Treasury Department : : : Bureau of Internal Revenue

Internal Revenue Bulletin

Cumulative Bulletin 1949–2

JULY–DECEMBER 1949

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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

Treasury Department : : : : : Bureau of Internal Revenue

Internal Revenue Bulletin

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

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

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

UNITED STATES GOVERNMENT PRINTING OFFICE : WASHINGTON : 1950

For sale by Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.
See back of title for prices

The Internal Revenue Bulletin service consists of bulletins issued every other week and semiannual cumulative bulletins.

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

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

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

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1948	1948–1	.75	1948–2	1.00
1949	1949–1	.75	1949–2	.75

* Contains only income tax rulings.

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

[2] Printed in one volume.

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

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

INTRODUCTORY NOTES

The Internal Revenue Cumulative Bulletin 1949–2, in addition to all decisions of the Treasury Department (called Treasury Decisions) pertaining to Internal Revenue matters, contains opinions of the Chief Counsel for the Bureau of Internal Revenue, and rulings and decisions pertaining to income, estate, gift, sales, excess profits, employment, social security, and miscellaneous taxes, and legislation affecting the revenue statutes, as indicated on the title page of this Bulletin, published in the Bulletins (1949, Nos. 14 to 26, inclusive) for the period July 1 to December 31, 1949. It also contains a cumulative list of announcements relating to decisions of The Tax Court of the United States, formerly the United States Board of Tax Appeals, published in the Internal Revenue Bulletin Service from July 1 to December 31, 1949.

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

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

ABBREVIATIONS

The following abbreviations are used throughout the Bulletin:

A, B, C, etc.—The names of individuals.
A. R. M.—Committee on Appeals and Review memorandum.
A. R. R.—Committee on Appeals and Review recommendation.
A. T.—Alcohol Tax Unit.
B. T. A.—Board of Tax Appeals.
C. B.—Cumulative Bulletin.
Ct. D.—Court decision.
C. S. T.—Capital Stock Tax Division.
C. T.—Taxes on Employment by Carriers.
D. C.—Treasury Department circular.

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

ANNOUNCEMENT RELATING TO DECISIONS OF THE TAX COURT OF THE UNITED STATES, 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 PUBLISHED IN THE INTERNAL REVENUE BULLETIN SERVICE FROM JULY 1, 1949, TO DECEMBER 31, 1949, INCLUSIVE

1949–26–13258

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[a] Board of Tax Appeals.

[1] Estate tax decision.

[2] Nonacquiescence published in Cumulative Bulletin 1943, page 27, withdrawn.

[3] Nonacquiescence published in Cumulative Bulletin XI–2 (1932), page 11, withdrawn.

[4] Gift tax decision.

[5] Partial nonacquiescence published in Cumulative Bulletin 1943, page 28, withdrawn.

[6] Acquiescence limited to the result, published in Cumulative Bulletin 1947–2, page 2, withdrawn.

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[a] Board of Tax Appeals.
[1] Nonacquiescence published in Cumulative Bulletin XI-2 (1932), page 12, withdrawn.
[2] Gift tax decision.
[3] Estate tax decision.
[4] Nonacquiescence published in Cumulative Bulletin 1948-2, page 5, withdrawn.

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[a] Board of Tax Appeals.

[1] Estate tax decision.

[2] Nonacquiescence published in Cumulative Bulletin 1940-1, page 8, withdrawn.

[3] Partial nonacquiescence published in Cumulative Bulletin 1943, page 41, withdrawn.

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[1] Estate tax decision.
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INCOME TAX RULINGS.—PART I

INTERNAL REVENUE CODE

CHAPTER 1.—INCOME TAX

SUBCHAPTER B.—GENERAL PROVISIONS

PART II.—COMPUTATION OF NET INCOME

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

SECTION 19.22(a)-1, REGULATIONS 103: What included in gross income. (Also Section 181, Section 19.181-1.) — 1949-16-13139 Ct. D. 1723

INCOME TAX—INTERNAL REVENUE CODE—DECISION OF SUPREME COURT

1. GROSS INCOME—FAMILY PARTNERSHIP.

A partner's intention to contribute capital or services to the partnership sometime in the future is not sufficient to satisfy ordinary concepts of partnership as required in *Commissioner* v. *Tower* (327 U. S. 280; Ct. D. 1670, C. B. 1946-1, 11) for application in family partnership tax cases. The decision in the Tower case clearly indicates the importance of participation in the business by the partners during the tax year. The Tax Court's use of "vital services" or "original capital" tests in this case ignores the required determination of whether the partnership is real within the meaning of the Federal revenue laws, which determination depends upon the partners' intention of joining together in good faith in the present conduct of an enterprise. The distinction between active participation in the affairs of the business by a donee of a share in the partnership on the one hand, and his passive acquiescence to the will of the donor on the other, is of importance in determining the true intent of the parties.

2. DECISION REVERSED AND CAUSE REMANDED.

Decision of the Court of Appeals for the Fifth Circuit (168 Fed. (2d) 979) reversed, and cause remanded to the Tax Court for decision as to which, if any, of respondent's sons were partners with him in the operation of the business during 1940 and 1941.

SUPREME COURT OF THE UNITED STATES

Commissioner of Internal Revenue, petitioner, v. *W. O. Culbertson, Sr., and Gladys Culbertson*

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

[June 27, 1949]

OPINION

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

This case requires our further consideration of the family partnership problem. The Commissioner of Internal Revenue ruled that the entire income from a

partnership allegedly entered into by respondent and his four sons must be taxed to respondent,[1] and the Tax Court sustained that determination. The Court of Appeals for the Fifth Circuit reversed. 168 Fed. (2d) 979. We granted certiorari, 335 U. S. 883, to consider the Commissioner's claim that the principles of *Commissioner* v. *Tower*, 327 U. S. 280 (1946) [Ct. D. 1670, C. B. 1946-1, 11], and *Lusthaus* v. *Commissioner*, 327 U. S. 293 (1946) [Ct. D. 1669, C. B. 1946-1, 9], have been departed from in this and other courts of appeals decisions.

Respondent taxpayer is a rancher. From 1915 until October, 1939, he had operated a cattle business in partnership with R. S. Coon. Coon, who had numerous business interests in the Southwest and had largely financed the partnership, was 79 years old in 1939 and desired to dissolve the partnership because of ill health. To that end, the bulk of the partnership herd was sold until, in October of that year, only about 1,500 head remained. These cattle were all registered Herefords, the brood or foundation herd. Culbertson wished to keep these cattle and approached Coon with an offer of $65 a head. Coon agreed to sell at that price, but only upon condition that Culbertson would sell an undivided one-half interest in the herd to his four sons at the same price. His reasons for imposing this condition were his intense interest in maintaining the Hereford strain which he and Culbertson had developed, his conviction that Culbertson was too old to carry on the work alone, and his personal interest in the Culbertson boys. Culbertson's sons were enthusiastic about the proposition, so respondent thereupon bought the remaining cattle from the Coon and Culbertson partnership for $99,440. Two days later Culbertson sold an undivided one-half interest to the four boys, and the following day they gave their father a note for $49,720 at 4 percent interest due 1 year from date. Several months later a new note for $57,674 was executed by the boys to replace the earlier note. The increase in amount covered the purchase by Culbertson and his sons of other properties formerly owned by Coon and Culbertson. This note was paid by the boys in the following manner:

Credit for overcharge	$5,930
Gifts from respondent	21,744
One-half of a loan procured by Culbertson & Sons partnership	30,000

The loan was repaid from the proceeds from operation of the ranch.

The partnership agreement between taxpayer and his sons was oral. The local paper announced the dissolution of the Coon and Culbertson partnership and the continuation of the business by respondent and his boys under the name of Culbertson & Sons. A bank account was opened in this name, upon which taxpayer, his four sons and a bookkeeper could check. At the time of formation of the new partnership, Culbertson's oldest son was 24 years old, married, and living on the ranch, of which he had for 2 years been foreman under the Coon and Culbertson partnership. He was a college graduate and received $100 a month plus board and lodging for himself and his wife both before and after formation of Culbertson & Sons and until entering the Army. The second son was 22 years old, was married and finished college in 1940, the first year during which the new partnership operated. He went directly into the Army following graduation and rendered no services to the partnership. The two younger sons, who were 18 and 16 years old respectively in 1940, went to school during the winter and worked on the ranch during the summer.[2]

The tax years here involved are 1940 and 1941. A partnership return was filed for both years indicating a division of income approximating the capital attributed to each partner. It is the disallowance of this division of the income from the ranch that brings this case into the courts.

First. The Tax Court read our decisions in *Commissioner* v. *Tower*, *supra*, and *Lusthaus* v. *Commissioner*, *supra*, as setting out two essential tests of partnership for income tax purposes: that each partner contribute to the partnership either vital services or capital originating with him. Its decision was based upon a finding that none of respondent's sons had satisfied those requirements during the tax years in question. Sanction for the use of these "tests" of partnership is sought in this paragraph from our opinion in the Tower case:

"There can be no question that a wife and a husband may, under certain circumstances, become partners for tax, as for other, purposes. If she either invests

[1] Gladys Culbertson, the wife of W. O. Culbertson, Sr., is joined as a party because of her community of interest in the property and income of her husband under Texas law.

[2] A daughter was also made a member of the partnership some time after its formation upon the gift by respondent of one-quarter of his one-half interest in the partnership. Respondent did not contend before the Tax Court that she was a partner for tax purposes.

capital originating with her or substantially contributes to the control and management of the business, or otherwise performs vital services, or does all of these things she may be a partner as contemplated by 26 U. S. C. sections 181, 182. The Tax Court has recognized that under such circumstances the income belongs to the wife. A wife may become a general or a limited partner with her husband. But when she does not share in the management and control of the business, contributes no vital additional service, and where the husband purports in some way to have given her a partnership interest, the Tax Court may properly take these circumstances into consideration in determining whether the partnership is real within the meaning of the Federal revenue laws." 327 U. S. at 290 [C. B. 1946-1, 14-15].

It is the Commissioner's contention that the Tax Court's decision can and should be reinstated upon the mere reaffirmation of the quoted paragraph.

The court of appeals, on the other hand, was of the opinion that a family partnership entered into without thought of tax avoidance should be given recognition taxwise whether or not it was intended that some of the partners contribute either capital or services during the tax year and whether or not they actually made such contributions, since it was formed "with the full expectation and purpose that the boys would, in the future, contribute their time and services to the partnership." [3] We must consider, therefore, whether an intention to contribute capital or services sometime in the future is sufficient to satisfy ordinary concepts of partnership, as required by the Tower case. The sections of the Internal Revenue Code involved are sections 181 and 182,[4] which set out the method of taxing partnership income, and sections 11 and 22(a),[5] which relate to the taxation of individual incomes.

In the Tower case we held that despite the claimed partnership, the evidence fully justified the Tax Court's holding that the husband, through his ownership of the capital and his management of the business, actually created the right to receive and enjoy the benefit of the income and was thus taxable upon that entire income under sections 11 and 22(a). In such case, other members of the partnership cannot be considered "Individuals carrying on business in partnership" and thus "liable for income tax * * * in their individual capacity" within the meaning of section 181. If it is conceded that some of the partners contributed neither capital nor services to the partnership during the tax years in question, as the court of appeals was apparently willing to do in the present case, it can hardly be contended that they are in any way responsible for the production of income during those years.[6] The partnership sections of the Code are, of course, geared to the sections relating to taxation of individual income, since no tax is imposed upon partnership income as such. To hold that "Individuals carrying on business in partnership" include persons who contribute nothing during the tax period would violate the first principle of income taxation: that income must be taxed to him who earns it. *Lucas* v. *Earl*, 281 U. S. 111 (1930); *Helvering* v. *Clifford*, 309 U. S. 331 (1940) [Ct. D. 1444, C. B. 1940-1, 105]; *National Carbide Corp.* v. *Commissioner*, 336 U. S. 422 (1949) [Ct. D. 1718, C. B. 1949-1, 165].

Furthermore, our decision in *Commissioner* v. *Tower*, *supra*, clearly indicates the importance of participation in the business by the partners during the tax year. We there said that a partnership is created "when persons join together their money, goods, labor, or skill for the purpose of carrying on a trade, profession, or business and where there is community of interest in the profits and losses." This is, after all, but the application of an often iterated definition of income—the gain derived from capital, from labor, or from both combined [7]—to a particular form of business organization. A partnership is, in other words, an

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[3] 168 Fed. (2d) 979 at 982. The court further said: "Neither statute, common sense, nor impelling precedent requires the holding that a partner must contribute capital or render services to the partnership prior to the time that he is taken into it. These tests are equally effective whether the capital and the services are presently contributed or are later to be contributed or to be rendered." Id. at 983. See note, 47 Mich. L. Rev. 595.

[4] 26 U. S. C. sections 181, 182.

[5] 26 U. S. C. sections 11, 22(a).

[6] Of course one who has been a bona fide partner does not lose that status when he is called into military or Government service, and the Commissioner has not so contended. On the other hand, one hardly becomes a partner in the conventional sense merely because he might have done so had he not been called.

[7] *Eisner* v. *Macomber*, 252 U. S. 189, 207 (1920) [T. D. 3010, C. B. 3, 25 (1920)]; *Merchants Loan & Trust Co.* v. *Smietanka*, 255 U. S. 509, 519 (1921) [T. D. 3173, Ct. D. 6, C. B. 4, 34 (1921)]. See Treasury Regulations 101, art. 22(a)-1. See 1 Mertens, *Law of Federal Income Taxation*, 159 et seq.

organization for the production of income to which each partner contributes one or both of the ingredients of income—capital or services. *Ward* v. *Thompson*, 22 How. 330, 334 (1859). The intent to provide money, goods, labor, or skill some-time in the future cannot meet the demands of sections 11 and 22(a) of the Code that he who presently earns the income through his own labor and skill and the utilization of his own capital be taxed therefor. The vagaries of human experience preclude reliance upon even good faith intent as to future conduct as a basis for the present taxation of income.[8]

Second. We turn next to a consideration of the Tax Court's approach to the family partnership problem. It treated as essential to membership in a family partnership for tax purposes the contribution of either "vital services" or "original capital."[9] Use of these "tests" of partnership indicates, at best, an error in emphasis. It ignores what we said is the ultimate question for decision, namely, "whether the partnership is real within the meaning of the Federal revenue laws" and makes decisive what we describe as "circumstances [to be taken] into consideration" in making that determination.[10]

The Tower case thus provides no support for such an approach. We there said that the question whether the family partnership is real for income tax purposes depends upon "whether the partners really and truly intended to join together for the purpose of carrying on the business and sharing in the profits and losses or both. And their intention in this respect is a question of fact, to be determined from testimony disclosed by their 'agreement, considered as a whole, and by their conduct in execution of its provisions.' *Drennen* v. *London Assurance Co.*, 113 U. S. 51, 56; *Cox* v. *Hickman*, 8 H. L. Cas. 268. We see no reason why this general rule should not apply in tax cases where the Government challenges the existence of a partnership for tax purposes." 327 U. S. at 287 [C. B. 1946-1, 13]. The question is not whether the services or capital contributed by a partner are of sufficient importance to meet some objective standard supposedly established by the Tower case, but whether, considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise.[11] There is nothing new or particularly difficult about such a test. Triers of fact are constantly called upon to deter-

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[8] The *reductio ad absurdum* of the theory that children may be partners with their parents before they are capable of being entrusted with the disposition of partnership funds or of contributing substantial services occurred in *Tinkoff* v. *Commissioner*, 120 Fed. (2d) 564, where a taxpayer made his son a partner in his accounting firm the day the son was born.

[9] While the Tax Court went on to consider other factors, it is clear from its opinion that a contribution of either "vital services" or "original capital" was considered essential to membership in the partnership. After finding that none of respondent's sons had, in the court's opinion, contributed either, the court continued: "In addition to the above inquiry as to the presence of those elements deemed by the Tower case essential to partnerships recognizable for Federal tax purposes, * * *" 6 CCH TCM 692, 699. Again, the court commented:

"Though the petitioner urges that many cattle businesses are composed of fathers and sons, and that the nature of the industry so requires, we think the same is probably equally true of other industries where men wish to take children into business with them. Nevertheless, we think that fact does not override the many decisions to the general effect that partners must contribute capital originating with them, or vital services." Id. at 700.

[10] See Mannheimer and Mook, A Taxwise Evaluation of Family Partnerships, 32 Iowa L. Rev. 436, 447-48.

[11] This is not, as we understand it, contrary to the approach taken by the Bureau of Internal Revenue in its most recent statement of policy. I. T. 3845, C. B. 1947-1, 66, states at page 67:

"Where persons who are closely related by blood or marriage enter into an agreement purporting to create a so-called family partnership or other arrangement with respect to the operation of a business or income-producing venture, under which agreement all of the parties are accorded substantially the same treatment and consideration with respect to their designated interests and prescribed responsibilities in the business as if they were strangers dealing at arm's length; where the actions of the parties as legally responsible persons evidence an intent to carry on a business in a partnership relation; and where the terms of such agreement are substantially followed in the operation of the business or venture, as well as in the dealings of the partners or members with each other, it is the policy of the Bureau to disregard the close family relationship existing between the parties and to recognize, for Federal income tax purposes, the division of profits prescribed by such agreement. However, where the instrument purporting to create the family partnership expressly provides that the wife or child or other member of the family shall not be required to participate in the management of the business, or is merely silent on that point, the extent and nature of the services of such individual in the actual conduct of the business will be given appropriate evidentiary weight as to the question of intent to carry on the business as partners."

mine the intent with which a person acted.[12] The Tax Court, for example, must make such a determination in every estate tax case in which it is contended that a transfer was made in contemplation of death, for "The question, necessarily, is as to the state of mind of the donor." *United States* v. *Wells*, 283 U. S. 102, 117 (1931) [Ct. D. 340, C. B. X-1, 475, 480 (1931)]. See *Allen* v. *Trust Co. of Georgia*, 326 U. S. 630 (1946) [Ct. D. 1667, C. B. 1946-1, 282]. Whether the parties really intended to carry on business as partners is not, we think, any more difficult of determination or the manifestations of such intent any less perceptible than is ordinarily true of inquiries into the subjective.

But the Tax Court did not view the question as one concerning the bona fide intent of the parties to join together as partners. Not once in its opinion is there even an oblique reference to any lack of intent on the part of respondent and his sons to combine their capital and services "for the purpose of carrying on the business." Instead, the court, focusing entirely upon concepts of "vital services" and "original capital," simply decided that the alleged partners had not satisfied those tests when the facts were compared with those in the Tower case. The court's opinion is replete with such statements as "we discern nothing constituting what we think is a requisite contribution to a real partnership * * * We find no son adding 'vital additional service' which would take the place of capital contributed because of formation of a partnership * * * it is clear that the sons made no capital contribution within the meaning of the Tower case."[13]

Unquestionably a court's determination that the services contributed by a partner are not "vital" and that he has not participated in "management and control of the business"[14] or contributed "original capital" has the effect of placing a heavy burden on the taxpayer to show the bona fide intent of the parties to join together as partners. But such a determination is not conclusive, and that is the vice in the "tests" adopted by the Tax Court. It assumes that there is no room for an honest difference of opinion as to whether the services or capital furnished by the alleged partner are of sufficient importance to justify his inclusion in the partnership. If, upon a consideration of all the facts, it is found that the partners joined together in good faith to conduct a business, having agreed that the services or capital to be contributed presently by each is of such value to the partnership that the contributor should participate in the distribution of profits, that is sufficient. The Tower case did not purport to authorize the Tax Court to substitute its judgment for that of the parties; it simply furnished some guides to the determination of their true intent. Even though it was admitted in the Tower case that the wife contributed no original capital, management of the business, or other vital services, this Court did not say as a matter of law that there was no valid partnership. We said, instead, that "There was, thus, more than ample evidence to support the Tax Court's finding that no genuine union for partnership purposes *was ever intended* and that the husband earned the income." 327 U. S. at 292 [C. B. 1946-1, 15]. (Italics added.)

Third. The Tax Court's isolation of "original capital" as an essential of membership in a family partnership also indicates an erroneous reading of the Tower opinion. We did not say that the donee of an intra-family gift could never become a partner through investment of the capital in the family partnership, any more than we said that all family trusts are invalid for tax purposes in *Helvering* v. *Clifford*, *supra*. The facts may indicate, on the contrary, that the amount thus contributed and the income therefrom should be considered the

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[12] Nearly three-quarters of a century ago, Bowen, L. J., made the classic statement that "the state of a man's mind is as much a fact as the state of his digestion." *Edgington* v. *Fitzmaurice*, 29 L. R. Ch. Div. 459, 483. State of mind has always been determinative of the question whether a partnership has been formed as between the parties. See e. g., *Drennen* v. *London Assurance Co.*, 113 U. S. 51, 56 (1884); *Meehan* v. *Valentine*, 145 U. S. 611, 621 (1892); *Barker* v. *Kraft*, 259 Mich. 70, 242 N. W. 841 (1932); *Zuback* v. *Bakmaz*, 346 Pa. 279, 29 Atl. 2d 473 (1943); *Kennedy* v. *Mullins*, 155 Va. 166, 154 S. E. 568 (1930).

[13] In the Tower case the taxpayer argued that he had a right to reduce his taxes by any legal means, to which this Court agreed. We said, however, that existence of a tax avoidance motive gives some indication that there was no bona fide intent to carry on business as a partnership. If Tower had set up objective requirements of membership in a family partnership, such as "vital services" and "original capital," the motives behind adoption of the partnership form would have been irrelevant.

[14] Although "management and control of the business" was one of the circumstances emphasized by the Tower case, along with "vital services" and "original capital," the Tax Court did not consider it an alternative "test" of partnership. See discussion, *infra*, at part third, and note 17.

property of the donee for tax, as well as general law, purposes. In the Tower and Lusthaus cases this Court, applying the principles of *Lucas* v. *Earl, supra; Helvering* v. *Clifford, supra;* and *Helvering* v. *Horst, supra* [Ct. D. 1472, C. B. 1940-2, 206]; found that the purported gift, whether or not technically complete, had made no substantial change in the economic relation of members of the family to the income. In each case the husband continued to manage and control the business as before, and income from the property given to the wife and invested by her in the partnership continued to be used in the business or expended for family purposes. We characterized the results of the transactions entered into between husband and wife as "a mere paper reallocation among the family members," noting that "The actualities of their relation to the income did not change." This, we thought, provided ample grounds for the finding that no true partnership was intended; that the husband was still the true earner of the income.

But application of the Clifford-Horst principle does not follow automatically upon a gift to a member of one's family, followed by its investment in the family partnership. If it did, it would be necessary to define "family" and to set precise limits of membership therein. We have not done so for the obvious reason that existence of the family relationship does not create a status which itself determines tax questions,[15] but is simply a warning that things may not be what they seem. It is frequently stated that transactions between members of a family will be carefully scrutinized. But more particularly, the family relationship often makes it possible for one to shift tax incidence by surface changes of ownership without disturbing in the least his dominion and control over the subject of the gift or the purposes for which the income from the property is used. He is able, in other words, to retain "the substance of full enjoyment of all the rights which previously he had in the property." *Helvering* v. *Clifford, supra,* at 336 [C. B. 1940-1, 107].[16]

The fact that transfers to members of the family group may be mere camouflage does not, however, mean that they invariably are. The Tower case recognized that one's participation in control and management of the business is a circumstance indicating an intent to be a bona fide partner despite the fact that the capital contributed originated elsewhere in the family.[17] If the donee of property who then invests it in the family partnership exercises dominion and control over that property—and through that control influences the conduct of the partnership and the disposition of its income—he may well be a true partner. Whether he is free to, and does, enjoy the fruits of the partnership is strongly indicative of the reality of his participation in the enterprise. In the Tower and Lusthaus cases we distinguished between active participation in the affairs of the business by a donee of a share in the partnership on the one hand, and his passive acquiescence to the will of the donor on the other.[18] This distinction is of obvious importance to a determination of the true intent of the parties. It is meaningless if "original capital" is an essential test of membership in a family partnership.

The cause must therefore be remanded to the Tax Court for a decision as to which, if any, of respondent's sons were partners with him in the operation of the ranch during 1940 and 1941. As to which of them, in other words, was there

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[15] Except, of course, when Congress defines "family" and attaches tax consequences thereto. See, e. g. 26 U. S. C. section 503(a)(2).

[16] It is not enough to say in this case, as we did in the Clifford case, that "It is hard to imagine that respondent felt himself the poorer after this [partnership agreement] had been executed or, if he did, that it had any rational foundation in fact." 309 U. S. at 336 [C. B. 1940-1, 107]. Culbertson's interest in his partnership with Coon was worth about $50,000 immediately prior to dissolution of the partnership. In order to sustain the Tax Court, we would have to conclude that he felt himself worth approximately twice that much upon his purchase of Coon's interest, even though he had agreed to sell that interest to his sons at the same price.

[17] As noted above (note 13), participation in control and management of the business, although given equal prominence with contributions of "vital services" and "original capital" as circumstances indicating an intent to enter into a partnership relation, was discarded by the Tax Court as a "test" of partnership. This indicates a basic and erroneous assumption that one can never make a gift to a member of one's family without retaining the essentials of ownership, if the gift is then invested in a family partnership. We included participation in management and control of the business as a circumstance indicative of intent to carry on business as a partner to cover the situation in which active dominion and control of the subject of the gift had actually passed to the donee. It is a circumstance of prime importance.

[18] There is testimony in the record as to the participation by respondent's sons in the management of the ranch. Since such evidence did not fall within either of the "tests" adopted by the Tax Court, it failed to consider this testimony. Without intimating any opinion as to its probative value, we think that it is clearly relevant evidence of the intent to carry on business as partners.

a bona fide intent that they be partners in the conduct of the cattle business, either because of services to be performed during those years, or because of contributions of capital of which they were the true owners, as we have defined that term in the Clifford, Horst, and Tower cases? No question as to the allocation of income between capital and services is presented in this case, and we intimate no opinion on that subject.

The decision of the court of appeals is reversed with directions to remand the cause to the Tax Court for further proceedings in conformity with this opinion.

Reversed and remanded.

Mr. Justice BLACK and Mr. Justice RUTLEDGE think that the Tax Court properly applied the principles of the Tower and Lusthaus decisions (327 U. S. 280, id., 293) in this case. However, they consider it of paramount importance in this case to have a court interpretation of the applicable taxing statute, for guidance in its application. Accordingly, they acquiesce in the Court's opinion and judgment.

Mr. Justice BURTON, concurring, states that, upon remand of the cause to the Tax Court, there is nothing in the facts which have been presented here which, as a matter of law, will preclude that court from finding that the 1940 and 1941 income was properly taxable on a partnership basis. The physical absence of some of the Culbertson boys from the ranch does not necessarily preclude them or others from the obligations or the benefits of the partnership for tax purposes. Their contributions of capital, their participation in the income and their commitments to return to the ranch or otherwise to render service to the partnership are among the material factors to be considered. A present commitment to render future services to a partnership is in itself a material consideration to be weighed with all other material considerations for the purposes of taxation as well as for other partnership purposes.

Mr. Justice JACKSON would affirm on the opinion of the court below, being of the view that the ordinary common-law tests of validity of partnerships are the tests for tax purposes and that they were met in this case.

Concurring opinion by Mr. Justice FRANKFURTER.

SECTION 29.22(a)-1: What included in gross income. 1949-25-13246
(Also Section 42, Section 29.42-1.) Mim. 6444

Taxable status of refunds of taxes

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., November 15, 1949.

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

1. In G. C. M. 25298 (C. B. 1947-2, 39), it was held that unpaid amounts asserted against a taxpayer as additional tax liabilities, which amounts are the subject of a *bona fide* contest, are not accruable items for Federal income tax purposes while they are unsettled as to amount and prior to establishment of the fact of liability. However, deficiencies of tax which have been paid were held to be deductible not later than the time of payment even though contested. G. C. M. 25298 states that the term "contest" includes not only a contest in court but any *bona fide* contest lodged with the tax authorities. Where payment of a tax is required as a prerequisite to further appeal, such payment is not to be regarded as a payment of a demanded tax deficiency. If, however, the payment is made to avoid penalties or interest, then the payment fixes the time of the deduction.

2. Heretofore the Bureau has held that tax deductions are allowable only for actual tax liabilities and not for taxes for which it is ulti-

mately determined the taxpayer was not liable. No distinction was drawn between taxes found to be erroneous or excessive and those found to be unconstitutional. Cases in which the tax was not erroneous but was eliminated by an event in a later taxable year, in which cases the refunds were taxed and the prior deductions were allowed to stand, were distinguished. Also, even in the case of illegal taxes, the refund was taxed if an assessment for the year in which the deduction was taken was barred by the statute of limitations.

3. Since the decision in *Burnet* v. *Sanford & Brooks Co.* (282 U. S. 359, Ct. D. 277, C. B. X–1, 363 (1931)), emphasis has been given to the point that income taxation is on an annual basis. So long as an item of income or expense was properly accounted for in one period, no change is justified under this doctrine merely because events in a subsequent period might materially change the treatment of the original item. The opinion of the Supreme Court of the United States in *Security Flour Mills Co.* v. *Commissioner* (321 U. S. 281, Ct. D. 1603, C. B. 1944, 526) reiterated this doctrine. There the taxpayer had collected processing taxes from vendees in 1935. Some of these taxes were paid and deductions taken in 1935 and some were merely deposited with the court, but deductions were taken by the petitioner as accrued tax liabilities in its 1935 tax return. This tax was declared unconstitutional in 1936, impounded funds were returned to the taxpayer, and reimbursements were made by the taxpayer to its customers in 1936, 1937, and 1938. The Court held that these reimbursements could not be related back to the year 1935 to reduce the taxable income for that year.

4. It is concluded from an analysis of the opinion of the Supreme Court in the Security Flour Mills case, in conjunction with the earlier cases, including *United States* v. *Anderson* (269 U. S. 422, T. D. 3839, C. B. V–1, 179 (1926)), *Dixie Pine Products Co.* v. *Commissioner* (320 U. S. 516, Ct. D. 1598, C. B. 1944, 509) and *Fawcus Machine Co.* v. *United States* (282 U. S. 375, Ct. D. 278, C. B. X–1, 424 (1931)), that each taxable year is to be treated as a separate unit. It follows that if a deduction for a tax is properly taken in a given year and the tax is subsequently invalidated in whole or in part, any refund or credit will be income in the subsequent year in the absence of a statutory provision to the contrary, and such invalidation will not disturb the original deduction.

5. In I. T. 3849 (C. B. 1947–1, 18), the Bureau held that an excessive accrual of New York State franchise tax, the rate having been retroactively reduced in the succeeding taxable year, should be treated as income in the succeeding taxable year. It is believed that a difference in the treatment of tax refunds or credits cannot be justified solely by reason of a difference in the type of tax refunded or credited but that, generally, all tax refunds or credits should be treated as income in the year of refund or credit to the extent that any prior deduction resulted in a tax benefit, regardless of whether the tax was legally or illegally imposed in the first instance. An exception, of course, is necessary in the case of a Federal tax held to be unconstitutional, the refund of which is covered by the provisions of section 128 of the Internal Revenue Code.

6. Accordingly, it is held that the receipt by a taxpayer of refunds of taxes, the deduction of which in prior years resulted in tax benefits, should be treated as income for the taxable year in which such refunds

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

7. In conformity with the position herein taken, Mimeograph 3958 (C. B. XI-2, 33 (1932)), Mimeograph 4564 (C. B. 1937-1, 93), I. T. 2578 (C. B. X-1, 119 (1931)), I. T. 2741 (C. B. XII-2, 48 (1933)), and I. T. 2934 (C. B. XIV-2, 63 (1935)) are modified to the extent that they are inconsistent with such position. O. D. 741 (C. B. 3, 115 (1920)) is revoked.

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

GEO. J. SCHOENEMAN,
Commissioner.

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

INTERNAL REVENUE CODE

Cash allowance received by Columbus, Ohio, police officers for purchase and maintenance of uniforms. (See I. T. 3978, page 24.)

SECTION 29.22(a)-2: Compensation for personal services. 1949-14-13121
I. T. 3960

INTERNAL REVENUE CODE

Taxable status for Federal income tax purposes of the Ross Essay Prize awarded by the American Bar Association.

Reference is made to the decision of the United States Court of Appeals for the District of Columbia in *Malcolm McDermott* v. *Commissioner* (150 Fed. (2d) 585), in which it was held that the Ross Essay Prize awarded by the American Bar Association for 1939 was not taxable to the recipient (McDermott) since it was a gift to him.

The Bureau does not agree with the conclusion reached in the McDermott case. Where services are required directly in connection with an award, it is the view of the Bureau that any prize money received is taxable income under section 22(a) of the Internal Revenue Code and that it is not excludable from gross income under section 22(b)(3) of the Code.

Accordingly, the winners of the Ross Essay Prize for 1949 and future years will be held to have received taxable income.

SECTION 29.22(a)-2: Compensation for personal services. 1949-20-13192
I. T. 3969
(Also Section 1625, Section 405.501, Regulations 116.)

INTERNAL REVENUE CODE

Where a Federal Government employee is separated from the service and is reemployed by the Government within the same tax-

able year prior to the expiration of the employee's accrued annual leave period, the amount, if any, of his compensation for accrued annual leave which is refunded or repaid to the employing agency by the employee pursuant to the Act of December 21, 1944 (58 Stat. 845), should be treated for Federal income tax purposes as an adjustment of his compensation for the taxable year.

The employee's gross salary for the year, including the full amount of his compensation for accrued annual leave, should be entered on Form W-2. Only the net amount of the salary received by the employee should be entered on Form 1040, accompanied by an explanatory statement.

Advice is requested as to the treatment for Federal income tax purposes of the amount of compensation which is refunded or repaid by a former Federal Government employee upon his reemployment by the Government within the same taxable year during which he was separated from the service.

In the instant case, a Government employee was separated from the service on March 31, 1948, and thereupon received a lump-sum payment of $564.18 for accrued annual leave in accordance with the Act of December 21, 1944 (58 Stat. 845). On April 5, 1948, after a lapse of only two working days, the separated employee was reemployed by the Government in another Government agency. In accordance with the Act of December 21, 1944, *supra*, he refunded to the employing agency $511.39, practically all of the lump-sum payment he had received. At the end of the calendar year 1948, the employee was furnished a Form W-2 (Withholding Statement—1948) showing $8,041.20 as the amount of total wages paid during 1948, which amount included the lump-sum payment of $564.18.

The Act of December 21, 1944, *supra*, provides in part as follows:

* * * whenever any civilian officer or employee of the Federal Government or the government of the District of Columbia is separated from the service or elects to be paid compensation for leave in accordance with the Act of August 1, 1941, as amended by the Act of April 7, 1942, or section 4 of the Act of June 23, 1943, he shall be paid compensation in a lump sum for all accumulated and current accrued annual or vacation leave to which he is entitled under existing law. Such lump-sum payment shall equal the compensation that such employee would have received had he remained in the service until the expiration of the period of such annual or vacation leave: *Provided*, That if such employee is reemployed in the Federal service or in or under the government of the District of Columbia under the same leave system prior to the expiration of the period covered by such leave payment, he shall refund to the employing agency an amount equal to the compensation covering the period between the date of reemployment and the expiration of such leave period, and the amount of leave represented by such refund shall be credited to him in the employing agency. * * * *Provided further*, That the lump-sum payment herein authorized shall not be regarded, except for purposes of taxation, as salary or compensation and shall not be subject to retirement deductions.

Under the provisions of section 1625(a) of the Internal Revenue Code, every employer required to withhold and collect a tax on wages must furnish to each employee with respect to his employment during the calendar year a written statement showing the entire amount of wages *paid* during the calendar year and the amount of tax deducted and withheld on such wages. Therefore, in the instant case, the total amount of compensation ($8,041.20) paid the Government employee during the calendar year 1948, including the lump-sum payment of $564.18, was properly shown on the withholding statement (Form W-2) furnished him for such year. (See section 405.501 of Regulations 116.)

In those cases in which both events, the separation from the Government service and the reemployment by the Government of the employee, occur during the same taxable year, an adjustment of income to be reported on Form 1040 for the taxable year should be made by the employee by taking into account the amount refunded to the employing agency. (Cf. *Appeal of H. C. Couch*, 1 B. T. A. 103, acquiescence, C. B. IV-1, 1 (1925); *Guy Fulton* v. *Commissioner*, 11 B. T. A. 641, acquiescence, C. B. VII-1, 11 (1928); *Albert W. Russel* v. *Commissioner*, 35 B. T. A. 602, acquiescence, C. B 1937-1, 22; and I. T. 2743, C. B. XII-2, 103 (1933).) The Government employee here involved should adjust the amount of $8,041.20, shown on the Form W-2 as salary (wages) paid him during the taxable year, by eliminating therefrom the amount of $511.39 which was refunded to the employing agency. The net amount ($7,529.81) received by him during the taxable year 1948 should be reported as salary on page 1, item 2, of Form 1040 for such year, accompanied by an explanatory statement with respect to the difference between the amount of salary shown on Form W-2 and that reported on Form 1040.

In view of the foregoing, it is held that where a Federal Government employee is separated from the service and is reemployed by the Government within the same taxable year prior to the expiration of the employee's accrued annual leave period, the amount, if any, of his compensation for accrued annual leave which is refunded or repaid to the employing agency by the employee pursuant to the Act of December 21, 1944 (58 Stat. 845), should be treated for Federal income tax purposes as an adjustment of his compensation for the taxable year. The employee's gross salary for the year, including the full amount of his compensation for accrued annual leave, should be entered on Form W-2. Only the net amount of the salary received by the employee should be entered on Form 1040, accompanied by an explanatory statement.

SECTION 29.22(a)-2: Compensation for personal services. 1949-21-13207
I. T. 3972

INTERNAL REVENUE CODE

The "ordinary death benefit" received by the widow of an employee of the Government of the Territory of Hawaii pursuant to section 708(8)(b) of chapter 15 of the Revised Laws of Hawaii, 1945, represents consideration for services rendered by the employee and constitutes taxable income to the widow.

Advice is requested as to the status for Federal income tax purposes of the "ordinary death benefit" received by the widow of an employee of the Government of the Territory of Hawaii pursuant to section 708(8)(b) of chapter 15 of the Revised Laws of Hawaii, 1945.

In the instant case, the taxpayer's husband, who died during the year 1948, was employed by the Government of the Territory of Hawaii for several years prior and up to the time of his death. He was a member of the Employees' Retirement System of the Territory of Hawaii, and, as such, he made contributions to the annuity savings fund of the system in order to provide for a retirement annuity. Subsequent to his death, the Territorial government paid to his widow, his designated beneficiary, an amount equal to 50 percent of the compensation earnable by him during the year immediately preceding

his death. No contribution was made by the employee to the fund from which the payment was made. Such amount was paid pursuant to section 708(8)(b) of chapter 15 of the Revised Laws of Hawaii, 1945.

The pertinent Hawaiian law provides as follows:

SEC. 708. BENEFITS.

* * * * * * *

8. *Ordinary death benefit.*—Upon the receipt of proper proofs of the death of a member there shall be paid to his estate or to such person having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the board: (*a*) his accumulated contribution and, if the member has had one or more years of creditable service, and no pension be payable under the provisions of subsection 9 of this section, *in addition thereto, (b) an amount equal to 50 per centum of the compensation earnable by him during the year immediately preceding his death.* [Italics supplied.]

* * * * * * *

SEC. 712. METHODS OF FINANCING.—The funds hereby created are * * * the pension accumulation fund * * *

3. *Pension accumulation fund.*—The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the Territory or any county and from which shall be paid all pensions and other benefits on account of members with prior service credit and *the lump sum death benefits* for all members payable from such contributions. Contributions to and payments from the pension accumulation fund shall be made as follows:

(*a*) On account of each member who is an employee of the Territory or a county, there shall be paid annually into the pension accumulation fund by the Territory or county, for the preceding fiscal year a certain percentage of the earnable compensation of such member to be known as the "normal contribution," and an additional percentage of such compensation to be known as the "accrued liability contribution." The rates per centum of such contributions shall be fixed on the basis of the liabilities of the system as shown by actuarial valuations. [Italics supplied.]

It is seen from the foregoing that the contributions by the Territory or a county to the fund from which the "ordinary death benefit" is paid to the widow or other beneficiary designated by an employee, or to his estate, become the funds of the Employees' Retirement System of the Territory of Hawaii. The death benefit is paid in consideration of the services which the employee rendered, and there exists a valid claim against the fund for such death benefit.

In *Varnedoe* v. *Allen* (158 Fed. (2d) 467, certiorari denied, 330 U. S. 821), the facts, briefly stated, were as follows: The taxpayer was the widow of a captain in the fire department of the city of Atlanta, Ga., who died while in service. Pursuant to a Georgia State statute, she received $100 per month after her husband's death. The taxpayer was never employed by, nor did she render any services to, the city of Atlanta, and she never paid or gave any personal consideration in exchange for the payments she received from the city. Under the laws of Georgia, deductions were made from her husband's salary during his lifetime. The question presented was whether the payments received by the widow were taxable to her under the income tax provisions of the Internal Revenue Code. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit includes the following language:

The taxpayer cites no provision of the statutes that specifically exempts this type of income. Section 22(a) provides that gross income, among other things, includes compensation for personal services of whatever kind and in whatever form paid. Section 29.22(a)-2 of Treasury Regulations 111, promulgated under

the Internal Revenue Code, provides that compensation for personal services includes, generally, "pensions or retiring allowances" and "are income to the recipients." One exception to this general rule is stated in the following language: "However, so-called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and are not taxable."

Usually the claimant of an exemption has the burden of proof, but we do not put our decision on this ground. If the payments to the taxpayer were not mere gifts or gratuities, under the above-quoted exception, awarded by one to whom no services had been rendered, they are taxable. It is not necessary that the services should have been rendered by the payee. The payor is the one to whom the services must have been rendered. The payments that the taxpayer received were awarded to her in consideration of services rendered to the city by her husband in his lifetime. They are gross income to her as compensation for services rendered within the meaning of section 22(a) of the Internal Revenue Code, and in our opinion are not within the exception to the general rule with reference to mere gifts or gratuities.

It is held that the "ordinary death benefit" received by the widow of an employee of the Government of the Territory of Hawaii pursuant to section 708(8)(b) of chapter 15 of the Revised Laws of Hawaii, 1945, represents consideration for services rendered by the employee and constitutes taxable income to the widow. (See I. T. 3840, C. B. 1947-1, 7.)

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

INTERNAL REVENUE CODE

Privilege taxes imposed by Florida Revenue Act of 1949. (See I. T. 3983, page 31.)

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

INTERNAL REVENUE CODE

Maintenance and cure, including cash payments, received by disabled seamen. (See I. T. 3977, page 92.)

SECTION 29.22(b)(2)-1: Life insurance—Endowment contracts—Amounts paid other than by reason of the death of the insured.

INTERNAL REVENUE CODE

Election, on or after maturity date, to receive endowment policy proceeds in installments. (See I. T. 3963, page 36.)

SECTION 29.22(b)(2)-2: Annuities. 1949-22-13215
I. T. 3974

INTERNAL REVENUE CODE

Payments received by a retired Federal civil service employee with respect to an "additional" annuity purchased with amounts voluntarily deposited pursuant to the provisions of section 10 of the Civil Service Retirement Act of May 29, 1930 (46 Stat. 468), as amended by the Act of February 28, 1948 (62 Stat. 48), constitute payments

received from an annuity separate and distinct from the "regular" annuity provided for under such Act. The two types of annuity should not be merged, for Federal income tax purposes, but should be treated as separate annuities in computing the amounts to be included in gross income.

Advice is requested as to the treatment, for Federal income tax purposes, of annuity payments received by a retired Federal civil service employee with respect to an "additional" annuity purchased by the voluntary deposit of additional sums pursuant to the provisions of section 10 of the Civil Service Retirement Act of May 29, 1930 (46 Stat. 468), as amended by the Act of February 28, 1948 (62 Stat. 48), where such retired employee also receives "regular" annuity payments under the provisions of such Act.

The significance of the question presented arises from the fact that if the payments attributable to the additional annuity and the payments attributable to the regular annuity are treated as payments with respect to one annuity, the combined cost of the two annuities would be recovered free of tax in approximately 2 to 4 years, whereas, if the payments are treated as payments from separate annuities, the cost of the regular annuity would be recovered free of tax in approximately 2 years but the cost of the additional annuity would not be recovered free of tax until after expiration of a period considerably in excess of 4 years.

The pertinent portion (second paragraph) of section 10 of the Civil Service Retirement Act of May 29, 1930, as amended by section 10 of the Act of February 28, 1948, *supra*, provides as follows:

Any officer or employee may at his option and under such regulations as may be prescribed by the Civil Service Commission deposit additional sums in multiples of $25 but not to exceed 10 per centum of his annual basic salary, pay, or compensation, for service rendered since August 1, 1920, which amount together with interest thereon at 3 per centum per annum compounded as of December 31 of each year, shall, at the date of his retirement, be available to purchase, as he shall elect and in accordance with such rules and regulations as may be prescribed by the Civil Service Commission, *an annuity in addition to the annuity provided by this Act.* The life annuity shall consist of $7 for each $100, increased by 20 cents for each full year, if any, such officer or employee is over the age of 55 years at the date of retirement. In the event of death or separation from the service of such officer or employee before becoming eligible for retirement on annuity, the total amount so deposited, with interest at 3 per centum per annum to date of death or separation compounded on December 31 of each year, shall be refunded in accordance with the provisions of section 12 of this Act. In case a retired employee who is receiving a life annuity under this paragraph shall die without having received in annuity purchased by the total amount so deposited, with interest at 3 per centum per annum compounded on December 31 of each year, to date of retirement, the difference shall be paid, upon the establishment of a valid claim therefor, in the order of precedence prescribed in section 12(e). [Italics supplied.]

A review of the Civil Service Retirement Act, as amended, and the regulations issued thereunder discloses that the annuities mentioned in the statute have distinguishing features and conditions in that (1) regardless of the type of regular annuity elected, an employee at retirement may make a separate and distinct election with respect to the type of annuity to be purchased with his voluntary contributions, and (2) if an employee has served 20 years or more in Federal civilian work, he is not entitled to a lump-sum refund of the amount deducted and withheld in connection with his regular annuity, whereas, regardless of length of service, voluntary deposits are refundable in full

upon absolute separation from the service before the employee becomes eligible for retirement. The second paragraph of section 10 of the Act, *supra*, expressly refers to "an annuity in addition to" the regular annuity, and the amount of the annuity purchased by voluntary deposits is determined in a different manner than the amount of the regular annuity. Information obtained from the Civil Service Commission indicates that although the aggregate amount of the two annuities may be included, for administrative purposes, in one check, separate and distinct accounts are maintained in the records of the Commission with respect to the regular annuity and to the additional annuity purchased with voluntary deposits, both in relation to the funds credited to the employee and to the recovery of the costs of the respective annuities.

Accordingly, since the additional annuity purchased by voluntary deposits is invested with legal characteristics which are different from those of the regular annuity, it is held that the two types of annuity should not be merged, for Federal income tax purposes, but should be treated as separate annuities in computing the amounts to be included in gross income.

SECTION 29.22(b)(13)-1: Compensation of members of military and naval forces. — 1949-25-13247 Ct. D. 1725

INCOME TAX—INTERNAL REVENUE CODE, AS AMENDED—DECISION OF SUPREME COURT

1. GROSS INCOME—EXCLUSIONS—ADDITIONAL ALLOWANCE FOR MILITARY AND NAVAL PERSONNEL.

On February 19, 1943, taxpayer, a civil service employee in the legal division of the Coast Guard, was enrolled as a lieutenant commander within one of the classifications which constituted the temporary members of the Coast Guard Reserve, under the authority of the Coast Guard Auxiliary and Reserve Act, which provided for the enrollment of "persons (including Government employees without pay other than the compensation of their civilian positions)." On April 24, 1944, he was reenrolled as a commander, and his class was described as "Coast Guard Civil Service Employees." *Held:* While taxpayer had a military status for some purposes, he received his compensation in a civilian status, and is not entitled to the claimed exclusion of $1.500 from gross income provided by section 22(b)(13)(A) of the Internal Revenue Code.

2. DECISION REVERSED.

Decision of the United States Court of Appeals for the District of Columbia (172 Fed. (2d) 877 (1949)), reversing decision of The Tax Court of the United States (8 T. C. 848 (1947)), reversed.

SUPREME COURT OF THE UNITED STATES

Commissioner of Internal Revenue, petitioner, v. *William I. Connelly and Bertha Connelly*

On writ of certiorari to the United States Court of Appeals for the District of Columbia

[November 7, 1949]

OPINION

Mr. Justice MINTON delivered the opinion of the Court.

The question we have here is whether respondent William I. Connelly, hereafter referred to as the taxpayer, is entitled to the $1,500 exclusion from gross

income provided by section 22(b)(13)(A) of the Internal Revenue Code.[1] The taxpayer claimed this additional allowance for the taxable years 1943 and 1944. The Commissioner disallowed the sum deducted. The Tax Court sustained the Commissioner, 8 T. C. 848, and the court of appeals reversed, one judge dissenting. 172 Fed. (2d) 877. We granted certiorari. 337 U. S. 924.

On February 19, 1943, taxpayer was a civil service employee in the legal division of the Coast Guard. On that date he was enrolled as a lieutenant commander within one of the six classifications which constituted the temporary members of the Coast Guard Reserve.[2] His enrollment was under authority of the Coast Guard Auxiliary and Reserve Act which provided for the enrolling of "persons (including Government employees without pay other than the compensation of their civilian positions)." 55 Stat. 12, as amended, 56 Stat. 1021, 14 U. S. C. section 307. On April 24, 1944, he was reenrolled as a commander and his class was described as "Coast Guard Civil Service Employees."

After enrollment taxpayer performed duties identical with those which he had previously performed. At the time he was enrolled, his civil service rating was P-5. Later this rating was raised to P-6 and his rank was increased at the same time to that of commander. He received the same pay after enrollment that he had received as a civil service employee. He received overtime pay as a civil service employee, deductions were made from his pay for civil service retirement, and he was subject to civil service regulations as to annual and sick leave. If he had been injured or killed, he would have received benefits as a civil employee of the United States. He was still subject to the Selective Training and Service Act. In the case of sickness or disease contracted while on active duty, taxpayer was entitled to the same hospital and medical care as members of the regular Coast Guard, but dental care was not included. While on active duty he was required to wear the uniform of and he received the courtesies due his rank. He was subject to the laws, regulations and orders of the Coast Guard and to disciplinary action.

It is apparent that taxpayer had a dual status. He had a limited military status with the rank of lieutenant commander and later that of commander. He had also the status of a civil service employee, carefully so limited and with all the privileges incident to such status. He was given just enough military status to enable him effectively to carry out his duties. All considerations of an economic character pertaining to his employment by the Government were related to his civil service status.

In *Mitchell* v. *Cohen*, 333 U. S. 411, we held that one employed in a department of the Federal Government as a civil service employee who was enrolled temporarily in the Volunteer Port Security Force of the Coast Guard Reserve and who worked part-time as a reservist without pay was not an "ex-serviceman" within the meaning of the Veterans' Preference Act. Looking to the legislative history of that statute, we found that the overshadowing purpose of the Act was to favor those who had a real record of military service.

The court of appeals found in this case that by the application of "long-established criteria—oath of office, military duty, and subjection to military discipline" taxpayer had acquired a military status and was thus entitled to the exclusion. We agree that he had a military status for some purposes. But the question for tax purposes is whether he received his pay in that status. To come within section 22(b)(13)(A), he must have received his compensation "for active service as a commissioned officer." We understand this to mean that if taxpayer received his pay *as a* commissioned officer, he would be entitled to the exclusion. It seems equally plain that if he received his pay *as a* civil service employee and served without military pay and allowances, he is not entitled to the claimed exclusion.[3] As in the Cohen case, the emphasis of the statute is on a military and not on a civilian status.

And it is clear that taxpayer received his compensation in a civilian status. As noted, section 307 of the Coast Guard Auxiliary and Reserve Act provided for

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[1] As amended by Revenue Act of 1945, section 141(a), 59 Stat. 571 (1945).

"(13) Additional allowance for military and naval personnel.—

"(A) In the case of compensation received * * * for active service as a commissioned officer * * * in the military or naval forces of the United States * * * so much of such compensation as does not exceed $1,500."

[2] These classifications and the organization of the Coast Guard Reserve are detailed in *Mitchell* v. *Cohen*, 333 U. S. 411, 412-14.

