

does not ratify such act. See paragraph (b) of §302.1-4 relating to relationship of Attorney General and former owner.

(c) *Refund payable to Attorney General.* All refund of taxes paid by the Attorney General shall be made directly to that official.

### PART 303—TAXES UNDER THE TRADING WITH THE ENEMY ACT

Sec.

303.1 Statutory provisions; section 36, Trading With the Enemy Act.

303.1-1 Definitions.

303.1-2 Application of part.

303.1-3 Protection of internal revenue prior to tax determination.

303.1-4 Computation of taxes.

303.1-5 Payment of taxes.

303.1-6 Interest and penalties.

303.1-7 Claims for refund or credit.

AUTHORITY: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805, and sec. 36 of the Trading With the Enemy Act, as added by the Act of Aug. 8, 1946, Pub. L. 671, 79th Cong., 60 Stat. 929; 50 U.S.C. App. 36.

SOURCE: T.D. 6459, 25 FR 2953, Apr. 7, 1960, unless otherwise noted.

#### §303.1 Statutory provisions; section 36, Trading With the Enemy Act.

SEC. 36 (a) The vesting in or transfer to the Alien Property Custodian of any property or interest (other than any property or interest acquired by the United States prior to December 18, 1941), or the receipt by him of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period prior or subsequent to the date of such vesting or transfer, nor render applicable the exemptions provided in title II of the Social Security Act with respect to service performed in the employ of the United States Government or of any instrumentality of the United States.

(b) The Alien Property Custodian shall, notwithstanding the filing of any claim or the institution of any suit under this Act, pay any tax incident to any such property or interest, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, interest, earnings, increment, or proceeds are held by the Alien Property Custodian, unless they are returned pursuant to this Act without payment of such tax by the Alien Property Custodian. Every such tax shall be paid by the Alien Property Custodian to the same extent, as nearly as may

be deemed practicable, as though the property or interest had not been vested in or transferred to the Alien Property Custodian, and shall be paid only out of the property or interest, or earnings, increment, or proceeds thereof, to which they are incident or out of other property or interests acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or interest or the earnings, increment, or proceeds thereof while held by the Alien Property Custodian except with his consent. Where any property or interest is transferred, otherwise than pursuant to section 9(a) or 32 hereof, the Alien Property Custodian may transfer the property or interest free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property or interest in the hands of the Alien Property Custodian.

(c) Subject to the provisions of subsection (b) hereof, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the Custodian with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with the regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessment, collection, refund, or credit of Federal taxes shall be suspended with respect to any vested property or interest, or the earnings, increment or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the Custodian.

(e) Any tax exemption accorded to the Alien Property Custodian by specific provision of existing law shall not be affected by this section.

[Section 36 as added by the Act of August 8, 1946 (Pub. L. 671, 79th Cong., 60 Stat 929)]

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## § 303.1-1

EXECUTIVE ORDER 9788, APPROVED OCTOBER 14, 1946 (3 CFR 1943-1948 COMP., P. 575)

By virtue of the authority vested in me by the Constitution and statutes, including the Trading With the Enemy Act of October 6, 1917, 40 Stat. 411, as amended, and the First War Powers Act, 1941, 55 Stat. 838, as amended, and as President of the United States, it is hereby ordered, in the interest of the internal management of the Government, as follows:

1. The Office of Alien Property Custodian in the Office for Emergency Management of the Executive Office of the President, established by Executive Order No. 9095 of March 11, 1942, is hereby terminated; and all authority, rights, privileges, powers, duties, and functions vested in such Office or in the Alien Property Custodian or transferred or delegated thereto are hereby vested in or transferred or delegated to the Attorney General, as the case may be, and shall be administered by him or under his direction and control by such offices and agencies of the Department of Justice as he may designate.

2. All property or interests vested in or transferred to the Alien Property Custodian or seized by him, and all proceeds thereof, which are held or administered by him on the effective date of this order are hereby transferred to the Attorney General.

3. All personnel, property, records, and funds of the Office of Alien Property Custodian are hereby transferred to the Department of Justice.

4. This order supersedes all prior Executive orders to the extent that they are in conflict with this order.

5. This order shall become effective on October 15, 1946.

### § 303.1-1 Definitions.

(a) *General*. When used in this part, the terms defined in this section shall have the meaning so assigned to them. A term not defined in this section shall have the meaning, if compatible with the context, imputed thereto under the Internal Revenue Code of 1954.

