amended by striking out "32 per centum" and inserting in lieu thereof "28 per centum".

(c) REGULATED INVESTMENT COMPANIES.—Section 362(b)(4) (relating to the surtax on regulated investment companies) is amended by striking out "16 per centum" and inserting in lieu thereof "14 per centum".

(d) TAXABLE YEARS TO WHICH APPLICABLE.—The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1945. For treatment of taxable years beginning in 1945 and ending in 1946, see section 131.

SEC. 122. REPEAL OF EXCESS PROFITS TAX IN 1946.

(a) IN GENERAL.—The provisions of subchapter E of chapter 2 shall not apply to any taxable year beginning after December 31, 1945.

(b) CARRY-BACKS FROM YEARS AFTER 1945, ETC.—Despite the provisions of subsection (a) of this section the provisions of subchapter E of chapter 2 shall remain in force for the purposes of the determination of the taxes imposed by such subchapter for taxable years beginning before January 1, 1946, such determination to be made as if subsection (a) had not been enacted but with the application of the amendments made by subsection (c) of this section and section 131 of this Act.

(c) UNUSED EXCESS PROFITS CREDIT FOR TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 1945.—Section 710(c)(2) (defining the unused excess profits credit) is amended by inserting at the end thereof a new sentence reading as follows: "There shall be no unused excess profits credit for a taxable year beginning after December 31, 1946. The unused excess profits credit for a taxable year beginning in 1946 and ending in 1947 shall be an amount which is such part of the unused excess profits credit determined under the preceding provisions of this paragraph as the number of days in such taxable year prior to January 1, 1947, is of the total number of days in such taxable year."

(d) AFFILIATED GROUPS.—Subsection (b) shall be applied in the case of corporations making or required to make a consolidated return under chapter 1 for any taxable year beginning after December 31, 1945, and in the case of a corporation making a separate return for any such taxable year which was a member of a group which made or was required to make a consolidated return for any prior taxable year, in such manner as may be prescribed in regulations prescribed by the Commissioner with the approval of the Secretary prior to the last day prescribed by law for the making of the return for the year beginning after December 31, 1945.

(e) CLAIMS FOR REFUND BASED ON CARRY-BACKS.—

(1) IN GENERAL.—The first sentence of section 322(b)(6) (relating to periods of limitation with respect to claims for refund based on carry-backs) is amended to read as follows: "If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry-back or to an unused excess profits credit carry-back, in lieu of the three-year period of limitation prescribed in paragraph (1), the period shall be that period which ends with the expiration of the fifteenth day of the thirty-ninth month following the end of the taxable year of the net operating loss or the unused excess profits credit which results in such carry-back, or the period prescribed in paragraph (3) in respect of such taxable year, whichever expires later."

(2) TAXABLE YEARS TO WHICH APPLICABLE.—The amendment made by this subsection shall be applicable to claims for credit or refund with respect to taxable years beginning after December 31, 1940.

(f) DEFICIENCIES ATTRIBUTABLE TO CARRY-BACKS.—

(1) Section 276(d) is amended to read as follows:

"(d) NET OPERATING LOSS CARRY-BACKS AND UNUSED EXCESS PROFITS CREDIT CARRY-BACKS.—In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carry-back or an unused excess profits credit carry-back, including deficiencies which may be assessed pursuant to the provisions of section 3780 (b) or (c), such deficiency may be assessed—

"(1) in case a return was required under subchapter E of chapter 2 for the taxable year of the net operating loss or unused excess profits credit resulting in the carry-back, at any time before the expiration of the period within which (under section 275 or subsection (a) or (b) of this section) a deficiency (with respect to tax imposed either by chapter 1 or by subchapter B or E of chapter 2) for such taxable year (whichever is the longer period) may be assessed; or

"(2) in case a return was not required under subchapter E of chapter 2 for the taxable year of the net operating loss or unused excess profits credit resulting in the carry-back, at any time before the expiration of the period within which (under section 275 or subsection (a) or (b) of this section) a deficiency (with respect to tax imposed either by chapter 1 or by subchapter A or B of chapter 2) for such taxable year (whichever is the longer period) may be assessed."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall be applicable with respect to all taxable years beginning after December 31, 1940.

(g) TECHNICAL AMENDMENTS.—Effective with respect to taxable years beginning after December 31, 1945—

(1) Section 26(e) (relating to the credit for income subject to the excess profits tax) is repealed.

(2) Section 13(a)(2) (defining "normal tax net income") is amended by striking out "minus the credit for income subject to the tax imposed by Subchapter E of Chapter 2 provided in section 26(e) and".

(3) Section 15(a) (defining "corporation surtax net income") is amended (A) by striking out "minus the credit for income subject to the tax imposed by Subchapter E of Chapter 2 provided in section 26(e) and"; and (B) by striking out "(computed by limiting such credit to 85 per centum of the net

income reduced by the credit for income subject to the tax imposed by Subchapter E of Chapter 2 in lieu of 85 per centum of the adjusted net income so reduced),".

(4) Section 26(b) (relating to the credit for dividends received) is amended by striking out "reduced by the credit for income subject to the tax imposed by Subchapter E of Chapter 2 provided in subsection (e)".

(5) Section 102(d)(1) (defining terms for the purposes of the tax imposed by section 102) is amended by striking out subparagraph (D) thereof.

(6) Section 131(b) (prescribing certain limitations on the foreign-tax credit) is amended by striking out paragraph (3) thereof.

(7) Section 204(a)(2) (relating to foreign mutual insurance companies other than life or marine) is amended to read as follows:

"(2) NORMAL-TAX AND CORPORATION SURTAX NET INCOME OF FOREIGN INSURANCE COMPANIES OTHER THAN LIFE OR MUTUAL AND FOREIGN MUTUAL MARINE.—In the case of a foreign insurance company (other than a life or mutual insurance company) and a foreign mutual marine insurance company and a foreign mutual fire insurance company described in paragraph (1) of this subsection, the normal tax net income shall be the net income from sources within the United States minus the credit provided in section 26(a) and the credit provided in section 26(b), and the corporation surtax net income shall be the net income from sources within the United States minus the credit provided in section 26(b)."

(h) FISCAL YEAR TAXPAYERS.—For taxable years beginning in 1945 and ending in 1946, see section 131.

Part III—Fiscal Year Taxpayers.

SEC. 131. FISCAL YEAR TAXPAYERS.

(a) INCOME TAXES.—Section 108 of the Internal Revenue Code is amended by striking out "(c)" at the beginning of subsection (c) and inserting in lieu thereof "(d)", and by inserting after subsection (b) the following:

"(c) TAXABLE YEARS BEGINNING IN 1945 AND ENDING IN 1946.—In the case of a taxable year beginning in 1945 and ending in 1946, the tax imposed by sections 11, 12, 13, 14, 15, and 400 shall be an amount equal to the sum of—

"(1) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1945, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1946, bears to the total number of days in such taxable year, plus

"(2) that portion of a tentative tax, computed as if the law applicable to years beginning on January 1, 1946, were applicable to such taxable year, which the number of days in such taxable year after December 31, 1945, bears to the total number of days in such taxable year."

(b) EXCESS PROFITS TAX.—

(1) IN GENERAL.—Section 710(a) (imposing the excess profits tax) is amended by inserting at the end thereof the following:

"(7) TAXABLE YEARS BEGINNING IN 1945 AND ENDING IN 1946.—In the case of a taxable year beginning in 1945 and ending in 1946, the tax shall be an amount equal to that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1945, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1946, bears to the total number of days in such taxable year."

(2) TECHNICAL AMENDMENTS.—

(A) Section 2(a) of the Tax Adjustment Act of 1945 (relating to the specific exemption) is repealed as of the date of its enactment.

(B) Section 710(b)(1) (relating to the specific exemption) is restored to read as such paragraph read immediately prior to the enactment of the Tax Adjustment Act of 1945, to be effective, as so restored, as if section 2(a) of the Tax Adjustment Act of 1945 had not been enacted.

Part IV—Veterans' and Servicemen's Provisions.

SEC. 141. ADDITIONAL ALLOWANCE FOR MILITARY AND NAVAL PERSONNEL.

(a) IN GENERAL.—Section 22(b)(13) (relating to the exclusion from gross income for military and naval personnel) is amended to read as follows:

"(13) ADDITIONAL ALLOWANCE FOR MILITARY AND NAVAL PERSONNEL.—

"(A) In the case of compensation received during any taxable year and before the termination of the present war as proclaimed by the President, for active service as a commissioned officer (or a commissioned warrant officer) in the military or naval forces of the United States during such 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 during any taxable year and before the termination of the present war as proclaimed by the President, 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 such war."

(b) TAXABLE YEARS TO WHICH APPLICABLE.—Subparagraph (A) of section 22(b)(13), as amended by subsection (a) of this section, shall be applicable with respect to taxable years beginning after December 31, 1942; subparagraph (B) thereof shall be applicable with respect to taxable years beginning after December 31, 1940.

(c) CREDITS OR REFUNDS FOR 1941 AND 1942.—If at any time prior to January 1, 1947, the allowance of a credit or refund of an overpayment of the tax for any taxable year beginning after December 31, 1940, and before January 1, 1943, is otherwise prevented by the operation of any law or rule of law (other than section 3761, relating to compromises), a credit or refund of the overpayment of such tax to the extent that the overpayment is attributable to the enactment of this section may, nevertheless, be allowed or made if a claim therefor is filed before January 1, 1947.

SEC. 142. DEFERMENT OF CERTAIN TAXES OF VETERANS AND SERVICEMEN.

(a) IN GENERAL.—Chapter 38 (miscellaneous provisions) is amended by inserting at the end thereof a new section reading as follows:

"SEC. 3808. DEFERMENT OF TAX ATTRIBUTABLE TO SERVICE PAY FOR COMMISSIONED SERVICE AND OF TAX ATTRIBUTABLE TO PRE-SERVICE EARNED INCOME.

"(a) DEFINITIONS.—As used in this section—

"(1) TAX ATTRIBUTABLE TO SERVICE PAY.—The term 'tax attributable to service pay' means—

"(A) in the case of a war year for which the taxpayer had no gross income other than compensation for active service as a member of the military or naval forces of the United States, the tax imposed under chapter 1 for such year; or

"(B) in the case of a war year for which the taxpayer had gross income in addition to compensation for active service as a member of the military or naval forces of the United States, the excess of the tax imposed under chapter 1 for such year over the tax that would have been imposed if such compensation had been excluded from gross income;

except that in the case of a commissioned officer (or a commissioned warrant officer) of the regular component of the Army, Navy, Marine Corps, or Coast Guard, such term shall not apply to any war year unless, at the time prescribed for the payment of the tax under chapter 1 for such year, a period of time was being disregarded under section 3804.

"(2) WAR YEAR.—The term 'war year'—

"(A) when used with respect to the tax attributable to service pay means any taxable year beginning after December 31, 1939, and before January 1, 1947; and

"(B) when used with respect to the tax attributable to pre-service earned income means any taxable year beginning after December 31, 1939, but before January 1, 1942, and before the taxpayer entered upon active service as a member of the military or naval forces of the United States, but does not include any year unless part of the tax imposed by chapter 1 for such year became due and payable after the taxpayer entered upon such active service.

"(3) TAX ATTRIBUTABLE TO PRE-SERVICE EARNED INCOME.—The term 'tax attributable to pre-service earned income' means the excess of the tax im-

posed by chapter 1 for any war year over the tax that would have been imposed for such year if there had been excluded from the net income for such year the amount of the earned net income (as such term was defined in section 25(a)(4) as in force with respect to such year, except that in computing such earned net income, compensation for active service in such forces shall be disregarded).

"(4) FIRST INSTALLMENT DATE.—The term 'first installment date' means May 15, 1946, in the case of taxpayers released from active duty in the military or naval forces of the United States prior to December 1, 1945; and in other cases June 15, 1947, or the fifteenth day of the sixth month which begins after the date of the taxpayer's release from active duty in such forces, whichever is the earlier; except that, if the first installment date with respect to any war year would otherwise occur earlier than the fifteenth day of the third month following the close of such year, the first installment date with respect to such year shall be the fifteenth day of such third month.

" (b) EXTENSION OF TIME FOR PAYMENT.—Upon application with respect to any war year, made prior to the first installment date, and under regulations prescribed by the Commissioner with the approval of the Secretary—

" (1) the time for payment of an amount of the tax under chapter 1 for such year which is equal to the tax attributable to service pay for such year and which has not been paid before the filing of such application; and

" (2) the time for the payment of an amount of the tax under chapter 1 for such year which is equal to the tax attributable to pre-service earned income for such year and which has not been paid before the filing of such application,

shall, in lieu of the time otherwise applicable, be as follows: one-twelfth thereof on the first installment date and an additional twelfth thereof every three months thereafter until such tax is paid.

" (c) SUSPENSION OF PERIOD OF LIMITATION.—The running of the period of limitation provided in section 276(c) (relating to the collection of the tax after assessment) in respect of any tax the time for the payment of which is prescribed under subsection (b), shall be suspended for the period beginning with the date of the filing of the application under such subsection and ending six months after the date prescribed therein for the payment of the last installment of such tax.

" (d) ESTIMATED TAX.—If the taxpayer is eligible for the benefits of subsection (b) with respect to any war year—

" (1) for the purposes of the application of section 58 with respect to such year, compensation for active service as a member of the military or naval forces of the United States may be disregarded in determining the gross income reasonably expected for such year, and in determining the estimated tax for such year; and

" (2) for the purposes of section 294(d) the tax for such year shall be determined as if such compensation were excluded from gross income.

This subsection shall not apply with respect to a taxpayer for any war year who at the time prescribed for making the declaration of estimated tax for such year is a commissioned officer (or a commissioned warrant officer) of the regular component of the Army, Navy, Marine Corps, or Coast Guard."

(b) REFUND OF INTEREST PAID.—Any interest paid prior to the date of the enactment of this Act with respect to tax attributable to service pay for any war year, or with respect to tax attributable to pre-service earned income for any war year, shall be credited or refunded if claim therefor is filed with the Commissioner prior to January 1, 1947.

Part V—Miscellaneous.

SEC. 151. REPORTS OF REFUNDS AND CREDITS TO JOINT COMMITTEE ON INTERNAL REVENUE TAXATION.

Section 3777(c) (relating to refunds and credits with respect to tentative carry-back adjustments) is amended by striking out in the heading "Carry-Back", and by inserting after "section 3780(b)" the following: "or under section 124(k)".

SEC 152. EXTENSION OF TREATMENT OF INCOME RESULTING FROM DISCHARGE OF INDEBTEDNESS.

Section 22(b) (9) and (10) (relating to the exclusion of income from the discharge of indebtedness) are amended by striking out "1945" in each of such paragraphs and inserting in lieu thereof "1946".

SEC. 153. LOST POSTWAR CREDIT BONDS.

Section 8(c) of the Government Losses in Shipment Act, as amended, is amended by inserting before the period at the end thereof the following: ", and also means any bond issued under section 780 of the Internal Revenue Code".

TITLE II—REPEAL OF CAPITAL STOCK TAX AND DECLARED VALUE EXCESS PROFITS TAX.

SEC. 201. REPEAL OF CAPITAL STOCK TAX.

Effective with respect to years ending after June 30, 1945, chapter 6 (imposing the capital stock tax) is repealed.

SEC. 202. REPEAL OF DECLARED VALUE EXCESS PROFITS TAX.

Effective with respect to income-tax taxable years ending after June 30, 1946, subchapter B of chapter 2 (imposing the declared value excess profits tax) is repealed.

SEC. 203. ALTERNATIVE TAX WHERE WAR LOSS RECOVERIES INCLUDED IN NET INCOME.

Effective with respect to income-tax taxable years ending after June 30, 1945, and before July 1, 1946, section 600 is amended by inserting before the first paragraph thereof "(a) IN GENERAL.—" and by inserting at the end of such section a new subsection reading as following:

"(b) ALTERNATIVE TAX.—If the net income for the taxable year includes any amount on account of war loss recoveries under section 127(c), then, in lieu of the tax computed under subsection (a), the tax shall be a tax computed as follows:

"(1) An amount computed under subsection (a), after excluding from net income the amount of the war loss recoveries, plus

"(2) One and one-quarter per centum of the amount of the war loss recoveries included in the net income or of such portion of the net income as would be subject to the tax imposed by subsection (a) in the absence of this subsection, whichever is the lesser."

TITLE III—EXCISE TAXES.

SEC. 301. REPEAL OF USE TAX ON MOTOR VEHICLES AND BOATS.

Effective with respect to the period after June 30, 1946, chapter 33A (imposing a tax on the use of motor vehicles and boats) is repealed.

SEC. 302. FLOOR STOCKS REFUNDS AND TECHNICAL PROVISIONS RELATING TO REDUCTION OF COMMUNICATIONS TAX.

Chapter 9A (relating to war taxes and war tax rates) is amended by inserting at the end thereof the following:

"SEC. 1656. FLOOR STOCKS REFUNDS ON DISTILLED SPIRITS, WINES, AND CORDIALS, AND FERMENTED MALT LIQUORS.

"(a) IN GENERAL.—With respect to any article upon which tax is imposed under section 2800, 3030, or 3150, upon which internal revenue tax (including floor stocks taxes) at the rate prescribed in section 1650 has been paid, and which, on the rate reduction date (as defined in section 1659), is held by any person and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be credited or refunded to such person (without interest), subject to such regulations as may be prescribed by the Commissioner with the approval of the Secretary, an amount equal to the difference between the tax so paid and the tax that would have been paid if section 1650 and the 1944 floor stocks taxes had not been applicable, if claim for such credit or refund is filed with the Commissioner within thirty days after the rate reduction date.

"(b) LIMITATIONS ON ELIGIBILITY FOR CREDIT OR REFUND.—No person shall be entitled to credit or refund under subsection (a) unless (1) such person, for such period or periods both before and after the rate reduction date (but not extending beyond one year thereafter), as the Commissioner with the approval of the Secretary shall by regulations prescribe, makes and keeps, and files with the Commissioner, such records of inventories, sales, and purchases as may be prescribed in such regulations; and (2) such person establishes to the satisfaction of the Commissioner, with respect to each kind of article for which refund is claimed by him under this section, that on and after the rate reduction date and

until the expiration of three months thereafter, the price at which articles of such kind were sold (until a number equal at least to the number on hand on the rate reduction date were sold) reflected, in such manner as the Commissioner may by regulations prescribe with the approval of the Secretary, the amount of the tax reduction.

" (c) All provisions of law, including penalties, applicable in respect of internal revenue taxes on distilled spirits, wines, liqueurs and cordials, imported perfumes containing distilled spirits, and fermented malt liquors shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the credits and refunds provided for in this section to the same extent as if such credits or refunds constituted credits or refunds of such taxes.

" SEC. 1657. FLOOR STOCKS REFUNDS ON ELECTRIC LIGHT BULBS.

"(a) IN GENERAL.—With respect to any article upon which tax is imposed under section 3406(a)(10), upon which internal revenue tax at the rate prescribed in section 1650 has been paid, and which, on the rate reduction date, is held by any person and intended for sale, or for use in the manufacture or production of any article intended for sale, there shall be credited or refunded to the manufacturer or producer of such article (without interest), subject to such regulations as may be prescribed by the Commissioner with the approval of the Secretary, an amount equal to so much of the difference between the tax so paid and the tax that would have been paid if section 1650 had not been applicable, as has been paid by such manufacturer or producer to such person as reimbursement for the tax reduction on such articles, if claim for such credit or refund is filed with the Commissioner prior to the expiration of three months after the rate reduction date.

"(b) LIMITATIONS ON ELIGIBILITY FOR CREDIT OR REFUND.—No person shall be entitled to credit or refund under subsection (a) unless he has in his possession such evidence of the inventories with respect to which he has made the reimbursements described in subsection (a) as the regulations under subsection (a) prescribe.

"(c) All provisions of law, including penalties, applicable in respect of the tax imposed under section 3406(a)(10) shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the credits and refunds provided for in this section to the same extent as if such credits or refunds constituted credits or refunds of such taxes.

" SEC. 1658. TELEGRAPH, TELEPHONE, RADIO, AND CABLE FACILITIES.

" Notwithstanding section 1650, the rates therein prescribed with respect to the taxes imposed by section 3465(a) (1), (2), and (3) shall continue to apply with respect to amounts paid pursuant to bills rendered prior to the rate reduction date; and, in the case of amounts paid pursuant to bills rendered on or after the rate reduction date for services for which no previous bill was rendered, the decreased rates shall apply except with respect to such services as were rendered more than two months before such date; and, in the case of services rendered more than two months before such date, the provisions of sections 1650 and 3465 in effect at the time such services were rendered shall be applicable to the amounts paid for such services.

" SEC. 1659. DEFINITION OF 'RATE REDUCTION DATE'.

" For the purposes of this chapter the term 'rate reduction date' means the first day of the first month which begins six months or more after the date of the termination of hostilities in the present war."

SEC. 303. CONTINUATION OF POWER OF SECRETARY OF THE TREASURY TO AUTHORIZE GOVERNMENT EXEMPTION FROM CERTAIN EXCISE TAXES.

Section 307(c) of the Revenue Act of 1943 (relating to power of Secretary with respect to Government exemption from certain excise taxes) is amended by striking out the last sentence thereof.

TITLE IV—SOCIAL SECURITY TAXES.

SEC. 401. AUTOMATIC INCREASE IN 1946 RATE NOT TO APPLY.

(a) Clauses (1) and (2) of section 1400 of the Federal Insurance Contributions Act (Internal Revenue Code, sec. 1400) are amended to read as follows:

"(1) With respect to wages received during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, 1945, and 1946, the rate shall be 1 per centum.

"(2) With respect to wages received during the calendar years 1947 and 1948, the rate shall be 2½ per centum."

(b) Clauses (1) and (2) of section 1410 of such Act (Internal Revenue Code, sec. 1410) are amended to read as follows:

"(1) With respect to wages paid during the calendar years 1939, 1940, 1941, 1942, 1943, 1944, 1945, and 1946, the rate shall be 1 per centum.

"(2) With respect to wages paid during the calendar years 1947 and 1948, the rate shall be 2½ per centum."

Approved November 8, 1945, 5.17 p. m.

COMMITTEE REPORTS.

1945–2–11945

PAYMENT OF TAXES BY CHECK AND MONEY ORDER.

[Senate Report No. 1357, Seventy-eighth Congress, Second Session. Calendar No. 1385.]

[December 7 (legislative day, November 21), 1944.]

Mr. George, from the Committee on Finance, submitted the following report [to accompany H. R. 5565]:

The Committee on Finance, to whom was referred the bill (H. R. 5565) to authorize collectors of internal revenue to receive certain checks and money orders in payment of taxes and for revenue stamps, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The bill authorizes collectors of internal revenue to accept not only certified checks but also cashiers' and treasurers' checks and certain money orders in payment for internal-revenue stamps. It has the approval of the Treasury Department.

It will be recalled that on June 22, 1944, the Senate passed a bill (S. 1419), reported by your committee, dealing with the same subject matter and in fact very similar to the House bill. The House has, however, made slight changes in the draft with respect to the acceptance of money orders, which your committee believes are desirable.

The report of the House Committee on Ways and Means on H. R. 5565 is appended hereto.

[House Report No. 2018, Seventy-eighth Congress, Second Session.]

[December 4, 1944.]

The Committee on Ways and Means, to whom was referred the bill (H. R. 5565) to authorize collectors of internal revenue to receive certain checks and money orders in payment of taxes and for revenue stamps, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The bill authorizes collectors of internal revenue to accept not only certified checks but also cashiers' and treasurers' checks and certain money orders in payment for internal-revenue stamps. As reported by the committee, it meets with the approval of the Treasury Department.

Section 3656 of the Internal Revenue Code now authorizes collectors to receive certified checks in payment for internal-revenue taxes and makes provision for discharge of tax liability where such checks are tendered. Uncertified checks may be received by collectors under this section for taxes payable other than by stamp. The bill amends section 3656 to extend the provisions concerning certified checks to cashiers' and treasurers' checks and United States postal, bank, express, and telegraph money orders.

United States postal money orders have always been accepted for internal-revenue taxes and in payment for stamps. By making cashiers' and treasurers' checks, bank money orders, which have the same characteristics as cashiers' checks but also bear the name of the purchaser, and express and telegraph money orders acceptable for stamps, it is believed that the bill would afford taxpayers increased convenience. The collection of taxes will not be impaired inasmuch as all the instruments have the common characteristic that once in the hands of the collector they can not be revoked and their acceptance would be subject to regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury.

Other checks remain acceptable for any taxes payable other than by stamp. Necessary changes are made in the law relating to discharge of liability corresponding to the change in authority to receive checks and money orders.

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1945–16–12114

TAX ADJUSTMENT BILL OF 1945.

[House of Representatives Report No. 849, Seventy-ninth Congress, First Session.]

[July 2, 1945.]

Mr. Doughton of North Carolina, from the Committee on Ways and Means, submitted the following report [to accompany H. R. 3633] :

The Committee on Ways and Means, to whom was referred the bill (H. R. 3633) to facilitate reconversion, and for other purposes, having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

GENERAL STATEMENT.

The major purpose of H. R. 3633 is to facilitate reconversion by improving the cash position of business enterprises and by relieving smaller businesses from some of the burdens of the excess-profits tax.

In the consideration of this bill, your committee have had the benefit of the studies made by the Joint Committee on Internal Revenue Taxation for Postwar Taxation.

To accomplish these desirable results, several immediate changes in the operation of taxes affecting business are provided in the bill. These changes, for the most part, do not affect ultimate tax liabilities. Specifically, these changes would:

1. Increase the excess-profits tax specific exemption from $10,000 to $25,000, effective after December 31, 1945.

2. Provide that the postwar credit of 10 per cent of the excess-profits tax be taken currently with respect to tax liabilities of 1944 and subsequent years.

3. Provide that outstanding postwar refund bonds be made payable, at the option of the owner, on or after January 1, 1946.

4. Provide for speed-up of refunds resulting from carry-backs of net operating losses and of unused excess-profits credits.

5. Provide for speed-up of refunds resulting from the recomputation of deductions for amortization of emergency facilities.

The increase of the specific exemption to $25,000 would reduce the repressive effect of the excess-profits tax upon smaller corporations with only a relatively small revenue loss.

The other four changes would improve the cash position of business during the period of reconversion and readjustment to peacetime production without decreasing ultimate tax liabilities.

This bill does not reduce existing tax rates for the following reasons:

1. Federal expenditures will remain at a high level during the war with Japan. It has been estimated that the Federal Government will spend for war alone at the annual rate of about 70 billion dollars.

2. The period of the war with Japan can be expected to be one of reasonably full employment, since the pent-up demand for goods and services is expected to offset the anticipated cut-back in war production. Such unemployment as may exist will be caused largely by unavoidable delays in the reconversion of plants to peacetime production. It is likely to be limited to a few areas in which large cut-backs in war production will be made. General tax reductions could do little to help these isolated areas.

3. Tax reductions at this time might be an important factor in starting a runaway inflation, since they might increase the demand for civilian goods and services which is already in excess of limited production. Furthermore, tax reductions at this time might weaken other anti-inflationary controls.

4. The armed forces are still called upon to endure personal and economic hardships.

THE NEED FOR THE RECOMMENDED TAX ADJUSTMENTS.

An important purpose of this bill is to improve the cash position of business by advancing the time of payment of postwar tax refunds and credits provided under existing law. This will reduce the danger that reconversion might be impeded by shortages of cash.

Various studies of the financial condition of American business have indicated large increases during the war period in the aggregate amount of cash and in the net working capital of business enterprises as a whole. However, aggregate figures tend to obscure the financial position of many companies which have expanded in response to war needs without an adequate base of working capital. In addition to the companies whose financial position will clearly be strained during the reconversion period, there are others whose position, though apparently good at present, may deteriorate as a result of losses from the liquidation of inventories and disposition of other assets.

It is true that not all businesses will need the cash obtainable from these refunds during reconversion. However, to distinguish those firms which do not need cash from those which do would present a serious and unnecessary administrative problem. Your committee does not believe that the release of cash in some cases where it is not needed, or before it is needed, would lead to serious consequences. The system of priority and price controls and other related measures should effectively mitigate the effect of any increase of inflationary pressures that might result from additions to existing cash balances in such cases.

A second important purpose of this bill is to provide incentives to small business to enter peacetime production. It is believed that the increase in the specific exemption for 1946 will contribute materially toward the accomplishment of this purpose.

THE DESIRABILITY OF EARLY ENACTMENT.

With the steadily increasing tempo of cut-backs and war contract cancellations, many businesses will need cash immediately. Prompt enactment of this bill is necessary if business is to be allowed to take full advantage this year of the provisions for speed-up of refunds and credits.

1. With immediate enactment, it would be possible for corporations anticipating losses or unused credits for 1945 to defer payment of the September 15 installment of their 1944 tax liabilities. For example, the September 15 installment of Corporation A will amount to $100,000. Due to cancellation of contracts on July 1, the corporation expects an unused credit for 1945 which will result in a refund of $200,000 with respect to prior years' taxes. This corporation will be able to defer the September 15 installment and utilize the $100,000 for purposes of reconversion when it is needed. On the other hand, if the passage of the legislation were postponed, the corporation would be required to pay out the $100,000 installment, and recovery of this sum would be accomplished only after delay of several months.

2. With immediate enactment, it would be possible for excess-profits taxpayers to reduce the amount of the September 15 installment of their 1944 tax liabilities by taking the postwar credit currently. For example, Corporation B reported an excess-profits tax liability of $1,000,000 for 1944 and paid installments of $250,000 each on March 15 and June 15, 1945. If this bill is promptly enacted, Corporation B's September 15 installment will be reduced by one-half of its postwar credit of $100,000. It will, therefore, have immediately available at that time $50,000 of additional cash.

3. With immediate enactment, refunds arising from the recomputation of amortization deductions on emergency facilities certified to be no longer necessary for national defense will become available in 1945 and early 1946. For example, Corporation C, owning emergency facilities for which a certificate of nonnecessity has been granted, filed a claim on June 15, 1945, for recomputation of taxes for 1943 and 1944 which will result in refunds of $50,000. Upon the enactment of this bill, this company can file a claim for quick refund, payment of which must be made within 90 days. The company would thus be able to anticipate the receipt of $50,000 of cash refunds, during the fall.

Businessmen are now planning for reconversion and readjustment to peacetime operations. The immediate enactment of this bill would facilitate this planning. Delay in the enactment of this bill would continue the present uncertainty and would therefore render planning more difficult.

Speedy enactment of the bill would be favorable to business confidence. It would be interpreted as an indication of the desire of Congress to encourage timely reconversion and vigorous business expansion.

Inevitably, there must be some lapse of time between the date of enactment and the time when the Bureau of Internal Revenue can have its administrative machinery set up to handle claims for tax deferments and current credits. With immediate enactment of the bill, the Bureau should be in a position to handle these matters by September 15.

GENERAL DESCRIPTION OF RECOMMENDED CHANGES.

INCREASE IN EXCESS-PROFITS TAX SPECIFIC EXEMPTION.

The bill provides that after December 31, 1945, the specific exemption be increased from $10,000 to $25,000. Taxpayers with fiscal years beginning in 1945 and ending in 1946 would enjoy a pro rata portion of the increase for the part of the year falling in 1946. This would give increased incentives for the expansion of small and the creation of new enterprises. Experience with the excess-profits tax has shown that it tends to be especially burdensome for many small corporations. The increase in the specific exemption would (*a*) remove a large number of these smaller corporations from liability under the excess-profits tax; and (*b*) reduce the burden on those corporations still subject to the tax, the reduction being relatively more important to smaller corporations.

It has been estimated that for the calendar year 1946 an increase in the specific exemption from $10,000 to $25,000 would result in a net revenue loss of about $160,000,000 or less than 2 per cent of the total revenue from the corporate income and excess-profits taxes.

Your committee recommends that the specific exemption be increased to $25,000 for 1946. It believes this change should not apply to 1945 taxes for the following reasons:

1. Increasing the specific exemption to $25,000 for 1945 would sacrifice much-needed revenue. It is estimated that the revenue loss from this increase in the specific exemption would be about $235,000,000 for 1945 and about $160,000,000 for 1946. Thus the loss for the two years would be nearly $400,000,000.

2. The increase in the specific exemption is the only element in the five-point program which involves a reduction in tax liabilities. To that extent, it is a departure from the hold-the-line policy. Although there are sufficient reasons for raising the specific exemption late in the war at a time of widespread reconversion, any relaxation of the hold-the-line policy effective as early as 1945 is undesirable.

3. During 1945, most small businesses will still be engaged in war work or will be producing for abnormal war demands. The resulting profits are properly subject to the excess-profits tax. It is believed that any such increase of the specific exemption would be unduly generous in 1945 while production is still primarily geared to war needs.

4. Increasing the specific exemption for 1945 would result in substantial windfalls, because, in some cases, the excess-profits tax has entered into selling prices and thus has not burdened the corporation.

5. Increasing the specific exemption for 1945 would be in large part retroactive and could have little effect upon business planning for this year. It would be unlikely to provide much additional encouragement for small businesses to go ahead with peacetime plans over what would be provided by an increase in the specific exemption for 1946.

CHANGES IN PROVISIONS RELATING TO THE POSTWAR CREDIT.

Under present law, corporations which pay excess-profits taxes are credited with an amount generally equal to 10 per cent of the excess-profits tax. This credit may be taken currently to the extent of 40 per cent of net debt retirement. To the extent that the credit is not taken currently, bonds are issued by the Government to the taxpayer. These bonds bear no interest. They are nonnegotiable until after the cessation of hostilities. They are redeemable before maturity at the option of the United States on three months' notice. If not redeemed, they mature in from two to six years after cessation of hostilities, the length of time depending upon the year for which issued.

It is the view of your committee that the present law fails to meet adequately one of the principal purposes for the allowance of postwar credits, namely, to provide a fund that will be available for the conversion of production facilities to peacetime demands. A corporation now facing reconversion

would not be able to negotiate any of its bonds until after the end of the war. Even then not all of its bonds would be immediately available.

To make the postwar credits fully available when they are needed, the bill provides that (*a*) the postwar credit of 10 per cent of excess-profits taxes paid be taken currently with respect to tax liabilities of 1944 and subsequent years, and (*b*) outstanding postwar refund bonds be made payable at the option of the owner on or after January 1, 1946.

The change making the postwar credit available currently against the tax liabilities of 1944 and subsequent years would involve no serious administrative or mechanical difficulties.

The amount of postwar credit (after credit for debt retirement) applicable to 1944 liabilities has been estimated at about $830,000,000 and the amount applicable to 1945 liabilities at about $710,000,000.

The estimated net amount of bonds issued or to be issued with respect to postwar credits is $480,000,000 for 1942 and $820,0000,000 for 1943, or a total of about $1.3 billions for the two years.

SPEEDING UP REFUNDS FROM CARRY-BACKS.

Under existing law, refunds resulting from the carry-back of net operating losses and unused excess-profits credits can not be made until a considerable length of time after the loss or unused credit arises. The claim can not be filed until after the year in which the loss or unused credit arises; for example, a claim arising from a loss in 1945 can not be made until after the close of the year, when the amount of the loss has been determined. Moreover, following the filing of the claim, many months are usually required for auditing the returns for all years affected and for reviewing the claim before a refund can be finally made.

To speed up the operation of the carry-back refund procedure, so that taxpayers may have the benefits of a currently improved cash position for reconversion, the bill provides (1) deferment of current tax payments on the basis of anticipated losses and unused credits; and (2) prompt payment of refunds after the loss or unused credit has occurred.

In order to provide a more equitable and adequate operation of the provisions for carry-back adjustments, the bill amends the provisions of existing law relating to the statute of limitations and computation of interest charges as applied to tax adjustments due to carry-backs. In general, these amendments are intended to assure that taxpayers will have an opportunity to claim carry-back adjustments in some instances where, under existing law, they would be prevented by the statute of limitations. The amendments also provide that the various interest charges in connection with tax adjustments due to carry-backs will, in general, be made on a comparable basis for both the taxpayers and the Government.

The amount of the future tax refunds resulting from the operation of the carry-backs of net operating losses and unused credits will depend largely upon the future pattern of business earnings. It has been estimated that the amount of refunds resulting from losses and unused credits for 1945 and 1946 would amount to perhaps $1,000,000,000. Presumably most of this would be adjusted under the speed-up procedure, but the exact proportion can not be estimated.

SPEEDING UP REFUNDS ARISING FROM RECOMPUTATION OF AMORTIZATION DEDUCTIONS.

Under exisiting law emergency facilities certified as necessary for national defense may be amortized over a 5-year period. If, within that period, the emergency is terminated, or a particular taxpayer's facilities are certified to be no longer necessary for national defense, the taxpayer may elect to have the amortization deductions recomputed on the basis of the shorter period. Shortening the period of amortization will result in additional deductions in returns previously filed, and, consequently, will give rise to tax refunds. Under present law, these claims for refunds must be handled through the usual administrative procedure, involving unavoidable delay at a time when the taxpayer may be in need of funds for reconversion.

The bill provides that applications for tentative adjustment on account of recomputation of amortization allowances may be filed and shall be acted upon within 90 days from the filing of the application. This procedure is similar to that recommended in the case of carry-backs.

It has been estimated that the increased allowances for the years 1941 through 1945 would amount to $2.9 billions out of a total cost of certified facilities of approximately $6.8 billions. The resulting tax refunds for the readjusted years have been estimated at $1.7 billions.

CARRY-OVERS AND CARRY-BACKS IN CASES OF RAILROAD REORGANIZATION.

Under existing law, if a railroad corporation is reorganized in a receivership proceeding or in a proceeding under section 77 of the National Bankruptcy Act, as amended, and the reorganization is effected through the organization of a new corporation, any carry-overs of net operating losses or unused excess profits credits of the old corporation can not be used by the new corporation, and any carry-backs of such losses or unused credits arising from the operations of the new corporation can not be used to obtain refunds of taxes paid by the old corporation. The reorganized company is regarded as a different taxpayer from the old company. Consequently, railroads coming out of receivership are treated differently in relation to carry-backs and carry-overs, such treatment being dependent upon whether they can be reorganized under the same charter or under a new charter. The bill removes this discrimination by treating a railroad, reorganized by securing a new charter, as the same taxpayer as the old railroad in so far as the net loss and unused excess profits credit carry-overs and carry-backs are concerned. For other purposes of taxation, such a railroad is treated as a different taxpayer because of the fact that it had acquired a new charter. This new treatment is retroactively applied to extend the benefit to railroads which have already completed their reorganization. It applies to all taxable years beginning after December 31, 1938, in the case of the net loss, and to taxable years beginning after December 31, 1939, with respect to the unused excess profits credit.

EFFECTS OF THE BILL ON THE CASH POSITION OF BUSINESS.

The provisions of the bill relating to the speed-up of refunds and postwar credits would accelerate the payment to taxpayers of a total sum of about $5.5 billions. Such early payment of refunds and credits would not alter the tax liabilities of business firms but merely advance the date on which refunds and credits, which taxpayers would ultimately receive under present law, would be available.

ULTIMATE REVENUE EFFECTS OF THE BILL.

The ultimate revenue effects of this bill can not be estimated with any certainty, but they apparently would not be large in relation to present tax revenues. The increase in the specific exemption would reduce the receipts in 1947 (for 1946 tax liabilities) by about $160,000,000. The effects of the other changes would be largely in connection with interest paid or saved by the Government and such factors as loss through uncollectible tax accounts. The Government will necessarily make additional interest payments by reason of the increase in interest-bearing debt coincidental with the elimination of postwar credits and bonds. On the other hand, in connection with the program for the prompt payment of carry-back and amortization refunds, the Government will save interest otherwise payable. Taking into account the uncertainties of loss through uncollectibility, litigation, and similar factors, it is impossible to state what the net cost in Government revenues would be. However, your committee believes that the net cost would be small in comparison with the benefits to be derived under this bill.

DETAILED DISCUSSIONS OF THE TECHNICAL PROVISIONS OF THE BILL.

SECTION 2. INCREASE IN EXCESS PROFITS TAX SPECIFIC EXEMPTION.

This section amends section 710(b)(1) of the Code to increase from $10,000 to $25,000 the specific exemption applicable in the computation of adjusted excess profits tax net income. Corresponding amendments are made to section 729(b)(2), relating to the excess profits tax return requirement, and section 141(c), relating to the computation of tax in case consolidated returns are filed. The amendments are made applicable to taxable years beginning after December 31, 1945. However, in the case of taxable years beginning in 1945 and end-

ing in 1946, the specific exemption will be prorated, so that for the portion of the year falling in 1945 the exemption will be computed at the rate of $10,000 and for the portion of the year falling in 1946 at the rate of $25,000.

SECTION 3. CHANGES IN PROVISIONS RELATING TO POSTWAR REFUND OF EXCESS PROFITS TAX.

This section amends sections 780, 781, and 783 of the Code, relating to postwar refund of excess profits tax imposed by Subchapter E of Chapter 2 of the Code, and adds a new section 784, which provides for a current credit against such tax for certain taxable years. The principal purposes of this section of the bill are to make the postwar credit against excess profits tax available currently for 1944 and subsequent years and to make the amount of the postwar refund bonds available on January 1, 1946. This section seeks to accomplish these objectives by repealing the postwar credit and credit for debt retirement for certain taxable years and in lieu thereof providing for a new current credit, and by permitting the owners of postwar refund bonds at their option to obtain payment of such bonds on or after January 1, 1946.

Subsection (a) of this section amends the first sentence of section 780(a) of the Code, which authorizes and directs the Secretary of the Treasury to establish a postwar credit, for each of certain specified taxable years, to the account of each taxpayer subject to the excess profits tax. The taxable years so specified under existing law are those ending after December 31, 1941 (except in the case of a taxable year beginning in 1941 and ending before July 1, 1942), and not beginning after "the date of cessation of hostilities in the present war," as defined in section 780(e) of the Code. The amendment strikes out the words quoted in the preceding sentence and substitutes therefor "December 31, 1943." Thus, under this amendment no postwar credit will be allowable for a taxable year beginning after December 31, 1943.