[3] See Judge Edgerton, dissenting in part, below:

"* * * I would be unable, in view of the rule that tax exemptions are strictly construed, to say that the compensation of a man who did not receive a commissioned officer's pay but served 'without pay other than the compensation of [his] civilian positions' was 'received * * * for active service as a commissioned officer'." 172 Fed. (2d) at 880.

the enrolling of "persons (including Government employees without pay other than the compensation of their civilian positions)." The Committee on Merchant Marine and Fisheries referred to the amendment by which the parenthetical phrase was added to the statute as being "advisable to clarify this authority [enrollment of temporary members without the pay of their military rank] and resolve any doubt of its applicability to Government employees by specifically providing for temporary membership in the Coast Guard Reserve of Government employees without military pay but with continuance in their civilian positions and the receipt of the compensation thereof." [4]

From the date of the enactment of the enrollment statute there seems to have been no deviation from the view that the taxpayer was to be paid as a civil service employee and not as a commissioned officer. His pay came from congressional appropriations allocated to civilian positions. His pay was at the civil service scale for his grade, with overtime pay and appropriate deductions for civil service retirement. His continuing civilian status is underlined by his receipt of a civil service promotion, from which his military promotion resulted. Indeed, the taxpayer's certificate of disenrollment described the duty performed as "Chief of Admiralty and Maritime Section having civil service status, receiving civilian but no military pay, and holding rank of commander as a temporary member of the Coast Guard Reserve."

The court of appeals ignored the status in which taxpayer was compensated and gave effect to his military status which was provided only to facilitate the performance of his duties in wartime.[5] Taxpayer's rank was for the purpose of getting the job done, and not for the purpose of receiving compensation.

The judgment of the court of appeals is

Reversed.

Mr. Justice FRANKFURTER and Mr. Justice DOUGLAS took no part in the consideration or decision of this case.

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

SECTION 29.22(d)-1: Inventories under elective method. (Also Section 29.22(d)-2; Sections 19.22(d)-1 and 19.22(d)-2, Regulations 103.)

1949-24-13235
T.D. 5756

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

Regulations 103 and Regulations 111 amended with respect to elective inventory computations.

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

To Collectors of Internal Revenue and Others Concerned:

PARAGRAPH 1. Section 29.22(d)-1 of Regulations 111, as amended by Treasury Decision 5605 [C. B. 1948-1, 16], approved March 4, 1948 [26 CFR 29.22(d)-1], and section 19.22(d)-1 of Regulations 103, as

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[4] H. R. Rept. No. 2525, 77th Cong., 2d sess., 3 (1942). The committee added that the amendment "would obviate any possible impairment of the right of such employees to continue to receive the compensation of their civilian positions for the entire period of their performance of active Coast Guard duty as such temporary members. There will be little, if any, change in the nature of their duties after enrollment."

[5] Office memorandum No. 13-43 issued by the Commandant of the Coast Guard on July 24, 1943, states:

"6. The attention of heads of offices and chiefs of divisions is invited to the fact that one of the principal reasons for the induction of civil service employees into the military establishment as temporary members of the Reserve was to obtain a homogeneous organization on a military basis and to eliminate differences in procedure and practices applicable to military personnel and civil service personnel engaged on exactly the same duty * * *"

amended by Treasury Decision 5605 [26 CFR 19.22(d)-1], are further amended by inserting in each case at the end thereof the following:

If a taxpayer uses consistently the so-called "dollar-value" method of pricing inventories, or any other method of computation established to the satisfaction of the Commissioner as reasonably adaptable to the purpose and intent of section 22(d), and if such taxpayer elects under section 22(d) to use the elective inventory method authorized by such section, the taxpayer's opening and closing inventories shall be determined under section 22(d) by the use of the appropriate adaptation.

PAR. 2. Section 29.22(d)-2 of Regulations 111, as amended by Treasury Decision 5605 [26 CFR 29.22(d)-2], is further amended by revising that portion thereof preceding the numbered paragraphs to read as follows:

Except as otherwise provided in section 29.22(d)-1 with respect to raw material computations, with respect to retail inventory computations, and with respect to "dollar-value" and other methods of computation established to the satisfaction of the Commissioner as reasonably adapted to the purpose and intent of section 22(d), the adoption and use of the elective inventory method is, by section 22(d) and the regulations thereunder, made subject to the following requirements:

PAR. 3. Section 19.22(d)-2 of Regulations 103, as amended by Treasury Decision 5605 [26 CFR 19.22(d)-2], is further amended by revising that portion thereof preceding the numbered paragraphs to read as follows:

Except as otherwise provided in section 19.22(d)-1 with respect to retail inventory computations and with respect to "dollar-value" and other methods of computation established to the satisfaction of the Commissioner as reasonably adapted to the purpose and intent of section 22(d), the adoption and use of the elective inventory method is, by section 22(d) and the regulations thereunder, made subject to the following requirements:

PAR. 4. The amendments made by this Treasury Decision shall be applicable to all taxable years beginning after December 31, 1938.

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

Because the amendments made by this Treasury Decision merely relieve taxpayers from a limitation applicable under existing regulations, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 2, 1949.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 8, 1949, 8:47 a. m.)

SECTION 29.22(d)-1: Inventories under elective method. 1949-25-13248
I. T. 3982

INTERNAL REVENUE CODE

Price indices for July, 1949, published by the Bureau of Labor Statistics under date of September 9, 1949, for use by department stores employing the retail inventory and elective inventory methods.

The following price indices for July, 1949, published by the Bureau of Labor Statistics for use by department stores employing the retail

inventory and elective inventory methods, are accepted by the Bureau of Internal Revenue pursuant to Treasury Decision 5605 (C. B. 1948-1, 16), approved March 4, 1948, and Mimeograph 6244 (C. B. 1948-1, 21), dated March 9, 1948, for appropriate application to inventories for taxable years of 12 months ended on June 30, 1949, and July 31, 1949. The indices published herein represent a continuation of department groups and prices shown in Table I, Table II (July to July), and Table III of I. T. 3904 (C. B. 1948-1, 18), as extended by the price indices and data for July, 1948, shown in I. T. 3927 (C. B. 1948-2, 26), and for January, 1949, shown in I. T. 3953 (C. B. 1949-1, 53).

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

[January, 1941=100]

Group	July, 1948	July, 1949	July, 1948, to July, 1949, percent change
I. Piece goods, domestics, and draperies	222.3	199.6	−10.2
II. Shoes	196.4	192.7	−1.9
III. Ladies' underwear	181.6	171.1	−5.8
IV. Ladies' outerwear and girls' wear	183.7	176.4	−4.0
V. Men's and boys' wear	194.2	185.9	−4.3
VI. Furniture and bedding	192.9	188.9	−2.4
VII. Home furnishings	165.9	171.0	3.1
VIII. Major appliances and electrical goods	169.8	160.9	−5.2
IX. Notions and toilet articles	141.1	142.8	1.2
X. Ladies' accessories	174.0	167.1	−4.0
Total, Groups I, II, III, IV, V, IX, and X	187.3	179.0	−4.4
Total, Groups VI, VII, and VIII	174.8	173.7	−.6
Store total	183.6	177.4	−3.4

SECTION 29.22(d)-2: Requirements incident to adoption and use of elective method. (Also Section 19.22(d)-2, Regulations 103.)

INTERNAL REVENUE CODE

Regulations 103 and 111 amended. (See T. D. 5756, page 21.)

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

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

INTERNAL REVENUE CODE

Gasoline license tax paid by individuals in certain Alabama counties who use gasoline in trade or business. (See I. T. 3962, page 25.)

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

INTERNAL REVENUE CODE

Amounts expended by Columbus, Ohio, police officers from cash allowance for purchase and maintenance of uniforms. (See I. T. 3978, page 24.)

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

INTERNAL REVENUE CODE

Florida privilege taxes paid by individuals in connection with trade or business. (See I. T. 3983, page 31.)

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

SECTION 29.23(a)-1: Business expenses. 1949-24-13236
(Also Section 22(a), Section 29.22(a)-1; Section 22(n), Section 29.22(n)-1; and Section 1621(a), Section 405.101, Regulations 116.) I. T. 3978

INTERNAL REVENUE CODE

Treatment for Federal income tax purposes of amounts received by, and amounts expended by, police officers of the city of Columbus, Ohio, in connection with the purchase and maintenance of their uniforms.

Advice is requested relative to the treatment for Federal income tax purposes of amounts received by, and amounts expended by, police officers of the city of Columbus, Ohio, in connection with the purchase and maintenance of their uniforms.

City of Columbus, Ohio, Ordinance No. 500-48, approved June 28, 1948, provides for an annual allowance to all male police officers in the division of police, who entered the division as patrolmen, to reimburse them for uniforms purchased for use in the division of police. Each such officer is allowed, as a clothing reimbursement, the sum of $150 for the first calendar year (or part thereof) in service and $75 for each succeeding year in service.

The Bureau has adopted the position that amounts expended for the purchase and maintenance of police officers' uniforms constitute ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code. As a result, nonacquiescence (C. B. 1943, 27) in *Marcus O. Benson* v. *Commissioner* (2 T. C. 12, affirmed, 146 Fed. (2d) 191) has been withdrawn and acquiescence (page 1, this Bulletin) substituted.

Section 29.22(n)-1 of Regulations 111 provides in part that the term "adjusted gross income" means the gross income computed under section 22 of the Code minus such of the deductions allowable under section 23 of the Code as are specified in section 22(n) of the Code. 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. In addition to traveling expenses, an employee's expenses 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, are deductible from gross income in computing adjusted gross income. Accordingly, in computing adjusted gross income, a police officer may deduct his actual expenses for uniforms up to, but not exceeding, the amount which he receives as an allowance or reimbursement therefor. In addition, for

the purpose of computing net income, he may either deduct any uniform expenses incurred in excess of such allowance or reimbursement if he elects to itemize his deductions, or he may claim the standard deduction.

Since the annual cash allowance paid to reimburse police officers of the city of Columbus, Ohio, for the purchase and maintenance of their uniforms represents an amount paid specifically for *bona fide* ordinary and necessary business expenses incurred or reasonably expected to be incurred in the business of the employer, such allowance does not constitute wages and is not subject to the withholding of income tax by the employer. (See section 405.101(*c*) of Regulations 116.) However, such cash allowance is includible in gross income under section 22(a) of the Internal Revenue Code.

SECTION 29.23(a)-1: Business expenses.

INTERNAL REVENUE CODE

Privilege taxes imposed by Florida Revenue Act of 1949. (See I. T. 3983, page 31.)

SECTION 29.23(a)-2: Traveling expenses.

INTERNAL REVENUE CODE

Nonresident alien individual traveling to United States to fulfill performance contracts. (See G. C. M. 26013, page 76.)

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

SECTION 29.23(c)-1: Taxes. 1949-15-13129
(Also Section 22(n), Section 29.22(n)-1.) I. T. 3962

INTERNAL REVENUE CODE

In general, the gasoline license tax imposed by the act of the Alabama Legislature approved September 16, 1947, effective October 1, 1947, in counties which have a population of 400,000 inhabitants or more, is deductible for Federal income tax purposes, under section 23(c)(1) of the Internal Revenue Code, by the consumer. If, however, an individual elects the optional standard deduction, no itemized deduction is allowable with respect to such tax unless it is attributable to a trade or business carried on by him, in which event the amount of the tax is deductible from gross income in computing adjusted gross income.

The amount of the above-mentioned Alabama gasoline license tax collected by the distributor or dealer should not be included in his gross income, and no deduction is allowable with respect to the amount of the tax remitted to the county.

Advice is requested whether the Alabama gasoline license tax imposed by the act of the Alabama Legislature approved September 16, 1947, effective October 1, 1947, may be deducted by the consumer in his Federal income tax return.

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The pertinent provisions of the Alabama statute imposing the tax in question provide in part as follows:

SECTION 1. This act shall apply in, and only in, counties which have a population of 400,000 inhabitants, or more, according to the last or any subsequent Federal census; this act shall not have the effect of altering or repealing in any wise any statute now in effect, except all ordinances of any municipality within such counties which impose or levy any gasoline excise tax or license tax based upon or graduated by the number of gallons of gasoline sold, distributed, stored, delivered or withdrawn from storage, but shall be in addition to and cumulative to all laws now in effect.

SEC. 2. When used in this act—(a) The term "person" means and includes every human being, firm, corporation, club, partnership, company, trustee, agency, or association, and any agent, servant, employee, or officer thereof, singular and plural. (b) The term "distributor" and the term "seller" each shall mean and include any person, as the word "person" is herein defined, who is engaged in the business of selling, distributing, delivering, storing, or taking out of storage gasoline within the county, or who sells, delivers, stores or takes out of storage gasoline within the county. * * *

SEC. 3. (a) Every distributor or seller of gasoline shall in addition to all other taxes and licenses imposed or levied by law, pay a license tax to the county equal to 1 cent on each gallon of gasoline by him sold, distributed, delivered, stored or taken out of storage within the county; * * *

SEC. 4. Every distributor and seller and every retail dealer of gasoline shall add the amount of the license tax levied and assessed herein to the price of the gasoline; it being the purpose and intent of this provision that the tax levied by this act is in fact a levy upon the consumer, with the distributor, seller and retail dealer acting merely as agent of the county for the collection of the tax. Each distributor and seller (except the retail dealer) shall state the amount of the tax separately from the price of the gasoline on all invoices or sales or delivery slips; and each retail dealer shall state the amount of the tax separately from the price of the gasoline on all display signs and advertisements which state or indicate the price of the gasoline. It shall be unlawful for any distributor, seller, or retail dealer engaged in or continuing within such county in the business for which the license tax is required by this act to fail or refuse to add to the sales price and collect from the purchaser the amount due by the taxpayer on account of the tax herein provided or to refund or offer to refund all or any part of the amount collected or to absorb or advertise directly or indirectly the absorption or rebate of the tax or any portion thereof. * * *

Section 23(c)(1) of the Internal Revenue Code provides that in computing net income there shall be allowed as deductions taxes paid or accrued within the taxable year, with certain exceptions not here material, and section 29.23(c)-1 of Regulations 111 provides that in general taxes are deductible only by the person upon whom they are imposed.

In view of the express intent of the Alabama State Legislature, as set forth in section 4, *supra*, of the act approved September 16, 1947, that the tax in question is in fact a levy upon the consumer, with the distributor, seller, and retail dealer acting merely as agents of the county for the collection of the tax, it is held that the gasoline license tax is deductible for Federal income tax purposes, under the provisions of section 23(c)(1) of the Internal Revenue Code, by the consumer, provided, however, that in the case of an individual who elects to take the optional standard deduction, no deduction is allowable unless the gasoline license tax is attributable to a trade or business carried on by him. If the tax is attributable to a trade or business carried on by an individual, the amount of such tax is deductible from gross income in computing adjusted gross income.

The amount of tax collected by the distributor or dealer should not be included in his gross income, and no deduction is allowable with respect to the amount of the tax remitted to the county.

SECTION 29.23(c)-1: Taxes. 1949-18-13171
I. T. 3966

INTERNAL REVENUE CODE

Contributions made by employers and employees to the State of California pursuant to the California Unemployment Insurance Act, as amended, are deductible as taxes under section 23(c)(1) of the Internal Revenue Code in computing net income for Federal income tax purposes.

I. T. 3096 (C. B. 1937-2, 81) revoked.

Advice is requested as to the deductibility for Federal income tax purposes of contributions made by employers and employees to the State of California pursuant to the California Unemployment Insurance Act, as amended.

The California Unemployment Insurance Act (formerly known as the Unemployment Reserves Act), as originally enacted, provided for the payment of unemployment compensation by the State to individuals who were unemployed but were able to work. The act provided for percentage contributions by both employers and employees based on salaries. Effective May 21, 1946, the act was amended by the addition of article 10 which provides for compensation to employees in case of disability due to sickness or accident. The moneys obtained from such contributions constitute a separate fund in the hands of the State to carry out the purpose of the amendment.

The California Unemployment Insurance Act (then known as the Unemployment Reserves Act) was given consideration by this office, prior to the addition of article 10, in I. T. 3096 (C. B. 1937-2, 81), and it was there held in effect that contributions made by employers and employees under the provisions of the act were deductible from gross income for Federal income tax purposes as business expenses. As indicated in the ruling, that conclusion was based on an opinion of the attorney general of the State of California as to the legal status of such contributions. He had held that "The payroll contribution cannot be held to be a tax."

Recent decisions indicate that the California courts regard the contributions made by both employers and employees to the State fund as taxes. In *Isenberg* v. *California Employment Stabilization Commission et al.* (172 Pac. (2d) 527), the court said (at page 531): "By whatever name it may be called, the 'contribution' is a tax." To the same effect are: *La Societe Francaise de Bienfaisance Mutuelle* v. *California Employment Commission* (133 Pac. (2d) 47); *Empire Star Mines Co., Ltd.*, v. *California Employment Commission* (168 Pac. (2d) 686); *Modern Barber Colleges, Inc.*, v. *California Employment Stabilization Commission* (192 Pac. (2d) 916).

In view of the above, it is held that contributions made by employers and employees to the State of California pursuant to the California Unemployment Insurance Act, as amended, are deductible as taxes under section 23(c)(1) of the Internal Revenue Code in computing net income for Federal income tax purposes. (See Mim. 4595, C. B. 1937-1, 63.) I. T. 3096, *supra*, is hereby revoked.

SECTION 29.23(c)-1: Taxes. 1949-20-13193
(Also Section 24, Section 29.24-1.) I. T. 3970

INTERNAL REVENUE CODE

Contributions made by employers and employees (workers) to the New Jersey unemployment compensation fund and to the State disability benefits fund pursuant to chapter 21, title 43 of the Revised Statutes of New Jersey, as amended and supplemented, are deductible as taxes under section 23(c)(1) of the Internal Revenue Code.

Contributions made by employees (workers) in accordance with private plans which provide for payment of disability benefits pursuant to chapter 21, title 43 of the Revised Statutes of New Jersey, as amended and supplemented, are not taxes within the meaning of section 23(c)(1) of the Code, nor medical expenses under section 23(x) of the Code. They are personal expenses under section 24(a)(1) of the Code which are not deductible for Federal income tax purposes.

Advice is requested as to the deductibility for Federal income tax purposes of contributions made by employers and employees (referred to sometimes in the New Jersey statute as workers) to the New Jersey unemployment compensation fund and to the State disability benefits fund pursuant to chapter 21, title 43 of the Revised Statutes of New Jersey, as amended and supplemented. Advice is also requested as to the deductibility of contributions made by such employees in accordance with private plans which provide for payment of disability benefits pursuant to the same provisions of New Jersey law.

Prior to June 1, 1948, chapter 21, title 43 of the Revised Statutes of New Jersey provided for the payment of unemployment compensation benefits to those unemployed persons who were able to work and available for work. Effective June 1, 1948, the law was amended to provide also for compensation to employees in case of disability due to nonoccupational sickness or accident as the result of which they are unavailable or unable to work. Employees may be covered by the State plan or by private plans. The pertinent provisions of the New Jersey Revised Statutes read as follows:

43:21-1. SHORT TITLE.

This chapter shall be known and may be cited as the "Unemployment Compensation Law."

43:21-4. BENEFIT ELIGIBILITY CONDITIONS.

An unemployed individual shall be eligible to receive benefits with respect to any week only if it appears that:

* * * * * * *

(c) He is able to work, and is available for work.

43:21-7. CONTRIBUTIONS.

(a) Payment.

(1) On and after December first, one thousand nine hundred and thirty-six, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter, with respect to having individuals in his employ during such calendar year * * * Such contributions shall become due and be paid by each employer to the commission [unemployment compensation commission] for the fund [unemployment compensation fund] in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ.

* * * * * * *

(d) Contribution of workers; transfer to temporary disability benefit fund.

(1) Each worker shall contribute to the fund one per centum (1%) of his wages paid by an employer with respect to his employment * * * *provided,*

however, that such contribution shall be at the rate of one-fourth of one per centum (¼ of 1%) of wages paid with respect to employment on and after January first, one thousand nine hundred and forty-nine, while the worker is covered by an approved private plan under the Temporary Disability Benefits Law. Each employer shall, notwithstanding any provisions of law in this State to the contrary, withhold in trust the amount of his workers' contributions from their wages at the time such wages are paid, shall show such deduction of [sic] his payroll records, shall furnish such evidence thereof to his workers as the commission may prescribe, and shall transmit all such contributions, in addition to his own contributions, to the office of the commission in such manner and at such times as may be prescribed. If any employer fails to deduct the contributions of any of his workers at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding payroll period, he alone shall thereafter be liable for such contributions, and for the purposes of section 43:21-14 of this title, such contributions shall be treated as employer's contributions required from him. * * *

(2) There shall be deposited in and credited to the State disability benefits fund, as the same shall be established by law, three-quarters of all worker contributions, received by the commission pursuant to subparagraph (1) above on and after April first, one thousand nine hundred and forty-eight or the date this subparagraph takes effect, whichever is later, with respect to wages upon which the rate of contribution is one per centum (1%) as provided in (1) above.

* * * * * * *

(e) Contributions by employers to State disability benefits fund.

(1) Except as hereinafter provided, each employer shall * * * contribute one-quarter of one per centum (¼ of 1%) of the wages paid by such employer to workers with respect to employment after January first, one thousand nine hundred and forty-nine. Such contributions shall become due and be paid by each employer to the commission for the State disability benefits fund as established by law, in accordance with such regulations as may be prescribed, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ. * * *

43:21-25. SHORT TITLE.

This act shall be known and may be cited as the "Temporary Disability Benefits Law."

43:21-26. PURPOSE.

* * * * * * *

The public policy of this State, already established, is to protect employees against the suffering and hardship generally caused by involuntary unemployment. But the unemployment compensation law provides benefit payments to replace *wage loss* caused by involuntary unemployment only so long as an individual is "able to work, and is available for work," and fails to provide any protection against *wage loss* suffered because of inability to perform the duties of a job interrupted by illness. * * * [Italics supplied.]

* * * * * * *

It has been found that existing voluntary plans for the payment of cash sickness benefits cover less than one-half of the number of working people of this State who are now covered by the unemployment compensation law, and that even this degree of voluntary protection affords uneven, unequal and sometimes uncertain protection among the various voluntary benefit programs. It is therefore desirable and necessary to fill the gap in existing provisions for protection against the *loss of earnings* caused by involuntary unemployment, by extending such protection to meet the hazard of *earnings loss* due to inability to work caused by nonoccupational sickness or accident. [Italics supplied.]

* * * In order to maintain consumer purchasing power, relieve the serious menace to health, morals and welfare of the people caused by insecurity and the *loss of earnings*, to reduce the necessity for public relief of needy persons, and in the interest of the health, welfare and security of the people of this State, such a system, enacted under the police power, is hereby established, requiring the payment of reasonable cash benefits to eligible individuals suffering accident or illness which is not compensable under the workmen's compensation law. [Italics supplied.]

43:21-32. ESTABLISHMENT OF PRIVATE PLANS.

Any covered employer may establish a private plan for the payment of disability benefits in lieu of the benefits of the State plan hereinafter established. Benefits

under such a private plan may be provided by a contract of insurance issued by an insurer duly authorized and admitted to do business in this State, or by an agreement between the employer and a union or association representing his employees, or by a specific undertaking by the employer as a self-insurer. Subject to the insurance laws of this State, such a contract of insurance may be between the insurer and the employer; or may be between the insurer and two or more employers, acting for the purpose through a nominee, designee or trustee; or may be between the insurer and the union or association with which the employer has an agreement with respect thereto. * * *

* * * * * * *

(d) no greater amount is required to be paid by employees toward the cost of benefits than that prescribed by law as the amount of worker contribution to the State disability benefits fund for covered individuals under the State plan; * * *

43:21-33. ELECTION BY EMPLOYEES; DEDUCTION OF CONTRIBUTIONS.

If employees are to be required to contribute toward the cost of benefits under a private plan, such plan shall not become effective unless prior to the effective date a majority of the employees in the class or classes to be covered thereby have agreed thereto by written election. In such event, the employer may during the continuance of the approved private plan collect the required contributions thereto by deduction from the wages paid to covered individuals under such plan; *provided*, that if any employer fails to deduct the contributions of any of his employees at the time their wages are paid, or fails to make a deduction therefor at the time wages are paid for the next succeeding payroll period, he may not thereafter collect a contribution with respect to such wages previously paid.

The decisions indicate that the New Jersey Unemployment Compensation Commission and the Federal and New Jersey courts regard the contributions to the State unemployment compensation fund as taxes. (See *In re Wilsonite Corporation*, 28 Fed. Supp. 913; *In re Wm. Akers, Jr., Co., Inc.*, 121 Fed. (2d) 846; *Singer Sewing Machine Co.* v. *New Jersey Unemployment Compensation Commission et al.*, 128 N. J. L. 611, 27 A. (2d) 889, affirmed, 130 N. J. L. 173, 31 A. (2d) 818; *Raines* v. *Unemployment Compensation Commission*, 129 N. J. L. 28, 28 A. (2d) 46, affirmed, 129 N. J. L. 387, 30 A. (2d) 31, certiorari denied, 319 U. S. 757.)

Accordingly, it is held that contributions made by employers and employees to the New Jersey unemployment compensation fund pursuant to chapter 21, title 43 of the Revised Statutes of New Jersey, as amended and supplemented, are deductible as taxes under section 23(c)(1) of the Internal Revenue Code. It is held further that contributions made by employers and employees to the State disability benefits fund pursuant to the same provisions of New Jersey law are also deductible as taxes under section 23(c)(1) of the Code.

It was held in *Robert O. Deming, Jr.*, v. *Commissioner* (9 T. C. 383, acquiescence, C. B. 1948-1, 1) that the petitioner was entitled to a deduction for medical expenses computed by subtracting from the total medical expenses paid, after appropriate adjustment as to 5 percent of his adjusted gross income, only the amount received under three accident insurance policies as indemnification for expenses of hospital and medical care. The amount received as indemnification for *loss of earnings* was not required to be used as a set-off against medical expenses.

Amounts received by employees under a private plan for payment of disability benefits are to compensate for loss of earnings only. It is held that contributions made by employees in accordance with such private plans are not taxes within the meaning of section 23(c)(1) of the Code, nor medical expenses under section 23(x) of the Code. They

are personal expenses under section 24(a)(1) of the Code which are not deductible for Federal income tax purposes. (See I. T. 3967, page 33, this Bulletin, relating to California.)

SECTION 29.23(c)-1: Taxes. 1949-25-13249
(Also Section 22(a), Section 29.22(a)-5; Section 22(n), Section 29.22(n)-1; Section 23(a), Section 29.23(a)-1; Section 24, Section 29.24-2.) I. T. 3983

INTERNAL REVENUE CODE

Treatment for Federal income tax purposes of the taxes with respect to rentals, admissions, and sales of tangible personal property imposed by the Florida Revenue Act of 1949.

Advice is requested as to the treatment for Federal income tax purposes of the taxes with respect to rentals, admissions, and sales of tangible personal property imposed by the Florida Revenue Act of 1949 which became effective on November 1, 1949.

The pertinent provisions of the Florida Revenue Act of 1949 provide in part as follows:

SEC. 3. (a) That it is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing or letting any living quarters, sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel, apartment house, rooming house, tourist or trailer camp, as hereinbefore defined in this act. For the exercise of said privilege a tax is hereby levied as follows: in the amount equal to three percent (3%) of and on the total rental charged for such living quarters, sleeping or housekeeping accommodations by the person charging or collecting the rental * * *

(b) The tax provided for herein shall be in addition to the total amount of the rental and shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this act, who receives said rental or payment. The owner, lessor or person receiving the rent shall remit the tax to the Comptroller at the times and in the manner hereinafter provided for "dealers" to remit taxes under this act. The same duties imposed by this act upon dealers in tangible personal property respecting the collection and remission of the tax * * * shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, rooming houses, tourist and trailer camps, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this act.

* * * * * * *

SEC. 4. It is hereby declared to be the legislative intent that every person exercising a taxable privilege who sells or receives anything of value, by way of admissions and that every person who sells admissions to any place of amusement, or for the privilege of entering or staying in any place of amusement, inclusive of admissions to theatres, outdoor theatres, shows, exhibitions, games, races and any place where charge is made through any selling of tickets, gate charges, seat charges, box charges, season pass charges, and cover charges or receipts of anything of value measured on an admission or length of stay, or seat box accommodations, in any place of business or where there is any exhibition or entertainment, shall be subject to a tax for the exercise of such privilege. * * *

(a) At the rate of three percent (3%) of the sales price or the actual value received for such admissions, the said three percent (3%) to be added and collected with all such admissions from the purchaser thereof, and such tax shall be paid for the exercise of the privilege as defined in the preceding paragraph.

* * * * * * *

(d) * * *

All of the provisions of this act relating to collection * * * of taxes upon sales of tangible personal property shall likewise apply to all privileges described or referred to in this section * * *

SEC. 5. That it is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this State, or who rents or furnishes any of the things or services taxable under this act, or who stores for use or consumption in this State any item or article of tangible personal property as defined herein and who leases or rents such property within the State of Florida. For the exercise of said privilege a tax is levied as follows:

(a) At the rate of three percent (3%) of the sales price of each item or article of tangible personal property when sold at retail in this State; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the State, and to include each and every retail sale.

(b) At the rate of three percent (3%) of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed or stored for use or consumption in this State; provided there shall be no duplication of the tax.

(c) At the rate of three percent (3%) of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein * * *

(d) At the rate of three percent (3%) of the lease or rental price paid by lessee or rentee, or contracted or agreed to be paid by lessee or rentee, to the owner of the tangible personal property.

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

* * * * * * *

SEC. 7. (a) The privilege tax herein levied measured by retail sales shall be collected by the dealers from the purchaser or consumer.

(b) Dealers shall, as far as practicable, add the amounts of tax imposed under this act to the sale price or charge, which shall be a debt from the purchaser or consumer to the dealer, until paid * * *

* * * * * * *

(d) A person engaged in any business taxable under this act shall not advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that he will relieve the purchaser of the payment of all or any part of the tax. * * *

* * * * * * *

SEC. 12. For the purpose of compensating the lessors of real and personal property taxed hereunder, and for the purpose of compensating dealers in tangible personal property and for the purpose of compensating owners of places where admissions are collected, as compensation for the keeping of prescribed records and the proper accounting and remitting of taxes by them, such seller, lessor, owner and dealer shall be allowed three percent (3%) of the amount of the tax due and accounted for and remitted to the Comptroller, in the form of a deduction in submitting his report and paying the amount due by him * * *

Section 23(c)(1) of the Internal Revenue Code provides that in computing net income there shall be allowed as deductions taxes paid or accrued within the taxable year, with certain exceptions not here material. Section 29.23(c)-1(*a*) of Regulations 111 provides that in general taxes are deductible only by the person upon whom they are imposed. Section 23(c)(3) of the Code provides that a tax imposed by any State, Territory, District, or possession of the United States, or any political subdivision thereof, upon persons engaged in selling tangible personal property at retail, which is measured by the gross sales price or the gross receipts from the sale or which is a stated sum per unit of such property sold, or upon persons engaged in furnishing services at retail, which is measured by the gross receipts for furnishing such services, if the amount of such tax is separately stated, then to the extent that the amount so stated is paid by the purchaser (otherwise than in connection with the purchaser's trade or business) to such person such amount shall be allowed as a deduction in computing the net income of such purchaser as if such amount constituted a tax imposed upon and paid by such purchaser.

It is not necessary, for the purposes of section 23(c)(3) of the Code, that the purchaser be furnished with a sales slip, bill, invoice, or other statement on which the tax is separately stated. Inasmuch as the law (section 7(d) of the Florida Revenue Act of 1949) prohibits the seller from absorbing the tax, it is presumed that the amount of the tax, in each instance, is separately stated. (See section 29.23(c)-1(*b*) of Regulations 111.)

In view of the foregoing, it is held that the taxes imposed by sections 3, 4, and 5 of the Florida Revenue Act of 1949 are deductible, under the provisions of section 23(c)(1) of the Internal Revenue Code, by the persons exercising the respective privileges set forth therein. If such persons are individuals, the deduction must be taken in computing adjusted gross income. (See section 22(n)(1) of the Code.) The tax collected from the purchasers, including that portion of the tax collected which is retained as compensation for keeping prescribed records and the proper accounting and remitting of taxes, must be included in the gross income of the persons exercising the privileges.

It is further held that to the extent the taxes imposed by sections 3, 4, and 5 of the Florida Revenue Act of 1949 are paid by the purchaser, otherwise than in connection with his trade or business, they are deductible by the purchaser under section 23(c)(3) of the Code, except in the case of an individual who elects to take the optional standard deduction. Where such taxes are paid in connection with the purchaser's trade or business, they are deductible by the purchaser as a business expense if the cost of the property or services is properly chargeable to expense. In case the purchaser is an individual, the taxes must be deducted in computing adjusted gross income. (See section 22(n)(1) of the Code.) Such taxes are to be treated as capital items where the cost of the property or services is properly capitalized.

SECTION 23(x).—DEDUCTIONS FROM GROSS INCOME: MEDICAL, DENTAL, ETC., EXPENSES

SECTION 29.23(x)-1: Medical, dental, etc., expenses.

INTERNAL REVENUE CODE

Contributions by employees under a California voluntary plan for payment of unemployment compensation disability benefits. (See I. T. 3967, below.)

SECTION 24.—ITEMS NOT DEDUCTIBLE

SECTION 29.24-1: Personal and family expenses. 1949-18-13172
(Also Section 23(x), Section 29.23(x)-1.) I. T. 3967

INTERNAL REVENUE CODE

Contributions made by employees to a fund established under a voluntary plan for the payment of unemployment compensation disability benefits to employees, which contributions are made pursuant to section 456 of article 10 of the California Unemployment Insurance Act, are not allowable as deductions under section 23(x) of the Internal Revenue Code, but are nondeductible personal expenses under section 24(a)(1) of the Code.

Advice is requested relative to the deductibility for Federal income tax purposes of contributions made by employees to a fund established under a voluntary plan for the payment of unemployment compensation disability benefits pursuant to section 456 of article 10 of the California Unemployment Insurance Act.

Prior to the enactment of article 10 of the California Unemployment Insurance Act, unemployment compensation benefits were payable only to those unemployed persons who were able to work and available for work. Effective May 21, 1946, the act was amended by the addition of article 10 which provides for compensation to employees in case of disability due to sickness or accident as the result of which they are unavailable or unable to work. The stated purpose of article 10 is to compensate in part for the *wage loss* sustained by individuals unemployed because of sickness or injury. Section 450 of article 10 provides that an employer, the majority of employees employed in California by an employer, or both, shall have the right to establish a voluntary plan of disability benefits. Section 456 of article 10 provides that an employer may deduct percentage contributions from the wages of his employees. These contributions are payable into the fund provided by the voluntary plan and are in lieu of contributions into the State Unemployment Compensation Disability Fund.

It was held in *Robert O. Deming, Jr.*, v. *Commissioner* (9 T. C. 383, acquiescence, C. B. 1948–1, 1) that the petitioner was entitled to a deduction for medical expenses computed by subtracting from the total medical expenses paid, after appropriate adjustment as to 5 percent of his adjusted gross income, only the amount received under three accident insurance policies as indemnification for expenses of hospital and medical care. The amount received as indemnification for loss of earnings was not required to be used as a set-off against medical expenses.

In view of the fact that amounts received by employees under a voluntary plan for the payment of unemployment compensation disability benefits are to compensate for loss of earnings only, it is held that contributions made by employees to a fund established under a voluntary plan for the payment of such benefits, which contributions are made pursuant to section 456 of article 10 of the California Unemployment Insurance Act, are not allowable as deductions under section 23(x) of the Internal Revenue Code, but are nondeductible personal expenses under section 24(a)(1) of the Code.

SECTION 29.24–1: Personal and family expenses.

INTERNAL REVENUE CODE

Contributions by employees (workers) under a New Jersey private plan for payment of disability benefits. (See I. T. 3970, page 28.)

SECTION 29.24–2: Capital expenditures.

INTERNAL REVENUE CODE

Florida privilege tax on sales of tangible personal property. (See I. T. 3983, page 31.)

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. 1949-14-13122 I. T. 3961

INTERNAL REVENUE CODE

Income resulting from a retroactive increase in temporary air mail rates, granted by an order of the Civil Aeronautics Board fixing permanent rates with respect to transportation of air mail, accrues, for Federal income tax purposes, for the taxable years during which the services were rendered.

Advice is requested as to accrual of income resulting from retroactive increases in temporary mail rates, in the case of an air mail carrier, by the fixing of permanent rates by the Civil Aeronautics Board with respect to transportation of air mail during prior taxable years.

In the instant case, the taxpayer operated an air mail route for a number of years prior to 1946 under a permanent certificate of public convenience and necessity issued to it by the Civil Aeronautics Board, for which it was compensated at a permanent rate. In 1945, the Board issued to the taxpayer a certificate of public convenience and necessity for a new route, and service thereunder was commenced in 1946. Pursuant to an application by the taxpayer for a mail rate on this new route, the Board issued an order in 1947 fixing a temporary rate of 20 cents per airplane mile for the new route, effective as of the date upon which service was commenced on the new route. Due to the fact that the addition of the new route materially altered the nature and increased the scope of the taxpayer's operations, the same order fixed a temporary rate of 20 cents per airplane mile for the old route. In 1948, the Board issued an order effective as of January 1, 1948, in which the temporary rate was increased to 35 cents per airplane mile, and the order stated "That the proceeding remain open pending entry of an order fixing a final rate retroactive to such date as the Board shall then determine, which said final rate may be lower or higher than the temporary rate." The final rate to be fixed by the Board will be higher than the temporary rate and will be retroactive to the date upon which service was commenced on the new route.

Section 401(m) of the Civil Aeronautics Act of 1938 (52 Stat. 973, 990) provides that:

(m) Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

Section 42(a) of the Internal Revenue Code provides in part as follows:

(a) GENERAL RULE.—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. * * *

Where income is properly reported on the accrual basis, it is the *right* to receive and not the actual receipt which determines the in-

clusion of the amount in gross income. (See *Spring City Foundry Co.* v. *Commissioner*, 292 U. S. 182, Ct. D. 829, C. B. XIII-1, 281 (1934).) It appears that the temporary rate applicable to both routes, fixed by the order of the Civil Aeronautics Board in 1947, was not intended to represent and did not represent the reasonable compensation to which the taxpayer was entitled. That rate was established when the taxpayer materially altered the nature and increased the scope of its operations. The Board was obviously of the opinion that the exact amount of just and reasonable compensation to be paid to the taxpayer from and after expansion of its operations required extended consideration. Apparently, the Board believed that the taxpayer had, at all times subsequent to commencement of service on the new route, the right to receive compensation in excess of the temporary rates which the Board fixed and that only further study was required to determine the exact amount.

Accordingly, it is held that income resulting from a retroactive increase in temporary air mail rates, granted by an order of the Civil Aeronautics Board fixing permanent rates with respect to transportation of air mail, accrues, for Federal income tax purposes, for the taxable years during which the services were rendered.

I. T. 3851 (C. B. 1947-1, 32) is not applicable to the facts presented in the instant case.

SECTION 29.42-1: When included in gross income.

INTERNAL REVENUE CODE

Tax refunds. (See Mim. 6444, page 11.)

SECTION 29.42-2: Income not reduced to possession. 1949-15-13130
I. T. 3963
(Also Section 22(b), Section 29.22(b)(2)-1.)

INTERNAL REVENUE CODE

A holder of an endowment policy who, prior to the maturity date, notifies the insurer of his election to receive the proceeds under an option which provides for the payment of the proceeds in installments does not constructively receive the total amount of the proceeds on the date of maturity. If the policyholder does not, prior to the maturity date, notify the insurer of his election to receive the proceeds of the policy under such an option, the policy matures on a lump-sum basis, and the income therefrom is includible in gross income as provided in section 22(b)(2) of the Internal Revenue Code.

Advice is requested whether any Federal income tax liability would result with respect to the proceeds of an endowment insurance policy where, *on or after* the maturity date, the policyholder elects to receive the proceeds in specified installments over a specified period of time.

The policy in question provides that, in the absence of an election to receive the proceeds in installments, upon the expiration of a designated term of years the insurer will pay to the insured the face amount of the policy, if the insured be then living, or will pay such amount before maturity of the policy to his beneficiary upon due proof

of the death of the insured. The optional methods of settlement provide, *inter alia*, that the insured may, by written notice to the insurer, make the proceeds of the policy payable pursuant to certain options including (1) in equal annual, semiannual, quarterly, or monthly installments for a fixed period of time in accordance with a table contained in the policy, and (2) in equal annual, semiannual, quarterly, or monthly installments of such amounts as may be agreed upon until the entire proceeds, plus interest, have been paid. It is stated that, although the policy does not so provide, the insurer ordinarily allows the payee a reasonable time after the date of maturity of the policy within which to make the election of an optional settlement.

Section 22(b)(2)(A) of the Internal Revenue Code provides in part that there shall be exempt from Federal income tax:

> In General.—Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. * * *

Section 29.42–2 of Regulations 111 provides in part as follows:

> Income Not Reduced to Possession.—Income which is credited to the account of or set apart for a taxpayer and which may be drawn upon by him at any time is subject to tax for the year during which so credited or set apart, although not then actually reduced to possession. To constitute receipt in such a case the income must be credited or set apart to the taxpayer 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 it may be drawn at any time, and its receipt brought within his own control and disposition. * * *

It is evident that where no optional settlement has been elected, the rights of the insured become fixed as of the date the proceeds of the policy become payable, i. e., the date of maturity. He is entitled, on the date of maturity, to demand a lump-sum payment of the proceeds of the policy. There are no restrictions or limitations on his right to draw the full amount and to bring it within his own control and disposition. In such a case the insured will constructively receive any income from the policy on the maturity date.

In view of the foregoing, it is held that a holder of an endowment policy who, prior to the maturity date, notifies the insurer of his election to receive the proceeds under an option which provides for the payment of the proceeds in installments does not constructively receive the total amount of the proceeds on the date of maturity. If the policyholder does not, prior to the maturity date, notify the insurer of his election to receive the proceeds of the policy under such an option, the policy matures on a lump-sum basis, and the income therefrom is includible in gross income as provided in section 22(b)(2) of the Internal Revenue Code. (Cf. *Henry L. Blum* v. *Higgins*, 57 Fed. Supp. 140, affirmed, 150 Fed. (2d) 471, and *Constance C. Frackelton* v. *Commissioner*, 46 B. T. A. 883.) The fact that the policyholder may, on or after the maturity date of the policy, be permitted by the insurer to change the method of accepting payment of the proceeds does not result in the exercise of an optional election as a contractual right.

SECTION 43.—PERIOD FOR WHICH DEDUCTIONS AND CREDITS TAKEN

SECTION 29.43-2: When charges deductible. 1949-17-13144 G. C. M. 26069

INTERNAL REVENUE CODE

New York City real estate taxes accrue, for Federal income tax purposes, as of the dates on which, under the charter of New York City, they become due and payable and become liens, i. e., on October 1 and April 1.

Reference is made to I. T. 3527 (C. B. 1942-1, 53), which holds that New York City real estate taxes accrue, for Federal income tax purposes, at the time when, under the charter of the city of New York, the real property assessment rolls are delivered to the collecting officer with warrants attached authorizing collection of the taxes.

The position so taken was based on the decision of the United States Board of Tax Appeals (now The Tax Court of the United States) in *S. E. & M. E. Bernheimer Co.* v. *Commissioner* (41 B. T. A. 249), which was affirmed (121 Fed. (2d) 454), *per curiam*, by the Circuit Court of Appeals for the Second Circuit. In that case, the Board quoted from the opinion in *United States* v. *Anderson* (269 U. S. 422; T. D. 3839, C. B. V-1, 179 (1926)) as follows: "in advance of the assessment of a tax all the events may occur which fix the amount of the tax and determine the liability of the taxpayer to pay it," and held in substance that New York City real estate taxes accrue "before the end of March when the tax bills are sent out" with collection warrants attached. Following the affirmance of the Board decision in the Bernheimer case by the circuit court, the Commissioner withdrew (C. B. 1942-1, 2) his nonacquiescence in that decision and published I. T. 3527, *supra*, which adopted the conclusions of the Board and the circuit court. At the same time, the Bureau revoked I. T. 2834 (C. B. XIII-2, 189 (1934)) and modified I. T. 3328 (C. B. 1939-2, 84), to the extent that it was in conflict with the views expressed in I. T. 3527, *supra*.

However, in *Adda, Inc.*, v. *Commissioner* (9 T. C. 199, acquiescence, C. B. 1949-1, 1) the Tax Court held that where a taxpayer purchased real property in New York City (from a vendor residing in the same tax district in which the property was located) on August 5, 1940, after the completion of the assessment roll for the fiscal year beginning July 1, 1940, and paid the taxes on such property prior to June 30, 1941, the close of its income-tax taxable year, it was entitled to deduct the amounts paid as "taxes paid or accrued" for the taxable year ended June 30, 1941. The Tax Court allowed the deduction of the taxes by the vendee on the ground that, under New York law, there was neither a lien on the property nor personal liability on the vendor for payment of the taxes at the time of the taxpayer's acquisition of the property, regardless of whether the vendor was a resident or nonresident of the tax district and, further, that even if there was a personal liability imposed on the vendor under New York law, it would be ineffective, since, under section 172 of the New York City charter, the taxes in question did not become due and the tax lien did not attach until October 1, 1940, which was after the acquisition of the property by the taxpayer. In *Adda, Inc.*, *supra*, the Tax Court held that the Bernheimer case was distinguishable for the reason that, as stated in the opinion of the Circuit Court of Appeals for the Second

Circuit in *Commissioner* v. *LeRoy* (152 Fed. (2d) 936, affirming the Tax Court, 4 T. C. 70), "The issue there involved the right of the owner of property who reported its income on the accrual basis to accrue and deduct taxes after they had been assessed but before they were due, where ownership remained unchanged," and added that "A privilege accorded the taxpayer to accrue taxes before they are due, when his books are kept and returns made on the accrual basis, does not thereby impose a liability to pay taxes before they become due."

The Tax Court decision in the Adda, Inc., case was affirmed by the Circuit Court of Appeals for the Second Circuit (171 Fed. (2d) 367) on January 14, 1949. The court cited with approval its decision in the LeRoy case, *supra*. Certiorari was not applied for in the Adda, Inc., case.

In the LeRoy case the Circuit Court of Appeals for the Second Circuit held, citing *Magruder* v. *Supplee* (316 U. S. 394; Ct. D. 1559, C. B. 1942–1, 173), that where real property in a borough in New York City, owned by a *nonresident* of that borough, against whom, under the general tax law, there is no personal liability for the payment of the tax on such property, was sold by such owner before the taxes became a lien on the property, the purchaser may deduct the full amount paid in satisfaction of such liability as "taxes." The Bureau concluded that the decision did not require the modification of any existing rulings. The nonacquiescence in the LeRoy case was withdrawn, and the decision was acquiesced in (C. B. 1946–1, 3). The decisions of the Tax Court and the Circuit Court of Appeals for the Second Circuit in the Adda, Inc., case were followed in the similar case of *Commissioner* v. *Lawrence Operating Co.* (See 152 Fed. (2d) 938, C. C. A.–2, affirming the Tax Court's memorandum opinion of February 3, 1945.)

The question at issue in the Adda, Inc., case was also at issue in *Commissioner* v. *Milner Hotels, Inc., New York* (173 Fed. (2d) 566, certiorari not applied for). In that case, the Circuit Court of Appeals for the Sixth Circuit cited the decision of the Circuit Court of Appeals for the Second Circuit in the Adda, Inc., case, *supra*, and held that the second installment of New York City real estate taxes on a parcel of real estate in the Borough of Manhattan, purchased by the taxpayer on January 7, 1943, from a corporation, a resident of the same borough, which was paid by the taxpayer on or about April 1, 1943, accrued for Federal income tax purposes on April 1, 1943, the due date of the second installment. (The case went to the Circuit Court of Appeals for the Sixth Circuit because Milner Hotels, Inc., New York, the taxpayer-vendee, had its principal offices in Detroit, Mich., and filed its Federal income tax returns in that city.)

It is apparent that the decisions in the above cases were based largely on the provisions of section 172 of the charter of New York City adopted November 3, 1936, effective January 1, 1938, which, as amended to September 30, 1946, and as now in effect, provides in part as follows:

All taxes upon real estate for each fiscal year [which, under section 111 of the charter, begins on the 1st day of July in each year and ends on the ensuing 30th day of June] shall be due and payable in two equal installments, the first of which shall be due and payable on the 1st day of October in such year, the second of which shall be due and payable on the 1st day of April in such year * * *

All taxes shall be and become liens on the real estate affected thereby and shall be construed as and deemed to be charged thereon on the respective days

when they become due and payable, and not earlier, and shall remain such liens until paid.

Although the Tax Court and the Circuit Court of Appeals for the Second Circuit in their decisions in the LeRoy and Adda, Inc., cases distinguished, rather than overruled, the Bernheimer decision, it seems clear, in the final analysis, that those courts are now of the opinion that New York City real estate taxes accrue, for Federal income tax purposes, as of the dates on which, under the charter of New York City, the taxes become due and payable and become liens, i. e., on October 1 and April 1. The Circuit Court of Appeals for the Sixth Circuit in the Milner Hotels, Inc., New York, case did not refer to the Bernheimer decision, but cited and followed the decision of the Circuit Court of Appeals for the Second Circuit in the Adda, Inc., case. Under these circumstances, it is believed that the Bureau can no longer hope to sustain the position taken in I. T. 3527, *supra.* Accordingly, it is recommended that I. T. 3527, which holds that New York City real estate taxes accrue at the time when, under the charter of New York City, the real property assessment rolls are delivered to the collecting officer with warrants attached, be revoked, and that the position be taken that those taxes accrue, for Federal income tax purposes, on the respectives dates when, under section 172 of the charter of New York City, they become due and payable.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SECTION 29.43-2: When charges deductible. 1949-18-13173
I. T. 3968

INTERNAL REVENUE CODE

Corporations which accrued and deducted, for Federal income-tax taxable years ended July 31, 1948, to and including December 31, 1948, the New York State franchise tax at the rate of 4½ percent will be considered to have properly accrued and deducted such tax. The additional tax of 1 percent made applicable to such years by the amendment to the New York State franchise tax law which became effective March 21, 1949, should be accrued and allowed as a deduction in the Federal income tax returns of such corporations for the succeeding taxable year.

Advice is requested as to the accrual, for Federal income tax purposes, of the increase in the New York State franchise tax on business corporations which became effective March 21, 1949.

Subdivision 1 of section 210 of the New York State franchise tax law, added by chapter 415 of the Laws of New York, 1944, as amended, was further amended by chapter 241 of the Laws of New York, 1949, by adding the following:

* * * and provided, further, that the tax computed on the basis of all or any part of each and every fiscal or calendar year beginning after July 31, 1947, to the extent computed on the basis of entire net income or entire net income plus salaries or on the portion thereof allocated within the State, shall be at the rate of 5½ per centum instead of 4½ per centum.

The last-cited statute was enacted and became effective on March 21, 1949.

In *Van Norman Co.* v. *Welch* (141 Fed. (2d) 99), decided by the United States Circuit Court of Appeals for the First Circuit on

March 8, 1944, the court stated in part as follows: "On the accrual basis no attempt should be made to include things which cannot be learned until beyond a reasonable time after the tax period. That is to say, the taxpayer should not be required to hold his books open beyond a reasonable time after the close of the period." (See I. T. 3672, C. B. 1944, 511.)

The Bureau has held that the New York State franchise tax accrues on the first day of a corporation's taxable year. (See I. T. 3697, C. B. 1944, 116.) A new law which merely changes the rate of taxation ordinarily does not change the otherwise recognized accrual date. (See G. C. M. 17340, C. B. XV-2, 81 (1936).) However, where the change in rate occurs after the close of the corporation's taxable year, consideration must be given to the question whether the statute changing the rate was passed "in ample time to allow the taxpayer to readjust its accounts" prior to the due date of the return. (See *Fawcus Machine Co.* v. *United States*, 282 U. S. 375; Ct. D. 278, C. B. X-1, 424 (1931).)

In the case of corporations using the accrual method of accounting and having income-tax taxable years ended July 31, 1948, to and including December 31, 1948, the law changing the rate of the franchise tax was not enacted until after the due dates for filing their Federal income tax returns for such years.

Accordingly, it is held that corporations which accrued and deducted, for Federal income-tax taxable years ended July 31, 1948, to and including December 31, 1948, the New York State franchise tax at the rate of 4½ percent will be considered to have properly accrued and deducted such tax. The additional tax of 1 percent made applicable to such years by the amendment to the New York State franchise tax law which became effective March 21, 1949, should be accrued and allowed as a deduction in the Federal income tax returns of such corporations for the succeeding taxable year. (See I. T. 3849, C. B. 1947-1, 18, relating to accrual of the New York State franchise tax where the rate was retroactively decreased.)

SECTION 29.43-2: When charges deductible. 1949-20-13194
I. T. 3971

INTERNAL REVENUE CODE

Date of accrual for Federal income tax purposes of the New York State franchise tax on business corporations for the period beginning November 1, 1944 (January 1, 1945, in the case of holding corporations), and extending through any subsequent part of the taxpayer's first fiscal or calendar year ending after such date.
I. T. 3697 (C. B. 1944, 116) modified.

Reconsideration has been given to that part of I. T. 3697 (C. B. 1944, 116) relating to the accrual for Federal income tax purposes of the New York State franchise tax imposed on business corporations by section 209.2, article 9-A, chapter 62 of the New York tax law (as added by section 2, chapter 415, Laws of 1944, effective March 31, 1944) for the transitional period beginning November 1, 1944 (January 1, 1945, in the case of holding corporations), and extending through any subsequent part of the taxpayer's first fiscal or calendar year ending after such date, in view of the decision in *Durst Produc-*

tions Corporation v. *Commissioner* (8 T. C. 1326, acquiescence, page 1, this Bulletin).