(b) *Attorney General*. The term "Attorney General" includes the Alien Property Custodian whose functions were transferred to the Attorney General pursuant to Executive Order 9788 (3 CFR 1943-1948 Comp., p. 575), and any other officers and agencies to which such functions are transferred or assigned pursuant to such Executive Order, or otherwise.

(c) *Commissioner*. The term "Commissioner" means the Commissioner of Internal Revenue.

(d) *Person*. The term "person" includes an individual, a trust, estate, partnership, company, or corporation, and any entity having or claiming an interest in vested property or liable or charged with liability for internal revenue tax in connection with such property.

(e) *Former owner*. The term "former owner" means the owner immediately prior to vesting and any successor in interest by inheritance, devise, bequest, or operation of law, of such owner.

(f) *Trading With the Enemy Act*. The term "Trading With the Enemy Act" includes all amendments of such Act, and all orders, rules, and regulations issued or prescribed under such Act or any such amendment.

(g) *Property*. The term "property" includes money, the proceeds of property, income, dividends, interest, annuities, and other earnings, but does not include any property or interest or any of the foregoing which vested in the Attorney General or was otherwise acquired by the United States prior to December 18, 1941.

(h) *Property vested by or in the Attorney General*. The terms "property vested by the Attorney General" and "property vested in the Attorney General" include property conveyed, transferred, assigned, delivered, or paid to or held or controlled by or vested in the Attorney General, under the Trading With the Enemy Act.

(i) *Engaged in trade or business in the United States*. The term "engaged in trade or business in the United States" includes the managing and renting of real estate in the United States by an agent of the Attorney General or of the former owner duly authorized to execute rental agreements and to pay all taxes and charges incident to the repair and maintenance of such property, but does not include the mere renting or leasing of property under an agreement requiring the lessee or occupant to pay taxes and to make repairs or improvements.

(j) *Tax*. The term "tax" has the meaning stated in section 36(d) of the Trading With the Enemy Act as added by the Act of August 8, 1946.

**§ 303.1-2 Application of part.**

(a) *Property covered.* This part is applicable in connection with property vested in the Attorney General on and after December 18, 1941. It is not applicable in connection with property or interest in property so vested or acquired by the United States prior to December 18, 1941, which property or interest is governed by Treasury Decision 4168, approved June 21, 1928, as amended by Treasury Decision 4254, approved January 7, 1929, and Treasury Decision 4514, approved January 18, 1935 (26 CFR (1938 ed.) 452.1-452.10).

(b) *Taxes covered.* Except as otherwise provided by specific exemption applicable with respect to the Alien Property Custodian, this part applies in the circumstances therein indicated, to any internal revenue tax applicable in respect of (1) property vested in the Attorney General or any action or transaction incidental to such property, or (2) any person whose property is so vested or any action or transaction of such person, whether the tax is applicable in respect of the period of vesting or any other period. Federal employment taxes are applicable with respect to wages paid to a person not a regular Government employee, permanent or temporary, for services immediately connected with the operation of an enterprise under control of the Attorney General such as might be rendered to a private operator.

**§ 303.1-3 Protection of internal revenue prior to tax determination.**

(a) *Suits and claims for return of vested property—(1) General.* The provisions of this paragraph apply in cases where there has been neither a final nor a tentative determination of internal revenue tax liability. See paragraphs (e) and (f) of § 303.1-4. In such cases vested property shall not be returned except in accordance with this paragraph.

(2) *Notice to Commissioner—(i) Suits for recovery.* Where suit for the return of vested property has been instituted under section 9 of the Act, within a reasonable time after answer has been filed or after beginning of the trial of the case, the Attorney General shall, in writing, notify the Commissioner of the property involved and the name,

address, citizenship, residence, and business organization of the claimant, and any other pertinent information.

(ii) *Return without suit.* At least 90 days prior to any return of vested property pursuant to section 32 of the Act the Attorney General shall in writing notify the Commissioner in the manner prescribed in subdivision (i) of this subparagraph.

(3) *Return of property—(i) Without security.* Vested property, the subject of a suit or proceeding pursuant to the Trading With the Enemy Act, may be returned without security prior to determination of applicable internal revenue taxes and prior to the judgment of the court or publication of the order of the Attorney General directing such return, to the following described claimants under the conditions hereinafter stated:

(a) *Residents and domestic enterprises.* In the case of claimants who at the time of return are (1) individuals permanently resident in the United States since December 7, 1941, or (2) corporations or other business enterprises organized under the laws of the United States, or any State, Territory, or possession thereof, or the District of Columbia, or doing business in the United States, the Attorney General may return the property at any time without notice to the Commissioner of such return.