Subsection (b) of this section amends section 780(b) of the Code, relating to the application of the postwar credit to the purchase of bonds of the United States. Under existing law, if the amount of the excess profits tax shown on the return for a taxable year for which a postwar credit is provided is paid in full before three months before the date of maturity of bonds for such year under section 780(c) of the Code, bonds are required to be issued for the postwar credit attributable to the payment. The amendment strikes out the words "three months before the date of maturity of bonds for such year under subsection (c)" and inserts in lieu thereof "July 1, 1945." Thus, under this amendment no bonds will be required to be issued with respect to the excess profits tax shown on the return for a taxable year for which a postwar credit is available under section 780(a), as amended, unless the tax is paid in full before July 1, 1945.

Subsection (c) of this section amends section 780(c) of the Code, relating to the terms and maturity of the bonds. Bonds purchased with the postwar credit for taxable years beginning within the calendar years 1941 and 1942 mature on the last day of the second calendar year beginning after the date of cessation of hostilities in the present war, as defined in section 780(e) of the Code. Bonds purchased for any taxable year beginning within the calendar year 1943 mature on the last day of the third calendar year beginning after the date of cessation of hostilities in the present war. No change is made with respect to the maturity date of the bonds for these years. However, the amendment made by this subsection of the bill provides that these bonds shall be payable at the option of the owner thereof on or after January 1, 1946. Since under the amendment to section 780(a) of the Code, made by subsection (a) of this section of the bill, no postwar credit is provided for taxable years beginning after December 31, 1943, subsection (c) of this section of the bill strikes out those provisions of section 780(c) of the Code relating to the maturity date of the bonds purchased with the postwar credit for those taxable years beginning within or after the calendar year 1944.

Subsection (d) of this section amends section 781(a) of the Code, relating to the effect of the payment of a deficiency in respect of the excess profits tax for a taxable year for which a postwar credit is provided. Under existing law, if such payment is made before "three months before the date of maturity of the bonds for such year," bonds are required to be issued for the postwar credit attributable to such payment. The amendment strikes out the words quoted in the preceding sentence and inserts in lieu thereof "July 1, 1945." Thus, under this amendment no bonds will be required to be issued with

respect to the postwar credit attributable to the payment of a deficiency in respect of the excess profits tax for a taxable year for which a postwar credit is available under the amendment to section 780(a), unless such payment is made before July 1, 1945.

Subsection (e) of this section amends the last sentence of section 781(b) of the Code, relating to the reduction, in certain cases, in the amount of the credit or refund of an overpayment of the excess profits tax for a taxable year for which a postwar credit is provided. For the purpose of the computation of interest upon such an overpayment, the last sentence of 781(b) of existing law provides that such reduction shall be made at the time of the credit or refund or as of the time of the maturity of bonds issued with respect to the taxable year for which the overpayment was made, if that time is earlier. Since under the amendment to section 780(c) of the Code, made by subsection (c) of this section of the bill, the bonds purchased with the postwar credit for any taxable year for which such credit is provided are payable at the option of the owner on or after January 1, 1946, subsection (e) of this section of the bill substitutes January 1, 1946, for the time of the maturity of the bonds in the parenthetical clause in the last sentence of section 781(b). Under this amendment, if the credit or refund is made after January 1, 1946, the reduction in the amount of the credit or refund will, for the purpose of computing the interest upon the overpayment, be made as of January 1, 1946.

Subsection (f) of this section amends section 781(c) of the Code, relating to the postwar credit in the case of a payment of excess profits tax for a taxable year for which a postwar credit is provided, on or after the date which is three months before the maturity date of the bonds for such year. The existing section 781(c) provides, in part, that, in case of a payment of the excess profits tax shown on the return for any taxable year for which a postwar credit is provided, or the payment of a deficiency in respect of such tax for any such taxable year, within three months before the maturity date of bonds for such year, the amount of the postwar credit attributable to such payment shall, so far as practicable, be available for the purchase of bonds, and there shall be issued to the taxpayer bonds with the same maturity as bonds issued with respect to such taxable year; and that, to the extent that it is not practicable to issue bonds against such amount of the postwar credit, the taxpayer shall be paid in cash. In lieu of those provisions, the amendment provides that, in case of a payment of the excess profits tax shown on the return for any taxable year for which a postwar credit is provided, or the payment of a deficiency in respect of such tax for any such taxable year, on or after July 1, 1945, the amount of the postwar credit attributable to such payment shall be paid to the taxpayer in cash. The Commissioner of Internal Revenue may, if he deems it advisable, permit the taxpayer to offset against the payment of tax or deficiency the postwar credit attributable to such payment in lieu of requiring full payment of the tax or deficiency and returning the amount of the postwar credit attributable to such payment to the taxpayer in cash. The amendment also adds a new provision to section 781(c), relating to interest. The amendment provides that no interest for the period after December 31, 1945, shall be assessed or collected on that portion of the excess profits tax for a taxable year for which a postwar credit is provided, or of the deficiency in respect of such tax for any such taxable year, equal to the postwar credit attributable to the payment of such tax or deficiency, after appropriate reduction of such credit under section 783(c) in cases where credit for debt retirement is allowed. The existing section 781(c) further provides that, in case after the maturity date of the bonds for any taxable year there is any postwar credit remaining in favor of the taxpayer, attributable to such year, such remainder shall be paid to the taxpayer in cash; and that no amount of any payment made under such section to a taxpayer shall be included in gross income. The amendment substitutes January 1, 1946, for the maturity date of the bonds. As under existing law, the postwar credits upon which payments to taxpayers under section 781(c) of the Code are based may be reduced under the provisions of section 783(c) of the Code in cases in which a credit for debt retirement is allowed, thereby reducing the amount of the cash payment to the taxpayer under section 781(c) in such cases. Likewise, as under existing law, no interest is allowable for any period with respect to any payment made to a taxpayer under section 781(c).

Section 781(d)(1), relating to the limitation on the postwar credit for taxable years beginning after December 31, 1943, is rendered obsolete by the amendment to section 780(a) of the Code, made by subsection (a) of this section of the

bill, which provides in effect that no postwar credit will be allowable for any taxable year beginning after December 31, 1943. The applicable limitations on the postwar credit for taxable years for which such credit is provided under section 780(a) of the Code, as so amended, are prescribed by section 781(d) of the Code, as added by section 250 of the Revenue Act of 1942, and by section 781(d)(2) and (3), as added by section 250(f) of the Revenue Act of 1943.

Subsection (g) of this section adds to section 783 of the Code, relating to the credit against the excess profits tax for debt retirement, a new subsection (e). Corresponding to the limitation of the postwar credit by subsection (a) of this section, subsection (e) provides that none of the provisions of section 783 shall apply to taxable years beginning after December 31, 1943.

Subsection (h) of this section adds section 784 to the Code. Section 784(a) provides that, against the excess profits tax imposed by Subchapter E of Chapter 2 of the Code for any taxable year beginning after December 31, 1943, there shall be allowed as a credit an amount equal to 10 per cent of such tax. The credit provided in section 784(a) for taxable years beginning after December 31, 1943, is in substitution for the postwar credit provided in the existing section 780 of the Code and the credit for debt retirement provided in the existing section 783 of the Code for such taxable years. For the purposes of sections 780, 781, and 783 of the Code, "tax imposed under this subchapter" or "tax imposed by this subchapter," in the case of taxable years beginning after December 31, 1941, is the amount of tax determined under Subchapter E of Chapter 2 of the Code prior to (1) any credit under section 131 of the Code, as made applicable by section 729 of the Code, for tax paid or accrued to a foreign country or possession of the United States, (2) any credit for debt retirement under section 783 of the Code, and (3) any adjustment under section 734 of the Code on account of position inconsistent with prior income tax liability. Likewise, for the purposes of section 784, "tax imposed by this subchapter" is the amount of tax determined under Subchapter E of Chapter 2 of the Code prior to (1) any credit under section 131, as made applicable by section 729, for tax paid or accrued to a foreign country or possession of the United States, and (2) any adjustment under section 734 on account of position inconsistent with prior income tax liability. The credit against excess profits tax for tax paid or accrued to a foreign country or possession of the United States is to be determined without regard to the credit provided for in section 784.

Section 784(b) of the Code, as added by subsection (h) of this section of the bill, provides that no interest shall be allowed or paid upon any overpayment of tax resulting from the application of section 784(a) to a taxable year ending before December 31, 1945, unless, in the return made for such taxable year, the taxpayer claims a credit under such section. In general, the purpose of section 784(b) is to deny interest upon that portion of the overpayment for taxable years beginning after December 31, 1943, and ending before December 31, 1945, which is attributable to the substitution of the credit under section 784 for the postwar credit under section 780 of the Code or the credit for debt retirement under section 783 of the Code. Thus, where the taxpayer filed its excess profits tax return for any such taxable year, without claiming a credit under section 784, no interest is allowable upon that portion of any overpayment which results from the allowance of the credit under section 784. On the other hand, where the taxpayer filed its excess profits tax return for a taxable year beginning after December 31, 1943, and claimed in the return a credit under section 784 in an amount less than the amount of the credit allowable under section 784, interest is allowable upon that portion of the overpayment resulting from the allowance of the proper credit under section 784. The term "the return," as used in section 784(b), means the excess profits tax return, or an amended excess profits tax return, filed by the taxpayer on or before the due date for such return; that is, the last day prescribed by law for filing the return (including the period of any extension of time for filing the return granted pursuant to section 53 of the Code), or, if the taxpayer fails to file an excess profits tax return on or before the due date, the first return thereafter filed by the taxpayer.

SECTION 4. EXTENSIONS OF TIME FOR PAYMENT OF TAXES BY CORPORATIONS EXPECTING CARRY-BACKS, AND TENTATIVE CARRY-BACK ADJUSTMENTS.

Section 4 of the bill deals with two principal subjects: (1) the extension of time for payment of taxes by corporations expecting net operating loss carry-backs or unused excess profits credit carry-backs; and (2) tentative carry-back adjustments in the case of both corporations and other taxpayers. Subsection (a) of

section 4 adds three new sections to the Internal Revenue Code: Section 3779 dealing with the extension of time for payment of taxes by corporations expecting carry-backs; section 3780 dealing with tentative carry-back adjustments; and section 3781 dealing with the application of such sections, and also of section 7 of the bill which relates to tentative adjustments with respect to amortization deductions, to cases involving consolidated returns. Subsection (b) of section 4 adds a new subsection (e) to section 294 of the Code to provide for a 5 per cent penalty in the case of a substantial error in the estimate of the amount of tax the time for payment of which might properly have been extended under section 3779. Subsection (c) of section 4 adds a new subsection (c) to section 3777 of the Code to provide that reports of credits or refunds in excess of $75,000 made in connection with tentative carry-back adjustments under section 3780 are not required to be submitted to the Joint Committee on Internal Revenue Taxation prior to the time such credits or refunds are made, but that a report of net credits or refunds of more than $75,000 shall be submitted to the Joint Committee at such time after the making of the credit or refund as the Commissioner shall determine the correct amount of the tax. Subsections (d) and (f) of section 4 amend section 122(b) of the Internal Revenue Code, relating to net operating loss carry-overs and carry-backs, and section 710(c)(3) of the Code, relating to unused excess profits credit carry-overs and carry-backs, in the case of certain reorganized railroad corporations. Subsections (e) and (g) of section 4 provide applicable dates for the amendments made by subsections (d) and (f).

SECTION 3779—EXTENSIONS OF TIME FOR PAYMENT OF TAXES BY CORPORATIONS EXPECTING CARRY-BACKS.

The basic purpose of section 3779 is to permit corporations to extend the time for payment of taxes otherwise due in any taxable year ending on or after September 30, 1945, in case the corporation expects that its operations for such taxable year will result in a net operating loss or an unused excess profits credit. A net operating loss or unused excess profits credit may be carried back to the two preceding taxable years and result in an overpayment of tax, or an overassessment, for such prior years.

The general operation of section 3779 may be illustrated as follows: Corporation A, which keeps its books and makes its tax returns on the calendar year basis, files its income and excess profits tax returns for 1945 on March 15, 1946. Such returns show that Corporation A owes $10,000 income tax and $15,000 excess profits tax for 1945. Corporation A, however, expects that its operations for 1946 will result in an unused excess profits credit of $20,000 for that year. The corporation further determines that such unused excess profits credit, if it in fact arises, when carried back to 1944 will result in a decrease of $9,100 in the aggregate of its taxes for 1944 and will not affect the amount of tax for any other year. Corporation A, therefore, may extend the time for payment of $9,100 of the taxes which it owes for 1945 and which would otherwise have to be paid on March 15 and on subsequent installment dates in 1946. Such extension in general will run until March 31, 1947; or, if Corporation A files an application for a tentative carry-back adjustment, pursuant to the provisions of section 3780, with respect to the unused excess profits credit of 1946, until the date on which notice is mailed by registered mail by the Commissioner to the taxpayer that such application is allowed or disallowed. Provisions are made for the payment of interest on the tax the time for payment of which was extended. In general, such interest will be at the rate of 3 per cent per annum upon an amount extended equal to the net reduction in Corporation A's taxes for 1944 and 1945 attributable to any carry-backs from 1946, as determined under an application filed under section 3780(a) for a tentative carry-back adjustment, and at the rate of 6 per cent per annum upon the remainder of the amount the time for payment of which was extended. If Corporation A expected to have both a net operating loss and an unused excess profits credit in 1946, it could have taken into account the effect of both the resulting net operating loss carry-back and the resulting excess profits credit carry-back in determining the amount of its 1945 taxes, the time for payment of which it might have extended under section 3779. It is to be noted that if the net operating loss carry-back from 1946 produced an unused excess profits credit in 1944 the overpayment of excess profits tax with respect to 1942 attributable to the unused excess profits credit carry-back from 1944 likewise would be deemed to be attributable to the net operating loss carry-back from 1946.

A corporation must expect that it will have a net operating loss or an unused excess profits credit before it may properly obtain an extension under section 3779. Subsection (a) of section 3779 provides that upon the filing, in any taxable year ending on or after September 30, 1945, of a statement with respect to the carry-back that will result from such loss or unused credit, the time for payment of the taxes imposed by Chapter 1 or 2 of the Code for the year immediately preceding the year of the expected loss or unused credit shall be extended, to the extent provided in the other subsections of section 3779. A corporation may not have an extension by reason of a loss or unused credit occurring in any taxable year ending prior to September 30, 1945. The only taxes the time for payment of which may be extended are those of the year immediately preceding the year of the expected loss or unused credit which are assessed within the taxable year of the expected loss or unused credit. Thus, if the year of the expected loss or unused credit is 1945, the time for payment of the taxes for 1944, and for no other year, may be extended. The time for payment of taxes for 1943 and prior years may not be extended, even if deficiencies with respect to such years are assessed and payable in 1945. Similarly, the time for payment of a deficiency with respect to 1944 may be extended if the deficiency is assessed in 1945 but not if it is assessed in 1946. An extension of time pursuant to section 3779 is automatically granted upon the filing of the necessary statement with the collector, and is not, as in the case of extensions granted under section 56(c) of the Code, dependent on further action by the Commissioner.

The statement to be filed by the corporation is to be sworn to in the same manner as in the case of a corporation income tax return and must be filed at such time and in such manner and form as the Commissioner, with the approval of the Secretary, may by regulations prescribe. Subsection (b) of section 3779 directs that certain information shall be shown on such statement and provides that such information shall be shown in such detail and with such supporting data as the regulations shall require. The statement must set forth the amount of the expected net operating loss or the unused excess profits credit, and the reasons, facts, and circumstances which cause the corporation to expect the loss or unused credit.

Section 3779 contemplates that the statement will contain sufficient information to show that the corporation might reasonably have expected to have a net operating loss or unused excess profits credit. Such information might include, for example, the number and dollar amounts of the taxpayer's Government contracts which have been canceled, the amount of reconversion expenditures made in the taxable year which represent deductible items, profit-and-loss statements, and the corporation's balance sheets.

The statement must also show the tax effect of the expected carry-back—that is, the amount of the reduction attributable to the expected carry-back in the aggregate of the taxes previously determined for all taxable years affected by the carry-back prior to the taxable year of the expected loss or unused credit, decreased by any postwar credits under section 780(a) of the Code attributable to so much of the taxes, previously determined for such years, as is affected by the carry-back. In determining the amount of the aggregate of the taxes previously determined for all taxable years affected by the carry-back prior to the taxable year of the expected loss or unused credit, the tax previously determined is to be ascertained in accordance with the method prescribed in section 3801(d) of the Code. In general, the tax previously determined, therefore, will be the tax shown on the return increased by any amounts assessed (or collected without assessment) as deficiencies prior to the date of the filing of the statement and decreased by any rebates, credits, or refunds allowed or made prior to such date. Moreover, the reduction attributable to the expected carry-back is to be determined on the basis of the items which entered into the computation of such taxes as previously determined. Thus, for example, if the taxpayer claimed a deduction for depreciation of $10,000 on its return and the Commissioner asserts that only $4,000 is properly deductible, no change is to be made in the $10,000 depreciation deduction as shown by the taxpayer on his return unless a deficiency resulting from a change in the amount of depreciation has been assessed prior to the filing of the statement. Deductions which are limited, for example, by net income, such as the deduction for charitable contributions, however, are to be recomputed on the basis of net income as reduced by operation of the carry-back. In determining the net operating loss deduction the adjustments required by sections 122(c), 711(a)(1)(J), and 711(a)(2)(L), of course, will likewise be made. It is to be noted that the reduction in the aggregate of the taxes is a net reduction, i. e., in determining the reduction in the aggregate of the taxes,

a decrease in any one tax, for example, the excess profits tax, will be offset by an increase in any other tax, for example, the income tax, resulting from such decrease.

The statement must also set forth the tax or taxes and the amount thereof the time for payment of which is to be extended. If the reduction in the aggregate of all taxes affected by the carry-back is less than the taxes owed by the taxpayer for the year immediately preceding the year of the expected loss or unused credit, the taxpayer is to specify the tax or taxes with respect to which he wishes to extend the time for payment. The taxpayer may choose to extend the time for payment of all of one or more taxes, or it may choose to extend the time for payment of portions of several taxes. The taxes chosen by the taxpayer need not be those taxes which are affected by the carry-back. The statement shall also contain such other information for the purposes of carrying out the provisions of section 3779 as may be required by the regulations.

The collector, upon request, will furnish a receipt for any statement filed. The receipt will show the date the statement was filed.

Two limitations are imposed by subsection (c) of section 3779 upon the amount of tax the time for payment of which may be extended—

(1) The amount the time for payment of which may be extended with respect to any single tax may not exceed the amount of such tax shown on the return, increased by any amount assessed as a deficiency (or as interest or additions to the tax) prior to the filing of the statement and decreased by any amount paid or required to be paid prior to the date of such filing;

(2) The total amount of all taxes the time for payment of which may be extended is not to exceed the amount of the reduction in the aggregate of the taxes previously determined for all taxable years affected by the carry-back prior to the year of the expected loss or unused credit, decreased by the amount of any credits under section 780 properly allocable to such reduction.

The first limitation imposed by subsection (c) of section 3779 provides, in effect, that there may be no extension of the time for payment of any tax, or part thereof, if the taxpayer is delinquent with respect to the payment of such tax, or part thereof, at the time of filing the statement. There may be an extension with respect to only such taxes as the taxpayer was not required to pay prior to the date of the filing of the statement. For the purposes of determining whether a deficiency was required to be paid prior to the date of the filing of the statement, it is to be considered that such deficiency was required to be paid on the tenth day after notice and demand was made for the payment of such deficiency. For the purposes of determining whether any tax was required to be paid prior to the filing of the statement, only the tax shown on the return and deficiencies actually assessed shall be taken into account. Similarly, if the taxpayer has been granted an extension pursuant to section 56(c) of the Code, such tax shall not be deemed required to be paid prior to the end of such extension.

If an extension of time relates to only a part of a tax, the time for payment of the remainder of the tax shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in four equal installments. This rule may be illustrated as follows: The taxpayer showed a tax of $1,000 on its 1945 income tax return and paid one-quarter of such tax, or $250, on March 15, 1946. On June 1, 1946, the taxpayer pursuant to the provisions of section 3779 extends the time for payment of $600 of such tax. The remainder of the tax the time for payment of which was not so extended, i. e., $400, is to be considered the tax and is to be paid in four equal installments on each of the normal installment dates. Since the taxpayer has already paid $250 on March 15, 1946, it will have nothing to pay on June 15, 1946, it will pay $50 on September 15, 1946, and $100 on December 15, 1946.

Subsection (d) of section 3779 provides that if the time for payment of a tax has been extended pursuant to section 3779, such extension shall expire—

(1) on the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of the return for the taxable year of the expected net operating loss or unused excess profits credit; or

(2) if an application for a tentative carry-back adjustment provided in section 3780 of the Code with respect to such loss or unused credit is filed before the expiration of the period prescribed in clause (1), on the date on

which notice is mailed by registered mail by the Commissioner to the taxpayer that such application is allowed or disallowed in whole or in part. Extensions of time under section 3779, unless sooner terminated by either the taxpayer or the Commissioner, thus will run until at least the last day of the month in which falls the date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the year of the expected loss or unused credit, and, if an application for a tentative carry-back adjustment under section 3780 is filed prior to such last day, the extension will run until the Commissioner mails to the taxpayer notice of his action with respect to such application.

Subsection (e) of section 3779 in effect provides that the taxpayer may file several statements each year under section 3779. Each such statement is to be considered a new statement and not an amendment of any prior statement. Each new statement is to be in lieu of the last statement previously filed with respect to the taxable year of the statement, but the time for payment of any amount the time for payment of which has already been extended under a prior statement may continue to be extended under the new statement. The regulations of the Commissioner may provide for such incorporation by reference as is compatible with administrative efficiency of materials used in earlier statements in new statements. If the amount the time for payment of which is extended under the new statement is less than such amount under the last statement previously filed, the extension of time shall be terminated on the date the new statement is filed as to the difference between the two amounts.

Subsection (f) of section 3779 expressly recognizes that in light of the nature of the statements filed under section 3779 and the time and administrative facilities available, the Commissioner is under no duty to make any examination of such statements. The Commissioner, however, is authorized to make such examination as he deems necessary and practicable. If upon such examination as he may make, the Commissioner believes that, as of the time he makes the examination, all or any part of the statement clearly is in a material respect erroneous or unreasonable, he is to terminate the extension as to any part of the amount to which such extension relates which he deems should be terminated. Any such action by the Commissioner shall be conclusive.

The Commissioner is likewise directed under subsection (h) of section 3779 to terminate any extension if he believes that the collection of the amount to which such extension relates is in jeopardy. In the case of such a termination, notice and demand is to be made by the collector for payment of such amount.

Subsection (g) of section 3779 provides that if an extension of time is terminated with respect to any amount either (1) by the filing of a new statement by the taxpayer extending the time for payment of a lesser sum than was extended in a prior statement or (2) by action of the Commissioner under subsection (f), no further extension of time shall be made under section 3779 with respect to such amount. The time for payment of such amount shall be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected to pay the tax in four equal installments. The provisions of subsection (g) may be illustrated as follows: Corporation B, which keeps its books and makes its tax returns on the calendar year basis, filed its 1945 income tax return, showing a tax of $1,000, on March 15, 1946. At the same time Corporation B filed a statement under section 3779 extending the time for payment of the entire $1,000 on the basis of an expected unused excess profits credit for 1946. On July 1, 1946, Corporation B filed a new statement indicating that the reduction in the aggregate of its taxes for years prior to 1946 attributable to the unused excess profits credit carry-back from 1946 would be only $600 and thus terminated the above extension to the extent of $400. The time for payment of such $400 may not be extended again, and such $400 is payable as if it were the tax for 1945 and Corporation B had elected to pay such tax in four equal installments. That is, $100 is payable on March 15, 1946, $100 on June 15, 1946, $100 on September 15, 1946, and $100 on December 15, 1946, and interest at the rate of 6 per cent payable under paragraph (2) of subsection (i) of section 3779 is to be computed on such amounts from such dates. Inasmuch as the March 15 and June 15 dates had already passed when Corporation B terminated the extension with respect to the $400, $200 is payable immediately upon such termination and $100 is payable on September 15, 1946, and $100 on December 15, 1946. The fact that Corporation B did not pay the $100 on March 15, 1946, and the $100 on June 15, 1946, is not to be considered such a failure to pay an installment on or before the date fixed for its payment as

would make the entire tax become due under the provisions of section 56(b) of the Code. If Corporation B had shown $1,200 of tax on its return and, accordingly, had paid $50 on March 15, 1946, and $50 on June 15, 1946, the other facts being the same, then upon the above termination as to $400, $200 would be payable immediately (that is, $100 which in the light of the termination should have been paid March 15, 1946, and $100 which should have been paid June 15, 1946), and two installments of $150 each would be payable on September 15, 1946, and December 15, 1946.

The above illustrations would also apply if the extension of time for the payment of the $400 were terminated by the Commissioner because he believed that the statement filed by Corporation B was erroneous or unreasonable in a material respect. If, however, the Commissioner terminated the extension with respect to such $400 because he believed the collection of such amount was in jeopardy, the entire $400 would be payable immediately on notice and demand by the collector.

Subsection (i) of section 3779 provides for the payment of interest on amounts the time for payment of which is extended under section 3779. The interest, which is to be collected as part of such amounts is to be computed from the dates on which payments would have been required if there had been no extension and the taxpayer had elected to pay the tax in four equal installments at the following rates:

(1) At the rate of 3 per cent per annum upon so much of such amount as is satisfied by applying or crediting thereto, within the period of extension, a decrease in tax determined in respect of an application for a tentative carry-back adjustment, as provided in section 3780(a), to the date of such satisfaction, except that the rate is to be 6 per cent per annum on so much of the satisfied amount as does not exceed the amount of the deficiencies assessed under section 3780(b) in respect of such application which is not so satisfied; and

(2) At the rate of 6 per cent per annum upon the remainder of the amount the time for payment of which has been extended to the date such amount is paid.

The effect of clause (1) of subsection (i) in general is that interest shall be collected at the rate of 3 per cent per annum on any amount the time for payment of which has been extended under section 3779 to the extent that such amount is satisfied by applying or crediting thereto, within the period of extension, a decrease in tax determined in respect of an application under section 3780. In determining whether an amount has been so satisfied, however, the net effect of the carry-back, including any resulting deficiencies, must be taken into account. This may be illustrated as follows: Corporation C, which came into existence on January 1, 1945, and which keeps its books and makes its tax returns on the calendar year basis, extended the time for payment of $855 of its excess profits tax for 1945 on the basis of an expected unused excess profits credit for 1946. Corporation C in fact had an unused excess profits credit in 1946 and it filed an application for a tentative carry-back adjustment under section 3780 on March 31, 1947. Such application showed a decrease in excess profits tax for 1945 of $855 and a resulting increase in income tax for 1945 of $400. Corporation C's application was allowed in full by the Commissioner on June 15, 1947, and the resulting decrease of $855 in excess profits tax for 1945 was applied against the $855 of excess profits tax for 1945 the time for payment of which had been extended. The Commissioner, however, simultaneously assessed and made notice and demand for the $400 increase with respect to Corporation C's income tax for 1945, and, inasmuch as the entire decrease in excess profits tax had been applied against the unpaid amount of excess profits tax for 1945, Corporation C paid such $400 increase in income tax in cash within 10 days after notice and demand. The reduction in the aggregate of Corporation C's taxes for 1945 attributable to the unused excess profits credit carry-back from 1946 was only $455, and Corporation C therefore should not have extended the time for payment of more than $455 of its 1945 taxes. Inasmuch as in effect only $455 of the amount the time for payment of which had been extended was satisfied by reason of the carry-back, subsection (i) provides that interest shall be collected at the rate of 3 per cent per annum on the $455 and that interest shall be collected at the rate of 6 per cent per annum on the remaining $400 of the excess profits tax the time for payment of which was extended. The interest shall be computed on the $455 and on the $400 at the rates of 3 per cent and 6 per cent, respectively, as if one-quarter of each such amount were payable on March 15, 1946, one-quarter on June 15, 1946, one-quarter on September 15, 1946, and one-

quarter on December 15, 1946; interest on the $455 is to run until the date the reduction in excess profits tax, determined in respect of the above application for a tentative carry-back adjustment, is applied against the excess profits tax for 1945 the time for payment of which had been extended, and interest on the $400 shall run until the date it is paid. Under the provisions of proposed section 292(c) of the Internal Revenue Code, added by section 6 of this bill, no interest will be payable in this case on the above $400 increase in income tax resulting from the decrease in excess profits tax.

It is to be particularly noted that interest on amounts the time for payment of which is extended under section 3779 will be payable at the rate of 3 per cent per annum only if such amounts are satisfied by applying or crediting thereto, within the period of extension, a decrease in tax determined in respect of an application for a tentative carry-back adjustment. To the extent that such amounts are not so satisfied, interest is payable at the rate of 6 per cent per annum. Thus, if an extension is terminated either by action of the taxpayer or the Commissioner, interest is payable on the amount to which such termination relates at the rate of 6 per cent per annum to the date of payment. Likewise, if the taxpayer pays some portion of the tax, the time for payment of which has been extended, prior to the termination of the extension, or if the taxpayer fails to file an application for a tentative carry-back adjustment prior to the last day of the month in which falls the date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the year of the expected loss or unused credit, interest is payable at the rate of 6 per cent per annum to the date of payment. If part of an amount the time for payment of which has been extended is satisfied by applying or crediting thereto a decrease determined in respect of an application for a tentative carry-back adjustment and part is not so satisfied, interest is to be payable on the first part at the rate of 3 per cent and on the second part at the rate of 6 per cent per annum. The action of the Commissioner in allowing or disallowing an application under section 3780 for a tentative carry-back adjustment is to be conclusive with respect to the interest payable on amounts the time for payment of which has been extended under section 3779; such interest is not to be affected by a later determination by the Commissioner or any court, including The Tax Court.

If, however, the Commissioner determines that during the period of extension a credit or refund of an overpayment has been allowed or made or a deficiency assessed affecting the amount to which the extension under section 3779 relates and that the taxpayer could not have taken such overpayment or deficiency into account in the statement or in a revised statement, an appropriate adjustment is to be made in determining whether interest shall be payable at the rate of 3 per cent or 6 per cent per annum.

Subsection (b) of the bill adds a new subsection (e) to section 294 of the Code. Such subsection (e) provides a penalty of 5 per cent in case the amount of tax the time for payment of which has been extended under section 3779 is substantially in excess of the amount the time for payment of which should have been extended. Subsection (e) defines as the "penalty portion" the excess of an amount to which an extension relates which is not paid by the end of the taxable year in which the extension is made over 125 per cent of the amount to which such extension relates which is satisfied by applying thereto a decrease in tax determined in respect of an application for a tentative carry-back adjustment under section 3780 less any amounts assessed in respect of such application which are not so satisfied. The penalty portion in effect is therefore the excess of the amount of tax the time for payment of which has been extended over 125 per cent of the net amount to which such extension relates which is satisfied by applying thereto a decrease in tax determined in respect of an application for a tentative carry-back adjustment. In the case of any extension under section 3779 in which it is determined that there is such a penalty portion, an amount equal to 5 per cent of the penalty portion is to be added to the tax unless the taxpayer establishes to the satisfaction of the Commissioner that, as of the end of the taxable year in which such extension was made, there was reasonable cause to expect that there would be no such penalty portion. Such amount is in addition to interest payable under subsection (i) of section 3779. If more than one tax is involved, the penalty is to be added to one tax or prorated among two or more, within the discretion of the Commissioner. It is to be noted that a taxpayer may always avoid the penalty imposed under section 294(e) by paying the tax, the time for payment of which has been extended, at any time prior to the close of the taxable year in which the extension was made.

In such case, interest will be payable at the rate of 6 per cent per annum but there will be no penalty of 5 per cent.

TENTATIVE CARRY-BACK ADJUSTMENTS.

Section 4(a) of the bill, in addition to adding to the Internal Revenue Code, section 3779, relating to extensions of time for payment of taxes by corporations expecting carry-backs, would likewise add a new section 3780 to the Code. Section 3780 is complementary to section 3779. The first part of the plan, embodied in section 3779, provides for the deferment of current tax payments on the basis of anticipated net operating losses and unused excess profits credits; the second part of the plan, embodied in section 3780, provides for prompt payment of refunds attributable to net operating loss carry-backs or unused excess profits credit carry-backs after the loss or unused credit has occurred. It is to be noted that section 3780, unlike section 3779, applies to taxpayers other than corporations as well as to corporations. Section 3780 in general has two main purposes: (1) the satisfying of any taxes the time for payment of which has been extended under section 3779; and (2) the prompt refund of cash to taxpayers. In many cases only the second of such purposes will be involved. This will be true in the case of any taxpayer other than a corporation, and also in the case of a corporation if such corporation has not availed itself of the right to an extension under section 3779, or does not owe any tax, the time for payment of which has been extended under section 3779, at the time it files an application for a tentative carry-back adjustment under section 3780.

Subsection (a) of section 3780 provides that a taxpayer may file an application for a tentative carry-back adjustment of the taxes affected by a net operating loss carry-back or by an unused excess profits credit carry-back from any taxable year ending on or after September 30, 1945. Thus, if a taxpayer has a net operating loss or an unused excess profits credit in any taxable year ending on or after September 30, 1945, he may file an application for a tentative adjustment of the taxes for all prior taxable years affected by the net operating loss carry-back or the unused excess profits credit carry-back resulting from such loss or unused credit. A decrease in excess profits tax resulting from an unused excess profits credit carry-back which itself results from, or is increased in amount by, a net operating loss carry-back shall be considered to be attributable to such net operating loss carry-back. If a corporation has, e. g., a net operating loss in the calendar year 1945 which when carried back to 1943 results in an unused excess profits credit, the decrease in excess profits tax for 1941 resulting from the unused excess profits credit carry-back from 1943 shall be considered to be attributable to the net operating loss carry-back from 1945. If a corporation has both a net operating loss and an unused excess profits credit in any taxable year beginning after December 31, 1944, it may file an application for a tentative carry-back adjustment in respect of both the net operating loss carry-back and the unused excess profits credit carry-back resulting from such loss and unused credit.

The application for a tentative carry-back adjustment in the case of a corporation is to be sworn to in the manner prescribed by section 52 of the Code for the filing of a corporation income tax return and in the case of taxpayers other than corporations is to be verified in the manner prescribed by section 51 of the Code. Such application is to be filed on or after the date of the filing of the return for the taxable year of the net operating loss or the unused excess profits credit from which the carry-back results and must be filed within a period of 12 months from the close of such taxable year. Any application filed prior to the date the return for the taxable year of the loss or the unused credit is filed shall be considered to have been filed on the date the return is filed.

The application for a tentative carry-back adjustment must be filed in such manner and form as may be required by regulations prescribed by the Commissioner with the approval of the Secretary. The application shall set forth, in such detail and with such supporting data and explanation as the regulations shall require—

(1) the amount of the net operating loss or unused excess profits credit;

(2) the amount of each tax previously determined for each prior taxable year affected by the carry-back;

(3) the amount of the increase or decrease in each such tax attributable to such carry-back;

(4) the amount by which the aggregate of such decreases exceeds the aggregate of such increases;

(5) the unpaid amount of each such tax, not including any amount with respect to a tax for the taxable year immediately preceding the year of the loss or unused credit as to which an extension of time for payment under section 3779 is in effect;

(6) the amount with respect to each tax for the taxable year immediately preceding the taxable year of the loss or unused credit as to which an extension of time under section 3779 is in effect; and

(7) such other information for the purpose of carrying out the provisions of section 3780 as may be required by the regulations.

In determining the amount of the tax previously determined for each prior taxable year affected by the carry-back, such tax shall be ascertained in accordance with the method prescribed in section 3801(d) of the Code. In general, therefore, such tax will be the amount of the tax shown on the return increased by any amounts assessed (or collected without assessment) as a deficiency prior to the date of the filing of the application and decreased by any rebates, credits, or refunds allowed or made prior to such date. Any items as to which the Commissioner and the taxpayer are in disagreement at the time of the filing of the application shall be taken into account only if, and to the extent that, they were shown on the return or were reflected in any amounts assessed (or collected without assessment) as deficiencies or in any amounts allowed as rebates, credits, or refunds prior to the date of the filing of the application for a tentative carry-back adjustment.

The increase or decrease in each tax affected by the carry-back is to be determined on the basis of the items which entered into the computation of the tax previously determined, such tax previously determined being ascertained in the manner described above. In determining an increase or decrease in tax, items accordingly shall be taken into account only to the extent that they appear on or were reflected in the return or were reflected in amounts assessed (or collected without assessment) as deficiencies or in amounts allowed as rebates, credits or refunds prior to the date of the filing of the application for a tentative carry-back adjustment. If the Commissioner and the taxpayer are in disagreement as to the proper treatment of any item, it shall be assumed for purposes of determining the increase or decrease in each tax that such item was correctly reported by the taxpayer unless the disagreement has resulted in assessment of a deficiency or allowance of a credit or refund. Thus, if the taxpayer claimed a deduction on its return of $50,000 for salaries paid its officers, but the Commissioner asserts that such deduction should not exceed $20,000, and the Commissioner and the taxpayer have not been able to agree on the amount properly deductible prior to the time the application for a tentative carry-back adjustment is filed, $50,000 shall be considered as the amount properly deductible for purposes of determining the increase or decrease in each tax affected by the carry-back in respect of which the application is filed. In determining the increase or decrease in any tax affected by the carry-backs, the tax previously determined, however, shall be increased or decreased by the amount of any increase or decrease in such tax shown on an application under section 124(j) of the Code, relating to an application for a tentative adjustment with respect to amortization deductions, filed prior to the filing of the application for a tentative carry-back adjustment, where the increase has not been assessed or the decrease allowed at the time of the filing of such application for a tentative carry-back adjustment; and the items entering into the computation of the tax previously determined are to be adjusted in conformity with such increase or decrease shown in such application. For the purpose of determining the increase or decrease in each tax affected by the carry-back, any deduction limited, for example, by net income or adjusted gross income, such as the deduction for charitable contributions, shall be recomputed on the basis of the net income as affected by the carry-back. In computing the net operating loss deduction for purposes of determining the increase or decrease in each tax affected by the carry-back, proper adjustments as required by sections 122(c), 711(a)(1)(J), or 711(a)(2)(L) shall be made.

An application for a tentative carry-back adjustment is not to constitute a claim for credit or refund. If such application is rejected in whole or in part, therefore, no suit may be maintained in any court for the recovery of any tax based on such application. The taxpayer, however, as under existing law, may file a regular claim for credit or refund under section 322 of the Code at any time before the expiration of the applicable period of limitation, if such a claim has not already been filed, and may maintain suit on such claim if it is rejected

or if the Commissioner does not act on such claim within six months after the date of the filing of the claim.

Subsection (b) of section 3780 provides that the Commissioner is to act upon any application for a tentative carry-back adjustment within 90 days of whichever of the following two dates is the later:

(1) The date the application is filed;

(2) The last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss or unused excess profits credit from which the carry-back results.

Within such period of 90 days the Commissioner is to make such limited examination of the application as he deems practicable for omissions and errors of computation therein. The Commissioner is then to determine the increase or decrease in any tax affected by the carry-back upon the basis of the application and such examination. The Commissioner is to determine such increases and decreases in the same manner as that provided by subsection (a) of section 3780 for the determination by the taxpayer of the increases and decreases in tax which must be set forth in the application for a tentative carry-back adjustment. The Commissioner, however, may correct any errors of computation or omissions he may discover upon whatever limited examination he may make of the application. In determining the increase or decrease in each tax affected by the carry-back, the Commissioner accordingly may correct any mathematical errors appearing on the application and he may likewise correct any adjustments required by law and incorrectly made by the taxpayer in computing its net operating loss, its unused excess-profits credit, the resulting carry-backs, or its net operating loss deduction or unused excess-profits credit adjustment. If the required adjustment has not been made and the Commissioner has available the necessary information to make such adjustment within the above 90-day period, he may do so. Thus, if the taxpayer's application fails to take into account certain tax-free interest which he received in the year of the net operating loss, or in a prior year the taxes for which are affected by the carry-back, the Commissioner, if he knows the amount of such tax-free interest received by the taxpayer in such year, may take such tax-free interest into account in determining the increases and decreases in the taxes affected by the carry-back. The Commissioner, however, will not change a deduction for depreciation because he believes that the taxpayer has claimed an excessive amount; likewise, the Commissioner will not include in gross income any amount not so included by the taxpayer even though the Commissioner believes that such amount is subject to tax and properly should be reported as gross income.

If the Commissioner finds that an application for a tentative carry-back adjustment contains material omissions or errors of computation, he may disallow such application in whole or in part without further action. If, however, the Commissioner finds that any error of computation can be corrected by him within the above 90-day period, he may do so and may allow the application in whole or in part. The Commissioner's determination as to whether he can correct any error of computation within the 90-day period shall be conclusive. Similarly, the Commissioner's action in disallowing any application in whole or in part shall be final and may not be challenged in any proceeding. The taxpayer's remedy lies in the usual claim for credit or refund as under existing law.

In the case of any application which the Commissioner allows in whole or in part, any increase determined by the Commissioner in any tax affected by the carry-back shall be deemed to have been determined as a deficiency and shall be assessed without regard to the restrictions on assessment provided in section 272 of the Code. Thus, the taxpayer will not have a right to contest such assessment before The Tax Court. Each decrease determined by the Commissioner in any tax affected by the carry-back shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. Such unpaid amount may include both an amount of tax with respect to the payment of which the taxpayer is delinquent and an amount of tax the time for which is extended under section 3779. In such case the Commissioner shall determine against which amount the decrease is first to be applied. The unpaid amount of tax against which a decrease may be applied, however, is not to include any amount of tax for any taxable year other than the year of the decrease. After making such application, the Commissioner shall credit any remainder of the decrease as follows:

(1) Against any increase (including additions to the tax) determined in any tax, other than the tax decreased, which is attributable to the carry-back and which has been assessed as provided above; and then

(2) against any unsatisfied amount of any tax, other than the tax decreased, for the taxable year immediately preceding the taxable year of the net operating loss or the unused excess profits credit the time for payment of which is extended under section 3779.