I. T. 3697, *supra*, holds in part that with respect to a corporation exercising its franchise or doing business in the State of New York for all or any part of the period beginning November 1, 1944 (January 1, 1945, for holding corporations), and extending through any subsequent part of its first fiscal or calendar year ending after that date (the transitional period), the franchise tax accrues on November 1, 1944 (January 1, 1945, for holding corporations), and is deductible in the Federal income tax return of such corporation for the taxable year which includes November 1, 1944.

In *Durst Productions Corporation* v. *Commissioner*, *supra*, the Tax Court held that the part of the tax imposed for the privilege of doing business during the transitional period which is fixed by the taxpayer's income for its fiscal year ended May 31, 1944, was accruable for Federal income tax purposes on the last minute of May 31, 1944. The Tax Court based its conclusion on *United States* v. *Anderson* (269 U. S. 422; T. D. 3839, C. B. V–1, 179 (1926)) and directed attention to G. C. M. 25202 (C. B. 1947–1, 15), relating to accrual of corporate excise and corporate franchise taxes imposed by the State of Tennessee.

Prior to March 31, 1944, the effective date of article 9–A, chapter 62 of the New York tax law, the New York State franchise tax was computed upon the basis of facts in respect of income-tax taxable years which ended immediately prior to the privilege years (beginning November 1) for which the tax was imposed, except that with respect to corporations whose fiscal years ended between July 31 and October 31, both dates inclusive, the tax was computed upon the basis of facts in respect of the income-tax taxable year prior to such a year which preceded the privilege year. The 1944 law was designed, among other things, to make the privilege year coincide with the income-tax taxable year the facts in respect of which provided the basis for the computation of the tax. In making such change, provision was made for a transitional period beginning on November 1, 1944, and ending with the close of the taxpayer's income-tax taxable year which included November 1, 1944. Section 209.2, article 9–A, chapter 62 of the 1944 law, provides as follows:

> 2. For the privilege of exercising its franchise or doing business in this State in a corporate or organized capacity for all or any part of the period beginning November 1, 1944, and extending through any subsequent part of its first fiscal or calendar year ending after said date, every domestic or foreign corporation * * * shall pay a like franchise tax, to be computed by the tax commission upon the basis of its entire net income, or upon such other basis as may be applicable, for each and every fiscal or calendar year or part thereof begun not earlier than August 1, 1942, and ending not later than October 31, 1945, during which such corporation was exercising its franchise or doing business in this State under the applicable provisions of this chapter, to the extent that such entire net income or other applicable basis, as the case may be, has not been used for the computation of any franchise tax under this chapter. * * * In either case, such tax shall be deemed a single tax for such privilege period but shall be computed separately with respect to each such fiscal or calendar year or part thereof on a report which shall be filed on or before the 15th day of May next succeeding the close of each such year, or, if any such fiscal year ends after the last day of February and prior to July 1, within 4 months after the close of such fiscal year, and shall be paid as hereinafter provided. * * *

In view of the foregoing, it is held that (1) the part of the New York State franchise tax for the transitional period which is com-

puted upon the basis of facts in respect of income-tax taxable years ended on or after July 31, 1943, and not later than March 31, 1944, accrued on March 31, 1944, and (2) the part of such tax which is computed upon the basis of facts in respect of income-tax taxable years ended on or after April 30, 1944, and not later than October 31, 1944, accrued on the *last* day of such taxable years. I. T. 3697, *supra*, is hereby modified to accord with such conclusions. The conclusions in I. T. 3697, *supra*, that (1) the part of the franchise tax for the transitional period which is computed on the basis of facts in respect of income-tax taxable years ended on or after November 30, 1944, and not later than October 31, 1945, accrued on November 1, 1944, and (2) the franchise tax for taxable years beginning on or after December 1, 1944, i. e., taxable years ended on or after November 30, 1945, accrued on the *first* day of such taxable years, are not modified.

SECTION 29.43-2: When charges deductible. 1949-21-13208
(Also Section 19.43-2, Regulations 103.) I. T. 3973

INTERNAL REVENUE CODE

Montgomery County, Md., real estate taxes accrue for Federal income tax purposes on May 1 of each year, beginning May 1, 1948. Such taxes accrued on June 30 of each year for the years 1941 to 1947, both inclusive.

I. T. 3435 (C. B. 1940-2, 73) is inapplicable with respect to taxes for years subsequent to 1940.

Advice is requested as to the continued applicability of I. T. 3435 (C. B. 1940-2, 73), relating to the date of accrual of Montgomery County, Md., real estate taxes, in view of the changes in the laws levying such taxes since the promulgation of that ruling.

The ruling in I. T. 3435, *supra*, was predicated on the provisions of section 26 of article 81, Annotated Code of Maryland (1939), which provided in part as follows:

Except taxes required to be levied upon assessments made by the State tax commission, all ordinary county and city taxes shall be levied for the same period as now prescribed by local law, and all ordinary State, county and city taxes shall be levied as of the same date of finality as now prescribed by local law; provided * * * (5) that in any county or city in which the date of finality is not now specifically prescribed by statute, all State, county and city taxes shall be levied as of the 1st day of January of each year as the date of finality.

Inasmuch as a date of finality was not specifically prescribed by statute for taxes on real estate in Montgomery County, it was held in I. T. 3435, *supra*, that since such taxes would generally be assessed as of January 1, that date would be considered as the accrual date for Federal income tax purposes. It should be noted, however, that chapter 278 of the Laws of Maryland, 1941, added section 168A to the Code of Public Local Laws of Montgomery County (1939 edition). Section 168A provided that the date of finality for the levying of all taxes should be June 30 in each year. That provision of law was in effect from March 31, 1941, until December 31, 1947. Chapter 724 of the Laws of Maryland, 1947, approved April 25, 1947, effective January 1, 1948, repealed and reenacted, with amendments, section 168A of the Montgomery County Code (1939 edition). That section now provides as follows:

168A. In Montgomery County the date of finality for the levying of all taxes which the county commissioners are now or may hereafter be authorized to levy

shall be May 1 in each year and all such taxes shall be levied for a taxable year beginning on the 1st day of July and ending on the 30th day of June in the next calendar year, and the State and county taxes shall be levied not later than the 1st day of July in each year; provided, however, that nothing herein contained shall be construed to prevent the levying of any assessment for front foot benefit charges or special benefit assessments for special improvements by the county commissioners of Montgomery County sitting as the district council for the Montgomery County Suburban District, at any such time as the said district council shall determine the special benefit thereunder.

Accordingly, it is held that Montgomery County, Md., real estate taxes accrue for Federal income tax purposes on May 1 of each year, beginning May 1, 1948. Such taxes accrued on June 30 of each year for the years 1941 to 1947, both inclusive.

I. T. 3435, *supra*, is inapplicable with respect to taxes for years subsequent to 1940.

SECTION 29.43-2: When charges deductible. 1949-25-13250
I. T. 3984

INTERNAL REVENUE CODE

Beginning with the property tax year ended on November 30, 1944, real and personal property taxes in the State of Colorado accrue, for Federal income tax purposes, on March 1 of the property tax year for which levied.

I. T. 3021 (C. B. XV-2, 145 (1936)) is inapplicable with respect to taxes for property tax years ending after November 30, 1943.

Advice is requested as to the proper accrual date, for Federal income tax purposes, of real and personal property taxes imposed by the State of Colorado pursuant to the provisions of chapter 142 of the 1935 Colorado Statutes Annotated, as amended by chapter 158 of the Session Laws of 1943.

I. T. 3021 (C. B. XV-2, 145 (1936)), published under the Revenue Acts of 1932 and 1934 prior to the 1943 amendment of chapter 142 of the 1935 Colorado Statutes Annotated, holds that real and personal property taxes in the State of Colorado accrue, for Federal income tax purposes, on April 1 of each year.

The pertinent sections of chapter 142 of the 1935 Colorado Statutes Annotated, as amended (effective January 1, 1944) by chapter 158 of the Session Laws of 1943, provide in part as follows:

SEC. 3. TAX LEVIED—LIEN—PROPERTY OMITTED SUBJECT TO TAX.—All taxes shall be levied for the fiscal year which shall end with November thirtieth. * * *

SEC. 4. LIEN TO ATTACH ON MARCH FIRST AT TWELVE O'CLOCK MERIDIAN.—The lien of general taxes for the current tax year shall attach to all property, real and personal, not exempt by law, on the first day of March, at twelve o'clock meridian, in each year.

* * * * * * *

SEC. 48. TAXPAYER REQUIRED TO FILE SCHEDULE WITH ASSESSOR.—On the first day of March, or as soon thereafter as practicable, the assessor or his deputy shall call upon each inhabitant of his county * * * and obtain from each person a statement under oath, setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock meridian and it is hereby required that such person shall file such statement with the assessor between the first day of March and May of each year * * *

* * * * * * *

SEC. 50. OWNER TO DESCRIBE REAL ESTATE—DESCRIPTION OF MINING CLAIMS.—Every property owner making any such schedule shall set down, therein al

real estate situated within the county by him owned or controlled on the first day of March of the then current year, describing the same * * *

* * * * * * *

SEC. 72. PERSONAL PROPERTY LISTED AND ASSESSED MARCH FIRST.—All personal property within this State on March first at twelve o'clock meridian in the then current year shall be listed and assessed in the county where it shall be on said March first.

It is held that beginning with the property tax year ended November 30, 1944, real and personal property taxes in the State of Colorado accrue, for Federal income tax purposes, on March 1 of the property tax year for which levied. It is further held that I. T. 3021, *supra*, is inapplicable with respect to taxes for property tax years ending after November 30, 1943.

SECTION 19.43–2, REGULATIONS 103: When charges deductible. 1949–17–13145
I. T. 3964

INTERNAL REVENUE CODE

Revocation of I. T. 3527 (C. B. 1942–1, 53)

In accordance with the recommendation contained in G. C. M. 26069 (page 38, this Bulletin), I. T. 3527 (C. B. 1942–1, 53) is herepy revoked.

PART V.—RETURNS AND PAYMENT OF TAX

SECTION 55.—PUBLICITY OF RETURNS

1949–19–13190
T. D. 5740

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

Regulations governing the inspection of income, excess-profits, and declared value excess-profits tax returns by the Military Renegotiation Policy and Review Board.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

SECTION 458.304. INSPECTION BY MILITARY RENEGOTIATION POLICY AND REVIEW BOARD.—Pursuant to the provisions of sections 55(a), 508, 603, and 729(a) of the Internal Revenue Code, income, excess-profits, and declared value excess-profits tax returns made under the Internal Revenue Code, as amended, for the year 1939 and subsequent years shall be open to inspection by the Military Renegotiation Policy and Review Board. The inspection of such returns herein authorized may be made by any officer or employee of such Board duly authorized by the Chairman of the Board to make such inspection. Upon written notice by the Chairman to the Secretary of the Treasury, stating the classes of returns which it is desired to inspect, the Secretary of the Treasury and any officer or employee of the Treasury Department, with the approval of the Secretary of the Treasury, may furnish the

Board with any data on such returns or make the returns, or any of them, available in the Office of the Commissioner of Internal Revenue for inspection and taking of such data as the Chairman 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.

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

(E. O. 10076, September 1, 1949, and sections 55(a), 508, 603, 729(a); 53 Stat. 29, 111; 54 Stat. 974, 989; 26 U. S. C. 55(a), 508, 603, 729(a).)

JOHN W. SNYDER,
Secretary of the Treasury.

Approved September 1, 1949.

HARRY S. TRUMAN,
The White House.

(Filed with the Division of the Federal Register September 1, 1949, 4:35 p. m.)

EXECUTIVE ORDER—INSPECTION OF INCOME, EXCESS-PROFITS, AND DECLARED VALUE EXCESS-PROFITS TAX RETURNS BY THE MILITARY RENEGOTIATION POLICY AND REVIEW BOARD

By virtue of the authority vested in me by sections 55(a), 508, 603, and 729(a) of the Internal Revenue Code (53 Stat. 29, 111, 54 Stat. 974, 989; 26 U. S. C. 55(a), 508, 603, and 729(a)), and in the interest of the internal management of the Government, it is hereby ordered that income, excess-profits, and declared value excess-profits tax returns made under the Internal Revenue Code for the year 1939 and subsequent years shall be open for inspection by the Military Renegotiation Policy and Review Board, subject to the conditions stated in the Treasury Decision relating to the inspection of returns by such Board, approved by me this day.

This Order shall be published in the Federal Register.

HARRY S. TRUMAN,
The White House.

SEPTEMBER 1, 1949.

(Filed with the Division of the Federal Register September 1, 1949, 4:35 p. m.)

1949–26–13264
T. D. 5765

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 458, SUBPART C.—INSPECTION UNDER SPECIAL EXECUTIVE ORDERS

Regulations governing the inspection of corporation income tax returns by the Federal Trade Commission.

TREASURY DEPARTMENT,
Washington 25, D. C.

To Collectors of Internal Revenue and Others Concerned:

SEC. 458.303a. INSPECTION BY FEDERAL TRADE COMMISSION OF CORPORATION INCOME TAX RETURNS.—(*a*) Pursuant to the provisions of section 55(a) of the Internal Revenue Code (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722; 26 U. S. C. 55(a)), and in the interest of the internal management of the Government, corporation income tax returns

made for the calendar year 1949 and fiscal years ending in the calendar year 1949 and for any taxable year ending after June 30, 1949, and before July 1, 1950, shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914, 38 Stat. 717. The inspection of such returns herein authorized may be made by any officer or employee of the Federal Trade Commission duly authorized by the Chairman of the Federal Trade Commission to make such inspection. Upon written notice by the Chairman of the Federal Trade Commission to the Secretary of the Treasury, the Secretary and any officer or employee of the Treasury Department, with the approval of the Secretary of the Treasury, may furnish the Federal Trade Commission with any data on such returns or may make the returns available in the office of the Commissioner of Internal Revenue for the taking of such data as the Chairman of the Federal Trade Commission may designate. Any information thus obtained shall be held confidential except to the extent that it shall be published or disclosed in statistical form, provided such publication shall not disclose, directly or indirectly, the name or address of any taxpayer.

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

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

Approved December 6, 1949.

Harry S. Truman,
The White House.

(Filed with the Division of the Federal Register December 7, 1949, 11:06 a. m.)

EXECUTIVE ORDER—INSPECTION OF INCOME TAX RETURNS BY FEDERAL TRADE COMMISSION

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722; 26 U. S. C. 55(a)), and in the interest of the internal management of the Government, it is hereby ordered that corporation income tax returns made for the calendar year 1949 and fiscal years ending in the calendar year 1949 and for any taxable year ending after June 30, 1949, and before July 1, 1950, shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914, 38 Stat. 717, 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 returns by the Federal Trade Commission, approved by me this date.

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

Harry S. Truman.

The White House,
December 6, 1949.

(E. O. 10090)

(Filed with the Division of the Federal Register December 7, 1949, 11:06 a. m.)

SUBCHAPTER C.—SUPPLEMENTAL PROVISIONS

SUPPLEMENT B.—COMPUTATION OF NET INCOME

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

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

INTERNAL REVENUE CODE

Determination of gain or loss from sale of real property by life tenant and remaindermen. (See I. T. 3975, below.)

SECTION 117.—CAPITAL GAINS AND LOSSES

SECTION 29.117-1: Meaning of terms. (Also Section 29.117-7; Section 113(a), Section 29.113(a)(5)-1.)

1949-22-13216
I. T. 3975

INTERNAL REVENUE CODE

Treatment for Federal income tax purposes of gain or loss realized upon the sale of a farm by a life tenant and remaindermen, each of whom had a fee interest in addition to his life or remainder interest.

Advice is requested with respect to the treatment for Federal income tax purposes of gain or loss realized upon the sale of a farm by a life tenant (the taxpayer) and the remaindermen, each of whom had a fee interest in the farm in addition to his life or remainder interest.

In the case under consideration, the taxpayer's husband died intestate in 1936, possessed of a 197-acre farm. By court decree, 80 acres (on which all buildings were situated) of the farm were received by the taxpayer as a homestead for use during her life, and, in addition, she obtained the fee in one-third of the remaining 117 acres. Three sons received the remainder in the homestead and the fee in the other two-thirds of the remaining 117 acres. In 1944, one son died intestate, and the taxpayer inherited his interest in the property. The entire farm was occupied and operated by the taxpayer until it was sold in 1945. At no time did the sons assert any control or authority with respect to their interests in the farm.

Section 117(a)(1) of the Internal Revenue Code provides in part as follows:

> (1) CAPITAL ASSETS.—The term "capital assets" means property held by the taxpayer * * * but does not include * * * real property used in the trade or business of the taxpayer;

Section 117(j)(1) of the Code provides in part as follows:

> (1) DEFINITION OF PROPERTY USED IN THE TRADE OR BUSINESS.—For the purposes of this subsection, the term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 23(l), held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not (A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the

taxable year, or (B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business. * * *

The operation of a farm for profit constitutes a trade or business. (Cf. section 29.23(a)–11 of Regulations 111.) A life estate in land is real property. (See *Alexander et al.* v. *Goellert et al.*, 109 Pac. (2d) 146, 148, 153 Kan. 202; see also *National Bank of America of Salina* v. *Barritt et al.*, 18 Pac. (2d) 552, 136 Kan. 870, and *Sanitary District of Chicago* v. *Manasse*, 42 N. E. (2d) 543, 380 Ill. 27.) Accordingly, except for the dwelling and the land which the taxpayer occupied as a residence, the taxpayer's interest in the homestead (80 acres), as well as her interest in five-ninths of the remaining 117 acres, constituted "real property used in the trade or business of the taxpayer," and the gain or loss realized by her from the sale of such interests is subject to the treatment prescribed by section 117(j)(2) of the Internal Revenue Code.

The dwelling and the land constituting the personal residence of the taxpayer were not used in farming operations. Consequently, the taxpayer's interests in that part of the homestead constituted capital assets, and the gain or loss attributable thereto is a capital gain or loss. Similarly, since the sons did not make any use of their interests in the farm, such interests were capital assets, and the gains or losses attributable thereto are capital gains or losses.

The various interests of the taxpayer in the farm at the time of the sale may, for convenience, be divided into the following categories: (*a*) those inherited from her husband in 1936, (*b*) those inherited from her son who died in 1944, and (*c*) the fee interest acquired by merger of the interests inherited from both her husband and her son.

(*a*) As to the fee interest in one-third of the 117 acres acquired by the taxpayer from her husband, it is clear that, pursuant to section 113(a)(5) of the Code, its basis would be one-third of the value of the 117 acres on the date of death of the husband in 1936. As to the life estate in an undivided two-thirds of the 80-acre homestead, the basis of such property interest is also established under section 113(a)(5) of the Code, adjusted to the time of sale as contemplated in section 29.113(a)(5)–1 of Regulations 111. The method set forth in I. T. 3911 (C. B. 1948–1, 66) for computing such adjusted basis under the regulations should be followed. As to the life estate in one-third of the homestead which was merged into the fee at the death of one of the remaindermen in 1944, see paragraph (*c*), below.

(*b*) The interests inherited by the taxpayer from the son who died in 1944 consist of a fee interest in two-ninths of the 117 acres and a remainder interest in one-third of the 80-acre homestead. Under section 113(a)(5) of the Code, the basis of the fee interest would be two-ninths of the value of the 117 acres at the date of the son's death in 1944. The deceased son's remainder interest in one-third of the homestead, having been merged with the taxpayer's life interest in the homestead, ceased to exist at the time of the son's death and presents a different problem which is discussed in (*c*), below.

(*c*) With regard to the taxpayer's one-third interest in the fee of the 80-acre homestead, it is clear that such fee interest came into being upon the merger of one-third of her life estate with one-third of an undivided remainder interest in the homestead. (See 1 Tiffany, Real Property (3d ed. 1939) sec. 70; 1 Restatement, Property (1936), sec. 152.) Hence, the basis of such fee interest is computed by adding the

basis of the remainder interest which she inherited from her son to the basis of her life estate therein at the time of the merger. Since the taxpayer inherited the remainder interest in 1944, it is held that she is entitled to the benefit of the substituted basis provided in section 113(a)(5) of the Code as to such interest. Accordingly, the basis of such remainder is to be determined by reference to the 1944 value of the homestead. The basis of the merged life interest should be determined with reference to the 1936 value of the homestead, adjusted to the time of merger, in accordance with section 29.113(a)(5)–1 of Regulations 111. For the method of such determinations, see I. T. 3911, *supra.*

In conclusion, gain or loss should be determined by the difference between the bases assigned to the various interests and the portions of the proceeds allocable to such interests. (See I. T. 3911, *supra.*)

SECTION 29.117–1: Meaning of terms. 1949–24–13237
I. T. 3979

INTERNAL REVENUE CODE

Retroactive application of G. C. M. 24910 (C. B. 1946–1, 101) and I. T. 3803 (C. B. 1946–1, 103).

Advice has been requested as to the retroactive application of G. C. M. 24910 (C. B. 1946–1, 101) and I. T. 3803 (C. B. 1946–1, 103).

G. C. M. 24910, *supra*, holds that a bank, mortgage finance company, building and loan association, or an insurance company (other than a life insurance company) which is offering for sale parcels of real estate on which it has been compelled to foreclose, or personal property taken over in satisfaction of debts, is not holding property "primarily for sale to customers in the ordinary course of * * * trade or business" within the provisions of section 117(a)(1) of the Internal Revenue Code and corresponding provisions of prior revenue laws. Gains or losses incurred in such sales are to be treated as capital gains or losses and not as ordinary gains or losses. G. C. M. 24910 revoked a contrary ruling in G. C. M. 21497 (C. B. 1939–2, 187), and I. T. 3803, *supra*, revoked contrary rulings in I. T. 3336 (C. B. 1939–2, 189) and I. T. 3600 (C. B. 1943, 369). G. C. M. 24910 stated that G. C. M. 21497, I. T. 3336, and I. T. 3600 were in conflict with the decision of The Tax Court of the United States in *The Kanawha Valley Bank* v. *Commissioner* (4 T. C. 252, acquiescence, C. B. 1946–1, 3).

In view of the fact that publication of acquiescence in the decision of the Tax Court in The Kanawha Valley Bank case and publication of G. C. M. 24910 and I. T. 3803 occurred after January 1, 1946, it is held that G. C. M. 24910 and I. T. 3803 will not be applied to taxable years ended prior to January 1, 1946, unless such application is requested by the taxpayer. This ruling is issued pursuant to authority contained in section 3791(b) of the Internal Revenue Code.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved October 5, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

SECTION 29.117-4: Determination of period for which capital assets are held. 1949-25-13251 I. T. 3985

INTERNAL REVENUE CODE

Determination of the holding period of securities purchased and sold where the provisions of section 117(h)(4) of the Internal Revenue Code, relating to wash sales, are applicable.

Advice is requested with respect to the determination of the holding period of securities purchased and sold where the provisions of section 117(h)(4) of the Internal Revenue Code, relating to wash sales, are applicable, particularly whether the period should be determined by the use of days or otherwise.

In the instant case, the taxpayer purchased 1,000 units of certain securities on May 16, 1947, and sold them on August 2, 1947, at a loss. He had purchased the same number of units of substantially identical securities on January 15, 1947, and February 19, 1947, and sold them at a loss on March 1, 1947, and April 19, 1947, respectively. He acquired no substantially identical securities within either 30 days before or 30 days after August 2, 1947. The securities involved were "capital assets," as defined in section 117(a)(1) of the Code.

Section 117(a) (2), (3), (4), and (5) of the Code provides as follows:

(a) DEFINITIONS.—As used in this chapter [Chapter 1 of the Code]—

* * * * * * *

(2) SHORT-TERM CAPITAL GAIN.—The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than 6 months, if and to the extent such gain is taken into account in computing net income;

(3) SHORT-TERM CAPITAL LOSS.—The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than 6 months, if and to the extent such loss is taken into account in computing net income;

(4) LONG-TERM CAPITAL GAIN.—The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than 6 months, if and to the extent such gain is taken into account in computing net income;

(5) LONG-TERM CAPITAL LOSS.—The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than 6 months, if and to the extent such loss is taken into account in computing net income;

Section 117(h)(4) of the Code provides as follows:

(h) DETERMINATION OF PERIOD FOR WHICH HELD.—For the purpose of this section—

* * * * * * *

(4) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 118 of this chapter [Chapter 1 of the Code] or section 118 of the Revenue Act of 1928, 45 Stat. 826, or the Revenue Act of 1932, 47 Stat. 208, or the Revenue Act of 1934, 48 Stat. 715, or the Revenue Act of 1936, 49 Stat. 1692, or the Revenue Act of 1938, 52 Stat. 503, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

Section 118(a) of the Code provides as follows:

(a) In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending

30 days after such date, the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed under section 23(e)(2); nor shall such deduction be allowed under section 23(f) unless the claim is made by a corporation, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business.

It is the position of the Bureau that the determination of the holding period of capital assets under section 117(a) (2), (3), (4), (5), and (h)(4), *supra*, must be made with reference to calendar months and fractions thereof rather than with reference to days. In *E. T. Weir* v. *Commissioner* (10 T. C. 996, affirmed *per curiam*, 173 Fed. (2d) 222), it was held that the holding period of shares of stock acquired on May 1, 1944, and sold on November 1, 1944, was not more than 6 months even though such period consisted of at least 184 days (more than one-half of the year 1944 if the period be determined by the use of days). Similarly, it was held in *J. Gerber Hoofnel* v. *Commissioner* (7 T. C. 1136, affirmed, 166 Fed. (2d) 504, certiorari denied, 334 U. S. 833) that where the petitioner, a citizen of the United States, left the United States on July 1, 1942, and did not return until July, 1944, he was not, within the meaning of section 116(a) of the Code, "a *bona fide* nonresident of the United States for more than six months during the taxable year" 1942, even though the period of his absence during that year consisted of more than 183 days (more than one-half of the year 1942 if the period be determined by the use of days).

It is reasonable to presume that Congress, in using the term "months" in the statute here concerned, intended that any well-established and appropriate methods or rules of computation pertaining to such units of time should be adopted in applying the statute, in the absence of any provision therein to the contrary. Federal as well as State courts, in interpreting the statutory expressions "six months" and "month," have repeatedly held that, unless a contrary intent is evidenced, the term "six months" means six calendar months, and the word "month" denotes a calendar month (regardless of whether the month or months of the calendar involved have 28, 29, 30, or 31 days) which is a period terminating with the day of the succeeding month (of the calendar) numerically corresponding to the day (date) of its beginning, less one, except, if there be no corresponding day of the succeeding month, such period terminates with the last day of the succeeding month. Under such calendar-month computation rule, a security sold on February 28, 1947, was held for a "month" whether it was acquired on January 28, 29, 30, or 31 of that year. Consistently, a security sold on February 29, 1948, was held for a "month" whether it was acquired on January 29, 30, or 31 of that leap year.

It should be noted that the calendar-month computation rule does not require exclusion particularly of either the beginning date or the ending date of the period but merely of *one* day, i. e., "less one," so as to eliminate duplication and avoid computations of fractions of days. (*Cf. Daley* v. *Anderson et al.*, 7 Wyo. 1, 48 Pac. 839.)

The above-stated calendar-month computation rule does not, however, incorporate any method or rule for computing fractions of a "month" for the purposes of section 117(a) (2), (3), (4), (5), and (h)(4), *supra*, where a period is less than a (calendar) "month."

It is the position of the Bureau that only one fraction should be computed where there is but a single holding period of less than a cal-

endar month, even though the period includes parts of two different months of the calendar. For example, where a security was acquired on January 15, 1947, and sold on February 14, 1947, the holding period, under the well-established calendar-month computation rule set forth above, was one day short of a calendar month, whereas if it be considered that the security was held $^{16}/_{31}$ of a "month" in January and $^{14}/_{28}$ of a "month" in February, such fractions of "months" would total more than a (whole) "month." Conversely, where a security was acquired on February 14, 1947, and sold on March 13, 1947, the holding period was only one day short of a calendar month, whereas if it be considered that the security was held $^{14}/_{28}$ of a "month" in February and $^{13}/_{31}$ of a "month" in March, the total of the fractions would be more than two days short of a calendar month. Thus, it is clear that it would be erroneous to compute a single holding period of less than a calendar month by the use of two fractions, even though the period includes parts of two different months of the calendar.

It is also the position of the Bureau that in the computation of a holding period for the purposes of section 117(a) (2), (3), (4), (5), and (h) (4), *supra*, which is less than a calendar month and includes parts of two different months of the calendar, the fraction of a "month" should be formed by using as the numerator the number of days in the entire fractional-month period (less one) and using as the denominator the number of days in the month (of the calendar) immediately preceding the month in which the holding period ends. (See examples 1 and 2, below.)

Consistently, where a holding period includes, in addition to one or more whole (calendar) "months," a fraction of a "month" which includes parts of two different months of the calendar, such fraction should be formed by using as the numerator the number of days remaining of the entire holding period after first computing the part thereof which consists of a whole "month" or "months" (using the above-stated calendar-month computation rule) and using as the denominator the number of days in the month (of the calendar) immediately preceding the month in which the entire holding period ends. (See examples 3 and 4, below.)

Where a holding period of less than a (calendar) "month" is included in only one month of the calendar, such fraction of a "month" should, of course, be formed by using as the numerator the number of days in the fractional-month period and using as the denominator the number of days in the particular month of the calendar in which the period is included. That rule is also applicable in computing the fraction of a "month" involved where such a fractional-month period is included in a holding period which also includes one or more whole (calendar) "months." (See examples 5 and 6, below.)

Example 1. Where a security was acquired on January 15, 1948, and sold on February 14, 1948, the entire (fractional-month) holding period consists of 16 days in January and 14 days in February, or 30 days. That figure, 30, should be used as the numerator. January, the month immediately preceding the month (of the calendar) in which the holding period ends (February), has 31 days. That figure, 31, should be used as the denominator. Thus, the security was held for $^{30}/_{31}$ of a "month."

Example 2. Similarly, a security acquired on February 14, 1948, and sold on March 13, 1948, was held for $^{28}/_{29}$ of a "month."

Example 3. Where a security was acquired on November 15, 1948, and sold on February 14, 1949, the period it was held includes two whole (calendar) "months" (November 15, 1948, to January 15, 1949). The number of days included in the entire period, in addition to those two "months" (16 days in January and 14 days in February), is 30. That figure, 30, should be used as the numerator of the fraction of a "month" included in the holding period. January, the month immediately preceding the month (of the calendar) in which the holding period ends (February), has 31 days. That figure, 31, should be used as the denominator of such fraction. The security, accordingly, was held for $2\frac{30}{31}$ "months."

Example 4. Similarly, a security acquired on November 15, 1948, and sold on March 14, 1949, was held for $3\frac{27}{28}$ "months."

Example 5. A security acquired on March 1, 1949, and sold on March 31, 1949, was held for $\frac{30}{31}$ of a "month."

Example 6. Consistently, a security acquired on November 15, 1948, and sold on February 28, 1949, was held for $3\frac{13}{28}$ "months."

The rule applicable in computing a fraction of a "month" which includes parts of two different months of the calendar must be conformed to the exception in the calendar-month computation rule hereinbefore outlined—that, unless a different intent is indicated, a "month" is a period of time terminating with the day of the succeeding month (of the calendar) numerically corresponding to the day (date) of the month of its beginning, less one, *except if there be no corresponding day of the succeeding month the period terminates with the last day of the succeeding month.* (See example 7, below.)

Example 7. As hereinbefore indicated, under the calendar-month computation rule, including the said exception, a security acquired on either January 28, 29, 30, or 31, 1949, and sold on February 28, 1949, was held for a whole "month." Conforming thereto the fractional-month computation rule applicable where the fraction of a (calendar) "month" involved includes parts of two different months of the calendar, a security acquired on either January 28, 29, 30, or 31, 1949, and sold on February 27, 1949, was held for $\frac{30}{31}$ of a "month," since the beginning date of the fractional month is in a month of the calendar (January) which has 31 days, which number, therefore, is the denominator, and the security having been held one day less than a (calendar) "month" under the said exception to the general calendar-month computation rule, a number of one less than 31, or 30, is the numerator of the fraction.

Applying the foregong computation methods or rules to the instant case (see table below), the total holding period, determined under section 117(a) (3), (5), and (h) (4), *supra*, of the securities purchased on May 16, 1947, and sold on August 2, 1947, is "more than 6 months," even though such period consisted of only 182 days.

Substantially identical securities	Date purchased	Date sold	Number of "months" held
Lot A—1,000 units	Jan. 15, 1947	Mar. 1, 1947	$1\frac{14}{28}$
Lot B—1,000 units	Feb. 19, 1947	Apr. 19, 1947	2
Lot C—1,000 units	May 16, 1947	Aug. 2, 1947	$2\frac{17}{31}$
Total holding period of Lot C securities			$6\frac{3}{62}$

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

Sale by life tenant of an interest in a farm. (See I. T. 3975, page 48.)

SECTION 119.—INCOME FROM SOURCES WITHIN UNITED STATES

SECTION 19.119–5, REGULATIONS 103: Rentals and royalties.

INTERNAL REVENUE CODE

Lump-sum advance payments to nonresident alien author for exclusive publication rights in United States. (See Ct. D. 1722, page 62.)

SECTION 29.119–10: Apportionment of deductions.

INTERNAL REVENUE CODE

Traveling expenses of nonresident alien individual. (See G. C. M. 26013, page 76.)

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX

SECTION 141.—CONSOLIDATED RETURNS

SECTION 23.11, REGULATIONS 104: Consolidated returns for subsequent years. 1949–24–13238 I. T. 3980

INTERNAL REVENUE CODE

Filing of consolidated Federal income tax returns for the calendar year 1949 by affiliated corporations which filed such returns for the calendar year 1948.

Advice is requested whether, under the provisions of clause (2) of section 23.11(*a*) of Regulations 104, affiliated corporations which filed consolidated Federal income tax returns for the calendar year 1948 may elect to file separate Federal income tax returns for the calendar year 1949.

It is held that the conditions stated in clause (2) of section 23.11(*a*) of Regulations 104 for the allowance of a new election do not exist with respect to the calendar year 1949. Accordingly, affiliated corporations which filed consolidated Federal income tax returns for the calendar year 1948 will not be permitted to file separate Federal income tax returns for the calendar year 1949 unless one of the other conditions provided in section 23.11(*a*) of Regulations 104 is met, or unless a subsequent change in the law or regulations should give rise to an occasion for an election for such year.

SECTION 143.—WITHHOLDING OF TAX AT SOURCE

SECTION 29.143-1: Withholding tax at source. (Also Section 29.143-3; Section 144, Section 29.144-2; Section 148, Section 29.148-1; Section 211, Section 29.211-7; Section 231, Section 29.231-1; Section 251, Section 29.251-1.)

1949-15-13131
T. D. 5709

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

Conforming Regulations 111 to United States-Netherlands and United States-Denmark income tax conventions; also amending section 29.148-1 relating to information returns, and section 29.251-1 relating to income from 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:

In order to conform Regulations 111 [26 CFR, Part 29] to the income tax convention between the United States and the Kingdom of the Netherlands, and the income tax convention between the United States and the Kingdom of Denmark, and to simplify the procedure outlined in section 29.148-1 [26 CFR 29.148-1] and to make a technical amendment to section 29.251-1 [26 CFR 29.251-1], such regulations are amended as follows:

PARAGRAPH 1. Section 29.143-1, as amended by Treasury Decision 5580 [C. B. 1947-2, 88], approved November 13, 1947 [26 CFR 29.143-1], is further amended by inserting in the first paragraph thereof immediately following the sentence "As to rates of withholding pursuant to the tax convention and protocol between the United States and the United Kingdom, see Treasury Decision 5532 [C. B. 1946-2, 73], approved August 23, 1946 [26 CFR 7.500-7.511, inclusive]." the following:

As to rates of withholding pursuant to the tax convention between the United States and the Kingdom of the Netherlands, see Treasury Decision 5690 [C. B. 1949-1, 92], approved March 2, 1949 [26 CFR 7.800-7.810, inclusive]. As to rates of withholding pursuant to the tax convention between the United States and the Kingdom of Denmark, see Treasury Decision 5692 [C. B. 1949-1, 104], approved March 8, 1949 [26 CFR 7.900-7.907, inclusive].

PAR. 2. Section 29.143-3, as amended by Treasury Decision 5687 [C. B. 1949-1, 9], approved February 16, 1949 [26 CFR 29.143-3], is further amended by inserting immediately preceding the penultimate thereof the following new paragraphs:

As to items of income received on or after January 1, 1947, by residents of the Netherlands (including Netherlands corporations) and not subject to the withholding provisions of the Internal Revenue Code, see the tax convention between the United States and the Kingdom of the Netherlands and Treasury Decision 5690, approved March 2, 1949 [26 CFR 7.800-7.810, inclusive].

As to items of income received on or after January 1, 1948, by residents of Denmark (including Danish corporations) and not subject to the withholding provisions of the Internal Revenue Code, see the tax convention between the United States and the Kingdom of Denmark and Treasury Decision 5692, approved March 8, 1949 [26 CFR 7.900-7.907, inclusive].

PAR. 3. Section 29.144-2 as amended by Treasury Decision 5580, approved November 13, 1947 [26 CFR 29.144-2], is further amended—

(A) By inserting in table II immediately after line 6, the following:

7. Residents (including corporations) of the Netherlands	See Treasury Decision 5690, approved March 2, 1949.
8. Residents (including corporations) of Denmark	See Treasury Decision 5692, approved March 8, 1949.

(B) By striking out "7" in the last line of the table, prior to its amendment by this Treasury Decision, and inserting "9" in lieu thereof.

PAR. 4. Section 29.148–1 as amended by Treasury Decision 5687, approved February 16, 1949 [26 CFR 29.148–1], is further amended by striking out the last sentence of paragraph (*c*) and inserting in lieu thereof the following:

Authority for granting extensions of time for filing the return of information is hereby delegated to the various collectors of internal revenue. Applications for such extensions shall be addressed to the collector of internal revenue for the district in which the corporation files its income tax returns, must contain a full recital of the causes for the delay, and must be submitted on or before the date prescribed for filing the return of information. No extension may be granted for more than 6 months.

PAR. 5. Section 29.211–7, as amended by Treasury Decision 5580, approved November 13, 1947 [26 CFR 29.211–7], is further amended by inserting in paragraph (*a*) immediately after "July 3, 1947." the following:

As to items of income received on or after January 1, 1947, by individual residents of the Netherlands, see the tax convention between the United States and the Kingdom of the Netherlands and Treasury Decision 5690, approved March 2, 1949 [26 CFR 7.800–7.810, inclusive]. As to items of income received in taxable years beginning on and after January 1, 1948, by individual residents of Denmark, see the tax convention between the United States and the Kingdom of Denmark and Treasury Decision 5692, approved March 8, 1949 [26 CFR 7.900–7.907, inclusive].

PAR. 6. Section 29.231–1, as amended by Treasury Decision 5580, approved November 13, 1947 [26 CFR 29.231–1], is further amended by inserting in paragraph (*a*) immediately after "July 3, 1947." the following:

As to items of income received on or after January 1, 1947, by a Netherlands corporation not having a permanent establishment in the United States, see the tax convention between the United States and the Kingdom of the Netherlands and Treasury Decision 5690, approved March 2, 1949 [26 CFR 7.800–7.810, inclusive]. As to items of income received in taxable years beginning on or after January 1, 1948, by a Danish corporation not having a permanent establishment in the United States, see the tax convention between the United States and the Kingdom of Denmark and Treasury Decision 5692, approved March 8, 1949 [26 CFR 7.900–7.907, inclusive].

PAR. 7. Section 29.251–1, as amended by Treasury Decision 5645 [C. B. 1948–2, 14], approved July 20, 1948, is further amended by striking out the words "or 1040A" and inserting in lieu thereof "(or short Form 1040A for taxable years beginning before January 1, 1944)".

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

Because the purpose of this Treasury Decision is to effect technical changes in existing regulations and to relieve restriction it is found that it is unnecessary to issue this Treasury Decision with notice and

public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved June 27, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 30, 1949, 8:47 a. m.)

SECTION 29.143-1: Withholding tax at source. (Also Section 144, Section 29.144-1.) 1949-17-13146 I. T. 3965

INTERNAL REVENUE CODE AND UNITED STATES-CANADA INCOME TAX CONVENTION

The provisions of section 7.14 of Treasury Decision 5157 (C. B. 1942-2, 137), a part of the regulations relating to the United States-Canada income tax convention, automatically apply to Newfoundland as of the moment (immediately before the expiration of the 31st day of March, 1949) when Newfoundland became a province of Canada.

Any United States income tax withheld on or after April 1, 1949, from dividends, interest, and other fixed or determinable annual or periodical income paid to residents and corporations of Newfoundland in excess of amounts determined under the United States-Canada income tax convention should be released by withholding agents upon receipt by them of proper applications from the payees.

Advice is requested as to the extension of the United States-Canada income tax convention to Newfoundland which recently became a province of Canada and the notification of United States withholding agents relative to the application, on and after April 1, 1949, of the reduced rate of withholding of Federal income tax at the source on dividends, interest, and other fixed or determinable annual or periodical income paid to residents and corporations of Newfoundland.

Newfoundland became a province of Canada immediately before the expiration of March 31, 1949. The Bureau, therefore, recognizes that on and after April 1, 1949, the reduced withholding rate of 15 percent, as provided in article XI of the United States-Canada income tax convention (see T. D. 5206, C. B. 1943, 526, 528-529), necessarily applies to nonresident aliens (as to the United States) who are residents of Newfoundland and to corporations organized under the laws of Newfoundland.

Section 7.14 of Treasury Decision 5157 (C. B. 1942-2, 137, 141) provides in part that a nonresident alien individual or a corporation whose address is in Canada shall be considered by United States withholding agents as a resident of Canada, or as a corporation organized in Canada, as the case may be. That regulation automatically applies to Newfoundland addressees as of the moment when Newfoundland became a province of Canada. (See paragraph 5 of the protocol forming a part of the United States-Canada income tax convention, T. D. 5206, C. B. 1943, 526, 532.)

With regard to United States income tax withheld at the rate of 30 percent from dividends, interest, and other fixed or determinable annual or periodical income paid on or after April 1, 1949, to residents

and corporations of Newfoundland, it should be observed that such taxes so withheld by withholding agents in the United States are not payable into the United States Treasury until after the close of the calendar year 1949. Accordingly, it follows that where excess tax has been thus withheld at the source in the case of such a taxpayer, the tax in excess of 15 percent should be released by the withholding agent upon receipt by him of an appropriate application therefor from the payee.

SECTION 29.143–3: Exemption from withholding.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5709, page 56.)

SECTION 144.—PAYMENT OF CORPORATION INCOME TAX AT SOURCE

SECTION 29.144–1: Withholding in the case of nonresident foreign corporations.

INTERNAL REVENUE CODE AND UNITED STATES-CANADA INCOME TAX CONVENTION

Extension of United States-Canada income tax convention to Newfoundland. (See I. T. 3965, page 58.)

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

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5709, page 56.)

SECTION 148.—INFORMATION BY CORPORATIONS

SECTION 29.148–1: Return of information as to payments of dividends.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5709, page 56.)

SUPPLEMENT E.—ESTATES AND TRUSTS

SECTION 162.—NET INCOME

SECTION 29.162–1: Income of estates and trusts. 1949–21–13209 G. C. M. 26031

INTERNAL REVENUE CODE

Under the terms of the will of A, real property was devised to a trustee to hold, manage, and control the property and to pay the income therefrom to the decedent's brother during his lifetime and,

thereafter, to certain nieces and a nephew or their issue. The will provides that if and when any of the property is sold, certain legacies to specified individuals, if living, and to designated charitable organizations shall be paid. Upon payment of such legacies, the balance of trust property shall go to the nieces and nephew, or their issue, free of all trusts. The trust is to terminate, in any event, upon the death of the survivor of the brother, nieces, and nephew, and any legacy then unpaid shall lapse. *Held*, the trust is not entitled to a deduction under section 162(a) of the Internal Revenue Code with respect to any capital gain used to pay the legacies to the charitable organizations.

An opinion is requested whether, in the case of the instant trust, a deduction is allowable under section 162(a) of the Internal Revenue Code for capital gains paid to charitable organizations which are pecuniary legatees of the trust established by the will of the decedent.

A, the testatrix, a resident of Massachusetts, died in October, 1948. Her will created a testamentary trust, the corpus of which is real property. The trust is to be terminated (1) when the pecuniary legacies payable from the proceeds of sale of trust corpus are paid, or (2) in any event, upon the death of the survivor of her brother, three nieces, and a nephew. Upon the termination of the trust under (1) above, the trust property will go to the testatrix's nieces and nephew, or their issue by right of representation, free of all trusts. But if the trust terminates under (2) above, the remaining corpus and any undistributed income shall go to the issue of the nieces and nephew, or their issue by right of representation. Until his death, the entire net income of the trust is distributable currently to the decedent's brother. After his death, this income is distributable currently to the testatrix's nieces and nephew.

The trustee is authorized to sell the trust property at any time, but he cannot be forced to do so by any of the pecuniary legatees. If such sales are made, the net proceeds will be distributed to the pecuniary legatees, if then living, in the amounts specified for each, or proportionate parts thereof. Under this provision, $62,000 is bequeathed to various parties, of which $17,000 is bequeathed to charitable organizations. If the trust is terminated under (2) above, any of the pecuniary legacies then unpaid shall lapse.

The question presented is whether, in the event of a sale of trust property, the trust is taxable on all of the realized gain, if any, derived from the sale, or whether the trust will be allowed a deduction of seventeen sixty-seconds of that gain as being that proportion of the gain distributed to charitable organizations.

Section 162(a) of the Internal Revenue Code provides as follows:

SEC. 162. NET INCOME.

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

(a) There shall be allowed as a deduction (in lieu of the deduction for charitable, etc., contributions authorized by section 23(o)) any part of the gross income, without limitation, which pursuant to the terms of the will or deed creating the trust, is during the taxable year paid or permanently set aside for the purposes and in the manner specified in section 23(o), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit;

In order for a trust to qualify for the benefits of section 162(a) of the Code, the will or deed creating the trust must direct the payment or setting aside of some part of the gross income for charitable purposes. (See I. T. 1966, C. B. III-1, 215 (1924).) The will which created the present trust does not direct the payment of any part of the trust income to the charities. The will specifies that the income from the trust will go to the decedent's brother for life and on his death to the nieces and nephew of the testatrix. Gains realized from the sale of trust corpus are considered accretions belonging to corpus under Massachusetts law. (See *Chase* v. *Union National Bank*, 275 Mass. 503, 176 N. E. 508.) The bequests here are specific pecuniary legacies and are gifts of corpus and not distributions of the trust income as such.

In *Arthur H. Wellman* v. *Welch* (99 Fed. (2d) 75, affirming 21 Fed. Supp. 978), a Massachusetts estate sought to deduct from its income, as payments to charity under section 162(a) of the Code, that part of the income of the estate used to pay charitable pecuniary legacies. But the district court and the circuit court of appeals held that the deduction was not allowable. It was stated that the estate was insufficient to pay the residuary legacies and, accordingly, all of the income of the estate became corpus, and when part of such income was used to pay the pecuniary legacies to charity, the payment was held to be a part payment of such legacies from the assets of the estate and not a distribution of income.

In *Old Colony Trust Co. et al.* v. *Commissioner* (38 B. T. A. 828), in which a deficiency asserted against the estate of Jennie K. Baldwin was involved, it was held that the gains derived by executors from the sale of securities, which gains were distributed to pecuniary legatees as part payment of their legacies, were not deductible (as payments of income) by the executors under section 162 (b) or (c) of the Revenue Act of 1934. The Board of Tax Appeals (now The Tax Court of the United States) said that what was income to the executors became principal upon distribution to the pecuniary legatees.

G. C. M. 24702 (C. B. 1945, 241) cited the above two cases for the proposition that the payment of a pecuniary legacy is an exception to the rule that an estate may deduct payments out of its income to residuary legatees during the taxable year in which the residue becomes payable, and such amounts will be taxable to the legatees (under section 162(b) of the Code) even though those amounts are considered payments of principal under State law.

Inasmuch as the will of A bequeaths certain pecuniary legacies to charity upon the happening of the contingency (sale of corpus by the trustee) and does not direct any of the income of the trust, as such, to be paid or permanently set aside for the charitable pecuniary legatees, it is the opinion of this office that, in the event gain is realized from sale of the trust corpus, and even though part of such gain is used to satisfy the pecuniary legacies to charity, the trust will not be entitled to any deduction under section 162(a) of the Code, *supra*.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SUPPLEMENT F.—PARTNERSHIPS

SECTION 181.—PARTNERSHIP NOT TAXABLE

SECTION 19.181–1, REGULATIONS 103: Partnerships.

INTERNAL REVENUE CODE

Family partnership between father and sons. (See Ct. D. 1723, page 5.)

SUPPLEMENT H.—NONRESIDENT ALIEN INDIVIDUALS

SECTION 211.—TAX ON NONRESIDENT ALIEN INDIVIDUALS

SECTION 29.211–7: Taxation of nonresident alien individuals.

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5709, page 56.)

SECTION 212.—GROSS INCOME

SECTION 19.212–1, REGULATIONS 103: Gross income of nonresident alien individuals. (Also Section 119, Section 19.119–5.) — 1949–15–13132 Ct. D. 1722

INCOME TAX—REVENUE ACT OF 1938 AND INTERNAL REVENUE CODE, AS AMENDED—DECISION OF SUPREME COURT

1. GROSS INCOME—NONRESIDENT ALIEN INDIVIDUAL—RENTS OR ROYALTIES.

Amounts received in 1938 and 1941 by a nonresident alien author not engaged in trade or business within the United States and not having an office or place of business therein, each of such sums having been received by the author as payments in full, in advance, for an exclusive serial or book right throughout the United States in relation to a specified original story written by him and ready to be copyrighted, come within the kinds of gross income referred to in the applicable revenue acts as "rentals or royalties for the use of or the privilege of using in the United States, * * * copyrights, * * * and other like property," and are accordingly taxable as gross income from sources within the United States under sections 119, 211, and 212(a) of the Revenue Act of 1938 and the Internal Revenue Code as amended in 1940 and 1941. The receipt of the respective amounts in single lump sums did not exempt them from taxation.

2. DECISION REVERSED.

Decision of the United States Court of Appeals, Fourth Circuit (166 Fed. (2d) 986), reversing decision of The Tax Court of the United States (8 T. C. 637), reversed.

SUPREME COURT OF THE UNITED STATES

Commissioner of Internal Revenue, petitioner, v. *Pelham G. Wodehouse*

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

[June 13, 1949]

OPINION

Mr. Justice BURTON delivered the opinion of the Court.

The question before us is whether certain sums received in 1938 and 1941, by the respondent, as a nonresident alien author not engaged in trade or business within the United States and not having an office or place of business therein, were required by the Revenue Acts of the United States to be included in his gross income for Federal tax purposes. Each of these sums had been paid to him in advance and respectively for an exclusive serial or book right throughout the United States in relation to a specified original story written by him and ready to be copyrighted. The answer turns upon the meaning of "gross income from sources within the United States" as that term was used, limited and defined in sections 212(a), 211 and 119 of the Revenue Act of 1938, and the Internal Revenue Code, as amended in 1940 and 1941.[1] For the reasons hereinafter stated, we hold that these sums each came within those kinds of gross income from sources within the United States that were referred to in those Acts as "rentals or royalties for the use of or the privilege of using in the United States, * * * copyrights, * * * and other like property,"[2] and that, accordingly, each of these sums was taxable under one or the other of those Acts.

The respondent, Pelham G. Wodehouse, at the times material to this case, was a British subject residing in France. He was a nonresident alien of the United States not engaged in trade or business within the United States and not having an office or place of business therein during either the taxable year 1938 or 1941. He was a writer of serials, plays, short stories and other literary works published in the United States in the Saturday Evening Post, Cosmopolitan Magazine and other periodicals.

February 22, 1938, the Curtis Publishing Co. (here called Curtis) accepted for publication in the Saturday Evening Post the respondent's unpublished novel "The Silver Cow." The story had been submitted to Curtis by the respondent's literary agent, the Reynolds Agency, and, on that date, Curtis paid the agency $40,000 under an agreement reserving to Curtis the American serial rights in the story, including in such rights those in the United States, Canada and South America. The memorandum quoted in Appendix B [page 74, this Bulletin], *infra*, page —, constituted the agreement. Also in 1938, the respondent received $5,000 from Doubleday, Doran & Co. for the book rights in this story. The story was published serially in the Saturday Evening Post, July 9 to September 3, 1939.

Pursuant to a like agreement, the respondent received $40,000 from Curtis, December 13, 1938, for serial rights in and to his story "Uncle Fred in the Springtime." It was published serially in the Saturday Evening Post, April 22 to May 27, 1939.

July 23, 1941, Hearst's International Cosmopolitan Magazine, through the respondent's same agent, paid the respondent $2,000 for "all American and Canadian serial rights (which include all American and Canadian magazine, digest, periodical and newspaper publishing rights)" to the respondent's article entitled "My Years Behind Barbed Wire." The agreement appears in Appendix C [page 75, this Bulletin], *infra*, page —. Apparently this story was published shortly thereafter.