(b) *Nonresidents, etc.* In the case of claimants who at the time of return are (1) individuals not permanently resident of the United States since December 7, 1941, or (2) nondomestic corporations or other nondomestic business enterprises not doing business within the United States, the property may be returned not less than 90 days after notice by the Attorney General to the Commissioner in a case within subparagraph (2)(i) of this paragraph (a), or not less than 60 days after notice in a case within subparagraph (2)(ii) of this paragraph (a), unless within such time the Attorney General is advised otherwise by the Commissioner.

(ii) *When security required.* Except as provided in subdivision (i) of this subparagraph vested property shall not be released prior to determination of tax liability without security satisfactory

## Internal Revenue Service, Treasury

## § 303.1-4

to the Commissioner, but determination of tax liability will be expedited in order that release of the property or of the security shall not be unnecessarily delayed.

(4) *Security.* Security when required shall be such of the following as shall, in the judgment of the Commissioner, be appropriate:

(i) *Bond.* A bond of the claimant conditioned upon payment of the full amount of internal revenue taxes determined to be due, filed with the district director in such amount, and with such sureties, as the Commissioner deems necessary. Only surety companies holding a certificate of authority from the Secretary of the Treasury may be used.

(ii) *Collateral security.* Collateral authorized by law deposited by the claimant in lieu of surety conditioned upon the payment of the full amount of internal revenue taxes determined to be due.

(iii) *Reservation of assets.* Moneys, or if the moneys are insufficient, so much of the other property involved, to be reserved by the Attorney General, as will be sufficient in the judgment of the Attorney General to cover any internal revenue tax liability determined by the Commissioner.

(b) *Vested property subject to debt claims—*(1) *Notice to Commissioner.* With respect to vested property available for the payment of debt claims under section 34 of the Act, and with respect to which debt claims have been filed, prior to the allowance of any such claims the Attorney General shall, in writing, notify the Commissioner of the property involved, the citizenship, residence, business organization, and other necessary information concerning the debtor and the aggregate of debt claims filed in respect thereof.

(2) *Action by Commissioner.* Upon receipt of the notice provided in subparagraph (1) of this paragraph (a), the Commissioner shall, as soon as practicable and not later than 120 days after receipt of notice, unless the time is extended by the Commissioner after notice to the Attorney General—

(i) Determine the taxes payable by the Attorney General in respect of the debtor, or

(ii) Advise the Attorney General of the provision, if any, to be made by him for payment of taxes in respect of the debtor.

### § 303.1-4 Computation of taxes.

(a) *Detail of employees of the Internal Revenue Service.* The Commissioner will detail for the assistance of the Attorney General such employees of the Internal Revenue Service as may be necessary to make the computations under this part promptly and accurately.

(b) *Relationship of Attorney General and former owner.* In the computation of tax liability under this part, except as otherwise provided in this part, the vesting of property shall not be considered as affecting the ownership thereof; and any act of the Attorney General in respect of such property (including the collection or operation thereof and any investment, sale, or other disposition and any payment or other expenditure) shall be considered as the act of the owner. Nevertheless, except as otherwise provided in the Act or this part, insofar as taxes are incident to vested property during the period of vesting, they shall be payable by the Attorney General, except that to the extent of the value of any of the property returned to the former owner the latter shall be liable for such tax not paid by the Attorney General. While tax incident to nonvested property is collectible out of both vested and nonvested property, the nonvested property will be regarded as the primary source of collection of such tax. In determining the amount of the liability to be paid out of property not vested by the Attorney General a computation shall be made covering the taxpayer's full period of liability, but without regard to the vested property, or the income received by, or the operations of, the Attorney General. The amount so computed shall be first asserted against and collected so far as practicable from the taxpayer or out of his property which is not vested. Such part of the total tax liability as is not paid by the taxpayer or collected out of property not vested shall be asserted against the vested property. See § 303.1-5, relating to payment of taxes, and § 303.1-7, relating to claims for refund or credit.

(c) *Laws applicable to computation.* Except as otherwise specifically provided in this part, the computation under this part of any internal revenue tax liability shall be in accordance with the internal revenue laws and regulations applicable thereto, including all amendments of such laws or regulations enacted or promulgated prior to determination of the tax.

(d) *Periods for which computations made.* The amount of income, employment, and excise taxes under the internal revenue laws will be computed for each taxable year or period during all or part of which property is vested prior to the return of the property. In the case of a return of property prior to computation of tax, see § 303.1-3. Where vesting occurs during a taxable year or taxable period, any return filed or computation made covering vested or non-vested property should nevertheless be for the entire year or period. See paragraph (b) of this section. Unless facts are available indicating a liability for taxes for a taxable year or period occurring wholly prior or subsequent to the period of vesting of the property by the Attorney General, the computations under this part, both tentative and final, will be made only in respect of years and periods during all or part of which the property is held by the Attorney General.