Any remainder of the decrease after such application and credits may, within the above 90-day period, in the discretion of the Commissioner, be credited against any income, war profits, or excess profits tax or installment thereof then due from the taxpayer, or, if not so credited, is to be refunded to the taxpayer within such 90-day period.

The application, credit, or refund of a decrease in tax determined under section 3780 shall constitute a credit or refund within the meaning of sections 781(b) and 3807(b)(1) of the Code, relating, respectively, to postwar credits or postwar bonds in the case of refunds and to the period of limitation in case of related taxes under Chapter 1 and Chapter 2.

In recognition of the fact that, due to the short period of time allowed, the Commissioner necessarily will act upon an application for a tentative carry-back adjustment only after a very limited examination, subsection (c) of section 3780 provides a summary procedure whereby the Commissioner and the taxpayer each may be restored to the same position occupied prior to the approval of such application. Subsection (c) provides that if the Commissioner determines that the amount applied, credited, or refunded with respect to an application for a tentative carry-back adjustment is in excess of the overassessment properly attributable to the carry-back upon which such application was based, he may assess the amount of the excess as a deficiency as if such deficiency were due to a mathematical error appearing on the face of the return. That is, the Commissioner may assess an amount equal to the excess, and such amount may be collected, without regard to the restrictions on assessment and collection imposed by section 272 of the Code. Either before or after assessing such amount, the Commissioner will notify the taxpayer that he has made or will make such assessment. Such notice, however, is not to constitute a notice of deficiency and the taxpayer may not file a petition with The Tax Court based on such notice. The taxpayer within the applicable period of limitation may file a regular claim for credit or refund under section 322 of the Code based on such carry-back, if he has not already filed such a claim, and may sue on such claim if it is rejected by the Commissioner or not acted upon within six months after the date of the filing of the claim.

Upon assessing any deficiency under subsection (c) of section 3780, the Commissioner is further directed to schedule as an overassessment the decrease in any other tax resulting from the adjustments reflected in the computation of the deficiency so assessed. Thus, if the Commissioner determines that $855 of excess profits tax for 1944 was applied, credited or refunded in respect of an application for a tentative carry-back adjustment in excess of the amount which properly should have been so applied, credited, or refunded, the Commissioner may assess such $855 as a deficiency without regard to the restrictions imposed on assessment by section 272 of the Code. Generally, however, such deficiency will result in a decrease of income tax for 1944 in the amount of $400, and subsection (c) provides that upon assessing the $855 of excess profits tax the Commissioner shall schedule such decrease of $400 in income tax as an overassessment which will be credited against the deficiency.

It is to be noted that the method provided in subsection (c) of section 3780 to recover any amounts applied, credited, or refunded under section 3780 which the Commissioner determines should not have been so applied, credited, or refunded is not an exclusive method. It is contemplated that the Commissioner will usually proceed by way of a deficiency notice in the ordinary manner, and the taxpayer may litigate any disputed issues before The Tax Court. The Commissioner may also proceed by way of a suit to recover an erroneous refund.

SECTION 3781—EXTENSION OF TIME AND TENTATIVE CARRY-BACK AND AMORTIZATION ADJUSTMENTS IN THE CASE OF CONSOLIDATED RETURNS.

Section 3779 and 3780, relating to extensions of time for the payment of the tax and to tentative carry-back adjustments, as well as section 124 (j) and (k), relating to amortization deductions, will apply in the case of a corporation involved in the filing of consolidated returns to the extent and in the manner

prescribed by the Commissioner in regulations approved by the Secretary, and subject to such conditions, limitations, and exceptions as may be prescribed in such regulations.

Under section 141 of the Code, the Commissioner is required, with the approval of the Secretary, to prescribe such regulations as are deemed necessary to the administration of consolidated return cases. The Commissioner's regulatory authority pertains equally to consolidated return periods and to those aspects of separate return computations for other periods affected by the filing of consolidated returns. It is the intention of your committee that the same principle shall apply with respect to proposed extensions of time, tentative carry-back adjustments, and amortization deductions in the case of any corporations which have once joined in the filing of consolidated returns. It is intended that all conditions, limitations, and exceptions deemed by the Commissioner to be reasonably necessary in this respect shall be developed in the regulations, and that the provisions of the proposed enactment shall be applicable subject to such regulations.

CARRY-OVERS AND CARRY-BACKS IN THE CASE OF CERTAIN RAILROAD CORPORATIONS.

Subsection (d) of section 4 of the bill adds paragraph (3) to section 122(b) of the Code relating to the net operating loss deduction. Under this provision if a railroad corporation (as defined in section 77m of the National Bankruptcy Act as amended) acquires property from another railroad corporation (as so defined) in a receivership proceeding or in a proceeding under section 77 of the National Bankruptcy Act, as amended, and if the basis of the property so acquired is determined under section 113(a)(20) of the Code, then, for the purposes of section 122, the corporation which acquired the property and the corporation from which the property was acquired are deemed to be the same taxpayer. If the acquiring corporation receives the property with such a basis from more than one such railroad corporation, then all such corporations are for the purposes of section 122 deemed to be the same taxpayer. The effect of this amendment is to make available to a successor railroad corporation the carry-overs of net operating losses incurred by its one or more predecessor railroad corporations prior to the effectuation of the plan of reorganization. Similiarly where the one or more predecessor railroad corporations have incurred tax on their net incomes prior to reorganization and the successor railroad corporation suffers net operating losses, the amendment makes the carry-back of such net operating losses available as a deduction against the net income of the one or more predecessor railroads. In this regard it should be noted that where more than one railroad company is involved in the reorganization and under the order of the court a combination into a single successor corporation is effected, problems of allocation of a carry-back of the net operating loss of the successor to the respective predecessor corporations are presented. In some cases one or more of such predecessor companies may have filed consolidated returns with another of the predecessor companies whereas there may be additional companies involved which were not so consolidated. It is contemplated that, because of his experience in making proper allocations in connection with similar situations occurring where corporations file consolidated returns, and because of the probable variation in the circumstances presented in each case, the Commissioner of Internal Revenue is best qualified to promulgate rules for the allocation of the deduction. The amendment, therefore, is silent as to the basis for allocation, and it will be necessary for the Commissioner to apply the statute in these cases under regulations prescribed by him with the approval of the Secretary.

Thus for taxable years ending after December 31, 1938, predecessor and successor railroad corporations which meet the conditions of the statute will be treated as the same taxpayer for the purpose of the net operating loss deduction. The method of computation of the deduction itself as well as the years for which it is available will, of course, be governed by the provisions of the law otherwise applicable to such years. For example, there is no intention by this amendment to create for any year a loss carry-back where the law otherwise applicable to such year provides no such deduction.

Subsection (e) of section 4 of the bill provides that the amendment made by subsection (d) shall be applicable to taxable years beginning after December 31, 1941; and that in the case of taxable years beginning prior to January 1, 1942, and after December 31, 1938, provisions having the effect of such amendment shall be deemed to be included in the revenue laws respectively applicable to such taxable years.

Subsection (f) of section 4 adds subparagraph (C) to section 710(c)(3) of the Code. This amendment makes the same provision with respect to the unused excess profits credit as subsection (d) of the bill makes with respect to the net operating loss. Under this provision if a railroad corporation (as defined in section 77m of the National Bankruptcy Act, as amended) acquires property from another railroad corporation (as so defined) in a receivership proceeding or in a proceeding under section 77 of the National Bankruptcy Act, as amended, and if the basis of the property so acquired is determined under section 113(a)(20), then for the purposes of section 710(c) the corporation which acquired the property and the corporation from which the property was so acquired are deemed to be the same taxpayer. If the acquiring corporation received the property with such a basis from more than one such railroad corporation, then all such corporations are for the purposes of section 710(c) deemed to be the same taxpayer. As in the case of the net operating loss carry-back where more than one predecessor railroad is combined in the reorganization in a single successor, it is contemplated that appropriate rules for the allocation of the unused excess profits credit carry-back among the predecessors will have to be formulated under regulations of the Commissioner.

Subsection (g) provides that the amendment made by subsection (f) shall be applicable to taxable years beginning after December 31, 1941; and that in the case of taxable years beginning prior to January 1, 1942, and after December 31, 1939, provisions having the effect of such amendment shall be deemed to be included in the revenue laws respectively applicable to such taxable years. The effect of this amendment is similar to that stated above with respect to subsection (e) of this section, providing applicable dates for the amendment to the net operating loss deduction. However, since the amendment made in subsection (f) of this section relates exclusively to the excess profits tax, retroactive effect is given to such amendment only with respect to years in which the excess profits tax was applicable.

SECTION 5. PERIOD OF LIMITATION IN CASE OF CARRY-BACKS.

In general, a credit or refund of an overpayment of tax may not be allowed or made after three years from the time the return is filed unless a claim is filed within such 3-year period. There are several exceptions to such general rule: For example, if the Commissioner and the taxpayer agree to extend the time within which the tax may be assessed, the time for the allowance of a credit or refund is extended beyond the usual 3-year period; likewise, claim for credit or refund may be filed at any time within two years after a payment of tax, but in such event the amount that may be credited or refunded can not exceed the amount of tax paid within such 2-year period.

The 3-year period within which credits or refunds normally may be allowed or made frequently is insufficient in the case of an overpayment attributable to a net operating loss carry-back or to an unused excess profits credit carry-back. This arises from the fact that the events which give rise to overpayments or to deficiencies attributable to carry-backs do not occur until after the close of the taxable year, and in some cases may not occur until a considerable number of years thereafter. The taxpayer, accordingly, does not have available, under present law, the necessary information upon which to make claims for credit or refund of overpayments resulting from carry-backs during part or all of the 3-year period within which such claims may be filed. The inadequacy of the present provisions of law may be illustrated by the following example:

Example. Corporation A, which keeps its books and files its tax returns on a calendar year basis, filed its income tax return for 1943 on March 15, 1944, and its return for 1945 on March 15, 1946. Corporation A's 1945 income tax return showed a net income of $10,000. On April 1, 1948, Corporation A, contending that it failed to deduct certain ordinary and necessary business expenses in computing its net income for 1945, filed a claim for credit or refund of its entire 1945 income tax; such claim was allowed on December 1, 1948. Upon taking such expenses into account, it further developed that Corporation A in fact sustained a net operating loss in 1945. Such net operating loss, when carried back to 1943, produced an overpayment of Corporation A's income tax for 1943. In the ordinary course of events, the time for filing a claim for credit or refund of an overpayment of Corporation A's income tax for 1943 expires on March 15, 1947. Corporation A, however, does not know that it has

an overpayment of income tax for 1943 until some time in 1948. Inasmuch as Corporation A does not know until 1948 that it has overpaid its income tax for 1943 and inasmuch as the period for filing a claim for credit or refund of its income tax for 1943 expires on March 15, 1947, Corporation A under present law will not be able to receive credit or refund of its overpayment of income tax for 1943.

In general a tax must be assessed within three years from the date the return for a taxable year is filed. Such period under present law is sometimes, and as a result of the amendments made by section 5 of the bill in the case of credits or refunds will be frequently, insufficient in the case of deficiencies attributable to net operating loss carry-backs or to unused excess profits credit carry-backs.

The amendments made by section 5 of the bill, accordingly, provide a new period of limitation for the allowance of a credit or refund of an overpayment of tax, and the assessment of a deficiency, which is attributable to a net operating loss carry-back or to an unused excess profits credit carry-back. Subsection (b) of section 5 adds a new paragraph (6) at the end of section 322(b) of the Code to provide that in the case of an overpayment attributable to a net operating loss carry-back or to an unused excess profits credit carry-back, in lieu of the normal 3-year period of limitation, there shall apply whichever of the following two periods expires later:

(1) The 3-year period provided in section 322(b)(1) for the filing of a claim for credit or refund, or the allowance of a credit or refund with respect to the year of the net operating loss or the unused excess profits credit;

(2) The period within which claim for credit or refund may be allowed or made, or claim for credit or refund filed, with respect to the year of net operating loss or the unused excess profits credit if such period is extended pursuant to the provisions of section 322(b)(3) of the Code as a result of the execution of an agreement extending the time within which the Commissioner may make an assessment with respect to such year.

In the case of such a claim, that portion of the overpayment which is attributable to a carry-back may be credited or refunded without regard to the date of payment of the tax. It is to be noted that the period provided in section 322(b)(6) is to be in lieu of the 3-year period provided in section 322(b)(1). Section 322(b)(6), however, is not to affect any other period, such as the 2-year period after the payment of the tax, within which under present law claim for credit or refund may be filed or credit or refund allowed or made.

For purposes of section 322(b)(6), as well as for purposes of all other amendments made by the bill, an overpayment of excess profits tax resulting from an unused excess profits credit carry-back which itself is produced, or which is increased in amount, by a net operating loss carry-back, is to be considered as attributable to the net operating loss carry-back to the extent it is produced or increased. In such case, therefore, the period within which claim for credit or refund of excess profits tax may be filed, or credit or refund allowed or made, will be coextensive with the period within which claim for credit or refund may be filed, or credit or refund allowed or made, with respect to the year of the net operating loss.

Subsection (a) of section 5 of the bill amends section 322(b)(5) of the Internal Revenue Code further to carry out the above policy with regard to the effect that the deductibility of a debt which had become worthless or the loss from worthlessness of a security has on the application to the taxpayer of a carry-back. Under present law, such a debt or loss may be deducted at any time within seven years from the time the return was filed, and accordingly it is likewise provided that a claim for credit or refund of an overpayment of a tax attributable to the effect that the deductibility of such a debt or loss has on the application of the taxpayer of a carry-back may be filed at any time within seven years from the date prescribed by law for filing the return for the taxable year of the asserted overpayment. Under the amendment made by subsection (a) such 7-year period will begin to run from the date prescribed by law for filing the return for the taxable year of the net operating loss or the unused excess profits credit. In such case, likewise, the credit or refund may be allowed or made without regard to the date when the tax was paid. If the period prescribed in section 322(b)(6) for the filing of a claim for credit or refund attributable to a carry-back expires later than the period prescribed in section 322(b)(5), the provisions of section 322(b)(6) shall apply even though the carry-back resulted from, or the amount of such carry-back was increased by, the deductibility of a bad debt or a loss from the worthlessness of a security.

Subsection (c) of section 5 of the bill amends section 322(d) of the Code in effect to provide that in any case in which The Tax Court of the United States determines that there is an overpayment of tax which is attributable to a net operating loss carry-back or to an unused excess profits credit carry-back, such overpayment may be credited or refunded without regard to the date of payment of the tax if The Tax Court determines as part of its decision that the notice of deficiency was mailed before the expiration of the period prescribed in section 322(b)(6) for the filing of a claim for credit or refund of an overpayment of tax attributable to a carry-back or that in fact such a claim was filed within such period.

In further recognition of the fact that the events which result in a net operating loss carry-back or an unused excess profits credit carry-back may not occur until a number of years after the close of the taxable year of the overpayment, subsection (d) of section 5 of the bill adds a new subsection (g) to section 322 of the Code. Subsection (g) in effect provides that a credit or refund of an overpayment of tax attributable to a net operating loss carry-back or to an unused excess profits credit carry-back may be allowed or made if claim therefor is filed within the period prescribed in section 322(b)(6) for the filing of such a claim, without regard to whether any law or rule of law (other than section 3761 of the Code, relating to compromises) would otherwise, but for the provisions of such subsection (g), bar such credit or refund. Subsection (g) makes similar provision in the case of an application, credit, or refund of a decrease in tax determined under section 3780(b) if application for a tentative carry-back adjustment is made within 12 months from the end of the taxable year of the net operating loss or unused excess profits credits. (See section 4 of the bill.) Section 322(c) of the Code in effect provides that where a taxpayer has filed a petition with The Tax Court for a redetermination of a tax for a taxable year, no credit or refund of an overpayment of such tax for such year, except as determined by The Tax Court and with certain other limited exceptions, may be allowed or made. However, under the proposed subsection (g) of section 322 of the Code, even though the tax liability for a given taxable year, for example, has already been litigated before The Tax Court, credit or refund of an overpayment attributable to a carry-back may be allowed or made, if claim for credit or refund is filed within the period prescribed in section 322(b)(6), or if an application for a tentative carry-back adjustment is filed within the period prescribed in section 3780(a). Subsection (g), however, is not to apply to any taxable year with respect to which the Commissioner and the taxpayer have entered into a closing agreement, prior to the date of enactment of this bill into law, in which it is expressly provided that the tax liability for such taxable year is not to be affected by a net operating loss carry-back or by an unused excess profits credit carry-back.

Though it is the purpose of subsection (g) to permit taxpayers to receive credit or refund of an overpayment of tax resulting from a carry-back, even though such credit or refund normally would be barred by the doctrine of res judicata or by some other law or rule of law, it is not intended that any determination of issues, including carry-back issues, made by any court in a proceeding in which the decision has become final shall be open for reconsideration. Subsection (g) provides that in the case of a claim for credit or refund of an overpayment attributable to a carry-back, or in the case of an application for a tentative carry-back adjustment, the determination of any court, including The Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction and the unused excess profits credit adjustment, and the effect of such deduction and adjustment, to the extent that such deduction or adjustment is affected by a carry-back which was not in issue in such proceeding. The operation of subsection (g) may be illustrated by the following example:

Example. Corporation B, which keeps its books and files its tax returns on the calendar year basis, filed its income and excess profits tax returns for 1944 on March 15, 1945. Corporation B claimed $100,000 as a deduction for depreciation on such returns. The Commissioner asserted that only $60,000 was properly allowable as a deduction for depreciation, and he further asserted that Corporation B had realized certain long-term capital gains in 1944 which it improperly failed to include in its gross income. These issues were litigated before The Tax Court, which sustained the Commissioner's determinations with respect to both the deduction for depreciation and the capital gains. Pursuant to the decision of The Tax Court, which became final on December 15, 1946, deficiency judgments were entered for the Commissioner with respect to both the income tax and the excess profits tax of Corporation B for the year 1944. In computing the

deficiency in excess profits tax, proper adjustment was made by The Tax Court for an unused excess profits credit carry-back from the year 1945 to 1944. In a decision which became final on May 1, 1947, the Supreme Court decided that gains of the type held taxable as long-term capital gains by The Tax Court in the above proceeding are not subject to tax. Corporation B sustains net operating losses in both 1946 and 1947, and the loss it sustains in 1947, when carried back to 1945, produces an increased unused excess profits credit for 1945. If proper claims for credit or refund are filed within the period provided in section 322(b)(6), Corporation B may receive a credit or refund of overpayments of both its income tax and its excess profits tax for 1944. In computing such overpayments, no adjustments may be made with respect to the gain held taxable as long-term capital gain by The Tax Court or with respect to any other item, except the net operating loss deduction and the unused excess profits credit adjustment, which entered into the determination of the income or excess profits tax liability for 1944. Overpayments attributable to the net operating loss deduction and unused excess profits credit adjustment may be credited or refunded.

Subsection (e) of section 5 of the bill adds a new subsection (d) to section 276 of the Code, relating to the period within which assessments may be made. Such new section 276(d) provides that a deficiency attributable to a net operating loss carry-back or an unused excess profits credit carry-back, including those amounts which may be assessed pursuant to the provisions of section 3780(b) and (c), may be assessed at any time prior to the expiration of the period within which a deficiency may be assessed with respect to the taxable year of the claimed net operating loss or unused excess profits credit resulting in such carry-back. Thus, as in the case of credits or refunds, the period for making assessments is made coextensive with the period within which assessments may be made with respect to the taxable year of the claimed loss or unused excess profits credit. In the usual case, such period will be three years from the date the return for the taxable year of the claimed loss or unused excess profits credit was filed, but if the period within which a deficiency may be assessed with respect to such year is longer than such three years (due, e. g., to the execution of an agreement extending such period, or to the filing of a fraudulent return, or to the substantial understatement of gross income), the period within which a deficiency with respect to a prior taxable year attributable to a carry-back from the year of the claimed loss or unused excess profits credit will be correspondingly longer. In determining whether there is a deficiency attributable to a carry-back, proper adjustment shall be made in computing the net operating loss or unused excess profits credit, in computing the carry-backs, and in computing the amount of the net operating loss deduction or unused excess profits credit adjustment. It is to be noted that it is immaterial whether the net operating loss or the unused excess profits credit as claimed by the taxpayer is different from or is exactly equal to the amount of the actual net operating loss or unused excess profits credit. Any deficiency attributable to a carry-back resulting from such loss or unused excess profits credit may be asserted at any time prior to the expiration of the period within which a deficiency may be assessed with respect to the taxable year of the claimed or actual net operating loss or unused excess profits credit.

The amendments made by section 5 of the bill are to be applicable with respect to all taxable years beginning after December 31, 1940, i. e., to all taxable years which may be affected by net operating loss carry-backs or by unused excess profits credit carry-backs, except, as noted above, that section 322(g) of the Code is not to be applicable to any taxable year with respect to which the Commissioner and the taxpayer have entered into a closing agreement, prior to the date of enactment of this bill into law, in which it is expressly provided that the tax liability for such taxable year is not to be affected by a net operating loss carry-back or by an unused excess profits credit carry-back.

Section 6. Interest in Connection With Carry-Backs.

Section 6 of the bill makes certain changes in the interest provisions of the law so far as they relate to deficiencies or overpayments attributable to net operating loss carry-backs or to unused excess profits credit carry-backs.

Under present law interest on an overpayment attributable to a net operating loss carry-back or to an unused excess profits credit carry-back may be allowed only from the date of the filing of a claim for credit or refund of such overpayment or from the date of the filing of a petition with The Tax Court, whichever is earlier. Overpayments in one tax, however, frequently result in deficiencies in another tax. Thus, an overpayment of excess profits tax generally results

in a deficiency in income tax. Interest on such deficiency, under present law, is payable from the date prescribed for the payment of the tax or, if the tax is paid in installments, from the date prescribed for the payment of the first installment. The provisions of present law may be illustrated as follows: Corporation A, which keeps its books and files its returns on the calendar-year basis, has an unused excess profits credit of $1,000 in 1946. Such unused excess profits credit, when carried back to 1944, produces an overpayment of excess profits tax for 1944 of $855. There is a resulting deficiencey in income tax for 1944, however, of $400. If Corporation A on March 15, 1947, files a claim for credit or refund of its overpayment of $855 of excess profits tax for 1944, attributable to the excess profits credit carry-back from 1946, interest on such overpayment will be allowed only from March 15, 1947; interest on the resulting deficiency of $400 in income tax for 1944, however, will be computed from March 15, 1945. The interest allowable on the credit or refund and the interest payable on the deficiency will each be computed at the rate of 6 per cent per annum.

If a credit or refund of an overpayment of tax attributable to a carry-back is allowed or made, and it is subsequently determined that the amount so allowed as a credit or refund was in excess of the amount that properly should have been allowed, the amount of such excess generally will be assessed as a deficiency. Under present provisions of law, interest on the amount credited or refunded will be allowed only from the date the claim for credit or refund was filed or from the date a petition was filed with The Tax Court, whichever is earlier, but interest on the deficiency will be payable from the date prescribed by law for the payment of the tax for the taxable year of the deficiency or, if such tax is paid in installments, from the date prescribed for the payment of the first installment. This may be illustrated as follows: Corporation B, which keeps its books and files its returns on the calendar year basis, sustains a net operating loss in 1945 which when carried back to 1943 results in an overpayment of income tax for 1943. Corporation B on March 15, 1946, files a claim for refund of $1,000 of its income tax for 1943, and such claim is allowed. Interest is paid by the Government on such $1,000 from March 15, 1946, at the rate of 6 per cent per annum. It is later determined, however, that the overpayment of Corporation B's income tax for 1943 attributable to the net operating loss carry-back from 1945 was only $900, and $100 consequently is assessed as a deficiency in Corporation B's income tax for 1943. Interest will be payable on such deficiency from March 15, 1944, at the rate of 6 per cent per annum.

To correct the above situation, subsection (a) of section 6 of the bill adds a new subsection (c) to section 292 of the Internal Revenue Code. Such new subsection (c) provides that if any part of a deficiency in tax results from an overpayment or a decrease, attributable to a net operating loss carry-back or to an unused excess profits credit carry-back, in any other tax, no interest shall be assessed or paid with respect to such part of the deficiency for any period during which interest was not allowed with respect to such overpayment or decrease. Subsection (c) likewise provides that if any part of a deficiency is attributable to an error in the amount or effect of a carry-back which resulted in a credit or refund of an overpayment of tax or in a decrease in tax, no interest shall be assessed or paid with respect to such part of the deficiency for any period during which interest was not allowed with respect to such overpayment or decrease. The decrease in tax referred to is a decrease determined under section 3780 of the Code with respect to an application for a tentative carry-back adjustment. The effect of the amendment is that interest on any deficiency resulting from an overpayment or a decrease, attributable to a carry-back, in any tax other than the tax in respect of which such overpayment or decrease was allowed and interest on any deficiency resulting from the allowance of an application, credit or refund of an excessive amount as an overpayment or a decrease, attributable to a carry-back, will not be payable for any period of time prior to the date from which interest was allowed on such overpayment or decrease. In the above examples, therefore, interest on Corporation A's deficiency of $400 in income tax for 1944 will be computed from March 15, 1947, the date from which interest is allowed in respect of the overpayment of Corporation A's excess profits tax for 1944; and interest on Corporation B's deficiency in income tax for 1943 will be computed from March 15, 1946, the date from which interest is allowed in respect of the overpayment of Corporation B's income tax for 1943.

As indicated above, section 3771(e) of the Code provides that no interest may be allowed or paid on any part of an overpayment attributable to a net operating loss carry-back or to an unused excess profits credit carry-back for any period

prior to the filing of a claim for credit or refund of such part of the overpayment or prior to the filing of a petition with The Tax Court, whichever is earlier. Subsection (b) of section 6 of the bill amends section 3771(e) to provide in addition that if an application for a tentative carry-back adjustment is filed under section 3780 of the Code, no interest may be allowed or paid with respect to any part of an overpayment attributable to a net operating loss carry-back or to an unused excess profits credit carry-back with respect to which such application was filed—

(1) for any period prior to the first day of the month immediately following the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss or the unused excess profits credit, or prior to the date on which the return is filed, whichever is later; and

(2) for the period beginning with the date such application is filed and ending with the last date the Commissioner's determination with respect to such application is required to be made under section 3780 of the Code.

The amendments to section 3771(e) apply only to cases in which an application for a tentative carry-back adjustment under section 3780 is filed. If no such application is filed, the present provisions of section 3771(e) will continue to govern, and interest accordingly will be allowed from the date of the filing of the claim or the date of the filing of the petition with The Tax Court, whichever is earlier.

The effect of the amendments to section 3771(e) may be illustrated as follows: Corporation C, which keeps its books and files its returns on the calendar year basis, sustained a net operating loss in 1945. It filed its income tax return for 1945 on March 15, 1946, and on the same date filed both a claim for credit or refund of an overpayment of its income tax for 1943 based on the net operating loss carry-back resulting from such net operating loss sustained in 1945 and an application for a tentative carry-back adjustment under section 3780 of the Code with respect to such net operating loss carry-back. No interest may be allowed or paid on any overpayment allowed in respect of such claim or on any decrease allowed in respect of such application for any period ending prior to June 30, 1946, which is the last date on which the Commissioner's determination is required to be made in respect of such application. Interest, however, will be allowed with respect to any such overpayment or decrease for the period beginning with June 30, 1946, and ending on the appropriate date provided in section 3771(b) of the Code.

If Corporation C filed its claim for credit or refund on March 20, 1946, and its application for a tentative carry-back adjustment on December 1, 1946, no interest on any overpayment allowed in respect of such claim or on any decrease allowed in respect of such application may be allowed or paid for any period ending prior to April 1, 1946, which is the first day of the month immediately following the month in which falls the last date prescribed by law for filing Corporation C's income tax return for 1945; and no interest may be allowed or paid for the period beginning on December 1, 1946, and ending on March 1, 1947, which is the last date on which the Commissioner's determination is required to be made in respect of such application. Interest, however, is to be allowed on any such overpayment or decrease for the period beginning on April 1, 1946, and ending on November 30, 1946, and for the period beginning on March 2, 1947, and ending on the appropriate date provided in section 3771(b) of the Code. If Corporation C had been granted an extension of 30 days for the filing of its 1945 income tax return and had filed such return on April 14, 1946, no interest would be allowed or paid for any period ending prior to May 1, 1946. If Corporation C had not been granted any extension of time for filing its 1945 income tax return, but filed such return on April 15, 1946, interest would not be allowed or paid for any period ending prior to April 15, 1946.

If an application for a tentative carry-back adjustment is filed, but no claim for credit or refund is filed, interest will not be allowed or paid on any decrease allowed in respect of such application for any period ending prior to the day after the last date on which the Commissioner's determination with respect to such application is required to be made under section 3780 of the Code. Interest, however, may be allowed on such decrease for a period beginning with the day after the last date on which the Commissioner's determination is required to be made and ending on the appropriate date prescribed in section 3771(b) of the Code.

SECTION 7. TENTATIVE ADJUSTMENTS WITH RESPECT TO AMORTIZATION DEDUCTIONS.

Section 7 of the bill provides for prompt tax adjustments in the case of the recomputation of the amortization deductions as provided in section 124 of the Code. Under section 124, emergency facilities certified as necessary in the interest of national defense may be amortized over a period of 60 months. If, within such time, the emergency period is terminated or a particular taxpayer's facilities are certified to be no longer necessary, the taxpayer may elect, under section 124(d), to recompute his taxes for the taxable years affected on the basis of amortization over the shorter period. The principal purpose of this section of the bill is to accelerate the crediting or payment of refunds arising from the recomputation of taxes reflecting such increased amortization deductions. This provision is fundamentally similar to section 3780 of the Code, added by section 4 of this bill.

Section 7 adds subsections (j) and (k) to section 124 of the Code. Subsection (j) provides that a taxpayer who has filed a statement of election to recompute his taxes as provided in section 124(d) may file an application for a tentative adjustment with respect to the taxes so affected for taxable years prior to the taxable year in which such application is filed. This application must be filed within 90 days from the date of the filing of the statement of election under section 124(d), or within 90 days from the date of enactment of this bill in the case of taxpayers whose facilities have already been certified as no longer necessary and who have filed the statement of election prior to the date of enactment.

The application is to be verified in the manner prescribed in the case of a tax return of the applicant and is to set forth the recomputation of the taxes required by section 124(d)(4), in such manner and with such supporting data and explanatory material as the regulations prescribed by the Commissioner with the approval of the Secretary shall require. The recomputation of each such tax for the purposes of this application must be made, except for the changed amortization deduction, on the basis of the various items entering into the computation of the tax shown on the return, increased by amounts assessed as deficiencies and decreased by rebates, credits or refunds allowed or made, prior to the filing of the application, in accordance with the method prescribed in section 3801(d). Any items as to which the Commissioner and the taxpayer are in disagreement at the time of the filing of the application are to be taken into account only to the extent that they were shown on the return or were reflected in any amounts assessed (or collected without assessment) as deficiencies or in any amounts allowed as rebates, credits or refunds prior to the date of the filing of the application. In addition, effect must be given to adjustments to items resulting in any increase or decrease in each such tax shown and to changes in the tax previously determined, in an application for a tentative carry-back adjustment previously filed under section 3780 of the Code (as added by section 4 of the bill) which have not been determined by the Commissioner prior to the time of filing the application under section 124(j). There shall also be set forth in the application the unpaid amount of each tax recomputed as provided by this subsection and such additional information as may be required in the regulations for the purpose of carrying out the provisions of this subsection and subsection (k).

The application is not to constitute a claim for credit or refund. If such application is rejected in whole or in part, therefore, no suit based on such application may be maintained in any court for the recovery of any tax. The taxpayer, however, may file the usual claim for credit or refund under section 322 of the Code at any time before the expiration of the applicable period of limitation, if such a claim has not already been filed, and may maintain suit on such claim if it is rejected.

Subsection (k) provides that the Commissioner shall dispose of the application under subsection (j) within a period of 90 days from the date of filing. Within such period he is required to make only such limited examination of the application for omissions and errors in computation as he may deem practicable under the circumstances. On the basis of the application so examined, he shall determine the increase or decrease in each tax to which the application relates. In making the examination he shall follow the method of computation specified in subsection (j) for the purposes of the application.

The Commissioner may make whatever adjustments to, or corrections in, the computations, of the taxpayer shown in the application as he deems proper, within the scope of the prescribed basis of computation, and may reject any application containing material omissions, or containing errors of computation

which he deems to be of such magnitude that he can not adjust or correct for them within the 90-day period. The Commissioner's determination on these matters is final. If the taxpayer is dissatisfied with the determination of the Commissioner upon his application, his remedy is the usual claim for credit or refund on which suit may be maintained as provided in the revenue laws.

In the case of applications which the Commissioner allows in whole or in part, any increase in any tax determined by the Commissioner is to be deemed determined as a deficiency and is to be assessed without regard to the restrictions on assessment provided in section 272 of the Code. Under this provision the taxpayer will not be permitted to contest the assessment of such a deficiency before The Tax Court. Each decrease in tax determined under this subsection by the Commissioner is to be applied first against any unpaid amount of the tax decreased. The balance, if any, is to be credited against the deficiencies (and interest or additions to the tax) assessed with respect to increases in the taxes recomputed. Any remainder of the decrease after such application and credits have been made is either to be credited against any other income, war profits, or excess profits tax or installment of such taxes which is then due and payable by the taxpayer or to be refunded to the taxpayer. This crediting or refunding of the decrease is to be completed within the 90-day period from the date of filing of the application.

The application, credit, or refund of a decrease is to be regarded as a credit or refund of an overpayment within the meaning of section 781(b) relating to the postwar credit in the case of credits or refunds.

1945–16–12115

TAX ADJUSTMENT BILL OF 1945.

[Senate Report No. 458, Seventy-ninth Congress, First Session (Calendar No. 457).]

[July 12 (legislative day, July 9), 1945.]

Mr. George, from the Committee on Finance, submitted the following report [to accompany H. R. 3633]:

The Committee on Finance, to whom was referred the bill (H. R. 3633) to facilitate reconversion, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

STATEMENT.

For many months the Joint Committee on Internal Revenue Taxation for Postwar Taxation has been considering tax problems dealing with the interim period between the end of hostilities in Europe and the end of major hostilities with Japan as well as tax problems relating to the transition and postwar periods. Its report No. 1 contained recommendations for legislative action immediately following the end of hostilities in Europe. The bill carries out all of the recommendations contained in that report. The major purpose of the bill is to facilitate reconversion by improving the cash position of business enterprises and by relieving smaller businesses of some or all of the burdens of the excess-profits tax.

The following summary states the recommendations of the Joint Committee on Internal Revenue Taxation for Postwar Taxation and the particular provisions of the bill designed to carry them into effect:

RECOMMENDATION No. 1.

Increase the excess-profits tax specific exemption from $10,000 to $25,000, effective beginning with the tax year 1946.

Section 2 of the bill carries out this recommendation. It increases the specific exemption for excess-profits tax purposes from $10,000 to $25,000, for taxable years beginning after December 31, 1945. A pro rata portion of the increase in exemption is provided for corporations with fiscal years beginning in 1945 and ending in 1946. Existing law provides that no excess-profits tax return is required if the excess-profits net income is not more than $10,000; the bill increases the limitation to accord with the increase in the specific exemption.

RECOMMENDATION No. 2.

Provide that the postwar credit of 10 per cent of the excess-profits tax be taken currently with respect to tax liabilities of 1944 and subsequent years.

Subsection (h) of section 3 of the bill (page 5, beginning with line 4) carries out this recommendation. It provides that for taxable years beginning after December 31, 1943, a credit of 10 per cent shall be deducted in computing the tax currently payable. In the case of corporations which have fully paid their 1944 taxes cash refunds of the amount of the credit will be made. Other corporations will reduce unpaid 1944 tax installments to reflect the allowance of the credit.

RECOMMENDATION No. 3.

Advance to January 1, 1946, the maturity date of outstanding postwar refund bonds.

Subsection (c) of section 3 of the bill, beginning on page 3, line 13, carries out this recommendation. It provides that bonds already issued for taxable years beginning prior to January 1, 1944, shall be payable at the option of the owner on or after January 1, 1946.

RECOMMENDATION No. 4.

Provide for speed-up of refunds resulting from carry-backs of net operating losses and of unused excess-profits credits.

This recommendation is carried out in subsection (a) of section 4. That portion beginning with line 1, page 6, and ending with line 5, page 12, provides for the deferment of current tax payments on the basis of anticipated losses and unused credits; and that portion beginning with line 6, page 12, and ending with line 12, page 16, provides for the prompt payment of refunds after the loss or unused credit has occurred. The provisions relate to losses or unused credits anticipated or arising in taxable years ending on or after September 30, 1945.

RECOMMENDATION No. 5.

Provide for speed-up of refunds resulting from the recomputation of deductions for amortization of emergency facilities.

This recommendation is carried out in section 7 of the bill, beginning on page 25, at line 2. The section provides for prompt tax adjustments with respect to taxes of prior years recomputed to reflect an accelerated amortization period in the case of emergency facilities which cease to be necessary for war purposes in less than the original 5-year period.

All five of the proposed changes would improve the cash position of business during the period of reconversion and readjustment to peacetime production. The increase of the specific exemption to $25,000 would, in addition, reduce the repressive effect of the excess-profits tax upon smaller corporations. With this change, a large number of smaller corporations would be freed from liability under the excess-profits tax and the burden for the smaller corporations still subject to this tax would be substantially reduced.

For the taxable year 1943, when the specific exemption was $5,000, approximately 68,000 corporations filed returns showing excess-profits tax liability. For the year 1944, when the specific exemption was increased to $10,000, it has been estimated that the number of corporations liable for the excess-profits tax was reduced by about 17,000 to a total of 51,000.

It has been estimated that, for the taxable year 1946, with the present exemption of $10,000, approximately 31,000 corporations would be liable for excess-profits tax. By increasing the specific exemption to $25,000, this number is reduced by an estimated 12,000 to a total of about 19,000. Thus, the proposed increase in the specific exemption is expected to free from liability under the excess-profits tax about one-third to one-half of all corporations otherwise subject to the tax. It has been estimated that for the taxable year 1946 an increase in the specific exemption from $10,000 to $25,000 would result in a reduction in excess-profits-tax liabilities of about $300,000,000. Since the income thus released from excess-profits-tax liability would become subject to the normal tax and surtax, the net loss of revenue would be about $160,000,000, or less than 2 per cent of the total revenue from the corporate income and excess-profits taxes.

The bill as reported by your committee contains provisions (which are the same as in the bill as passed by the House) designed to facilitate the adminis-

trative operation of the recommendations discussed above. Section 5 makes certain changes in the period of limitations with respect to carry-backs and section 6 contains special interest provisions. A detailed discussion of the technical provisions of the bill will be found in the report of the House Committee on Ways and Means (Rept. No. 849, Seventy-ninth Congress, first session [page 566, this Bulletin]), which describes with some particularity the operation and effect of all of the provisions of the bill.

The committee recommends that the bill as passed by the House be amended by striking out subsections (d), (e), (f), and (g) of section 4. The provisions eliminated would have granted to certain reorganized railroads special relief in relation to the carry-overs and carry-backs. In effect such provisions would have treated an acquiring railroad as the same corporation as the old railroad for the purposes of the operating loss and unused excess-profits credit carry-overs and carry-backs.

This new treatment would have been retroactively applied to extend the benefit to railroads which have already completed their reorganization and would have involved an immediate loss of revenue of approximately $8,500,000. It would have applied to all taxable years beginning after December 31, 1938, in the case of the net loss and to taxable years beginning after December 31, 1939, in the case of the unused excess-profits credit. The provisions stricken out are outside the scope of the purposes of the bill. They would materially affect the tax liabilities of many railroads and would present problems that should receive more careful study than is possible if this bill is to be promptly enacted. Your committee is therefore of the opinion that the provisions should not be included as part of this bill, but should be the subject of further consideration and a public hearing. Accordingly, your committee has eliminated the provisions without prejudice to their future consideration.

THE DESIRABILITY OF EARLY ENACTMENT.

With the steadily increasing tempo of cut-backs and war-contract cancellations, many businesses will need cash immediately. Prompt enactment of this bill is necessary if business is to be allowed to take full advantage this year of the provisions for speed-up of refunds and credits.

1. With immediate enactment, it would be possible for corporations anticipating losses or unused credits for 1945 to defer payments of the September 15 installment of their 1944 tax liabilities. For example, the September 15 installment of Corporation A will amount to $100,000. Due to cancellation of contracts on July 1, the corporation expects an unused credit for 1945 which will result in a refund of $200,000 with respect to prior years' taxes. This corporation will be able to defer the September 15 installment and utilize the $100,000 for purposes of reconversion when it is needed. On the other hand, if the passage of the legislation were postponed, the corporation would be required to pay out the $100,000 installment, and recovery of this sum would be accomplished only after delay of several months.

2. With immediate enactment, it would be possible for excess-profits taxpayers to reduce the amount of the September 15 installment of their 1944 tax liabilities by taking the postwar credit currently. For example, Corporation B reported an excess-profits tax liability of $1,000,000 for 1944 and paid installments of $250,000 each on March 15 and June 15, 1945. If this bill is promptly enacted, Corporation B's September 15 installment will be reduced by one-half of its postwar credit of $100,000. It will, therefore, have immediately available at that time $50,000 of additional cash.