August 12, 1941, Curtis, through the same agent, paid the respondent $40,000 for the "North American (including Canadian) serial rights" to respondent's novel entitled "Money in the Bank." The agreement was in the form used by Curtis in 1938.[3] The evidence does not state that this story was published but

[1] The material provisions were identical in the Revenue Act of 1938, enacted May 28, 1938, c. 289, 52 Stat. 447, et seq., and in the Internal Revenue Code, enacted February 10, 1939, 53 Stat. 1, et seq. Amendments to these provisions in 1940 and 1941 changed only the rates of the taxes. For text of the material provisions, see Appendix A [page 72, this Bulletin], *infra*, pages —, —, following this opinion.

[2] Section 119(a)(4), 52 Stat. 504, 53 Stat. 54, 26 U. S. C. section 119(a)(4). For full text of the material provisions of section 119, see Appendix A, *infra*, page —.

[3] See Appendix B [page 74, this Bulletin], *infra*, page —.

it shows that Curtis, pursuant to its agreements, took out a United States copyright on each of the respective stories named in the foregoing agreements. After each story's serial publication, Curtis reassigned to the respondent, on the latter's demand, all rights in and to the story excepting those rights which the respondent expressly had agreed that Curtis was to retain. The respective sums were thus paid to the respondent, in advance and in full, for the serial or book rights which he had made available. For United States income tax purposes, the respondent's literary agent, or some other withholding agent, withheld from the respondent, or from his wife as his assignee, a part of each payment.

In 1944 the Commissioner of Internal Revenue, petitioner herein, gave the respondent notice of tax deficiencies assessed against him for the taxable years 1923, 1924, 1938, 1940 and 1941. In these assessments, among other items, the Commissioner claimed deficiencies in the respondent's income tax payments based upon his above-described 1938 and 1941 receipts. The respondent, in a petition to the Tax Court for a redetermination of such deficiencies, not only contested the additional taxes assessed against him, which were based upon the full amounts of those receipts, but he asked also for the refund to him of the amounts which had been withheld, for income tax purposes, from each such payment. The Tax Court entered judgment against him for additional taxes for 1938, 1940 and 1941, in the respective amounts of $11,806.71, $8,080.83 and $1,854.85. In speaking of the taxes for 1940 and 1941, the Tax Court said:

"The first issue, found also in the year 1938, presents the question of the taxability of lump sum payments for serial rights to literary works. Counsel for the petitioner [Wodehouse, the respondent here] concedes that substantially the same issue was raised and decided in *Sax Rohmer*, 5 T. C. 183; affirmed, 153 Fed. (2d) 61; certiorari denied, 328 U. S. 862.

"In *Sax Rohmer, supra*, we held that the lump sum payments for serial rights were royalties and, as such, were taxable to the recipient. The arguments advanced in the cases at bar follow the same pattern as those appearing in the *Sax Rohmer* case, as presented to this court and to the circuit court of appeals. The petitioner's contentions were rejected in both courts and for the same reasons stated in the opinions therein, they are rejected here." 8 T. C. 637, 653.

As the respondent's taxes for 1938 and 1941 had been paid to the Collector of Internal Revenue at Baltimore, Md., his petition for review of the Tax Court's judgment for those years was filed in the United States Court of Appeals for the Fourth Circuit. The judgment against him was there reversed, 166 Fed. (2d) 986, one judge dissenting on the authority and reasoning of *Rohmer* v. *Commissioner*, 153 Fed. (2d) 61 (C. A. 2d Cir.). Because of the resulting conflict between the circuits and also because comparable issues as to this respondent's taxes for 1940 were pending before the Court of Appeals for the Second Circuit, we granted certiorari. 335 U. S. 807.[4]

The petitioner contends that receipts of the type before us long have been recognized as rentals or royalties paid for the use of or for the privilege of using in the United States, patents, copyrights and other like property. Keeping in mind that, before 1936, such receipts were expressly subject to withholding as part of the taxable income of nonresident alien individuals, he contends that those receipts remained taxable and subject to withholding in 1938 and 1941, after the standards for taxation of such aliens had been made expressly coterminous with the standards for subjecting this part of their income to withholding procedures.

In opposition, the respondent argues, first, that each sum he received was a payment made to him in return for his sale of a property interest in a copyright and not a payment to him of a royalty for rights granted by him under the protection of his copyright. Being the proceeds of a sale by him of such a property interest, he concludes that those proceeds were not required to be included in his taxable gross income because the controlling Revenue Acts did not attempt

[4] As the court below held that the respondent's 1938 and 1941 receipts were not subject to taxation, it did not reach the subsidiary issues which had been raised as to the proper amount of those taxes if they were sustained. Similarly, the court below did not pass upon the claim that certain of the assessments were subject to the 3-year statute of limitations rather than the 5-year statute here applied. See section 275 (a) and (c), 52 Stat. 539, 53 Stat. 86, 26 U. S. C. section 275 (a) and (c). This claim turned upon the recognition to be given to certain assignments made by the respondent to his wife. Those assignments, if fully recognized, might have reduced the tax to be assessed against the respondent to an amount less than 25 percent of the amount originally stated by him in his return and thus rendered the 5-year statute inapplicable. However, the effect of those assignments was not passed upon by the court below.

to tax nonresident alien individuals, like himself, upon income from sales of property. Secondly, the respondent argues that, even if his receipts were to be treated as royalties, yet each was received in a single lump sum and not "annually" or "periodically," and that, therefore, they did not come within his taxable gross income.

The petitioner replies that, in this case, we do not properly reach the fine questions of title, or of sales or copyright law, thus raised by the respondent as to the divisibility of a copyright or as to the sale of some interest in a copyright. The petitioner states that the issue here is one of statutory interpretation. It is confined primarily to the taxability of the respondent's receipts within the broad, rather than narrow, language of certain Revenue Acts. Attention must be focused on those Revenue Acts. If *their* terms made these receipts taxable because of the general nature of the transactions out of which the receipts arise, namely, payments for the use of or for the privilege of using copyrights, then it is *those* statutory definitions, properly read in the light of *their* context and of *their* legislative history, that must determine the taxability of the receipts. He argues that the language of the Revenue Acts does not condition the right of the United States to its revenue upon any fine point of property law but covers these receipts in any event. Treating the respondent's receipts simply as representing payments for the use of or the privilege of using copyrights the petitioner argues that they constituted income that was subject both to withholding and to taxation in 1938 and 1941. He claims finally that the respondent cannot escape taxation of such receipts merely by showing that each payment was received by him in a lump sum in advance for certain uses of a copyright, instead of in several payments to be made at intermediate dates during the life of the copyright.

I

Sums received by a nonresident alien individual for the use of a copyright in the United States constituted gross income taxable to him under the Revenue Act of 1938 and the Internal Revenue Code

Under the income tax laws of the United States, sums received by a nonresident alien author not engaged in trade or business within the United States and not having an office or place of business therein long have been required to be included in his gross income for our Federal tax purposes. Such receipts have been an appropriate and readily collectible subject of taxation. A review of the statutes, regulations, administrative practices and court decisions discloses this policy and, at least from a revenue standpoint, no reason has appeared for changing it.

Since the early days of our income tax levies, rentals and royalties paid for the use of or for the privilege of using in the United States, patents, copyrights and other like property have been taxed to nonresident aliens and for many years at least a part of the tax has been withheld at the source of the income. To exempt this type of income from taxation in 1938 or 1941, in the face of this long record of its taxation, would require a clearness and positiveness of legislative determination to change the established procedure that is entirely absent here.

The policy of this Court in this general field of statutory interpretation was stated in 1934 in a case which dealt with the taxation of a somewhat comparable form of income of a foreign corporation. In *Helvering* v. *Stockholms Enskilda Bank*, 293 U. S. 84 [Ct. D. 887, C. B. XIII–2, 299 (1934)], the question presented was that of the proper interpretation to be given to section 217(a)(1) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 30 (analogous to section 119(a)(1) of the Revenue Act of 1938, 52 Stat. 503, now before us). Certain sums had been received by a foreign corporation from the United States Government in the form of interest upon a refund of an overpayment by that corporation of its income taxes. This Court held that such interest, in turn, constituted taxable gross income derived by the foreign corporation from a source within the United States, because it amounted to interest upon an interest-bearing obligation of a resident of the United States within the meaning of the Act. This interpretation was adopted in opposition to the foreign corporation's argument that the payment should be exempted because it amounted to interest on one of the "obligations of the United States" and that interest on such an obligation was expressly exempted from taxation by section 213(b)(4) of the Revenue Act of 1926 (analogous to section 22(b)(4) of the Revenue Act of 1938). This Court distinguished

between the meaning of the word "obligations" in the context of the different sections of the Act and stated the applicable general principles of statutory construction as follows:

"The general object of this Act is to put money into the Federal Treasury; and there is manifest in the reach of its many provisions an intention on the part of Congress to bring about a generous attainment of that object by imposing a tax upon pretty much every sort of income subject to the Federal power. Plainly, the payment in question constitutes income derived from a source within the United States; and the natural aim of Congress would be to reach it. In *Irwin* v. *Gavit*, 268 U. S. 161, 166 [T. D. 3710, C. B. IV-1, 123, 124 (1925)], this Court, rejecting the contention that certain payments there involved did not constitute income, said: 'If these payments properly may be called income by the common understanding of that word and the statute has failed to hit them it has missed so much of the general purpose that it expresses at the start. Congress intended to use its power to the full extent. *Eisner* v. *Macomber*, 252 U. S. 189, 203 [T. D. 3010, C. B. 3, 25, 27 (1920)].' Although Congress intended, as the Court held in the Viscose case, *supra* [56 Fed. (2d) 1033 (C. A. 3d Cir.)] [Ct. D. 660, C. B. XII-1, 213 (1933)], to include interest on a tax refund made to a *domestic* corporation, we are asked to deny such intention in respect of a competing *foreign* corporation. But we see nothing in the relationship of a foreign corporation to the United States, or in any other circumstance called to our attention, which fairly shows that such a discrimination was within the contemplation of Congress. On the contrary, the natural conclusion is that if any discrimination had been intended it would have been made in favor of, and not against, the domestic corporation, which contributes in a much more substantial degree to the support of the people and Government of the United States." Id. at pages 89–90.

And further:

"In the foregoing discussion, we have not been unmindful of the rule, frequently stated by this Court, that taxing acts 'are not to be extended by implication beyond the clear import of the language used,' and that doubts are to be resolved against the Government and in favor of the taxpayer. The rule is a salutary one, but it does not apply here. The intention of the lawmaker controls in the construction of taxing acts as it does in the construction of other statutes, and that intention is to be ascertained, not by taking the word or clause in question from its setting and viewing it apart, but by considering it in connection with the context, the general purposes of the statute in which it is found, the occasion and circumstances of its use, and other appropriate tests for the ascertainment of the legislative will. Compare *Rein* v. *Lane*, L. R. 2 Q. B. Cases 144, 151. The intention being thus disclosed, it is enough that the word or clause is reasonably susceptible of a meaning consonant therewith, whatever might be its meaning in another and different connection. We are not at liberty to reject the meaning so established and adopt another lying outside the intention of the legislature, simply because the latter would release the taxpayer or bear less heavily against him. To do so would be not to resolve a doubt in his favor, but to say that the statute does not mean what it means." Id. at pages 93–94.

A. *These receipts unquestionably would have been taxed to a nonresident alien individual if received by him under the Revenue Act of 1934.*

The background and development of the particular provisions before us emphasize the congressional purpose to tax this type of income. They disclose the full familiarity of Congress with this general type of transaction. Throughout the history of our Federal income taxes since the sixteenth amendment to our Constitution, the Revenue Acts have expressly subjected to taxation the income received by nonresident alien individuals from sources within the United States. For example, there is no doubt that the receipts here in question would have been taxable to the respondent if they had been received by him under the Revenue Act of 1934, c. 277, 48 Stat. 680, et seq., and the present issue resolves itself largely into a determination whether such receipts were relieved from taxation by the Revenue Act of 1936, c. 690, 49 Stat. 1648, et seq., through certain changes in the income tax laws that were made by that Act and which were still in effect in 1938 and 1941.

Under the Revenue Act of 1934, the income of a nonresident alien individual was taxed at the same rates as was the income of a resident citizen (sections 11 and 12) but his taxable gross income was limited wholly to that which he

had received "from sources within the United States," section 211(a).[5] Such sources were described in section 119 of that Act, and the material portions of that section have remained unchanged ever since. They give their own definition of rentals and royalties. These have been quoted from above and they are set forth in full in Appendix A, *infra*, p. —. The Act of 1934 thus sought to include as taxable gross income any income which a nonresident alien individual received as royalties for the privilege of using any copyrights in the United States and also sought to tax his income from the sale of any personal property which he had produced (in whole or in part) outside the United States but had sold within the United States. Section 119 (a)(4) and (e)(2). As a mechanism of collection, the Act also sought to withhold from nonresident alien individuals, at the source of payment, the entire normal tax of 4 percent computed upon numerous classifications of their income named in section 143(b).[6] This language is important in this case. It expressly included certain forms of interest and also "*rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, of any nonresident alien individual,* * * *." [Emphasis added.] While *royalties* were not mentioned specifically in this statutory withholding clause, they had been expressly listed in the regulations, since long before 1934, so that there was no doubt that they were to be subject to withholding as a matter of interpretation. It was equally clear that *income derived from a sale* in the United States, of either real or personal property, was not included, either expressly or by implication or interpretation, in the income subject to a withholding of the tax on it at the source of the income. The regulations, since the Act of 1924 (U. S. Treasury Regulations 65, article 362 (1924)) to the present time, have contained decisive statements on these points. Such regulations have been substantially identical with the following which appeared in Treasury Regulations 86, article 143-2 (1934):

"Only fixed or determinable annual or periodical income is subject to withholding. The Act specifically includes in such income, interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, and emoluments. *But other kinds of income are included, as, for instance, royalties.*

"* * * *The income derived from the sale in the United States of property, whether real or personal, is not fixed or determinable annual or periodical income.*" [Emphasis added.]

Apart from these provisions requiring the withholding of taxes at the source of the income, the Revenue Acts have contained other provisions, in similar language, calling for the reporting to the Commissioner of Internal Revenue of material information as to certain income which might be taxable. This language has received an interpretation which is related to and consistent with that here given to the provisions as to withholding taxes.[7]

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[5] "SUPPLEMENT H—NONRESIDENT ALIEN INDIVIDUALS

"SEC. 211. GROSS INCOME.

"(a) GENERAL RULE.—In the case of a nonresident alien individual gross income includes only the gross income from sources within the United States." Section 211(a), 48 Stat. 735.

[6] "SEC. 143. WITHHOLDING OF TAX AT SOURCE.

"(a) TAX-FREE COVENANT BOND.—* * *

"(b) NONRESIDENT ALIENS.—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of *interest* (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States and not having an office or place of business therein), *rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, of any nonresident alien individual*, or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, * * * deduct and withhold *from such annual or periodical gains, profits, and income a tax equal to 4 per centum thereof:* * * *" [Emphasis added.] 48 Stat. 723-724.

[7] "SEC. 147. INFORMATION AT SOURCE.

"(a) PAYMENTS OF $1,000 OR MORE.—*All persons, in whatever capacity acting*, including lessees or mortgagors of real or personal property, fiduciaries, and employers, *making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income* * * * of $1,000 or more in any taxable year, * * * shall render a true and accurate return to the Commissioner, *under such regulations* and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, * * *" [Emphasis added.] 48 Stat. 726.

Treasury Regulations 86, under the Act of 1934, showed among other things, that this section applied generally to fixed or determinable income, that royalties were included as

These statutes and Regulations show that, under the Act of 1934, Congress sought to tax (and withhold all or part of the tax on) the income of a nonresident alien individual insofar as it was derived from payments for the use of or for the privilege of using copyrights in the United States. It also sought to tax (although it could not generally withhold the tax on) any gain which the taxpayer derived from the sale of personal property produced by him without the United States but sold within the United States. Accordingly, if the receipts now before us had been received by the respondent under the Act of 1934, they would have been taxable whether they were treated as payments in the nature of royalties for the use of the copyrights under section 119(a) or were treated as payments of a sale's price for certain interests in copyrights under section 119(e). The regulations helpfully carried this analysis further. They showed that, while *both forms of income were taxable, yet it was only the royalty payments* (and not the sales' proceeds) *that were subject to the withholding procedure.* A Treasury Decision made in 1933, under the Revenue Acts extending from 1921 to 1928,[8] and a decision of the Court of Appeals for the Second Circuit made in 1938, under the Revenue Act of 1928, c. 852, 45 Stat. 791, sustain the above conclusions. The latter case was that of *Sabatini* v. *Commissioner*, 98 Fed. (2d) 753 (C. A. 2d Cir.),[9] later discussed and approved in *Rohmer* v. *Commissioner*, 153

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fixed and determinable income and that information as to them was not required when such royalties did not exceed the taxpayer's exemptions. Also, such information at the source was not required where the income had been withheld, at the source, from a nonresident alien individual and a report had been made to that effect. See, for example:

"ART. 147-1. * * * Although to make necessary a return of information the income must be fixed or determinable, it need not be annual or periodical. * * *"

"ART. 147-3. Cases where no return of information required.—Payments of the following character, although over $1,000, need not be reported in returns of information * * *:

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"(*h*) Payments of salaries, rents, *royalties*, interest (except bond interest required to be reported on ownership certificates), *and other fixed or determinable income* aggregating less than $2,500 made to a married individual: * * *"

"ART. 147-5. Return of information as to payments to other than citizens or residents.—In the case of payments of fixed or determinable annual or periodical income to nonresident aliens (individual or fiduciary), * * * the returns filed by withholding agents on Form 1042 [required by Article 143-8] shall constitute and be treated as returns of information. (See sections 143 and 144.)" [Emphasis added.]

[8] This opinion was rendered in response to a request to the Treasury for advice as to whether certain payments received during the years 1921 to 1928 by the taxpayer, a nonresident alien author, were taxable as income from sources within the United States. The payments were received pursuant to contracts granting certain volume, serial and motion picture rights in consideration of stipulated royalties payable in various ways. Some contracts prescribed a royalty on each copy sold, others a total stipulated sum, and, in at least one case, this sum was payable in several parts. The opinion reviewed the practice of many years and gave a positive answer to guide future practice. The answer was that all these receipts were taxable insofar as they came from sources within the United States. The opinion contained the following significant statements which indicate the administrative practice which had been applied and thereafter was to apply to these sections:

"The fact that a payment in the nature of a rent or royalty is in a lump sum rather than so much per annum, per unit of property, per performance, per book sold, or a certain percentage of the receipts or profits, does not alter the character of the payment as rent or royalty. (O. D. 1028, C. B. 5, 83; *Appeal of J. M. & M. S. Browning Co.*, 6 B. T. A., 914, acquiescence C. B. VII-1, 5 [1928].) Nor is it material whether the royalty is paid in advance. (*Appeal of Bloedel's Jewelry, Inc.*, 2 B. T. A., 611.) It is accordingly the opinion of this office that the payments in question are 'rentals or royalties from * * * [or] for the use of or for the privilege of using * * * copyrights * * * and other like property.' Since the grant by the taxpayer in each instance is so clearly the grant of a particular right in all the rights constituting the taxpayer's literary property and copyright, the conclusion is obvious that the grant is a license and not a sale.

"The applicable Revenue Acts regard royalties from American copyrights (or for the use of or for the privilege of using in the United States copyrights and other like property) as income from sources within the United States, and royalties from foreign copyrights (or for the use of or for the privilege of using without the United States copyrights and other like property) as income from sources without the United States. Substantially all the income here in question constitutes royalties from, or for the use of, or for the privilege of using American copyrights." I. T. 2735, C. B. XII-2, 131 (1933).

[9] "The fact that one lump sum was received for the privilege of using the property of the author instead of a series of payments does not alter the real character of what the taxpayer received. It was payment for the use of his literary property for the purpose named and insofar as it was in payment for use in the United States was taxable as a royalty paid in advance and received for the granting of that privilege. While there seems to be no direct authority for this view of the meaning of the statute, we believe it correct in principle and the order of the Board in this respect is reversed." Id. at page 755. This decision effectively supplements the Treasury Bulletin of 1933 and emphasizes the general language of the statute in taxing proceeds of the type of transaction that is before us. It reversed an intermediate holding made by the Board of Tax Appeals in 1935 in *Sabatini* v. *Commissioner*, 32 B. T. A. 705. That intermediate decision, accordingly, was in the process of review when the Revenue Act of 1936 was enacted and,

Fed. (2d) 61, 63 (C. A. 2d Cir.). Incidentally, these opinions declared not only that the taxes in question were imposed upon the receipts as royalties but that it made no difference whether such royalties were each received in lump sums in full payment in advance, to cover the use of the respective copyrights throughout their statutory lives, or whether the royalties were received from time to time and in lesser sums.

B. *The Revenue Act of 1936 preserved the taxability of the several kinds of income of nonresident alien individuals which had been the subject of withholding at their respective sources, including receipts in the nature of royalties for the use of copyrights in the United States.*

The Revenue Act of 1936 did not change materially the statutory definition of gross income from sources within the United States under section 119. It did, however, amend section 211(a) [10] materially in its description of the taxable income of nonresident alien individuals. These amendments (1) substituted a special flat rate of 10 percent for the general normal tax and surtax rates, (2) required this entire special tax, in the usual case, to be withheld at the source of the taxable income, (3) limited the taxability of the income of each nonresident alien individual to those kinds of income to which the withholding provisions also applied, and (4) (except for the addition of dividends) inserted verbatim, as a new statement of the types of taxable income of a nonresident alien individual (not engaged in trade or business within the United States and not having an office or place of business therein), the language that previously had been used to state the specific types of income to which the withholding procedure was to apply. See its section 143(b) [11] paralleling its amended section 211(a). By thus restricting the income tax to those specific types of income to which the withholding procedure had previously applied, Congress automatically relieved nonresident alien individuals from the taxation of their income from certain sales of real or personal property, previously taxed. This amendment, on the other hand, retained and increased the tax on the very kind of income that is before us. It also increased the porton of such income to be withheld at its source to meet the new and higher flat rate of tax.

The legislative history of the Revenue Act of 1936 confirms the special meaning thus apparent on its face. It emphasizes the policy which expressly marked the enactment of this Act, including particularly these amendments. The practical situation was that it had been difficult for United States tax officials to ascertain the taxable income (in the nature of capital gains) which had been derived from sales of property at a profit by nonresident alien individuals, or by foreign corporations, when the respective taxpayers were not engaged in trade or business within the United States and did not have an office or place of business therein. This difficulty was in contrast with the ease of computing and collecting a tax from certain other kinds of income, including payments for the use of patents and copyrights, from which the United States income taxes were

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therefore, it cannot be argued that Congress carried its interpretation into the Revenue Act of 1936. If anything, the contrary might be argued as to *Sabatini* v. *Commissioner*, 98 Fed. (2d) 753 (C. A. 2d Cir.), which was decided before the enactment of the Internal Revenue Code.

[10] "SEC. 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

"(a) No United States Business or Office.—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 11 and 12, upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as *interest* (except interest on deposits with persons carrying on the banking business), *dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 10 per centum of such amount,* * * *" [Emphasis added.] 49 Stat. 1714.

[11] "SEC. 143. WITHHOLDING OF TAX AT SOURCE.

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"(b) Nonresident Aliens.—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of *interest* (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States and not having an office or place of business therein), *dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitute gross income from sources within the United States), of any nonresident alien individual,* or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, shall * * * *deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 10 per centum thereof,* * * *" [Emphasis added.] 49 Stat. 1700–1701.

being, wholly or partially, withheld at the source. The Congressional Committee Reports expressed a purpose of Congress to limit future taxes on nonresident alien individuals to those readily collectible.[12] With a view evidently to securing substantially as much revenue as before, Congress thereupon applied a new flat rate of 10 percent to nonresident alien individuals and of 15 percent to foreign corporations, the entire amount of this flat rate of tax to be withheld and collected at the source of the income. The reports referred also to increases in stock transfer taxes which might result from thus removing the income tax from profits of nonresident alien individuals on their stock sales. Congress recognized a value and a convenience in thus turning to the accessible, fixed and determinable income of nonresident aliens. There is no doubt that these steps sought to increase or at least to maintain the existing volume of revenue.[13] No suggestion appears that Congress intended or wished to relieve from taxation the readily accessible and long-established source of revenue to be found in the payments made to nonresident aliens for the use of patents or copyrights in the United States. Much less was any suggestion made that lump sum advance payments of rentals or royalties should be exempted from taxation while at the same time smaller repeated payments of rentals or royalties would be taxed and collected at the source of the income. To have exempted these nonresident aliens from these readily collectible taxes derived from sources within the United States would have discriminated in their favor against resident citizens of the United States who would be required to pay their regular income tax on such income, if treated as royalties within the meaning of our gross income provisions, or at least to pay a tax upon them as capital gains, if treated as income from sales of capital within the meaning of our capital gains provisions. No such purpose to discriminate can be implied.

Accordingly, at the time in 1936 when these amendments were being enacted into section 211(a), the provisions for taxing the gross income of nonresident alien individuals under the Revenue Act of 1934 already had been long and officially interpreted as covering receipts from royalties as expressly and broadly defined

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[12] "NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

"It has also been necessary to recommend substantial changes in our present system of taxing nonresident aliens and foreign corporations. * * * In section 211, it is proposed that the tax on a nonresident alien not engaged in a trade or busiess in the United States and not having an office or place of business therein, shall be at the rate of *10 percent on his gross income from interest, dividends, rents, wages, and salaries and other fixed and determinable income. This tax (in the usual case) is collected at the source by withholding as provided for in section 143. Such a nonresident will not be subject to the tax on capital gains, including gains from hedging transactions, as at present, it having been found impossible to effectually collect this latter tax.* It is believed that this exemption from tax will result in additional revenue from the transfer taxes and from the income tax in the case of persons carrying on the brokerage business. * * *

"* * * In the case of a foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, it is proposed to levy a flat rate of tax of 15 percent on the gross income of such corporation from interest, dividends, rents, salaries, wages, and *other fixed and determinable income (not including capital gains)*. This tax is to be collected in the usual case by withholding at the source. * * *

"It is believed that the proposed revision of our system of taxing nonresident aliens and foreign corporations will be productive of substantial amounts of additional revenue, since *it replaces a theoretical system impractical of administration in a great number of cases.*" [Emphasis added.] H. R. Rept. No. 2475, 74th Cong., 2d sess. 9–10 (1936) [C. B. 1939–1 (Part 2), 667, 673–674].

To the same effect, see S. Rept. No. 2156, 74th Cong., 2d sess. 21, 23 (1936) [C. B. 1939–1 (Part 2), 678, 691–693]

[13] On the floor of the House, Representative Hill of Washington, of the Committee on Ways and Means, supporting these amendments, said:

"We have placed a flat tax of 10 percent on nonresident aliens, that is, people not citizens of the United States and not residing in the United States; and this 10-percent tax is withheld at the source. We expect to get considerably more revenue out of both nonresident aliens and foreign corporations having no place of business or not engaged in trade or business in this country, than we have been getting under the present plan, because we are going to withhold it at the source, and not take a chance on their making a report of it, or having to send our representatives to some foreign country to find what their net income is, and seek to induce them to pay their tax." 80 Cong. Rec. 6005 (1936).

On the floor of the Senate, Senator King of Utah, a member of the Finance Committee and in charge of the bill, said, in supporting these amendments:

"The House bill changes the method of taxing nonresident aliens and foreign corporations. A nonresident alien not engaged in a trade or business in the United States, or not having an office or place of business therein, is taxed at a flat rate of 10 percent on his income from interest, dividends, rents, wages, salaries, and other fixed or determinable income, which are collected at the source. * * * These nonresident aliens are exempted under the House bill from the tax on capital gains, including hedging transactions, it being found administratively almost impossible to collect the capital-gains tax in such cases. This exemption will result in increased revenue from transfer taxes or from the income tax in the case of persons carrying on the brokerage business." 80 Cong. Rec. 8650 (1936).

in section 119(a) and subjected to withholding at the source of income under section 143(b). The legislative history of the 1936 amendments is, therefore, a refutation of any claim that Congress, at that time, was seeking to exempt such taxpayers from those appropriate and readily collectible items. On the other hand, that history shows that Congress was seeking to continue to tax, and even to increase the tax upon, those kinds of income which had been found to be readily withholdable at their respective sources. Accordingly, what Congress did was to incorporate the very language of the withholding provisions of section 143(b) into the language of the taxing section 211(a). The regulations under section 143(b), quoted above substantially as being in effect since 1924, had already settled that *royalties were included in section 143(b). The Treasury Bulletin also showed that lump sum payments made in advance for limited rights under copyrights were included in the "royalties" thus subject to withholding and taxation. The type of transactions and the kind of payments were thus identified. The broad language there used is entitled to be interpreted in accordance with its plain meaning and established usage.* Therefore, after the 1936 amendments, *it became equally clear that these receipts in the nature of royalties and previously withheld at their source were included in the sources of income specified in section 211(a) but that profits from sales of property were not included in the sources of income specified in section 211(a).* The decisions of the Court of Appeals of the Second Circuit in *Sabatini* v. *Commissioner, supra,* in 1938, in relation to the Revenue Act of 1928 and in *Rohmer* v. *Commissioner, supra,* in 1946, in relation to the Internal Revenue Code, as amended in 1940, reflected the same point of view.

None of these provisions of the Act of 1936 were changed by the Revenue Act of 1938, the Internal Revenue Code, or the 1940 or 1941 Amendments to that Code, except in relation to the size of the tax rates. The principal changes even in those rates were to provide higher taxes in the higher brackets, rather than to reduce the taxes on nonresident aliens.[14]

II

The receipt of the respective amounts by the respondent in single lump sums as payments in full, in advance, for certain rights under the respective copyrights did not exempt those receipts from taxation

Once it has been determined that the receipts of the respondent would have been required to be included in his gross income for Federal income tax purposes if they had been received in annual payments, or from time to time, during the life of the respective copyrights, it becomes equally clear that the receipt of those same sums by him in single lump sums as payments in full, in advance, for the same rights to be enjoyed throughout the entire life of the respective copyrights cannot, solely by reason of the consolidation of the payment into one sum, render it tax exempt. No Revenue Act can be interpreted to reach such a result in the absence of inescapably clear provisions to that effect. There are none such here.

The argument for the exemption was suggested by the presence in sections 211(a) and 143(b) of the words "annual" and "periodical." If read apart from their text and legislative history and supplemented by the gratuitous insertion after them of the word "payments," they might support the limiting effect here argued for them. However, when taken in their context, and particularly in the light of the legislative history of those Acts, and the interpretation placed upon them by the Treasury Department and the lower courts, they have no such meaning. Those words are merely generally descriptive of the character of the gains, profits and income which arise out of such relationships as those which produce readily withholdable interest, rents, royalties and salaries, consisting wholly of income, especially in contrast to gains, profits and income in the nature of capital gains from profitable sales of real or personal property.[15]

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[14] Particularly in the Revenue Act of 1938, section 211 was amended to provide that, if the aggregate amount of a taxpayer's income of the types included from sources within the United States was more than $21,600, during a taxable year, then the regular rate of tax imposed by sections 11 and 12 became applicable, subject to the proviso that in no case it be less than 10 percent of the gross income subject to the tax. Section 211 (a) and (c), 52 Stat. 527–528, and see Appendix A, *infra,* p. —.

[15] "* * * While payment ordinarily is at a certain rate for each article or certain percent of the gross sale, that in itself is not determinative. The purpose for which the payment is made and not the manner thereof is the determining factor." *Commissioner* v. *Affiliated Enterprises,* 123 Fed. (2d) 664, 668 (C. A. 10th Cir.).

In the instant case, each copyright which was to be obtained had its full, original life of 28 years to run after the advance payment was received by the author covering the use of or the privilege of using certain rights under it. Fixed and determinable income, from a tax standpoint, may be received either in annual or other payments without altering in the least the need or the reasons for taxing such income or for withholding a part of it at its source. One advance payment to cover the entire 28-year period of a copyright comes within the reason and reach of the Revenue Acts as well as, or even better than, two or more partial payments of the same sum.

Article 143-2 of Treasury Regulations 101, issued under the Revenue Act of 1938, provided:

"The income need not be paid annually if it is paid periodically; that is to say, from time to time, whether or not at regular intervals. That the length of time during which the payments are to be made may be increased or diminished in accordance with someone's will or with the happening of an event does not make the payments any the less determinable or periodical."

Substantially this liberal language in the regulations has been used in this connection since 1918. (U. S. Treasury Regulations 45, article 362 (1918).) Single lump sum payments of royalties were held to be taxable under the Revenue Acts of 1921, 1924, 1926 and 1928, I. T. 2735, C. B. XII-2, 131 (1933); under the Revenue Act of 1928, *Sabatini* v. *Commissioner, supra;* and under the Internal Revenue Code, as amended in 1940, *Rohmer* v. *Commissioner, supra.*

For the foregoing reasons, we hold that the receipts in question were required to be included in the gross income of the respondent for Federal income tax purposes. The judgment of the court of appeals accordingly is reversed and remanded for further proceedings consistent with this opinion.

Reversed and remanded.

Mr. Justice DOUGLAS took no part in the consideration or decision of this case.

Dissenting opinion by Mr. Justice FRANKFURTER, with whom Mr. Justice MURPHY and Mr. Justice JACKSON join.

APPENDIX A

Material provisions of sections 212(a), 211 and 119 of the Revenue Act of 1938 and the Internal Revenue Code:

"SEC. 212. GROSS INCOME.

"(a) GENERAL RULE.—*In the case of a nonresident alien individual gross income includes only the gross income from sources within the United States.*" [Emphasis added.] 52 Stat. 528, and 53 Stat. 76, 26 U. S. C. section 212(a).

"SEC. 211. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

"(a) NO UNITED STATES BUSINESS OR OFFICE.—

"(1) GENERAL RULE.—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 11 and 12 [normal tax and surtax imposed generally upon individuals and applicable in the instant case, under paragraphs (a)(2) and (c), because the respondent's gross income for each taxable year exceeded the allowable maximum there specified], upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein, *from sources within the United States as interest* (except interest on deposits with persons carrying on the banking business), *dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income,* a tax of 10 per centum of such amount, * * *

"(2) AGGREGATE MORE THAN $21,600.—The tax imposed by paragraph (1) shall not apply to any individual if the aggregate amount received during the taxable year from the sources therein specified is more than $21,600.

* * * * * * *

"(c) NO UNITED STATES BUSINESS OR OFFICE AND GROSS INCOME OF MORE THAN $21,600.—A nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein who has a gross income for any taxable year of more than $21,600 *from the sources specified*

in subsection (a)(1), shall be taxable without regard to the provisions of subsection (a)(1), except that—

"(1) *The gross income shall include only income from the sources specified in subsection (a)(1);*

"(2) The deductions (other than the so-called 'charitable deduction' provided in section 213(c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a)(1);

"(3) The aggregate of the normal tax and surtax under sections 11 and 12 shall, in no case, be less than 10 per centum of the gross income from the sources specified in subsection (a)(1); and * * *" [Emphasis added.] 52 Stat. 527-528.

The above provisions of sections 212 and 211 were reenacted in the Internal Revenue Code, 53 Stat. 75-76. The tax rates were changed by the Revenue Act of 1940, c. 419, 54 Stat. 516-517 as follows: the surtaxes were increased generally in section 12(b), the flat rates were increased from 10 percent to 15 percent and the allowable maximum income subject to the flat rates was raised from $21,600 to $24,000 in section 211 (a) and (c), 54 Stat. 518. The Revenue Act of 1941, c. 412, 55 Stat. 687, 688, again increased the surtaxes in section 12(b), increased the flat rates from 15 percent to 27½ percent and decreased the allowable maximum income subject to the flat rates from $24,000 to $23,000 in section 211 (a) and (c), 55 Stat. 694. Since then, the normal tax and surtax rates have been increased still further, the flat rate applicable to nonresident alien individuals has been increased from 27½ percent to 30 percent and the allowable maximum income to which the flat rates apply has been reduced to $15,400. 26 U. S. C. section 211 (a) and (c).

"SEC. 119. INCOME FROM SOURCES WITHIN UNITED STATES.

"(a) GROSS INCOME FROM SOURCES IN UNITED STATES.—The following items of gross income shall be treated as income from sources within the United States:

"(1) INTEREST.—* * *

"(2) DIVIDENDS.—* * *

"(3) PERSONAL SERVICES.—* * *

"(4) RENTALS AND ROYALTIES.—*Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property;* and

"(5) SALE OF REAL PROPERTY.—Gains, profits, and income from the sale of real property located in the United States.

"(6) SALE OF PERSONAL PROPERTY.—For gains, profits, and income from the sale of personal property, see subsection (e).

"(b) NET INCOME FROM SOURCES IN UNITED STATES.—From the items of gross income specified in subsection (a) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States.

"(c) GROSS INCOME FROM SOURCES WITHOUT UNITED STATES.—The following items of gross income shall be treated as income from sources without the United States:

"(1) Interest other than that derived from sources within the United States as provided in subsection (a)(1) of this section;

"(2) Dividends other than those derived from sources within the United States as provided in subsection (a)(2) of this section;

"(3) Compensation for labor or personal services performed without the United States;

"(4) *Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties;* and

"(5) Gains, profits, and income from the sale of real property located without the United States.

"(d) NET INCOME FROM SOURCES WITHOUT UNITED STATES.—* * *

"(e) INCOME FROM SOURCES PARTLY WITHIN AND PARTLY WITHOUT UNITED STATES.—* * * Gains, profits, and income from—

"(1) transportation or other services rendered partly within and partly without the United States, or

"(2) *from the sale of personal property* produced (in whole or in part) by the taxpayer within and sold without the United States, or *produced (in whole or in part) by the taxpayer without and sold within the United States,*

shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, * * *

"(f) DEFINITIONS.—* * *." [Emphasis added.] 52 Stat. 503–506, 53 Stat. 53–55, 26 U. S. C. section 119.

APPENDIX B

"THE CURTIS PUBLISHING COMPANY

INDEPENDENCE SQUARE

PHILADELPHIA

February 22, 1938

"PAUL R. REYNOLDS & SON,
599 Fifth Avenue,
New York City.

We inclose herewith our check forty thousand dollars in payment for
Serial: The Silver Cow.
By P. G. Wodehouse. $40,000.00.

"IMPORTANT

"This check is offered and accepted with the understanding that The Curtis Publishing Company buys all rights in and of all stories and special articles appearing in its publications and with the further understanding that every number of these publications in which any portion thereof shall appear shall be copyrighted at its expense. After publication in a Curtis periodical is completed it agrees to reassign to the author on demand all rights, except American (including Canadian and South American) serial rights.

"MOTION PICTURE RIGHTS

"Please note that our reservation of serial rights (which includes publication in one installment) includes new story versions based on motion-picture or dramatic scenarios of short stories and serials that have appeared in Curtis publications, and that we permit the use of such versions only under the following conditions: Such synopsis, scenario, or new story version shall not exceed fifteen hundred (1,500) words in length when based on a short story appearing complete in one issue, or five thousand (5,000) words when based on a serial appearing in two or more issues, or a series of not less than three connected short stories from which a single picture is to be made. Such synopsis shall appear only in circular matter, press books, press notices, trade journals and in magazines devoted exclusively to dramatic or motion-picture matter, and shall in no event appear as having been written by the author. When selling motion-picture or dramatic rights of matter, you must notify the producer to this effect, so that there may be no misunderstanding on his part and no infringement of our rights.

"THE CURTIS PUBLISHING COMPANY"

Respondent's exhibit containing the foregoing memorandum agreement also included the statement rendered and the checks issued by the agent to the respondent and to the respondent's wife for $17,100 each, including the following:

"MARCH 3, 1938.

"P. G. Wodehouse in account with Paul R. Reynolds & Son.

"Received from Saturday Evening Post *for All American, Canadian & South American serial rights to*

The Silver Cow	$40,000
Commission 5 percent	2,000
	38,000
U. S. Income Tax 10 percent	3,800
	34,200
Ethel Wodehouse share one-half	17,100
Draft herewith	17,100"

[Emphasis added.]

No issue is before us relating to the computation of the amount withheld or the division of the payments between the respondent and his wife. In the statements rendered by the agent as to the payments received for serial rights to "Uncle Fred in the Springtime," the initial amount withheld was 10 percent of the full payment without deduction of the agent's commission.

APPENDIX C

"HEARST'S INTERNATIONAL COSMOPOLITAN

Hearst Magazine Building
Fifty-seventh Street and Eighth Avenue
New York City

JULY 23, 1941.

JUL 24, 1941.

"MR. PAUL R. REYNOLDS, SR.,
599 Fifth Avenue,
New York City.

"DEAR MR. REYNOLDS:

"This will confirm our purchase of the article entitled My Year Behind Barbed Wire by P. G. Wodehouse for two thousand dollars ($2,000.00). *We are buying all American and Canadian serial rights (which include all American and Canadian magazine, digest, periodical and newspaper publishing rights).*

"It is understood and agreed that the author, and you as his agent, will not use or permit the use of this article or any part or parts thereof (1) in any manner or for any purpose until thirty (30) days after magazine publication and (2) in connection with or as the basis for any motion and/or talking picture(s), radio broadcast(s), television, dramatic production(s) or public performance(s) throughout the world unless the words 'Based on (or taken from) literary material originally published in Cosmopolitan' immediately precede or follow or otherwise accompany the title of any and all such motion and/or talking pictures, radio broadcasts, telecasts, dramatic productions or public performances.

"Your signature hereon will constitute an agreement between us.

"Sincerely yours,

"FRANCES WHITING.
FRANCES WHITING.

"Accepted:

Date: ---

"I am accepting the above letter on the condition that publication of this article can be released in England simultaneously with publication in Cosmopolitan Magazine (despite the wording of (1) in the second paragraph); with the further understanding that Cosmopolitan will permit no digest or newspaper publication of this article without the consent of the author or his agent in writing; and with the further condition that we receive payment not later than September 1, 1941." [Emphasis added.]

SECTION 213.—DEDUCTIONS

SECTION 29.213-1: Deductions allowed nonresident alien individuals. (Also Section 23(a), Section 29.23(a)-2; Section 119, Section 29.119-10.)

1949-16-13140
G. C. M. 26013

INTERNAL REVENUE CODE

The expenses incurred by a citizen and resident of France, whose principal place of business is in France, in behalf of himself, his manager, and his secretary, in traveling from France to the United States in order to fulfill performance contracts in the United States and Canada, as well as the expenses incurred in returning to France upon completion of such contracts, are deductible for Federal income tax purposes in the proportion that the gross income from sources within the United States bears to the total gross income from sources within both the United States and Canada.

An opinion is requested as to the deductibility, for Federal income tax purposes, of amounts paid by the taxpayer for expenses of himself, his manager, and his secretary, in traveling from France to this country for the purpose of fulfilling performance contracts in the United States and Canada, and in returning to France upon completion of such contracts.

In the instant case, the taxpayer, a citizen and resident of France, has for many years performed in motion pictures, made recordings and radio appearances, and has given concerts in France and other European countries, as well as in the United States. He also owns and manages a number of business enterprises in France. He entered the United States in March, 1947, under a temporary visitor's visa to fulfill performance contracts both here and in Canada. He gave a series of performances here from March 10, 1947, to May 17, 1947, at which time he departed for Canada to carry out his engagements there. Upon conclusion of his performances in Canada, he returned to the United States and departed in June, 1947, for France, where he was scheduled to give concerts.

Section 213(a) of the Internal Revenue Code provides as follows:

GENERAL RULE.—In the case of a nonresident alien individual the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

Section 29.213-1(*b*) of Regulations 111 provides in part as follows:

United States business.—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 deductions allowed by section 23 for business expenses * * * are allowed only if and to the extent that they are connected with income from sources within the United States. * * *

Both the statute and the regulation which are set forth above specify that deductions are allowed to a nonresident alien "only if and to the extent that they are connected with income from sources within the United States." This conditional clause was explained in I. T. 2792 (C. B. XIII-1, 85 (1934)) as follows:

* * * To be allowable, therefore, the deduction must be "connected" with income from sources within the United States. The word "connected" means

"joined or linked together by some tie, as of causality, relationship, or intimacy." The meaning at once suggested is that the requisite tie between the deduction and the income is that of causality, that is, that the expenditure for which the deduction is claimed must enter into, and be directly related to, the production of the income.

The taxpayer, accompanied by his manager and secretary, undertook the trip from France to this continent and return for the express purpose of fulfilling performance contracts in the United States and Canada, and those engagements were the immediate cause inducing the transportation expenses in question. Thus, the requisite tie of causality is present here, and such transportation expenses are "connected" with, or directly related to, the production of income in the United States and Canada. It follows that such expenses qualify under section 213(a) of the Code "to the extent that they are connected with income from sources within the United States," provided they also constitute deductible business expenses under section 23(a)(1)(A) of the Code.

Since the transportation expenses of the taxpayer, his manager, and his secretary, in traveling to the United States and in returning to France, cannot be allocated exclusively to income from sources within the United States, such expenses should be apportioned upon the ratio of gross income from sources within the United States to the total gross income from sources within both the United States and Canada which resulted from that trip. (See section 29.119–10 of Regulations 111.)

There remains to be considered whether the apportioned part of such expenses, thus allocated to income from sources within the United States, is deductible as a business expense under section 23(a)(1)(A) of the Code or, more specifically, as a traveling expense (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business. The taxpayer's home and principal or regular place of business during the period in question was in France. While in the United States, he was on a business trip which required nothing more than a temporary departure from the place where he customarily carried on his business during the taxable year. Thus, the instant situation is regarded as being closely analogous to that considered in *Coburn* v. *Commissioner* (138 Fed. (2d) 763). The fact that the instant taxpayer is a nonresident alien does not affect the application of the general principles governing the deductibility of traveling expenses. (See *Virginia Ruiz Carranza* (*Zuri*) v. *Commissioner*, 11 T. C. 224.) Accordingly, it is believed that the apportioned part of such traveling expenses which is allocable to income from sources within the United States constitutes a deductible traveling expense under section 23(a)(1)(A) of the Code.

G. C. M. 4956 (C. B. VII–2, 128 (1928)), which disallowed the deduction claimed by a nonresident alien musician for annual, round-trip transportation expenses between the United States and Austria, is readily distinguishable from the instant case because that musician's principal and apparently his only place of business was in the United States; consequently, those expenses were not directly connected with his performance in a domestic orchestra or with his income from sources within the United States. The motivating factors of such travel were apparently his personal conveniences and necessities rather than the exigencies of his trade or business. (See *Commissioner* v.

Flowers, 326 U. S. 465; Ct. D. 1659, C. B. 1946-1, 57.) The rule stated in the second sentence of O. D. 451 (C. B. 2, 157 (1920)), which disallows the expenses incurred in reaching a new place of employment in a foreign country, apparently concerns an employee who accepts an employment contract of indefinite duration and thereby establishes his principal or regular post of duty in such foreign country. (Cf. *John D. Johnson* v. *Commissioner*, 8 T. C. 303.) Such a rule is not applicable to an individual who accepts, in pursuit of his trade or business, one or more short-term contracts which require but a temporary departure from his usual place of business. (*Coburn* v. *Commissioner*, *supra*.) The essential facts in the instant case appear to be substantially the same as those involved in I. T. 3034 (C. B. XV-2, 136 (1936)). There, a nonresident alien musician was allowed to deduct his expenditures for meals and lodging while on a brief concert tour in this country. If that musician, who left his home and principal or regular place of business for the sole purpose of engaging in a brief concert tour in this country, had claimed a deduction for expenses incurred in traveling to and from the United States, such deduction, in the opinion of this office, would also have been allowable.

For the reasons stated above, it is the opinion of this office that the apportioned part of the expenses paid by the taxpayer for transportation of himself, his manager, and his secretary, in traveling to and from the United States, which is allocable to income from sources within the United States, constitutes a proper deduction for Federal income tax purposes.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

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. 5709, page 56.)

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES

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

SECTION 29.251-1: Citizens of the United States and domestic corporations deriving income from sources within a possession of the United States. — I. T. 3981

INTERNAL REVENUE CODE

In the case of an individual member of a partnership, gross income, for the purposes of section 251 of the Internal Revenue Code, relating to income from sources within possessions of the United

States, includes the partner's proportionate share of the partnership's gross income, not his distributive share of the partnership's ordinary net income.

Advice is requested whether, for the purposes of section 251 of the Internal Revenue Code, relating to income derived from sources within possessions of the United States, gross income derived by a partner from a partnership consists of his proportionate share of the partnership's gross income or his distributive share of the partnership's ordinary net income.

It is contended that Supplement F (sections 181 through 190) of Subchapter C of Chapter 1 of the Internal Revenue Code contains provisions which change the nature of the gross income derived by a partner from a partnership so that it consists (with exceptions not hereto relevant) only of his distributive share of the partnership's ordinary net income, and not of gross income such as is contemplated by section 22 of the Code.

With the exception of section 187 of the Code, none of the sections of Supplement F contains any reference to gross income. Even in section 187, no indication is given that, as the term is there used, gross income is anything other than the items specified in section 22 of the Code.

Section 29.189–1(*a*) (3) of Regulations 111 reads in part as follows:

His distributive share of a business ordinary net income of the partnership shall be included by each partner as ordinary business gross income, and of a business ordinary net loss of the partnership as an ordinary business deduction. His distributive share of a nonbusiness ordinary net income of the partnership shall be included by each partner as ordinary nonbusiness gross income, and of a nonbusiness ordinary net loss of the partnership as an ordinary nonbusiness deduction.

The sole purpose of section 29.189–1 of Regulations 111 is to interpret section 189 of the Code, a section which deals with the application of section 23(s) of the Code to partnership income. Both the purpose and the language of the regulation are such as to preclude any reasonable contention that it has the objective of prescribing that the gross income derived by a partner from a partnership should consist only of his distributive share of the partnership net income. It is apparent, therefore, that there is nothing in Supplement F which makes any exception or addition to the concept of gross income as set forth in section 22 of the Code.

The general provisions of the income tax statute, in the absence of specific provisions to the contrary, apply to partnership income as if it were received by the partners without the intervention of the partnership. Although a partnership may generally be considered as a business unit, it is, from the viewpoint of Federal income taxation, a unit only for the purpose of making an information return on Form 1065 (United States Partnership Return of Income). Neither the partnership itself nor the partnership return can insulate the partner from his allocable portion of the partnership gross income. Form 1065 is analogous to certain of the schedules contained in Form 1040 (U. S. Individual Income Tax Return) in which the gross income derived from specified sources is entered and the deductions directly allocable thereto are subtracted, the difference constituting an item of adjusted gross income (cf. section 22(n) of the Internal Revenue Code). If, for purposes of Federal income taxation, it is necessary

to determine the taxpayer's gross income, the amount of gross income entered in such a schedule, not the amount of adjusted gross income, is controlling. An essential difference between the schedules in Form 1040 and the return on Form 1065 is that the schedules apply to but one return, whereas Form 1065 generally applies to two or more returns. But the individual partner's distributive share of the partnership's ordinary net income is as clearly an item of adjusted gross income as if the computation by which it was arrived at had been set forth on his individual return.

The requirements of section 251(a) of the Code are based on amounts of gross income as well as sources of gross income. Adjusted gross income does not enter into the calculations made to determine whether the taxpayer is entitled to its benefits. A taxpayer claiming the benefits of section 251, all or a part of whose gross income during the applicable period thereunder was derived from a partnership, must determine, in addition to the sources of gross income, the amount of the gross income of that partnership which is allocable to him and make his calculations accordingly. His distributive share of the ordinary net income of the partnership does not affect this calculation.

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

INTERNAL REVENUE CODE

Regulations 111 amended. (See T. D. 5709, page 56.)

CHAPTER 2.—ADDITIONAL INCOME TAXES

SUBCHAPTER E.—EXCESS PROFITS TAX

PART I

SECTION 719.—BORROWED INVESTED CAPITAL

SECTION 30.719–1, REGULATIONS 109: Borrowed invested capital. 1949–21–13210 Ct. D. 1724

EXCESS PROFITS TAX—INTERNAL REVENUE CODE—DECISION OF COURT

BORROWED INVESTED CAPITAL—WHETHER ADVANCES TO TAXPAYER BY FACTOR REPRESENTED "BORROWED CAPITAL."

Taxpayer corporation entered into a written agreement with a factor in order to obtain sufficient capital for its business, under which agreement it assigned its accounts receivable to the factor and the latter agreed to advance 90 percent of the face value of such accounts, and the balance, less the factor's charges, upon payment of the assigned accounts. The assignments were effected by instruments separate from the agreement. *Held:* The agreement and assignments together were equivalent in effect and in reality to an indebtedness evidenced by a mortgage within the meaning of section 719(a)(1) of the Internal Revenue Code, and accordingly

the advances constituted "borrowed capital" for the purposes of computing excess profits credit under sections 712 and 714 of the Code.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Brewster Shirt Corp., petitioner, v. *Commissioner of Internal Revenue, respondent*
[159 Fed. (2d) 227]

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

Before SWAN, AUGUSTUS N. HAND, and CLARK, Circuit Judges

[January 11, 1947]

From an order determining a deficiency of $3,148.91 in the excess profits taxes of the petitioner Brewster Shirt Corp. on the ground that certain of the assets did not constitute borrowed invested capital within the meaning of section 719 of the Internal Revenue Code, the petitioner appeals. Reversed.