(e) *Tentative computation.* In order that the return of property or other appropriate action may not be delayed until the amount of taxes payable is finally computed and paid, a tentative computation of such amount will be made in every case, unless there are circumstances appearing to make such action inappropriate. Such circumstances would include (1) return of the property in accordance with § 303.1-3, (2) notice to the Commissioner of Internal Revenue by the person to whom the property is returnable or by the Attorney General that such person or the Attorney General, as the case may be, prefers that the return of the property be postponed until the amount of such taxes can be finally computed, or (3) belief on the part of the Commissioner that a final computation will not unduly delay the return of, or other appropriate action with respect to, the property. In making any such tentative

computation of income or estate tax, the gross income or the gross estate, as the case may be, as shown by the records of the Attorney General (excluding therefrom items exempt from taxation) shall be considered as the taxable income or taxable estate, respectively, unless a tax return has been filed or facts are available upon which a more accurate computation can be made. In any case in which a duly authorized officer or employee of the Internal Revenue Service has otherwise computed the amount of taxes payable in respect of any period, such computation will be accepted as a tentative computation, unless the facts clearly indicate that a more accurate computation can be made.

(f) *Final computation*—(1) *General.* A final computation of the amount of taxes payable by the person to whom property is returnable, or out of property to be returned, will be made as soon as practicable in every case. In any case in which the amount shown by a tentative computation has been paid, refund or credit of any amount paid in excess of the amount properly due will be made in accordance with the final computation, even though a claim therefor has not been filed, if the period of limitation applicable to the filing of such claim has not expired. However, if it is desired to protect the right to any credit or refund determined to be due, a claim for credit or refund should be filed. The sufficiency of any such claim in respect of an amount paid in accordance with a tentative computation under this part will not be questioned solely because facts upon which a more accurate computation could be made are not available or cannot be established at the time such claim is filed. Any such claim in respect of an amount paid in accordance with a final computation must, however, clearly set forth in detail under the penalties of perjury all the facts relied upon in support of the claim and must conform to the regulations applicable to an ordinary claim for refund or credit. See § 301.6402-2 of this chapter and § 303.1-7, relating to claims for refund or credit.

(2) *Information required*—(i) *Income taxes.* The following information submitted under the penalties of perjury

by or for the taxpayer is necessary in each case for a final computation, for each taxable year for which the computation is to be made:

(a) All income (other than income received by the Attorney General) from sources within the United States, or if no such income has been received, then a statement to that effect, except that in the case of a citizen or resident of the United States, income from sources without as well as within the United States must be shown.

(b) If a return of such income has been made, then the following data in respect of such return:

(1) The taxable year for which the return was made and the tax paid;

(2) The name of the taxpayer for whom the return was made;

(3) The name of the agent or other person (if any) by whom such return was made;

(4) The office of the district director in which the return was filed.

(c) Such other facts as may be required, from time to time, by the Commissioner.

(ii) *Other taxes.* Except as otherwise provided in subdivision (i) of this subparagraph, in order to make a final computation of the amount of any internal revenue tax payable by return in any case, the usual return should be filed, together with the supporting documents required by the regulations pertaining to the tax.

(g) *Tax returns*—(1) *General.* In many cases allowance of deductions and credits is contingent upon the making of a return in accordance with the applicable internal revenue law. The submission of evidence relative to income tax in accordance with subdivisions (a) and (c) of paragraph (f)(2)(i) of this section will be considered as the making of the return required by any such law, only (i) for any taxable period, ending on or before December 31, 1946, during all or part of which all or part of the property of the taxpayer was held by the Attorney General, or (ii) for any taxable period ending within one year from the date of the first return to the taxpayer, of any part of the property held by the Attorney General, whichever period ends later. In all other cases a return will be required in accordance with the applicable internal

revenue laws and regulations. In the case of returns where property is vested during a taxable year or period, see paragraph (d) of this section.

(2) *Estates and trusts.* In the case of estates and trusts the fiduciaries shall file returns, including information returns as required by section 6041 of the Internal Revenue Code of 1954.

(3) *Income tax forms to be used.* In the case of taxpayers engaged in trade or business in the United States Forms 1040B and 1120, as may be appropriate, shall be used. Where the taxpayer is not engaged in trade or business in the United States, Form M797 may be used in lieu of Forms 1040NB, 1040NB—a and 1120NB.