3. With immediate enactment, refunds arising from the recomputation of amortization deductions on emergency facilities certified to be no longer necessary for national defense will become available in 1945 and early 1946. For example, Corporation C, owning emergency facilities for which a certificate of nonnecessity has been granted, filed a claim on June 15, 1945, for recomputation of taxes for 1943 and 1944 which will result in refunds of $50,000. Upon the enactment of this bill, this company can file a claim for quick refund, payment of which must be made within 90 days. The company would thus be able to anticipate the receipt of $50,000 of cash refunds, during the fall.

Businessmen are now planning for reconversion and readjustment to peacetime operations. The immediate enactment of this bill would facilitate this planning. Delay in the enactment of this bill would continue the present uncertainty and would therefore render planning more difficult.

Speedy enactment of the bill would be favorable to business confidence. It would be interpreted as an indication of the desire of Congress to encourage timely reconversion and vigorous business expansion.

Inevitably, there must be some lapse of time between the date of enactment and the time when the Bureau of Internal Revenue can have its administrative machinery set up to handle claims for tax deferments and current credits. With immediate enactment of the bill, the Bureau should be in a position to handle these matters by September 15.

1945-21-12161

THE REVENUE BILL OF 1945.

[House of Representatives Report No. 1106, Seventy-ninth Congress, First Session.]

[October 9, 1945.]

Mr. Doughton of North Carolina, from the Committee on Ways and Means, submitted the following report [to accompany H. R. 4309]:

The Committee on Ways and Means, to whom was referred the bill (H. R. 4309) to reduce taxation, and for other purposes, having had the same under consideration, report it back to the House without amendment and unanimously recommend that the bill do pass.

GENERAL STATEMENT.

The bill has been designed to aid both individuals and businesses in the difficult period of transition from war to peace. To accomplish this your committee believes that it is necessary to reduce the high wartime tax rates to provide incentives for business to expand and to increase consumer purchasing power. Certain expenditures necessary after the end of a war, however, will keep Federal revenue requirements at a high level during 1946 if a large deficit is to be avoided. Federal expenditures for the fiscal year 1946 have been estimated by the Bureau of the Budget at 66.4 billion dollars and the deficit for fiscal year 1946 at 30.4 billion dollars. Federal expenditures for calendar year 1946 are expected to be much lower, but it is anticipated that the deficit will still be sizable. In view of the probable extent of the deficit in 1946 it is necessary to limit the over-all reduction in taxes. Your committee believes that with only a limited tax reduction possible in 1946, moderate tax relief for all groups would be preferable to the complete elimination of a few wartime taxes affecting only a relatively small number of taxpayers.

SUMMARY OF CHANGES IN EXISTING LAW.

The bill makes the following changes in existing law:

INDIVIDUAL INCOME TAXES.

1. The present surtax exemptions are made applicable to the normal tax. Accordingly the normal tax exemption of $500 for each income recipient is eliminated, and there are allowed in its place exemptions of $500 each for the taxpayer, his spouse, and each of his dependents. This change will be effective on and after January 1, 1946.

2. The rate applicable to each surtax bracket is reduced by 4 percentage points effective on and after January 1, 1946. The combined normal tax and surtax starting rate thus becomes 19 per cent instead of the present 23 per cent.

3. The surtax rates are further revised, effective January 1, 1946, so that generally the reduction of normal tax and surtax combined for any taxpayer will not be less than 10 per cent.

CORPORATE TAXES.

1. The excess-profits tax rate is set at 60 per cent for the calendar year 1946. The present excess-profits tax net rate is 85½ per cent.

2. The entire excess-profits tax is repealed, effective December 31, 1946.

3. The corporate surtax rate is reduced 4 percentage points as of January 1, 1946. This results in a minimum combined corporate normal tax and surtax

rate of 21 per cent in place of the present 25 per cent and a maximum combined rate of 36 per cent in place of the present 40 per cent.

4. The capital stock tax is repealed beginning with the capital stock tax payable on July 31, 1946. The declared value excess-profits tax beginning with the related year is also repealed.

EXCISE TAXES.

1. The excise "war tax rates" are reduced to the 1942 rates effective July 1, 1946. These are the "war tax rates" imposed by Title III of the Revenue Act of 1943 to be effective until six months after the termination of hostilities as proclaimed by the President or specified in a concurrent resolution of Congress.

2. Tax refunds, to the extent of the excise tax rate reductions, are to be made on all floor stocks of distilled spirits, wines, and fermented malt liquors, held for sale or use in production on July 1, 1946, on which the wartime excise tax rates had been paid. Similar refunds are to be made with respect to the reduction in the manufacturers' excise tax on electric light bulbs.

3. The tax on the use of motor vehicles and boats is repealed, effective July 1, 1946.

EMPLOYMENT TAXES.

1. Employment taxes for the old-age and survivors insurance program are continued through 1946 at the present rate of 1 per cent on wages paid by employers and 1 per cent on wages received by employees, instead of increasing in 1946, as provided by present law, to 2½ per cent for each of these groups.

SUMMARY OF ESTIMATED REVENUE EFFECT OF TAX REDUCTIONS.

The estimated tax liabilities and reductions under the committee bill are shown in table 1. Total tax liabilities under the committee bill for 1946 are estimated at $27,140,000,000—$5,350,000,000 less than the estimate for existing law in 1946. Of this $5,350,000,000 reduction, $2,627,000,000 is attributable to reductions in individual income taxes, $1,888,000,000 to reductions in corporate taxes, $535,000,000 to the return of certain excise taxes to their 1942 rates, $140,000,000 to the repeal of the tax on the use of motor vehicles and boats, and $160,000,000 to tax refunds to be made of the war excise taxes of floor stocks of alcoholic beverages and light bulbs.

In 1947, tax liabilities under the committee bill would be $7,252,000,000 lower than estimates under existing law for 1947 if general conditions remain the same as in 1946. This is a $1,902,000,000 additional loss over that of 1946. Most of the additional reduction in 1947 arises from the repeal of the excess-profits tax and a full year's operation of excise taxes at the 1942 rates. However, the repeal of the excess-profits tax also increases somewhat the losses under the reduction of the corporate surtax rates, since the repeal of the excess-profits tax increases the base for corporate surtaxes. An increased loss also results in 1947, for similar reasons, from the capital stock and declared value excess-profits taxes. The tax refunds on floor stocks of certain goods is a nonrecurring item and thus offsets in a small degree the increased losses in 1947 over 1946. To make this comparison between the revenue effect of the committee bill in 1946 and 1947 possible, it was arbitrarily assumed that general conditions in 1947 would be the same as in 1946. This includes the assumption that the supply of goods and services subject to excise taxes will remain constant.

The distribution of tax liability reductions among the various corporate taxes in which reductions are made is based on the sequence of the action of your committee, which was: First, to reduce the excess-profits tax rate and repeal the tax; second, to reduce corporate surtax rates; and, third, to repeal the capital stock and declared value excess-profits taxes. If these taxes had been acted upon in a different order, the losses from each corporate tax would have been different although the total loss would have remained the same. This difference in individual items can be accounted for by the fact that various corporate taxes are interrelated, and action on one tax frequently changes the size of the base of another tax.

TABLE 1.—*Estimated tax liabilty under the committee bill for calendar years 1946 and 1947,[1] as compared with tax liabilty under present law.*

[In million of dollars.]

Source.	Estimated yields.		Decrease, committee bill.	
	Present law.	Committee bill.	1946	1947
1. Internal revenue:				
(1) Income, excess profits, and capital stock taxes—				
(a) Corporation taxes [2]—				
Excess profits tax	4,847	3,547	1,300	2,555
Normal tax and surtax	3,856	3,451	405	646
Capital stock and declared value excess profits taxes	351	168	183	243
Total corporation taxes	9,054	7,166	1,888	3,444
(b) Individual income taxes—				
Normal tax	2,085	1,303	782	782
Surtax and alternative tax on capital gains	11,255	9,410	1,845	1,845
Total individual income taxes	13,340	10,713	2,627	2,627
Total income and excess profits taxes and capital stock tax	22,394	17,879	4,515	6,071
(2) Miscellaneous internal revenue excluding capital stock tax—				
(a) Excise taxes affected by reduction in wartime rates—				
Liquor taxes—				
Distilled spirits	1,473	1,224	249	472
Fermented malt liquors	545	513	32	63
Wines	47	36	11	18
Total liquor taxes	2,065	1,773	292	553
Retailers' excise taxes—				
Jewelry, etc	201	153	48	99
Furs	90	65	25	44
Toilet preparations	79	61	18	39
Luggage, etc	62	47	15	30
Total retailers' excise taxes	432	326	106	212
Telephone, telegraph, radio, and cable facilities, etc.	126	111	15	29
Local telephone service	128	107	21	41
Transportation of persons	188	160	28	60
Admissions	268	203	65	129
Electric light bulbs and tubes	14	10	4	10
Club dues and initiation fees	11	9	2	5
Bowling alleys, billiard and pool tables	4	2	2	2
Total excise taxes affected by reduction in wartime tax rates	3,236	2,701	535	1,041
(b) Use tax on automobiles and boats	140		140	140
(c) All other	2,978	2,978		
Total miscellaneous internal revenue excluding capital stock tax	6,354	5,679	675	1,181
2. Employment taxes (net)	392	392		
3. Customs	450	450		
4. Miscellaneous receipts	2,900	2,900		
Net receipts, general and special accounts	32,490	27,300	5,190	7,252
Refunds on floor stocks [3]		160	160	
Net receipts less refunds on floor stocks	32,490	27,140	5,350	7,252

[1] Assumes, for comparative purposes, the same general conditions in 1947 as in 1946.

[2] Takes into account the following sequence in tax reduction or repeal: First, action on the excess-profits tax; second, action on the corporate surtax rate; and, third, action on the capital stock and declared value excess-profits taxes.

[3] Tax refunds are classified by the Federal Government as expenditures but are included here as reduction in tax liability since they arise directly from the committee bill.

GENERAL DISCUSSION OF RECOMMENDED INDIVIDUAL INCOME TAX REDUCTIONS.

1. PROVIDING SAME PERSONAL EXEMPTIONS FOR NORMAL TAX AS FOR SURTAX.

This bill makes the present surtax exemptions applicable to the normal tax, effective January 1, 1946. Thus the normal tax exemptions of $500 for each income recipient are eliminated,[1] and there are allowed for both normal tax and surtax exemptions of $500 each for the taxpayer, his spouse, and each of his dependents.

This provision would relieve from tax approximately 12,000,000 of the 48,000,000 persons receiving income now subject to tax. This provision would result in a revenue loss of approximately $780,000,000 of which $310,000,000 represents the loss from removing the 12,000,000 persons from the tax rolls. Those removed from the income tax rolls would be taxpayers in the lower income groups who at present are subject to the normal tax but not the surtax. Examples of persons in this class at the present time are taxpayers with one dependent[2] and with net income before exemptions ranging from $500 to $1,000; taxpayers with two dependents and with net income ranging from $500 to $1,500; and taxpayers with three dependents and net income ranging from $500 to $2,000. The proposal would also reduce the tax of all married persons whose spouses have incomes of less than $500 and all taxpayers with dependents, since an additional exemption of $500 would be granted to a taxpayer for his spouse and each of his dependents. This would in effect grant tax relief of up to $15 per spouse or dependent to every taxpayer.

Your committee believes this change in the tax law to be desirable for the following reasons:

(1) The taxpayers subject only to the present normal tax were first brought into the tax base when the victory tax was enacted in the Revenue Act of 1942. They were added to the tax rolls only as a wartime measure and with the end of the war this reason for retaining them in the tax base is removed.

(2) Persons relieved from the tax by this proposal constitute the lowest income group now subject to income taxes and receive income which is substantially below that required for an adequate standard of living and therefore do not have the ability to pay income taxes under a peacetime tax structure.

(3) This proposal would be an aid to income tax simplification by providing the same exemption for the normal tax as for the surtax, and would reduce tax administration costs both for the Federal Government and for employers withholding the tax from wages.

2. REDUCING SURTAX RATES BY 4 PERCENTAGE POINTS.

The committee bill reduces the rate applicable to each surtax bracket by at least 4 percentage points, effective on or after January 1, 1946. This would reduce the starting rate for the combined normal tax and surtax from the present 23 per cent to 19 per cent. The estimated reduction in tax liabilities in 1946 resulting from this proposal would be approximately $1,740,000,000.

Although your committee does not believe it is desirable to embody a comprehensive revision of the individual income surtax rates in this bill, it does believe that some relief should be provided to everyone who has been paying high wartime taxes. This provision grants substantial tax relief to all individuals subject to the income tax at the time when many of them must shift from wartime to peacetime employment. Thus this provision should be an aid in curbing deflationary tendencies of our economy as it shifts from high levels of wartime production to peacetime levels.

3. ASSURING TAXPAYERS GENERALLY AT LEAST A 10 PER CENT TAX REDUCTION.

In addition to the reduction of 4 percentage points in each surtax bracket, the bill further revises surtax rates so that generally the reduction of the normal tax and surtax combined for any taxpayer will not be less than 10 per cent. Below the $20,000 to $22,000 surtax bracket, the 4 percentage points reduction provides more than a 10 per cent tax reduction and above that bracket less than a 10 per cent reduction. Accordingly, this provision will require additional reductions beyond the 4 percentage point reductions in the surtax bracket of $20,000 to

[1] The present normal tax exemption for the spouse of a taxpayer is allowed only to the extent of the income of the spouse if the income is less than $500 a year.

[2] Or a spouse with no income.

$22,000 and higher surtax brackets. The estimated revenue loss in 1946 from this proposal is about $110,000,000.

Your committee believes that it is desirable to provide a 10 per cent reduction in individual income taxes to aid unincorporated businesses.

Present law limits the aggregate normal tax and surtax to 90 per cent of the net income of the taxpayer. To assure taxpayers subject to the limit a 10 per cent reduction in tax, this 90 per cent limitation is decreased to 81 per cent of the net income of the taxpayer. Generally, this limit affects taxes only when net income exceeds $650,000.

The proposed new surtax rates and the tax burdens for each bracket compared with present rates and burdens are shown in table 2. The data shown in this table include both the effect of the 4 percentage points reduction and the minimum 10 per cent reduction. A comparison of individual income tax burdens under present law and under the committee bill are shown in tables 3, 4, and 5. Table 3 shows the burden on single persons with no dependents at various income levels; table 4, the burden on married persons with no dependents; and table 5, the burden on married persons with two dependents.

TABLE 2.—*Comparison of individual surtax rates and cumulative surtax under present law and under the committee bill.*

Surtax net income.		Surtax rates.		Cumulative surtax.		Reduction under committee bill.	
Exceeding—	Not exceeding—	Present law.	Committee bill.	Present law.	Committee bill.	Percentage points.	Cumulative surtax.
		Per cent.	*Per cent.*				
$0	$2,000	20	16			4	
$2,000	$4,000	22	18	$400	$320	4	$80
$4,000	$6,000	26	22	840	680	4	160
$6,000	$8,000	30	26	1,360	1,120	4	240
$8,000	$10,000	34	30	1,960	1,640	4	320
$10,000	$12,000	38	34	2,640	2,240	4	400
$12,000	$14,000	43	39	3,400	2,920	4	480
$14,000	$16,000	47	43	4,260	3,700	4	560
$16,000	$18,000	50	46	5,200	4,560	4	640
$18,000	$20,000	53	49	6,200	5,480	4	720
$20,000	$22,000	56	50	7,260	6,460	6	800
$22,000	$26,000	59	53	8,380	7,460	6	920
$26,000	$32,000	62	55	10,740	9,580	7	1,160
$32,000	$38,000	65	58	14,460	12,880	7	1,580
$38,000	$44,000	69	62	18,360	16,360	7	2,000
$44,000	$50,000	72	65	22,500	20,080	7	2,420
$50,000	$60,000	75	67	26,820	23,980	8	2,840
$60,000	$70,000	78	70	34,320	30,680	8	3,640
$70,000	$80,000	81	72	42,120	37,680	9	4,440
$80,000	$90,000	84	76	50,220	44,880	8	5,340
$90,000	$100,000	87	78	58,620	52,480	9	6,140
$100,000	$150,000	89	79.5	67,320	60,280	9.5	7,040
$150,000	$200,000	90	81	111,820	100,030	9	11,790
$200,000		91	81.5	156,820	140,530	9.5	16,290

TABLE 3.—*Comparison of individual income-tax burden on specified net income under present law and under the committee bill.*

SINGLE PERSON, NO DEPENDENTS.

Net income before personal exemption.	Income tax burden.		Effective tax rate (per cent).		Reduction under committee bill.	
	Present law.	Committee bill.	Present law.	Committee bill.	Amount.	Per cent.
$500						
$600	$23.00	$19.00	3.83	3.17	$4.00	17.39
$700	46.00	38.00	6.57	5.43	8.00	17.39
$750	57.50	47.50	7.67	6.33	10.00	17.39
$800	69.00	57.00	8.62	7.12	12.00	17.39
$900	92.00	76.00	10.22	8.44	16.00	17.39
$1,000	115.00	95.00	11.50	9.50	20.00	17.39
$1,200	161.00	133.00	13.42	11.08	28.00	17.39
$1,500	230.00	190.00	15.33	12.67	40.00	17.39
$1,800	299.00	247.00	16.61	13.72	52.00	17.39
$2,000	345.00	285.00	17.25	14.25	60.00	17.39
$2,500	460.00	380.00	18.40	15.20	80.00	17.39
$3,000	585.00	485.00	19.50	16.17	106.00	17.09
$4,000	835.00	695.00	20.87	17.37	140.00	16.77
$5,000	1,105.00	925.00	22.10	18.50	180.00	16.29
$6,000	1,395.00	1,175.00	23.25	19.58	220.00	15.77
$7,000	1,705.00	1,445.00	24.36	20.64	260.00	15.25
$8,000	2,035.00	1,735.00	25.44	21.69	300.00	14.74
$9,000	2,385.00	2,045.00	26.50	22.72	340.00	14.26
$10,000	2,755.00	2,375.00	27.55	23.75	380.00	13.79
$11,000	3,145.00	2,725.00	28.59	24.77	420.00	13.35
$12,000	3,555.00	3,095.00	29.62	25.79	460.00	12.94
$13,000	3,990.00	3,490.00	30.69	26.85	500.00	12.53
$14,000	4,450.00	3,910.00	31.79	27.93	540.00	12.13
$15,000	4,930.00	4,350.00	32.87	29.00	580.00	11.76
$20,000	7,580.00	6,800.00	37.90	34.00	780.00	10.29
$25,000	10,590.00	9,520.00	42.36	38.08	1,070.00	10.10
$30,000	13,795.00	12,390.00	45.98	41.30	1,405.00	10.18
$40,000	20,580.00	18,475.00	51.45	46.19	2,105.00	10.23
$50,000	27,945.00	25,140.00	55.89	50.28	2,805.00	10.04
$60,000	35,730.00	32,130.00	59.55	53.55	3,600.00	10.08
$70,000	43,815.00	39,415.00	62.59	56.31	4,400.00	10.04
$80,000	52,200.00	46,905.00	65.25	58.63	5,295.00	10.14
$90,000	60,885.00	54,785.00	67.65	60.87	6,100.00	10.02
$100,000	69,870.00	62,875.00	69.87	62.87	6,995.00	10.01
$150,000	115,860.00	104,117.50	77.24	69.41	11,742.50	10.14
$200,000	162,355.00	146,110.00	81.18	73.05	16,245.00	10.01
$250,000	209,350.00	188,357.50	83.74	75.34	20,992.50	10.03
$300,000	256,350.00	230,607.50	85.45	76.87	25,742.50	10.04
$400,000	350,350.00	315,107.50	87.59	78.78	35,242.50	10.06
$500,000	444,350.00	399,607.50	88.87	79.92	44,742.50	10.07
$750,000	675,000.00	607,500.00	90.00	81.00	67,500.00	10.00
$1,000,000	900,000.00	810,000.00	90.00	81.00	90,000.00	10.00
$2,000,000	1,800,000.00	1,620,000.00	90.00	81.00	180,000.00	10.00
$5,000,000	4,500,000.00	4,050,000.00	90.00	81.00	450,000.00	10.00

TABLE 4.—*Comparison of individual income tax burden on specified net incomes under present law and under the committee bill.*

MARRIED PERSON, NO DEPENDENTS.

Net income before personal exemption.	Income tax burden.		Effective tax rate (per cent).		Reduction under committee bill.	
	Present law.	Committee bill.	Present law.	Committee bill.	Amount.	Per cent.
$600	$3.00	----------	0.50	----------	$3.00	100.00
$700	6.00	----------	.86	----------	6.00	100.00
$750	7.50	----------	1.00	----------	7.50	100.00
$800	9.00	----------	1.12	----------	9.00	100.00
$900	12.00	----------	1.33	----------	12.00	100.00
$1,000	15.00	----------	1.50	----------	15.00	100.00
$1,200	61.00	$38.00	5.08	3.17	23.00	37.70
$1,500	130.00	95.00	8.67	6.33	35.00	26.92
$1,800	199.00	152.00	11.06	8.44	47.00	23.62
$2,000	245.00	190.00	12.25	9.50	55.00	22.45
$2,500	360.00	285.00	14.40	11.40	75.00	20.83
$3,000	475.00	380.00	15.83	12.67	95.00	20.00
$4,000	725.00	590.00	18.12	14.75	135.00	18.62
$5,000	975.00	800.00	19.50	16.00	175.00	17.95
$6,000	1,265.00	1,050.00	21.08	17.50	215.00	17.00
$7,000	1,555.00	1,300.00	22.21	18.57	255.00	16.40
$8,000	885.00	1,590.00	23.56	19.87	295.00	15.65
$9,000	2,215.00	1,880.00	24.61	20.89	335.00	15.12
$10,000	2,585.00	2,210.00	25.85	22.10	375.00	14.51
$11,000	2,955.00	2,540.00	26.86	23.09	415.00	14.04
$12,000	3,365.00	2,910.00	28.04	24.25	455.00	13.52
$13,000	3,775.00	3,280.00	29.04	25.23	495.00	13.11
$14,000	4,235.00	3,700.00	30.25	26.43	535.00	12.63
$15,000	4,695.00	4,120.00	31.30	27.47	575.00	12.25
$20,000	7,315.00	6,540.00	36.57	32.70	775.00	10.59
$25,000	10,295.00	9,240.00	41.18	36.96	1,055.00	10.25
$30,000	13,485.00	12,100.00	44.95	40.33	1,385.00	10.27
$40,000	20,235.00	18,150.00	50.59	45.37	2,085.00	10.30
$50,000	27,585.00	24,800.00	55.17	49.60	2,785.00	10.10
$60,000	35,355.00	31,780.00	58.92	52.97	3,575.00	10.11
$70,000	43,425.00	39,050.00	62.04	55.79	4,375.00	10.07
$80,000	51,795.00	46,530.00	64.74	58.16	5,265.00	10.16
$90,000	60,465.00	54,390.00	67.18	60.43	6,075.00	10.05
$100,000	69,435.00	62,470.00	69.43	62.47	6,965.00	10.03
$150,000	115,415.00	103,705.00	76.94	69.14	11,710.00	10.15
$200,000	161,905.00	145,690.00	80.95	72.84	16,215.00	10.02
$250,000	208,895.00	187,935.00	83.56	75.17	20,960.00	10.03
$300,000	255,895.00	230,185.00	85.30	76.73	25,710.00	10.05
$400,000	349,895.00	314,685.00	87.47	78.67	35,210.00	10.06
$500,000	443,895.00	399,185.00	88.78	79.84	44,710.00	10.07
$750,000	675,000.00	607,500.00	90.00	81.00	67,500.00	10.00
$1,000,000	900,000.00	810,000.00	90.00	81.00	90,000.00	10.00
$2,000,000	1,800,000.00	1,620,000.00	90.00	81.00	180,000.00	10.00
$5,000,000	4,500,000.00	4,050,000.00	90.00	81.00	450,000.00	10.00

TABLE 5.—*Comparison of individual income tax burden on specified net incomes under present law and under the committee bill.*

MARRIED PERSON, 2 DEPENDENTS.

Net income before personal exemption.	Income tax burden.		Effective tax rate (per cent).		Reduction under committee bill.	
	Present law.	Committee bill.	Present law.	Committee bill.	Amount.	Per cent.
$600	$3.00		0.50		$3.00	100.00
$700	6.00		.86		6.00	100.00
$750	7.50		1.00		7.50	100.00
$800	9.00		1.12		9.00	100.00
$900	12.00		1.33		12.00	100.00
$1,000	15.00		1.50		15.00	100.00
$1,200	21.00		1.75		21.00	100.00
$1,500	30.00		2.00		30.00	100.00
$1,800	39.00		2.17		39.00	100.00
$2,000	45.00		2.25		45.00	100.00
$2,500	160.00	$95.00	6.40	3.80	65.00	40.62
$3,000	275.00	190.00	9.17	6.33	85.00	30.91
$4,000	505.00	380.00	12.62	9.50	125.00	24.75
$5,000	755.00	590.00	15.10	11.80	165.00	21.85
$6,000	1,005.00	800.00	16.75	13.33	205.00	20.40
$7,000	1,295.00	1,050.00	18.50	15.00	245.00	18.92
$8,000	1,585.00	1,300.00	19.81	16.25	285.00	17.98
$9,000	1,915.00	1,590.00	21.28	17.67	325.00	16.97
$10,000	2,245.00	1,880.00	22.45	18.80	365.00	16.26
$11,000	2,615.00	2,210.00	23.77	20.09	405.00	15.49
$12,000	2,985.00	2,540.00	24.87	21.17	445.00	14.91
$13,000	3,395.00	2,910.00	26.12	22.38	485.00	14.29
$14,000	3,805.00	3,280.00	27.18	23.43	525.00	13.80
$15,000	4,265.00	3,700.00	28.43	24.67	565.00	13.25
$20,000	6,785.00	6,020.00	33.92	30.10	765.00	11.27
$25,000	9,705.00	8,680.00	38.82	34.72	1,025.00	10.56
$30,000	12,865.00	11,520.00	42.88	38.40	1,345.00	10.45
$40,000	19,545.00	17,500.00	48.86	43.75	2,045.00	10.46
$50,000	26,865.00	24,120.00	53.73	48.24	2,745.00	10.22
$60,000	34,605.00	31,080.00	57.67	51.80	3,525.00	10.19
$70,000	42,645.00	38,320.00	60.92	54.74	4,325.00	10.14
$80,000	50,985.00	45,780.00	63.73	57.22	5,205.00	10.21
$90,000	59,625.00	53,600.00	66.25	59.56	6,025.00	10.10
$100,000	68,565.00	61,660.00	68.56	61.66	6,905.00	10.07
$150,000	114,525.00	102,880.00	76.35	68.59	11,645.00	10.17
$200,000	161,005.00	144,850.00	80.50	72.42	16,155.00	10.03
$250,000	207,985.00	187,090.00	83.19	74.84	20,895.00	10.05
$300,000	254,985.00	229,340.00	84.99	76.45	25,645.00	10.06
$400,000	348,985.00	313,840.00	87.25	78.46	35,145.00	10.07
$500,000	442,985.00	398,340.00	88.60	79.67	44,645.00	10.08
$750,000	675,000.00	607,500.00	90.00	81.00	67,500.00	10.00
$1,000,000	900,000.00	810,000.00	90.00	81.00	90,000.00	10.00
$2,000,000	1,800,000.00	1,620,000.00	90.00	81.00	180,000.00	10.00
$5,000,000	4,500,000.00	4,050,000.00	90.00	81.00	450,000.00	10.00

GENERAL DISCUSSION OF RECOMMENDED CORPORATE REDUCTIONS.

1. REDUCING AND REPEALING THE EXCESS-PROFITS TAX.

This bill sets the excess-profits tax rate at 60 per cent for the calendar year 1946 and repeals the entire excess-profits tax effective after December 31, 1946. It is estimated that the reduction of the excess-profits tax rate to 60 per cent for 1946 will reduce net excess-profits tax liabilities in that year by about 50 per cent, or by about $1,300,000. The remaining half of excess-profits tax liabilities will be removed for 1947 by the repeal of the tax in this bill as of the first of that year.

The way in which the 60 per cent rate for 1946 will reduce excess-profits tax liabilities by one-half can be shown as follows: The present credit which, as a result of the Tax Adjustment Act of 1945 (approved July 31, 1945 [page 532, this Bulletin]), can be taken currently. Thus the net excess-profits tax rate is 85½ per cent. In addition to this, however, there is an over-all corporate income and excess-profits tax limitation in present law of 80 per cent with a credit of 10 per cent of the excess-profits tax portion. This has resulted in an over-all effective excess-profits tax rate for all corporations taken together of close to 80 per cent. Since profits taxed under the excess-profits tax would be subject to the corporate normal tax and surtax rates of 40 per cent if there were no

excess-profits tax, these profits are in effect only subject to an over-all additional tax of about 40 per cent as the result of the excess-profits tax. Thus a 50 per cent reduction in this additional tax would reduce the excess-profits tax by about 20 percentage points below the present over-all effective excess-profits tax rate of about 80 per cent, or would reduce the excess-profits tax to the 60 per cent proposed by this bill for 1946. There is, of course, no 10 per cent credit against the tax at the 60 per cent rate.

Although your committee recognizes the desirability of having no excess-profits tax in our peacetime tax structure, as indicated by the proposed repeal of the excess-profits tax as of the first of 1947, it did not believe that the complete elimination of the excess-profits tax for 1946 was as desirable as the reduction of other corporate taxes which affect all corporations with taxable income. It should also be noted that the continuation of the excess-profits tax for 1946 automatically makes the unused excess-profits credit carry-back available from 1946 to 1944 and 1945. This should especially aid those firms which are faced with a difficult reconversion problem.

Your committee also decided that the need of railroads and certain other industries for an extension of the unused excess-profits credit carry-back one year beyond the repeal of the excess-profits tax presents a problem of sufficient importance to merit special consideration in the next tax bill.

2. REDUCING CORPORATE SURTAX RATES BY 4 PERCENTAGE POINTS.

The corporate surtax rates under this bill are reduced 4 percentage points, effective after December 31, 1945. This reduces the present combined normal tax and surtax rate of 40 per cent on corporations with net incomes of $50,000 and over to 36 per cent. For corporations with net incomes of less than $50,000, it also reduces each of the rates 4 percentage points. For example, the bill provides a combined normal tax and surtax rate of 21 per cent on the first $5,000 of income instead of the present 25 per cent rate. The reduction of 4 percentage points for corporations with income over $50,000 represents a 10 per cent tax reduction. For corporations with income under $50,000 it represents a tax reduction ranging from 10 per cent to 16 per cent—the greatest tax reductions going to corporations with the smallest incomes. The estimated revenue loss in 1946 from this proposal is about $400,000,000.

Your committee believes that the reduction in the corporate surtax rate is desirable for the following reasons:

(1) Many corporations not subject to the excess-profits tax during the war will face problems of readjustment from a wartime to a peacetime economy and thus will be in need of tax relief. The proposed reduction in the corporate income tax grants relief to all of these corporations with taxable income.

(2) Corporate income-tax rates have been raised during the war period from a top rate of 24 per cent in 1941 to the present rate of 40 per cent. Thus the excess-profits tax is not the only "war imposed" corporate tax and should not be the only one reduced.

(3) Only about 20,000 corporations are expected to have income subject to the excess-profits tax in 1946 out of a total of about 260,000 corporations expected to have taxable income. Thus, if the excess-profits tax were eliminated in 1946 instead of the proposed reduction in both this tax and the corporate income tax, less than 8 per cent of all corporations with taxable income would be given tax relief. Since it is believed to be especially desirable to stimulate new and small businesses, it would seem desirable to grant all of them with taxable income, part of any tax relief given in 1946.

3. REPEALING THE CAPITAL STOCK AND DECLARED VALUE EXCESS-PROFITS TAXES.

Under this bill, the capital stock tax is repealed beginning with the capital stock tax payable on July 31, 1946, and the declared value excess-profits tax with respect to related years is also repealed. The capital stock tax is payable in July of each year and is imposed on the value declared by the corporation. It is presumably determined in accordance with estimates of income to be earned in the current taxable year, since the declared value excess-profits tax is levied on the amount of income in excess of a specified ratio of the declared value of the capital stock. The estimated loss in 1946 from the repeal of these two taxes will be $180,000.

Repeal of these taxes would simplify the corporate tax structure, since one return would be eliminated and the present income-tax return somewhat condensed.

Your committee believes that 1946 would be an especially appropriate time to repeal these taxes because the transition period will be a more than usually difficult time in which to predict corporate income and thus the operation of these taxes will be more erratic than usual in 1946.

TABLE 6.—*A comparison of the present corporate tax structure with changes which would be made by the committee bill.*

A. INCOME TAX.

	Present law.	Committee bill.
I. Normal tax:		
(*a*) Corporations with normal tax net incomes of not more than $50,000—		
First $5,000	15 per cent	No change.
$5,000 to $20,000	17 per cent	No change.
$20,000 to $25,000	19 per cent	No change.
$25,000 to $50,000	31 per cent	No change.
(*b*) Corporations with normal tax net incomes over $50,000	24 per cent	No change.
II. Surtax:		
(*a*) Corporations with surtax net incomes of not more than $50,000—		
First $25,000	10 per cent	6 per cent.
$25,000 to $50,000	22 per cent	18 per cent
(*b*) Corporations with surtax net incomes over $50,000	16 per cent	12 per cent.
(*c*) Consolidated returns: Consolidated surtax net incomes, additional.	2 per cent	No change.

B. EXCESS-PROFITS TAX.

(*a*) Net rate payable	85½ per cent	60 per cent.	Repealed Jan. 1 1947.
(*b*) Over-all income and excess profits tax limited to	80 per cent of surtax net income.	No limitation.	

C. CAPITAL STOCK AND DECLARED VALUE EXCESS-PROFITS TAXES.

(*a*) Capital stock tax	$1.25 for each $1,000.	Repealed.
(*b*) Declared value excess-profits tax:		
Portion of net income from 10 to 15 per cent of declared value	6.6 per cent	Repealed.
Portion of net income in excess of 15 per cent of declared value	13.2 per cent	Repealed.

GENERAL DISCUSSION OF RECOMMENDED EXCISE TAX REDUCTIONS.

1. REDUCING WARTIME EXCISE TAX RATES.

The excise "war tax rates" under the committee bill are reduced to the 1942 rates, effective July 1, 1946. These are the "war tax rates" imposed by Title III of the Revenue Act of 1943. One excise tax, the luggage tax, would continue to be a retail excise tax instead of reverting to a manufacturers' excise tax as it was in 1942. The tax rate in this case, however, would be returned to the 1942 level of 10 per cent although continued on the retail sale values rather than on manufacturers' sale values. The estimated tax liability loss in 1946 arising from the excise tax rate reductions has been estimated at about $540,000,000 for the half of the year in which the reductions would be effective.

The Revenue Act of 1943, in enacting the temporary increases in the excise tax rates, provided that the additional wartime increase would be removed approximately six months after the termination of hostilities in the present war. Your committee believes that it is preferable to fix a specific date for the removal of these additional rates so that both the consumers and businesses involved would have advance knowledge of the termination date. Your committee also believes that it is desirable to assure the removal of these wartime rates in 1946, when the purchasing power of many workers will necessarily be impaired due to readjustments arising from shifts from wartime to peacetime employment. The luggage tax is retained as a retailers' tax rather than being returned to a manufacturers' tax because it is believed that it will be easier administratively

to collect this tax from the retailer who also pays similar excise taxes on many other closely related articles whose classification is not always distinguishable from luggage.

The changes in wartime excise tax rates which would be made in this bill are shown in table 7.

2. REFUNDING WARTIME EXCISE TAXES ON FLOOR STOCKS.

Your committee bill provides tax refunds of the additional wartime excise taxes on all floor stocks of distilled spirits, wines, and fermented malt liquors held for sale or use in production on the effective date of the wartime excise tax rate increases to special taxes which were the equivalent of the additional war rates. This bill now reverses this process and provides refunds on floor stocks held at the time of the repeal of the wartime rates. In view of the substantial tax reduction, particularly in the case of distilled spirits, your committee believes that this is necessary to avoid subjecting retailers and manufacturers involved to an unfair tax burden. Not to do so might result in substantial inequity, since those holding such floor stocks on which the wartime rates had been paid might be forced to reduce their prices on such stocks and thus absorb the war tax if in competition with others obtaining alcoholic beverages on which the additional wartime excise tax rate had not been paid. Therefore, refunds are granted in those cases where such price reductions actually are made.

Although no tax was imposed on floor stocks when the tax on electric light bulbs was increased, your committee believes that refunds on floor stocks of electric light bulbs are justified by reason of the differences in the trade practices of competitors.

TABLE 7.—*Comparison of war tax rates on excises with rates to be effective after June 30, 1946.*

Description of tax.	War tax rates.	New rates.
Admissions	1 cent for each 5 cents or major fraction thereof.	1 cent for each 10 cents or fraction thereof.
Permanent use or lease of boxes or seats	20 per cent	11 per cent.
Sales of tickets outside box office	20 per cent	11 per cent.
Cabarets, roof gardens, etc	20 per cent	5 per cent.
Dues or membership fees	20 per cent	11 per cent.
Initiation fees	20 per cent	11 per cent.
Jewelry	20 per cent	10 per cent.
Furs	20 per cent	10 per cent.
Toilet preparations	20 per cent	10 per cent.
Distilled spirits	$9 per gallon	$6 per gallon.
Imported perfumes containing distilled spirits.	$9 per gallon	$6 per gallon.
Still wines:		
(1) Not over 14 per cent of alcohol	15 cents per gallon	10 cents per gallon.
(2) Over 14 per cent and not over 21 per cent of alcohol.	60 cents per gallon	40 cents per gallon.
(3) Over 21 per cent and not over 24 per cent of alcohol.	$2 per gallon	$1 per gallon.
Sparkling wines, liqueurs, and cordials:		
(1) Champagne or sparkling wine	15 cents per half pint or fraction thereof.	10 cents per half pint or fraction thereof.
(2) Artificially carbonated wine	10 cents per half pint or fraction thereof.	5 cents per half pint or fraction thereof.
(3) Liqueurs, cordials, etc	10 cents per half pint or fraction thereof.	5 cents per half pint or fraction thereof.
Fermented malt liquors	$8 per barrel	$7 per barrel.
Billiard and pool tables and bowling alleys	$20 per year per table; $20 per year per alley.	$10 per year per table; $10 per year per alley.
Electric light bulbs and tubes	20 per cent	5 per cent.
Telephone, long-distance	25 per cent	20 per cent.
Domestic telegraph, cable, or radio dispatches.	25 per cent	15 per cent.
Leased wires, etc	25 per cent	15 per cent.
Wire and equipment service	8 per cent	5 per cent.
Local telephone service	15 per cent	10 per cent.
Transportation of persons	15 per cent	10 per cent.
Seats, berths, etc	15 per cent	10 per cent.
Luggage	20 per cent of retail sales price	10 per cent of retail sales price.

3. REPEALING THE TAX ON THE USE OF MOTOR VEHICLES AND BOATS.

The tax on the use of motor vehicles and boats is repealed under your committee bill, effective July 1, 1946. The next use tax is due at that time. The tax is an annual stamp tax of $5 on the use of automobiles and a stamp tax of from $5 to $200 on the use of certain boats, the tax in the latter case varying with the size of the boat. The estimated revenue loss in 1946 from the repeal of this tax is $140,000,000.

The use tax was first enacted in the Revenue Act of 1941 and was intended primarily as a source of revenue during the emergency and war period. With the war ended, the reason for retaining the tax no longer exists. Therefore your committee believes that the tax should be discontinued.

GENERAL DISCUSSION OF RECOMMENDED EMPLOYMENT TAX LEGISLATION.

Under your committee bill, employment taxes levied on employers and employees, to finance the old-age and survivors insurance program, are continued through 1946 at the present rate of 1 per cent on wages paid by employers and 1 per cent on wages received by employees. Present law provides that the rates on each of these groups be increased to 2½ per cent effective January 1, 1946.

Your committee at the present time, with the aid of a group of experts, is studying the social security program, particularly with reference to its financing. It is believed that it would be desirable to await the completion of this study before making any changes in employment tax rates.

GENERAL DISCUSSION OF OTHER PROPOSED CHANGES.

1. DETERMINING EFFECT OF PROPOSED TAX REDUCTIONS ON INDIVIDUALS AND CORPORATIONS USING FISCAL YEARS.

All of the proposed tax reductions in the individual income tax as well as the changes proposed in the excess-profits tax (both the rate reduction in 1946 and the repeal in 1947) and the corporate income tax require special legislation for individuals or corporations on a fiscal-year rather than a calendar-year basis. Your committee bill provides that fiscal-year taxpayers be allowed a pro rata portion of any tax reduction, determined by the portion of their taxable year falling in the calendar year in which the tax reductions become effective. A similar pro rata basis would be used to determine any unused excess-profits credit carry-back available to a fiscal-year taxpayer with respect to any fiscal year beginning in calendar year 1946 and ending in calendar year 1947.

2. EXTENDING FEDERAL GOVERNMENT EXEMPTIONS FROM CERTAIN FEDERAL EXCISE TAXES.

This bill provides for the continuation of the authority of the Secretary of the Treasury to exempt from certain Federal excise taxes any articles or services to be purchased for the exclusive use of the United States, if the Secretary determines that the imposition of the tax with respect to such articles or services will cause substantial burden and expense which can be avoided by tax exemption. The Secretary's power, under present law, to make such exemptions expires six months after the cessation of hostilities.

DETAILED DISCUSSION OF THE TECHNICAL PROVISIONS OF THE BILL.

TITLE I—INCOME AND EXCESS-PROFITS TAX.

PART I—INDIVIDUAL INCOME TAXES.

SECTION 101. REDUCTION IN SURTAX ON INDIVIDUALS.