OPINION

AUGUSTUS N. HAND, Circuit Judge: The taxpayer seeks to have reversed an order of The Tax Court of the United States which sustained a determination by the Commissioner of Internal Revenue of a deficiency in excess profits taxes for the year 1941 in the amount of $3,148.91.

The question before us is whether various advances to the taxpayer by its factor Mills Factors Corp. represented "borrowed capital" within the meaning of section 719(a)(1) for the purpose of computing its excess profits.

Section 710 of the Revenue Act fixes the tax on adjusted excess profits net incomes. In arriving at the tax the Commissioner disallowed a sum of $185,332.77 borrowed from Mills Factors Corp. which the taxpayer had set forth in its return for the purpose of establishing a proper credit in reporting its excess profits net income for the year 1941. The propriety of this disallowance depends on whether that sum was "borrowed capital" which in turn depends on the interpretation to be placed on the portions of section 719 of the Act quoted in the margin.[1]

The Commissioner gave a narrow construction to the words "bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage or deed of trust * * *" and assessed a deficiency in excess profits taxes by holding that the taxpayer was not entitled to the credit claimed under sections 712 and 714 because the loans by Mills Factors Corp. did not come within any of the specifications of section 719. The Tax Court affirmed the Commissioner.

The Brewster Shirt Corp. was organized in 1931 with a capitalization of $40,000, of which $18,000 was expended in purchasing a factory at Danbury, Conn. That expenditure left it with insufficient capital for profitable operation and it was obliged to resort to the common practice of factoring its accounts in order to obtain sufficient capital for its business. Accordingly it entered into a written agreement with Mills Factors Corp. under which it assigned its accounts receivable to the Factor and the latter agreed to advance 90 percent of the face value of such accounts and the balance upon payment of the assigned accounts. As is common in such factoring agreements there was a stipulated charge on the part of the Factor, for its expenses and services, of three-fourths of 1 percent per month on the net sales of the taxpayer assigned to the Factor. The taxpayer agreed to repurchase at face value accounts which were not paid at their maturity, assumed all credit risks with respect to the accounts, including liability for defects in goods and agreed to hold returned merchandise in trust for the Factor until any

[1] SEC. 719. BORROWED INVESTED CAPITAL.

(a) BORROWED CAPITAL.—The borrowed 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:

(1) The amount of the outstanding indebtedness (not including interest, and not including indebtedness described in section 751(b) relating to certain exchanges) of the taxpayer which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage or deed of trust, * * *

amounts advanced thereon should be repaid. The parties stated the general terms of their arrangements as set forth in the margin.[2]

In accordance with the agreement the taxpayer assigned accounts receivable to Mills Factors Corp. and obtained money thereon from the Factor. These assignments were effected by instruments separate from the agreement, reflected the specific accounts assigned, and were in the following form:

"For value received, we hereby sell, assign, transfer and set over unto Mill Factors Corp., its successors and assigns the accounts receivable indicated below and all of our right, title and interest in and to any merchandise therein described that may be returned to us and we hereby guarantee to said Mill Factors Corp. that such accounts are just and true, that no payments have been made on account thereof, that there are no defenses, counterclaims or offsets thereto, that the terms of credit are as specified therein and that no part of these accounts has been assigned, transferred or in any other manner encumbered, except as therein stated. This assignment is made pursuant to the agreement between us and Mill Factors Corp. dated 3/24/38."

At the end of each month a statement was submitted by the Factor to petitioner showing balance of the amount advanced by the Factor to petitioner. In its excess profits tax return, filed for the year 1941, the taxpayer computed its invested capital and included as part of its average borrowed invested capital 50 percent of its daily average outstanding indebtedness to Mills Factors Corp. If the borrowed invested capital was "evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage or deed of trust, * * *" as prescribed by section 719(a)(1) of the Internal Revenue Act the amount inserted in the return was the correct amount to be credited under section 719(b), which reads as follows:

"(b) Borrowed Invested Capital.—The borrowed invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be an amount equal to 50 per centum of the borrowed capital for such day."

The opinion of the Tax Court in denying the above credit claimed by the taxpayer for borrowed invested capital set forth the taxpayer's contention that the agreement with the Factor and the various assignments of accounts receivable "were in effect and in reality, notes or bills of exchange within the meaning of the quoted section of the Internal Revenue Code," and then merely added: "With this contention we are unable to agree," and cited their decisions in *Journal Publishing Co.* v. *Commissioner*, 3 T. C. 518; *Wm. A. Higgins & Co., Inc.*, v. *Commissioner*, 4 T. C. 1033, and *Flint Nortown Theatre Co.* v. *Commissioner*, 4 T. C. 536, as authority for the result reached.

We think that the decision interprets the credit allowable under section 719 for borrowed invested capital too narrowly and was not required by the prior authorities on which it relied.

It is clear that as soon as accounts were assigned and advances made thereon the agreement and assignments involved security transactions which in law constituted a mortgage. What legally is a mortgage is a matter of substance and not of mere form. This has long been the settled New York doctrine as is shown in the decisions in *Sheldon* v. *McFee*, 216 N. Y. 618, 620; *Dunham* v. *Whitehead*, 21 N. Y. 131, 133; *Leitch* v. *Hollister*, 4 N. Y. 211, 216; cf. *In re Bernard & Katz, Inc.*, 38 Fed. (2d) 40 (C. C. A. 2). While the meaning of the term "mortgage" in a tax statute like the one under consideration is ordinarily a matter for controlling determination by the United States courts, decisions of the State courts which define a commercial term in such common use as "mortgage" are a reasonable source of guidance.

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[2] First: Where terms of sale to customers shall first have been approved by the Factor in writing, and the accounts receivable assigned to the Factor, all as in this agreement provided for, the Factor will purchase said accounts receivable subject to the terms and conditions hereinafter set forth, at their net face value, less trade discounts and commissions. Brewster is to pay interest for all additional time taken by its customers in the payment of their bills, provided such interest is not paid by customer. * * *

Fourth: As collateral security for any and all sums which may now or hereafter be due from Brewster to the Factor, Brewster further and hereby assigns to the Factor, except as noted below, all accounts receivable, bills receivable and other evidences of indebtedness arising from sales or created in the course of Brewster's business, and Brewster hereby grants to the Factor a lien thereon, and upon any and all merchandise of Brewster, the sale of which has resulted in such accounts receivable. Brewster agrees to execute any further form of assignment which may be required by the Factor. The exception refers to all export shipments and also sales made on terms of 10 days or less, which latter may, at Brewster's option, be eliminated from the terms of this agreement.

The effect of the interpretation given by the Tax Court to the term "mortgage" would be to subject factoring agreements to burdensome excess profits taxes. Factoring agreements are common enough but are frequently entered into by persons of only moderate financial strength who cannot obtain the money they need from commercial banks and must borrow at higher cost from institutions having greater freedom in the risks they may take when making loans. We cannot suppose that it was the intention of Congress to subject security given under factoring agreements to a form of taxation which would in effect discriminate against those arrangements in favor of secured bank loans, especially when borrowers from factors are a class frequently least able to bear the burden. The fact that the security was given in the form of outright assignments is quite unimportant when the transaction was in effect a mortgage. Indeed, article "fourth" of the agreement with Mills Factors Corp. assigns all accounts "as collateral security." Article "ninth" and "fourteenth" moreover show that the accounts are collateral for loans and that the borrower is liable for any deficiency.[3] We hold that indebtedness here was evidenced by instruments which constituted a mortgage. It made no difference that article "first" of the agreement provided that the Factor should "purchase said accounts subject to the terms and conditions hereinafter set forth, at their net face value, less trade discounts and commissions" for the advances were in fact loans and assigned accounts, were collateral security by the terms of the agreement and repayment of the advances was guaranteed by the borrower. *Home Bond Co.* v. *McChesney*, 239 U. S. 568.

In *Flint Nortown Theatre Co.* v. *Commissioner*, 4 T. C. 536, it was held that certain advances made on open account were not borrowed invested capital because they were not evidenced by any of the specific evidences of indebtedness enumerated in section 719(a)(1) of the Internal Revenue Code. No mortgage was involved. In *Wm. A. Higgins & Co., Inc.*, v. *Commissioner*, 4 T. C. 1033, it was held that when drafts were accepted under letters of credit the letters of credit ripened into an indebtedness to the extent of the acceptances and the acceptances would properly be included as bills of exchange in the computation of borrowed invested capital. No mortgage was involved in the issues before the court in that case. There apparently were trust receipts covering foreign shipments but they were given after the acceptances and did not enter into the discussion by the Tax Court. Similarly in the case at bar when accounts are assigned and 90 percent was advanced thereon the agreement and assignment together constituted a "mortgage" of the accounts to secure the taxpayer's indebtedness to the Factor. In *Journal Publishing Co.* v. *Commissioner*, 3 T. C. 518, it was held that an agreement to purchase certain assets and the good will of a publishing concern for $520,000 was not a note and should not be included in the invested borrowed capital of the purchaser because the liability of the latter was contingent upon the performance of a counter obligation of the seller not to reenter the publishing business during the contract period and was therefore not a certain obligation to pay a fixed amount and accordingly was not the equivalent of a note. No mortgage was involved.

We cannot see that any of the above decisions of the Tax Court indicate that the factoring arrangements in the case at bar were not equivalent to an indebtedness evidenced by a mortgage.

The order of the Tax Court is reversed and the proceeding remanded.

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[3] Ninth: Brewster assumes all credit risks in connection with the sales made by it hereunder. Brewster shall pay to the Factor upon its request, or, at the option of the Factor, the same may be deducted from any amounts due or to become due on other accounts previously or subsequently assigned, the amount of any account which shall be disputed in whole or in part or where the merchandise through the sale of which such assigned account has resulted or is represented to have resulted, is for any reason not finally accepted by the customer and the amount of any account the debtor owing which shall fail or become insolvent, make a general assignment, have a receiver appointed, or become a party to any proceeding in bankruptcy in which its adjudication in bankruptcy is sought, or for an extension of time to pay its debts pursuant to section 74 or 77–b of the Bankruptcy Act, or, in any event, where an assigned account shall be more than 20 days past due, plus the Factor's commission and all other charges incurred by it hereunder in connection therewith, and thereupon the Factor will reassign such account to Brewster.

Fourteenth: If at the termination of this agreement there is any money owing to the Factor, the same shall be paid by Brewster, upon request, otherwise the Factor may sell any collateral held by it at public sale, with 10 days' notice to Brewster. The net proceeds thereof after deduction of all costs of sale, commissions and charges, including legal expenses, shall be applied to the indebtedness of Brewster hereunder. Any surplus shall be turned over to Brewster, but if there be a deficit, Brewster shall remain liable. At its option, the Factor may, in lieu of selling any or all of the accounts receivable, collect such of the accounts as it may choose, charging to Brewster all expenses of collection, including legal expenses, and apply the net proceeds thereof to the indebtedness of Brewster to the Factor hereunder.

EXCESS PROFITS TAX COUNCIL

1949-14-13127
E. P. C. 43

Treatment of abnormalities attributable to extraordinary effect of preparation for the war and factors resulting from the outbreak of the war on September 1, 1939.

1. The P Corporation was organized in 1926 to engage in the manufacture of aircraft. Until 1934 its activities were principally research and development, sales being confined to custom-built planes. During 1934 it first offered for general sale two types of aircraft—designated XM and XC. XM was suitable for military use only. XC was adaptable to both military and commercial purposes. Through 1938 sales were confined to these two types, as modified and improved from time to time. Taxpayer had no foreign business prior to 1939.

2. In April, 1939, the P Corporation entered into a contract with the government of a highly industrialized European nation calling for the speedy manufacture of 150 military aircraft of a type known as XM-2. This plane was generally similar to XM but, in accordance with the national policy of the European nation involved, previously had been manufactured solely by producers native to that country. By a second contract executed in November, 1939, the quantity was increased to 350 and the taxpayer agreed to increase its capacity for production by acquiring additional facilities, the major part of the cost of such facilities to be contributed by the foreign government. The additional facilities were completed and first put into use during 1940.

3. Sales of the taxpayer, in terms of units and types of aircraft sold from 1934 through 1939, were as follows:

	For commercial use (XC)	For military use		Total
		United States Government (XM)	Foreign (XM-2)	
1934	1	6		7
1935	18	12		30
1936	32	15		47
1937	38	14		52
1938	51	35		86
1939	65	95	24	184

4. Actual earnings per unit sold during the base period increased with volume until by 1939 they approximated x dollars per plane for XM and XC. 1939 earnings for XM-2 were $2x$ dollars per unit. For standard-issue purposes taxpayer's average base period net income is equal to its actual earnings for 1939 by reason of the application of the growth formula under the provisions of section 713(f).

5. The P Corporation filed applications for relief under section 722 alleging that it had changed the character of its business immediately prior to and during the base period by (*a*) introducing a new product, XC, during 1934; (*b*) introducing a new product, XM, during 1934; (*c*) entering the European export market during 1939 with a new product, XM-2; and (*d*) committing itself during 1939 to change its capacity for production or operation through the acquisition of addi-

tional facilities. As a part of its claim, the taxpayer has determined its constructive level of earnings as of December 31, 1939, by assuming that each of the first three changes in character took place 2 years before they actually were made and by assuming that the increase in facilities was completed December 31, 1937.

6. The record indicates that sales of aircraft by the P Corporation during the base period were affected by the following major influences:

(*a*) the technological developments in the industry which resulted in permanently greater acceptance and utilization of air transportation in the normal economic life of the world;

(*b*) the growing realization of the potentialities of aerial warfare which resulted in an increase in the proportion of usual military expenditures allocated to aircraft and related equipment;

(*c*) the relatively permanent improvement in the P Corporation's competitive position in its industry which permitted it to capture an increased proportion of the growing normal market for aircraft; and

(*d*) the increasing international tension and warlike activity abroad which led to unusually large expenditures for military purposes attributable to preparation for the war as distinguished from ordinary expenditures incident to security force maintenance.

7. The following statements were made by the Council in E. P. C. 6 (C. B. 1946–2, 123):

> Thus, in establishing normal earnings, factors attributable to conditions induced by the war or preparations for the war will be considered abnormal to the extent, if any, that such factors were not typical, in character or degree, of the domestic economy during the base period. No factors resulting from the outbreak of the war on September 1, 1939, will be regarded as normal.

In making these statements the Council recognized:

(*a*) that expenditures for a military establishment are necessary at all times to the national security of the government of any nation and that the ordinary cost of maintaining such establishments throughout the world is a factor which is typically reflected in our domestic economy;

(*b*) that the war anticipated by the major powers was of such scope that preparation prior to actual hostilities extended over a number of years preceding September, 1939, during which period expenditures for security purposes exceeded those ordinarily to be expected;

(*c*) that, while our domestic economy during the base period was influenced by such preparation for the war, this factor, in the main, had no extraordinary effect on the earnings of the typical taxpayer and, hence, in the usual case is not considered to be an abnormality or to otherwise require adjustment;

(*d*) that, on the other hand, in the case of certain taxpayers the unusually large preparatory expenditures resulted in abnormal profits identifiable as resulting from such preparatory expenditures and so substantial in amount as clearly to be improper elements for the purpose of establishing a standard of normal earnings; and

(*e*) that events or conditions resulting from the outbreak of the war on September 1, 1939, are not proper elements to be in-

cluded in normal earnings whether relief is sought because of such events or conditions or upon other grounds.

8. In E. P. C. 13 (C. B. 1947–1, 83), the Council discussed abnormal variation, fluctuation, and growth. Abnormal variation and fluctuation were distinguished as follows:

> A variation in income, expense, or net earnings of a particular character of magnitude will be normal (i. e., "fluctuation") when it would ordinarily be expected to occur within the base period or any equal interval, or abnormal (i. e., "abnormal variation") when it would ordinarily be expected to occur if at all, only after intervals substantially longer than the base period.

Growth was defined as "a relatively permanent increase, during the base period, in the level of the taxpayer's earnings" evidenced by changes such as the first three of the four factors listed in paragraph 6 above.

9. In applying these principles to a case such as the one presented here, the taxpayer is entitled to a reconstruction of normal earnings that gives effect to the higher of—

(*a*) taxpayer's actual level of earnings as of December 31, 1939, adjusted to compensate for abnormalities attributable to any extraordinary effect of preparation for the war and any factors resulting from the outbreak of the war on September 1, 1939; and

(*b*) taxpayer's constructive level of earnings as of December 31, 1939, determined by application of the push-back rule; which would not include among the assumptions made any extraordinary effects of preparation for the war or any factors resulting from the outbreak of the war on September 1, 1939.

10. With respect to type XC, it has been determined that there is involved no abnormality attributable to any extraordinary effect of preparation for the war and no factor resulting from the outbreak of the war on September 1, 1939. The taxpayer's actual level of earnings as of December 31, 1939, has been determined to reflect production at the rate of 70 planes of this type a year. By applying the push-back rule and assuming that it had introduced XC during 1932 (i. e., 2 years before it actually did so), taxpayer has established its constructive level of earnings as of December 31, 1939, which includes 75 planes of this type a year. In making these determinations, the relatively permanent greater acceptance by the end of the base period of commercial air transportation and the accompanying more profitable market enjoyed by producers of acceptable commercial planes are factors which have been taken into account, along with the P Corporation's growth within its industry. These are conditions which, subject to general economic fluctuation during the base period, properly may be assumed to have existed during the entire base period.

11. With respect to type XM, it has been determined that there is involved some abnormality attributable to the extraordinary effect of preparation for the war, but that there is no factor resulting from the outbreak of the war on September 1, 1939. Under these circumstances, taxpayer's actual level of earnings as of December 31, 1939, has been adjusted to eliminate earnings resulting from this abnormality. As adjusted, it includes 50 planes of this type. By applying the push-back rule and assuming that it had introduced XM in 1932 (i. e., 2 years before it actually did so), and that United States Government buying reflected no extraordinary effect of preparation for the war, taxpayer has established its constructive level of earnings as of Decem-

ber 31, 1939, which includes 60 planes of this type. In making these determinations the relatively permanent greater acceptance by the end of the base period of the airplane as a usual and ordinary part of the peacetime security program is a factor which has been taken into account, along with the P Corporation's growth within its industry. These circumstances also may be assumed to have existed during the entire base period.

12. With respect to type XM-2, it has been determined that the first contract is in its entirety attributable to the extraordinary effect of preparation for the war and that any constructive production under the second contract would be in its entirety the result of the outbreak of the war on September 1, 1939. Under these findings, the taxpayer's actual level of earnings as of December 31, 1939, requires adjustment to eliminate entirely the effect of performance under the first contract and the effect, if any, of preparation for performance under the second contract. Neither contract is a proper element to be included in normal earnings, and neither can be made a subject for application of the push-back rule. In short, normal earnings for the taxpayer have been determined under the assumption that these contracts did not exist.

13. In light of the facts found, it has been determined that the taxpayer's activities represent to such an extent abnormalities attributable to the extraordinary effect of preparation for the war and factors resulting from the outbreak of the war on September 1, 1939, that actual earnings for 1939—the amount of average base period net income—exceed normal earnings. Whether activities of a taxpayer, in whole or in part, represent abnormalities attributable to the extraordinary effect of preparation for the war or factors resulting from the outbreak of the war on September 1, 1939, are determinations which must be made in light of all the facts and for which no precise rules can be formulated. The determinations made in the three preceding paragraphs are not to be construed as setting any fixed pattern to be followed in cases involving these problems. Thus, it is not the position of the Council that all manufacturers of aircraft (or of military supplies, ships, machine tools, and other items commonly associated with national security and preparedness programs) necessarily were abnormally affected by preparation for the war or that all defense orders from foreign governments, in whole or in part, are not proper elements to be included in normal earnings. Neither is it intended to preclude the finding, in a proper case, that a taxpayer may have abnormal income from domestic sales to private industry by reason of reduced competition arising from an extraordinary influx of foreign orders attributable to preparation for the war.

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

JUNE 20, 1949.

1949-25-13252
E. P. C. 44

Under the facts given, the Council holds that taxpayer is entitled to consideration under section 722; that taxpayer's method of averaging constructive base period earnings is not acceptable; and that the fair and just amount representing normal earnings is $52,800.

1. The Q Corporation, which was organized in 1925 for the purpose of operating a summer resort hotel having a season extending from June 15 through September 15, filed application for relief under section 722 for the fiscal year ended September 30, 1942. It alleged as its sole ground that its average base period net income is an inadequate standard of normal earnings because its base period operations were interrupted by a fire. Due to a change in accounting period, the taxpayer's base period determined under section 713(b) is a period of 57 months, commencing January 1, 1936, and ending September 30, 1940. The fire occurred during December, 1939, and caused the taxpayer to suffer a loss for the fiscal year ended September 30, 1940.

2. The actual base period earnings of the Q Corporation were as follows:

Taxable year ended—	Earnings	Index (1939=100)
Dec. 31, 1936	$52,100	86.9
Dec. 31, 1937	54,600	91.0
Sept. 30, 1938 (9 months)	44,500	74.1
Sept. 30, 1939	60,000	100.0
Sept. 30, 1940	(13,000)	

3. The taxpayer receives no gross income except during its 3-month season and deductions applicable to the nine off-season months are nominal. It is admitted that, for all practical purposes, the earnings for the 9-month period ended September 30, 1938, are equivalent to the earnings for a full year. An index of earnings compiled from data relating to four competing hotels (using 1939 as 100) shows a close correlation with an index derived from taxpayer's earnings for 1936, 1937, 1938, and 1939 seasons and indicates a relation to 130 for the 1940 season. It is the taxpayer's contention that constructive earnings for its fiscal year 1940 should be at least $60,000 (i. e., 100 percent of fiscal year 1939) and possibly more, if it could satisfactorily eliminate from the index of its four competitors the effect of its own inability to operate during the 1940 season. The taxpayer further contends that the resulting aggregate constructive base period earnings should be divided by 57 and the quotient multiplied by 12 to obtain its constructive average base period net income.

4. This application for relief presents questions typical of those encountered in dealing with taxpayers having standard-issue base periods other than the four calendar years 1936 through 1939. Since such cases are numerous, it is considered advisable in this memorandum to discuss the problem somewhat generally, as well as in its relation to the particular facts presented by the claim of this taxpayer.

5. The Q Corporation is entitled to consideration under section 722. The taxpayer's excess profits credit, computed without benefit of section 722, is based upon its average base period net income, which, in turn, is based upon the excess profits net income for each of the five taxable years in its standard-issue base period. The fire is an event, unusual and peculiar in the Q Corporation's experience, which interrupted its operation during the standard-issue base period and which adversely affected excess profits net income for the fiscal year 1940. It may be admitted for purposes of this discussion that the fire also adversely affected average base period net income.

6. Whether the taxpayer is entitled to relief under section 722 will depend upon whether its average base period net income is an inadequate standard of normal earnings and, as stated in E. P. C. 16 (C. B. 1947–1, 90), there is, in principle, no test for this other than a comparison of average base period net income and constructive average base period net income. With respect to the concept of constructive average base period net income, the following statement made in E. P. C. 35 (C. B. 1949–1, 134) should be kept in mind:

> * * * while the grounds for qualification necessarily differ, the measure of relief applicable to all corporations entitled to consideration under section 722 is the same.

Without going further, it can be decided that, regardless of the method by which normal earnings for the Q Corporation are to be determined, neither the actual earnings of the four competitors for the 1940 season nor the earnings the Q Corporation would have had for the 1940 season had there been no fire may be considered.

7. It is the view of the Council that normal earnings need not in every case be determined by use of the standard-issue base period and that statements to the opposite effect appearing in the Bulletin on section 722 (e. g., p. 147, G. P. O. printing) are incorrect. To hold otherwise would, for example, be contrary to the purpose of section 722(b)(3) and would immediately prejudice many taxpayers claiming relief under section 722(b)(2). Similarly, E. P. C. 4 (C. B. 1946–2, 122) specifically recognized possible injustice in cases involving standard-issue base periods containing more or less than 48 months coupled with marked seasonal variation in income.[1] Conversely, it is believed that no undue advantage should accrue to any taxpayer because of a standard-issue base period other than the four calendar years 1936 through 1939. In all cases, however, the post-1939 prohibition set forth in the last sentence of section 722(a) must be observed and this ruling is not to be construed as modifying E. P. C. 9 (C. B. 1947–1, 76).[2]

8. In the instant case, the taxpayer has a standard-issue base period containing 57 months. It experiences extreme seasonal variation in income, in that only 3 months in each calendar year are of any practical significance. Also, each taxable year in its standard-issue base period contains one complete season, so that if reconstruction were based upon the 57-month period, a fair and just amount representing normal earnings—on an annual basis—would be 20 percent of the aggregate earnings for the five seasons involved. By contending for a constructive average base period net income equal to twelve fifty-sevenths (or 21 percent) of the aggregate constructive earnings for the five seasons, the taxpayer is asking for the equivalent of 105 percent of the amount to which it would be entitled. Its method of averaging cannot, therefore, be approved.

9. In view of the express prohibition against the use of post-1939 data in determining normal earnings, a determination of constructive

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[1] In that ruling the Council stated that a fair and just amount representing normal earnings could not be determined (even though neither section 722(b)(2) nor 722(b)(3) was involved) without, in effect, employing a period of time other than the taxpayer's standard-issue base period.

[2] The taxpayer cited in E. P. C. 9 [C. B. 1947–1, 76] claimed relief because of a post-1939 change in the character of its business. The reconstruction it sought could not be made unless such post-1939 events or conditions were regarded and also required the assumption that such events or conditions had existed throughout the base period.

average base period net income made by employing a base period ending December 31, 1939, is, as a matter of principle, considered preferable in any case. (See, for example, E. P. C. 23, C. B. 1947-2, 139.) The regulations, however, provide for reconstructions using standard-issue base periods ending after December 31, 1939,[3] and experience has demonstrated that this has practical advantages, in that it avoids accounting difficulties, while at the same time it generally achieves substantial justice. Nevertheless, it does not follow that a standard-issue base period containing more or less than 48 months, or one ending after December 31, 1939, is proper where it results in undue advantage or disadvantage to the taxpayer.

10. Applying the foregoing to this case, the Council believes that there is nothing in the statement of facts inconsistent with holding the fair and just amount representing normal earnings to be equal to one-fourth of the aggregate earnings for the first four taxable years of the Q Corporation's standard-issue base period (i. e., $52,800). The Council cannot agree that the taxpayer is entitled to weight the average by including a fifth season equal to or better than 1939.

HENRY J. MERRY,
Chairman, Excess Profits Tax Council.

NOVEMBER 22, 1949.

CHAPTER 9.—EMPLOYMENT TAXES

SUBCHAPTER A.—EMPLOYMENT BY OTHERS THAN CARRIERS

PART III.—GENERAL PROVISIONS

SECTION 1420.—COLLECTION AND PAYMENT OF TAXES

SECTION 405.606, REGULATIONS 116: Use of Federal Reserve banks and authorized commercial banks in connection with payment of taxes with respect to wages paid on or after January 1, 1950.
(Also Sections 405.107 and 405.605, Regulations 116.)

INTERNAL REVENUE CODE

Regulations 116 amended. (See T. D. 5760, page 123.)

SUBCHAPTER D.—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

SECTION 1621(a).—DEFINITIONS: WAGES

SECTION 405.101, REGULATIONS 116: Wages. 1949-22-13217
I. T. 3976

INTERNAL REVENUE CODE

The active service pay and the retirement pay of chaplains in the military or naval forces of the United States are subject to withhold-

[3] Subparagraph (10), section 30.722-2(*b*), Regulations 109, and subparagraph (10), section 35.722-2(*b*), Regulations 112.

ing of income tax at the source on wages under section 1622 of the Internal Revenue Code.

Advice is requested whether retirement pay of a retired naval chaplain is subject to withholding of Federal income tax at the source on wages.

The underlying question is whether, for purposes of withholding Federal income tax at the source on wages, a chaplain in the United States Navy should be considered a naval officer or a minister of the gospel. Withholding of Federal income tax from the chaplain's pay is required if the chaplain is to be considered a naval officer. Withholding is not required if the chaplain is to be considered a minister of the gospel, since section 1621(a)(9) of the Internal Revenue Code specifically excepts from the term "wages," subject to withholding, remuneration paid "for services performed as a minister of the gospel."

The taxability of pay and allowances of Army and Navy chaplains was considered in I. T. 2760 (C. B. XIII–1, 35 (1934)), in which it was stated in part as follows:

A chaplain in the Army or Navy is a commissioned officer, and the taxpayer's military rank, rather than his calling as a minister, determines his remuneration and emoluments. In other words, the pay and allowances are received by reason of his status as a commissioned officer in the United States Army or Navy and not by reason of his calling or vocation.

The above-quoted statement is applicable to the instant case. It is a well-known fact that not all officers in the military and naval forces are combatants. Some are members of recognized professions, such as lawyers, physicians, engineers, ministers of the gospel, etc. The fact that such an officer in private life may be a member of a profession does not take precedence over, nor supersede, his status as an officer in the military or naval forces. On the contrary, his professional status is merged into his status as a member of the military or naval forces. Consequently, his remuneration, both before and after retirement, as an officer or member of such forces is subject to withholding to the extent provided by the Internal Revenue Code. In I. T. 2963 (C. B. XV–1, 85 (1936)), the following statement was made:

Retirement allowances paid to officers retired from active service in the Regular Army, Navy, or Marine Corps are regarded as compensation for services previously rendered and for awaiting orders to active service whenever the contingency may arise. An officer who is retired from active service is still in the military service of the United States.

Wages representing retired pay for service in the military or naval forces of the United States are subject to withholding unless the individual receiving such pay has been retired because of personal injuries or sickness resulting from active service with such forces. (See section 405.101(*b*), Regulations 116.)

In view of the foregoing, it is held that the active service pay and the retirement pay of chaplains in the military or naval forces of the United States are subject to withholding of Federal income tax at the source on wages under section 1622 of the Internal Revenue Code. It follows, with respect to the specific inquiry presented, that the retirement pay of a retired naval chaplain is subject to such withholding.

SECTION 405.101, REGULATIONS 116: Wages. (Also Section 22(b).)

1949-23-13222
I. T. 3977

INTERNAL REVENUE CODE

Amounts designated as wages, paid to seamen who are disabled in the service of their ships, constitute payments for services rendered and are subject to withholding of income tax at the source under section 1622 of the Internal Revenue Code.

Maintenance and cure (care), including cash payments, provided for such disabled seamen constitute damages received on account of injuries or sickness and are excludible from gross income under section 22(b)(5) of the Internal Revenue Code. Accordingly, they are not subject to withholding of income tax at the source under section 1622 of the Code.

Advice is requested whether (1) payments made to seamen while they are absent from duty due to injury or sickness incurred in the service of their ships, and (2) maintenance and cure (care), including cash payments in lieu thereof, provided for such disabled seamen are subject to withholding of income tax at the source on wages under section 1622 of the Internal Revenue Code.

Early in the development of admiralty law, the right of a seaman who is disabled in the service of his ship to recover from the ship and her owner or operator for wages and for maintenance and cure (care) was established. The obligation of the shipowner or operator to pay wages is limited in duration to the end of the voyage or, if the seaman recovers before then, until he is well and able to find suitable employment. On the other hand, the obligation of the owner or operator to supply maintenance and cure generally lasts so long as the seaman has need for them.

Seamen employed on a vessel registered under the maritime laws of the United States are entitled, upon becoming disabled, to food, lodging, and treatment, without charge, at hospitals of the United States Public Health Service. If the facilities of such a hospital are available, a disabled seaman usually receives treatment there. If such facilities are not available, or if the seaman is not sent to a United States Public Health Service hospital but, instead, is sent to a private hospital, the charges for his food, lodging, and medical care must be paid by the shipowner or operator.

Section 1621(a) of the Internal Revenue Code provides generally that 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, with certain exceptions not here material. Section 1622(a) of the Code provides generally that every employer making payment of wages shall deduct and withhold a tax upon such wages. However, amounts received as damages on account of injuries or sickness do not constitute wages and are excluded from gross income, for Federal income tax purposes, by the provisions of section 22(b)(5) of the Code.

It is held that amounts designated as wages, paid to seamen who are disabled in the service of their ships, constitute payments for services rendered and are subject to withholding of income tax at the source under section 1622 of the Internal Revenue Code. It is also held that maintenance and cure (care) provided for such disabled seamen, either by means of hospitalization or cash payments, constitute damages received on account of injuries or sickness and are excludible from

gross income under section 22 (b) (5) of the Code. They are, therefore, not subject to withholding of income tax at the source under section 1622 of the Code.

SECTION 405.101, REGULATIONS 116: Wages.

INTERNAL REVENUE CODE

Cash allowance received by Columbus, Ohio, police officers for purchase and maintenance of uniforms. (See I. T. 3978, page 24.)

SECTION 1625.—RECEIPTS

SECTION 405.501, REGULATIONS 116: Receipts for tax withheld at source on wages. 1949-19-13178 Circular 2131

Form W-2, Withholding Statement for 1950.—Rules for reproduction.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., August 22, 1949.

Collectors of Internal Revenue and Others Concerned:

1. Form W-2 for 1950 has been approved. It may be reproduced, but its reproduction must have official approval. Requests for such approval must be addressed to the Commissioner of Internal Revenue, Attention: A&C: Col: O, Washington 25, D. C., and must include the proposed form of the reproduction and a sample of the paper to be used. 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 space for the name of the employee must be above that used for the name of the employer.

(*c*) *Data to be shown on Form W-2:* Reproduced Forms W-2 must be designed so as to provide for entry by employers of the same data as to wages paid and tax withheld as required by the official form. A separate showing of the tax withheld from the employee under the Federal Insurance Contributions Act, which may be abbreviated as F. I. C. A., will be permitted if clearly indicated as such. However, only one amount of wages may be shown, the gross wages before any payroll deductions of any nature have been made. Permission will not be granted for reproductions which would permit employers to show, on the original and triplicate copies, any payroll deductions other than those indicated herein. There is no objection to the attachment, to the duplicate portion of the form only, of a stub or extension to provide additional information not authorized for reproduction on the form itself.

(*d*) *Additional copies* similar to Form W-2b may be reproduced for the use of employers. It will be permissible to prepare forms, as

carbon impressions of Form W-2, for use in connection with taxes other than Federal income tax, provided such forms bear no mention of the Internal Revenue Service or the United States Treasury Department. These forms or additional copies must not be placed ahead of Form W-2a in the assembly. Forms for delivery to State or local taxing authorities should be clearly labeled to indicate the purpose for which they are intended and should not bear any part of the designation "Form W-2."

(*e*) *Dimensions:* The official size of the form is 7⅜ inches wide by 3¼ inches in depth, but the depth may vary from 3¼ to 3¾ inches and the width from 7⅜ inches to 8 inches.

(*f*) *Carbonized forms or "spot carbons"* are not permissible. Interleaved carbon, if used, must be of good quality to preclude smudging.

(*g*) *The Government Printing Office symbol* must be omitted from reproduced forms.

(*h*) *Authorized reproduction:* An approved form must bear the notation "App. B. I. R." and the date of its approval in small type on the bottom margin, left-hand side of the face of both the original and the collector's copy, Form W-2a.

2. A facsimile of Form W-2 for 1950 is attached for your information and the information of those who wish to reproduce the form. This facsimile should be made available to any employers or printers in your district who wish to reproduce the form.

3. Correspondence relative to the contents of this circular should refer to its number and to the symbols A&C: Col.

GEO. J. SCHOENEMAN,
Commissioner.

FACSIMILE OF FORM W-2, FOR 1950

The text of Form W-2 for 1950 is reproduced herewith. The form will be printed on buff paper of 16-pound commercial weight and will otherwise be arranged and folded similar to the earlier forms. Requests for approval to reproduce this form must be addressed to the Commissioner of Internal Revenue, Attention: A&C: Col., Washington 25, D. C.

The pages of the form are reproduced in this facsimile in the following order: Front page, original copy; back page, original copy; front page, employee's copy; front page, collector's copy; and front page, employer's copy.

Form W-2
U. S. Treasury Department
Internal Revenue Service

WITHHOLDING STATEMENT—1950
Wages Paid and Income Tax Withheld

ORIGINAL
Do Not Lose This Statement

EMPLOYEE TO WHOM PAID (Print name, full address, and Social Security Number)

Total wages (before pay-roll deductions) paid in 1950	Federal income tax withheld, if any
$	$

EMPLOYER BY WHOM PAID (Name, address, and Social Security Identification Number)

NOTICE TO EMPLOYEE

This statement is important!

It must be attached to your U. S. income tax return for 1950.

See instructions on other side

INSTRUCTIONS FOR FILING U. S. INCOME TAX RETURN

Who Must File.—If your income in 1950 was $600 or more, you must file an income tax return either on Employee's Optional Income Tax Return (Form 1040A) or on Form 1040. Copies of these forms may be obtained from the Collector of Internal Revenue, your employer, bank, or post office.

A single person with less than $600 income should file a return to get a refund if tax was withheld. A married person with income less than her (or his) own personal exemption(s) should always file a joint return with husband or wife to get the smaller tax or larger refund for the couple.

Filing on Form 1040A.—If your total income was less than $5,000 and consisted entirely of wages reported on Withholding Statements (Forms W-2), or of such wages and not more than $100 total of other wages, dividends, and interest, you may use Employee's Optional Income Tax Return (Form 1040A). The Collector will compute the tax and send you either a check for any refund due you or a bill for any amount you owe. He will determine your tax from the table provided by law which allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous items.

Filing on Form 1040.—If your income does not meet the tests given in the preceding paragraph, or you had income from any other source, such as rents, annuities, etc., you must use Form 1040 and compute your own tax. Also, it will generally be to your advantage to file Form 1040 if your deductions amount to more than 10 percent of your income, or if you claim traveling or reimbursed expenses.

Joint Returns of Married Couples.—Husband and wife may use Form 1040A if their combined income was less than $5,000 and consisted entirely of wages reported on Withholding Statements (Forms W-2), or of such wages and not more than $100 total of other wages, dividends, and interest.

To assure any benefits of the split-income provisions, a married couple should file a joint income tax return. A joint return on Form 1040A never results in more tax than separate returns because the tax is computed by the Collector on the combined incomes or on the separate incomes, whichever results in the smaller tax or larger refund for the couple.

Form W-2
U. S. Treasury Department
Internal Revenue Service

WITHHOLDING STATEMENT—1950
Wages Paid and Income Tax Withheld

EMPLOYEE'S COPY (DUPLICATE)

EMPLOYEE TO WHOM PAID (Print name, full address, and Social Security Number)

Total wages (before pay-roll deductions) paid in 1950	Federal income tax withheld, if any
$	$

EMPLOYER BY WHOM PAID (Name, address, and Social Security Identification Number)

KEEP THIS COPY FOR YOUR OWN RECORD

Form W-2a U. S. Treasury Department Internal Revenue Service

WITHHOLDING STATEMENT—1950

Wages Paid and Income Tax Withheld

EMPLOYEE TO WHOM PAID (Print name, full address, and Social Security Number)

Total wages (before pay-roll deductions) paid in 1950	Federal income tax withheld, if any
$.....	$.....

EMPLOYER BY WHOM PAID (Name, address, and Social Security Identification Number)

COLLECTOR'S COPY (TRIPLICATE)

To EMPLOYER:

1. Prepare this form in triplicate for each employee (a) from whom tax has been withheld during the year or (b) whose wages for any pay-roll period exceeded the amount of one withholding exemption for such period (even though no tax was withheld).
2. Fill in
   (a) the employee's name, address and S. S. number;
   (b) the total wages paid before any pay-roll deductions;
   (c) the amount of tax withheld, if any; and
   (d) your name, address, and S. S. identification number.
3. Give original and Employee's Copy to the employee.
4. Forward this triplicate copy and all other triplicate copies, together with your yearly Reconciliation Statement, Form W-3, to your Collector of Internal Revenue with your Employer's Quarterly Federal Tax Return (Form 941) for the fourth quarter of the calendar year (or with your final return).

Form W-2b
U. S. Treasury Department
Internal Revenue Service

WITHHOLDING STATEMENT—1950
Wages Paid and Income Tax Withheld

COPY

EMPLOYEE TO WHOM PAID (Print name, full address, and Social Security Number)

Total wages (before pay-roll deductions) paid in 1950	Federal income tax withheld, if any
$.....	$.....

EMPLOYER BY WHOM PAID (Name, address, and Social Security Identification Number)

SECTION 405.501, REGULATIONS 116: Receipts for tax withheld at source on wages.

INTERNAL REVENUE CODE

Former Federal Government employee reemployed by Government during year of separation. (See I. T. 3969, page 13.)

CHAPTER 25.—FIREARMS

SUBCHAPTER A.—PISTOLS AND REVOLVERS

SECTION 2701.—RETURNS

SECTION 405.601, REGULATIONS 116: Return and payment of income tax withheld on wages.

INTERNAL REVENUE CODE

Regulations 116 amended. (See T. D. 5759, page 119.)

CHAPTER 36.—COLLECTION

SUBCHAPTER F.—CLOSING AGREEMENTS AND COMPROMISES

SECTION 3760.—CLOSING AGREEMENTS

1949–24–13240
Mim. 6383

Closing agreements under section 3760 of the Internal Revenue Code.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., March 31, 1949.

Collectors of Internal Revenue, Internal Revenue Agents in Charge, Officers and Employees of the Bureau of Internal Revenue, and Others Concerned:

1. Section 3760 of the Internal Revenue Code authorizes the Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any taxable period. The section further provides that if the agreement is approved by the Secretary, the Under Secretary, or an Assistant Secretary, within such time as may be stated in the agreement, or later agreed to, the agreement will be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, (1) the case shall not be reopened as to matters agreed upon or

the agreement modified, by any officer, employee, or agent of the United States, and (2) in any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

2. Closing agreements under section 3760 of the Internal Revenue Code may relate to any taxable period ending prior or subsequent to the date of the agreement. With respect to taxable periods ending prior to the date of the agreement, the matter agreed upon may relate to the total tax liability of the taxpayer (Form 866) or it may relate to one or more separate items affecting the tax liability of the taxpayer (Form 906), as, for example, the amount of gross income, deductions for losses, depreciation or depletion, or the year for which an item of income is to be included in gross income or the year for which an item of loss is to be deducted, or the value of property on a specified date. A closing agreement may also be entered into in order to provide a "determination under the income tax laws" as defined in section 3801 of the Code and for the purpose of allowing a deficiency dividend credit under section 506 of the Code. With respect to taxable periods ending subsequent to the date of the agreement on Form 906, the matter agreed upon may relate only to one or more separate items affecting the tax liability of the taxpayer. The following, among others, are examples of the latter type of closing agreement: (1) A taxpayer may sell a portion of his holdings in a particular stock. A closing agreement on Form 906 may be entered into fixing the cost or other legal factor determining the basis for computing gain or loss on such sale, and, at the same time, fixing the cost or other legal factor determining the basis (unless or until the statute is changed to require the use of some other factor to determine basis) of the remaining portion of the stock still held by the taxpayer upon which gain or loss will be computed when the taxpayer sells such stock in a later year; (2) if the taxpayer is undecided whether to sell property or hold it, or as to the price at which to sell it, a closing agreement may be entered into determining the market value of the property as of March 1, 1913, for future taxable periods, prior to the consummation of the sale by the taxpayer. Closing agreements may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of agreements relating to the tax liability for a single period.

3. A closing agreement will be entered into and submitted for the approval of the Secretary of the Treasury, the Under Secretary, or an Assistant Secretary, in any case in which (1) there appears to be an advantage in having the case permanently and conclusively closed, such as where, in the settlement of disputed issues, the taxpayer and the Government have made mutual concessions, or (2) where good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is shown that the Government will sustain no disadvantage through consummation of such an agreement, examples of which are:

(*a*) Estates where the fiduciary desires a closing agreement in order that he may be discharged by the court;

(*b*) Trusts, or receiverships, where the fiduciary desires a final determination before distribution is made;

(*c*) Corporations in process of liquidation or dissolution which desire closing agreements in order to wind up their affairs;

(*d*) Cases where, in connection with the taxpayer's financial affairs, creditors demand authentic evidence of the status of the taxpayer's tax liability;

(*e*) Cases where taxpayers desire to follow the consistent practice of closing their returns from year to year;

or (3) such action has been determined appropriate under the provisions of section 506 or section 3801 of the Code, or (4) properly executed amended returns have been filed by taxpayers, after the expiration of the period in which assessments might have been made and where no fraud was involved, if the barred deficiency amounts to $500, or more, and payment has been made. No application for a closing agreement will be rejected solely because there is no apparent advantage to the Government.

4. An agreement as to final determination of tax liability (Form 866) may be entered into only after two conditions have been fulfilled:

(*a*) The taxable period for which the agreement is desired must have ended; and

(*b*) The tax liability for the taxable period must have been determined.

In any case where an agreement of this character is in order, the amount of tax liability for each period shown in the agreement must represent the total tax liability determined for each period (exclusive of any penalty or interest applicable thereto). If, however, in any case it is in the interest of the Government that the closing agreement should be inclusive of ad valorem penalties which have been incurred, the second paragraph of Form 866 will be modified by striking out the words "penalty or," and the tax and penalty will be described in the agreement consistent with the following example:

Period	Character of tax	Title number and revenue act or chapter number and subchapter letter of I. R. C.	Amount of tax
Fiscal year ended Apr. 30, 1939	Income	1, 1938 Act	$2,000
	50 percent penalty		1,000
Fiscal year ended Apr. 30, 1940	Income	1B, I. R. C.	1,500
	50 percent penalty	1C, I. R. C.	750

When the agreement is so modified, the form must be typed in duplicate, and the paper used for both the original and duplicate must be of weight at least equal to that used for the printed form.

5. In cases in which it is proposed to close conclusively the total tax liability for a taxable period ended prior to the date of the agreement, Form 866, Agreement as to Final Determination of Tax Liability, will be used. In cases in which the taxpayer and the Commissioner have concurred in the disposition of one or more issues and a closing agreement is considered necessary to insure consistent treatment of such issues in any other taxable period, Form 906, Closing Agreement as to Final Determination Covering Specific Matters, will be used.

6. In any case in which a taxpayer desires to submit a closing agreement (either on Form 866 or Form 906) and a Form 870 agreement

conditioned upon the approval of the final closing agreement, there should be inserted in the Form 870 a paragraph providing that the waiver of restrictions on assessment and collection contained therein is subject to the approval of the closing agreement, and that if the agreement is not approved under section 3760 of the Code, the waiver shall be ineffective.

7. Where the statutory period of limitation on assessment of tax (if any) for a period covered by the closing agreement will expire on or before the last date upon which the Secretary of the Treasury, the Under Secretary, or an Assistant Secretary, may approve the closing agreement, or will expire within 30 days after that date, the taxpayer should be advised that the closing agreement will not be submitted for approval unless a consent (Form 872) is signed extending the period of limitation for assessment to a date at least 90 days subsequent to the latest day upon which the agreement may be approved.

8. In the preparation of an agreement on Form 866 or Form 906, the following matters should be carefully observed:

(*a*) The agreement must be executed in duplicate.

(*b*) The original and duplicate of the agreement must be identical.

(*c*) The agreement may relate to one or more years.

(*d*) The agreement must be free from erasures or corrections of any kind.

(*e*) The entire tax liability determined must be stated in the Form 866 and such liability must be segregated as to taxable periods and character of taxes, together with the title number and revenue act or chapter number and subchapter letter of the Internal Revenue Code under which each tax covered was imposed.

(*f*) The first "Whereas" clause in the Form 906 must contain an accurate and concise statement of the determination made, preceded by the premise forming the basis of such determination.

(*g*) Terms descriptive of the specific Federal tax or taxes will be used in the agreement, Form 906, e. g., "Federal income tax," or in appropriate circumstances, "Federal income and excess profits taxes," etc.

9. The following requirements with respect to the signatures on closing agreements shall be adhered to:

(*a*) The agreement form for an individual taxpayer must be dated and signed by the taxpayer, or by his legally authorized representative, whose credentials, showing his authority to act on behalf of the taxpayer in the matter of signing the agreement, have been submitted. Any agreement with respect to a year for which a joint income tax return was filed by a husband and wife must be signed by both spouses, except that one spouse may sign as agent for the other, provided an authenticated copy of the document specifically authorizing such agent to act in that capacity has been submitted.

(*b*) The agreement form for a corporation must be dated and signed with the corporate name, followed by the signature and title of an officer (or officers) authorized by the board of directors to execute an agreement of this character on behalf of the corporation (in addition to which the corporate seal must be affixed) and must be accompanied by a certified copy of the resolution

adopted by such board, authorizing the officer (or officers) signing the agreement to act in the matter of closing the tax liability (or matters affecting the liability) of the corporation. In those instances where the corporation involved is in process of dissolution, the corporate name will be followed by the signature and title of the person (or persons) authorized by the board of directors to act in the matter of winding up the corporation's affairs, and the form will be accompanied by a certified copy of the resolution adopted by the board of directors naming and authorizing the person (or persons) acting as trustee or agent in dissolution to wind up the affairs of the corporation. It will also be shown that the authority granted remains in full force and effect. In any instance, however, where the corporation has been dissolved and the period during which any agent or trustee might have acted on behalf of the corporation has elapsed, the agreement form will be dated and signed by individuals representing a majority of the voting stock of the corporation at the date of dissolution and will be accompanied by an affidavit showing the total number of shares of stock outstanding and the number held by each individual at that date.

(*c*) The agreement form for an estate, trust, minor, incompetent, insolvent corporation, etc., must be dated and signed with the name of the taxpayer, followed by the signature and title of each fiduciary (unless it is definitely shown that less than all may act in the matter) and must be accompanied by documentary evidence showing the appointment of the fiduciaries and indicating that their authority to act on behalf of the taxpayer remains in full force and effect.

10. When it has been determined that a closing agreement will be recommended, the "receiving officer" in the office in which the proposed agreement originated will cause to be prepared, for the signature of the Deputy Commissioner, a supporting memorandum in the form shown in the following Exhibit A or Exhibit B. The original and two carbon copies (and an additional copy for each return covered) of that memorandum will accompany the agreement which it supports. In the discussion of the major issues changed or major items unchanged (Form 866) and with respect to the specific matter involved (Form 906), the supporting memorandum must clearly set forth in detail the facts connected therewith, and must show the reason, or reasons, why an agreement of this character should be accepted. Terms descriptive of the specific Federal tax or taxes will be used in the memorandum, e. g., "Federal income tax" or, in appropriate circumstances, "Federal income and excess profits taxes," etc. Any statutes, regulations, decisions, etc., relied upon will be cited and their applicability established. Any other relevant circumstances which may aid the Secretary of the Treasury, the Under Secretary, or an Assistant Secretary, in the exercise of independent judgment in the matter will be shown. The "receiving officer" in the office in which the proposed agreement originated will initial the original of the supporting memorandum in the lower left corner and indicate his recommendation for the acceptance of the proposed agreement in the space provided on the back of the original of the Form 866 or Form 906. The "reviewing officer" in the office in which the proposed agreement originated will initial the original of the supporting memorandum

in the lower left corner and indicate his approval of the proposed agreement in the space provided on the back of the original of the form. The administrative file, including the proposed agreement, original supporting memorandum and the copies thereof, and the necessary documentary evidence in support of the agreement will, in the case of closing agreements prepared in offices of collectors or internal revenue agents in charge, be forwarded to the Bureau in Washington, for the attention of the appropriate Audit Review Division, for post review and transmittal through the proper channels to the Final Agreement Subsection, Proving Section, for recording and control and other necessary action leading to the consummation of the agreement.

11. After approval of a closing agreement affecting or relating to tax liability for a period ending subsequent to the date of the agreement, the appropriate field division should be fully advised as to the basis of the agreement in order that through maintenance of proper records, the Government may be insured against loss through failure to give effect to all the terms thereof in the determination of taxes for periods ending subsequent to the date of the agreement.

12. This mimeograph supersedes Mimeographs 3652 (C. B. VII-2, 79 (1928)), 3670 (unpublished), 3697 (C. B. VIII-1, 118 (1929)), 3711 (C. B. VIII-1, 122 (1929)), 3728 (C. B. VIII-1, 124 (1929)), 3739 (C. B. VIII-1, 123 (1929)), 4149 (C. B. XIII-1, 162 (1934)), and 4821 (C. B. 1938-2, 254), and any other prior instructions in conflict with the provisions of this mimeograph to the extent of such conflict.

13. Communications from collectors regarding the instructions herein contained should be addressed for the attention of A&C: Col. Communications from internal revenue agents in charge should be addressed for the attention of IT: F.

GEO. J. SCHOENEMAN,
Commissioner.