#### § 303.1-5 Payment of taxes.

(a) *Pursuant to tentative computations.* The amount of taxes shown by a tentative computation shall be paid by the Attorney General or the taxpayer, as the case may be, to the district director as soon as practicable after the tentative computation has been made. It will not be necessary, however, for the payment by the Attorney General to be made prior to the return of property if an amount sufficient to cover all internal revenue taxes is retained from the property by the Attorney General.

(b) *Pursuant to final computations.* Upon a final computation of internal revenue taxes properly payable, the amount thereof remaining unpaid shall be paid by the Attorney General to the district director as soon as practicable after the final computation has been made, or, in case the property has been returned to the former owner, by such owner. If the final computation shows that the full amount of internal revenue taxes properly payable is less than the amount previously paid, the difference shall be credited or refunded in accordance with the provisions of these and other applicable regulations. A final computation will not prohibit a subsequent recomputation if it is determined that the amount shown by the final computation is erroneous.

(c) *Deficiency procedure.* The Attorney General shall pay internal revenue taxes without regard to the provisions of law relating to the sending of a deficiency notice by certified or registered mail or to notice and demand.

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### § 303.1-6 Interest and penalties.

(a) *Liability for interest and civil penalties.* Under subsection (d) of section 36 of the Trading With the Enemy Act there is no liability for interest or penalty on account of any act or failure of the Attorney General. Such subsection is not applicable to interest or penalties payable in respect of any act or failure during the period prior to the vesting of the property by the Attorney General, or after the return of the property, or during the period during which the property was vested by the Attorney General on account of an act or omission of any person other than the Attorney General.

(b) *Adjustment.* In case of any assessment or collection, or credit or refund, of interest or a civil penalty contrary to the provisions of section 36 (c) or (d), proper adjustment shall be made.

### § 303.1-7 Claims for refund or credit.

(a) Claims for refund or credit must be filed within the period prescribed by section 6511 of the Internal Revenue Code of 1954 as modified by section 36(c) of the Trading With the Enemy Act. Any such claim must contain a detailed statement under the penalties of perjury of all the facts relied upon in support of the claim and should be filed with the district director for the district in which the tax was paid. See paragraph (f)(1) of § 303.1-4, relating to final computation.

(b) Any act of the Attorney General for, or on behalf of, a taxpayer in respect of any claim under this part will be considered as the act of such taxpayer, unless such taxpayer notifies the Commissioner of Internal Revenue in writing, by the filing of a claim for refund or credit or otherwise, that he does not ratify such act. See paragraph (b) of § 303.1-4, relating to relationship of Attorney General and former owner.

(c) All refund of taxes paid by the Attorney General shall be made directly to that official.

## PART 304 [RESERVED]

## 26 CFR Ch. I (4-1-25 Edition)

### PART 305—TEMPORARY PROCEDURAL AND ADMINISTRATIVE TAX REGULATIONS UNDER THE INDIAN TRIBAL GOVERNMENTAL TAX STATUS ACT OF 1982

Sec.

305.7701-1 Definition of Indian tribal government.

305.7871-1 Indian tribal governments treated as States for certain purposes.

AUTHORITY: Sec. 7805 (68A Stat. 917, 26 U.S.C. 7805) Internal Revenue Code of 1954.

SOURCE: T.D. 7952, 49 FR 19303, May 7, 1984, unless otherwise noted.

#### § 305.7701-1 Definition of Indian tribal government.

(a) *Definition.* A governing body of a tribe, band, pueblo, community, village, or group of native American Indians, or Alaska Natives, qualifies as an Indian tribal government upon determination by the Internal Revenue Service that the governing body exercises governmental functions. Designation of a governing body as an Indian tribal government will be by revenue procedure. If a governing body is not currently designated by the applicable revenue procedure as an Indian tribal government, and such governing body believes that it qualifies for such designation, the governing body may apply for a ruling from Internal Revenue Service. In order to qualify as an Indian tribal government, for purposes of section 7701(a)(40) and this section, such governing body must receive a favorable ruling from the Internal Revenue Service. The request for a ruling shall be made in accordance with all applicable procedural rules set forth in the Statement of Procedural Rules (26 CFR part 601) and any applicable revenue procedures relating to the submission of ruling requests. The request shall be submitted to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:IND:S, room 6545, 1111 Constitution Avenue, NW., Washington, D.C. 20224.

(b) *Effective date.* The provisions of this section are effective after December 31, 1982.