Under the bill reported by your committee, the surtax rates for individuals range from 16 per cent to 81.5 per cent, as compared with rates of 20 per cent to 91 per cent under existing law. The rates applicable to the surtax brackets from $2,000 through $20,000 have been reduced 4 percentage points; the rates applicable to the higher brackets have been reduced by amounts varying from 6 to 9.5 percentage points. The new schedule of rates results in a reduction of at least 10 per cent in the total normal tax and surtax rates on ordinary income of all on all individuals with net incomes below about $650,000.

Subsection (b) of this section of the bill amends section 12(g) of the Code, which limits the present aggregate normal tax and surtax to 90 per cent of the net income of the taxpayer. This 90 per cent limitation is decreased to 81 per cent of the net income of the taxpayer. In general, this over-all limitation comes into play where the net income approximates $650,000.

The reduced rates provided by this section will be applicable to taxable years beginning after December 31, 1945. Special provision for fiscal years beginning in 1945 and ending in 1946 is made in section 131(a) of the bill.

SECTION 102. ALLOWANCE OF SAME EXEMPTIONS FOR NORMAL TAX AS FOR SURTAX.

Under existing law, section 25(a)(3) provides a single exemption of $500 for normal tax purposes, except that in the case of a joint return of a husband and wife, each having adjusted gross income of $500 or more, the normal tax exemption is $1,000. If a joint return is filed by husband and wife, one of whom has an adjusted gross income of less than $500, the normal tax exemption is $500 plus the adjusted gross income of such spouse. For surtax purposes, the taxpayer is entitled to exemptions in the amount of $500 for himself, $500 for his spouse if a joint return is filed or if a separate return is filed and the spouse has no gross income and is not the dependent of another, and $500 for each dependent whose gross income is less than $500.

Subsection (a) of this section of the bill would revise section 25(b) of the Code to make the present exemptions now allowable in computing the surtax also available as credits against net income for the purpose of the normal tax. Subsection (b) contains 11 technical amendments necessitated by the change in the exemptions for normal tax purposes. These amendments conform sections 11, relating to normal tax on individuals, 23(x), relating to the deduction for medical expenses, 25(a)(3), relating to normal tax exemptions, 47(e), relating to the reduction of credits against net income in the case of returns for a fractional part of a year under section 146(a)(1), 58(a)(1), relating to requirement for declaration of estimated tax, 143(a)(2), relating to withholding of tax at source on tax-free covenant bond interest, 163(a)(1), relating to credits of estate and trusts, 214, relating to credits against net income in the case of nonresident aliens, 215(b), relating to allowance of credits in the case of nonresident aliens where tax is withheld at source, 251(f), relating to credits against net income in the case of citizens entitled to the benefits of section 251, and 401, relating to exemptions for the purposes of the tax imposed under Supplement T.

The amendments made by this section shall be applicable to taxable years beginning after December 31, 1945. Special provision is made in section 131(a) of the bill for taxable years beginning in 1945 and ending in 1946.

SECTION 103. INDIVIDUALS WITH ADJUSTED GROSS INCOMES OF LESS THAN $5,000.

This section amends the tax table contained in section 400 of the Code, relating to the optional tax on individuals with adjusted gross incomes of less than $5,000. The schedule of taxes imposed thereunder has been revised to give effect to the reduced rates in the surtax as provided by section 101 of the bill and to the increase in the exemptions for the purpose of the normal tax as made by section 102 of the bill. The new table of taxes would become effective for taxable years beginning after December 31, 1945. Special provision is made in section 131(a) of the bill for taxable years beginning in 1945 and ending in 1946.

SECTION 104. REDUCTION IN WITHHOLDING OF TAX AT SOURCE ON WAGES.

Section 1622(a) of existing law requires the use of three different percentage rates in computing the amount of tax to be withheld at the source, if the employer elects to use the percentage method in lieu of the wage-bracket tables provided in section 1622(c). The several rates are necessary in order to compute the appropriate amount of tax to be withheld in respect of the normal tax and the first and second brackets of the surtax. The rates provided under existing law for such purpose are 2.7 per cent, 18 per cent, and 19.8 per cent, respectively. The separate rate for computing the amount of tax to be withheld in respect of the normal tax is occasioned by the difference in the exemptions provided in section 25 for normal tax and for surtax purposes. As a

result of the amendment contained in section 102 of the bill which makes the present surtax exemptions available for normal tax purposes, it is possible to eliminate the 2.7 per cent rate entirely and to combine the normal tax with the surtax rates. The two rates now corresponding to the first and second surtax bracket rates are revised to reflect the amendment contained in section 101 of the bill reducing the surtax rates. Accordingly, subsection (a) of this section amends section 1622(a) by eliminating the 2.7 per cent rate and by reducing the 18 per cent and 19.8 per cent rates to 17 per cent and 19 per cent, respectively. These rates take into consideration the standard deduction of approximately 10 per cent. A technical amendment is also made to conform the percentage method withholding table to the new rate applicable to the first surtax bracket.

Subsection (b) of this section substitutes for the present withholding tax tables under section 1622(c)(1) new tax tables which reflect the changes made with respect to the surtax rates in section 101 of the bill and with respect to the normal tax exemptions in section 102 of the bill.

Subsection (c) is a technical amendment to section 1622(h)(1)(C) to conform the reference to exemptions in the case of dependents to the changes made by section 102 of the bill.

The amendments made by this section of the bill are made applicable to wages paid on or after January 1, 1946.

PART II—CORPORATION TAXES.

SECTION 121. DECREASE IN CORPORATION SURTAX.

This section of the bill amends section 15(b) of the Code, relating to the surtax on corporations, section 207(a) of the Code, relating to certain mutual insurance companies, and section 362(b)(4) of the Code, relating to regulated investment companies.

The amendments made by this section are designed to effectuate a reduction of 4 percentage points in the surtax on corporations, except in the case of Western Hemisphere trade corporations, which are exempt from surtax, and foreign corporations not engaged in trade or business within the United States, which are subject to a special tax under section 231(a) of the Code.

In the case of the surtax imposed by section 15(b) of the Code, the amendments made by subsection (a) reduce the surtax rate upon surtax net incomes not over $25,000, from 10 to 6 per cent, upon surtax net incomes over $25,000 but not over $50,000 from 22 to 18 per cent, and upon surtax net incomes over $50,000 from 16 to 12 per cent. In the case of regulated investment companies, subsection (c) reduces the surtax rate under section 362(b)(4) of the Code from 16 to 12 per cent.

Under existing law mutual insurance companies subject to the surtax imposed by section 207(a)(1)(B) are not taxable if their corporation surtax net income is not over $3,000, and are subject to an alternative surtax rate of 20 per cent, in lieu of the rate prescribed by section 15(b), of the Code on the portion of their surtax net income over $3,000 and not over $6,000. Also, under existing law, mutual insurance companies which are interinsurers or reciprocal underwriters subject to the tax imposed by section 207(a)(3)(B) are not taxable if their corporation surtax net income is not over $50,000, and are subject to an alternative surtax rate of 32 per cent, in lieu of the rate prescribed by section 15(b) of the Code, on the portion of their surtax net income over $50,000 and not over $100,000. In order to maintain the breaking points for the alternative taxes at $6,000 and $100,000, respectively, the 20 per cent rate is reduced to 12 per cent and the 32 per cent rate to 24 per cent.

The amendments made by this section are applicable to taxable years beginning after December 31, 1945. Under section 131(a) of the bill, special treatment is prescribed in the case of taxable years beginning in 1945 and ending in 1946. However, the fiscal year provision in section 131(a) has no application to mutual insurance companies to which subsection (b), applies, or to regulated investment companies to which subsection (c) applies.

SECTION 122. REDUCTION IN EXCESS-PROFITS TAX FOR 1946.

This section amends section 710(a)(1) of the Code, imposing the excess-profits tax, and repeals section 710(a)(5), permitting deferment of tax in cases of abnormality, and section 784 of the Code, providing a 10 per cent credit against

excess profits tax. It also makes certain technical amendments necessitated by these changes.

Under existing law, section 710(a)(1) of the Code imposes an excess profits tax of 95 per cent upon adjusted excess profits net income, or with certain qualifications, a tax which when added to the tax imposed for the taxable year under Chapter 1 equals 80 per cent of the corporation surtax net income. Under the amendment made by subsection (a) of this section a tax of 60 per cent of the adjusted excess profits net income is imposed in lieu of the 95 per cent rate and in lieu of the 80 per cent limitation.

Under existing law, section 710(a)(5) of the Code permits a taxpayer to defer payment of a portion of the excess profits tax in certain instances where the taxpayer is claiming relief under section 722 of the Code. In view of the reduction of the excess profits tax rate to 60 per cent, the reasons for this deferment privilege have largely ceased to be operative and accordingly the provision is repealed by paragraph (1) of subsection (b) of this section. Paragraph (2) of subsection (b) eliminates a cross-reference to section 710(a)(5) in section 722(d) of the Code.

Under existing law, section 784 of the Code provides a 10 per cent credit against excess profits tax. Your committee intends that the 60 per cent excess profits tax rate under the amendment made by subsection (a) shall be a net rate, and accordingly section 784 of the Code is repealed by subsection (c).

Subsection (d) makes technical amendments to section 26(e) of the Code relating to the credit for income subject to excess profits tax, to conform section 26(e) to the new rate of 60 per cent and to strike out reference to the 80 per cent limitation.

The amendments and repeals made by this section are applicable to taxable years beginning after December 31, 1945. Special treatment is prescribed by section 131 of the bill in the case of taxable years beginning in 1945 and ending in 1946. With respect to the repeal of section 710(a)(5) of the Code by subsection (b), a taxpayer with a fiscal year beginning in 1945 and ending in 1946 will apply section 710(a)(5) to its final tax computed as prescribed in section 710(a)(7) of the Code, added by section 131(b). Section 123 of the bill deals with repeal of the excess-profits tax for taxable years beginning after December 31, 1946.

SECTION 123. REPEAL OF EXCESS PROFITS TAX IN 1947.

Section 123(a) of the bill repeals Subchapter E of Chapter 2 of the Code, relating to the excess profits tax, with respect to taxable years beginning after December 31, 1946. Except as noted below with respect to taxable years beginning in 1946 and ending in 1947, such repeal, however, is to have no effect whatsoever with respect to taxable years beginning prior to January 1, 1947. Any liability, penalty, or interest which accrues under Subchapter E of Chapter 2 with respect to a taxable year beginning prior to January 1, 1947, shall be unaffected by such repeal, and any proceeding necessary to enforce such liability, penalty, or interest may be instituted at any time within the applicable period of limitation as if Subchapter E of Chapter 2 had not been repealed. Provision is made under section 131(b)(1) of the bill for the excess profits tax in the case of taxable years beginning in 1946 and ending in 1947.

Subsection (b) of section 123 makes certain technical amendments with respect to taxable years beginning after December 31, 1946, to conform other provisions of the Code to the repeal of the excess profits tax with respect to such taxable years. Section 26(e) of the Code, relating to the credit for income subject to excess profits tax, is repealed. Sections 13(a)(2), 15(a), 26(b), 102(d)(1), 131(b), and 204(a)(2) of the Code, relating, respectively, to the definition of normal tax net income, the definition of corporation surtax net income, the credit for dividends received, the definition of section 102 net income, the limitation on the foreign tax credit, and the definition of normal tax net income and corporation surtax net income of foreign insurance companies other than life or mutual and foreign mutual marine, are amended to conform to the repeal of the credit under section 26(e).

PART III—FISCAL YEAR TAXPAYERS.

SECTION 131. FISCAL YEAR TAXPAYERS.

The Code contains in section 108 special rules for the computation of the tax in the case of taxpayers making returns on a fiscal year basis. Section 131(a) of the bill amends section 108 of the Code by redesignating subsection (c) as subsection (e) and adding a new subsection (c) to provide for the computation of the

tax imposed by sections 11, 12, 13, 14, 15, and 400 in the case of taxable years beginning in 1945 and ending in 1946. It provides that in the case of a corporation or an individual the tax shall be an amount equal to the sum of (*a*) that portion of the tentative tax (computed as if the law applicable to taxable years beginning on January 1, 1945, were applicable to such taxable year) which the number of days in such taxable year prior to January 1, 1946, bears to the total number of days in such taxable year plus (*b*) that portion of a tentative tax (computed as if the law applicable to taxable years beginning on January 1, 1946, were applicable to such taxable year) which the number of days in such taxable year after December 31, 1945, bears to the total number of days in such taxable year.

This subsection of the bill also adds a new subsection (d) to section 108 of the Code to provide a similar rule for the computation in the case of corporations of the tax imposed by sections 13, 14, and 15 for taxable years beginning in 1946 and ending in 1947.

Section 131(b) adds new paragraph (7) to section 710(a) of the Code to provide for the computation of the excess profits tax in the case of taxable years beginning in 1945 and ending in 1946. The rule so provided is similar to that provided in section 710(a)(6) with respect to taxable years beginning in 1943 and ending in 1944.

Section 131(b) also adds new paragraph (8) to section 710(a) to provide for the computation of the excess profits tax for taxable years beginning in 1946 and ending in 1947. In view of the amendment made by section 123 of the bill repealing the excess profits tax with respect to taxable years beginning after December 31, 1946, paragraph (8) provides that the excess profits tax for such fiscal years shall be an amount equal to that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1946, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1947, bears to the total number of days in such taxable year.

The Tax Adjustment Act of 1945 increased the excess profits tax specific exemption from $10,000 to $25,000 for taxable years beginning after December 31, 1945, and provided a special rule for computing the exemption for taxable years beginning in 1945 and ending in 1946. In view of the amendment adding paragraph (7) to section 710(a) to provide for the computation of the tax for such fiscal years, this subsection contains technical amendments eliminating this special rule.

This subsection of the bill also amends section 710(c)(2) of the Code to provide that the unused excess profits credit for a taxable year beginning in 1946 and ending in 1947 shall be an amount which bears the same ratio to the unused excess profits credit for such taxable year otherwise allowable as the total number of days in such taxable year prior to January 1, 1947, bears to the total number of days in such taxable year.

TITLE II—REPEAL OF CAPITAL STOCK TAX AND DECLARED VALUE EXCESS PROFITS TAX.

SECTION 201. REPEAL OF CAPITAL STOCK TAX.

This section repeals Chapter 6 of the Code, which imposes the capital stock tax. This tax is applicable with respect to years ending June 30, and the repeal is effective with respect to years ending after June 30, 1945; in other words, the repeal is effective with respect to the year ending June 30, 1946, and succeeding years.

SECTION 202. REPEAL OF DECLARED VALUE EXCESS PROFITS TAX.

This section repeals Subchapter B of Chapter 2 of the Internal Revenue Code, which imposes the declared value excess-profits tax. The repeal is technical, since the tax applies only to corporations subject to capital stock tax, which tax is repealed by section 201. The declared value excess-profits tax is due with respect to the income tax taxable years ending after the close of the capital stock tax taxable year. The repeal of Subchapter B is accordingly made effective with respect to income tax taxable years ending after June 30, 1946, the first year with respect to which the repeal of the capital stock tax is effective.

TITLE III—EXCISE TAXES.

SECTION 301. TERMINATION OF WAR TAX RATES AFTER JUNE 30, 1946.

This section deals with the excise taxes imposed, or the rates of which were increased, by Chapter 9A, added to the Internal Revenue Code by section 302 of the Revenue Act of 1943.

Subsection (a) amends section 1650 of Chapter 9A so as to change and make more definite the period of applicability of the increased excise-tax rates imposed by section 1650. Under present law the increased rates become generally inapplicable on and after the 1st day of the first month which begins six months or more after the date of termination of hostilities. Under the amendment made by subsection (a) the war tax rates become generally inapplicable on and after July 1, 1946. The several war tax rates and the reduced rates are shown in table 7 in the general discussion of the excise tax reductions.

Subsections (b) and (c) of section 301 of the bill specially fix the dates of termination of particular war tax rates. Subsection (b) changes the date of termination of the war tax rates applicable with respect to billiard and pool tables and bowling alleys. Under section 302(b) of the Revenue Act of 1943, the war tax rates are effective through June 30 next following the 1st day of the first month which begins six months or more after the date of the termination of hostilities. Under the amendment the war tax rates continue through June 30, 1946, and thus are inapplicable on and after July 1, 1946.

Subsection (c)(1) makes the decreased rate of tax applicable with respect to cabaret charges apply at 10 a. m., prevailing local time, July 1, 1946.

Under subsection (c)(2) the reduction in the taxes imposed by section 3465(a)(1) with respect to telephone toll calls and telegraph, cable, or radio dispatches or messages is applicable to amounts paid for services rendered on or after July 1, 1946. The reduction in the taxes imposed by section 3465(a) (2) and (3) with respect to leased wires, wire-equipment service, and local telephone service are applicable with respect to amounts paid pursuant to bills rendered on or after the 1st day of August, 1946, for services for which no previous bill was rendered. Where bills rendered on or after the 1st day of August, 1946, include charges for services previously rendered, the reduced rates do not apply to such services as were rendered more than two months before such date.

Subsection (d)(1) amends section 1651(a) of Chapter 9A of the Internal Revenue Code to reduce from 20 per cent to 10 per cent the rate of the tax on luggage, etc., sold at retail. Subsection (d)(2) makes the retail tax permanent by repealing section 1654 of the Internal Revenue Code under which the tax terminates on or after the 1st day of the first month which begins six months or more after the date of termination of hostilities in the present war.

Subsection (d)(2) also repeals section 1655, which, for the purposes of Chapter 9A of the Internal Revenue Code, defines the term "date of termination of hostilities in the present war." This definition is rendered unnecessary by the amendments of the several sections of Chapter 9A made by the bill under which the duration of the taxes or tax rate increases imposed by Chapter 9A is no longer related to the termination of the war.

SECTION 302. REPEAL OF USE TAX ON MOTOR VEHICLES AND BOATS.

This section repeals Chapter 33A, added to the Internal Revenue Code by section 557 of the Revenue Act of 1941, taxing the use of motor vehicles and boats. The repeal is effective with respect to the period after June 30, 1946, so that the tax will be inapplicable with respect to the use of motor vehicles and boats on and after July 1, 1946.

SECTION 303. DRAW-BACK ON DISTILLED SPIRITS.

Section 303 amends section 309(b) of the Revenue Act of 1943, which fixed the rate of draw-back of tax on distilled spirits used for certain nonmedicinal purposes at $6 per proof gallon for the period beginning April 1, 1943, and ending on the 1st day of the first month which begins six months or more after the date of termination of hostilities in the present war. By the amendment made by section 303, the period during which the $6 rate is applicable runs to July 1, 1946.

SECTION 304. FLOOR STOCKS REFUNDS.

This section deals with the termination of the war tax rates applicable with respect to certain alcoholic liquors and electric light bulbs and tubes. It adds sections 1656 and 1657 to the Internal Revenue Code.

Section 1656, as added by this section, covers alcoholic liquors, including distilled spirits, imported perfumes containing distilled spirits, wines, including liqueurs and cordials, and fermented malt liquors. It provides for refund or credit (without interest) of the excess of the taxes (including floor stocks taxes) paid with respect to such liquors on account of the war tax rates over the taxes that would have been payable in the absence of the war tax rates. To be entitled to refund, the liquor must, on July 1, 1946, be held for sale or use in the manufacture or production of an article held for sale; the person so holding it must, prior to August 1, 1946, file claim for refund; and he must also make, keep, and file records as required, and must establish to the satisfaction of the Commissioner, with respect to each kind of article for which refund is claimed by him under this section, that after June 30, 1946, and before October 1, 1946, the price at which articles of such kind were sold (until a number equal at least to the number on hand on July 1, 1946, were sold) reflected, in such manner as the Commissioner may by regulations prescribe with the approval of the Secretary, the amount of the tax reduction. Under this section the Commissioner will be authorized, under regulations, to establish a system for making refunds where the benefit of the tax reduction is passed on to the consumer. The regulations may prescribe the method of arriving at the price at which the article was sold before the tax reduction. The regulations may also prescribe the method of ascertaining the reduced price reflecting the tax reduction, if a refund is to be allowed. Refund is not to be allowed under this section with respect to any article unless, with respect to all the articles of all the kinds as to which refund is claimed, the requirements of the section and the regulations are satisfied.

Section 1657 as added by this section provides for credit or refund of tax with respect to electric light bulbs held in floor stocks on July 1, 1946, and with respect to which the manufacturers' tax under section 3406(a)(10) was paid at the war tax rate. The amount of the credit or refund is determined by the difference between the war tax rate and the tax that would have been payable in the absence of the war tax rate; in other words, the new tax rate. The credit or refund is to be allowed only to the extent that the manufacturer has reimbursed the person holding the article in floor stock for the amount of war tax passed on to such person. The refund provision applies both to electric light bulbs held for sale on the effective date of the change in rate and bulbs held for use in the manufacture or production of an article intended for sale. No interest is allowable on such credit or refund, and claims are required to be filed prior to October 1, 1946. The Commissioner is authorized to prescribe necessary regulations, and no manufacturer or producer will be entitled to credit or refund unless he has in his possession such evidence respecting inventories of articles as to which he has made reimbursement of tax as the regulations prescribe.

SECTION 305. CONTINUATION OF POWER OF SECRETARY OF THE TREASURY TO AUTHORIZE GOVERNMENT EXEMPTION FROM CERTAIN EXCISE TAXES.

This section deals with the authority conferred by section 307(c) of the Revenue Act of 1943 upon the Secretary of the Treasury to authorize exemption from the taxes imposed by Chapter 19 of the Internal Revenue Code relating to retailers' excise taxes, Chapter 29 relating to manufacturers' excise and import taxes, and Chapter 30 relating to transportation and communications taxes, notwithstanding amendments of the Internal Revenue Code made by section 307 of such Act rendering certain exemptions for benefit of the United States, States, etc., inapplicable with respect to the United States. To make permanent the authority thus conferred upon the Secretary, section 305 of the bill strikes out the last sentence of section 307(c), which now makes the Secretary's authority inapplicable to any contract entered into on or after the 1st day of the first month which begins six months or more after the date of termination of hostilities in the present war. It was believed that administrative processes would be simplified if the person selling articles or rendering service to the United States paid over to the collector of internal revenue the taxes on such sales. The Secretary has authorized exemption in several exceptional situations where exemption was found to be administratively more efficient. It is administratively desirable

that the authority granted to the Secretary be continued. The authority, as continued, would also enable continued exemption to be granted, should it appear desirable, in the case of other governmental excise tax exemptions which will terminate at some period after the termination of hostilities, for example, the exemption from the tax imposed by section 3404.

TITLE IV—SOCIAL SECURITY TAXES.

SECTION 401. AUTOMATIC INCREASE IN 1946 RATE NOT TO APPLY.

This section postpones the increase in the rates of the taxes imposed by the Federal Insurance Contributions Act (Subchaper A of Chapter 9 of the Code). Under existing law, the rate of the income tax on employees imposed by section 1400 increases from 1 to 2½ per cent on January 1, 1946; and the rate of the excise tax on employers of one or more employees imposed by section 1410 also increases from 1 to 2½ per cent on such date. In the case of each such tax the amendment provides that the 1 per cent rate shall remain in force through the calendar year 1946, and that the 2½ per cent rate shall be applicable to wages paid and received during the calendar years 1947 and 1948.

TABLE 8.—*Estimated number of income recipients, number incurring surtax, and number incurring normal tax, together with their net income, surtax net income, normal tax base, net capital gains subject to alternative tax, surtax, normal tax, alternative tax, and total tax, under present law, as levels of income estimated for the calendar year 1946.*

[Money amounts in thousands of dollars.]

Net income class.	Number of income recipients.			Net income of—			Surtax net income.	Normal tax base.	Net capital gains subject to alternative tax.	Surtax.	Normal tax.	Alternative tax.	Total tax.
	All.	Incurring surtax.	Incurring normal tax.	All recipients.	Recipients incurring surtax.	Recipients incurring normal tax.							
0 to 1	15,897,200	7,074,309	10,812,700	9,741,201	5,469,491	8,356,843	1,932,336	2,946,915		386,467	88,408		474,875
1 to 2	23,548,700	16,476,251	23,548,700	34,310,173	23,777,392	34,310,173	10,973,320	22,524,182		2,194,663	675,724		2,870,387
2 to 3	8,813,580	7,632,556	8,813,580	21,144,039	18,412,696	21,144,039	8,201,826	16,733,113		1,642,217	501,995		2,144,212
3 to 4	2,778,160	2,713,092	2,778,160	9,487,606	9,270,773	9,487,606	5,265,939	8,096,656		1,067,971	242,900		1,310,871
4 to 5	1,162,360	1,158,868	1,162,360	5,131,106	5,102,467	5,131,106	3,410,138	4,548,772		706,434	136,464		842,898
Under 5	52,200,000	35,055,076	47,115,500	79,814,125	62,032,819	78,429,767	29,783,559	54,849,638		5,997,752	1,645,491		7,643,243
5 to 10	823,218	823,218	823,218	5,452,000	5,452,000	5,452,000	4,365,725	5,034,709		984,283	151,042		1,135,325
10 to 25	323,916	323,916	323,916	4,786,000	4,786,000	4,786,000	4,369,266	4,602,829	14,692	1,354,836	138,085	7,346	1,500,267
25 to 50	69,555	69,555	69,555	2,349,000	2,349,000	2,349,000	2,241,465	2,284,912	25,786	1,024,715	68,548	12,893	1,106,156
50 to 100	23,035	23,035	23,035	1,536,000	1,536,000	1,536,000	1,484,121	1,496,572	26,084	875,378	44,899	13,042	933,319
100 to 250	6,383	6,383	6,383	897,000	897,000	897,000	860,168	862,790	29,958	627,731	25,885	14,979	668,595
250 to 500	639	639	639	213,000	213,000	213,000	198,812	198,975	13,510	164,827	5,970	6,755	177,552
500 to 1,000	177	177	177	119,000	119,000	119,000	103,140	103,203	15,670	89,399	3,095	7,835	100,329
1,000 and over	49	49	49	90,798	90,798	90,798	69,593	69,589	21,162	62,096	2,087	10,581	74,764
Over 5	1,246,972	1,246,972	1,246,972	15,442,798	15,442,798	15,442,798	13,692,290	14,653,579	146,862	5,183,265	439,611	73,431	5,696,307
Grand total	53,446,972	36,302,048	48,362,472	95,256,923	77,475,617	93,872,565	43,475,849	69,503,217	146,862	11,181,017	2,085,102	73,431	13,339,550

Estimated percentage distributions in respect of number of income recipients, number incurring surtax, and number incurring normal tax, together with their net income, surtax net income, normal tax base, net capital gains subject to alternative tax, surtax, normal tax, alternative tax, and total tax, under present law, at levels of income estimated for the calendar year 1946.

Net income class ($000).	Number of income recipients.			Net income of—			Surtax net income.	Normal tax base.	Net capital gains subject to alternative tax.	Surtax.	Normal tax.	Alternative tax.	Total tax.
	All.	Incurring surtax.	Incurring normal tax.	All recipients.	Recipients incurring surtax.	Recipients incurring normal tax.							
	Simple percentage distribution.												
0 to 1	29.74	19.49	22.36	10.23	7.06	8.90	4.45	4.24	----------	3.46	4.24	----------	3.56
1 to 2	44.06	45.39	48.69	36.02	30.69	36.55	25.24	32.41	----------	19.63	32.41	----------	21.52
2 to 3	16.49	21.03	18.22	22.20	23.77	22.52	18.87	24.08	----------	14.69	24.08	----------	16.07
3 to 4	5.20	7.47	5.74	9.96	11.97	10.11	12.11	11.65	----------	9.55	11.65	----------	9.83
4 to 5	2.18	3.19	2.40	5.39	6.59	5.47	7.84	6.55	----------	6.32	6.55	----------	6.32
Under 5	97.67	96.57	97.42	83.79	80.07	83.55	68.51	78.92	----------	53.64	78.92	----------	57.30
5 to 10	1.54	2.27	1.70	5.72	7.04	5.81	10.04	7.24	----------	8.80	7.24	----------	8.51
10 to 25	.61	.89	.67	5.02	6.18	5.10	10.05	6.62	10.00	12.12	6.62	10.00	11.25
25 to 50	.13	.19	.14	2.47	3.03	2.50	5.16	3.29	17.56	9.17	3.29	17.56	8.29
50 to 100	.04	.06	.05	1.61	1.98	1.64	3.41	2.15	17.76	7.83	2.15	17.76	7.00
100 to 250	.01	.02	.01	.94	1.16	.96	1.98	1.24	20.40	5.61	1.24	20.40	5.01
250 to 500	(1)	(1)	(1)	.22	.28	.23	.46	.29	9.20	1.47	.29	9.20	1.33
500 to 1,000	(1)	(1)	(1)	.13	.15	.13	.24	.15	10.67	.80	.15	10.67	.75
1,000 and over	(1)	(1)	(1)	.10	.12	.10	.16	.10	14.41	.56	.10	14.41	.56
Over 5	2.33	3.44	2.58	16.21	19.93	16.45	31.49	21.08	100.00	46.36	21.08	100.00	42.70
Grand total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

[1] Less than 0.005 per cent.

Estimated percentage distributions in respect of number of income recipients, number incurring surtax, and number incurring normal tax, together with their net income, surtax net income, normal tax base, net capital gains subject to alternative tax, surtax, normal tax, alternative tax, and total tax, under present law, at levels of income estimated for the calendar year 1946—Continued.

Net income class ($000).	Number of income recipients.			Net income of—			Surtax net income.	Normal tax base.	Net capital gains subject to alternative tax.	Surtax.	Normal tax.	Alternative tax.	Total tax.
	All.	Incurring surtax.	Incurring normal tax.	All recipients.	Recipients incurring surtax.	Recipients incurring normal tax.							
	Percentage distribution, cumulated from smallest to largest net income classes.												
0 to 1	29.74	19.49	22.36	10.23	7.06	8.90	4.45	4.24		3.46	4.24		3.56
1 to 2	73.80	64.87	71.05	46.25	37.75	45.45	29.69	36.65		23.08	36.65		25.08
2 to 3	90.29	85.90	89.27	68.44	61.52	67.98	48.55	60.72		37.77	60.72		41.15
3 to 4	95.49	93.37	95.02	78.40	73.48	78.08	60.66	72.37		47.32	72.37		50.98
4 to 5	97.67	96.56	97.42	83.79	80.07	83.55	68.51	78.92		53.64	78.92		57.30
5 to 10	99.21	98.83	99.12	89.51	87.11	89.36	78.55	86.16		62.45	86.16		65.81
10 to 25	99.81	99.72	99.79	94.54	93.28	94.46	88.60	92.78	10.00	74.56	92.78	10.00	77.06
25 to 50	99.94	99.92	99.94	97.00	96.31	96.96	93.75	96.07	27.56	83.73	96.07	27.56	85.35
50 to 100	99.99	99.98	99.99	98.61	98.30	98.59	97.17	98.22	45.32	91.56	98.22	45.32	92.35
100 to 250	(2)	(2)	(2)	99.56	99.46	99.55	99.15	99.46	65.72	97.17	99.46	65.72	97.36
250 to 500	(2)	(2)	(2)	99.78	99.73	99.78	99.60	99.75	74.92	98.64	99.75	74.92	98.69
500 to 1,000	(2)	(2)	(2)	99.91	99.88	99.90	99.84	99.90	85.59	99.44	99.90	85.59	99.44
1,000 and over	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
	Percentage distribution, cumulated from largest to smallest net income classes.												
0 to 1	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00		100.00	100.00		100.00
1 to 2	70.26	80.51	77.64	89.77	92.94	91.10	95.56	95.76		96.54	95.76		96.44
2 to 3	26.20	35.13	28.95	53.76	62.25	54.55	70.32	63.35		76.92	63.35		74.92
3 to 4	9.71	14.10	10.73	31.56	38.49	32.02	51.45	39.28		62.23	39.28		58.85
4 to 5	4.51	6.63	4.98	21.60	26.52	21.92	39.34	27.63		52.68	27.63		49.02
5 to 10	2.33	3.44	2.58	16.21	19.93	16.45	31.49	21.08		46.36	21.08		42.70
10 to 25	.79	1.17	.88	10.49	12.90	10.64	21.45	13.84	100.00	37.55	13.84	100.00	34.19
25 to 50	.19	.28	.21	5.46	6.72	5.55	11.40	7.22	90.00	25.44	7.22	90.00	22.94
50 to 100	.06	.08	.06	3.00	3.69	3.04	6.25	3.93	72.44	16.27	3.93	72.44	14.65
100 to 250	.01	.02	.01	1.39	1.70	1.41	2.83	1.78	54.68	8.44	1.78	54.68	7.66
250 to 500	(1)	(1)	(1)	.44	.55	.45	.85	.53	34.28	2.83	.53	34.28	2.64
500 to 1,000	(1)	(1)	(1)	.22	.27	.22	.40	.25	25.08	1.36	.25	25.08	1.31
1,000 and over	(1)	(1)	(1)	.10	.12	.10	.16	.10	14.41	.56	.10	14.41	.56

[1] Less than 0.005 per cent.

[2] More than 99.995 per cent.

NOTE.—Figures are rounded and will not necessarily add to totals.

TABLE 9.—*Individual income tax as approved by the Ways and Means Committee: Estimated number of income recipients, number incurring tax liability,[1] their net income, surtax net income, normal tax base, net capital gains subject to alternative tax, surtax, normal tax, alternative tax, and total tax, at levels of income estimated for the calendar year 1946.*

[Money amounts in thousands of dollars.]

Net income class.	Number of income recipients.		Net income of—		Surtax net income.	Normal tax base.	Net capital gains subject to alternative tax.	Surtax.	Normal tax.	Alternative tax.	Total tax.
	All.	Incurring tax liability.[1]	All recipients.	Recipients incurring tax liability.							
0 to 1	15,897,200	7,074,309	9,741,201	5,469,491	1,932,336	1,929,994		309,173	57,900		367,073
1 to 2	23,548,700	16,476,251	34,310,173	23,777,392	10,973,320	10,965,143		1,755,709	328,954		2,084,663
2 to 3	8,813,580	7,632,556	21,144,039	18,412,696	8,201,826	8,198,222		1,314,140	245,947		1,560,087
3 to 4	2,778,160	2,713,092	9,487,606	9,270,773	5,265,939	5,264,113		857,826	157,923		1,015,749
4 to 5	1,162,360	1,158,868	5,131,106	5,102,467	3,410,138	3,408,988		571,523	102,270		673,793
Under 5	52,200,000	35,055,076	79,814,125	62,032,819	29,783,559	29,766,460		4,808,371	892,994		5,701,365
5 to 10	823,218	823,218	5,452,000	5,452,000	4,315,725	4,360,047		807,371	130,801		938,172
10 to 25	323,916	323,916	4,786,000	4,786,000	4,369,666	4,363,145	14,292	1,178,796	130,894	7,146	1,316,836
25 to 50	69,555	69,555	2,349,000	2,349,000	2,241,465	2,237,933	25,786	913,603	67,138	12,893	993,634
50 to 100	23,035	23,035	1,536,000	1,536,000	1,484,121	1,482,290	26,084	782,834	44,469	13,042	840,345
100 to 250	6,383	6,383	897,000	897,000	860,168	859,104	29,958	561,950	25,773	14,979	602,702
250 to 500	639	639	213,000	213,000	198,812	198,615	13,510	147,673	5,958	6,755	160,386
500 to 1,000	177	177	119,000	119,000	103,140	103,099	15,670	80,082	3,093	7,835	91,010
1,000 and over	49	49	90,798	90,798	69,593	69,571	21,162	55,617	2,087	10,581	68,285
Over 5	1,246,972	1,246,972	15,442,798	15,442,798	13,692,690	13,673,804	146,462	4,527,926	410,213	73,231	5,011,370
Grand total	53,446,972	36,302,048	95,256,923	77,475,617	43,476,249	43,440,264	146,462	9,336,297	1,303,207	73,231	10,712,735

[1] The number who incur surtax but not normal tax is negligible.

Individual income tax as approved by the Ways and Means Committee: Estimated percentage distributions in respect of number of income recipients, number incurring tax liability,[1] their net income, surtax net income, normal tax base, net capital gains subject to alternative tax, surtax, normal tax, alternative tax, and total tax, at levels of income estimated for the calendar year 1946.

Net income class ($000).	Number of income recipients.		Net income of—		Surtax net income.	Normal tax base.	Net capital gains subject to alternative tax.	Surtax.	Normal tax.	Alternative tax.	Total tax.
	All.	Incurring tax liability.[1]	All recipients.	Recipients incurring tax liability.							
	Simple percentage distribution.										
0–1	29.74	19.49	10.23	7.06	4.44	4.44	----------	3.31	4.44	----------	3.43
1–2	44.06	45.39	36.02	30.69	25.24	25.24	----------	18.81	25.24	----------	19.46
2–3	16.49	21.03	22.20	23.77	18.87	18.87	----------	14.08	18.87	----------	14.56
3–4	5.20	7.47	9.96	11.97	12.11	12.12	----------	9.19	12.12	----------	9.48
4–5	2.18	3.19	5.39	6.59	7.84	7.85	----------	6.12	7.85	----------	6.29
Under 5	97.67	96.57	83.79	80.07	68.51	68.52	----------	51.50	68.52	----------	53.22
5–10	1.54	2.27	5.72	7.04	10.04	10.04	----------	8.65	10.04	----------	8.76
10–25	.61	.89	5.02	6.18	10.05	10.04	9.76	12.63	10.04	9.76	12.29
25–50	.13	.19	2.47	3.03	5.16	5.15	17.61	9.79	5.15	17.61	9.28
50–100	.04	.06	1.61	1.98	3.41	3.41	17.81	8.38	3.41	17.81	7.84
100–250	.01	.02	.94	1.16	1.98	1.98	20.45	6.02	1.98	20.45	5.63
250–500	(2)	(2)	.22	.28	.46	.46	9.22	1.58	.46	9.22	1.50
500–1,000	(2)	(2)	.13	.15	.24	.24	10.70	.86	.24	10.70	.85
1,000 and over	(2)	(2)	.10	.12	.16	.16	14.45	.60	.16	14.45	.64
Over 5	2.33	3.44	16.21	19.93	31.49	31.48	100.00	48.50	31.48	100.00	46.78
Grand total	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
	Percentage distribution, cumulated from smallest to largest net income classes.										
0–1	29.74	19.49	10.23	7.06	4.44	4.44	----------	3.31	4.44	----------	3.43
1–2	73.80	64.87	46.25	37.75	29.68	29.68	----------	22.12	29.68	----------	22.89
2–3	90.29	85.90	68.44	61.52	48.55	48.56	----------	36.19	48.56	----------	37.45
3–4	95.49	93.37	78.40	73.48	60.66	60.68	----------	45.38	60.68	----------	46.93
4–5	97.67	96.56	83.79	80.07	68.51	68.52	----------	51.50	68.52	----------	53.22
5–10	99.21	98.83	89.51	87.11	78.55	78.56	----------	60.15	78.56	----------	61.98
10–25	99.81	99.72	94.54	93.28	88.60	88.60	9.76	72.78	88.60	9.76	74.27

25–50	99.94	99.92	97.00	96.31	93.75	93.76	27.36	82.56	93.76	27.36	83.55
50–100	99.99	99.98	98.61	98.30	97.17	97.17	45.17	90.95	97.17	45.17	91.39
100–250	(3)	(3)	99.56	99.46	99.15	99.15	65.63	96.96	99.15	65.63	97.02
250–500	(3)	(3)	99.78	99.73	99.60	99.60	74.85	98.55	99.60	74.85	98.51
500–1,000	(3)	(3)	99.91	99.88	99.84	99.84	85.55	99.40	99.84	85.55	99.36
1,000 and over	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
	Percentage distribution, cumulated from largest to smallest net income class.										
0–1	100.00	100.00	100.00	100.00	100.00	100.00	----------	100.00	100.00	----------	100.00
1–2	70.26	80.51	89.77	92.94	95.56	95.56	----------	96.69	95.56	----------	96.57
2–3	26.20	35.13	53.76	62.25	70.32	70.32	----------	77.88	70.32	----------	77.11
3–4	9.71	14.10	31.56	38.49	51.45	51.44	----------	63.81	51.44	----------	62.55
4–5	4.51	6.63	21.60	26.52	39.34	39.32	----------	54.62	39.32	----------	53.07
5–10	2.33	3.44	16.21	19.93	31.49	31.48	----------	48.50	31.48	----------	46.78
10–25	.79	1.17	10.49	12.90	21.45	21.44	100.00	39.85	21.44	100.00	38.02
25–50	.19	.28	5.46	6.72	11.40	11.40	90.24	27.22	11.40	90.24	25.73
50–100	.06	.08	3.00	3.69	6.25	6.24	72.64	17.44	6.24	72.64	16.45
100–250	.01	.02	1.39	1.70	2.83	2.83	54.83	9.05	2.83	54.83	8.61
250–500	(2)	(2)	.44	.55	.85	.85	34.37	3.04	.85	34.37	2.98
500–1,000	(2)	(2)	.22	.27	.40	.40	25.15	1.45	.40	25.15	1.49
1,000 and over	(2)	(2)	.10	.12	.16	.16	14.45	.60	.16	14.45	.64

[1] The number who incur surtax but not normal tax is negligible.
[2] Less than 0.005 per cent.
[3] More than 99.995 per cent.

NOTE.—Figures are rounded and will not necessarily add to totals.

TABLE 10.—*Tax burden under Supplement T of present law compared with that under committee bill.*

SINGLE PERSON WITH NO DEPENDENTS.