EXHIBIT A

Form of memorandum for Form 866

Symbols

MEMORANDUM TO ACCOMPANY AGREEMENT UNDER SECTION 3760 OF THE INTERNAL REVENUE CODE IN THE CASE OF (NAME OF TAXPAYER) WITH RESPECT TO (CHARACTER OF TAX) TAXES FOR THE (TAXABLE PERIOD)

Character of tax	Period	Total tax liability
Income	Calendar year 19	$
Excess profits	Calendar year 19	
Income	Jan. 1, 19 to Mar. , 19	
Income	Fiscal year ended Mar. , 19	

IN GENERAL

The opening paragraph will contain a statement with respect to the execution of the agreement and the basis upon which it was submitted. If the agreement is signed by other than the taxpayer, the authority for such signature will be given. The opening paragraph should read substantially as follows:

A closing agreement under section 3760 of the Internal Revenue Code has been signed for the (taxable period) by ((1) the above-named taxpayer, if an individual; (2) duly authorized officers, stockholders, or receiver of the above-named corporation, if a corporation; (3) executors, administrators, or trustees, if an estate or trust, mentioning the court or other authority). The agreement was submitted as a result of the taxpayer's acceptance of the tax liability which was computed by an internal revenue agent (or deputy collector).

RETURNS

The opening statement under this heading will contain a description of the taxpayer's business and any relevant facts connected therewith. A schedule will be set up under this heading showing, as set forth in the return, all items of gross income, all deductions, and tax liability for each year. If items of capital gain or loss or "other income" and "other deductions" are shown in the return, an explanation of the computation and composition of these items should be set forth.

FIELD EXAMINATION OF TAX

A statement under this heading will reveal, in tabular form, any and all adjustments to income proposed in any report of field examination. Any further adjustments made upon final review of the case will also be set up in tabular form. That information will be with regard to amounts only, the issue involving the changes will be explained or supported under subsequent headings, and should read practically as follows:

An examination of the taxpayer's books and records was made by an internal revenue agent (or deputy collector) in connection with the returns filed. This examination disclosed an increase (or decrease) in net income of $_____ with resulting deficiency (or overassessment) of $_____ based upon the following adjustments:

Net income as shown on the return			$_____
Additions:			
1	$_____		
2	_____		
3	_____		
Total additions		$_____	
Deductions:			
1	$_____		
2	_____		
3	_____		
Total deductions		_____	
			_____
Net income as adjusted by internal revenue agent (or deputy collector)			_____

The taxpayer accepted these adjustments, and the deficiency was assessed (or an overassessment was disclosed). The minor and major issues resulting in the above deficiency (or overassessment) are hereinafter discussed.

MINOR ISSUES

The statement under this heading will contain a general discussion of the less important issues in the case. Such statement may be brief provided it is sufficient to indicate the propriety of such adjustments.

MAJOR ISSUES

Under this heading, a detailed discussion will be made of all major issues, listed in numerical order. Any law, regulations, decisions, etc., relied upon will be cited and their applicability established. Any other relevant circumstances which may aid the Secretary of the Treasury, the Under Secretary, or an Assistant Secretary, in the exercise of independent judgment will be shown.

MAJOR ITEMS NOT CHANGED

Under this heading, any important or unusual items appearing on the return which have not been changed will be discussed briefly. The concluding paragraph under this heading will indicate that the case has been thoroughly reviewed and that the basis of the final determination proposed appears to comprehend all incidental and necessary adjustments.

STATUTE OF LIMITATIONS

Under this heading, the date of the expiration of the period of limitation for assessment of deficiencies and filing of claims for refund will be given for each year.

SUMMARY

A schedule will be inserted under this heading as follows:

YEAR

	Original return	Finally determined
Gross income	$	$
Deductions		
Net income		
Tax liability		
Tax assessed		
Deficiency or overassessment (date)		

If authoritative information is in the file to the effect that the deficiency has been paid, a statement to that effect should be made. If such information is not in the file, the following paragraphs should be shown as indicated:

1. In cases where deficiencies are indicated for all years involved:

   Any unpaid portion of the liability determined and assessed will be made the subject of notice and demand or other proceedings by the collector of internal revenue of the taxpayer's district.

2. In cases where deficiencies are indicated for some of the years involved and overassessments are indicated for others:

   Taxpayer has waived the restrictions respecting the assessment and collection of any deficiency in tax for any taxable period involved and further agrees to pay such deficiency by credit or otherwise.

3. In cases where overassessments alone are indicated for all years or the returns are accepted as filed, no statement need be made.

The closing paragraph will show the reasons why the consummation of the closing agreement is warranted, or is advantageous to the Government, or why it appears to fall within the exceptions to the general rule.

_____,
Deputy Commissioner.

EXHIBIT B

Form of memorandum for Form 906

Symbols

MEMORANDUM TO ACCOMPANY AGREEMENT UNDER SECTION 3760 OF THE INTERNAL REVENUE CODE IN THE CASE OF (NAME OF TAXPAYER) WITH RESPECT TO A SPECIFIC MATTER AFFECTING THE INCOME TAX LIABILITY OF THAT INDIVIDUAL (OR CORPORATION)

IN GENERAL

A closing agreement under section 3760 of the Internal Revenue Code covering a specific matter (or specific matters) affecting the income tax liability of the above-named individual (or corporation) has been signed by the taxpayer

(or by duly authorized officers, stockholders, executors, administrators, receivers, liquidators, etc., to act in the closing of specific matters). The agreement was submitted as the result of the taxpayer's acceptance of the report made by an internal revenue agent (or deputy collector) to the effect that (state the issue under consideration).

FIELD EXAMINATION

The opening statement under this heading will contain a description of the taxpayer's business and any relevant facts connected therewith.

A further statement under this heading will reveal any and all adjustments to income proposed in any report of field examination. Any further adjustments made upon final review of the case will also be set up. This paragraph should indicate whether or not the taxpayer agreed with the revenue agent's (or deputy collector's) findings.

SPECIFIC MATTER(S)

Under this heading, a detailed discussion will be made of the specific matters proposed for final closing in Form 906. Any law, regulations, decisions, etc., relied upon will be cited and their applicability established. Any other relevant circumstances which may aid the Secretary of the Treasury, the Under Secretary, or an Assistant Secretary, in the exercise of independent judgment will be shown.

The closing paragraph will show the reasons why the consummation of the closing agreement is warranted, or is advantageous to the Government, or why it appears to fall within the exceptions to the general rule.

---,
Deputy Commissioner.

CHAPTER 38.—MISCELLANEOUS PROVISIONS

SECTION 3801(a).—MITIGATION OF EFFECT OF LIMITATION AND OTHER PROVISIONS IN INCOME TAX CASES: DEFINITIONS

SECTION 29.3801(a)(3)-1: Related taxpayer. 1949-26-13259
I. T. 3986

INTERNAL REVENUE CODE

Even though a so-called family partnership is not recognized or treated as valid for Federal income tax purposes, the individuals comprising the partnership are nevertheless "related taxpayers" within the meaning of section 3801(a)(3) of the Internal Revenue Code if the partnership is recognized as valid under State law.

Advice is requested whether the word "partner," as used in section 3801(a)(3)(F) of the Internal Revenue Code, includes the individual members of a so-called family partnership which is not recognized as a valid partnership for Federal income tax purposes but which is recognized as a valid partnership under State law.

Section 3801(a)(3) of the Internal Revenue Code provides in part as follows:

SEC. 3801. MITIGATION OF EFFECT OF LIMITATION AND OTHER PROVISIONS IN INCOME TAX CASES.

(a) DEFINITIONS.—For the purpose of this section—

* * * * * * *

(3) RELATED TAXPAYER.—The term "related taxpayer" means a taxpayer who, with the taxpayer with respect to whom a determination specified in subsection (b) (1), (2), (3), or (4) is made, stood, in the taxable year with respect to which the erroneous inclusion, exclusion, omission, allowance, or

disallowance therein referred to was made, in one of the following relationships: (A) husband and wife; (B) grantor and fiduciary; (C) grantor and beneficiary; (D) fiduciary and beneficiary, legatee, or heir; (E) decedent and decedent's estate; or (F) partner.

In *Lovering* v. *United States* (49 Fed. Supp. 1), it was held that the relationship of fiduciary and beneficiary existed and section 3801 of the Internal Revenue Code, providing in part for the mitigation of effect of limitation in certain cases of correlative adjustments of income between "related taxpayers" therein defined, was applicable even though the trust was properly treated as a corporation and the beneficiary as a stockholder for Federal income tax purposes. It is believed that the court's construction of the statute in that case was fair and reasonable. Practically the same question is presented where taxpayers are operating under an agreement which creates a valid partnership under State law but which, due to surrounding circumstances, is not recognized as such for Federal income tax purposes. The situations being analogous, the rule laid down in the Lovering case is applicable and controlling with respect to the instant inquiry.

Accordingly, it is held that even though a so-called family partnership is not recognized or treated as valid for Federal income tax purposes, the individuals comprising the partnership are nevertheless "related taxpayers" within the meaning of section 3801(a)(3) of the Internal Revenue Code, *supra*, if the partnership is recognized as valid under State law.

INCOME TAX RULINGS.—PART II

REVENUE ACT OF 1938 AND PRIOR REVENUE ACTS

SUBTITLE C.—SUPPLEMENTAL PROVISIONS

SUPPLEMENT B.—COMPUTATION OF NET INCOME

SECTION 119.—INCOME FROM SOURCES WITHIN UNITED STATES

ARTICLE 119–5, REGULATIONS 101: Rentals and royalties.

REVENUE ACT OF 1938

Lump-sum advance payments to nonresident alien author for exclusive publication rights in United States. (See Ct. D. 1722, page 62.)

SUPPLEMENT C.—CREDITS AGAINST TAX

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

ARTICLE 131–8, REGULATIONS 86: Limitations on credit for foreign taxes. 1949–17–13147 G. C. M. 26062

REVENUE ACT OF 1934

G. C. M. 25723 (C. B. 1948–2, 131), relating to the computation of the foreign tax credit under section 131 of the Revenue Act of 1934, is modified by eliminating therefrom the statement to the effect that the decision in *Hubbard* v. *United States* (17 Fed. Supp. 93, certiorari denied, 300 U. S. 666; Ct. D. 1224, C. B. 1937–1, 259) will no longer be relied upon as a precedent in the computation of such foreign tax credit.

Reference is made to G. C. M. 25723 (C. B. 1948–2, 131), relating to the computation of the amount of the credit to be allowed to a citizen of the United States under section 131(a)(1) of the Revenue Act of 1934, as limited by section 131(b) of that Act, in respect of income tax paid to the Philippine Islands.

G. C. M. 25723, *supra*, modified G. C. M. 21432 (C. B. 1939–2, 234), which held in part that where, under section 117(a) of the Revenue Act of 1934, only 30 percent of the capital gains is taken into account for Federal income tax purposes, but the entire amount of capital gains is taxed by the Philippine Islands, the tax paid to that Government on the 70 percent excluded profits, not taxed by the United States, was not allowable as a credit under section 131(a) of the Revenue Act of 1934. However, the Tax Court allowed as a credit the entire tax paid with respect to capital gains, including that portion of the capital gains not subject to United States income tax. (See *I. B. Dexter et ux.* v. *Commissioner* (47 B. T. A. 285, acquiescence, C. B. 1948–2, 1.)

The modification of G. C. M. 21432, *supra*, was based in part on the decision in *Helvering* v. *Nell* (139 Fed. (2d) 865), affirming a

decision of the Tax Court entered on November 6, 1942 (memorandum opinion, Dkt. 107448). One of the issues before the Tax Court in the Nell case involved a credit for taxes paid to the Philippine Islands on salaries from sources therein which were excluded from gross income by reason of section 251 of the Revenue Act of 1928 and sections 262 of the Revenue Acts of 1924 and 1926.

The decision in the Nell case, *supra*, insofar as it allows a credit for taxes paid to the Philippine Islands on salaries excluded from gross income for Federal income tax purposes, is in direct conflict with the decision of the United States Court of Claims in *Hubbard* v. *United States* (17 Fed. Supp. 93, certiorari denied, 300 U. S. 666; Ct. D. 1224, C. B. 1937-1, 259). That case involved the question whether income tax paid to Great Britain on salary earned abroad, which was exempt from Federal income tax under section 213(b) (14) of the Revenue Act of 1926, was allowable as a credit against United States income tax. In disallowing the credit, the court stated in part: "Double taxation exists only when the same income is taxed both in the foreign country and in the United States." The court cited the decision of the United States Supreme Court in *Burnet* v. *Chicago Portrait Co.* (285 U. S. 1; Ct. D. 463, C. B. XI-1, 286 (1932)) wherein it was stated that "the primary design of the provision was to mitigate the evil of double taxation."

In *L. Helena Wilson* v. *Commissioner* (7 T. C. 1469, promulgated December 31, 1946, after the circuit court decision in the Nell case), the Canadian Government taxed as income a legacy of $20,000 which is not considered income under our internal revenue laws. (See section 22(b) (3) of the Internal Revenue Code and *Burnet* v. *Whitehouse*, 283 U. S. 148; Ct. D. 327, C. B. X-1, 366 (1931).) In denying the Canadian tax as a credit against the United States income tax, the Tax Court stated:

> It is almost superfluous for us to add that section 131 was enacted to prevent the *double taxation of the same income in a foreign country and in the United States. Hubbard* v. *United States*, 17 Fed. Supp. 93; certiorari denied, 300 U. S. 666. In the very nature of the facts before us, there is no double taxation. The contrary appears. * * * [Italics supplied.]

In G. C. M. 25723, *supra*, it was stated in part as follows:

> In view of the foregoing, G. C. M. 21432, *supra*, is hereby modified, i. e., in relation to the computation of the foreign tax credit under section 131 of the Revenue Act of 1934, *and the decision in Hubbard* v. *United States, supra, will no longer be relied upon as a precedent in the computation of such foreign tax credit.* [Italics supplied.]

Inasmuch as the italicized portion of the above-quoted paragraph of G. C. M. 25723, *supra*, was not necessary in the modification of G. C. M. 21432, *supra*, and as the result reached in the Hubbard case represents the long-standing position of the Bureau and appears to be legally sound, such italicized portion of G. C. M. 25723, *supra*, is hereby deleted, and that memorandum is modified accordingly.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SECTION 212.—GROSS INCOME

ARTICLE 212–1, REGULATIONS 101: Gross income of nonresident alien individuals.

REVENUE ACT OF 1938

Lump-sum advance payments to nonresident alien author for exclusive publication rights in United States. (See Ct. D. 1722, page 62.)

SECTION 214(a)(3).—DEDUCTIONS ALLOWED INDIVIDUALS: TAXES

ARTICLE 134, REGULATIONS 65: Federal estate and State inheritance taxes. 1949–25–13253 G. C. M. 26211

REVENUE ACTS OF 1918, 1921, AND 1924

Revocation of S. M. 4683 (C. B. V–1, 59 (1926))

In view of the position taken in Mimeograph 6444 (page 11, this Bulletin), relating to the taxable status of tax refunds, S. M. 4683 (C. B. V–1, 59 (1926)) is hereby revoked.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

ESTATE AND GIFT TAXES

ESTATE TAX

SECTION 81.13, REGULATIONS 105: Property of decedent at time of death. — 1949-24-13241 E. T. 22

INTERNAL REVENUE CODE

The decision of the United States Court of Appeals for the Second Circuit in *Jandorf's Estate* v. *Commissioner* (171 Fed. (2d) 464), holding that United States bonds issued after March 1, 1941, are not includible in the gross estate of a nonresident alien who is not engaged in business in the United States, will not be followed by the Bureau.

Advice is requested whether the Bureau will follow the decision of the United States Court of Appeals for the Second Circuit in *Jandorf's Estate* v. *Commissioner* (171 Fed. (2d) 464).

In the above-cited case, Karl Jandorf, a nonresident alien not engaged in business in the United States, died the beneficial owner of United States Treasury bonds, issued after March 1, 1941, and physically located in the United States, in the face amount of $75,000. The decedent also owned similar bonds issued prior to March 1, 1941, in the face amount of $75,000. In that case The Tax Court of the United States held (9 T. C. 338) that the bonds issued after March 1, 1941, are includible in the decedent's gross estate. However, on appeal, the United States Court of Appeals for the Second Circuit reversed the decision of the Tax Court and held that the bonds should not be included in the gross estate of the decedent.

Under the provisions of section 81.13 of Regulations 105, United States bonds are not exempt from Federal estate tax except such bonds as were issued before March 1, 1941, and were beneficially owned by a nonresident who was not a citizen and not engaged in business in the United States.

The contention that United States bonds issued on or after March 1, 1941, beneficially owned by a nonresident who was not a citizen and was not engaged in business in the United States, are exempt from Federal estate tax is based on section 3 of the Fourth Liberty Bond Act of July 9, 1918 (40 Stat. 844, 845), as amended by section 4 of the Victory Liberty Loan Act of March 3, 1919 (40 Stat. 1309, 1311), in which it is provided that bonds, notes, and certificates of indebtedness of the United States shall, while beneficially owned by a nonresident alien individual not engaged in business in the United States, be exempt both as to principal and interest from any and all taxation now or hereafter imposed by the United States.

The estate tax is not a tax on property. It is an excise tax imposed upon the transfer of or shifting in relationships to property at death. (See *United States Trust Co. of New York* (Bunker will) v. *Helvering*, 307 U. S. 57; Ct. D. 1396, C. B. 1939–1 (Part 1), 330.) The above-cited statutory provision specifically exempts from tax the principal and interest of United States bonds. As the estate tax is not a tax on either the principal or interest of such bonds, but is an excise tax on the transfer of the bonds at death, the exemption does not extend to the estate tax. Hence, the bonds are properly includible in the gross estate of a decedent.

In view of the above, it is concluded that the provisions of section 81.13 of Regulations 105 are correct. The decision in *Jandorf's Estate* v. *Commissioner*, *supra*, will therefore not be followed by the Bureau.

SECTIONS 81.17, 81.18, AND 81.19, REGULATIONS 105.

1949–20–13195
T. D. 5741

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 81.—REGULATIONS RELATING TO ESTATE TAX

Sections 81.17, 81.18, and 81.19 of Regulations 105 amended

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

To Collectors of Internal Revenue and Others Concerned:

On April 15, 1949, notice of proposed rule making regarding the application of the Federal estate tax to transfers intended to take effect at or after death was published in the Federal Register (14 F. R. 1824). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments to Regulations 105 [26 CFR, Part 81] set forth below are hereby adopted. Such amendments are necessary to conform such regulations to the decision of the United States Supreme Court in *Commissioner* v. *Estate of Francois L. Church*, 335 U. S. 632. No amendments are required as a result of the decision in *Estate of Sidney M. Spiegel* v. *Commissioner*, 335 U. S. 701.

PARAGRAPH 1. Section 81.17, as amended by Treasury Decision 5512 [C. B. 1946–1, 264], approved May 1, 1946 [26 CFR 81.17], is further amended as follows:

(A) By striking from the first paragraph the second sentence (which begins with the words "The decedent shall not be deemed") and the third sentence (which begins "(For regulations") and inserting in lieu thereof the following:

A right to the possession or enjoyment of, or a right to the income from, the property, or the right to designate the persons who shall possess or enjoy the property or the income therefrom, constitutes a right or interest in the property. (See also sections 81.18 and 81.19.)

(B) By striking from the last sentence of the first paragraph the words "last paragraph" and inserting in lieu thereof "next to the last paragraph".

(C) By striking from the fourth sentence in example (5) the word "also" and by inserting immediately preceding the period at the end

of such sentence the following: ", and is also satisfied by reason of the decedent's life estate".

(D) By striking out example (6) in its entirety and inserting in lieu thereof the following example:

Example (6). The decedent, during his life, transferred property in trust, providing that the income be accumulated and added to corpus until his death, and that the corpus be paid at decedent's death in equal shares to his surviving children. The share of any child who should predecease the decedent was to be paid to his issue, or, if no issue survived the decedent, to other children of the decedent or their issue. If no children and no issue of any child should survive the decedent, the corpus was to be paid to the next of kin of the decedent. It is assumed for the purposes of this example that the disposition to "the next of kin of the decedent" creates a remainder in the persons who at his death are his next of kin and not a reversion to the decedent's estate. In this case, the decedent has parted with every right and interest in the property and hence requirement (2) is not satisfied. Accordingly, no part of the property is includible in the decedent's gross estate under this section.

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

In the case of a decedent who died on or before January 17, 1949, the date of the decision of the United States Supreme Court in *Commissioner* v. *Estate of Francois L. Church*, 335 U. S. 632, property transferred by the decedent shall not be included in his gross estate under this section if the decedent's only right or interest in the property consisted of an estate for his life. (See, however, sections 81.18 and 81.19.)

PAR. 2. Section 81.18 [26 CFR 81.18] is amended by inserting immediately before the second sentence (which begins with the words "A reservation") the following: "(See, however, section 81.17.)"

PAR. 3. Section 81.19 [26 CFR 81.19] is amended by inserting at the end of the third paragraph (but not as a part of subparagraph (2) thereof) the following: "(See, however, section 81.17.)"

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

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 6, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 8, 1949, 8:50 a. m.)

SECTION 81.24(b), REGULATIONS 105. 1949-22-13218
T. D. 5749

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 81.—REGULATIONS RELATING TO ESTATE TAX

Regulations 105 amended to conform to section 1 of Public Law 137 (Eighty-first Congress) [page 269, this Bulletin], relating to release of powers of appointment.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 105 [26 CFR, Part 81] to section 1 of Public Law 137 (Eighty-first Congress, first session) [page 269, this

Bulletin], approved June 28, 1949, such regulations are amended as follows:

PARAGRAPH 1. There is inserted immediately following Public Law 635 (Eightieth Congress, second session), which was inserted in such regulations by Treasury Decision 5658 [C. B. 1948–2, 153], approved October 1, 1948, 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 137 (EIGHTY-FIRST CONGRESS, FIRST SESSION), APPROVED JUNE 28, 1949

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 403(d)(3) * * * of the Revenue Act of 1942 (relating to release of certain powers of appointment in the case of the estate * * * taxes) are hereby amended by striking out "1949" wherever appearing therein and inserting in lieu thereof "1950".

PAR. 2. Section 81.24(*b*), added by Treasury Decision 5239 [C. B. 1943, 1081], approved March 10, 1943, as amended by Treasury Decision 5699 [C. B. 1949–1, 181], approved May 13, 1949 [26 CFR 81.24(b)], is further amended as follows:

(A) By striking out "1949" wherever it appears, except in the second paragraph of (*b*)(3) beginning with the words "Section 2 of Public Law 635, approved June 12, 1948," and inserting in lieu thereof "1950".

(B) By striking from the first sentence of subparagraph (3) "(as amended by Public Law 635 (Eightieth Congress), approved June 12, 1948)" and inserting in lieu thereof the following: "(as amended by Public Law 137 (Eighty-first Congress), approved June 28, 1949)".

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

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

(This Treasury Decision is issued under authority contained in section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791) and section 1 of Public Law 137 (Eighty-first Congress, first session), approved June 28, 1949.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved October 7, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 12, 1949, 8:49 a. m.)

GIFT TAX

SECTIONS 86.1 AND 86.2(b), REGULATIONS 108. 1949-22-13219
T. D. 5750

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER B, PART 86.—GIFT TAX UNDER CHAPTER 4 OF THE INTERNAL REVENUE CODE, AS AMENDED

Regulations 108 amended to conform to section 1 of Public Law 137 (Eighty-first Congress) [page 269, 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 [26 CFR, Part 86] to section 1 of Public Law 137 (Eighty-first Congress, first session) [page 269, this Bulletin], approved June 28, 1949, such regulations are amended as follows:

PARAGRAPH 1. There is inserted after section 374 of the Revenue Act of 1948, which was inserted by Treasury Decision 5698 [C. B. 1949-1, 222], approved May 13, 1949, and immediately preceding section 86.1, the following:

PUBLIC LAW 137 (EIGHTY-FIRST CONGRESS, FIRST SESSION), APPROVED JUNE 28, 1949

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That sections * * * 452(c) of the Revenue Act of 1942 (relating to release of certain powers of appointment in the case of the * * * gift taxes) are hereby amended by striking out "1949" wherever appearing therein and inserting in lieu thereof "1950".

PAR. 2. Section 86.1, as amended by Treasury Decision 5659 [C. B. 1948-2, 155], approved October 1, 1948 [26 CFR 86.1], is further amended by striking from the second sentence "1949" and inserting in lieu thereof "1950".

PAR. 3. Section 86.2(b), as amended by Treasury Decision 5659 [26 CFR 86.2(b)], is further amended as follows:

(A) By striking out "1949" wherever it appears, except in the third sentence of the first paragraph beginning with the words "Section 2 of Public Law 635, approved June 12, 1948," and inserting in lieu thereof "1950".

(B) By striking out "as amended by Public Law 635 (Eightieth Congress), approved June 12, 1948" wherever it appears and inserting in lieu thereof the following: "as amended by Public Law 137 (Eighty-first Congress), approved June 28, 1949".

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

This Treasury Decision shall be effective upon filing with the Division of the Federal Register.

(This Treasury Decision is issued under authority contained in sections 1029 and 3791 of the Internal Revenue Code (53 Stat. 157, 467; 26 U. S. C. 1029, 3791) and section 1 of Public Law 137 (Eighty-first Congress, first session), approved June 28, 1949.)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved October 7, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register October 12, 1949, 8:49 a. m.)

EMPLOYMENT TAX RULINGS

INTERNAL REVENUE CODE

CHAPTER 9, SUBCHAPTER A.—FEDERAL INSURANCE CONTRIBUTIONS ACT

SECTION 1411: Adjustment of tax.
REGULATIONS 106, SECTION 402.702: Adjustment of employees' tax.

Changes effected by use of Form 941. (See T. D. 5759, below.)

SECTION 1411: Adjustment of tax.
REGULATIONS 106, SECTION 402.703: Adjustment of employers' tax.

Changes effected by use of Form 941. (See T. D. 5759, below.)

SECTION 1420: Collection and payment of taxes. 1949-25-13254
REGULATIONS 106, SECTION 402.501: Employers' identification numbers. T. D. 5759
(Also Sections 1411, 1420, and 1421; Regulations 106, Sections 402.504, 402.601, 402.603, 402.607, 402.702, 402.703, and 402.704.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PARTS 402 AND 405

Regulations 106 and 116 amended, with respect to tax-return periods commencing after December 31, 1949, to prescribe a combined return for the reporting of the taxes under the Federal Insurance Contributions Act and the income tax collected at source on wages.

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

To Collectors of Internal Revenue and Others Concerned:

On September 23, 1949, notice of proposed rule making regarding the amendment of Regulations 106 and 116 to prescribe a combined return for the reporting of the taxes under the Federal Insurance Contributions Act and the income tax collected at source on wages was published in the Federal Register (184 F. R. 5808). After consideration of all relevant matter presented by interested persons regarding the proposed amendments, the following amendments are hereby adopted:

PARAGRAPH 1. Section 402.501 of Regulations 106 [26 CFR 402.501] is amended by striking out in the last sentence "Form SS–1a" and by inserting in lieu thereof "Form 941 (or, with respect to periods ended prior to January 1, 1950, Form SS–1a)".

PAR. 2. Section 402.504 of Regulations 106 [26 CFR 402.504] is amended as follows:

(A) By striking out in the first sentence of paragraph (*a*) "Form SS–1a" and by inserting in lieu thereof "Form 941 (or, with respect to periods ended prior to January 1, 1950, Form SS–1a)".

(B) By adding after "Form SS–1a" in the fifth and sixth paragraphs of section 402.504(*a*) the following: "or Form 941".

PAR. 3. Section 402.601 of Regulations 106 [26 CFR 402.601] is amended by adding after the first sentence the following new sentence:

For quarters commencing after December 31, 1949, Form 941 shall be used in lieu of Form SS–1a.

PAR. 4. Section 402.603 of Regulations 106 [26 CFR 402.603] is amended as follows:

(A) By adding after "Form SS–1a" in the first sentence the following: "or Form 941".

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

With respect to periods commencing after December 31, 1949, the term "wages" as used in this section of these regulations includes any remuneration which constitutes wages as defined in either section 1426(a) or section 1621(a) of the Internal Revenue Code. Thus, if an employer ceases to pay wages as defined in one of such sections, but continues to pay wages as defined in the other of such sections, no final return should be filed so long as he continues to pay such wages. If an employer who has been paying remuneration which constitutes wages as defined in each of such sections permanently ceases to pay such wages, a final return is required of such employer. Such final return must be filed on or before the thirtieth day after the date of the last payment of wages as defined in such sections. If an employer who has been paying remuneration which constitutes wages as defined in only one of such sections permanently ceases to pay such wages, a final return is required of such employer. Such final return must be filed on or before the thirtieth day after the date of the last payment of wages as defined in such section.

PAR. 5. Section 402.607 of Regulations 106 [26 CFR 402.607] is amended by striking out in the first sentence "Form SS–1a" and by inserting in lieu thereof "Form 941 (or, with respect to periods ended prior to January 1, 1950, Form SS–1a)".

PAR. 6. Section 402.702 of Regulations 106 [26 CFR 402.702] is amended as follows:

(A) By striking out "Form SS–1a" in the first sentence of section 402.702(*a*)(1) and in the first and second paragraphs of section 402.702(*a*)(2) where the designation first appears, and by inserting in lieu thereof "Form 941 (or, with respect to periods ended prior to January 1, 1950, Form SS–1a)".

(B) By striking out in the first and second paragraphs of section 402.702(*a*)(2) "Form SS–1 or Form SS–1a" and by inserting in lieu thereof "Form SS–1, Form SS–1a, or Form 941".

(C) By adding after "Form SS–1a" in the first and second sentences of section 402.702(*b*)(1) the following: "or Form 941".

PAR. 7. Section 402.703 of Regulations 106 [26 CFR 402.703] is amended as follows:

(A) By striking out "Form SS-1a" in the first and second paragraphs of section 402.703(*a*) where the designation first appears, and by inserting in lieu thereof "Form 941 (or, with respect to periods ended prior to January 1, 1950, Form SS-1a)".

(B) By striking out in the first and second paragraphs of section 402.703(*a*) "Form SS-1 or Form SS-1a" and by inserting in lieu thereof "Form SS-1, Form SS-1a, or Form 941".

PAR. 8. Section 402.704 of Regulations 106, as amended by Treasury Decision 5665 [C. B. 1948-2, 135], approved November 1, 1948 [26 CFR 402.704], is further amended as follows:

(A) By adding after "Form SS-1a" in the first sentence of paragraph (*a*) the following: "or Form 941".

(B) By striking out in the last sentence of paragraph (*d*) "or on Schedule A of Form SS-1a" and "or such Schedule A of Form SS-1a" and by inserting in lieu thereof ", Schedule A of Form SS-1a, or Schedule A of Form 941" and ", such Schedule A of Form SS-1a, or such Schedule A of Form 941", respectively.

REGULATIONS 116 [26 CFR, PART 405]

PAR. 9. Section 405.102(*h*)(2) of Regulations 116, as added by Treasury Decision 5645 [C. B. 1948-2, 14], approved July 20, 1948 [26 CFR 405.102(*h*)(2)], is amended by striking out in the first sentence of the third paragraph "Form W-1" and by inserting in lieu thereof "Form 941 (or, with respect to periods ended prior to January 1, 1950, Form W-1)".

PAR. 10. Section 405.501(*c*) of Regulations 116 [26 CFR 405.501(c)] is amended by striking out "(Form W-1)" and by inserting in lieu thereof "(Form W-1 or Form 941)".

PAR. 11. Immediately preceding the caption "SECTION 2702(a) OF THE INTERNAL REVENUE CODE" as set forth immediately preceding section 405.601 of Regulations 116 [26 CFR 405.601], the following is inserted:

SECTION 2701 OF THE INTERNAL REVENUE CODE

RETURNS

> Every person liable for the tax * * * shall make * * * returns under oath * * * to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

PAR. 12. Section 405.601 of Regulations 116 [26 CFR 405.601] is amended as follows:

(A) By striking out "Every" in the first sentence and inserting in lieu thereof "Except as provided in section 405.602, every".

(B) By adding after the second sentence the following new sentences:

> For quarters commencing after December 31, 1949, Form 941 shall be used in lieu of Form W-1. The return on Form 941 must be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or if the employer has no principal place of business in the United States, with the collector of internal revenue at Baltimore, Md.

(C) By adding after "Form W-1" wherever it appears in the second and last paragraphs the following: "or Form 941".

(D) By adding after "Forms W-1" in the eighth paragraph the following: "or Forms 941".

PAR. 13. Section 405.602 of Regulations 116 [26 CFR 405.602] is amended as follows:

(A) By adding after "Form W-1" in the first sentence the following: "or Form 941".

(B) By inserting after "the collector" in the second sentence the following: "and the tax shall be paid".

(C) By adding at the end of the section the following:

With respect to periods commencing after December 31, 1949, the term "wages" as used in this section of these regulations includes any remuneration which constitutes wages as defined in either section 1426(a) or section 1621(a) of the Internal Revenue Code. Thus, if an employer ceases to pay wages as defined in one of such sections, but continues to pay wages as defined in the other of such sections, no final return should be filed so long as he continues to pay such wages. If an employer who has been paying remuneration which constitutes wages as defined in each of such sections permanently ceases to pay such wages, a final return is required of such employer. Such final return must be filed on or before the thirtieth day after the date of the last payment of wages as defined in such sections. If an employer who has been paying remuneration which constitutes wages as defined in only one of such sections permanently ceases to pay such wages, a final return is required of such employer. Such final return must be filed on or before the thirtieth day after the date of the last payment of wages as defined in such section.

PAR. 14. Section 405.701 of Regulations 116 [26 CFR 405.701] is amended by striking out "Form W-1" wherever it appears therein and by inserting in lieu thereof "Form 941 (or, with respect to periods ended prior to January 1, 1950, Form W-1)".

PAR. 15. Section 405.805(*a*) of Regulations 116 [26 CFR 405.805(a)] is amended by striking out "Return of Income Tax Withheld on Wages (Form W-1)" and by inserting in lieu thereof "return on Form 941 (or, with respect to periods ended prior to January 1, 1950, Form W-1)".

(This Treasury Decision is issued under the authority contained in sections 1429 and 3791 of the Internal Revenue Code (53 Stat. 178, 467; 26 U. S. C. 1429, 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 10, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 18, 1949, 8:46 a. m.)

SECTION 1420: Collection and payment of taxes.
REGULATIONS 106, SECTION 402.501: Employers' identification numbers.

Identification numbers to be shown on Form 941. (See T. D. 5760, page 123.)

SECTION 1420: Collection and payment of taxes.
REGULATIONS 106, SECTION 402.504: Duties of employer with respect to employees' account numbers.

Changes effected by use of Form 941. (See T. D. 5759, page 119.)

SECTION 1420: Collection and payment of taxes.
REGULATIONS 106, SECTION 402.601: Tax and information returns.

Changes effected by use of Form 941. (See T. D. 5759, page 119.)

SECTION 1420: Collection and payment of taxes.
REGULATIONS 106, SECTION 402.603: Final returns.

Changes effected by use of Form 941. (See T. D. 5759, page 119.)

SECTION 1420: Collection and payment of taxes.
REGULATIONS 106, SECTION 402.607: Payment of tax.

Changes effected by use of Form 941. (See T. D. 5759, page 119.)

SECTION 1421: Refunds, credits, and abatements.
REGULATIONS 106, SECTION 402.704: Refund or credit of overpayments which are not adjustable; abatement of overassessments.

Changes effected by use of Form 941. (See T. D. 5759, page 119.)

SECTION 1426: Definitions. 1949–25–13255
REGULATIONS 106, SECTION 402.201: General definitions and use of terms. T. D. 5760
(Also Sections 1420 and 1430; Regulations 106, Sections 402.501 and 402.607a.)

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER D, PARTS 402 AND 405

Regulations 106 and 116 amended with respect to use of Federal Reserve banks and authorized commercial banks in connection with the payment of the taxes under the Federal Insurance Contributions Act and of the income tax collected at source on wages.

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

To Collectors of Internal Revenue and Others Concerned:

On September 23, 1949, notice of proposed rule making regarding the amendment of Regulations 106 and 116, with respect to the use of Federal Reserve banks and authorized commercial banks in connection with the payment of the taxes under the Federal Insurance Contributions Act and of the income tax collected at source on wages, was published in the Federal Register (184 F. R. 5807). After consideration of all relevant matter presented by interested persons regarding the proposed amendments, the following amendments are hereby adopted.

REGULATIONS 106 [26 CFR, PART 402]

PARAGRAPH 1. Regulations 106 [26 CFR, Part 402] are amended as follows:

(A) By striking out the period at the end of section 402.201(*i*) [26 CFR 402.201(i)] and by inserting in lieu thereof a comma and the following: "except that such term when used in section 402.607a includes also the income tax collected at source on wages under section 1622 of the Internal Revenue Code."

(B) By amending the last sentence of section 402.501 to read as follows: "Identification numbers assigned to employers shall be shown in their records, returns, and claims to the extent required by sections 402.605, 402.607a, 402.609, and 402.704 and by the instructions relating to Form 941 (or, with respect to periods ended prior to January 1, 1950, Form SS-1a) and to Form 450."

(C) By inserting immediately preceding section 402.608 [26 CFR 402.608] the following new section:

SEC. 402.607a. USE OF FEDERAL RESERVE BANKS AND AUTHORIZED COMMERCIAL BANKS IN CONNECTION WITH PAYMENT OF TAXES WITH RESPECT TO WAGES PAID ON OR AFTER JANUARY 1, 1950.—(*a*) *In general.*—Except as provided in paragraph (*b*) of this section, if during any calendar month after December 31, 1949, the aggregate amount of

(1) the employees' tax withheld under section 1401,
(2) the employers' tax for such month under section 1410, and
(3) the income tax withheld at source on wages under section 1622,

of the Internal Revenue Code, exceeds $100 in the case of an employer, it will be the duty of such employer to deposit such amount within 15 days after the close of such calendar month with a Federal Reserve bank. The remittance of such amount shall be accompanied by a Federal Depositary Receipt (Form 450). Such depositary receipt shall be prepared in accordance with the instructions and regulations applicable thereto. The employer, at his election, may forward such remittance, together with such depositary receipt, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the aforementioned taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the employer. Every employer making deposits pursuant to this section shall attach to his return on Form 941 for the calendar quarter with respect to which such deposits are made, in part or full payment of the taxes shown thereon, depositary receipts so validated, and shall pay to the collector the balance, if any, of the taxes due for such quarter.

(*b*) *Payments for last month of the calendar quarter.*—With respect to the taxes specified in paragraph (*a*) of this section for the last month of the calendar quarter, the employer may either include with his return direct remittance to the collector for the amount of such taxes or attach to such return a depositary receipt validated by a Federal Reserve bank as provided in paragraph (*a*) of this section. Payment of the taxes required to be reported on each return, in the form of validated depositary receipts or direct remittances, shall be made to the collector at the time fixed for filing such return. If a deposit is made for the last month of the quarter, the employer shall make it in ample time (whether before, on, or after the 15th day of the succeeding month) to enable the Federal Reserve bank to return the validated receipt to the employer so that it can be attached to and filed with the employer's return at the time so fixed.

(*c*) *Procurement of prescribed form.*—Initially, Form 450, Federal Depositary Receipt, will so far as possible be furnished the employer by the collector. An employer not supplied with the proper form should make application therefor to the collector in ample time to have such form available for use in making his initial deposit within the time prescribed in paragraph (*a*) of this section. Thereafter a blank form will be sent to the employer by the Federal Reserve bank when returning the validated depositary receipt. An employer may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of his identification number. The employer's identification number and name, on each depositary receipt, should be the same as they are required to be shown on the combined quarterly tax return, Form 941, to be filed with the

collector. The address of the employer, as shown on each depositary receipt, should be the address to which the receipt should be returned following validation by the Federal Reserve bank.

REGULATIONS 116 [26 CFR, PART 405]

PAR. 2. Regulations 116 [26 CFR, Part 405] are amended as follows:

(A) By redesignating paragraph (*d*) of section 405.107 [26 CFR 405.107] as paragraph (*e*).

(B) By inserting immediately after paragraph (*c*) of section 405.107 [26 CFR 405.107] the following new paragraph:

(*d*) Identification number means the identifying number of an employer, assigned as the case may be, under the Federal Insurance Contributions Act or Title VIII of the Social Security Act, or by the collector in accordance with section 405.606(*c*).

(C) By revising the heading of section 405.605, which section was amended by Treasury Decision 5644 [C. B. 1948–2, 123], approved July 14, 1948 [26 CFR 405.605], to read as follows: "USE OF GOVERNMENT DEPOSITARIES IN CONNECTION WITH PAYMENT OF TAXES WITH RESPECT TO WAGES PAID PRIOR TO JANUARY 1, 1950."

(D) By inserting at the end of section 405.605, as amended by Treasury Decision 5644 [26 CFR 405.605], the following:

This section shall be applicable only with respect to wages paid prior to January 1, 1950.

SEC. 405.606. USE OF FEDERAL RESERVE BANKS AND AUTHORIZED COMMERCIAL BANKS IN CONNECTION WITH PAYMENT OF TAXES WITH RESPECT TO WAGES PAID ON OR AFTER JANUARY 1, 1950.—(*a*) *In general.*—Except as provided in paragraph (*b*) of this section, if during any calendar month after December 31, 1949, the aggregate amount of

(1) the employees' tax withheld under section 1401,
(2) the employers' tax for such month under section 1410, and
(3) the income tax withheld at source on wages under section 1622,

of the Internal Revenue Code, exceeds $100 in the case of an employer, it will be the duty of such employer to deposit such amount within 15 days after the close of such calendar month with a Federal Reserve bank. The remittance of such amount shall be accompanied by a Federal Depositary Receipt (Form 450). Such depositary receipt shall be prepared in accordance with the instructions and regulations applicable thereto. The employer, at his election, may forward such remittance, together with such depositary receipt, to a commercial bank authorized in accordance with Treasury Department Circular No. 848, to accept remittances of the aforementioned taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the employer. Every employer making deposits pursuant to this section shall attach to his return on Form 941 for the calendar quarter with respect to which such deposits are made, in part of full payment of the taxes shown thereon, depositary receipts so validated, and shall pay to the collector the balance, if any, of the taxes due for such quarter.

(*b*) *Payments for last month of the calendar quarter.*—With respect to the taxes specified in paragraph (*a*) of this section for the last month of the calendar quarter, the employer may either include with his return direct remittance to the collector for the amount of such taxes or attach to such return a depositary receipt validated by a Federal Reserve bank as provided in paragraph (*a*) of this section. Payment of the taxes required to be reported on each return, in the form of validated depositary receipts or direct remittances, shall be made to the collector at the time fixed for filing such return. If a deposit is made for the last month of the quarter, the employer shall make it in ample time (whether before, on, or after the 15th day of the succeeding month) to enable the Federal Reserve bank to return the validated receipt to the employer so that it can be attached to and filed with the employer's return at the time so fixed.

(*c*) *Procurement of prescribed form.*—Initially, Form 450, Federal Depositary Receipt, will so far as possible be furnished the employer by the collector. An employer not supplied with the proper form should make application therefor to the collector in ample time to have such form available for use in making his initial deposit within the time prescribed in paragraph (*a*) of this section.

Thereafter a blank form will be sent to the employer by the Federal Reserve bank when returning the validated depositary receipt. An employer may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of his identification number. (See section 405.107(*d*).) The collector will assign an identification number to each employer who is not required either to withhold the employees' tax under section 1401 or to pay the employers' tax under section 1410. Every employer making deposits pursuant to this section shall make such use of his identification number as is prescribed by this section and by the instructions relating to Form 941 and to Form 450. The employer's identification number and name, on each depositary receipt, should be the same as they are required to be shown on the combined quarterly tax return, Form 941, to be filed with the collector. The address of the employer, as shown on each depositary receipt, should be the address to which the receipt should be returned following validation by the Federal Reserve bank.

(This Treasury Decision is issued under the authority contained in sections 1429 and 3791 of the Internal Revenue Code (53 Stat. 178, 467; 26 U. S. C. 1429, 3791).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 10, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 18, 1949, 8:46 a. m.)

SECTION 1430: Other laws applicable.
REGULATIONS 106, SECTION 402.607a: Use of Federal Reserve banks and authorized commercial banks in connection with payment of taxes with respect to wages paid on or after January 1, 1950.

Use of Government depositaries in connection with payment of employment taxes. (See T. D. 5760, page 123.)

MISCELLANEOUS TAX RULINGS

STAMP TAXES

INTERNAL REVENUE CODE

SECTION 1802(b), AS AMENDED.—SALES AND TRANSFERS

REGULATIONS 71 (1941), SECTION 113.33: Sales and transfers subject to tax. — 1949-18-13174, G. C. M. 26070

Applicability of documentary stamp tax on transfers of rights to receive stock, imposed by section 1802(b) of the Internal Revenue Code, where, pursuant to an agreement, stock of a corporation is issued to the partners of M Company, a partnership, in their individual names in consideration of the transfer to the corporation of all of the assets of M Company and the complete cessation of its business.

G. C. M. 23414 (C. B. 1942-2, 254) modified.

Advice is requested with respect to the applicability of documentary stamp tax on transfers of rights to receive stock, imposed by section 1802(b) of the Internal Revenue Code, where, pursuant to an agreement, stock of a corporation is issued to the partners of M Company, a partnership, in their individual names in consideration of the transfer to the corporation of all of the assets of M Company and the complete cessation of its business.

In G. C. M. 23414 (C. B. 1942-2, 254) it was held on substantially similar facts that a transfer tax was incurred upon the transfer to the partners individually of the rights of the other parties to receive the shares of stock as coowners.

Section 1802(b) of the Internal Revenue Code, as amended, imposes a stamp tax on transfer of rights to receive corporate stock. Section 113.33 of Regulations 71 (1941) includes among examples of taxable transfers the transfer from persons holding legal title as tenants in common, as joint tenants, or as tenants by the entirety, to the same persons separately to effect a partition, or from one person to two or more persons, whether or not including the transferor as tenants in common, as joint tenants, or as tenants by the entirety.

The consistent position taken by the Bureau is that a partnership is not a separate entity and that the assets of a partnership are held by the individual partners as coowners. Thus, where partnership assets are transferred there is no compulsion to hold that the partnership as such has a right to the proceeds as is true where the assets of a corporation are transferred.

The dissolution of a partnership and the subsequent distribution of the partnership assets to the individual partners involves a partition or division of property held in cotenancy. However, cotenants may

agree jointly to sell the property owned in common and to receive back consideration as individuals without any division of the jointly held property. Thus, in order for a tax to attach in the present case, it must be found that the partners or cotenants had a right to receive the stock as cotenants. Since there is not necessarily an assumption that where cotenants sell property the consideration is received by them as cotenants, the intent of the cotenants at the time of sale must be determined. Only if it is evident that the partners by their actions must have intended to receive the stock of the corporation as cotenants is a transfer tax due when the stock is later distributed to the individuals.

In the present case the agreement of the partners to sell all of the partnership assets along with the complete cessation of the partnership business is strong evidence of an agreement to dissolve the partnership relation. (*Fisher* v. *Fisher*, 188 Pac. (2d) 802 (1948); *Cavasso* v. *Downey*, 188 Pac. 594 (1920).) Therefore, when the property held in common was sold by the cotenants jointly, the cotenancy established by the partnership was destroyed. To hold that the right to receive the stock as consideration ever existed in cotenancy would require evidence that the parties intended that the stock was to be held in cotenancy. No such evidence exists in the present case. On the contrary, the parties stipulated that the stock was to be received in their individual names.

It is the opinion of this office that the issue of stock by the corporation to the partners of M Company in their individual names under the circumstances outlined above does not involve a transfer of the right to receive stock within the meaning of section 1802(b) of the Code, and accordingly, no transfer tax is due.

G. C. M. 23414, *supra*, is modified to the extent that it is inconsistent with the foregoing opinion.

CHARLES OLIPHANT,
Chief Counsel, Bureau of Internal Revenue.

SECTION 1801, AS AMENDED.—CORPORATE SECURITIES

REGULATIONS 71 (1941), SECTION 113.55: Issues subject to tax. — 1949-20-13196 M. T. 38

Applicability of the tax imposed by sections 1800 and 1801 of the Internal Revenue Code on the issuance of corporate securities to instruments termed "promissory notes" executed pursuant to and under the terms of a loan agreement.

Advice is requested whether the following described corporate instruments termed "promissory notes" constitute debentures within the meaning of section 1801 of the Internal Revenue Code, and are, accordingly, taxable upon issue.

Sections 1800 and 1801 of the Internal Revenue Code impose a tax on all bonds, debentures, or certificates of indebtedness issued by any corporation, and all instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities.

M Corporation, hereinafter called M, entered into a loan agreement with N Insurance Co., hereinafter called N, in accordance with which

M issued to N interest-bearing notes evidencing the borrowing of x dollars, due y years from date of issuance. The agreement pursuant to which the notes were issued provides for an acceleration of the maturity date or prepayment prior to such date. The agreement limits M with respect to other corporate financing and the disposition of its assets and properties. M is also restricted in the declaration of dividends and in the modification of its corporate structure, being required to maintain specified minimum capital as long as the notes are outstanding, and to furnish balance sheets and income and surplus statements and such additional information regarding its business affairs and financial condition as may reasonably be required by N. The loan agreement is made by M and N, subject to the approval of counsel as to the legality of the notes, and upon the representation of N that it is acquiring the notes for the purpose of investment only and not with a view to the sale or disposition thereof.

In *General Motors Acceptance Corporation* v. *Higgins* (161 Fed. (2d) 593, Ct. D. 1708, C. B. 1948–2, 157; certiorari denied, 332 U. S., 810), it was held that certain instruments termed "notes," should be classified as "debentures" without regard to the name by which they were called. The court held that the type of instruments there involved fell within a "class apart from ordinary commercial promissory notes and into the category of debentures as that term is used in the statute in its setting with bonds, and certificates of indebtedness, to designate a type of corporate securities which does not include ordinary promissory notes."

It is the opinion of the Bureau that the instruments issued pursuant to the agreement involved in the present case create rights and liabilities not commonly associated with promissory notes. By their terms and provisions, the instruments represent a method of financing common to debentures, which is similar to that type of financing accomplished through the medium of a public issuance of investment securities under an indenture. Moreover, the instruments were issued by the corporate borrower to obtain capital for use in its business under conditions similar to the sale of bonds, debentures, or other investment securities. The fact that the borrowing is effected through one or more lenders, rather than the general public, is not material to the question here at issue. Thus, from an over-all standpoint, and not based upon any particular factor or condition, it is the opinion of the Bureau, in the light of the decision in the General Motors Acceptance Corporation case, *supra*, that the instruments involved in the present case should be classed as debentures. Accordingly, they are subject to the tax imposed by sections 1800 and 1801 of the Code, as amended.

TRANSPORTATION TAXES

INTERNAL REVENUE CODE

TAXES ON SAFE DEPOSIT BOXES AND ON CERTAIN TRANSPORTATION AND COMMUNICATIONS SERVICES

REGULATIONS 42 (1942), SECTION 130.64: Transportation outside the northern portion of the Western Hemisphere. 1949–15–13133 T. D. 5708

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 130.—TAXES ON SAFE DEPOSIT BOXES AND ON CERTAIN TRANSPORTATION AND COMMUNICATION SERVICES

Continuance of exemption, from the tax on transportation of persons, of certain foreign travel via Newfoundland.

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

To Collectors of Internal Revenue and Others Concerned:

In order to conform Regulations 42 (1942 edition) [26 CFR, Part 130], to the provisions of Public Law 35, Eighty-first Congress [C. B. 1949–1, 299], approved March 31, 1949, such regulations are amended as follows:

PARAGRAPH 1. Immediately preceding section 130.64, as added by Treasury Decision 5559 [C. B. 1947–1, 160], approved April 18, 1947 [26 CFR 130.64], there is inserted the following:

PUBLIC LAW 35 (EIGHTY-FIRST CONGRESS), APPROVED MARCH 31, 1949

* * * section 3469(a) of the Internal Revenue Code (relating to the tax on transportation of persons) is hereby amended by inserting after the second sentence thereof a new sentence to read as follows: "A port or station within Newfoundland shall not, for the purposes of the preceding sentence, be considered as a port or station within Canada."

SEC. 2. The amendment made by this joint resolution shall apply to amounts paid for transportation on or after April 1, 1949.

PAR. 2. Section 130.64 is amended by adding at the end of the first paragraph thereof the following sentence:

A port or station within Newfoundland shall not, for the purposes of the preceding sentences of this paragraph, be considered as a port or station within Canada.

(This Treasury Decision is issued pursuant to the authority contained in sections 3472 and 3791 of the Internal Revenue Code (53 Stat. 423, 467, 55 Stat. 722; 26 U. S. C. 3472, 3791).)

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

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved June 27, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register June 30, 1949, 8:47 a. m.)

PROCESSING TAXES

INTERNAL REVENUE CODE

SECTION 2470.—PROCESSING OF COCONUT OIL

REGULATIONS 48 (1934), ARTICLE 6: Rates of tax. 1949-20-13197
Mim. 6432

Termination, under section 505(b) of the Philippine Trade Act of 1946, of the suspension of the provisions of section 2470(a)(2) of the Internal Revenue Code which imposes an additional tax of 2 cents per pound upon the first domestic processing of certain coconut oil.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., September 12, 1949.