Adjusted gross income of individuals using the standard deduction.	Tax.		Effective rate (per cent).		Reduction over present law.	
	Present law.	Committee bill.	Present law.	Committee bill.	Amount.	Per cent.
$500	$0	$0	0	0	$0	0
$600	12	10	2.00	1.67	2	16.67
$700	32	27	4.57	3.86	5	15.63
$800	53	44	6.63	5.50	9	16.97
$900	74	61	8.22	6.78	13	17.57
$1,000	95	78	9.50	7.80	17	17.89
$1,100	115	95	10.45	8.64	20	17.39
$1,200	136	112	11.33	9.33	24	17.65
$1,300	157	129	12.08	9.92	28	17.83
$1,400	177	147	12.64	10.50	30	16.95
$1,500	198	164	13.20	10.93	34	17.17
$1,750	250	206	14.29	11.77	44	17.60
$2,000	302	249	15.10	12.45	53	17.55
$2,250	353	292	15.68	12.98	61	17.28
$2,500	405	335	16.20	13.40	70	17.33
$2,750	457	377	16.62	13.71	80	17.51
$3,000	516	427	17.20	14.23	89	17.25
$3,250	572	474	17.60	14.58	98	17.13
$3,500	628	521	17.94	14.89	107	17.04
$3,750	684	568	18.24	15.15	116	16.96
$4,000	741	616	18.53	15.40	125	16.87
$4,250	797	663	18.75	15.60	134	16.81
$4,500	853	710	18.96	15.78	143	16.76
$4,750	909	757	19.14	15.94	152	16.72

TABLE 11.—*Tax burden under Supplement T of present law compared with that under committee bill.*

MARRIED PERSON WITH NO DEPENDENTS.

Adjusted gross income of individuals using the standard deduction.	Tax.		Effective rate (per cent).		Reduction over present law.	
	Present law.[1]	Committee bill.	Present law.[1]	Committee bill.	Amount.	Per cent.
$500	$0	$0	0	0	$0	0
$600	2	0	.33	0	2	100.00
$700	4	0	.57	0	4	100.00
$800	7	0	.88	0	7	100.00
$900	10	0	1.11	0	10	100.00
$1,000	12	0	1.20	0	12	100.00
$1,100	15	0	1.36	0	15	100.00
$1,200	36	17	3.00	1.42	19	52.78
$1,300	57	34	4.38	2.62	23	40.35
$1,400	77	52	5.50	3.71	25	32.47
$1,500	98	69	6.53	4.60	29	29.59
$1,750	150	111	8.57	6.34	39	26.00
$2,000	202	154	10.10	7.70	48	23.76
$2,250	253	197	11.24	8.76	56	22.13
$2,500	305	240	12.20	9.60	65	21.31
$2,750	357	282	12.98	10.25	75	21.01
$3,000	411	327	13.70	10.90	84	20.44
$3,250	463	370	14.25	11.38	93	20.09
$3,500	518	416	14.80	11.89	102	19.69
$3,750	574	463	15.31	12.35	111	19.34
$4,000	631	511	15.78	12.78	120	19.02
$4,250	687	558	16.16	13.13	129	18.78
$4,500	743	605	16.51	13.44	138	18.57
$4,750	799	652	16.82	13.73	147	18.40

[1] Assumes only one spouse has income.

1945–22–12174

THE REVENUE BILL OF 1945.

[Senate Report No. 655, Seventy-ninth Congress, First Session. Calendar No. 658.]

[October 23 (legislative day, October 22), 1945.]

Mr. George, from the Committee on Finance, submitted the following report [to accompany H. R. 4309]:

The Committee on Finance, to whom was referred the bill (H. R. 4309) to reduce taxation, and for other purposes, having had the same under consideration, report favorably thereon, with certain amendments, and, as amended, recommend that the bill do pass.

GENERAL STATEMENT.

This bill has been designed to aid both individuals and businesses in the difficult period of transition from war to peace. Your committee concurs with the Ways and Means Committee of the House in believing that to accomplish this objective it is necessary to reduce the high wartime tax rates in order to provide incentives for business to expand and to increase consumer purchasing power. Certain expenditures necessary after the end of a war, however, will keep Federal revenue requirements at a high level during 1946 if a large deficit is to be avoided. Federal expenditures for the fiscal year 1946 have been estimated by the Bureau of the Budget at 66.4 billion dollars and the deficit for fiscal year 1946 at 30.4 billion dollars. Although Federal expenditures for the calendar year 1946 are expected to be much lower, it is anticipated that the deficit will still be sizable. In view of the probable extent of the deficit in 1946 it is necessary to limit the over-all reduction in taxes. Your committee believes that with only a limited tax reduction possible in 1946, attention should be directed toward removing or reducing those taxes which especially hamper the process of reconverting our economy from a war to a peace time basis.

SUMMARY OF CHANGES IN EXISTING LAW.

H. R. 4309, with the amendments proposed by your committee, makes the following changes in existing law:

INDIVIDUAL INCOME TAXES.

1. Your committee concurs with the House in making present surtax exemptions applicable to the normal tax. Accordingly, the normal tax exemption of $500 for each income recipient is replaced by exemptions of $500 each for the taxpayer, his spouse, and each of his dependents. This change will be effective on and after January 1, 1946.

2. The rate applicable to each surtax bracket is reduced by 3 percentage points, effective on and after January 1, 1946.

3. The combined normal tax and surtax as computed under the proposed exemptions and rates is reduced further by 5 per cent of the tax. Thus the combined normal tax and surtax rates begin, in effect, with a starting rate of 19 per cent and reach a top rate of 86.45 per cent. However, the present combined limit on normal tax and surtax of 90 per cent of net income is reduced to 85.5 per cent.

APPLICATION OF INDIVIDUAL INCOME TAXES TO MEMBERS OF THE ARMED FORCES.

1. All compensation received during any taxable year, beginning after December 31, 1940, and before the termination of the war, for service in the military or naval forces of the United States by an individual below the grade of a commissioned officer is excluded from income. All enlisted personnel would have no income-tax liability with respect to service pay, and would be relieved of filing returns, with respect to such pay.

2. The bill extends the time for paying taxes attributable to service pay of commissioned officers; the tax if so deferred, to be paid in 12 equal quarterly installments, without interest.

3. Similar extension of time for payment is provided in the case of taxes attributable to preservice earned income for 1940 or 1941, which became due after the taxpayer's entry into the service.

CORPORATE TAXES.

1. The excess-profits tax is repealed, effective January 1, 1946.

2. The 2-year carry-back of the unused excess-profits credit is extended for one

year beyond the date of the repeal of the excess-profits tax. Thus an unused excess-profits credit arising in 1946 may be carried back to reduce the excess-profits taxes of 1944 or 1945.

3. A new schedule of corporate normal tax and surtax rates and brackets is provided for small corporations with incomes under $60,000, effective on and after January 1, 1946. The rates and brackets are as follows:

Income.	Normal tax rate on income in bracket.	Surtax rate on income in bracket.	Combined normal tax and surtax rate on income in bracket.
	Per cent.	*Per cent.*	*Per cent.*
Not over $10,000	15	5	20
Over $10,000 but not over $20,000	18	9	27
Over $20,000 but not over $25,000	19	10	29
Over $25,000 but not over $60,000	29	22	51

4. Your committee concurs with the House in repealing the capital stock tax beginning with the tax payable on July 31, 1946, and the declared value excess-profits tax beginning with the related taxable year.

EXCISE TAXES.

1. With respect to the excise "war tax rates" your committee leaves untouched the provisions of existing law which provide that such rates will be reduced to the 1942 levels approximately six months after the termination of hostilities as proclaimed by the President or as specified in a concurrent resolution of Congress. However, when these excises are thus reduced, tax refunds to the extent of the excise tax rate reductions are to be made on floor stocks of distilled spirits, wines, fermented malt liquors, and electric light bulbs.

2. Your committee concurs with the House in repealing the tax on the use of motor vehicles and boats, effective July 1, 1946.

EMPLOYMENT TAXES.

1. Your committee concurs with the House in continuing the employment taxes for the old-age and survivors insurance program through 1946 at the present rate of 1 per cent on wages paid by employers and 1 per cent on wages received by employees, instead of increasing the rates in 1946, as provided by present law, to 2½ per cent for each of these groups.

SUMMARY OF ESTIMATED REVENUE EFFECT OF TAX REDUCTIONS.

Estimated tax liabilities for 1946 and 1947 under the present law, the House bill, and your committee's bill are shown in table 1. The tax liability reductions in 1946 and 1947 from present law arising from the House bill and from your committee's bill are shown in table 2. Total tax liabilities under your committee's bill for 1946 are estimated at $26,857,000,000—$5,633,000,000 less than under existing law, and $283,000,000 less than under the House bill.

If general economic conditions remain the same in 1947 as estimated for 1946, there would be no further tax reductions arising from your committee's bill. However, the tax liabilities under the House bill would be further decreased by $1,802,000,000. Thus, if the total reductions in tax liabilities in 1946 and 1947 are considered, the reduction under the House bill for the two years exceeds that under your committee's bill by $1,336,000,000. This does not take into consideration the possible automatic reduction in excise taxes under existing law in 1946 or 1947.

Of the $5,633,000,000 tax reduction arising from your committee's bill in 1946, $2,644,000,000 is attributable to reductions in the individual income taxes; $2,555,000,000, to the repeal of the excess-profits tax; $294,000,000 to the reduction of other corporate taxes; and $140,000,000 to the repeal of the use tax on motor vehicles and boats.

The additional loss in 1946 under your committee's bill over that of the House bill can be largely accounted for by the fact that your committee's bill repeals the excess-profits tax in 1946 whereas the House bill merely reduces the rate. If this were the only difference in the two bills, the loss under your committee's bill in 1946 would exceed that of the House bill by $1,255,000,000. However, nearly $1,000,000,000 of this amount is offset under your committee's bill by

smaller reductions in other corporate taxes and by not reducing wartime excise tax rates. Tax liability losses in 1946 attributable to the individual income tax are approximately the same under your committee's bill and the House bill.

The reduction in tax liabilities in the House bill in 1947 exceeds that of the bill of your committee by $1,619,000,000. This can be accounted for largely by the repeal of the excess-profits tax in 1947 under the House bill and by the full year effect of the reduction in wartime excise tax rates.

TABLE 1.—*Estimated tax liabilities under present law, under the House bill, and under the Finance Committee bill, calendar years 1946 and 1947.*[1]

[In millions of dollars.]

Source.	Estimated yields.					
	1946			1947 [1]		
	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.
1. Internal revenue:						
(1) Income, excess-profits, and capital stock taxes—						
(a) Corporation taxes [2]	9,054	7,166	6,205	9,054	5,610	6,205
(b) Individual income taxes	13,340	10,713	10,696	13,340	10,713	10,696
Total income, excess-profits, and capital stock taxes	22,394	17,879	16,901	22,394	16,323	16,901
(2) Miscellaneous internal revenue, excluding capital stock tax—						
(a) Excises subject to war tax rates—						
Liquor taxes—						
Distilled spirits	1,473	1,224	1,473	1,473	1,001	1,473
Fermented malt liquors	545	513	545	545	482	545
Wines	47	36	47	47	29	47
Total liquor taxes	2,065	1,773	2,065	2,065	1,512	2,065
Retailers' excise taxes—						
Jewelry, etc	201	153	201	201	102	201
Furs	90	65	90	90	46	90
Toilet preparations	79	61	79	79	40	79
Luggage, etc	62	47	62	62	32	62
Total retailers' excise taxes	432	326	432	432	220	432
Telephone, telegraph, radio, and cable facilities, etc	126	111	126	126	97	126
Local telephone service	128	107	128	128	87	128
Transportation of persons	188	160	188	188	128	188
Admissions	268	203	268	268	139	268
Electric light bulbs and tubes	14	10	14	14	4	14
Club dues and initiation fees	11	9	11	11	6	11
Bowling alleys, billiard and pool tables	4	2	4	4	2	4
Total excises subject to "war tax rates" [3]	3,236	2,701	3,236	3,236	2,195	3,236
(b) Use tax on motor vehicles and boats	140	-------	-------	140	-------	-------
(c) All other	2,978	2,978	2,978	2,978	2,978	2,978
Total miscellaneous internal revenue excluding capital stock tax	6,354	5,679	6,214	6,354	5,173	6,214
2. Employment taxes (net)	392	392	392	392	392	392
3. Customs	450	450	450	450	450	450
4. Miscellaneous receipts	2,900	2,900	2,900	2,900	2,900	2,900
Net receipts, general and special accounts	32,490	27,300	26,857	32,490	25,238	26,857
Refunds on floor stocks [4]	-------	160	-------	-------	-------	-------
Net receipts less refunds on floor stocks	32,490	27,140	26,857	32,490	25,238	26,857

[1] Assumes, for comparative purposes, the same general conditions in 1947 as in 1946.

[2] Under present law, the House bill, and your committee's bill it is estimated that the unused excess-profits credit carry-back in 1946 will offset Federal Government revenue to the extent of $235,000,000.

[3] It is assumed that the excise "war tax rates" are not reduced to the 1942 rates, by operation of existing law, in 1946 or 1947. Thus no reduction is shown under present law or your committee's bill.

[4] Tax refunds are classified by the Federal Government as expenditures.

TABLE 2.—*Estimated net reductions in tax liabilities under the House bill and under the Finance Committee bill as compared with tax liability under present law, calendar years 1946 and 1947.*[1]

[In millions of dollars.]

Source.	Reduction in tax liabilities from present law.			
	1946		1947[1]	
	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
Internal revenue:				
(1) Income, excess profits and capital stock taxes—				
(a) Corporation taxes[2]—				
Excess profits tax	1,300	2,555	2,555	2,555
Normal tax and surtax	405	63	646	63
Repeal of capital stock and declared value excess-profits taxes	183	231	243	231
Total corporation taxes	1,888	2,849	3,444	2,849
(b) Individual income taxes[3]—				
Allow same exemption for normal tax as for surtax	782	782	782	782
Reduce surtax rates by 4 percentage points under House bill and by 3 percentage points under Finance Committee amended bill	1,738	1,303	1,738	1,303
Provision for reduction of tax by at least 10 per cent under House bill	107	----------	107	----------
Reduction of 5 per cent in normal tax and surtax under Finance Committee amended bill	----------	559	----------	559
Total individual income taxes	2,627	2,644	2,627	2,644
Total; income, excess-profits and capital stock taxes	4,515	5,493	6,071	5,493
(2) Miscellaneous internal revenue, excluding capital stock tax—				
(a) Excises subject to war tax rates—				
Liquor taxes—				
Distilled spirits	249	----------	472	----------
Fermented malt liquors	32	----------	63	----------
Wines	11	----------	18	----------
Total liquor taxes	292	----------	553	----------
Retailers' excise taxes—				
Jewelry, etc	48	----------	99	----------
Furs	25	----------	44	----------
Toilet preparations	18	----------	39	----------
Luggage, etc	15	----------	30	----------
Total retailers' excise taxes	106	----------	212	----------
Telephone, telegraph, radio, and cable facilities, etc	15	----------	29	----------
Local telephone service	21	----------	41	----------
Transportation of persons	28	----------	60	----------
Admissions	65	----------	129	----------
Electric light bulbs and tubes	4	----------	10	----------
Club dues and initiation fees	2	----------	5	----------
Bowling alleys, billiard and pool tables	2	----------	2	----------
Total excises subject to war tax rates	535	----------	1,041	----------
(b) Use tax on motor vehicles and boats	140	140	140	140
(c) All other	----------	----------	----------	----------
Total miscellaneous internal revenue excluding capital stock tax	675	140	1,181	140
2. Employment taxes (net)	----------	----------	----------	----------
3. Customs	----------	----------	----------	----------
4. Miscellaneous receipts	----------	----------	----------	----------
Net receipts, general and special accounts	5,190	5,633	7,252	5,633
Refunds on floor stocks[4]	160	----------	----------	----------
Net receipts less refunds on floor stocks	5,350	5,633	7,252	5,633

[1] Assumes, for comparative purposes, the same general conditions in 1947 as estimated for 1946.

[2] Takes into account the following sequence in tax reduction or repeal: First, action on the excess-profits tax; second, action on the corporation normal tax and surtax rates; and third, action on the capital stock and declared value excess-profits taxes.

[3] Takes into account the following sequence in tax reduction: First, action on normal tax exemption; second, action reducing surtax rates by 3 or 4 percentage points; and third, action reducing tax by at least 10 per cent from present law under the House bill, and by 5 per cent (for all normal taxes and surtaxes) under the Finance Committee bill.

[4] Tax refunds are classified by the Federal Government as expenditures.

General Discussion of Recommended Individual Income Tax Reductions.

1. Providing the same exemptions for normal tax as for surtax.

Your committee concurs with the House in making the present surtax exemptions applicable to the normal tax, effective on and after January 1, 1946. Thus the normal tax exemption of $500 for each income recipient [1] is replaced by exemptions of $500 each for the taxpayer, his spouse, and each of his dependents.

This provision would relieve from tax approximately 12,000,000 of the 48,000,000 persons receiving income now subject to tax. The revenue loss from this provision is estimated at $782,000,000. Of this amount, $310,000,000 represents the loss from removing the 12,000,000 persons from the tax rolls who are now subject to the normal tax but not the surtax. In all cases these would be married taxpayers or taxpayers with dependents. Examples of persons in this class at the present time are taxpayers with one dependent [2] and with a net income before exemptions ranging from $500 to $1,000; taxpayers with two dependents and with a net income ranging from $500 to $1,500; and taxpayers with three dependents and a net income ranging from $500 to $2,000. The proposal would also reduce the tax of all married persons whose spouses have incomes of less than $500 and all taxpayers with dependents, since for normal tax purposes an additional exemption of $500 would be granted to a taxpayer for his spouse and each of his dependents. This would in effect grant tax relief of up to $15 per spouse or dependent.

It is believed desirable to apply the surtax exemption to the normal tax for several reasons. One of the most important of these is the fact that taxpayers subject only to the present normal tax were first brought into the tax base in the Revenue Act of 1942 when the victory tax was enacted only for the period of the war. With the war ended this reason for retaining these taxpayers in the tax base is removed. Moreover, it is not believed that an income tax should be continued in the postwar period in which exemptions do not recognize family status. This provision is also desirable as an aid to income tax simplification.

2. Reducing surtax rates by 3 percentage points.

The Finance Committee bill reduces the rate applicable to each surtax bracket by 3 percentage points, effective on and after January 1, 1946. This would reduce the starting rate for the combined normal tax and surtax from the present 23 to 20 per cent. The estimated revenue reduction in 1946 resulting from this proposal would be approximately $1,303,000,000.

The House bill reduces the rate applicable to each surtax bracket by 4 percentage points giving a starting rate of 19 per cent. After adjustment has been made for a further 5 per cent cut in tax allowed under your committee's bill, the starting rates used under the two bills are generally the same. This 5 per cent reduction is discussed in the following section.

Although your committee does not believe that it is desirable to embody a comprehensive revision of the individual income surtax rates in this bill, it does believe that some relief should be provided to everyone who has been paying high wartime taxes. The provision reducing surtax rates 3 percentage points grants substantial tax relief to all individuals subject to the income tax at the time when many of them must shift from wartime to peacetime employment. This reduction, together with the change in normal tax exemptions, is in effect the equivalent of removing the present normal tax which was first enacted as the victory tax in the Revenue Act of 1942 and which was enacted only as an emergency wartime measure. Thus with the end of the war your committee considered it especially appropriate to reduce the tax on individuals by 3 percentage points.

3. Reducing the combined normal tax and surtax by 5 per cent.

In addition to the reduction of 3 percentage points in each surtax bracket, this bill provides that the combined normal tax and surtax, before computing the alternative tax for capital gains, be further reduced by 5 per cent of the tax. The estimated revenue loss from this provision is $559,000,000.

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[1] The present normal tax exemption for the spouse of a taxpayer is allowed only to the extent of the income of the spouse if the income is less than $500.

[2] Or with spouse having no income.

The House bill did not provide for the 5 per cent tax reduction but rather removed 1 percentage point more in all of the surtax brackets than does your committee's bill, and readjusted the surtax rates in the brackets above $20,000 to assure taxpayers of at least an over-all tax reduction of 10 per cent. A comparison of the effect of combined normal tax and surtax rates of the House bill and Finance Committee bill with present law is shown in table 3. Table 4 compares surtax rates under the two bills with present law.

In comparing the bracket rates under the House and Finance Committee bills in table 3, it will be noted that in the first bracket ($0 to $2,000) of income after exemptions, the Finance Committee's 3 percentage points reduction plus the 5 per cent reduction in tax is exactly the equivalent of the House bill's 4 percentage points reduction where the normal tax and surtax bases are the same. In the brackets between $2,000 and $20,000 the Finance Committee's 5 per cent reduction provides greater tax relief than the House bill's additional percentage point; above the $20,000 bracket, however, the House bill provision, adjusting surtax rates so that all taxpayers will be assured of a 10 per cent reduction, provides the greater reduction.

TABLE 3.—*The combined normal ta xand surtax bracket rates of the individual income tax; House bill and Senate Finance Committee bill compared with present law.*

[Tax rates expressed as percentages.]

Income after exemptions, by brackets.		Tax rate on income in bracket.			
				Finance Committee bill.	
Exceeding—	Not exceeding—	Present law.[1]	House bill.	Tentative tax rate.	Tax rate after 5 per cent reduction.
		Per cent.	*Per cent.*	*Per cent.*	*Per cent.*
$0	$2,000	23	19.0	20	19.00
$2,000	4,000	25	21.0	22	20.90
$4,000	6,000	29	25.0	26	24.70
$6,000	8,000	33	29.0	30	28.50
$8,000	10,000	37	33.0	34	32.30
$10,000	12,000	41	37.0	38	36.10
$12,000	14,000	46	42.0	43	40.85
$14,000	16,000	50	46.0	47	44.65
$16,000	18,000	53	49.0	50	47.50
$18,000	20,000	56	52.0	53	50.35
$20,000	22,000	59	53.0	56	53.20
$22,000	26,000	62	56.0	59	56.05
$26,000	32,000	65	58.0	62	58.90
$32,000	38,000	68	61.0	65	61.75
$38,000	44,000	72	65.0	69	65.55
$44,000	50,000	75	68.0	72	68.40
$50,000	60,000	78	70.0	75	71.25
$60,000	70,000	81	73.0	78	74.10
$70,000	80,000	84	75.0	81	76.95
$80,000	90,000	87	79.0	84	79.80
$90,000	100,000	90	81.0	87	82.65
$100,000	150,000	92	82.5	89	84.55
$150,000	200,000	93	84.0	90	85.50
$200,000	----------	[2]94	[3]84.5	91	[4]86.45

[1] Taxpayers under present law who are subject only to the normal tax pay a 3 per cent rate.
[2] Subject to an over-all 90 per cent limitation.
[3] Subject to an over-all 81 per cent limitation.
[4] Subject to an over-all 85½ per cent limitation.

TABLE 4.—*Comparison of individual surtax rates and cumulative surtax under present law, House bill, and under Finance Committee bill.*

Surtax net income.		Surtax rates.[1]			Cumulative surtax at top of bracket.				Reduction in surtax.	
							Finance Committee bill.		Cumulative surtax.	
Exceeding—	Not exceeding—	Present law.	House bill.[2]	Finance Committee bill.[3]	Present law.	House bill.	Tentative tax.	Tax after 5 per cent reduction.	House bill.	Finance Committee bill.
		Per cent.	*Per cent.*	*Per cent.*						
$0	$2,000	20	16.0	17	$400	$320	$340	$323	$80	$77
$2,000	4,000	22	18.0	19	840	680	720	684	160	156
$4,000	6,000	26	22.0	23	1,360	1,120	1,180	1,121	240	239
$6,000	8,000	30	26.0	27	1,960	1,640	1,720	1,634	320	326
$8,000	10,000	34	30.0	31	2,640	2,240	2,340	2,223	400	417
$10,000	12,000	38	34.0	35	3,400	2,920	3,040	2,888	480	512
$12,000	14,000	43	39.0	40	4,260	3,700	3,840	3,648	560	612
$14,000	16,000	47	43.0	44	5,200	4,560	4,720	4,484	640	716
$16,000	18,000	50	46.0	47	6,200	5,480	5,660	5,377	720	823
$18,000	20,000	53	49.0	50	7,260	6,460	6,660	6,327	800	933
$20,000	22,000	56	50.0	53	8,380	7,460	7,720	7,334	920	1,046
$22,000	26,000	59	53.0	56	10,740	9,580	9,960	9,462	1,160	1,278
$26,000	32,000	62	55.0	59	14,460	12,880	13,500	12,825	1,580	1,635
$32,000	38,000	65	58.0	62	18,360	16,360	17,220	16,359	2,000	2,001
$38,000	44,000	69	62.0	66	22,500	20,080	21,180	20,121	2,420	2,379
$44,000	50,000	72	65.0	69	26,820	23,980	25,320	24,054	2,840	2,766
$50,000	60,000	75	67.0	72	34,320	30,680	32,520	30,894	3,640	3,426
$60,000	70,000	78	70.0	75	42,120	37,680	40,020	38,019	4,440	4,101
$70,000	80,000	81	72.0	78	50,220	44,880	47,820	45,429	5,340	4,791
$80,000	90,000	84	76.0	81	58,620	52,480	55,920	53,124	6,140	5,496
$90,000	100,000	87	78.0	84	67,320	60,280	64,320	61,104	7,040	6,216
$100,000	150,000	89	79.5	86	111,820	100,030	107,320	101,954	11,790	9,866
$150,000	200,000	90	81.0	87	156,820	140,530	150,820	143,279	16,290	13,541
$200,000		91	81.5	88						

[1] Does not include the 3 per cent normal tax rate.
[2] Gives effect to the 10 per cent minimum reduction.
[3] Does not give effect to the 5 per cent reduction in total tax.

In terms of effective rates on income before exemptions—or in terms of total tax paid—your committee's bill provides the same relief in the lowest income brackets as the House bill, but in the middle brackets up to $50,000 it provides more relief than the House bill. Thus, it is only in the higher income brackets above $50,000 that the tax actually paid is smaller under the House bill. These effective rates and tax burdens are shown in tables 8, 9, and 10 in the following section.

4. A COMPARISON OF TAX BURDENS UNDER THE HOUSE BILL AND FINANCE COMMITTEE BILL.

The following tables compare the individual income-tax burden, and effective tax rates on specified net incomes, before exemptions, under the present law, the House bill, and the Finance Committee bill. The tables also show the amount and per cent of tax reduction and the amount by which the tax reduction under the Finance Committee bill is greater or less than under the House bill.

Tables 5, 6, and 7 are based on the Supplement T tax table, which is used by most taxpayers having adjusted gross income of less than $5,000. In general, adjusted gross income is gross income less business deductions and for most wage earners represents gross income.

Tables 8, 9, and 10 are based on net income. In general, net income is gross income less all deductions, both business and nonbusiness.

TABLE 5.—*Tax burden under Supplement T of present law compared with that under the House bill and under the Finance Committee bill.*

SINGLE PERSON—NO DEPENDENTS.

Adjusted gross income of individuals using the standard deduction.	Income-tax burden.			Effective tax rate.			Reduction in tax.			
	Present law.[1]	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
							Amount.	*Amount.*	*Per cent.*	*Per cent.*
$500	$0	$0	$0	0	0	0	$0	$0	0	0
$600	12	10	10	2.0	1.7	1.7	2	2	16.67	16.67
$700	32	27	27	4.6	3.9	3.9	5	5	15.63	15.63
$800	53	44	44	6.6	5.5	5.5	9	9	16.97	16.97
$900	74	61	61	8.2	6.8	6.8	13	13	17.57	17.57
$1,000	95	78	78	9.5	7.8	7.8	17	17	17.89	17.89
$1,100	115	95	95	10.5	8.6	8.6	20	20	17.39	17.39
$1,200	136	112	112	11.3	9.3	9.3	24	24	17.65	17.65
$1,300	157	129	129	12.1	9.9	9.9	28	28	17.83	17.83
$1,400	177	147	147	12.6	10.5	10.5	30	30	16.95	16.95
$1,500	198	164	164	13.2	10.9	10.9	34	34	17.17	17.17
$1,750	250	206	206	14.3	11.8	11.8	44	44	17.60	17.60
$2,000	302	249	249	15.1	12.5	12.5	53	53	17.55	17.55
$2,250	353	292	292	15.7	13.0	13.0	61	61	17.28	17.28
$2,500	405	335	335	16.2	13.4	13.4	70	70	17.33	17.33
$2,750	457	377	377	16.6	13.7	13.7	80	80	17.51	17.51
$3,000	516	427	427	17.2	14.2	14.2	89	89	17.25	17.25
$3,250	572	474	474	17.6	14.6	14.6	98	98	17.13	17.13
$3,500	628	521	521	17.9	14.9	14.9	107	107	17.04	17.04
$3,750	684	568	568	18.2	15.1	15.1	116	116	16.96	16.96
$4,000	741	616	615	18.5	15.4	15.4	125	126	16.87	17.00
$4,250	797	663	662	18.8	15.6	15.6	134	135	16.81	16.94
$4,500	853	710	709	19.0	15.8	15.8	143	144	16.76	16.88
$4,750	909	757	756	19.1	15.9	15.9	152	153	16.72	16.83
$4,900	943	786	784	19.2	16.0	16.0	157	159	16.65	16.86

[1] Assumes only one spouse has income.

TABLE 6.—*Tax burden under Supplement T of present law compared with that under the House bill and under the Finance Committee bill.*

MARRIED PERSON—NO DEPENDENTS.

Adjusted gross income of individuals using the standard deduction.	Income-tax burden.			Effective tax rate.			Reduction in tax.			
	Present law.[1]	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.
				Per cent.	*Per cent.*	*Per cent.*	*Amount.*	*Amount.*	*Per cent.*	*Per cent.*
$500	$0	$0	$0	0	0	0	$0	$0	0	0
$600	2	0	0	.3	0	0	2	2	100.00	100.00
$700	4	0	0	.6	0	0	4	4	100.00	100.00
$800	7	0	0	.9	0	0	7	7	100.00	100.00
$900	10	0	0	1.1	0	0	10	10	100.00	100.00
$1,000	12	0	0	1.2	0	0	12	12	100.00	100.00
$1,100	15	0	0	1.4	0	0	15	15	100.00	100.00
$1,200	36	17	17	3.0	1.4	1.4	19	19	52.78	52.78
$1,300	57	34	34	4.4	2.6	2.6	23	23	40.35	40.35
$1,400	77	52	52	5.5	3.7	3.7	25	25	32.47	32.47
$1,500	98	69	69	6.5	4.6	4.6	29	29	29.59	29.59
$1,750	150	111	111	8.6	6.3	6.3	39	39	26.00	26.00
$2,000	202	154	154	10.1	7.7	7.7	48	48	23.76	23.76
$2,250	253	197	197	11.2	8.8	8.8	56	56	22.13	22.13
$2,500	305	240	240	12.2	9.6	9.6	65	65	21.31	21.31
$2,750	357	282	282	13.0	10.3	10.3	75	75	21.01	21.01
$3,000	411	327	327	13.7	10.9	10.9	84	84	20.44	20.44
$3,250	463	370	370	14.2	11.4	11.4	93	93	20.09	20.09
$3,500	518	416	416	14.8	11.9	11.9	102	102	19.69	19.69
$3,750	574	463	463	15.3	12.3	12.3	111	111	19.34	19.34
$4,000	631	511	510	15.8	12.8	12.8	120	121	19.02	19.18
$4,250	687	558	557	16.2	13.1	13.1	129	130	18.78	18.92
$4,500	743	605	604	16.5	13.4	13.4	138	139	18.57	18.71
$4,750	799	652	651	16.8	13.7	13.7	147	148	18.40	18.52
$4,900	833	681	679	17.0	13.9	13.9	152	154	18.25	18.49

[1] Assumes only one spouse has income.

TABLE 7.—*Tax burden under Supplement T of present law compared with that under the House bill and under the Finance Committee bill.*

MARRIED PERSON—2 DEPENDENTS.

Adjusted gross income of individuals using the standard deduction.	Income-tax burden.			Effective tax rate.			Reduction in tax.			
	Present law.[1]	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.	House bill	Finance Committee bill.	House bill.	Finance Committee bill.
							Amount.	*Amount.*	*Per cent.*	*Per cent.*
$500	$0	$0	$0	0	0	0	$0	$0	0	0
$600	2	0	0	.3	0	0	2	2	100.00	100.00
$700	4	0	0	.6	0	0	4	4	100.00	100.00
$800	7	0	0	.9	0	0	7	7	100.00	100.00
$900	10	0	0	1.1	0	0	10	10	100.00	100.00
$1,000	12	0	0	1.2	0	0	12	12	100.00	100.00
$1,100	15	0	0	1.4	0	0	15	15	100.00	100.00
$1,200	18	0	0	1.5	0	0	18	18	100.00	100.00
$1,300	20	0	0	1.5	0	0	20	20	100.00	100.00
$1,400	23	0	0	1.6	0	0	23	23	100.00	100.00
$1,500	26	0	0	1.7	0	0	26	26	100.00	100.00
$1,750	33	0	0	1.9	0	0	33	33	100.00	100.00
$2,000	39	0	0	2.0	0	0	39	39	100.00	100.00
$2,250	53	7	7	2.4	.3	.3	46	46	86.79	86.79
$2,500	105	50	50	4.2	2.0	2.0	55	55	52.38	52.38
$2,750	157	92	92	5.7	3.3	3.3	65	65	41.40	41.40
$3,000	211	137	137	7.0	4.6	4.6	74	74	35.07	35.07
$3,250	263	180	180	8.1	5.5	5.5	83	83	31.56	31.56
$3,500	315	223	223	9.0	6.4	6.4	92	92	29.21	29.21
$3,750	366	266	266	9.8	7.1	7.1	100	100	27.32	27.32
$4,000	418	308	308	10.5	7.7	7.7	110	110	26.32	26.32
$4,250	470	351	351	11.1	8.3	8.3	119	119	25.32	25.32
$4,500	523	395	395	11.6	8.8	8.8	128	128	24.47	24.47
$4,750	579	442	442	12.2	9.3	9.3	137	137	23.66	23.66
$4,900	613	471	470	12.5	9.6	9.6	142	143	23.16	23.33

[1] Assumes only one spouse has income.

TABLE 8.—*Comparison of individual income tax burden on specified net incomes under present law, House bill, and under Finance Committee bill.*

SINGLE PERSON—NO DEPENDENTS.

Net income before personal exemption.	Income tax burden.			Effective tax rate.			Reduction in tax burden.				
							Amount.		Per cent.		Increase (+) or decrease (−), Finance Committee bill over House bill.
	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	
				Per cent.	*Per cent.*	*Per cent.*					
$500											
$600	$23.00	$19.00	$19.00	3.83	3.17	3.17	$4.00	$4.00	17.39	17.39	
$700	46.00	38.00	38.00	6.57	5.43	5.43	8.00	8.00	17.39	17.39	
$750	57.50	47.50	47.50	7.67	6.33	6.33	10.00	10.00	17.39	17.39	
$800	69.00	57.00	57.00	8.62	7.12	7.12	12.00	12.00	17.39	17.39	
$900	92.00	76.00	76.00	10.22	8.44	8.44	16.00	16.00	17.39	17.39	
$1,000	115.00	95.00	95.00	11.50	9.50	9.50	20.00	20.00	17.39	17.39	
$1,200	161.00	133.00	133.00	13.42	11.08	11.08	28.00	28.00	17.39	17.39	
$1,500	230.00	190.00	190.00	15.33	12.67	12.67	40.00	40.00	17.39	17.39	
$1,800	299.00	247.00	247.00	16.61	13.72	13.72	52.00	52.00	17.39	17.39	
$2,000	345.00	285.00	285.00	17.25	14.25	14.25	60.00	60.00	17.39	17.39	
$2,500	460.00	380.00	380.00	18.40	15.20	15.20	80.00	80.00	17.39	17.39	
$3,000	585.00	485.00	484.50	19.50	16.17	16.15	100.00	100.50	17.09	17.18	+$0.50
$4,000	835.00	695.00	693.50	20.87	17.37	17.34	140.00	141.50	16.77	16.95	+1.50
$5,000	1,105.00	925.00	921.50	22.10	18.50	18.43	180.00	183.50	16.29	16.61	+3.50
$6,000	1,395.00	1,175.00	1,168.50	23.45	19.58	19.47	220.00	226.50	15.77	16.24	+6.50
$7,000	1,705.00	1,445.00	1,434.50	24.36	20.64	20.49	260.00	270.50	15.25	15.87	+10.50
$8,000	2,035.00	1,735.00	1,719.50	25.44	21.69	21.49	300.00	315.50	14.74	15.50	+15.50
$9,000	2,385.00	2,045.00	2,023.50	26.50	22.72	22.48	340.00	361.50	14.26	15.16	+21.50
$10,000	2,755.00	2,375.00	2,346.50	27.55	23.75	23.47	380.00	408.50	13.79	14.83	+28.50
$11,000	3,145.00	2,725.00	2,688.50	28.59	24.77	24.44	420.00	456.50	13.35	14.52	+36.50
$12,000	3,555.00	3,095.00	3,049.40	29.62	25.79	25.41	460.00	505.50	12.94	14.22	+45.50
$13,000	3,990.00	3,490.00	3,434.25	30.69	26.85	26.42	500.00	555.75	12.53	13.93	+55.75
$14,000	4,450.00	3,910.00	3,842.75	31.79	27.93	27.45	540.00	607.25	12.13	13.65	+67.25
$15,000	4,930.00	4,350.00	4,270.25	32.87	29.00	28.47	580.00	659.75	11.76	13.38	+79.75
$20,000	7,580.00	6,800.00	6,645.25	37.90	34.00	33.23	780.00	934.75	10.29	12.33	+154.75
$25,000	10,590.00	9,520.00	9,362.25	42.36	38.08	37.45	1,070.00	1,227.75	10.10	11.59	+157.75
$30,000	13,795.00	12,390.00	12,264.50	45.98	41.30	40.88	1,405.00	1,530.50	10.18	11.09	+125.50
$40,000	20,580.00	18,475.00	18,425.25	51.45	46.19	46.06	2,105.00	2,154.75	10.23	10.47	+49.75
$50,000	27,945.00	25,140.00	25,137.00	55.89	50.28	50.27	2,805.00	2,808.00	10.04	10.05	+3.00
$60,000	35,730.00	32,130.00	32,247.75	59.55	53.55	53.75	3,600.00	3,482.25	10.08	9.75	−117.75
$70,000	43,815.00	39,415.00	39,643.50	62.59	56.31	56.63	4,400.00	4,171.50	10.04	9.52	−228.50
$80,000	52,200.00	46,905.00	47,324.25	65.25	58.63	59.16	5,295.00	4,875.75	10.14	9.34	−419.25

$90,000	60,885.00	54,785.00	55,290.00	67.65	60.87	61.43	6,100.00	5,595.00	10.02	9.19	−505.00
$100,000	69,870.00	62,875.00	63,540.75	69.87	62.87	63.54	6,995.00	6,329.25	10.01	9.06	−665.75
$150,000	115,860.00	104,117.50	105,806.25	77.24	69.41	70.54	11,742.50	10,053.75	10.14	8.68	−1,688.75
$200,000	162,355.00	146,110.00	148,551.50	81.18	73.05	74.28	16,245.00	13,803.50	10.01	8.50	−2,441.50
$250,000	209,350.00	188,357.50	191,771.75	83.74	75.34	76.71	20,992.50	17,578.25	10.03	8.40	−3,414.25
$300,000	256,350.00	230,607.50	234,996.75	85.45	76.87	78.33	25,742.50	21,353.25	10.04	8.33	−4,389.25
$400,000	350,350.00	315,107.50	321,446.75	87.59	78.78	80.36	35,242.50	28,903.25	10.06	8.25	−6,339.25
$500,000	444,350.00	399,607.50	407,896.75	88.87	79.92	81.58	44,742.50	36,453.25	10.07	8.20	−8,289.25
$750,000	675,000.00	607,500.00	624,021.75	90.00	81.00	83.20	67,500.00	50,978.25	10.00	7.55	−16,521.75
$1,000,000	900,000.00	810,000.00	840,146.75	90.00	81.00	84.01	90,000.00	59,853.25	10.00	6.65	−30,146.75
$2,000,000	1,800,000.00	1,620,000.00	1,704,646.75	90.00	81.00	85.23	180,000.00	95,353.25	10.00	5.30	−84,646.75
$5,000,000	4,500,000.00	4,050,000.00	4,275,000.00	90.00	81.00	85.50	450,000.00	225,000.00	10.00	5.00	−225,000.00

TABLE 9.—*Comparison of individual income tax burden on specified net incomes under present law, House bill, and under the Finance Committee bill.*

MARRIED PERSON—NO DEPENDENTS.