Collectors of Internal Revenue and Others Concerned:

The Act approved September 16, 1942, as amended, 56 Stat. 752, 58 Stat. 647, suspended for the period from September 17, 1942, to and including June 30, 1946, the provisions of section 2470(a)(2) of the Internal Revenue Code, which section imposes an additional tax of 2 cents per pound on the first domestic processing of coconut oil or any combination or mixture containing a substantial quantity of coconut oil other than that wholly produced in the Philippine Islands or any possession of the United States, or produced wholly from materials grown or produced in the Philippine Islands or any possession of the United States.

Section 505(b) of the Philippine Trade Act of 1946 (60 Stat. 157, 22 U. S. C. (1946) 1355) provides that whenever the President, after consultation with the President of the Philippines, finds that adequate supplies of neither copra nor coconut oil, the product of the Philippines, are readily available for processing in the United States, he shall so proclaim, and after the date of such proclamation the provisions of section 2470(a)(2) of the Internal Revenue Code shall be suspended until the expiration of 30 days after he proclaims that, after consultation with the President of the Philippines, he has found that such adequate supplies are so readily available.

By his proclamation of June 27, 1946, the President continued the suspension of the additional tax of 2 cents per pound imposed by section 2470(a)(2) of the Internal Revenue Code.

The President, after consultation with the President of the Philippines concerning the supplies of copra and coconut oil, the product of the Philippines, which are available for processing in the United States, on July 27, 1949, proclaimed that he has found that such adequate supplies are now readily available for processing in the United States; and that the suspension of the provisions of section 2470(a)(2) of the Internal Revenue Code affected by his proclamation of June 27, 1946, will be terminated so that on and after August 27, 1949, the processing tax provided for in that section will be applicable.

Accordingly, the suspension of the additional tax of 2 cents per pound imposed by section 2470(a)(2) of the Code will be terminated so that on and after August 27, 1949, such additional tax of 2 cents

per pound will be applicable upon the first domestic processing of coconut oil other than that wholly produced in the Philippine Islands or any possession of the United States, or produced wholly from materials grown or produced in the Philippine Islands or any possession of the United States.

Form 932, monthly return of the Tax on the First Domestic Processing or First Use of Coconut Oil, Palm Oil, Palm Kernel Oil, etc., is being revised as of August 1949, to provide space for proper reporting of the additional tax. Processors must keep sufficient records to enable the Bureau, upon investigation, to determine that the correct amount of tax has been paid with respect to the several kinds of coconut oil processed.

Those processors who are filing returns on Form 932 should be furnished with a copy of this mimeograph, an additional supply of which will be forwarded for that purpose. Said processors should also be furnished with a supply of Form 932, Revised August 1949.

As of August 27, 1949, and to the extent hereinabove indicated, Mimeograph 6033 [C. B. 1946–2, 175] is hereby superseded.

All correspondence in reference to this mimeograph should refer to the number thereof and the symbols MT : M.

GEO. J. SCHOENEMAN,
Commissioner.

TOBACCO, SNUFF, CIGARS, CIGARETTES, ETC.

INTERNAL REVENUE CODE

REGULATIONS 8 (1934), ARTICLES 47 AND 76. 1949-20-13204
T. D. 5746

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 140.—TAXES ON TOBACCO, SNUFF, CIGARS, CIGARETTES, CIGARETTE PAPERS AND TUBES, AND PURCHASE AND SALE OF LEAF TOBACCO

Regulations relating to subdivision packages amended

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

To Collectors of Internal Revenue and Others Concerned:

Regulations 8 (1934 edition) [26 CFR, Part 140] but only as prescribed and made applicable to the Internal Revenue Code by Treasury Decision 4885 [C. B. 1939-1 (Part 1), 396], approved February 11, 1939 [26 CFR Cum. Supp., page 5876], are hereby amended as follows:

PARAGRAPH 1. Article 47 [26 CFR 140.47] is amended to read as follows:

ARTICLE 47. SUBDIVISION PARCELS.—The quantity of manufactured tobacco or snuff contained in a stamped statutory box or package may be subdivided into parcels or in any other manner satisfactory to the Commissioner. The caution notice provided by article 55 [26 CFR 140.55] must not appear on any subdivision of a statutory box or package, but must appear only on the statutory box or package on which the requisite tax stamps are affixed. Tobacco or snuff when subdivided must remain in the stamped statutory box or package until sold or delivered at arms length direct to consumers, and the total net weight of tobacco or snuff in each stamped statutory box or package must correspond to the total denominations of the tax stamps affixed to such box or package.

PAR. 2. Article 76, as amended by Treasury Decision 4781 [C. B. 1937-2, 514], approved December 7, 1937 [26 CFR 140.76], is further amended to read as follows:

ARTICLE 76. SUBDIVISION PARCELS.—The number of cigars or cigarettes contained in a stamped statutory box or package may be subdivided into parcels or in other manner satisfactory to the Commissioner. The caution notice provided by article 84 [26 CFR 140.84], factory brand provided by article 85 [26 CFR 140.85], and classification clause provided by article 86 [26 CFR 140.86], must not appear on any subdivision of a statutory box or package on which the requisite tax stamp is affixed. Cigars and cigarettes when subdivided must remain in the stamped statutory box or package until sold or delivered at arms length direct to consumers, and the total number of cigars or cigarettes in each stamped statutory box or package must correspond to the denomination of the tax stamp affixed to such box or package.

(This Treasury Decision is issued pursuant to the authority contained in section 3791 of the Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

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

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

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 12, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register September 15, 1949, 8:48 a. m.)

FEDERAL FIREARMS ACT (1938)

1949–26–13262
T. D. 5763

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 315.—LICENSING UNDER THE FEDERAL FIREARMS ACT OF MANUFACTURERS OF, AND DEALERS IN, FIREARMS OR AMMUNITION

[Treasury Decision 5646]

Dealers' records

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., December 2, 1949.

To Collectors of Internal Revenue and Others Concerned:

On September 17, 1949, notice of proposed rule making regarding dealers' records of transactions in firearms was published in the Federal Register (14 F. R. 5723). No objection having been received, the following amendment to Treasury Decision 5646 [C. B. 1948–2, 194], approved July 26, 1948 [26 CFR, Part 315], is hereby adopted. The amendment is designed to establish a uniform requirement as to the place where records of licensed dealers shall be kept.

Section 315.10(b) is amended by striking therefrom the first sentence thereof and inserting in lieu of such sentence the following:

Each licensed dealer shall maintain at each store or place where firearms are sold or kept a complete and adequate record of all firearms (not including parts of firearms but including firearms in an unassembled condition) acquired or disposed of in the course of his business at such store or place. If desired, duplicate or additional records of transactions at branch establishments may also be maintained at the home or central establishment.

(This Treasury Decision is issued under the authority contained in section 7 of the Federal Firearms Act (52 Stat. 1252; 15 U. S. C. 907).)

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register December 8, 1949, 8:50 a. m.)

MISCELLANEOUS RULINGS

SECTION 3 OF THE VINSON ACT (48 STAT. 503, 505), AS AMENDED

1949-20-13198
Mim. 6433

Extension of time until November 15, 1949, of the date for filing annual reports of profit under the profit limitation provisions of the Vinson Act (48 Stat. 503, 505), as amended, for the calendar year 1948 and for the fiscal year ended January 31, 1949.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington 25, D. C., September 12, 1949.

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

H. R. 4146, An Act Making appropriations for the National Security Council, the National Security Resources Board, and for military functions administered by the National Military Establishment for the fiscal year ending June 30, 1950, and for other purposes, passed in the House of Representatives April 13, 1949, was amended and passed by the Senate on August 29, 1949. Section 622 of the bill, as amended, reads in part:

(b) Notwithstanding any agreement to the contrary, the profit limitation provisions of the Act of March 27, 1934 (48 Stat. 503, 505), as amended and supplemented, shall not apply to any contract or subcontract which is subject to the Renegotiation Act of 1948.

The annual reports of contracts and subcontracts coming within the scope of the Act of March 27, 1934 (48 Stat. 503, 505), as amended, also referred to as the Vinson Act, for the calendar year 1948 and the fiscal year ended January 31, 1949, are due to be filed on or before September 15, 1949, and October 15, 1949, respectively.

It is expected that H. R. 4146 will receive further consideration in conference and, if this provision is enacted in the bill, it will retroactively eliminate the necessity for including in the annual reports of profit the profit and excess profit on contracts and subcontracts to which the exemption applies and require the refunding of any excess profit theretofore paid with respect to such contracts and subcontracts.

Therefore, a general extension of time is hereby granted to contractors and subcontractors up to and including November 15, 1949, for filing annual reports of profit under the Vinson Act (48 Stat. 503, 505), as amended, for the calendar year 1948 and for the fiscal year ended January 31, 1949. Contractors and subcontractors who take advantage of this extension of time will be charged interest at the rate of 6 percent per annum on the unpaid installments of excess profit, if

any, from the original due date until paid. The foregoing extension of time is granted under section 53(a)(2) of the Revenue Act of 1934, as made applicable by section 651 of the Internal Revenue Code.

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

GEO. J. SCHOENEMAN,
Commissioner.

SECTION 3809.—VERIFICATION OF RETURNS: PENALTIES OF PERJURY

1949-24-13242
T. D. 5757

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER E, PART 475.—REGULATIONS UNDER SECTION 3809 OF THE INTERNAL REVENUE CODE

Verification of returns, statements, and documents by declaration under penalties of perjury required in lieu of verification by oath, wherever the prescribed form contains such declaration.

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

To Collectors of Internal Revenue and Others Concerned:

The following regulations relating to section 3809, Internal Revenue Code, are hereby adopted:

SEC. 4. VERIFICATION OF RETURNS. [PUBLIC LAW 271, EIGHTY-FIRST CONGRESS, APPROVED AUGUST 27, 1949.]

(a) Chapter 38 of the Internal Revenue Code is hereby amended by inserting at the end thereof the following new section:

"SEC. 3809. VERIFICATION OF RETURNS; PENALTIES OF PERJURY.

"(a) PENALTIES.—Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

"(b) SIGNATURE PRESUMED CORRECT.—The fact that an individual's name is signed to a return, statement, or other document filed shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

"(c) VERIFICATION IN LIEU OF OATH.—The Commissioner, under regulations prescribed by him with the approval of the Secretary, may require that any return, statement, or other document required to be filed under any provision of the internal revenue laws shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of any oath otherwise required."

(b) Sections 51(d), 145(c), and 1630 of such Code are hereby repealed.

(c) The amendments made by this section shall be applicable with respect to any return, statement, or document filed after the date of the enactment of this Act.

SECTION 475.1. VERIFICATION BY DECLARATION IN LIEU OF OATH.—If the form officially prescribed for any internal revenue return, statement, or other docu-

ment contains therein provisions for verification by a written declaration that such return, statement, or other document is made under penalties of perjury, such return, statement, or other document shall be verified by the execution of such declaration, and such declaration so executed shall be in lieu of any oath otherwise required for verification by law or by regulations (including Treasury Decisions) prescribed by the Commissioner with the approval of the Secretary.

SEC. 475.2. PRIOR REGULATIONS VALID.—All regulations (including all Treasury Decisions) prescribed by the Commissioner with the approval of the Secretary under section 1630(a) of the Internal Revenue Code and in effect on the date of the enactment of Public Law 271, Eighty-first Congress, August 27, 1949, are hereby prescribed under section 3809(c), Internal Revenue Code.

SEC. 475.3. EFFECTIVE DATE.—These regulations shall be effective on and after August 28, 1949.

(This Treasury Decision is issued under authority of section 3791, Internal Revenue Code (53 Stat. 467; 26 U. S. C. 3791).)

Because the amendments made by this Treasury Decision will operate to relieve taxpayers from a limitation applicable under existing laws and regulations, and to continue certain relief already granted, it is found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 3, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Filed with the Division of the Federal Register November 8, 1949, 8:48 a. m.)

INDUSTRIAL ALCOHOL

INTERNAL REVENUE CODE

REGULATIONS 3, SECTIONS 182.12, ETC. 1949–15–13134
T. D. 5711

TITLE 26—INTERNAL REVENUE—CHAPTER I, SUBCHAPTER C, PART 182—INDUSTRIAL ALCOHOL

Amending Regulations 3

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

To District Supervisors and Others Concerned:

1. On March 4, 1949, a notice of proposed rule making, regarding the producton of industrial alcohol, was published in the Federal Register (14 F. R. 980).

2. After consideration of all such relevant matter as was presented by interested persons regarding the proposal, Regulations 3 (26 CFR, Part 182), approved March 6, 1942, is amended, as follows, by—

(*a*) revoking sections 182.211, 182.303, and 182.433;

(*b*) amending sections 182.12, 182.13, 182.14, 182.18, 182.19, 182.44 (first paragraph), 182.49 (first paragraph), 182.57, 182.59, 182.63, 182.72, 182.73, 182.74 (first paragraph), 182.80, 182.99, 182.110, 182.113, 182.114, 182.121, 182.122 (first paragraph), 182.149, 182.151, 182.153, 182.155, 182.160, 182.168, 182.181, 182.207, 182.208, 182.210, 182.212, 182.217, 182.218, 182.219, 182.262(*a*)(3), 182.269, 182.270, 182.272, 182.278 (*a*)(3), (*b*)(3), 182.284, 182.286(*b*), 182.297, 182.329, 182.356, 182.432, 182.478, 182.502, 182.519(*b*), 182.527 (*a*), (*c*), 182.539, 182.540, 182.541, 182.634, 182.635, 182.657, 182.665, 182.666, 182.691, 182.728 (first paragraph), 182.773, 182.774, 182.780, 182.815, 182.816, 182.855 (*a*)(4), (*b*), 182.868, 182.870, 182.874(*b*), and 182.895; and

(*c*) adding new sections 182.15a and 182.868a.

SEC. 182.12. SPECIALLY DENATURED ALCOHOL USERS PREMISES.—A manufacturer qualifying under these regulations for the use of specially denatured alcohol must have suitable premises for the business being conducted, as indicated by section 182.6(*u*). Proper storage facilities must be provided on the premises for safeguarding the specially denatured alcohol received for use. These storage facilities must consist of a storeroom or storage tanks (not necessarily in a room or building), or a combination of storeroom and storage tanks. The storage facilities must be constructed in accordance with section 182.57. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.13. SPECIALLY DENATURED ALCOHOL BONDED DEALER PREMISES.—A bonded dealer qualifying under these regulations for the sale of specially denatured alcohol must have suitable premises for such business, as indicated by section 182.6(*u*). Proper storage facilities must be provided on the premises for safeguarding the specially denatured alcohol received for sale. These storage facilities must consist of a storeroom or storage tanks (not necessarily in a room or building), or a combination of storeroom and storage tanks. The storage facilities must be constructed in accordance with section 182.59. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.14. TAX-FREE ALCOHOL USER'S PREMISES.—A tax-free alcohol user qualifying under these regulations for the use of alcohol free of tax must have suitable premises for the activities being conducted, as indicated by section 182.6(*u*). Proper storage facilities must be provided on the premises for safe-

guarding the alcohol received for use. The storage facilities shall consist of a room or compartment, constructed in accordance with section 182.61. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.15a. EQUIPMENT NOT IN BUILDINGS.—Notwithstanding other provisions of these regulations, the Commissioner may, in his discretion, approve industrial alcohol plants consisting, in whole or in part, of equipment and apparatus not located in a room or building, if, in his opinion, the location and construction are such that the safety of the alcohol and the revenue are not endangered. High-wine tanks, receiving tanks, and other tanks used for the receipt and storage of alcohol must be enclosed and protected in the manner required by section 182.44. An adequate number of electric floodlights shall be installed for properly lighting the premises at night. Any other protective measures deemed essential by the district supervisor or the Commissioner may be required. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.18. WALLS.—The outside walls of industrial alcohol plant buildings must be securely and substantially constructed. If wood, corrugated iron, or tin is used, the same must be applied over solid sheathing for the first 12 feet of height, and over solid sheathing or sheathing spaced not greater than 12 inches from board to board for the remaining height. Where substantial sheet metal is used and the sheets are welded together in such manner as to constitute a solid wall, sheathing, if used, may be applied in any manner desired. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.19. ROOFS.—The roofs of industrial alcohol plant buildings must be securely and substantially constructed. Where corrugated iron or tin is used, the same must be applied over sheathing spaced not greater than 12 inches from board to board. Where substantial sheet metal is used and the sheets are welded together in such a manner as to constitute a solid roof, sheathing, if used, may be applied in any manner desired. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.44. STORAGE TANKS AS WAREHOUSES.—The Commissioner may approve permanent storage tanks not located within a room or building as a bonded warehouse, or a part thereof: *Provided*, That such tanks are constructed, equipped, and enclosed in conformity with the following requirements:

* * * * * * *

SEC. 182.49. CONSTRUCTION.—Denaturing plants must be constructed in accordance with the applicable provisions of sections 182.15 to 182.25, inclusive, and sections 182.41 and 182.44. The construction of the denaturing plant shall also conform to the following additional requirements:

* * * * * * *

SEC. 182.57. CONSTRUCTION.—A manufacturer using specially denatured alcohol must provide on the manufacturing premises covered by the basic permit a specially denatured alcohol storeroom for the storage of specially denatured alcohol, except that this requirement shall not apply where permanently fixed metal tanks, of such size that they cannot be readily removed and so constructed that they can be securely locked, are installed on the manufacturing premises for the storage of specially denatured alcohol. The walls and ceiling of the storeroom must be securely constructed of substantial materials. The entrance door must be equipped with a cylinder lock or with a hasp and staple for the reception of a padlock so as to afford proper protection to the denatured alcohol stored therein. The remaining doors, windows, and other openings must be equipped with hardware for securing the same on the inside of the storeroom. Specially denatured alcohol storage tanks may be placed underground. Such tanks must be equipped for locking and so constructed that the contents can be ascertained. For underground tanks, the identifying sign required by section 182.58 shall be placed at a convenient and suitable location. (Secs. 3105, 3124(a)(6), 3176, I. R. C.

SEC. 182.59. CONSTRUCTION.—A dealer in specially denatured alcohol must provide on the premises covered by the basic permit a specially denatured alcohol storeroom for the storage of specially denatured alcohol. Permanently fixed metal tanks, of such size that they cannot be readily removed and so constructed that they can be securely locked, may be located without the storeroom and used for the storage of specially denatured alcohol. Specially denatured alcohol in original packages, or other portable receptacles, must be stored in the specially denatured alcohol storeroom. The walls and ceiling of the storeroom must be securely constructed of substantial materials. The entrance door must be equipped with a cylinder lock, or with a hasp and staple for the reception of the padlock, so as to afford proper protection to

the denatured alcohol stored therein. The remaining doors, windows, and other openings must be equipped with hardware for securing the same on the inside of the storeroom. Specially denatured alcohol storage tanks may be placed underground. Such tanks must be equipped for locking and so constructed that the contents can be ascertained. For underground tanks, the identifying sign required by section 182.60 shall be placed at a convenient and suitable location. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.63. SCALES.—The proprietor must provide in the receiving room suitable and accurate scales for weighing packages of alcohol. The proprietor must also provide on the industrial alcohol plant premises suitable and accurate scales for the weighing of grain and other nonliquid distilling materials received and used: *Provided*, That where the proprietor receives shipments of materials by rail or motor carrier, the shipper's weights appearing on the bill of lading or invoice may be recorded as the amount received; and, in such cases, track or truck scales for weighing the materials received need not be furnished. If the industrial alcohol plant is equipped with meal hoppers mounted on scales, the meal may be weighed therein. Beams or dials of scales used to weigh packages must indicate weight in half-pound graduations: *Provided*, That if packages containing exactly 1, 2, 5, and 10 wine gallons, which would require weighing in terms of pounds and ounces, are filled or received, scales indicating weight in ounce graduations must be provided. The beams or dials of weighing tank scales must indicate weight in 5-pound graduations for scales up to and including 25 tons capacity; in 10-pound graduations for scales exceeding 25 tons capacity, but not exceeding 60 tons capacity; and in 20-pound graduations for scales having a capacity of more than 60 tons. (Secs. 2808, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.72. WASHWATER RECEIVING TANKS.—If carbon dioxide is recovered and the washwater is used in the manufacture of alcohol, there must be provided a sufficient number of washwater receiving tanks, which shall be constructed of metal and be of uniform dimensions from top to bottom. Each such tank shall be equipped with a suitable measuring device whereby the actual contents will be correctly indicated. There must be painted on each tank the words "Washwater Receiving Tank," followed by its serial number and capacity in wine gallons. The outlet valve must be equipped for the reception of Government lock. Such tanks, if connected with low-wine tanks, stills, or other distilling apparatus, shall be connected by means of fixed metal pipe lines for the purpose of transferring the washwater. If the washwater is not used in the manufacture of alcohol, as provided by section 182.391, washwater receiving tanks need not be installed. (Secs. 2823, 2829, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.73. STILLS.—The stills must be of substantial construction, and must have a clear space of not less than 1 foot around them. The steam or fuel line to each still shall be equipped with a valve so constructed that it may be locked with a Government lock, as provided in section 182.67. The drain and wash-out pipes of stills must also, wherever practicable, be equipped with valves so constructed that they may be locked with Government locks. If there is a furnace under the stills or doublers, the door thereto must, as provided in section 182.67, be so constructed that it may be secured with a Government lock. There must be a clear space of not less than 2 feet around every doubler and condenser or worm tank. The doubler and worm tanks must be elevated not less than 1 foot from the floor. Every still must be numbered, commencing with number 1, and have painted thereon its designated use, such as "Beer Still," "Doubler," "Rectifying Column," etc., and its number. The capacity of stills and doublers shall be determined in accordance with section 182.915 and marked thereon. Where the still is insulated or the manufacturer's serial number is otherwise obscured, such number and capacity will likewise be painted on the covering of the still. (Secs. 3103, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.74. GENERAL REQUIREMENTS FOR TANKS AND OTHER EQUIPMENT.—All tanks used as receptacles for spirits between the outlet of the first condenser or worm and the receiving tanks shall be constructed of metal, and shall be of uniform dimensions from top to bottom. Each such tank shall be equipped with a suitable measuring device whereby the actual contents will be correctly indicated. All tanks must be so constructed as to permit examination of every part thereof, and so arranged as to leave an open space of not less than 3 feet between the top and the roof or floor above. Where tanks are equipped with manholes or valves in the top, which are required to be locked with Government locks, suitable walks or landings with steps or stairways leading thereto, must be provided near the top of such tanks in order that ready access may be had by Government officers

to the manholes. District supervisors may require such walks or landings, with steps or stairways leading thereto, to be installed at plants now operating, where the tanks have manholes or valves in the top, which are required to be locked with Government locks, and the present method of gaining access to the top of the tanks is hazardous or unsafe to Government officers who are required to open and close the locks on such manholes or valves, or to inspect the contents of the tanks from time to time. All tanks, such as low-wine tanks, high-wine tanks, heads and tails tanks, fusel oil tanks, distilled water tanks, and similar equipment, shall each have plainly and legibly painted thereon its designated use, serial number, and capacity in wine gallons. Manheads, inlets, and outlets of the tanks and all necessary openings in the distilling apparatus and equipment, except column stills, whereby access may be had to the alcohol, must be provided with facilities for locking with Government locks: *Provided*, That distilled water storage tanks need not be so equipped unless a pipe line is connected therewith for the conveyance of distilled water to contiguous establishments, as provided in section 182.76. All openings in tanks and other distilling apparatus and equipment, which are not absolutely necessary and which can be permanently closed without interference with plant operations, shall be closed by brazing, welding, or otherwise securely fastening and sealing. Tanks used as receptacles for alcohol may be permanently connected with pipe lines for the conveyance thereto of air and distilled water, but the distilled water pipe line must be affixed to the top of the tank, and may not extend into the tank. Such pipe lines must be equipped with a control valve which may be locked with a Government lock. Pipe lines used for the conveyance of air must also be equipped with a check valve located near the point of entry to the tank in order to effectively prevent any abstraction of alcohol from the tank. Pipe lines, except those indicated herein and those used for the conveyance of alcohol, may not be permanently connected with such tanks.

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SEC. 182.80. RECEIVING TANKS.—The proprietor must provide in the receiving room receiving tanks of sufficient capacity to hold at least the maximum quantity of alcohol that can be distilled during a day of 24 hours. Receiving tanks must be constructed and arranged in conformity with the requirements of section 182.74, and, in addition thereto, such tanks must be elevated not less than 18 inches from the floor and so separated that Government officers may pass completely around each. Each receiving tank must be equipped with a suitable measuring device whereby the actual contents will be correctly indicated, and shall have plainly and legibly painted thereon the words "Receiving Tank," followed by its serial number and capacity in wine gallons. Pipe lines connected with receiving tanks must be brazed, welded, or otherwise secured and sealed, to the tanks in such a manner that they cannot be detached or altered without showing evidence of tampering. Except as provided by section 182.74, pipe lines for the conveyance of water, air, or other substance than alcohol may not be permanently connected with receiving tanks. (Secs. 2823, 2829, 3103, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.99. TANKS.—If the proprietor desires to receive specially denatured alcohol in tank cars, tank trucks, or by pipe line from a denaturing plant on contiguous premises operated by him, he must provide tanks for the storage of the specially denatured alcohol so received by him. Each such tank must be constructed of metal, and equipped with a suitable measuring device whereby the actual contents will be correctly indicated: *Provided*, That wooden tanks may be used for formulas for which metal tanks are unsuitable. Each such tank shall have plainly and legibly painted thereon the words "Specially Denatured Alcohol Storage Tank," followed by its serial number and capacity in wine gallons. The tanks shall be equipped for locking in such a manner as to prevent access to the denatured alcohol. Specially denatured alcohol storage tanks may be placed underground. For such underground storage tanks the identifying sign shall be placed at a convenient and suitable location. (Secs. 2829, 3105, 3124 (a)(6), 3176, I. R. C.)

SEC. 182.110. DESCRIPTION OF PREMISES.—The lot or tract of land on which the industrial alcohol plant, bonded warehouse, or denaturing plant (or any combination thereof) is situated, must be described on Form 1431 by courses and distances, in feet and inches, with the particularity required in conveyances of real estate. If the premises consist of two or more lots or parcels, the condition of the title to which is not the same, the entire premises shall be first described, followed by a separate description by courses and distances, in feet and inches, of each such lot or parcel. The continuity of the premises must be unbroken,

except that the premises may be divided by a public street or highway if parts of the premises so divided abut on such street or highway opposite each other. The premises may be similarly divided by a railroad right-of-way if the railroad is a common carrier. In such cases, each tract of land constituting the premises shall be described separately on the form. If a portion of the premises is owned in fee, unencumbered, by the proprietor, or a portion is owned by the proprietor but is encumbered, or a portion is not owned by the proprietor and he has procured consent, Form 1602, from the owner and from any encumbrancer, the entire premises shall be described first, followed by a separate description, by courses and distances, in feet and inches, of the portions thereof which are encumbered and/or of the tract which is not owned by the proprietor. (Secs. 2800(e)(1), 3105, 3112(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.113. CONDITION OF TITLE TO PREMISES.—The condition of title to the premises shall be shown on Form 1431. If the proprietor is not the owner in fee, unencumbered by any mortgage, judgment, or other lien, of the lot or tract of land on which the industrial alcohol plant, bonded warehouse, or denaturing plant is situated, the name and address of the owner of the fee, and of any mortgagee, judgment-creditor, and of any person having a lien thereon, shall be stated. Where the written consent of the owner of the fee, and of any mortgagees, judgment-creditors, or other lienors, is filed for an industrial alcohol plant or bonded warehouse, as provided in section 182.119, or where an indemnity bond is filed in lieu of such written consent, as provided in section 182.122, such fact, together with information as to the kind, date, and amount of the encumbrance and the balance due thereon shall be shown on the Form 1431 in connection with the statement of the present condition of the title. In cases where an indemnity bond is filed, the date of the district supervisor's approval of the filing of such bond shall also be given. (Secs. 2800(e)(1), 2815(b)(1), 3105, 3112(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.114. CONDITION OF TITLE TO APPARATUS AND EQUIPMENT.—The proprietor's title to, or interest in, the distilling, warehousing, or denaturing appartus and equipment shall be shown on Form 1431. If the proprietor is not the owner of such apparatus and equipment, unencumbered by any mortgage, judgment, or other lien, the name and address of the owner thereof and of any mortgagee, judgment-creditor, conditional sales vendor, or other lienor, shall be stated. Where the written consent of the owner and of the mortgagees, judgment-creditors, conditional sales vendors, or other lienors, is filed for an industrial alcohol plant or bonded warehouse, as provided in section 182.119, or where an indemnity bond is filed in lieu of such written consent, as provided in section 182.122, such fact, together with information as to the kind, date, and amount of the encumbrance and the balance due thereon, or, if the apparatus was purchased under a conditional sales contract, or other form of title retaining contract, the purchase price and the balance due shall be shown in connection with the statement of the proprietor's title, or interest in, the property. In cases where an indemnity bond, Form 1604, is filed, the date of the district supervisor's approval of the filing of such bond shall also be given. (Secs. 2800(e)(1), 2815(b)(1), 3105, 3112(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.121. APPLICATION.—The application shall contain (1) an accurate description of the lot or tract of land on which the industrial alcohol plant or bonded warehouse is situated, and of the buildings, and the distilling apparatus and equipment thereon; (2) a full and clear statement of the condition of the title to the premises and apparatus and equipment, including the name and address of the owner and of all mortgagees, judgment-creditors, conditional sales vendors, and other persons having liens thereon, the kind, date, and amount of each encumbrance and the balance due thereon, and, in the case of apparatus and equipment purchased under a conditional sales contract, or other form of title retaining contract, the purchase price and the balance due; and (3) a full and clear statement of the reasons why the applicant cannot obtain the prescribed written consent. The district supervisor will take action on such application in accordance with the procedure prescribed in section 182.284. (Secs. 3103, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.122. BOND, FORM 1604.—If the application is approved by the district supervisor, the applicant shall execute bond on Form 1604, "Indemnity Bond," in triplicate, in conformity with the provisions of sections 182.184 to 182.205, inclusive, and file the same with the district supervisor. The penal sum of the bond shall be equal to the appraised value of the lot or tract of land on which the industrial alcohol plant or, except as provided in paragraph (*a*), the bonded warehouse is situated, and the buildings, apparatus, and equipment thereon:

Provided, That the maximum penal sum of the bond shall be $50,000 for an industrial alcohol plant, or an industrial alcohol plant and bonded warehouse situated on the same premises, and $10,000 for a bonded warehouse situated elsewhere. If such bond is filed in less than the maximum penal sum and the value of the premises, buildings, or apparatus or equipment is increased by additional land, buildings, or apparatus or equipment, an additional bond on such form to cover the increase in value will be required: *Provided further*, That if such increase in value is less than $1,000, no additional bond will be required, nor will an additional bond be required in excess of the maximum penal sums specified herein. In the event of the failure of bond on Form 1604, the proprietor will be no longer qualified unless a new and satisfactory bond is filed, or consent, as required by section 182.119, is obtained.

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SEC. 182.149. LABELS AND ADVERTISING MATTER.—Samples of labels or facsimiles thereof (or sketches, subject to the filing of the actual labels, if approved) must be attached to each copy of the Form 1479–A. Advertising matter also must be attached when required by these regulations or by the Commissioner. Where permittees change labels which have been previously approved or provide new labels for products, the formula for which has been previously approved, samples of the changed or new labels, or facsimiles thereof (or sketches, subject to the filing of the actual labels, if approved) must be submitted, attached to Form 1479–A, in quadruplicate, to the Commissioner for approval. In such cases, the formula need not be restated on Form 1479–A, but the form should be marked "For label approval only," and should give the name under which the preparation was previously approved, the laboratory number of the approved sample, if any, and the date of approval. The Commissioner will take action on the proposed changes in accordance with section 182.151. The approval of labels by the Commissioner is limited only to the manufacturing data required by these regulations, and does not extend to the context of the label relative to the brand or name of the preparation, directions for use, claims of efficiency or strength, or other statements. Such approvals are made with the following wording: "APPROVED, CONFORMS TO INTERNAL REVENUE REG. 3." (Secs. 3105, 3114(c), 3124(a)(6), 3176, I. R. C.)

SEC. 182.151. APPROVAL OR DISAPPROVAL OF SAMPLES, FORMULAS, PROCESSES, LABELS, AND ADVERTISING MATTER.—Upon examination of the samples, formulas, processes, labels, and advertising matter by the Commissioner, he will note his approval or disapproval on all copies of Form 1479–A, retain one copy of the form, and forward the other three copies to the district supervisor, who will retain one copy for his files, furnish one copy to the branch laboratory for his district, and forward the third copy to the applicant. Both sets of the samples will be retained by the Commissioner, one of which will be furnished to the branch laboratory when needed. In addition to the other limitations in these regulations, the Commissioner may, in approving Forms 1479–A, specify thereon the maximum size of the containers in which any preparation may be sold and the maximum quantity that may be sold to any person during a calendar month. The approval of the article or preparation by the Commissioner will be based on laboratory examination of the finished product, ingredients, formulas, and processes. Approval, unless restricted on Form 1479–A or by these regulations, permits the packaging and labeling of any size container up to and including 1 gallon capacity. A change in container size only does not necessitate resubmission of formula and label. Such approval shall mean only that the sample, formula, or process has been approved as conforming to the standards of the Bureau of Internal Revenue, and such approval shall in no way require the district supervisor to issue a basic permit to use specially denatured alcohol in such process, formula, or preparation. No permit shall be issued to use specially denatured alcohol unless the processes, formulas, preparations, labels, and advertising matter, when required to be submitted to the Commissioner, have been approved by him. All processes, formulas, and samples of preparations submitted to the Bureau must be treated as strictly confidential by its employees, who will be held accountable for any unwarranted disclosure of information respecting such processes, formulas, or samples. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.153. OTHER QUALIFYING DOCUMENTS.—Where the applicant is a corporation, there must be submitted with, and made a part of, the original or initial application on Form 1479, three copies of (1) certificate of incorporation or certificate authorizing the corporation to operate in the State where premises are located, if other than that in which incorporated, (2) a certified list of names and addresses of the officers and directors, and (3) list of stockholders, as

provided in section 182.126. In the case of an individual owner, copartnership, or association, there must be submitted with, and made a part of, the original or initial application on Form 1479, three copies of (1) certified copy of the articles of copartnership or association, if any, (2) an affidavit giving the name of every person interested, or to be interested, in the business, whether such interest appears in the name of the interested party or in the name of another for him, and (3) where the business is to be conducted under a trade name, a trade name certificate, or if no such certificate or other document is required by the laws of the State where the premises are located, then a certified statement to that effect. In addition to the foregoing requirements, and the requirements of section 182.138 hereby made applicable, the Commissioner or district supervisor may, at any time in his discretion, require the proprietor to furnish such additional information as he may deem necessary. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.155. PENAL SUM.—The penal sum of the bond, Form 1480, shall be in a maximum of $100,000, and a minimum of $500, and shall be computed on each wine gallon of specially denatured alcohol, including recovered and restored denatured alcohol, authorized to be on hand, in transit, and unaccounted for at any one time, at double the rate prescribed by law as the internal revenue tax on alcohol (in proof gallons): *Provided*, That the penal sum of bonds covering specially denatured alcohol, Formulas 18 and 19, shall be computed on each wine gallon at the rate prescribed by law as the tax on alcohol (in proof gallons). In the case of manufacturers recovering completely denatured alcohol or articles in the form of denatured alcohol only, the penal sum of the bond, Form 1480, shall be calculated at the same rate on the maximum quantity in wine gallons of recovered and restored denatured alcohol that may be on hand and unaccounted for at any one time. (Secs. 3105, 3114(a), 3124(a) (6), 3176, I. R. C.)

SEC. 182.160. PENAL SUM.—The penal sum of the bond shall be computed on each wine gallon of specially denatured alcohol authorized to be on hand, in transit, and unaccounted for at any one time at double the rate prescribed by law as the internal revenue tax on alcohol (in proof gallons): *Provided*, That the minimum penal sum of such bond shall not be less than $10,000, and the maximum not more than $100,000. (Secs. 3105, 3114(a), 3124(a) (6), 3176, I. R. C.)

SEC. 182.168. OTHER QUALIFYING DOCUMENTS.—Where the applicant is a corporation, there must be submitted with, and made a part of, the original or initial application on Form 1447, three copies of (1) certificate of incorporation or certificate authorizing the corporation to operate in the State where premises are located, if other than that in which incorporated, (2) a certified list of names and addresses of the officers and directors, and (3) list of stockholders, as provided in section 182.126. In the case of an individual owner, copartnership, or association, there must be submitted with, and made a part of, the original or initial application on Form 1447, three copies of (1) certified copy of the articles of copartnership or association, if any, (2) an affidavit giving the name of every person interested, or to be interested, in the business, whether such interest appears in the name of the interested party or in the name of another for him, and (3) where the business is to be conducted under a trade name, a trade name certificate, or if no such certificate or other document is required by the laws of the State where the premises are located, then a certified statement to that effect. In addition to the foregoing requirements, and the requirements of section 182.138 hereby made applicable, the Commissioner or district supervisor may, at any time in his discretion, require the proprietor to furnish such additional information as he may deem necessary. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.181. OTHER QUALIFYING DOCUMENTS.—Where the applicant is a corporation, there must be submitted with, and made a part of, the original or initial application on Form 144, three copies of (1) certificate of incorporation or certificate authorizing the corporation to operate in the State where the application is filed, if other than that in which incorporated, (2) list of names and addresses of the officers and directors, and (3) list of stockholders, as provided in section 182.126. In the case of an individual owner, copartnership, or association, there must be submitted with, and made a part of, the original or initial application on Form 144, three copies of (1) certified copy of the articles of copartnership or association, if any, (2) an affidavit giving the name of every person interested, or to be interested, in the business, whether such interest appears in the name of the interested party or in the name of another for him, and (3) where the business is to be conducted under a trade name, a trade name certificate, or if no such certificate or other document is required by the laws of the State where the application is filed, then a certified statement to that effect. In addition to the fore-

going requirements, and the requirements of section 182.138 hereby made applicable, the Commissioner or district supervisor may, at any time in his discretion, require the proprietor to furnish such additional information as he may deem necessary. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.207. PREPARATION.—Every plat and plan shall be drawn to scale, and each sheet thereof shall bear a distinctive title and the complete name and address of the proprietor, enabling ready identification. The cardinal points of the compass must appear on each sheet, except those of elevational plans. The minimum scale of any plat will not be less than one-fiftieth inch per foot. Each sheet of the original plat and plans shall be numbered, the first sheet being designated number 1, and the other sheets numbered in consecutive order. Plats and plans shall be submitted on sheets of tracing cloth, opaque cloth, or sensitized linen. The dimensions of plats and plans shall be 15 by 20 inches, outside measurement, with a clear margin of at least 1 inch on each side of the drawing, lettering, and writing. Plats and plans may be original drawings, or reproductions made by the "ditto process," or by blue-, brown-, or black-line lithoprint, if such reproductions are clear and distinct. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.208. DEPICTION OF PREMISES.—Plats must show the outer boundaries of the premises by courses and distances, in feet and inches, in a color contrasting with those used for other drawings on the plat, and the point of beginning with respect to its distance and bearings from some near and well-known landmark must be shown. The plat must also contain an accurate depiction of the building or buildings and/or tanks comprising the premises, and any driveway, public highway, or railroad right-of-way adjacent thereto or connecting therewith. The depiction of the premises on the plat should agree with the description thereof in the application. In the case of an industrial alcohol plant or bonded warehouse, if the premises consist of two or more lots or parcels of land, the condition of title to which is not the same, each such lot or parcel shall be separately depicted by courses and distances, in feet and inches, and such lots or parcels shall be delineated or cross-hatched in contrasting colors. If two or more buildings are to be used, they must be shown in their relative positions, the designated name of each indicated, and all pipe lines or other connections, if any, between the same depicted. Where two or more buildings are used for the same purpose, the name of each such building shall include an alphabetical designation, beginning with "A," and they shall be so shown on the plat. If the establishment consists of a room or floor of a building, an outline of the building, the precise location and the dimensions of the room or floor, and the means of ingress from and egress to a public street or yard, shall be shown. All first floor exterior doors of each building on the premises will be shown on the plat. Except as provided in section 182.216, all pipe lines leading to or from the premises, the purpose for which used, and the points of origin and termination will be indicated on the plat. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.210. FLOOR PLANS.—The plans shall include a floor plan of each floor of each building comprising the industrial alcohol plant, bonded warehouse, and denaturing plant showing the general dimensions of the rooms and floors, and the location of all doors, windows, and other openings, and how such openings are protected. The plans shall also include all apparatus, equipment, and tanks established under sections 182.15a, 182.44, and 182.49. All apparatus, tanks, and equipment, except pipe lines in the industrial alcohol plant, must be shown in their exact location on the floor plans, and their designated use indicated. Pipe lines in the industrial alcohol plant may be shown if desired. As to the bonded warehouse and denaturing plant, the pipe lines must be shown, unless they are portrayed on elevational flow diagrams in accordance with section 182.217. In the case of stills, tanks, and similar equipment, the serial number and capacity shall also be shown. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.212. ELEVATIONAL PLANS OF BUILDINGS.—The plans shall also include an exterior, elevational view of each exposure of each building or room, showing the type of security afforded the openings. The number of stories, and the height of each story, will be indicated on the elevational plans. In lieu of drawings, the proprietor may submit a photograph of each exposure of each building in a size not smaller than 7 by 9 inches. The photographs must be in sufficient detail to clearly depict the buildings from the ground to the roof, and must be properly identified. Where photographs are submitted, drawings must be furnished to show the security afforded the openings in all rooms required to be locked, such as wine room or receiving room: *Provided*, That in lieu of such drawings, the photographs may be noted to show the type of security afforded the

openings in such rooms by reference to the appropriate sheet of plans on file whereon such information is shown. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.217. ELEVATIONAL FLOW DIAGRAMS.—Elevational flow diagrams (plans) shall be submitted covering (1) distilling material system, (2) mashing and fermenting systems, (3) distilling system, (4) the receiving tank system, and (5) the storage and denaturing systems as provided herein. Such diagrams or plans shall clearly depict all equipment in its relative operating sequence and elevation by floors, with all connecting pipe lines, valves, flanges (except as provided in section 182.214), Government locks, measuring devices, etc. The elevation by floors on the diagrams may be indicated by horizontal lines representing floor levels. All the flow diagrams as a unit must show the flow of the distilling material, and the resulting products, through the distilling material tanks, fermenters, stills, doublers, and other equipment, and the deposit of the finished spirits in the receiving room or building and the method of removal therefrom. The diagrams must also show the flow of alcohol, denaturing materials and denatured alcohol, if the storage and denaturing systems are not fully illustrated on plans pursuant to section 180.210. All major equipment, fermenters, stills, tanks, etc., must be identified on these plans as to number and use. The elevational flow diagram must be so drawn that all fixed pipe lines, except those indicated by section 182.216, may be readily traced from beginning to end. Other types of drawings that clearly depict the information required herein may be submitted in compliance with this section. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.218. CERTIFICATE OF ACCURACY.—The plat and plans shall bear a certificate of accuracy, preferably in the lower right-hand corner of each sheet, signed by the proprietor, the draftsman, and the district supervisor, substantially in the following form:

_____
(Name of proprietor)

_____
(Address)

Approved _____
(Date)

Accuracy certified by:

_____
(District supervisor)

_____
(Name and capacity for proprietor)

_____
(Draftsman)

Industrial Alcohol Plant No. _____

_____ 19_____. Sheet No. _____
(Date)

(Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.219. REVISED PLATS AND PLANS.—The sheets of revised plats and plans shall bear the same number as the sheets superseded, but will be given a new date. Any additional plats and plans shall be given a new number in consecutive order, or will be otherwise numbered and lettered in such manner as will permit the filing of the plats and plans in proper sequence. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.262. CHANGE IN PROPRIETORSHIP.—(*a*) *Suspension.*—

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(3) *Registry of stills.*—If the business is to be permanently discontinued, file Form 26, "Registry of Stills," in triplicate, in accordance with section 182.432.

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SEC. 182.269. CHANGES IN CONSTRUCTION AND USE.—Where a change is to be made in the construction of a room or building of an industrial alcohol plant, bonded warehouse, or denaturing plant, not involving an extension or curtailment of the premises, or where a change is to be made in the use of any portion of such premises, the permittee shall first secure approval thereof by the district supervisor, pursuant to application, in triplicate, setting forth specifically the proposed changes. Upon approval of the application, the changes will be made under the supervision of a Government officer, unless they are of such a nature as, in the opinion of the district supervisor, do not require such supervision. The completed changes will be reflected in the next amended or annual application, Form 1431, and amended plans filed by the permittee, unless the district supervisor requires the immediate filing of an amended application and amended plans. (Secs. 3105, 3124(a) (6), 3176, I. R. C.)

SEC. 182.270. INDEMNITY BOND COVERING CHANGES IN BUILDINGS.—If buildings on industrial alcohol plant or bonded warehouse premises, or on premises which have been eliminated from the industrial alcohol plant or bonded warehouse premises, are to be demolished or altered in such a manner as to decrease the value of the property, and a lien for taxes exists on such property under section 3112, I. R. C., the permittee, if (1) the owner of the fee unencumbered, or (2) consents, in accordance with section 182.119, are necessary and have been obtained, must file with the district supervisor an indemnity bond, Form 1617, in triplicate, in a penal sum equal to the decrease in the value of the property: *Provided*, That if such decrease in value is less than $1,000, no indemnity bond will be required.

(*a*) *Appraisal.*—The amount of the decrease in value of the property subject to the Government's lien, which will be caused by the demolition or alteration of buildings, shall be determined by appraisal by two or more competent persons designated by the district supervisor. The appraisers shall render to the district supervisor a report, in duplicate, of their appraisal, which shall include information as to the methods employed by them in determining their valuations. The appraisal shall be at the expense of the permittee, unless made by Government officers. The district supervisor may dispense with the formal appraisal when he has reason to believe that the value of the property concerned is less than $1,000. (Secs. 3103, 3105, 3112(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.272. INDEMNITY BOND COVERING REMOVAL OF EQUIPMENT.—If apparatus or equipment on industrial alcohol plant or bonded warehouse premises on which a lien has attached, under section 3112, I. R. C., for taxes on alcohol produced or stored, which has not been tax-paid or withdrawn for a tax-free purpose, is to be removed from the premises without replacement thereof with apparatus or equipment that will become a real fixture in law of an equal or greater value than the apparatus or equipment to be removed, (1) where the proprietor is the owner of the premises in fee unencumbered, whether the property is realty or personalty; (2) where consents, in accordance with section 182.119, are necessary and have been obtained, whether the property is realty or personalty; and (3) where an indemnity bond, Form 1604, is on file and the property is personalty; the permittee must file with the district supervisor an indemnity bond on Form 1617, in triplicate, in a penal sum equal to the value of the apparatus or equipment to be removed, or equal to the excess in value of the old apparatus or equipment to be removed over the value of the new apparatus or equipment to be substituted therefor: *Provided*, That if such value, or difference in value, as the case may be, is less than $1,000, no indemnity bond will be required. The value of the apparatus or equipment to be removed, or the difference between the value of such apparatus or equipment and the value of the apparatus or equipment to be substituted therefor, will be determined by appraisal in the manner prescribed in section 182.270(*a*). (Secs. 3103, 3105, 3112(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.278. WHERE OPERATION OF A BONDED WAREHOUSE OR DENATURING PLANT ON PREMISES IS CONTINUED.—(*a*) *Suspension.*—* * *

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(3) *Registry of stills.*—Register the stills on Form 26, in triplicate, in accordance with section 182.432, if not previously registered.

* * * * * * *

(*b*) *Resumption.*—* * *

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(3) *Registry of stills.*—Register the stills on Form 26, in triplicate, in accordance with section 182.432, if not previously registered.

* * * * * * *

SEC. 182.284. INDEMNITY BOND APPLICATION.—In the case of an industrial alcohol plant or bonded warehouse, when an application for permission to file an indemnity bond, Form 1604, in lieu of the written consent of the owner of the industrial alcohol plant or bonded warehouse premises or apparatus or equipment, or of any mortgagee, judgment-creditor, conditional sales vendor, or other person having a lien thereon, is submitted by the applicant and such application conforms to the requirements of these regulations, the district supervisor will cause an investigation to be made of the facts upon which the application is based, and will designate two or more competent persons to make an appraisal of the value of the lot or tract of land on which the industrial alcohol plant or bonded warehouse is situated, the industrial alcohol plant or bonded warehouse, the buildings, and apparatus and equipment. The appraisal

shall be made as provided in section 182.123. If the district supervisor finds, upon consideration of the appraisal and reports of investigation, that under the law and regulations an indemnity bond may properly be accepted in lieu of the consent of the owner or lienor, and if he is satisfied that the valuation placed upon the property by the appraisers is fair, he will note his approval on all copies of the application. He will then return one copy of the approved application to the applicant and retain the original for his files. He will forward the remaining copy of the application and copies of the reports of investigation and appraisal to the Commissioner at the time of forwarding the indemnity bond. If the application is disapproved, the district supervisor will note his disapproval thereon and will return all copies of such application to the applicant with a statement of the reasons for his disapproval. (Secs. 3103, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.286. INVESTIGATION.—(*a*) *Inspection of premises.*—* * *

(*b*) *Qualification of applicant to use specially denatured alcohol.*—The district supervisor shall detail an officer or officers to inspect the premises of the applicant for permit to use specially denatured alcohol to determine whether the premises and storeroom are suitable for the business to be carried on and meet the requirements of the regulations. This investigation shall include a careful inquiry into the character of the applicant. His previous business experience must be carefully inquired into, and should the officers find that the applicant is not reasonably qualified to do or engage in the business proposed, recommendation for approval shall not be made. Inquiry should also be made of reputable firms, persons, and associates who have knowledge of the particular line of business being inquired into, and who are familiar with the general requirements of the trade in their respective territories, for the purpose of ascertaining the facts necessary to determine whether the applicant is proceeding in good faith in a lawful business enterprise. The premises where the business is to be conducted shall also be made the subject of careful and detailed inquiry, and approval of any application shall be withheld as to any premises not of a character generally regarded as suitable for a manufacturing business of the kind for which application is made. Such premises shall be substantially constructed, and approval shall not be given to premises of insecure construction where there is a likelihood of theft. Examining officers will be held strictly accountable for the recommendation of approval of only such premises as are suitable for the business to be carried on, and, except in the case of very small operations, as would be generally satisfactory to strictly commercial or industrial establishments, and in locations that would commend themselves to any prudent businessman. The manufacturing supplies and equipment should be ample for the business to be conducted. Where toilet articles or various liquids such as deoderants or sprays are to be manufactured, there shall be on hand raw materials, manufacturing apparatus, and packages for the finished product in a value which, in the opinion of the district supervisor, evidences the bona fides or the proposed business, and which is commensurate with the volume of business the applicant proposes to conduct. The applicant must submit a detailed inventory of all raw materials, such as oils and chemicals; of all manufacturing apparatus, such as tanks, pumps, filters, and filling machines; and all packages on hand in which the finished product is to be sold; and the inventory must be verified. In case of doubt as to appraisal of particular items, advice of disinterested persons who have knowledge of these particular lines of business shall be sought. (Secs. 3105, 3114, 3124(a)(6), 3176, I. R. C.)

SEC. 182.297. APPLICATIONS AND REPORTS COVERING CHANGES.—Where an application covering changes in apparatus or equipment, or in construction or use of a room or building, is approved by the district supervisor, he will retain one copy of the application and forward one copy to the permittee; and in the case of an industrial alcohol plant, bonded warehouse, denaturing plant, or user of specially denatured alcohol, one copy to the Commissioner, and, when reports covering changes in apparatus and equipment are received from Government officers in accordance with section 182.271, he will retain one copy and promptly forward one copy to the Commissioner. Similar disposition will be made of reports received from the permittee covering emergency repairs of apparatus and equipment. Where changes in buildings, apparatus, or equipment are such as to require the filing of an indemnity bond, in the case of an industrial alcohol plant or bonded warehouse, the district supervisor may approve the application, if he has recommended approval of the bond, and permit the changes in buildings, apparatus, or equipment to proceed pending approval of the bond by the Commissioner. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.329. CHEMICAL PLANT PRODUCING ALCOHOL AS A BYPRODUCT.—* * *

(*b*) *Exception.*—A manufacturer who uses products containing specially denatured alcohol in a process where part or all of the specially denatured alcohol is recovered will not be required to qualify the premises as an industrial alcohol plant, provided he obtains a permit to recover and use specially denatured alcohol in an approved process or preparation. The recovered alcohol, if necessary, must be redenatured before use, or returned to an industrial alcohol plant or denaturing plant if he has no use for such recovered alcohol, and otherwise accounted for, as provided by these regulations.