Net income before personal exemption.	Income tax burden.			Effective tax rate.			Reduction in tax burden.				
							Amount.		Per cent.		Increase (+) or decrease (−), Finance Committee bill over House bill.
	Present law.[1]	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	
				Per cent.	*Per cent.*	*Per cent.*					
$600	$3.00			0.50			$3.00	$3.00	100.00	100.00	
$700	6.00			.86			6.00	6.00	100.00	100.00	
$750	7.50			1.00			7.50	7.50	100.00	100.00	
$800	9.00			1.12			9.00	9.00	100.00	100.00	
$900	12.00			1.33			12.00	12.00	100.00	100.00	
$1,000	15.00			1.50			15.00	15.00	100.00	100.00	
$1,200	61.00	$38.00	$38.00	5.08	3.17	3.17	23.00	23.00	37.70	37.70	
$1,500	130.00	95.00	95.00	8.67	6.33	6.33	35.00	35.00	26.92	26.92	
$1,800	199.00	152.00	152.00	11.06	8.44	8.44	47.00	47.00	23.62	23.62	
$2,000	245.00	190.00	190.00	12.25	9.50	9.50	55.00	55.00	22.45	22.45	
$2,500	360.00	285.00	285.00	14.40	11.40	11.40	75.00	75.00	20.83	20.83	
$3,000	475.00	380.00	380.00	15.83	12.67	12.67	95.00	95.00	20.00	20.00	
$4,000	725.00	590.00	589.00	18.12	14.75	14.72	135.00	136.00	18.62	18.76	+$1.00
$5,000	975.00	800.00	798.00	19.50	16.00	15.96	175.00	177.00	17.95	18.15	+2.00
$6,000	1,265.00	1,050.00	1,045.00	21.08	17.50	17.42	215.00	220.00	17.00	17.39	+5.00
$7,000	1,555.00	1,300.00	1,292.00	22.21	18.57	18.46	255.00	263.00	16.40	16.91	+8.00
$8,000	1,885.00	1,590.00	1,577.00	23.56	19.87	19.71	295.00	308.00	15.65	16.34	+13.00
$9,000	2,215.00	1,880.00	1,862.00	24.61	20.89	20.69	335.00	353.00	15.12	15.94	+18.00
$10,000	2,585.00	2,210.00	2,185.00	25.85	22.10	21.85	375.00	400.00	14.51	15.47	+25.00
$11,000	2,955.00	2,540.00	2,508.00	26.86	23.09	22.80	415.00	447.00	14.04	15.13	+32.00
$12,000	3,365.00	2,910.00	2,869.00	28.04	24.25	23.91	455.00	496.00	13.52	14.74	+41.00
$13,000	3,775.00	3,280.00	3,230.00	29.04	25.23	24.85	495.00	545.00	13.11	14.44	+50.00
$14,000	4,235.00	3,700.00	3,638.50	30.25	26.43	25.99	535.00	596.50	12.63	14.08	+61.50
$15,000	4,695.00	4,120.00	4,047.00	31.30	27.47	26.98	575.00	648.00	12.25	13.80	+73.00
$20,000	7,315.00	6,540.00	6,393.50	36.57	32.70	31.97	775.00	921.50	10.59	12.60	+146.50
$25,000	10,295.00	9,240.00	9,082.00	41.18	36.96	36.33	1,055.00	1,213.00	10.25	11.78	+158.00
$30,000	13,485.00	12,100.00	11,970.00	44.95	40.33	39.90	1,385.00	1,515.00	10.27	11.23	+130.00
$40,000	20,235.00	18,150.00	18,097.50	50.59	45.37	45.24	2,085.00	2,137.50	10.30	10.56	+52.50
$50,000	27,585.00	24,800.00	24,795.00	55.17	49.60	49.59	2,785.00	2,790.00	10.10	10.11	+5.00
$60,000	35,355.00	31,780.00	31,891.50	58.92	52.97	53.15	3,575.00	3,463.50	10.11	9.80	−111.50
$70,000	43,425.00	39,050.00	39,273.00	62.04	55.79	56.10	4,375.00	4,152.00	10.07	9.56	−223.00
$80,000	51,795.00	46,530.00	46,939.50	64.74	58.16	58.67	5,265.00	4,855.50	10.16	9.37	−409.50
$90,000	60,465.00	54,390.00	54,891.00	67.18	60.43	60.99	6,075.00	5,574.00	10.05	9.22	−501.00

$100,000	69,435.00	62,470.00	63,127.50	69.43	62.47	63.13	6,965.00	6,307.50	10.03	9.08	−657.50
$150,000	115,415.00	103,705.00	105,383.50	76.94	69.14	70.26	11,710.00	10,031.50	10.15	8.69	−1,678.50
$200,000	161,905.00	145,690.00	148,124.00	80.95	72.84	74.06	16,215.00	13,781.00	10.02	8.51	−2,434.00
$250,000	208,895.00	187,935.00	191,339.50	83.56	75.17	76.54	20,960.00	17,555.50	10.03	8.40	−3,404.50
$300,000	255,895.00	230,185.00	234,564.50	85.30	76.73	78.19	25,710.00	21,330.50	10.05	8.34	−4,379.50
$400,000	349,895.00	314,685.00	321,014.50	87.47	78.67	80.25	35,210.00	28,880.50	10.06	8.25	−6,329.50
$500,000	443,895.00	399,185.00	407,464.50	88.78	79.84	81.49	44,710.00	36,430.50	10.07	8.21	−8,279.50
$750,000	675,000.00	607,500.00	623,589.50	90.00	81.00	83.15	67,500.00	51,410.50	10.00	7.62	−16,089.50
$1,000,000	900,000.00	810,000.00	839,714.50	90.00	81.00	83.97	90,000.00	60,285.50	10.00	6.70	−29,714.50
$2,000,000	1,800,000.00	1,620,000.00	1,704,214.50	90.00	81.00	85.21	180,000.00	95,785.50	10.00	5.32	−84,214.50
$5,000,000	4,500,000.00	4,050,000.00	4,275,000.00	90.00	81.00	85.50	450,000.00	225,000.00	10.00	5.00	−225,000.00

[1] Assumes only one spouse has income.

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TABLE 10.—*Comparison of individual income tax burden on specified net incomes under present law, House bill, and under Finance Committee bill.*

MARRIED PERSON—2 DEPENDENTS.

Net income before personal exemption.	Income-tax burden.			Effective tax rate.			Reduction in tax burden.				
							Amount.		Per cent.		Increase (+) or decrease (−), Finance Committee bill over House bill.
	Present law.[1]	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	House bill.	Finance Committee bill.	
				Per cent.	*Per cent.*	*Per cent.*					
$600	$3.00			0.50			$3.00	$3.00	100.00	100.00	
$700	6.00			.86			6.00	6.00	100.00	100.00	
$750	7.50			1.00			7.50	7.50	100.00	100.00	
$800	9.00			1.12			9.00	9.00	100.00	100.00	
$900	12.00			1.33			12.00	12.00	100.00	100.00	
$1,000	15.00			1.50			15.00	15.00	100.00	100.00	
$1,200	21.00			1.75			21.00	21.00	100.00	100.00	
$1,500	30.00			2.00			30.00	30.00	100.00	100.00	
$1,800	39.00			2.17			39.00	39.00	100.00	100.00	
$2,000	45.00			2.25			45.00	45.00	100.00	100.00	
$2,500	160.00	$95.00	$95.00	6.40	3.80	3.80	65.00	65.00	40.62	40.62	
$3,000	275.00	190.00	190.00	9.17	6.33	6.33	85.00	85.00	30.91	30.91	
$4,000	505.00	380.00	380.00	12.62	9.50	9.50	125.00	125.00	24.75	24.75	
$5,000	755.00	590.00	589.00	15.10	11.80	11.78	165.00	166.00	21.85	21.99	+$1.00
$6,000	1,005.00	800.00	798.00	16.75	13.33	13.30	205.00	207.00	20.40	20.60	+2.00
$7,000	1,295.00	1,050.00	1,045.00	18.50	15.00	14.93	245.00	250.00	18.92	19.30	+5.00
$8,000	1,585.00	1,300.00	1,292.00	19.81	16.25	16.15	285.00	293.00	17.98	18.49	+8.00
$9,000	1,915.00	1,590.00	1,577.00	21.28	17.67	17.52	325.00	338.00	16.97	17.65	+13.00
$10,000	2,245.00	1,880.00	1,862.00	22.45	18.80	18.62	365.00	383.00	16.26	17.06	+18.00
$11,000	2,615.00	2,210.00	2,185.00	23.77	20.09	19.86	405.00	430.00	15.49	16.44	+25.00
$12,000	2,985.00	2,540.00	2,508.00	24.87	21.17	20.90	445.00	477.00	14.91	15.98	+32.00
$13,000	3,395.00	2,910.00	2,869.00	26.12	22.38	22.07	485.00	526.00	14.29	15.49	+41.00
$14,000	3,805.00	3,280.00	3,230.00	27.18	23.43	23.07	525.00	575.00	13.80	15.11	+50.00
$15,000	4,265.00	3,700.00	3,638.00	28.43	24.67	24.26	565.00	626.50	13.25	14.69	+61.50
$20,000	6,785.00	6,020.00	5,890.00	33.92	30.10	29.45	765.00	895.00	11.27	13.19	+130.00
$25,000	9,705.00	8,680.00	8,521.50	38.82	34.72	34.09	1,025.00	1,183.50	10.56	12.19	+158.50
$30,000	12,865.00	11,520.00	11,381.00	42.88	38.40	37.94	1,345.00	1,484.00	10.45	11.54	+139.00
$40,000	19,545.00	17,500.00	17,442.00	48.86	43.75	43.60	2,045.00	2,103.00	10.46	10.76	+58.00
$50,000	26,865.00	24,120.00	24,111.00	53.73	48.24	48.22	2,745.00	2,754.00	10.22	10.25	+9.00
$60,000	34,605.00	31,080.00	31,179.00	57.67	51.80	51.96	3,525.00	3,426.00	10.19	9.90	−99.00
$70,000	42,645.00	38,320.00	38,532.00	60.92	54.74	55.05	4,326.00	4,113.00	10.14	9.64	−212.00
$80,000	50,985.00	45,780.00	46,170.00	63.73	57.22	57.71	5,205.00	4,815.00	10.21	9.44	−390.00
$90,000	59,625.00	53,600.00	54,093.00	66.25	59.56	60.10	6,025.00	5,532.00	10.10	9.28	−493.00

$100,000	68,565.00	61,660.00	62,301.00	68.56	61.66	62.30	6,905.00	6,264.00	10.07	9.14	−641.00
$150,000	114,525.00	102,880.00	104,538.00	76.35	68.59	69.69	11,645.00	9,987.00	10.17	8.72	−1,658.00
$200,000	161,005.00	144,850.00	147,269.00	80.50	72.42	73.63	16,155.00	13,736.00	10.03	8.53	−2,419.00
$250,000	207,985.00	187,090.00	190,475.00	83.19	74.84	76.19	20,895.00	17,510.00	10.05	8.42	−3,385.00
$300,000	254,985.00	229,340.00	233,700.00	84.99	76.45	77.90	25,645.00	21,285.00	10.06	8.35	−4,360.00
$400,000	348,985.00	313,840.00	320,150.00	87.25	78.46	80.04	35,145.00	28,835.00	10.07	8.26	−6,310.00
$500,000	442,985.00	398,340.00	406,600.00	88.60	79.67	81.32	44,645.00	36,385.00	10.08	8.21	−8,260.00
$750,000	675,000.00	607,500.00	622,725.00	90.00	81.00	83.03	67,500.00	52,275.00	10.00	7.74	−15,225.00
$1,000,000	900,000.00	810,000.00	838,850.00	90.00	81.00	83.88	90,000.00	61,150.00	10.00	6.79	−28,850.00
$2,000,000	1,800,000.00	1,620,000.00	1,703,350.00	90.00	81.00	85.17	180,000.00	96,650.00	10.00	5.37	−83,350.00
$5,000,000	4,500,000.00	4,050,000.00	4,275,000.00	90.00	81.00	85.50	450,000.00	225,000.00	10.00	5.00	−225,000.00

[1] Assumes only one spouse has income.

GENERAL DISCUSSION OF VETERANS' AND SERVICEMEN'S PROVISIONS.

Your committee had under consideration the tax provisions of existing law relating to members of the armed forces. While in general it was believed that these provisions have operated equitably, and that in certain respects proposals pending in the Congress and elsewhere require further study, it was believed that in other respects certain provisions should be enacted at this time.

1. PROVIDING TAX FORGIVENESS FOR ENLISTED MEN.

The committee bill excludes from gross income all active-service pay received during the war years by members of the armed forces below the grade of commissioned officer (or commissioned warrant officer). Under this provision enlisted men will have no tax liability as to active-service pay for taxable years beginning after December 31, 1940, and before the termination of the war, and will not have to file income tax returns for these years as to such pay. Any tax which has been paid for such years will be refunded.

2. PROVIDING TAX DEFERMENT FOR COMMISSIONED SERVICE.

Under your committee bill, the exclusion provisions are continued for commissioned personnel, and liability deferred under existing law for the war years may be extended, in so far as it relates to service pay, for 36 months, payable in 12 quarterly installments, without interest.

Under existing law, commissioned personnel, like other service personnel, if on sea or overseas duty, or if ability to pay tax was impaired by reason of military service, could defer payment until six months after return to the United States in the former case, or six months from date of discharge in the latter. In addition, under section 700 of the Soldiers' and Sailors' Civil Relief Act, by application to the courts an extension period can be obtained on a showing of hardship for a period equal to the length of service, with interest at 6 per cent during such extension period.

Without taking away any right under existing law, the bill provides the extension period referred to as a matter of right.

3. PROVIDING TAX DEFERMENT ON PRESERVICE EARNED INCOME.

The bill also provides for similar extension in the case of preservice earned income for the taxable years 1940 and 1941, and earned before the serviceman entered upon active service, if such tax became due and payable after entry into service. For this purpose, earned income is defined as in the Internal Revenue Code, and has a maximum limit of $14,000, and a minimum limit of $3,000.

Taxpayers entering the service in 1941 or 1942 were not on a current payment basis and were paying tax in the year following the year in which income was earned. Therefore, many of them owed tax on the civilian income of the year prior to entry into the service, when the service pay was much less than the prior year civilian income.

Nothing in the veterans' and servicemen's provisions in your committee bill will operate to reduce or take away any right to which service personnel are entitled under existing law.

GENERAL DISCUSSION OF RECOMMENDED CORPORATE REDUCTIONS.

1. REPEALING THE EXCESS-PROFITS TAX.

Your committee's bill repeals the excess-profits tax, effective January 1, 1946. It is estimated that this will result in a reduction in tax liabilities of $2,555,000,000 in 1946.

The 2-year carry-back of unused excess-profits credits is retained for one year beyond the repeal of the excess-profits tax. Thus it will be possible to carry back unused excess-profits credits arising in 1946 to 1944 and 1945 and reduce the excess-profits tax paid in these years. It is believed necessary to continue the carry-back for one more year, to be sure that business has the opportunity to apply reconversion expenditures to reduce wartime taxes. However, it is recognized that this carry-back is subject to abuse and inequity.

Therefore, your committee is studying ways of removing the abuses of this provision and expects to propose retroactive legislation on this subject in the near future.

The primary reason for advocating the repeal of the excess-profits tax as of the first of 1946 is the belief that this tax is a major obstacle in the way of reconversion and expansion of business which are essential for the attainment of a high level of employment and income. The tax takes such a large portion of corporate profits that most businesses are not willing to take the risk of expanding their business while this tax is in operation. Other reasons for proposing the repeal of this tax at the end of 1946 are:

(1) One of the major purposes of this tax was to prevent war profiteering. With the end of the war, this reason for continuing the tax is removed.

(2) The longer the excess-profits tax is retained the less the income of 1936–1939 base period is a proper measure of "excessive" profits. This base period will be a particularly poor measure of earnings in the postwar period when many corporations will be entering new fields of enterprise or expanding their businesses.

(3) The tax tends to favor old and well-established businesses, since many of them have invested capital which has long ago ceased to contribute toward earnings, although it is included in the credit used to determine the excess-profits tax. New businesses without such credits based on inflated capital bases are thus penalized by the tax.

2. PROVIDING TAX REDUCTIONS FOR SMALL BUSINESSES.

A new schedule of normal tax and surtax rates and brackets is provided for corporations with income under $60,000, effective on and after January 1, 1946. The schedule provides a lower corporate income tax for all corporations with income of $60,000 or less. The rates and brackets are as follows:

Net income.	Normal tax rate.	Surtax rate.	Combined tax rate.
	Per cent.	*Per cent.*	*Per cent.*
Not over $10,000	15	5	20
Over $10,000 but not over $20,000	18	9	27
Over $20,000 but not over $25,000	19	10	29
Over $25,000 but not over $60,000	29	22	51

The estimated tax liability loss in 1946 from this new schedule is $63,000,000.

Under the House bill the corporate tax rate is reduced 4 percentage points for all corporations. A comparison with present law of the effect of the House bill and Finance Committee bill on small businesses is shown in table 11. It will be noted that the tax burden of a corporation with $15,000 of net income is the same under the House and Finance Committee proposals. The Finance Committee bill, however, gives a larger tax reduction to corporations with income under $15,000, and the House bill, to corporations with incomes over $15,000.

Over 200,000 of the total of about 260,000 corporations estimated to have taxable income in 1946 are expected to have incomes under $15,000. Thus your committee's bill will give more relief to nearly 80 per cent of the corporations with taxable income than does the House bill. About the same aggregate tax reduction will be given under the two proposals for corporations with taxable incomes of less than $60,000. Since the relief under the House bill is given to all corporations, and not merely those with incomes of under $60,000, the revenue loss is much greater than your committee's proposal. In addition to the $59,000,000 tax reduction given to corporations with incomes under $30,000, the House bill gives tax reductions of $586,000,000 to the larger corporations making a total tax liability loss of about $646,000,000 in 1946.[1] This can be compared to the reduction of tax liabilities in 1946 under the Finance Committee bill of $63,000,000.

[1] This assumes the repeal of the excess-profits tax in 1946. If this tax were not repealed until 1947, the loss in 1946 would be $405,000,000. However, there would be an additional loss of $241,000,000 in 1947 when the excess-profits tax is repealed.

TABLE 11.—*Effect of House bill and Finance Committee bill on corporate income taxes of small corporations, comparison of bracket rates, tax burdens, and effective rates with present law.*

Net income.		Bracket rates.			Cumulative tax burden at top of income class.			Effective rate at top of income class.		
Exceeding—	Not exceeding—	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.	Present law.	House bill.	Finance Committee bill.
		Per cent.	*Per cent.*	*Per cent.*				*Per cent.*	*Per cent.*	*Per cent.*
$0	$5,000	25	21	20	$1,250	$1,050	$1,000	25.0	21.0	20.0
$5,000	$10,000	27	23	27	2,600	2,200	2,000	26.0	22.0	20.0
$10,000	$15,000				3,950	3,350	3,350	26.3	22.3	22.3
$15,000	$20,000				5,300	4,500	4,700	26.5	22.5	23.5
$20,000	$25,000	29	25	29	6,750	5,750	6,150	27.0	23.0	24.6
$25,000	$30,000				9,400	8,200	8,700	31.3	27.3	29.0
$30,000	$35,000				12,050	10,650	11,250	34.4	30.4	32.1
$35,000	$40,000	53	49		14,700	13,100	13,800	36.8	32.8	34.5
$40,000	$45,000			51	17,350	13,550	16,350	38.6	34.6	36.3
$45,000	$50,000				20,000	18,000	18,900	40.0	36.0	37.8
$50,000	$55,000	40% rate on all income	36% rate on all income		22,000	19,800	21,450	40.0	36.0	39.0
$55,000	$60,000				24,000	21,600	24,000	40.0	36.0	40.0

Your committee believes it is especially desirable to stimulate the starting and expansion of small businesses, both because the postwar economy must depend on them to supply a substantial portion of the employment and because strong, vigorous small businesses are necessary for the maintenance of competition.

3. REPEALING THE CAPITAL STOCK AND DECLARED VALUE EXCESS-PROFITS TAXES.

Your committee concurs with the House in repealing the capital stock tax, beginning with the tax payable on July 31, 1946, and the declared value excess-profits tax, beginning with respect to the tax payable for the related years. The capital stock tax is payable in July of each year and is imposed on the value declared by the corporation. It is presumably determined in accordance with estimates of income to be earned in the current taxable year, since the declared value excess-profits tax is levied on the amount of income in excess of specified ratios of the declared value of the capital stock. The estimated loss in 1946 from the repeal of these two taxes will be $228,000,000.

Your committee believes that these taxes should be repealed for the following reasons:

(1) The taxes penalize corporations which can not successfully guess the size of their income 1 to 12 months ahead. This especially works a hardship on smaller firms, since they generally have less stable incomes than larger corporations.

(2) Repeal of these taxes would simplify the corporate tax structure, since one return would be eliminated and the present income-tax return somewhat condensed.

Your committee believes that 1946 would be an especially appropriate time to repeal these taxes because the transition period will be a more than usually difficult time in which to predict corporate income and thus the operation of these taxes will result in unusual hardships in 1946.

An additional amendment, dealing with these taxes, has been made by your committee. Corporations which have recovered, in 1945, foreign properties seized by the enemy are permitted by this bill to pay a declared value excess-profits tax, equivalent to the capital stock tax, of 1.25 per cent of the amount recovered. Under present law most such corporations would have to pay the full declared value excess-profits tax on such recoveries, since in most cases they would have been unable to determine the value of the recoveries in sufficient time to allow for them in their capital stock declarations. Under your committee's bill these corporations are placed in the same position as they would have been had they known the amount of the income recovered at the time they made their capital stock declarations.

A comparison of the changes in the present corporate tax structure made by your committee's bill and the House bill are shown in table 12.

TABLE 12.—*A comparison of the present corporate tax structure with changes made by the House bill and the Finance Committee bill.*

A. INCOME TAX.

Description of tax.	Present law.	House bill.	Finance Committee bill.
I. Normal tax:			
(a) Corporations with normal-tax net incomes of not more than $50,000 under present law and House bill or $60,000 under the Finance Committee bill—			
On first $5,000	15 per cent	15 per cent	15 per cent.
On amount over $5,000 but not over $10,000	17 per cent	17 per cent	
On amount over $10,000 but not over $20,000	17 per cent	17 per cent	18 per cent.
On amount over $20,000 but not over $25,000	19 per cent	19 per cent	19 per cent.
On amount over $25,000 but not over $50,000	31 per cent	31 per cent	
On amount over $50,000 but not over $60,000	Subject to 24 per cent tax on all income.	Subject to 24 per cent tax on all income.	29 per cent.
(b) Corporations with normal-tax net incomes over $50,000 under present law and House bill or $60,000 under the Finance Committee bill.	24 per cent	24 per cent	24 per cent.
II. Surtax:			
(a) Corporations with surtax net incomes of not more than $50,000 under present law and House bill or $60,000 under the Finance Committee bill—			
On first $10,000	10 per cent	6 per cent	5 per cent.
On amount over $10,000 but not over $20,000			9 per cent.
On amount over $20,000 but not over $25,000			10 per cent.
On amount over $25,000 but not over $50,000	22 per cent	18 per cent	
On amount over $50,000 but not over $60,000	Subject to 16 per cent rate on all income.	Subject to 12 per cent rate on all income.	22 per cent.
(b) Corporations with surtax net incomes of over $50,000 under present law and House bill or $60,000 under the Finance Committee bill.	16 per cent	12 per cent	16 per cent.
(c) Consolidated returns: consolidated surtax incomes, additional.	2 per cent	2 per cent	2 per cent.

B. EXCESS-PROFITS TAX.

(a) Net rate payable	85½ per cent	60 per cent. Repealed Jan. 1, 1947.	Repealed Jan. 1, 1946.
(b) Over-all income and excess profits tax limited to	80 per cent of surtax net income.	No limitation.	

C. CAPITAL STOCK AND DECLARED VALUE EXCESS-PROFITS TAXES.

(a) Capital stock tax	$1.25 for each $1,000.	Repealed	Repealed.
(b) Declared value excess-profits tax:			
Portion of net income from 10 to 15 per cent of declared value.	6.6 per cent	Repealed	Repealed.
Portion of net income in excess of 15 per cent of declared value.	13.2 per cent.		

GENERAL DISCUSSION OF RECOMMENDED EXCISE TAX REDUCTIONS.

1. EFFECT OF THE FINANCE COMMITTEE BILL ON WARTIME EXCISE TAXES.

The temporary excise "war tax rates" imposed by Title III of the Revenue Act of 1943 provided that the additional wartime increases would be removed approximately six months after the termination of hostilities as proclaimed by the President or specified in a concurrent resolution of Congress. The House bill removes this termination date for the wartime excises and substitutes the specific date, June 30, 1946.

Your committee did not change present law with respect to the termination date of these excise war tax rates because it believes that other tax reductions are more desirable for the economy, at this time, and it is not believed that revenues should be lowered to the extent that would permit the reduction in excise tax rates. Furthermore, there are many other excise taxes which were imposed or increased during the war by the Revenue Acts of 1941 and 1942. Some of these were imposed, or increased, specifically to limit the purchase by the public of goods which the Government needed for defense or war purposes. It is believed that consideration should also be given to these taxes when excise rates are reduced. There is not sufficient time to revise these excises in the present bill, however, and thus it is recommended that general excise tax reductions await a future bill.

Your committee concurs with the House, however, in providing that when the war tax rate reductions are made, refunds of the additional wartime excise taxes be made on all floor stocks of distilled spirits, wines, fermented malt liquors, and electric light bulbs held for sale or use in production at the effective date of the repeal, on which the wartime rates have been paid.

The Revenue Act of 1943 subjected floor stocks of alcoholic beverages held for sale or use in production on the effective date of the wartime excise tax rate increases to special taxes which were the equivalent of the additional war rates. This bill now reverses the process and provides refunds on floor stocks held at the time when the wartime rates are repealed. In view of the substantial tax reduction, particularly in the case of distilled spirits, your committee believes that this is necessary to avoid subjecting retailers and manufacturers involved to an unfair tax burden. Not to do so might result in substantial inequity, since those holding such floor stocks on which the wartime rates had been paid might be forced to reduce their prices on such stocks and thus absorb the war tax, if in competition with others obtaining alcoholic beverages on which the additional wartime excise tax rate had not been paid. Therefore, refunds are to be granted in those cases where such price reductions actually are made.

Although no tax was imposed on floor stocks when the tax on electric light bulbs was increased, your committee believes that refunds on floor stocks of electric light bulbs are justified by reason of the differences in the trade practices of competitors.

2. REPEALING THE TAX ON THE USE OF MOTOR VEHICLES AND BOATS.

Your committee concurs with the House in repealing the tax on the use of motor vehicles and boats, effective July 1, 1946. The next use tax is due at that time. The tax is an annual stamp tax of $5 on the use of automobiles and a stamp tax of from $5 to $200 on the use of certain boats, the tax in the latter case varying with the size of the boat. The estimated revenue loss in 1946 from the repeal of this tax is $140,000,000.

The use tax was enacted by the Revenue Act of 1941 and was intended primarily as a source of revenue during the emergency and war period. With the war ended this reason for retaining the tax no longer exists. Therefore your committee believes that the tax should be discontinued.

GENERAL DISCUSSION OF RECOMMENDED EMPLOYMENT TAX LEGISLATION.

Your committee concurs with the House in continuing employment taxes for the old-age and survivors insurance program through 1946 at the present rates of 1 per cent on wages paid by employers and 1 per cent on wages received by employees, instead of increasing the rates in 1946, as provided by present law, to 2½ per cent for each of these groups.

It is believed that it is desirable to study further the financing of the old-age and survivors insurance program before making any changes in employment tax rates.

GENERAL DISCUSSION OF OTHER PROPOSED CHANGES.

1. DETERMINING EFFECT OF PROPOSED TAX REDUCTIONS ON INDIVIDUALS AND CORPORATIONS USING FISCAL YEARS.

All of the proposed tax reductions in the individual income tax as well as the repeal of the excess-profits tax and the reductions in the corporate income tax require special legislation for individuals or corporations on a fiscal-year rather

than a calendar-year basis. This bill provides that fiscal-year taxpayers be allowed a pro rata portion of any tax reduction, determined by the portion of their taxable year falling in the calendar year in which the tax reductions become effective. A similar pro rata basis would be used to determine any unused excess-profits credit carry-back available to a fiscal-year taxpayer with respect to any fiscal year beginning in calendar year 1946 and ending in calendar year 1947.

2. EXTENSION OF EXCLUSION FROM GROSS INCOME OF INCOME FROM DISCHARGE OF INDEBTEDNESS.

Your committee's bill extends the application of section 22(b) (9) and (10) to include taxable years beginning in 1946. These provisions provide for the exclusion from gross income of income realized by a corporation by the purchase of its own bonds, debentures, or other evidence of indebtedness and also in the case of railroads, the exclusion from gross income of any gains realized from the cancellation of indebtedness in bankruptcy proceedings. The application of the provisions under existing law is limited to taxable years beginning before January 1, 1946. This bill continues the application of these provisions for another year, during which time the whole problem of the tax treatment of income from the cancellation of indebtedness will be studied.

3. EXTENDING FEDERAL GOVERNMENT EXEMPTIONS FROM CERTAIN FEDERAL EXCISE TAXES.

Your committee concurs with the House in providing for the continuation of the authority granted by the Revenue Act of 1943 to the Secretary of the Treasury to exempt from certain Federal excise taxes any articles or services to be purchased for the exclusive use of the United States, if the Secretary determines that the imposition of the tax with respect to such articles or services will cause substantial burden and expense which can be avoided by tax exemption. The Secretary's power, under present law, to make such exemptions expires six months after the cessation of hostilities.

DETAILED DISCUSSION OF THE TECHNICAL PROVISIONS OF THE BILL.

TITLE I—INCOME AND EXCESS-PROFITS TAX.

PART I—INDIVIDUAL INCOME TAXES.

SECTION 101. REDUCTION IN NORMAL TAX AND SURTAX ON INDIVIDUALS.

Section 101 of the bill with the amendments proposed by your committee provides reductions in the normal tax and surtax on individuals. Subsection (a), for which there is no corresponding provision in the House bill, amends section 11 of the Code to provide for an over-all reduction of 5 per cent in the amount of the normal tax computed at the 3 per cent rate. The amendment, in effect, reduces the normal tax rate from 3 to 2.85 per cent. The reduction in the normal tax reduces the tax effect of credits allowed for the normal tax, such as the credits for partially tax-exempt obligations under section 25(a) (1) and (2).

Under existing law the surtax rates on individuals range from 20 per cent to 91 per cent. The law also provides that the combined normal tax and surtax shall not, in the aggregate, exceed 90 per cent of the net income of the taxpayer for the taxable year. Section 101(a) of the House bill amended section 12(b) of the Code to provide a new schedule of surtax rates, ranging from 16 to 81½ per cent.

Under section 101(b) of the bill as proposed by your committee the surtax rates provided in section 12(b) of existing law have been reduced by 3 percentage points in each bracket to provide a new schedule of rates for a tentative surtax ranging from 17 to 88 per cent. In addition to these changes, section 12(b) of the Code has been amended to provide for a reduction of 5 per cent in the amount of the tentative surtax computed under the revised rates. Thus the surtax is 5 per cent less than the amount computed under the table.

The amendment made by section 101(b) of the House bill to section 12(g) of the Code, reducing the limitation on the aggregate, normal tax and surtax from 90 to 81 per cent, has been eliminated by your committee. In lieu thereof, section 101(c) of your committee bill reduces the 90 per cent limitation to 85½ per cent.

Section 101(d) of your committee bill is identical with section 101(c) of the House bill and provides that the amendments made by section 101 shall be applicable to taxable years beginning after December 31, 1945. Special provision for fiscal years beginning in 1945 and ending in 1946 is made in section 131(a) of the bill.

SECTION 102. ALLOWANCE OF SAME EXEMPTIONS FOR NORMAL TAX AS FOR SURTAX.

Section 102 of the bill as reported by your committee is substantially the same as section 102 of the House bill.

Under existing law, section 25(a)(3) provides a single exemption of $500 for normal tax purposes, except that in the case of a joint return of a husband and wife, each having adjusted gross income of $500 or more, the normal tax exemption is $1,000. If a joint return is filed by husband and wife, one of whom has an adjusted gross income of less than $500, the normal tax exemption is $500 plus the adjusted gross income of such spouse. For surtax purposes, the taxpayer is entitled to exemptions in the amount of $500 for himself, $500 for his spouse if a joint return is filed or if a separate return is filed and the spouse has no gross income and is not the dependent of another, and $500 for each dependent whose gross income is less than $500.

Subsection (a) of this section of the bill would revise section 25(b) of the Code to make the present exemptions now allowable in computing the surtax also available as credits against net income for the purpose of the normal tax. Subsection (b) contains 10 technical amendments necessitated by the change in the exemptions for normal tax purposes. It is proposed to eliminate the first amendment contained in subsection (b) of the House bill since the appropriate correction of section 11, relating to the normal tax on individuals, is made in section 101(a) of your committee bill. The 10 technical amendments in your committee bill are the same as the remaining amendments in the House bill.

The amendments made by this section shall be applicable to taxable years beginning after December 31, 1945. Special provision is made in section 131(a) of the bill for taxable years beginning in 1945 and ending in 1946.

SECTION 103. INDIVIDUALS WITH ADJUSTED GROSS INCOMES OF LESS THAN $5,000.

This section, like the corresponding section of the House bill, amends the tax table contained in section 400 of the Code, relating to the optional tax on individuals with adjusted gross incomes of less than $5,000. The tax table proposed in your committee bill gives effect to the changes made in the normal tax and surtax under sections 101 and 102. The table has been computed by allowing the exemptions against both normal tax and surtax and by taking into account the reduced normal tax and surtax rates. Thus, the 5 per cent reduction, in addition to the other changes, has been taken into account in preparing the table.

The new table of taxes would become effective for taxable years beginning after December 31, 1945. Special provision is made in section 131(a) of the bill for taxable years beginning in 1945 and ending in 1946.

SECTION 104. REDUCTION IN WITHHOLDING OF TAX AT SOURCE ON WAGES.

This section is the same as section 104 of the House bill except for the substitution of new tables for the tables in subsection (b) and the addition of a new subsection (d).

Section 1622(a) of existing law requires the use of three different percentage rates in computing the amount of tax to be withheld at the source, if the employer elects to use the percentage method in lieu of the wage-bracket tables provided in section 1622(c). The several rates are necessary in order to compute the appropriate amount of tax to be withheld in respect of the normal tax and the first and second brackets of the surtax. The rates provided under existing law for such purpose are 2.7, 18, and 19.8 per cent, respectively. The separate rate for computing the amount of tax to be withheld in respect of the normal tax is occasioned by the difference in the exemptions provided in section 25 for normal tax and for surtax purposes. As a result of the amendment contained in section 102 of the bill which makes the present surtax exemptions available for normal tax purposes, it is possible to eliminate the 2.7 per cent rate entirely and to combine the normal tax with the surtax rates. The two rates now corresponding to the first and second surtax bracket rates are revised to reflect the amendments contained in section 101 of the bill reducing the nor-

mal tax and surtax rates. Accordingly, subsection (a) of this section amends section 1622(a) by eliminating the 2.7 per cent rate and by reducing the 18 and 19.8 per cent rates to 17 per cent and 19 per cent, respectively. These rates take into consideration the standard deduction of approximately 10 per cent. A technical amendment is also made to conform the percentage method withholding table to the new rate applicable to the first surtax bracket.

Subsection (b) of the House bill substitutes for the present withholding tax tables under section 1622(c)(1) new tax tables which reflect the changes made with respect to the surtax rates in section 101 of such bill and with respect to the normal-tax exemptions in section 102 of such bill. Subsection (b) of your committee's bill likewise provides for new withholding tables which reflect the reduction made with respect to the normal tax and the surtax.

Subsection (c) is a technical amendment to section 1622(h)(1)(C) to conform the reference to exemptions in the case of dependents to the changes made by section 102 of the bill.

Subsection (d), for which there is no corresponding provision in the House bill, would amend sections 1625(a) and 1626 (a) and (b) of the Code. Under section 1625(a) of existing law every employer required to deduct and withhold a tax in respect of the wages of an employee is required to furnish to each such employee, in respect of his employment during the calendar year, a written statement showing the wages paid by the employer to such employee during such calendar year and the amount of the tax deducted and withheld under Subchapter D of Chapter 9 of the Code in respect of such wages. The amendment to section 1625(a) would require an employer to furnish such a statement to an employee, even though no tax is required to be deducted and withheld with respect to such employee's wages, if the wages paid to such employee exceed the amount of one withholding exemption. For example, if an employee is paid $15 per week, there may be no tax required to be deducted and withheld inasmuch as the employee may claim two or more withholding exemptions; nevertheless, since the wages exceed the amount of one withholding exemption for a weekly pay-roll period, a statement would be required to be furnished to such employee under the proposed amendment. Such statement (known as Form W-2) is used as a simple tax return form by millions of taxpayers. Under the amendment such simple return form would be made available to an employee who is required to make a return but who has no tax deducted or withheld from his wages. The amendments of section 1626 (a) and (b) consist of the omission of the expression "in respect of tax withheld pursuant to this subchapter" and the substitution of "statement" for "receipt" wherever appearing therein. As a result of such amendments, the penalties for furnishing a fraudulent receipt or failure to furnish a receipt would apply in cases where no tax is required to be withheld but a statement is required under section 1625(a) as amended.

The amendments made by this section of the bill are made applicable to wages paid on or after January 1, 1946.

PART II—CORPORATION TAXES.

SECTION 121. REDUCTION IN NORMAL TAX AND SURTAX OF SPECIAL CLASSES OF CORPORATIONS.

This section replaces section 121 of the House bill which was eliminated by your committee. The House bill reduced the surtax of corporations by 4 percentage points, making related changes in the surtax on corporations with surtax net incomes of less than $50,000 and on certain particular classes of corporations. In lieu thereof section 121 of your committee bill reduces the aggregate normal tax and surtax of smaller corporations (i. e., those with net incomes of less than $60,000). The tax reductions are effected by adjustments in the normal tax and surtax rates and also in the brackets which effect the transition to the regularly applicable rates to obviate the "notch" which would otherwise exist. The general effect of the amendments is to provide relatively more relief in the lower brackets of income and proportionately less in the higher brackets until the tax reduction entirely disappears in the case of net incomes of $60,000. Certain classes of corporations which are subject to special tax provisions under existing law are not affected.

Subsection (b) of section 121 amends section 14(b) of the Code, relating to the normal tax on corporations with net incomes of not more than $25,000. Under the amendment the normal tax rate upon normal tax net incomes not

in excess of $10,000 is fixed at 15 per cent, upon normal tax net incomes in excess of $10,000 and not in excess of $20,000 at 18 per cent, and upon normal tax net incomes in excess of $20,000 and not in excess of $25,000 at 19 per cent.

Subsection (a) of section 121 amends subsection (b) (2) of section 13 of the Code which at present provides for an alternative normal tax on corporations with normal tax net incomes over $25,000 and not over $50,000. The amendment changes the rate from 31 to 29 per cent, and also extends the bracket from the present $50,000 up to $60,000. This provides a transition from the rates under the amendments made by subsection (b) and (c) of the section to the generally applicable 24 per cent normal tax rate imposed by section 13(b)(1) of the Code, which remains unchanged.

Subsection (c) of section 121 amends section 15(b) of the Code relating to the corporation surtax. The amendment breaks the existing first bracket of surtax net incomes not over $25,000 into three brackets and imposes rates running from 5 per cent on the first $10,000 of surtax net income to 9 per cent on the portion of surtax net income over $10,000 and not over $20,000 and to 10 per cent upon the portion of surtax net income over $20,000 and not over $25,000. As in the case of the normal tax, the amendment also extends the existing bracket provision, which runs from $25,000 to $50,000, up to $60,000. The rate in this bracket remains at 22 per cent as under existing law. This adjustment provides a more satisfactory and equitable transition to the generally applicable 16 per cent surtax rate, which remains unchanged.

Subsection (d) of section 121 amends section 207(a)(1)(B) of the Code relating to mutual insurance companies other than life or marine. Under existing law the alternative surtax rate under section 207(a)(1)(B) is 20 per cent and applies on surtax net incomes over $3,000 and not over $6,000. In order to maintain the point at which this alternative surtax ceases to apply at $6,000, as under existing law, the 20 per cent rate is reduced to 10 per cent. This change is correlated with the reduction of the surtax rate on surtax net incomes not over $10,000 to 5 per cent, under the amendment made by subsection (b).

Subsection (e) of section 121 makes the amendments made by the section applicable with respect to taxable years beginning after December 31, 1945. Under section 131 of the bill special treatment is prescribed in the case of taxable years beginning in 1945 and ending in 1946. This latter provision, however, has no application to the mutual insurance companies to which the amendment made by subsection (d) applies.

SECTION 122. REPEAL OF EXCESS-PROFITS TAX IN 1946.

Section 122 of the House bill continued the excess-profits tax through 1946, but provided that the rate of tax should be 60 per cent for taxable years beginning after December 31, 1945. Section 123(a) of the House bill repealed the excess-profits tax with respect to taxable years beginning after December 31, 1946. Your committee has eliminated section 122 of the House bill and has renumbered section 123 as section 122 and amended it to provide, in subsection (a), that the excess-profits tax shall not be applicable with respect to any taxable year beginning after December 31, 1945. Provision has been made by your committee under section 131(b) of the bill for taxable years beginning in 1945 and ending in 1946.

Your committee, however, has provided in section 122(b) of the bill that the provisions of Subchapter E of Chapter 2, which relate to the excess-profits tax, shall remain in force for purposes of the determination of excess-profits taxes for taxable years beginning prior to January 1, 1946. The determination of such taxes is to be made with the application of the amendments made by sections 122(c) and 131 of the bill. Section 131 relates to fiscal-year taxpayers. Subsection (c) of section 122 amends section 710(c)(2) of the Code to provide that there shall be no unused excess-profits tax credit for any taxable year beginning after December 31, 1946. There is, however, to be an unused excess-profits credit for a taxable year beginning in 1946. In the case of a taxable year which begins in 1946 and ends in 1947, the unused excess-profits credit will be an amount which is such part of the unused excess-profits credit otherwise determined as the number of days in such taxable year prior to January 1, 1947, is of the total number of days in such taxable year. Thus, even though no excess-profits tax will be imposed for a taxable year beginning in 1946, there may be an unused excess-profits credit for such taxable year, and such unused excess-profits credit may be carried back and may affect the excess-profits tax

otherwise imposed for taxable years beginning in 1944 or 1945. All provisions of law necessary to compute the excess-profits credit, the excess-profits net income, and the unused excess-profits credit for a taxable year beginning in 1946, and the unused excess-profits credit carry-back from such taxable year, shall be taken into account in determining the unused excess-profits credit and the resulting carry-back in the same manner as if an excess-profits tax were imposed for such taxable year. In determining the unused excess-profits credit adjustment for taxable years beginning prior to January 1, 1946, the unused excess-profits credit for a taxable year beginning in 1946 may be computed by taking into account a constructive average base period net income determined under section 722 of the Code. A taxable year beginning in 1946 for purposes of the excess-profits tax shall be the same taxable year as that for purposes of the tax imposed by Chapter 1 of the Code.

There is danger that the operation of the unused excess-profits credit carry-back provision, particularly in 1946, may make possible certain abuses. These potential abuses might arise through various devices or transactions entered into wholly or in large part for the purpose of obtaining refunds of wartime excess-profits taxes through unused credit carry-backs, or through transactions having the apparent effect of creating carry-back refunds in situations unrelated to the purpose and intent of the provisions allowing carry-backs. While various tax-avoidance schemes are already dealt with either by express provision in the internal-revenue laws or through court decisions, your committee will give further consideration to the necessity or desirability of retroactive legislation in this connection.

Subsection (d) of section 122 applies with respect to an affiliated group of corporations making consolidated returns. Unused excess-profits credit carry-backs from taxable years subsequent to 1945 may become a factor in the case of such corporations. The consolidated return involved may be a consolidated income-tax return made for a taxable year beginning in 1946; or it may be a consolidated income or excess-profits tax return made for the taxable year 1944 or 1945; or consolidated returns may be made for the several taxable years involved. Section 122(d) provides that, in all such cases, the carry-backs from a subsequent taxable year, whether or not a consolidated return is made for such year, shall be given effect in such manner as the Commissioner, with the approval of the Secretary, shall have prescribed by regulations prior to the last day prescribed by law for the making of the return for such year, which date includes the last day of any extension of time granted by the Commissioner.

Subsection (e) of section 122 of the bill, for which there is no corresponding provision in the House bill, amends section 322(b)(6) of the Code which provides a special period of limitation in the case of credits or refunds of overpayments which are attributable to net operating loss carry-backs or to unused excess-profits credit carry-backs. In general, section 322(b)(6), added by section 5(b) of the Tax Adjustment Act of 1945, provides that if an overpayment of tax is attributable to a net operating loss carry-back or to an unused excess profits credit carry-back, the period within which a claim for credit or refund of such overpayment may be filed, or credit or refund allowed or made, shall be coextensive with the period within which claim for credit or refund may be filed, or credit or refund allowed or made, with respect to the taxable year of the net operating loss or the unused excess-profits credit which resulted in the carry-back. Inasmuch as the period within which claim for credit or refund may be filed, or credit or refund allowed or made, with respect to the taxable year of the net operating loss or the unused excess-profits credit depends, under section 322(b)(1) of the Code, on the date on which the return for such taxable year is filed and inasmuch as no excess profits tax return will be filed for a taxable year beginning in 1946, it is necessary to amend section 322(b)(6) to provide a satisfactory period of limitation. Section 322(b)(6) is accordingly amended by subsection (e) of section 122 of the bill to provide that in the case of an overpayment attributable to a net operating loss carry-back or to an unused excess-profits credit carry-back the 3-year period specified in section 322(b)(1) of the Code within which a claim for credit or refund may be filed, or credit or refund allowed or made, shall be (1) that period which ends with the expiration of the 15th day of the thirty-ninth month following the end of the taxable year of the net operating loss or the unused excess-profits credit which resulted in the carry-back, or (2) the period specified in section 322(b)(3), relating to waivers, whichever expires later. The amendment is to be applicable with respect to all taxable years beginning after December 31, 1940, i. e., to all taxable years which may be

affected by a carry-back and to which the original provisions of section 322(b)(6) were made applicable.

Subsection (f) of section 122 of the bill, to which there is no corresponding provision in the House bill, amends section 276(d) of the Code, relating to deficiencies attributable to net operating loss carry-backs and to unused excess-profits credit carry-backs. Section 276(d) of the Code, which was added by section 5(e) of the Tax Adjustment Act of 1945 and which is correlative of section 322(b)(6) of the Code, provides in general that a deficiency attributable to a net operating loss carry-back or to an unused excess-profits credit carry-back may be assessed at any time prior to the expiration of the period within which a deficiency may be assessed with respect to the taxable year of the net operating loss or the unused excess-profits credit which resulted in the carry-back. Inasmuch as no excess-profits tax return will be filed for a taxable year beginning in 1946, it is necessary to provide a proper period of limitation for assessing a deficiency where such deficiency is attributable to an unused excess-profits credit carry-back from a taxable year beginning in 1946. Moreover, there is likewise some doubt under the present provisions of section 276(d) as to the proper period of limitation in certain types of cases for assessing a deficiency attributable to a carry-back. For example, it is not clear whether a deficiency attributable to all unused excess-profits credit carry-back which itself was produced by a net operating loss carry-back may be assessed at any time prior to the expiration of the period within which a deficiency may be assessed with respect to the tax imposed under Chapter 1 of the Code for the taxable year of the net operating loss or at any time prior to the expiration of the period within which a deficiency may be assessed with respect to the excess-profits tax for the taxable year of the net operating loss. Subsection (f) of section 122 of the bill accordingly amends section 276(d) of the Code to provide a rule to take care of the special situation arising out of deficiencies attributable to unused excess-profits credit carry-backs from taxable years beginning in 1946, and to remove any ambiguity in the existing provisions of law. The amendment made by subsection (f) of section 122 of the bill is to be applicable to all taxable years beginning after December 31, 1940, i. e., to all taxable years which may be affected by a carry-back and to which the original provisions of section 276(d) were made applicable.

The period within which a deficiency attributable to a carry-back may be assessed, under section 276(d) of the Code as amended by section 122(f) of the bill, will depend on whether an excess-profits tax return was required for the taxable year of the net operating loss or the unused excess-profits credit which resulted in the carry-back. If an excess-profits tax return was required to be filed for such taxable year, a deficiency in any tax attributable to such carry-back may be assessed at any time prior to the expiration of the period within which (under the provisions of section 275 or 276 (a) or (b) of the Code) a deficiency may be assessed with respect to the same or any other tax imposed by Chapter 1 or by Subchapter B or E of Chapter 2 for such taxable year. It is immaterial whether an excess-profits tax return in fact was filed for the taxable year of the net operating loss or the unused excess-profits credit, whether the deficiency is attributable to a net operating loss carry-back or to an unused excess-profits credit carry-back, or whether the deficiency is in respect of the excess-profits tax or some other tax. If the period within which a deficiency may be assessed under any other applicable provision of law is longer than the period provided in section 276(d), a deficiency attributable to a carry-back may be assessed at any time prior to the expiration of such longer period.

If no excess-profits tax return was required to be filed for the taxable year of the net operating loss or the unused excess-profits credit, a deficiency in any tax attributable to a carry-back which resulted from such loss or unused credit may be assessed at any time prior to the expiration of the period within which (under the provisions of section 275 or 276 (a) or (b) of the Code) a deficiency may be assessed with respect to the same or any other tax imposed by Chapter 1 or by Subchapter A or B of Chapter 2 for such taxable year. If a longer period of time is provided under some other applicable provision of law than that specified in section 276(d) of the Code, a deficiency attributable to a carry-back may be assessed, as in the case where an excess-profits tax return is required, at any time prior to the expiration of the longer period.

Subsection (g) of section 122 of the bill, which corresponds to subsection (b) of section 123 of the House bill, makes certain technical amendments with respect to taxable years beginning after December 31, 1945, to conform the provisions of the Code to the amendment made by section 122(a).

Subsection (h) of section 122 of the bill, which corresponds to subsection (c) of section 123 of the House bill and which relates to taxable years beginning in 1945 and ending in 1946, is a cross reference to section 131 of the bill which relates to fiscal year taxpayers.

PART III—FISCAL YEAR TAXPAYERS.

SECTION 131. FISCAL YEAR TAXPAYERS.

Section 108 of the Code contains special rules for the computation of the tax in the case of taxpayers making returns on a fiscal-year basis. Section 131(a) of the House bill amended section 108 of the Code by adding two new subsections to provide for the computation of the tax imposed by sections 11, 12, 13, 14, 15, and 400 in the case of taxable years beginning in 1945 and ending in 1946, and for the computation of the tax imposed by sections 13, 14, and 15 for taxable years beginning in 1946 and ending in 1947. The computations provided by these amendments are similar to the computation provided under existing law with respect to fiscal years beginning in 1943 and ending in 1944. Under the House bill the rule prescribed for the computation of the tax imposed by sections 13, 14, and 15 for taxable years beginning in 1946 and ending in 1947 was necessitated by the fact that the excess-profits tax was continued at a lower rate for 1946 and was repealed for 1947 by sections 122 and 123 of the House bill. These provisions were inserted as subsections (c) and (d) of section 108 of the Code and subsection (c) was redesignated subsection (e).

The bill as reported by your committee retains the provision of the House bill respecting the computation of the tax for fiscal years beginning in 1945 and ending in 1946 but strikes out the provision of section 108(d) relative to the computation of the tax imposed by sections 13, 14, and 15 for taxable years beginning in 1946 and ending in 1947, since under your committee bill there is no difference in the law applicable to 1946 and 1947 with respect to such tax.

Section 131(b) of the House bill added new paragraphs (7) and (8) to section 710(a) of the Code to provide for the computation of the excess-profits tax for taxable years beginning in 1945 and ending in 1946 and for taxable years beginning in 1946 and ending in 1947, respectively. The rule provided for taxable years beginning in 1945 and ending in 1946 is similar to that provided in section 710(a)(6) of the Code for taxable years beginning in 1943 and ending in 1944. Since the House bill provided for repeal of the excess-profits tax with respect to taxable years beginning after December 31, 1946, paragraph (8) added to section 710(a) by the House bill provided that the excess-profits tax for fiscal years beginning in 1946 and ending in 1947 should be an amount equal to that portion of a tentative tax, computed as if the law applicable to taxable years beginning on January 1, 1946, were applicable to such taxable year, which the number of days in such taxable year prior to January 1, 1947, bears to the total number of days in such taxable year.

Under the bill reported by your committee, the excess-profits tax is made inapplicable with respect to taxable years beginning after December 31, 1945. Hence, paragraph (7), added to section 710(a) of the Code by the House bill, to provide for the computation of the tax for fiscal years beginning in 1945 and ending in 1946, is eliminated, and in lieu thereof there is inserted a new paragraph (7) to prescribe for the computation of the tax for such fiscal years a rule similar to that provided under the House bill for fiscal years beginning in 1946 and ending in 1947.

The Tax Adjustment Act of 1945 increased the excess-profits tax specific exemption from $10,000 to $25,000 for taxable years beginning after December 31, 1945, and provided a special rule for computing the exemption for taxable years beginning in 1945 and ending in 1946. Because of the amendment made by section 131(b) of the House bill to provide for the computation of the tax for such fiscal years, the House bill contained technical amendments eliminating the special rule for computation of the exemption for such fiscal years. Subsection (b) of this section of the House bill also amended section 710(c)(2) of the Code to provide a special rule for the computation of the unused excess-profits credit for a taxable year beginning in 1946 and ending in 1947. Under your committee bill the excess-profits tax is not applicable to taxable years beginning after December 31, 1945. Hence, section 131(b) of the bill restores section 710(b)(1) of the Code to read as it did immediately prior to its amendment by the Tax Adjustment Act of 1945.

This subsection of your committee bill also strikes out the amendment made by section 131(b)(3) of the House bill to section 710(c)(2) of the Code to provide for the computation of the unused excess-profits credit for a taxable year beginning in 1946 and ending in 1947. Appropriate provisions for the computation of the unused excess-profits credit for taxable years beginning after December 31, 1945, are contained in section 122(c) of the bill as reported by your committee, and a discussion of these provisions appears elsewhere in the report.

PART IV—VETERANS' AND SERVICEMEN'S PROVISIONS.

SECTION 141. ADDITIONAL ALLOWANCE FOR MILITARY AND NAVAL PERSONNEL.

This section, for which there is no corresponding provision in the House bill, would amend section 22(b)(13) of the Code, relating to the exclusion from gross income for military and naval personnel, and would provide for certain credits and refunds.

Under section 22(b)(13) of existing law, a $1,500 exclusion from gross income is provided in the case of military and naval personnel with respect to the compensation received during any taxable year and before the termination of the present war as proclaimed by the President for active service in the armed forces of the United States (or of any of the other United Nations, if the taxpayer is a citizen or resident of the United States) during such war. This provision applies only with respect to taxable years beginning after December 31, 1942.

Subsection (a) of this section of the bill would amend section 22(b)(13) so as to provide for the exclusion from gross income of the entire amount of the compensation received during any taxable year and before the termination of the present war as proclaimed by the President, 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 such war. The $1,500 exclusion would, under the amendment, be continued with respect to the compensation received during any taxable year and before the termination of the present war as proclaimed by the President, for active service as a commissioned officer (or a commissioned warrant officer) in the military or naval forces of the United States during such 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. The parenthetical expression relating to a commissioned warrant officer is intended to be declaratory of the law with respect to "personnel below the grade of commissioned officer" for the purposes of section 22(b)(13) prior to its amendment by section 7 of the Current Tax Payment Act of 1943. Under the amendment, if the compensation pertains to active service rendered during the present war and if it is received before the termination of the present war as proclaimed by the President, the exclusion applies regardless of whether such compensation is received in one lump sum or in periodic amounts and regardless of whether received before or after discharge or release from such service. With respect to the $1,500 exclusion for commissioned officers, only one such exclusion shall be allowable in respect of the compensation of each such officer during any taxable year.

Subsection (b) of this section provides that the exclusion with respect to compensation for active service as a commissioned officer shall be applicable with respect to taxable years beginning after December 31, 1942, and that the exclusion with respect to compensation for active service as a member below the grade of commissioned officer shall be applicable with respect to taxable years beginning after December 31, 1940.

Subsection (c) of this section provides that a credit or refund of any overpayment of the tax for any taxable year beginning after December 31, 1940, and before January 1, 1943, to the extent that the overpayment is attributable to the enactment of this section may be allowed or made if a claim therefor is filed before January 1, 1947, even though at any time prior to such date the allowance of a credit or refund of the overpayment for any such taxable year is otherwise prevented by the operation of any law or rule of law other than section 3761 of the Code, relating to compromises.

SECTION 142. DEFERMENT OF CERTAIN TAXES OF VETERANS AND SERVICEMEN.

This section, for which there is no corresponding provision in the House bill, adds a new section 3808 to Chapter 38 of the Code to prescribe, in the case of certain members of the military or naval forces of the United States, the time

for payment of the tax attributable to service pay and the tax attributable to preservice earned income for the war years. The time for payment is prescribed in subsection (b) of section 3808. Definitions of the terms used in subsection (b) are contained in section 3808(a).

Section 3808(b) provides, in general, that the tax attributable to service pay for any war year and the tax attributable to preservice earned income for any war year shall, in lieu of the time otherwise prescribed by law, be paid in 12 equal installments spread over a period of three years beginning with the "first installment date" as defined in section 3808(a)(4). The benefits of section 3808(b) are allowable only upon application made, under regulations prescribed by the Commissioner with the approval of the Secretary, prior to the first installment date. In the case of taxpayers who have been released from active duty in the military or naval forces prior to December 1, 1945, the term "first installment date" means May 15, 1946. In other cases the term "first installment date" means June 15, 1947, or the 15th day of the sixth month which begins after the date of the taxpayer's release from active duty in such forces, whichever is the earlier. It is provided, however, that if the first installment date with respect to any war year would otherwise occur before the 15th day of the third month following the close of such year, or before the end of the period of time disregarded under section 3804 with respect to the tax for such year, the first installment date with respect to such year shall be the 15th day of such third month or the day following the end of the period disregarded under section 3804, as the case may be. Thus, in the case of a taxpayer who is discharged in December, 1945, the "first installment date" with respect to that portion of the tax attributable to service pay for a war year would be June 15, 1946, which is the 15th day of the sixth month beginning after the month of the taxpayer's release from active duty. If, however, the taxpayer is released from active duty in the armed forces in the month of June, 1946, the 15th day of the sixth month which begins after the taxpayer's release would be the 15th day of December, 1946. Since such date falls before the 15th day of the third month following the close of such year, the 15th day of such third month, or March 15, 1947, would be the first installment date for the payment of the tax attributable to that portion of the service pay received in 1946. If appropriate application is made and payment of the tax is deferred in accordance with the provisions of section 3808(b), one-twelfth of the tax in respect of which the deferment is authorized is payable on the first installment date, one-twelfth thereof on the 15th day of the third month following the first installment date, and one-twelfth on the 15th day of each succeeding third month after the preceding installment until the full amount of tax is paid.

Inasmuch as the effect of section 3808(b) is to prescribe the time for payment of the tax in lieu of the time otherwise prescribed by law, no interest shall be charged or paid if the tax is paid at the time prescribed in such section. Interest at the rate of 6 per cent per annum shall be charged on installments not paid at the time prescribed in such section from the date the installment became due until the installment is paid. If the taxpayer fails to pay an installment of the tax at the time prescribed in section 3808(b), such failure shall not accelerate the due date of the remaining installments.

The extension of time provided in section 3808(b) relates to "tax attributable to service pay" and "tax attributable to preservice earned income" for war years. The term "war year" as defined in section 3808(a)(2) means, in the case of the tax attributable to service pay, any taxable year beginning after December 31, 1939, and before January 1, 1947. In the case of the tax attributable to preservice earned income, the term means taxable year beginning after December 31, 1939, but before January 1, 1942, and before the taxpayer entered upon active service as a member of the armed forces of the United States, but does not include any year unless part of the tax imposed by Chapter 1 for such year became due and payable after the taxpayer entered upon such active service.

If the taxpayer had no gross income for "a war year" other than compensation for active service as a member of the military or naval forces of the United States, the term "tax attributable to service pay" means the tax imposed under Chapter 1 for such year. If the taxpayer had gross income for "a war year" in addition to the compensation for active service as a member of the military or naval forces of the United States, the term "tax attributable to service pay" means the excess of the tax imposed under Chapter 1 for such year over the tax which would have been imposed if the compensation for such service had been

excluded from gross income. Under the terms of the definition an exception is provided with respect to the service pay of commissioned officers of the regular component of the Army, Navy, Marine Corps, or Coast Guard. Thus, in the case of a regular officer of these services the term does not apply to the service compensation for a war year unless such officer by reason of service on sea duty or outside the continental United States is entitled to the benefits of section 3804 of the Internal Revenue Code with respect to the tax under Chapter 1 for such year.

If the taxable year constitutes a war year within the scope of the definition, the "tax attributable to preservice earned income" in respect of such taxable year is the excess of the tax imposed under Chapter 1 for such year over the tax that would have been imposed if there had been excluded from the net income the amount of the "earned net income" for such taxable year. As used in this section the term "earned net income" means the earned net income as defined in section 25(a)(4) of the Internal Revenue Code applicable in respect of such taxable year, except that in computing the earned net income under the definition contained in section 25(a)(4) compensation for active service in the armed forces shall not be taken into account. For the purposes of computations under section 3808 the term "tax imposed under Chapter 1" means a tax computed without regard to the credit provided in section 31 of the Code relating to taxes of foreign countries and possessions of the United States, and the credit provided in section 32 relating to the tax withheld at the source.

Section 3808(c) provides for the suspension of the period of limitations under section 276(c) of the Code on the collection of the tax in respect of any tax the time for the payment of which is prescribed under section 3808(b). The period of suspension so provided is the period beginning with the date of the filing of the application under section 3808(b) and ending six months after the date prescribed in such section for the payment of the last installment of such tax.

Subsection (b) of section 142 provides for the refund of interest paid on that portion of the tax for any taxable year in respect of which a new payment date is authorized by section 3808, as added by section 142 (a) and (b) of the bill. The subsection provides that any such interest paid prior to the date of the enactment of the Revenue Act of 1945 shall be credited or refunded to the taxpayer if claim therefor is filed with the Commissioner prior to January 1, 1947.

PART V—MISCELLANEOUS.

SECTION 151. REPORTS OF REFUNDS AND CREDITS TO JOINT COMMITTEE ON INTERNAL REVENUE TAXATION.

With the end of the emergency period specified in section 124, a large volume of applications for tentative adjustments under section 124(j) of the Code will be filed. Under section 124(k) the Commissioner is required to make the appropriate credits and refunds within a 90-day period. Section 3777(c) provides that carry-back refunds and credits, similarly made within a 90-day period, under section 3780(b), do not require prior report to the Joint Committee on Internal Revenue Taxation. In order that the refunds arising through amortization adjustments may not be delayed, this section, for which there is no corresponding provision in the House bill, provides that the same exception to the requirement of a report required by section 3777(a) as was provided by the Tax Adjustment Act with respect to carry-backs should be made with respect to refunds or credits under section 124(k).

SECTION 152. EXTENSION OF TREATMENT OF INCOME RESULTING FROM DISCHARGE OF INDEBTEDNESS.

Section 22(b)(9) of the Code provides, in the case of corporations, for the exclusion from gross income of the amount of income attributable to the discharge of indebtedness during the taxable year, provided that the taxpayer consents to the provisions of the regulations prescribed under section 113(b)(3), relating to the adjustment of basis of property of the corporation by the amount excluded from gross income. By its terms section 22(b)(9) has no application to taxable years beginning after December 31, 1945. Section 22(b)(10) of the Code provides for the exclusion from gross income of the amount of income attributable to the discharge of indebtedness of a railroad corporation, as defined in section 77m of the National Bankruptcy Act, pursuant to an order of a court in a receivership proceeding or in a proceeding under section 77 of the

Bankruptcy Act, as amended. Section 22(b)(10) has no application to taxable years beginning after December 31, 1945. Section 152 of your committee bill would amend section 22(b) (9) and (10) to extend the application of such sections to taxable years beginning before January 1, 1947. There is no corresponding provision in the House bill.

SECTION 153. LOST POSTWAR CREDIT BONDS.

This section, for which there is no corresponding provision in the House bill, amends section 8(c) of the Government Losses in Shipment Act to confer authority for the issuance of new certificates to replace lost, stolen, or destroyed excess-profits tax refund bonds. Under the present provisions of the Government Losses in Shipment Act, such bonds can not be replaced since section 8 of that Act applies only to interest-bearing obligations or those issued on a discount basis. This amendment would make section 8 of that Act applicable to bonds issued under section 780 of the Internal Revenue Code and would obviate the necessity for obtaining special legislation in cases where such bonds have been lost, stolen, or destroyed.

TITLE II.—REPEAL OF CAPITAL STOCK TAX AND DECLARED VALUE EXCESS-PROFITS TAX.

SECTION 201. REPEAL OF CAPITAL STOCK TAX.

This section, which is the same as section 201 of the House bill, repeals Chapter 6 of the Code, which imposes the capital stock tax. This tax is applicable with respect to years ending June 30, and the repeal is effective with respect to years ending after June 30, 1945; in other words, the repeal is effective with respect to the year ending June 30, 1946, and succeeding years.

SECTION 202. REPEAL OF DECLARED VALUE EXCESS-PROFITS TAX.

This section, which is identical with section 202 of the House bill, repeals Subchapter B of Chapter 2 of the Internal Revenue Code, which imposes the declared value excess-profits tax. The repeal is technical, since the tax applies only to corporations subject to capital stock tax, which tax is repealed by section 201. The declared value excess-profits tax is due with respect to the income tax taxable years ending after the close of the capital stock tax taxable year. The repeal of Subchapter B is accordingly made effective with respect to income tax taxable years ending after June 30, 1946, the first year with respect to which the repeal of the capital stock tax is effective.

SECTION 203. ALTERNATIVE TAX WHERE WAR LOSS RECOVERIES INCLUDED IN NET INCOME.

Section 203, which has been added to the bill as passed by the House, amends section 600 of the Code by adding thereto a new subsection (b) to impose an alternative declared value excess-profits tax. This tax is applicable only in cases where the taxpayer's net income includes any amount on account of war losses recoveries under section 127(c) of the Code. It is limited to taxable years ending after June 30, 1945, and of course to years ending before July 1, 1946, since the tax is repealed with respect to years ending after June 30, 1946.

Section 600(b) provides that where the net income of the taxpayer for purposes of the declared value excess-profits tax includes any amount on account of war loss recoveries under section 127(c), then, in lieu of the tax computed under section 600(a) (the regular tax) the tax shall be the amount computed under section 600(a), after exclusion from net income of the amount of the war loss recoveries, plus the lesser of the following amounts: 1¼ per cent of the amount of the war loss recoveries included in the net income of 1¼ per cent of such portion of the net income which would be subject to tax under section 600(a) in the absence of this amendment.

TITLE III.—EXCISE TAXES.

SECTION 30Y. REPEAL OF USE TAX ON MOTOR VEHICLES AND BOATS.

This section, which, except for numbering, is the same as section 302 of the House bill, repeals Chapter 33A, added to the Internal Revenue Code by section

557 of the Revenue Act of 1941, taxing the use of motor vehicles and boats. The repeal is effective with respect to the period after June 30, 1946, so that the tax will be inapplicable with respect to the use of motor vehicles and boats on and after July 1, 1946. Section 301 of the House bill terminating war tax rates after June 30, 1946, was eliminated.

SECTION 302. FLOOR STOCKS REFUND AND TECHNICAL PROVISIONS RELATING TO REDUCTION OF COMMUNICATIONS TAX.

This section corresponds to section 304 of the House bill, which added to Chapter 9A of the Code two new sections numbered 1656 and 1657. Section 302 of your committee bill further adds sections 1658 and 1659.

Section 1656, as added by section 304 of the House bill, covers alcoholic liquors, including distilled spirits, imported perfumes containing distilled spirits, wines, including liqueurs and cordials, and fermented malt liquors. It provides for refund or credit (without interest) of the excess of the taxes (including floor stocks taxes) paid with respect to such liquors on account of the war tax rates over the taxes that would have been payable in the absence of the war tax rates. To be entitled to credit or refund, the liquor must, on July 1, 1946, be held for sale or use in the manufacture or production of an article intended for sale; the person so holding it must, prior to August 1, 1946, file claim for credit or refund; and he must also make, keep, and file records as required, and must establish to the satisfaction of the Commissioner, with respect to each kind of article for which credit or refund is claimed by him under this section, that after June 30, 1946, and before October 1, 1946, the price at which articles of such kind were sold (until a number equal at least to the number on hand on July 1, 1946, were sold) reflected, in such manner as the Commissioner may by regulations prescribe with the approval of the Secretary, the amount of tax reduction. The Commissioner will be authorized, under regulations, to establish a system for making credit or refund where the benefit of the tax reduction is passed on to the consumer. The regulations may prescribe the method of arriving at the price at which the article was sold before the tax reduction. The regulations may also prescribe the method of ascertaining the reduced price reflecting the tax reduction, if a credit or refund is to be allowed. Credit or refund is not to be allowed under this section with respect to any article unless, with respect to all the articles of all the kinds as to which credit refund is claimed, the requirements of the section and the regulations are satisfied. The word "article," as thus used, may under regulations, mean a general class, such as distilled spirits, wine, etc., or a subclass, such as whisky, rum, etc., or rye whisky, bourbon whisky, etc., or liquor sold under a special brand of a particular manufacturer.

Under the amendment of Code section 1656 made by your committee the liquor must be intended for sale or use in the manufacture or production of an article held for sale on the rate reduction date, the claim for credit or refund must be filed "30 days after the rate reduction date"; records must be made, kept, and filed as required both before and after the rate reduction date (but not extending beyond one year thereafter); and tax reduction must be passed on, on and after the rate reduction date and before the expiration of three months thereafter (until a number equal at least to the number on hand on the tax reduction rate has been sold). The term "rate reduction date" is defined in section 1659.

Under the House bill section 1657 provides for credit or refund of tax with respect to electric light bulbs held in floor stocks on July 1, 1946, and with respect to which the manufacturer's tax under section 3406(a)(10) was paid at the war tax rate. The amount of the credit or refund is determined by the difference between the war tax rate and the tax that would have been payable in the absence of the war tax rate; in other words, the new tax rate. The credit or refund is to be allowed only to the extent that the manufacturer has reimbursed the person holding the article in floor stocks for the amount of war tax passed on to such person. The provision for credit or refund applies both to electric light bulbs held for sale on the effective date of the change in rate and bulbs held for use in the manufacture or production of an article intended for sale. No interest is allowable on such credit or refund, and claims are required to be filed prior to October 1, 1946. The Commissioner is authorized to prescribe necessary regulations, and no manufacturer or producer will be entitled to credit or refund unless he has in his possession such evidence respecting inventories of articles as to which he has made reimbursement of tax as the regulations precribe

Under the amendment made by your committee, section 1657 is applicable to electric light bulbs held on the rate reduction date, and claim must be filed prior to the expiration of three months after such date.

Section 302 of the bill, as amended by your committee, also adds Code section 1658, which corresponds to section 301(c)(2) of the House bill, establishing effective dates for the reductions in rates of the tax imposed by section 3465(a)(1), (2), and (3) with respect to telegraph, telephone, radio, and cable facilities. Under section 301(c)(2) of the House bill, the reduction in the tax imposed by section 3465(a)(1) with respect to telephone toll calls and telegraph, cable, or radio dispatches or messages is applicable as of one date, July 1, 1946, with a different date applicable with respect to services taxable under subsections (2) and (3). The reduction in the taxes imposed by section 3465(a) (2) and (3) with respect to leased wires, wire equipment service, and local telephone service for which no previous bill was rendered was to be applicable with respect to amounts paid pursuant to bills rendered on or after August 1, 1946.

As added by section 302 of your committee bill, section 1658 provides that with respect to section 3465(a) (1), (2), and (3), the war rates shall apply in the case of amounts paid pursuant to bills rendered prior to the rate reduction date, and in the case of amounts paid pursuant to bills rendered on or after the rate reduction date for services for which no previous bill was rendered, the decreased rates shall apply except with respect to such services as were rendered more than two months before such date. In the case of services rendered more than two months before the rate reduction date, the provisions of sections 1650 and 3465 in effect at the time the services were rendered are to be applicable to the amounts paid for such services.

Section 302 of your committee bill also adds to the Code section 1659. This section defines the term "rate reduction date," used in other sections of Chapter 9A as amended by your committee, to mean the 1st day of the first month which begins six months or more after the date of the termination of hostilities in the present war.

SECTION 303. CONTINUATION OF POWER OF SECRETARY OF THE TREASURY TO AUTHORIZE GOVERNMENT EXEMPTION FROM CERTAIN EXCISE TAXES.

This section is the same as section 305 of the House bill. The section deals with the authority conferred by section 307(c) of the Revenue Act of 1943 upon the Secretary of the Treasury to authorize exemption from the taxes imposed by Chapter 19 of the Internal Revenue Code relating to retailers' excise taxes, Chapter 29 relating to manufacturers' excise and import taxes, and Chapter 30 relating to transportation and communications taxes, notwithstanding amendments of the Internal Revenue Code made by section 307 of such Act rendering certain exemptions for benefit of the United States, States, etc., inapplicable with respect to the United States. To make permanent the authority thus conferred upon the Secretary, section 305 of the bill strikes out the last sentence of section 307(c) which now makes the Secretary's authority inapplicable to any contract entered into on or after the 1st day of the first month which begins six months or more after the date of termination of hostilities in the present war. It was believed that administrative processes would be simplified if the person selling articles or rendering service to the United States paid over to the collector of internal revenue the taxes on such sales. The Secretary has authorized exemption in several exceptional situations where exemption was found to be administratively more efficient. It is administratively desirable that the authority granted to the Secretary be continued. The authority, as continued, would also enable continued exemption to be granted, should it appear desirable, in the case of other governmental excise tax exemptions which will terminate at some period after the termination of hostilities, for example, the exemption from the tax imposed by section 3404.

TITLE IV—SOCIAL SECURITY TAXES.

SECTION 401. AUTOMATIC INCREASE IN 1946 RATE NOT TO APPLY.

This section, which is the same as section 401 of the House bill, postpones the increase in the rates of the taxes imposed by the Federal Insurance Contributions Act (Subchapter A of Chapter 9 of the Code). Under existing law, the rate of the income tax on employees imposed by section 1400 increases from 1 to 2½ per cent on January 1, 1946, and the rate of the excise tax on employers of one

or more employees imposed by section 1410 also increases from 1 to 2½ per cent on such date. In the case of each such tax the amendment provides that the 1 per cent rate shall remain in force through the calendar year 1946, and that the 2½ per cent rate shall be applicable to wages paid and received during the calendar years 1947 and 1948.

1944–22–12175

THE REVENUE BILL OF 1945.

[House of Representatives Report No. 1165, Seventy-ninth Congress, First Session.]

[October 29, 1945.]

Mr. Doughton of North Carolina, from the committee of conference, submitted the following conference report [to accompany H. R. 4309]:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4309) to reduce taxation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

* * * * * * *

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 4309) to reduce taxation, and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendments Nos. 1 and 2: These are technical amendments and the House recedes.

Amendment No. 3: This is a clerical amendment and the House recedes.

Amendments Nos. 4, 5, 6, and 7: The House bill provided surtax rates on individuals, ranging from 16 per cent to 81½ per cent, and provided that in no case should the aggregate of the normal tax and surtax exceed 81 per cent of the net income.

The Senate amendments strike out the House provisions, provide for a 5 per cent reduction in the normal tax, and establish a tentative surtax table, running from 17 to 88 per cent, with a 5 per cent reduction in the tentative surtax so computed, and provide that the aggregate of the normal tax and surtax shall in no case exceed 85½ per cent of the net income.

The House recedes on these amendments.

Amendments Nos. 8 to 19, inclusive: These are clerical amendments and the House recedes.

Amendment No. 20: The House bill provided a tax table for Supplement T, dealing with the tax on individuals with adjusted gross incomes of less than $5,000, which embodied the normal tax and surtax rates under the House bill. The Senate amendment substitutes another table based on the Senate's treatment of normal tax and surtax. The House recedes.

Amendment No. 21: The House bill provided tables for wage bracket withholding by employers of tax from wages paid employees. These tables were based on the normal tax and surtax rates provided in the House bill. The Senate amendment substitutes other tables based on the normal tax and surtax under the Senate amendments. The House recedes.

Amendment No. 22: Under both the House bill and the Senate amendments the exemptions applicable to the surtax are made applicable to the normal tax. Thus employers will no longer withhold tax from those previously subject solely to liability for the normal tax. Under present law an employer is required to provide a statement (known as Form W–2) only when tax has been withheld. Such statements are used by millions of taxpayers as a simple tax return. The amendment requires employers to continue to provide employees with such withholding statements where they would be required under present law even though no tax is withheld under the new withholding provisions. The House recedes.

Amendment No. 23: This is a clerical amendment and the House recedes.

Amendment No. 24: The House bill reduced the surtax on corporations by 4 percentage points in each bracket, effective for taxable years beginning after December 31, 1945. The Senate amendment strikes out this provision and provides for a reduction in normal tax and surtax in the case of corporations whose normal tax net income or surtax net income is less than $50,000, effective for taxable years beginning after December 31, 1945. The House recedes with an amendment (1) providing for a reduction of 2 percentage points in surtax rates on corporations with corporation surtax net incomes of $50,000 and over, and (2) retaining the House provisions for corporations with corporation surtax net incomes of less than $50,000, subject to a "notch" rate on the income between $25,000 and $50,000 so as to provide an equitable transition between the 2 percentage points reduction on the one hand, and the 4 percentage points reduction provided in the House bill on the other hand.

Amendment No. 25: The House bill reduced the excess-profits tax rate from the present effective rate of 85½ to 60 per cent, the reduction to be effective for taxable years beginning after December 31, 1945. The Senate amendment strikes out this provision of the House bill. The House recedes.

Amendments Nos. 26 and 27: These are clerical amendments and the House recedes.

Amendments Nos. 28 and 29: The House bill repealed the excess-profits tax effective with respect to taxable years beginning after December 31, 1946. Amendment 28 strikes out this provision. Amendment 29 provides that the excess-profits tax chapter of the Internal Revenue Code shall not apply to any taxable year beginning after December 31, 1945. Senate amendment 29 also provides that, despite the repeal of the excess-profits tax for 1946, the provisions of the excess-profits tax law shall remain in force so as to permit carry-back of the unused excess-profits credit from 1946 to 1944 and 1945, and so as to assure the making of the necessary adjustments in the net operating loss carry-backs. The amendment provides that there shall be no carry-back of unused excess-profits credits from taxable years beginning after December 31, 1946. The amendment also makes provision for the application of the carry-back in the case of affiliated groups of corporations.

Technical changes are also made with respect to the periods of limitation for claiming or allowing credits or refunds and assessing deficiencies, attributable to carry-backs. The House recedes.

Amendments Nos. 30 to 33, inclusive: These are clerical amendments and the House recedes.

Amendment No. 34: This amendment changes the specific exemption in the case of taxable years beginning in 1945 and the Senate recedes.

Amendments Nos. 35 and 36: These are clerical amendments and the House recedes.

Amendment No. 37: This is a clerical amendment and the Senate recedes.

Amendments Nos. 38 and 39: These are technical amendments relating to fiscal years and the House recedes.

Amendment No. 40: This is a technical amendment and the House recedes with an amendment making a further technical amendment.

Amendment No. 41: This is a technical amendment and the House recedes.

Amendment No. 42: This is a clerical amendment and the House recedes.

Amendment No. 43: This amendment provides for the exclusion from gross income of the entire service pay of enlisted personnel for taxable years beginning after 1940 and preserves the $1,500 exclusion from gross income in the case of officers for the taxable years beginning after 1942, the exclusion in either case to apply only to pay received before the termination of the war, whether or not before separation from the service; and the House recedes.

Amendment No. 44: Under this amendment the time for the payment of the tax liability of commissioned personnel of the armed forces for the years 1940 through 1946, inclusive, is, upon application of the taxpayer, deferred, in so far as such liability is attributable to service pay. The liability so deferred is payable over a period of approximately three years in 12 quarterly installments. The 3-year period begins on May 15, 1946, in the case of taxpayers released from active duty prior to December 1, 1945, and in other cases on June 15, 1947, or the 15th day of the sixth month which begins after the date of the taxpayer's release from active duty, whichever is the earlier. Under the Senate amendment if the

3-year period begins before the end of a period of time disregarded under section 3804 (relating to taxpayers overseas) the beginning of the 3-year period does not begin until the end of the period so disregarded.

The Senate amendment also provides that tax for the year 1940 or 1941 (to the extent that it is attributable to preservice earned income), which became due and payable after the taxpayer entered upon active service in the armed forces, may also be deferred and paid in 12 quarterly installments over the 3-year period specified above.

Any interest paid prior to the date of the enactment of the Act with respect to tax which could be deferred under the provisions of the Senate amendment is to be credited or refunded if claim therefor is filed before January 1, 1947.

The conference agreement adopts the provisions of the Senate amendment with certain clerical and technical amendments thereto. The technical amendments are as follows:

(1) The conference agreement does not authorize deferment of tax attributable to service pay in the case of officers of the regular component of the Army, Navy, Marine Corps, or Coast Guard, unless at the time prescribed for the payment of the tax a period of time was being disregarded under section 3804 (relating to taxpayers overseas).

(2) In determining when the first of the 12 quarterly installments is payable, the conference agreement omits the reference to section 3804 as unnecessary since section 3804 in itself will operate to postpone such first installment date in proper cases.

(3) The conference agreement inserts a provision relating to declaration and payment of estimated tax in order to make it clear that the deferment for which a taxpayer might apply in the future is not nullified by a requirement that the taxpayer currently declare and make payments of estimated tax. This provision does not apply to commissioned officers of the regular component of the Army, Navy, Marine Corps, or Coast Guard for the reason that the requirements with respect to declaration and payment of estimated tax by them is adequately dealt with in section 3804.

Amendment No. 45: This is a clerical amendment and the House recedes.

Amendment No. 46: This amendment provides that where amounts in excess of $75,000 are allowed as tentative amortization adjustments, the Commissioner shall not be required to report such allowances to the Joint Committee on Internal Revenue Taxation prior to their payment but shall report them when the correct amount of the tax has been determined. The House recedes.

Amendment No. 47: This amendment extends to taxable years beginning in 1946, the provisions of section 22(b) (9) and (10) of the Code relating to discharge of indebtedness. The House recedes.

Amendment No. 48: This amendment applies to lost, stolen, or destroyed excess-profits tax postwar credit bonds the same treatment that is now applied to other Government securities by section 8(c) of the Government Losses in Shipment Act. The House recedes.

Amendment No. 49: This amendment provides that for income-tax taxable years ending after June 30, 1945, and before July 1, 1946, the declared value excess-profits tax attributable to war loss recoveries included in net income shall be at the rate of 1¼ per cent in lieu of the generally applicable rate. The House recedes.

Amendment No. 50: This amendment strikes out section 301 of the House bill, which provided for the termination on June 30, 1946, of the increases made in the Revenue Act of 1943 in various excise-tax rates. The House recedes.

Amendment No. 51: This is a clerical amendment and the House recedes.

Amendment No. 52: This is a technical amendment and the House recedes.

Amendments Nos. 53, 54, and 55: These are clerical amendments and the House recedes.

Amendments Nos. 56 to 78, inclusive: These are technical amendments. The principal effect of these amendments is to make the provisions of the House bill relating to floor stocks tax refunds for alcoholic beverages and electric light bulbs applicable so that the refunds will be made whenever the increases in the rates made by the Revenue Act of 1943 terminate. The House recedes on these amendments.

Amendment No. 79: This amendment provides that the termination of the increases made by the Revenue Act of 1943 in the rates applicable to telegraph, telephone, radio, and cable facilities shall, when payment is made pursuant to bills rendered, take place upon the basis of bills rendered on or after the rate reduction date for services for which no previous bills were rendered except with respect to services rendered more than two months before such date. The House recedes.

Amendment No. 80: This is a technical amendment made necessary by the Senate treatment of the excise tax provisions and the House recedes.

Amendment No. 81: This is a clerical amendment and the House recedes.

Amendment No. 82: This amendment repeals certain excise taxes. The Senate recedes.

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JERE COOPER,
JOHN D. DINGELL,
A. WILLIS ROBERTSON,
HAROLD KNUTSON,
DANIEL A. REED,
ROY O. WOODRUFF,
Managers on the part of the House.

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Internal Revenue Cumulative
Bulletin. 1945.

DATE LOANED	BORROWER'S NAME	PHONE NUMBER
10/22/71	[illegible]	[illegible]

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