(*c*) *Exception.*—A manufacturer who uses chemicals which do not contain specially denatured alcohol, but which were manufactured under a permit with specially denatured alcohol, and uses such chemicals in a process where part or all of the specially denatured alcohol used in their manufacture is recovered, will be required to qualify the premises as an industrial alcohol plant: *Provided*, That where the Commissioner finds there is no jeopardy to the revenue, the manufacturer may be permitted, in lieu of qualification as the proprietor of an industrial alcohol plant, to obtain a permit to recover and use specially denatured alcohol. The recovered alcohol, if necessary, must be redenatured before use, or returned to an industrial alcohol plant or denaturing plant, and otherwise accounted for, as provided by these regulations. (Secs. 3103, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.356. DISTILLATION OF LIQUID CHEMICALS.—* * *

* * * * * * *

(*c*) *Test for alcohol.*—The chemicals produced, such as butyl alcohol, isopropyl alcohol, acetone, ether, etc., must be tested for the purpose of determining the presence of ethyl alcohol, in accordance with the applicable requirements of sections 182.368 through 182.388, or by such other method or methods as may be prescribed by the Commissioner. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.432. REGISTRY ON FORM 26.—Every person having in his possession or custody, or under his control, any still or distilling apparatus that is set up, must register the same on Form 26, in triplicate, with the district supervisor for the district in which it is located. Stills to be used for the production of various types of alcohol may be registered for "alcohol," and the specific type need not be shown. Thereafter, where the plant is changed from the production of one type of alcohol to another, reregistration by the same proprietor will not be required. Where an alcohol still is registered for both alcohol and chemicals, its alternate use for such purposes may be permitted by the storekeeper-gauger without further registration. The temporary suspension of a plant does not necessitate reregistration of the stills. The operation of a plant by alternating proprietors, where no permanent change in ownership occurs, does not require reregistration of the stills by the proprietors. When there is a change in location or use or a bona fide change in ownership of a still, the still must be registered to reflect the change. The district supervisor will, upon approving the registration of a still on Form 26, retain one copy, forward one copy to the Commissioner, and return the remaining copy to the plant proprietor. The proprietor will retain his copy at the industrial alcohol plant available for inspection by Government officers. (Secs. 3103, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.478. RATE OF TAX.—The law imposes a tax on distilled spirits, including alcohol, produced in or imported into the United States, at the rate prescribed therein on each proof gallon, or wine gallon when below proof, and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid when withdrawn from bond. (Secs. 2800(a)(1), 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.502. FILLING OF TANK CAR.—The tank car must be filled in the immediate presence of the storekeeper-gauger. The pipe line from the weighing tank to the tank car must be in full view of the officer, and must not be connected or used except in his presence. The officer will seal-lock the car as soon as it is filled. The proprietor will enter on Form 1440, covering the gauge of the alcohol, the symbol and serial number of the car, the number of inches above or below the full mark, and the temperature of the alcohol at filling, the serial number of the lock seal or seals, the destination, and the date of shipment; for example: "Withdrawn in U. P. tank car number 1643, filled 2 inches above full mark at 80° F., lock seal number 46457, for transfer to Ind. Alc. Bonded Whse. No. 56, New York, N. Y. Billed out 4:30 p. m., May 1, 1941." The lock seal numbers will also be entered on Form 1439. (Secs. 3101, 3105, 3107, 3108, 3124(a)(6), 3176, I. R. C.)

SEC. 182.519. MARKS AND BRANDS.—(*a*) *Drums, barrels, etc.*—* * *

(*b*) *Cases of bottled alcohol.*—Each package containing alcohol in bottles shall bear all the marks required by sections 182.517 and 182.518 except the gross weight, tare, and net weight, it not being necessary to ascertain such. The number and capacity of the bottles shall, however, be shown on each package. The marks shall be placed on one side of the case. (Secs. 2808, 3103, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.527. STAMPS.—(*a*) *Affixing.*—Tax-paid and export stamps shall be securely affixed to the Government head of packages, or the side of cases, with a good adhesive, and, when affixed to wooden packages or cases, with a tack or staple in each corner of the stamp.

* * * * * * *

(*c*) *Covering.*—After the stamp has been canceled, it must be covered with a coating of transparent shellac, lacquer, or varnish, to protect it against moisture, alteration, and removal. (Secs. 3105, 3124(a)(6), 3176, 3301, I. R. C.)

SEC. 182.539. BOTTLE STAMPS.—The proprietor must affix over the mouth of each bottle of alcohol filled in his warehouse, except when alcohol is bottled for export, an engraved bottle stamp, with the serial number printed thereon. (Secs. 3105, 3124(a)(6), 3176, 3300, I. R. C.)

SEC. 182.540. PROCUREMENT AND ISSUANCE OF STAMPS.—(*a*) *Procurement.*—Bottle stamps are supplied to collectors of internal revenue in the same manner as other stamps. District supervisors will obtain supplies of such stamps from the collectors as desired, and shall forward sufficient stamps of each denomination to the storekeeper-gaugers in charge of the bonded warehouses.

(*b*) *Issuance.*—The storekeeper-gauger will issue bottle stamps as needed. The registry number of the industrial alcohol bonded warehouse and the name of the proprietor shall be entered on each bottle stamp by the proprietor. The required information may be rubber-stamped or overprinted on the bottle stamps. The stamps shall be issued in proper serial order, starting with the lowest serial number of the stamps at the time of issuance. However, the stamps need not be affixed in serial order. The total number of stamps used for each lot bottled shall be reported on Form 1440.

(*c*) *Record and Report, Form 118.*—Storekeeper-gaugers having custody of bottle stamps at industrial alcohol bonded warehouses will keep a record of bottle stamps received and used on part 1 of Form 118, "Storekeeper-gauger's Monthly Record and Report of Alcohol Warehousing Stamps," as required by the instructions on the form. The record will be kept in bound form, available for inspection by other Government officers. The storekeeper-gauger will prepare his monthly report on part 2 of Form 118 in triplicate, retain one copy thereof, furnish one copy to the proprietor, and forward one copy to the district supervisor. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.541. MANNER OF AFFIXING BOTTLE STAMPS.—The bottle stamps must be securely affixed to the bottles with the use of a good adhesive. The adhesive used must be in proper liquid condition, and care must be taken to cover the entire back of the stamp with the adhesive, and to press the whole surface of the stamp firmly against the surface of the bottle sufficiently long to cause the entire surface of the stamp to adhere securely to the bottle. The stamp must pass over the mouth of the bottle, extending an approximately equal distance on two sides of the bottle. The stamp must be affixed in such manner that upon opening the bottle, a portion of the stamp will be left attached thereto until emptied. (Secs. 3105, 3124(a)(6), 3176, 3301, I. R. C.)

SEC. 182.634. LOSSES FROM PACKAGES.—Losses sustained from packages in bonded warehouses will be determined when the packages are withdrawn from warehouse, unless they are regauged for repackaging or other reason prior to withdrawal, and the loss reported on Form 1440 and Form 1443–B. Where the quantity lost from any package exceeds 1 percent in the case of metal packages, or 6 percent in the case of wooden packages, of the quantity originally contained therein, claim for remission of tax on the entire quantity lost from the package will be made by the proprietor, except as herein provided. If the loss does not exceed 1 percent, or 6 percent, so calculated, claim for remission of tax will not be required: *Provided*, That (1) claim for remission of tax will not be required for an amount less than one proof gallon, and (2) there are no circumstances indicating that the alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.635. LOSSES IN TRANSIT.—Losses in transit to bonded warehouses must be determined at the time alcohol is received at the warehouse, and the loss reported on Form 1443–A when received in tank cars, and on Form 1443–B

when received in packages. Where the quantity lost from any tank car or package exceeds 1 percent (3 percent on wooden packages) of the quantity shipped therein, claim for remission of tax on the entire quantity lost from the package will be made by the proprietor, except as herein provided. If the loss does not exceed 1 percent (3 percent on wooden packages), so calculated, claim for remission of tax will not be required: *Provided*, That (1) claim for remission of tax will not be required for an amount less than one proof gallon, and (2) there are no circumstances indicating that the alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.657. DEPOSIT IN STOREROOM.—Tax-free alcohol received pursuant to withdrawal permit, Form 1450, shall be placed in the locked storeroom or compartment required to be provided in accordance with section 182.61. Such alcohol shall remain in the original packages in the storeroom or compartment until withdrawn for use. The room or compartment for the storage of tax-free alcohol must be used for the purpose of storing such alcohol in the original containers. (Secs. 3105, 3108, 3114(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.665. LOSSES IN TRANSIT.—Losses in transit to tax-free permittee's premises must be ascertained at the time the alcohol is received by the permittee. Accordingly, when packages are received showing evidence of having sustained a loss in transit, the permittee should determine the extent of the loss at that time. The quantity ascertained to have been lost will be noted on Form 1451 immediately below the line on which receipt of the shipment is reported. Where the quantity lost from any package exceeds 1 percent of the quantity originally contained therein as to any metal package, or 3 percent as to any wooden package, claim for allowance of the entire quantity lost from the package will be made by the permittee, except as herein provided. If the loss does not exceed 1 percent, or 3 percent, so calculated, claim for allowance will not be required: *Provided*, That (1) claim for remission of tax will not be required for an amount less than one proof gallon, and (2) there are no circumstances indicating that the alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.666. LOSSES AT PERMITTEE'S PREMISES.—Losses of tax-free alcohol at permittee's premises will be reported on Form 1451 for the month in which the loss is ascertained. If the loss of alcohol at a permittee's premises during any month exceeds 1 percent of the quantity on hand during the month, claim for allowance of the entire quantity lost will be made by the permittee, except as herein provided. If the loss does not exceed 1 percent, so calculated, claim for allowance will not be required: *Provided*, That (1) claim for remission of tax will not be required for an amount less than one proof gallon, and (2) there are no circumstances indicating that the alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.691. RETURN OF RECOVERED DENATURED ALCOHOL FOR RESTORATION AND REDENATURATION.—Denatured alcohol recovered for reuse by manufacturers using the same, may be shipped to industrial alcohol plants for redistillation or to denaturing plants for restoration and redenaturation. If the shipment is to a denaturing plant, such plant must be equipped for restoring recovered alcohol. The recovered alcohol will be returned to the industrial alcohol plant or denaturing plant pursuant to notice on Form 1484, as provided in section 182.895. (Secs. 3073, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.728. RAILROAD TANK CARS OR TANK TRUCKS.—Denatured alcohol may be shipped in railroad tank cars only where the premises of both the denaturer and the consignee are equipped with suitable railroad siding facilities. Denatured alcohol may be transported by tank trucks only where suitable storage tanks are provided on the consignees' premises. The manhole covers, outlet valves, and all other openings on all railroad tank cars or tank trucks used for shipping denatured alcohol shall be equipped with facilities for sealing so that the contents cannot be removed without showing evidence of tampering. Railroad, or other appropriate seals, dissimilar in marking from cap seals used by the Bureau of Internal Revenue, for securing manhole covers, outlet valves, and all other openings in tank cars or tank trucks containing denatured alcohol, shall be furnished and affixed by the carrier or the proprietor: *Provided*, That serially numbered cap seals for use on tank trucks for the transportation of specially denatured alcohol shipped from one denaturing plant to another denaturing plant shall be furnished by the Government and affixed by the storekeeper-gauger. Immediately after filling, the tank car or tank truck shall be sealed in such a manner as will secure all openings affording access to the contents of the tank.

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SEC. 182.773. LOSSES FROM PACKAGES.—Losses sustained from packages in denaturing plants will be determined when the packages are dumped for denaturation, and the loss will be reported on Form 1468-A at that time. Where the quantity lost from any package exceeds 1 percent in the case of metal packages, or 6 percent in the case of wooden packages, of the quantity originally contained therein, claim for remission of tax on the entire quantity lost from the package will be made by the proprietor, except as herein provided. If the loss does not exceed 1 percent, or 6 percent, so calculated, claim for remission of tax will not be required: *Provided*, That (1) claim for remission of tax will not be required for an amount less than one proof gallon, and (2) there are no circumstances indicating that the alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.774. LOSSES IN TRANSIT.—Losses in transit to denaturing plants must be determined at the time alcohol is received at the denaturing plant, and the loss reported on Form 1468-A. Where the quantity lost from any tank car or metal package exceeds 1 percent, or 3 percent in the case of any wooden package, of the quantity shipped therein, claim for remission of tax on the entire quantity lost from the package will be made by the proprietor, except as herein provided. If the loss does not exceed 1 percent, or 3 percent, so calculated, claim for remission of tax will not be required: *Provided*, That (1) claim for remission will not be required for an amount less than one proof gallon, and (2) there are no circumstances indicating that the alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.780. REGISTRY ON FORM 26.—Every denaturer having in his possession or custody, or under his control, stills set up, must register the same with the district supervisor on Form 26, as provided by section 182.432. (Secs. 2810(a), 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.815. DESTRUCTION OR OTHER DISPOSITION.—Specially denatured alcohol in the possession of a bonded dealer may, upon the approval of the district supervisor, be destroyed or disposed of to the proprietor of an industrial alcohol plant or a denaturing plant because of unsalability or other legitimate reason, in accordance with the provisions of sections 182.867 to 182.869, inclusive. Notations concerning the destruction or disposition of specially denatured alcohol shall be made on Form 1478. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.816. LOSSES IN TRANSIT.—Losses in transit to bonded dealer's premises must be ascertained at the time the specially denatured alcohol is received by the bonded dealer. Accordingly, when packages, tank cars, or tank trucks are received which show evidence of having sustained a loss in transit, the bonded dealer should determine the extent of the loss at that time. The quantity ascertained to have been lost will be reported on Form 1478 on the line on which receipt of the shipment is reported, and in the column provided therefor. Where the quantity lost from any metal package, tank car, or tank truck exceeds 1 percent, or 3 percent as to any wooden package, of the quantity originally contained therein, claim for allowance of the entire quantity lost from the package, tank car, or tank truck will be made by the bonded dealer, except as herein provided. If the loss does not exceed 1 percent, or 3 percent, so calculated, claim for allowance will not be required: *Provided*, That (1) claim for allowance will not be required for an amount less than one wine gallon, and (2) there are no circumstances indicating that the specially denatured alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.855. LABELS.—(*a*) *Brand label.*—* * *

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(4) The legend "Contains 70 percent alcohol by volume," "Contains 70 percent ethyl alcohol by volume," or "Contains 70 percent absolute alcohol by volume."

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(*b*) *Caution notice.*—There must be placed on each bottle, as a part of the brand label or otherwise, but not on the back of any label, a caution notice, printed in plain and legible type of not less than 6 point, reading as follows: * * *

SEC. 182.868. RETURN TO INDUSTRIAL ALCOHOL PLANT, DENATURING PLANT OR BONDED DEALER.—Where specially denatured alcohol, lawfully in the possession of a manufacturer, is found to be unsuitable for use, or where any such manufacturer discontinues the use thereof, or where for any other legitimate reason such manufacturer desires so to do, such denatured alcohol may be returned to any industrial alcohol plant, denaturing plant, or bonded dealer for lawful

disposition: *Provided*, That (1) consent of surety is filed on the bond (if any) of the manufacturer, extending terms thereof to cover the transportation of the specially denatured alcohol to the industrial alcohol plant, denaturer, or bonded dealer, (2) the industrial alcohol plant, denaturer or bonded dealer consents to the return, and (3) permission for such transfer is, in each instance, first obtained from the district supervisor of the district from which the specially denatured alcohol is to be returned. The application shall be filed in triplicate with the district supervisor. If the application is approved, the district supervisor will forward one copy of the approved application to the Commissioner, attached to Form 1482, and one copy to the permittee, and retain the remaining copy for his files. If the industrial alcohol plant, denaturer, or bonded dealer is situated in another district, the district supervisor authorizing the return will forward a letter of authorization to the district supervisor of such other district. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.868a. AUTHORIZATION FOR REDENATURATION OF RETURNED SPECIALLY DENATURED ALCOHOL.—Pursuant to appropriate application by the proprietor of the denaturing plant to which specially denatured alcohol is returned, the district supervisor may authorize the conversion of any specially denatured alcohol not containing Methyl (wood) alcohol into any one of the completely denatured alcohol formulae by adding the required denaturants, under supervision of the Government officer. Upon authority of the district supervisor, any such specially denatured alcohol contained in tank cars may be redenatured in such tank cars at the denaturing plant premises. Appropriate entries, in red, should be made in the denaturing plant records covering such conversion. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.870. LOSSES IN TRANSIT.—Losses in transit to a manufacturer's premises must be ascertained at the time the specially denatured alcohol is received by the manufacturer. Accordingly, when packages, tank cars, or tank trucks are received which bear evidence of having sustained a loss in transit, the manufacturer should determine the extent of the loss at that time. The quantity ascertained to have been lost will be noted on Form 1482 immediately below the line on which receipt of the shipment is reported. Where the quantity lost from any metal package, tank car, or tank truck exceeds 1 percent, or 3 percent as to any wooden package, of the quantity originally contained therein, claim for allowance of the entire quantity lost from the package, tank car, or tank truck will be made by the manufacturer, except as herein provided. If the loss does not exceed 1 percent, or 3 percent, so calculated, claim for allowance will not be required: *Provided*, That (1) claim for allowance will not be required for an amount less than one wine gallon, and (2) there are no circumstances indicating that the specially denatured alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.874. FORM 1482.—(*a*) *Recovery.*—* * *

(*b*) *Special entries.*—If specially denatured alcohol is destroyed on the premises, or is returned to an industrial alcohol plant, or a denaturer, or bonded dealer, or disposed of to another manufacturer, notation of such transactions, in the case of destruction, giving the dates of the destruction and, if supervised, the name of the officer supervising the destruction; and, in the case of disposal, the name and address of the industrial alcohol plant, denaturer, bonded dealer, or manufacturer to whom shipped, and the date, quantity, and formula number, etc., shall be made on the form. (Secs. 3070, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.895. SHIPMENT TO INDUSTRIAL ALCOHOL PLANT OR DENATURING PLANT.—Recovered denatured alcohol requiring restoration or redenaturation, or both, unless redenatured on the manufacturer's premises in accordance with section 182.894, shall be shipped to an industrial alcohol plant for restoration, or to a denaturing plant for restoration and redenaturation: *Provided*, That where the recovered alcohol is to be restored and the shipment is to a denaturing plant, the denaturing plant must be equipped with the necessary apparatus to restore the alcohol. Appropriate entries of the recovered denatured alcohol shall be made on Forms 1442 and 1452 as to industrial plant transactions, and on Form 1468-F as to denaturing plant transactions.

(*a*) *Marks on packages.*—Packages of recovered denatured alcohol shipped to an industrial alcohol plant or a denaturing plant for restoration or redenaturation must be numbered in serial order and have marked or stenciled thereon the name of the manufacturer, his permit number and address, and the quantity of alcohol contained therein, and the words "Recovered (specially) or (completely) denatured alcohol formula No. _____."

(*b*) *Notice, Form 1484.*—The manufacturer, at the time of shipping recovered denatured alcohol to an industrial alcohol plant or a denaturing plant, shall submit Form 1484, "Manufacturer's Notice of Shipment of Recovered Denatured Alcohol." The notice shall give all of the information called for by the form, and shall be forwarded on the day of shipment to the storekeeper-gauger at the industrial alcohol plant or denaturing plant, and to the district supervisor of the district in which the industrial alcohol plant or denaturing plant is located, as provided in subparagraphs (1) and (2).

(1) *Interdistrict shipments.*—When shipment is made to an industrial alcohol plant or a denaturing plant located in another supervisory district, the manufacturer will prepare Form 1484, in triplicate, and forward one copy to the storekeeper-gauger at the plant to which shipment is made, and the remaining copies to the district supervisor of the district in which the plant is located. The district supervisor will check both copies of the form with the monthly report of the receiving plant, execute his certificate of report of receipt on the form, and forward one copy of the form to the district supervisor of the manufacturer's district, who will check the form against the manufacturer's monthly report on Form 1482.

(2) *Intradistrict shipments.*—When recovered alcohol is shipped to an industrial alcohol plant or a denaturing plant located in the same district, the manufacturer will prepare Form 1484, in duplicate, and forward one copy to the storekeeper-gauger at the receiving plant, and the remaining copy to the district supervisor. The district supervisor will check the form with the monthly reports of the manufacturer and the receiving plant on Forms 1482 and 1442, or 1468-F.

(*c*) *Record of shipment.*—All denatured alcohol recovered for reuse on the manufacturer's premises and shipped to an industrial alcohol plant or a denaturing plant for restoration or denaturation shall be duly entered by the manufacturer on his monthly report, Form 1482. (Secs. 3070, 3073, 3105, 3124(a)(6), 3176, I. R. C.)

3. The words "Warehouse Stamp" are hereby deleted from figure 6 of section 182.528.

4. These amendments are designed to simplify requirements dealing with equipment, plant facilities, construction and premises, the preparation and filing of qualifying documents, indemnity bonds required for the removal of equipment, the registration of stills and losses of alcohol, and to prescribe other provisions of a corrective or clarifying nature. It is not intended by these amendments to require permittees to file additional plats and plans, or to change equipment immediately, in cases where the existing documents and equipment conform essentially to the regulations prior to these amendments. Upon filing new plats and plans covering extensive changes in premises and equipment, these new requirements must be observed.

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

6. This Treasury Decision is issued under the authority contained in sections 2800, 2808, 2810, 2815, 2823, 2829, 3070, 3073, 3101, 3103, 3105, 3107, 3108, 3112, 3113, 3114, 3124, 3176, and 3300, Internal Revenue Code (26 U. S. C. 2800, 2808, 2810, 2815, 2823, 2829, 3070, 3073, 3101, 3103, 3105, 3107, 3108, 3112, 3113, 3114, 3124, 3176, and 3300).

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved July 1, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register July 8, 1949)

REGULATIONS 3, SECTIONS 182.64, ETC. 1949-21-13211
T. D. 5748

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 182.—INDUSTRIAL ALCOHOL

Amending Regulations 3

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

To District Supervisors and Others Concerned:

1. On August 18, 1949, a notice of proposed rule making regarding industrial alcohol was published in the Federal Register (14 F. R. 5147).

2. After consideration of all such relevant matter as was presented by interested persons regarding the proposal, the following amendments of sections 182.64, 182.85, 182.87, 182.90, 182.92, 182.175, 182.176, 182.179, 182.182 (new paragraph (*c*)), 182.183, 182.229 (new paragraph (*h*)), 182.230, 182.290, 182.322, 182.400, 182.407, 182.408, 182.494, 182.495 (new paragraph (*c*)), 182.498, 182.514, 182.548, 182.550, 182.556, 182.557, 182.560, 182.561, 182.635, the introductory text of section 182.644 and paragraphs (*a*) and (*b*) of section 182.644, 182.645, 182.696, 182.774, 182.904, 182.908, 182.909, 182.910, 182.911, 182.912, and 182.913 of Regulations 3 (26 CFR, Part 182), approved March 6, 1942, relating to the production of industrial alcohol, are amended and sections 182.491a, 182.493a, 182.502a, 182.511a, 182.521a, and 182.698a are added to such regulations.

EQUIPMENT

INDUSTRIAL ALCOHOL PLANTS

SEC. 182.64. WEIGHING TANKS.—Except as provided in section 182.407, the proprietor must provide in the receiving room one or more suitable weighing tanks constructed in accordance with the provisions of section 182.65. If molasses or other liquids are used as distilling materials, a suitable weighing or measuring tank must be provided for determining the quantity thereof. (Secs. 2808, 3105, 3107, 3124(a)(6), 3176, I. R. C.)

BONDED WAREHOUSES

SEC. 182.85. WEIGHING TANKS.—Where alcohol is to be removed by pipe line to tank cars for shipment, or to a denaturing plant on the same premises, or to a rectifying plant on contiguous or nearby premises (as authorized by section 182.82a), or to tank trucks for transfer in bond to another bonded warehouse (as authorized by section 182.550) or to a denaturing plant (as authorized by section 182.560), or where alcohol is to be received in tanks cars, or received in tank trucks from an industrial alcohol plant (as authorized by section 182.400) or from another bonded warehouse (as authorized by section 182.550), the proprietor of the warehouse must provide for use in weighing such alcohol one or more suitable weighing tanks, constructed and secured in accordance with the provisions of section 182.65. (Secs. 2808, 3105, 3107, 3124(a)(6), 3176, I. R. C.)

SEC. 182.87. ALCOHOL STORAGE TANKS.—The proprietor of a bonded warehouse must provide a sufficient number of alcohol storage tanks for the storage of alcohol received by pipe line, in railroad tank cars, or in tank trucks. Each such tank must be constructed and secured in accordance with the provisions of section 182.74, and have painted thereon the words "Storage tank," followed by its serial number and capacity in wine gallons. Each storage tank must be equipped with a suitable measuring device whereby the actual contents will be correctly indicated. Valves must be provided in the pipe connections and so arranged as

to control completely the flow of alcohol both into and out of tanks, and so constructed that they may be locked with a Government lock. Except as provided in section 182.74, storage tanks must not be permanently connected with pipe lines for the conveyance of air, distilled water, or other substances than alcohol. (Secs. 2829, 3105, 3107, 3124(a) (6), 3176, I. R. C.)

DENATURING PLANTS

SEC. 182.90. WEIGHING TANKS.—Where alcohol is stored in storage tanks or is received by pipe line from a bonded warehouse on the same premises, and the alcohol is not weighed at the time of transfer in a weighing tank located in the bonded warehouse, or where alcohol is received in tank cars, or is received in tank trucks from an industrial alcohol plant (as authorized by section 182.400) or from a bonded warehouse (as authorized by section 182.560), or where denatured alcohol is to be removed in tank cars, or in tank trucks (as authorized by section 182.728), or by pipe line (as authorized by section 182.98), the proprietor of the denaturing plant must provide for use in weighing such alcohol and denatured alcohol one or more suitable weighing tanks, constructed and secured in accordance with the provisions of section 182.65. (Secs. 2808, 3105, 3107, 3124(a) (6), 3176, I. R. C.)

SEC. 182.92. ALCOHOL STORAGE TANKS.—Where alcohol is received by pipe line from a bonded warehouse on the same premises, or in railroad tank cars, or in tank trucks as authorized by these regulations, a sufficient number of alcohol storage tanks must be installed in the denaturing plant, unless the alcohol is run directly, or through weighing tanks, to mixing tanks, as provided in sections 182.694 to 182.698. If alcohol is received in barrels or drums only, storage tanks are not required, but the proprietor may, if he so desires, provide such tanks for the storage of alcohol received in packages. Alcohol storage tanks must be constructed and secured in conformity with the provisions of section 182.74 and must be equipped with a suitable measuring device whereby the actual contents will be correctly indicated. Each such tank shall have plainly and legibly painted thereon the words "Alcohol storage tank," followed by its serial number and capacity in wine gallons. Valves must be provided in the pipe connections and so arranged as to control completely the flow of spirits both into and out of tanks, and so constructed that they may be locked with a Government lock. Except as provided in section 182.74, storage tanks must not be permanently connected with pipe lines for the conveyance of air, distilled water, or other substances than alcohol. (Secs. 2829, 3105, 3107, 3124(a) (6), 3176, I. R. C.)

QUALIFYING DOCUMENTS

CARRIERS

SEC. 182.175. APPLICATION, FORM 144.—Every person desiring to transport tax-free alcohol or specially denatured alcohol must file Form 144, "Application for Permit to Transport Tax-Free and Specially Denatured Alcohol," in triplicate, for permit so to do. The carrier will specify the mode of transportation, such as railroad, express company, steamship, barge line, truck, etc., and the supervisory districts in which tax-free or specially denatured alcohol will be transported. Where steamship or barge lines or motor carriers operate between certain points and over certain courses or routes, such points and courses or routes will be specified in the application. Where the mode of transportation is by tank truck, the carrier will give the serial number of each tank truck and its capacity. Every person desiring to transport, in tank trucks, undenatured ethyl alcohol for transfer in bond between industrial alcohol plants, industrial alcohol bonded warehouses and denaturing plants pursuant to withdrawal permits, Form 1436 or 1463, as the case may be, must file Form 144, properly modified, in triplicate, for permit so to do. The carrier will give the serial number of each tank truck and its capacity. In cases where transportation is in more than one supervisory district, the application shall be filed with the district supervisor in whose district the principal office or place of business of the applicant is located. The provisions of sections 182.105, 182.106, 182.115, 182.117, and 182.118 are hereby extended, insofar as applicable to carriers.

(*a*) *Persons entitled to permit.*—Basic permits to transport tax-free or specially denatured alcohol, or undenatured ethyl alcohol for transfer in bond in tank trucks, shall be issued only to reputable carriers who are actively and regularly engaged generally in the legitimate business of transportation, and who possess

adequate facilities to insure safe delivery at destination of any alcohol transported by them. (Secs. 3105, 3107, 3114(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.176. USE OF MOTOR TRUCKS BY RAILROAD, STEAMSHIP, AND EXPRESS COMPANIES.—If the applicant is a railroad, steamship, or express company and operates motor trucks pursuant to contracts with the owners of such trucks in transporting tax-free alcohol or specially denatured alcohol or in transporting undenatured ethyl alcohol in tank trucks for transfer in bond between industrial alcohol plants, industrial alcohol bonded warehouses, and denaturing plants under the carrier's bill of lading, express receipt, waybill, etc., there must be stipulated in the application that "In consideration of the issuance of the basic permit herein applied for, the applicant agrees to assume full responsibility for the safe transportation and proper delivery of any and all such alcohol so possessed for transporting by his said trucking agents; and said applicant further covenants and agrees to pay to the United States all internal revenue taxes, assessments, and penalties due by reason of any diversion of said alcohol in the hands of any of his said agents, or as the result of the delivery by any such agent of said alcohol to any person not authorized to receive the same." (Secs. 3105, 3107, 3124(a)(6), 3176, I. R. C.)

SEC. 182.179. CONDITIONS OF APPROVAL.—No application shall be approved unless and until it is established by the applicant to the satisfaction of the district supervisor that he is a reputable carrier and is actively and regularly engaged generally in the legitimate business of transportation and that he possesses adequate facilities to insure safe delivery at destination of any tax-free alcohol or specially denatured alcohol or undenatured ethyl alcohol in tank trucks which may be transported by him. No application for an original or renewal permit for the transportation in tank trucks of undenatured ethyl alcohol or specially denatured alcohol shall be approved unless and until it is determined by the district supervisor, after inspection, that each tank truck meets the requirements of the regulations in this part. (Secs. 3105, 3107, 3124(a)(6), I. R. C.)

SEC. 182.182. BOND, FORM 49.—

(c) *Undenatured ethyl alcohol in tank trucks.*—(1) *Transportation by motor carriers.*—Motor carriers, as defined in these regulations, in order to transport undenatured ethyl alcohol by tank trucks, between industrial alcohol plants, industrial alcohol bonded warehouses, and denaturing plants, must procure permits so to do, in accordance with the regulations in this part and file bond, Form 49, properly modified, in the penal sum specified in section 182.183.

(2) *Transportation by consignors or consignees.*—A consignor or consignee, in order to transport undenatured ethyl alcohol between industrial alcohol plants, industrial alcohol bonded warehouses, and denaturing plants, in tank trucks controlled and operated by such consignor or consignee, must file application on Form 144 and procure permit, Form 145, authorizing such transportation and file consent of surety, Form 1533, on his bond, Form 1432-A, extending the terms thereof to be liable for the tax, together with penalties and interest on all undenatured ethyl alcohol withdrawn, transported, used, or sold in violation of laws and regulations now or hereafter in force. If the maximum of the present bond is not sufficient when computed as set forth in section 182.183, a new bond in a sufficient penal sum must be furnished to cover the additional liability.

(3) *Present permits and bonds.*—Basic permits (Form 145) and bonds now held by motor carriers, and by consignors and consignees, which authorize the transportation of tax-free and specially denatured alcohol, may, on application and the filing of consents of surety, be modified to authorize tank truck shipments of undenatured ethyl alcohol for transfer in bond between industrial alcohol plants, industrial alcohol bonded warehouses, and denaturing plants and to contain an undertaking to be liable for the tax, or an amount equal to the tax as provided in subparagraph (2) of this paragraph. The consent of surety, or a new bond, must be filed so that the principal and surety will be responsible to the extent specified in section 182.183. (Secs. 3105, 3107, 3114(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.183. PENAL SUM OF BOND, FORM 49.—The penal sum of the bond must be computed at the rate of not less than $1,000 for each vehicle (other than a tank truck) to be used by the permittee, nor more than $10,000 for all such vehicles so used. The penal sum of the bond for the transportation of specially denatured alcohol in tank trucks shall be in the penal sum of $50,000 for each such tank truck, and not more than $200,000 for the total of all trucks used. The penal sum of the bond for the transportation of undenatured ethyl alcohol in tank trucks for transfer in bond between industrial alcohol plants, industrial

alcohol bonded warehouses, and denaturing plants shall be in the penal sum of $75,000 for each such tank truck, and not more than $200,000 for the total of all trucks used. Where a permit is obtained authorizing the transportation of tax-free alcohol or specially denatured alcohol in vehicles (other than a tank truck), specially denatured alcohol or undenatured ethyl alcohol in tank trucks, and bond in the maximum penal sum of $200,000 is filed, such bond shall be sufficient to cover the transportation of all tax-free, specially denatured, and undenatured alcohol authorized to be transported by the permit. (Secs. 3105, 3107, 3114(a), 3124(a)(6), 3176, I. R. C.)

Basic Permits

ISSUANCE OF ORIGINAL BASIC PERMITS

Sec. 182.229. Limitations Under Permit.—

(*h*) *Permit to transport undenatured ethyl alcohol in tank trucks, Form 145.*—The permit will specify the supervisory districts in which the carrier will be permitted to transport undenatured ethyl alcohol in tank trucks, for transfer in bond between industrial alcohol plants, industrial alcohol bonded warehouses, and denaturing plants. If the carrier is a motor carrier operating between certain points and over certain courses or routes, such points and courses or routes will be specified in the permit. The permit shall specify the number of tank trucks to be used by the permittee in the transportation of undenatured ethyl alcohol and the serial number and capacity of each. (Secs. 3105, 3107, 3114, 3124(a)(6), 3176, I. R. C.)

Sec. 182.230. Filing of Permits.—Every person receiving a basic permit under the provisions of the regulations in this part must file the same, together with a copy of the application and all qualifying documents in support of the application, in such manner, at the place of business covered by the basic permit, that they may be examined by Government officers. Whenever tax-free or specially denatured alcohol is transported other than by railroad or steamship company, or express company operating thereon, there shall be posted in or on the vehicle of transportation, including motor trucks authorized to be used or be in the possession of the person in charge thereof, a copy of the basic permit (Form 145) under which such transportation is authorized which has been duly certified as a true copy by the district supervisor issuing the same, except that where specially denatured alcohol is transported in a tank truck the certified copy of the basic permit under which such transportation is authorized shall be attached to the route board of the tank truck in accordance with section 182.731. Whenever undenatured ethyl alcohol is transported in tank trucks as authorized by these regulations, a copy of the basic permit (Form 145) under which such transportation is authorized which has been duly certified as a true copy by the district supervisor issuing the same, shall be attached to the route board of the tank truck in accordance with section 182.514. (Secs. 3105, 3107, 3124(a)(6), 3176, I. R. C.)

Action by District Supervisor

ORIGINAL ESTABLISHMENT

Sec. 182.290. Authority to Approve.—(*a*) *By district supervisor.*—District supervisors are authorized to approve applications for basic permits and bonds relating to (1) the use of tax-free alcohol (except by the United States or governmental agency thereof), (2) dealing in specially denatured alcohol, (3) use of denatured alcohol (including the recovery of specially or completely denatured alcohol, or articles in the form of denatured alcohol), (4) the transportation of tax-free or specially denatured alcohol, or undenatured ethyl alcohol in tank trucks for transfer in bond between industrial alcohol plants, industrial alcohol bonded warehouses, and denaturing plants, (5) the exportation of alcohol or specially denatured alcohol, (6) the removal of alcohol to customs manufacturing bonded warehouses, and (7) the withdrawal of alcohol tax-free for use on vessels and aircraft. District supervisors are also authorized to approve, insofar as the issuance of basic permit is concerned, applications on Form 1431, for the establishment and operation of industrial alcohol plants, bonded warehouses, and denaturing plants.

(*b*) *By Commissioner.*—The Commissioner will approve applications (except as to the issuance of basic permits) and bonds respecting (1) the establishment and operation of industrial alcohol plants, bonded warehouses, and denatur-

ing plants, and (2) the use of tax-free and specially denatured alcohol by the United States or governmental agency thereof. (Secs. 3105, 3107, 3114, 3124(a)(6), 3170, 3176, I. R. C.)

General Requirements Regarding Operations

Sec. 182.322. Compliance With Requirements of Law and Regulations.—Under no circumstances will a person conduct any operations in connection with the production, storage, taxpayment, or denaturation of alcohol, or use tax-free alcohol or deal in or use specially denatured alcohol, or transport tax-free or specially denatured alcohol, or undenatured ethyl alcohol in tank trucks as authorized by the regulations in this part, or recover denatured alcohol, or articles in the form of denatured alcohol, until compliance with all the requirements of law and these regulations, and the application, bond (if required) and supporting documents have been approved and a basic permit issued pursuant thereto, in accordance with the provisions of the regulations in this part. (Secs. 3105, 3107, 3114, 3115, 3124(a)(6), 3176, I. R. C.)

Operation of Industrial Alcohol Plants

Taxpayment, Removal, and Transfer of Alcohol from Receiving Room

Sec. 182.400. Authorized Removals.—Alcohol produced at industrial alcohol plants, after deposit in the receiving tanks, may be:

(1) Transferred by means of pipe lines to storage tanks in a bonded warehouse on the bonded premises where produced, or to alcohol storage tanks or mixing tanks in a denaturing plant located on the bonded premises where produced.

(2) Drawn into tank cars or other approved containers or drawn into tank trucks and transferred to any bonded warehouse for storage therein, or to any denaturing plant for denaturation.

(3) Withdrawn upon payment of tax without being entered into a bonded warehouse.

(4) Tax-paid and transferred by pipe line to a rectifying plant on contiguous or nearby premises, as authorized by sections 182.574a to 182.574g.

(5) Removal for lawful tax-free purposes. (Secs. 2885, 2891, 3105, 3106, 3107, 3108, 3124(a)(6), 3176, I. R. C.; sec. 309(a), Tariff Act of 1930 (19 U. S. C., Supp. V, 1309(a).)

Drawing Off, Gauging, and Removal of Alcohol

Sec. 182.407. Weighing Alcohol Removed by Pipe Line.—Where alcohol is to be removed by pipe line, the same will be weighed in a weighing tank before removal from the receiving room, except that where alcohol is transferred by pipe line from the receiving tanks to a bonded warehouse or denaturing plant on the industrial alcohol plant premises, and no weighing tank is provided in the receiving room, the alcohol may be run into weighing tanks in the bonded warehouse or denaturing plant, respectively, and weighed therein. The alcohol must, in any event, be weighed once in connection with its transfer to the bonded warehouse or the denaturing plant. Where alcohol is transferred from receiving tanks to tank cars or tank trucks one or more weighing tanks must be provided in the receiving room and all alcohol removed by pipe line must be weighed in such weighing tanks, and the correct weight will be recorded by the proprietor on the appropriate forms. The storekeeper-gauger will balance the scales upon which the weighing tank is mounted before the alcohol is run into such tank. Scales used for weighing alcohol in lots of not over 500 gallons will be tested from time to time under the supervision of the storekeeper-gauger, by means of test weights, provided in accordance with section 182.66. Such scales will be tested by placing the prescribed test weights on the scales and checking the weight registered on the beam or dial of the scales. The test weights will then be removed without disturbing the beam or dial and the weighing tank filled with alcohol or water to the same weight, whereupon the test weights will again be placed upon the scales, the alcohol or water being retained in the tank and the weight registered on the beam or dial checked. This operation will be continued until the scales have been checked in 500-pound notches at all weights for which the scales are used. Storekeeper-gaugers will, from time to time, check the gallonage indicated by scales used for weighing alcohol in larger lots against the gallonage indicated by volumetric determination of the contents of the tank. Such volumetric determination will be made by (*a*) accurately ascertaining the proof and temperature of the alcohol,

and the depth of the liquid in the tank by means of a steel tape, (*b*) multiplying the depth in inches by the capacity of the tank for 1 inch of depth, and (*c*) correcting the volume to 60 degrees Fahrenheit in accordance with table No. 7 of the Gauging Manual. The corrected wine gallonage thus determined can then be compared with the wine gallons indicated by the scales. The storekeeper-gauger will not permit the use of any scales found to be inaccurate. (Secs. 2808, 3105, 3107, 3124(a)(6), 3176, I. R. C.)

SEC. 182.408. PIPE-LINE REMOVALS.—A pipe line used for the transfer of alcohol from the receiving room to storage tanks in a bonded warehouse, or to a denaturing plant on the industrial alcohol plant premises, or to railroad tank cars or tank trucks for shipment, must conform to the requirements of section 182.82, except that alcohol may be transferred into a tank car or tank truck by means of a hose connection where the same is in full view of the Government officer throughout its entire length. The valves on such pipe line shall be kept closed and locked at all times, except when necessary to be opened for the transfer of alcohol. The keys to all locks on the valves of pipe lines shall remain at all times in the custody of the storekeeper-gauger. Alcohol may be transferred by pipe line only under the immediate supervision of the storekeeper-gauger. (Secs. 3105, 3107, 3124(a)(6), 3176, I. R. C.)

OPERATION OF INDUSTRIAL ALCOHOL BONDED WAREHOUSE

RECEIPT OF ALCOHOL

SEC. 182.491a. IN TANK TRUCKS FROM AN INDUSTRIAL ALCOHOL PLANT OR ANOTHER BONDED WAREHOUSE.—When alcohol is received in a tank truck from an industrial alcohol plant not on the same premises or from another bonded warehouse, the seals must be broken by the storekeeper-gauger assigned to the receiving bonded warehouse and no undenatured ethyl alcohol may be removed from the tank truck, except in the presence of such officer. When the alcohol is received at the warehouse, the shipment will be examined by the proprietor and the storekeeper-gauger, in accordance with section 182.493a. (Secs. 3101, 3105, 3107, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.493a. EXAMINATION OF TANK TRUCK.—When a tank truck is received, it will be examined, and if it bears evidence of loss by leakage, theft, or otherwise, or if the gauge of its contents discloses a loss or shortage, the storekeeper-gauger will make a report of the loss to the district supervisor similar to that required when packages which have sustained a loss in transit are received. (Secs. 3105, 3107, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.494. DEPOSIT IN RECEIVING WAREHOUSE.—Upon completion of the examination of the containers, the proprietor will accurately determine the quantity received and will check in the receipt of the alcohol against Form 1440 in the presence of the storekeeper-gauger and will execute the certificate of receipt on both copies of the form, and will note thereon and on Form 1443-A, or Form 1443-B, any loss or deficiency in the shipment. The proprietor will then file one copy of Form 1440 as a permanent record, as provided in section 182.643(*a*), and at the close of the day will deliver the other copy with Form 1441 to the storekeeper-gauger for transmittal to the district supervisor of his district. On the day of receipt of the alcohol, the storekeeper-gauger shall fill in the certificate of receipt on Form 1439, noting any losses and discrepancies. Where a loss in transit is sustained the storekeeper-gauger will report the total loss and, in the case of packages, the loss from each package. The receipted form shall be forwarded to the district supervisor of the district from which the alcohol was shipped. Such district supervisor will check daily, on receipt, each Form 1439 covering a tank truck shipment, and make any inquiry which he deems necessary with respect to any discrepancy. In the event of failure to receive a form from the storekeeper-gauger at the consignee's premises within the time normally required for the truck to make the shipment and the form to be sent by mail, the district supervisor will make appropriate investigation. (Secs. 3101, 3105, 3107, 3113, 3124(a)(6), 3176, I. R. C.)

SEC. 182.495. METHOD OF DEPOSIT.—

(*c*) *Alcohol received in tank trucks.*—Undenatured ethyl alcohol received in tank trucks shall be gauged and transferred immediately to storage tanks. The seals must be broken by the storekeeper-gauger assigned to the bonded warehouse and no undenatured ethyl alcohol may be removed from the tank truck, except in the presence of such officer. (Secs. 3101, 3105, 3107, 3113, 3124(a)(6), 3176, I. R. C.)

REMOVAL OF ALCOHOL FROM RECEIVING AND STORAGE TANKS

SEC. 182.498. GAUGE ON WITHDRAWAL.—Where alcohol is drawn into drums, barrels, or similar containers from receiving and storage tanks, the packages shall be gauged in accordance with the provisions of the Gauging Manual (26 CFR, Part 186). Where alcohol is drawn into tank cars, drawn into tank trucks, or is transferred by pipe line, as authorized by the regulations in this part, such alcohol shall be gauged in accordance with the rules prescribed in the regulations in this part and in the Gauging Manual; the weight of the alcohol will be determined by means of weighing tanks, as provided in section 182.407. Alcohol may be drawn from receiving and storage tanks only under the immediate supervision of the storekeeper-gauger.

(*a*) *Fractional parts of a gallon.*—All fractional parts of a gallon less than one-tenth, shown in the Gauging Manual, shall be disregarded in gauging alcohol. For example, a package of 190 degrees proof alcohol, weighing 326 pounds net, shall be reported on Form 1440 as containing 47.90 wine gallons and 91.10 proof gallons. A package containing 190 degrees proof alcohol, weighing 340 pounds, shall be reported as containing 50 wine gallons and 95 proof gallons.

(*b*) *Details of gauge.*—The details of all alcohol gauged in the bonded warehouse shall be recorded by the proprietor on Form 1440, as hereinafter provided. (Secs. 3101, 3105, 3107, 3124(a) (6), 3176, I. R. C.)

SEC. 182.502a. FILLING OF TANK TRUCK.—The tank truck must be filled in the immediate presence of the storekeeper-gauger. Prior to filling, the storekeeper-gauger shall determine whether the tank truck is authorized to be used by comparing the serial number and the capacity of the tank as marked thereon, with the copy of the basic permit, and will inspect all openings to the tank truck to determine whether they may be effectively sealed. If the tank truck does not meet such requirements, its use for the transportation of undenatured ethyl alcohol will not be permitted. After filling, the storekeeper-gauger shall seal the tank truck in such a manner as will secure all openings affording access to the contents of the tank. The proprietor will enter on Form 1440, covering the gauge of the alcohol, the number of inches of undenatured ethyl alcohol loaded into each compartment and the temperature thereof at the time of filling, the name of the carrier, the number of the tank truck, the State license number of the truck, the driver's full name, and the driver's permit number and State issuing the same, the destination, the date of shipment, and the serial numbers of the cap seals used. (Secs. 3101, 3105, 3107, 3108, 3124(a) (6), 3176, I. R. C.)

APPROVED CONTAINERS

SEC. 182.511a. TANK TRUCKS.—Undenatured ethyl alcohol may be transported by tank trucks only where suitable storage tanks are provided on the receiving bonded warehouse premises. The manhole covers, outlet valves, and all other openings on tank trucks used for shipping undenatured ethyl alcohol shall be equipped with facilities for sealing so that the contents cannot be removed without showing evidence of tampering. Serially numbered cap seals for use on such tank trucks shall be furnished by the Government and affixed by the storekeeper-gauger. Immediately after filling, the tank truck shall be sealed in such a manner as will secure all openings affording access to the contents of the tank. (Secs. 3101, 3105, 3107, 3108, 3124(a) (6), 3176, I. R. C.)

SEC. 182.514. TANK TRUCKS.—Tank trucks may be used for transporting undenatured ethyl alcohol subject to the provisions of the regulations in this part. Every tank truck used to transport undenatured ethyl alcohol must conform to the following requirements: The tank shall be securely and permanently attached to the frame or chassis of the truck or trailer and shall be securely constructed. Interior bulkheads or stiffeners must have proper drainage cut-outs. Manhole covers, outlet valves, vents or pressure relief valves, and all other openings shall be equipped for sealing so as to prevent unauthorized access to the contents of the tank. Outlets of each compartment must be so arranged that delivery of any compartment will not afford access to the contents of any other compartment. Partial delivery, by meter or otherwise, will not be permitted. There shall be but one consignor per load and not less than the entire contents of any one compartment shall be delivered to any one consignee. Calibrated charts, prepared or certified by competent and recognized authorities or engineers, showing the capacity of each compartment in wine gallons for each inch of depth shall be carried in each truck. Each tank truck shall also be equipped with a route board, at least 10 by 12 inches, constructed of substantial material and permanently

attached thereto by round-headed or carriage bolts, nutted and riveted, battered or welded. Provision will also be made for protection, against the weather, of the permit and label by the use of celluloid or equally substantial material. A copy of the basic permit (Form 145) under which transportation is authorized (as required by section 182.230) and the prescribed label (as required by section 182.521a) will be affixed to such route board. Tanks shall be so constructed that they will completely drain the contents of each compartment, even when the ground is not perfectly level. Suitable ladders and cat walks, permanently attached, must be provided in order to permit ready examination of manholes and other openings. Provision shall be made for the proper grounding of tank trucks when filling or emptying. (Secs. 3101, 3105, 3107, 3108, 3124(a)(6), 3176, I. R. C.)

MARKS, BRANDS, AND STAMPS

SEC. 182.521a. TANK TRUCKS.—Each tank truck used to transport undenatured ethyl alcohol must have permanently and legibly marked or painted thereon its number, capacity in wine gallons, and the name of the owner in letters at least 4 inches in height. If the tank truck consists of two or more compartments, each compartment must be identified by a letter of the alphabet, such as "A," "B," etc., and the capacity in wine gallons of each compartment must be marked thereon. The consignor shall securely attach to the route board of each tank truck, a label showing the name, registry number, and location (city or town and State) of the shipping industrial alcohol plant or bonded warehouse; the name, registry number, and location (city or town and State) of the receiving industrial alcohol bonded warehouse or denaturing plant, followed by the date of shipment; and the quantity in wine and proof gallons of undenatured ethyl alcohol contained in each compartment. Such label shall be destroyed upon emptying the tank truck. (Secs. 2808, 3105, 3107, 3108, 3124(a)(6), 3176, I. R. C.)

REMOVAL OF ALCOHOL FROM WAREHOUSE

SEC. 182.548. TRANSPORTATION.—(*a*) *In bond.*—Alcohol shipped in bond to another bonded warehouse, in containers other than tank trucks, shall be transported to the premises of the receiving warehouse by the proprietor of the shipping warehouse; or by a railroad or steamship company, or an express company operating thereon; or by a motor carrier who holds a permit to transport tax-free or specially denatured alcohol or who has qualified with the Interstate Commerce Commission as a "self insurer"; or by other carriers, including motor and barge lines, who are actively and regularly engaged in the legitimate business of transportation and who possess adequate facilities to insure safe delivery at destination of any alcohol transported by them, and who are approved by the district supervisor. Alcohol shipped in bond to another bonded warehouse or to a denaturing plant in tank trucks shall be transported to the premises of the receiving bonded warehouse or denaturing plant by the proprietor of the shipping warehouse, or by the proprietor of the receiving bonded warehouse or denaturing plant, or by a motor carrier, who holds a permit, Form 145, to transport undenatured ethyl alcohol in tank trucks.

(*b*) *Tax-free.*—Alcohol withdrawn free of tax for denaturation, export, transfer to customs manufacturing bonded warehouse, use on vessels and aircraft, use of the United States or any governmental agency thereof, the several States and Territories or any municipal subdivision thereof, or the District of Columbia, hospitals, sanatoriums, colleges, laboratories, scientific purposes, etc., must be transported to the premises of the consignee or, if withdrawn for export, to the port of export, by the proprietor of the bonded warehouse or a carrier holding permit on Form 145 to transport tax-free alcohol: *Provided*, That the consignee may transport the alcohol from the premises of the delivering carrier at the place of destination to his own premises or, in the case of export, or use on vessels and aircraft, to the point of lading.

(*c*) *Method of transportation.*—Alcohol shipped in bond or tax-free in accordance with paragraphs (*a*) and (*b*) of this section must be transported by the proprietor of the bonded warehouse or the authorized carrier personally, or by some person regularly and exclusively in their employ, and the right to the possession of any vehicle used for such transportation must be vested in the vendor or carrier.

(*d*) *Responsibility for delivery.*—The consignor will be responsible for proper delivery of alcohol shipped in bond or tax-free to an authorized carrier, or to the premises of the consignee when delivery is made by the consignor. The con-

signee will likewise be responsible for the proper delivery to his permit premises of alcohol shipped to him in bond or tax-free and transported by him from the premises of the authorized carrier. Failure to make such delivery will be deemed to be grounds for citation for revocation of the basic permit of the person responsible for the proper delivery of the alcohol.

(*e*) *Certificate in bill of lading, waybill, etc.*—When alcohol is transported by a carrier, as authorized herein, the proprietor of the shipping warehouse shall include in his bill of lading, waybill, express receipt, etc., a statement to the following effect: "Before making delivery, the agent of the delivering carrier at destination must have received from the consignee a certified copy of the withdrawal permit authorizing this shipment."

(1) *Exception; written statement.*—Where no bill of lading is issued, as in the case of delivery by local express company, a written statement to the above effect, signed by the shipper, shall be delivered to the carrier. (Secs. 3070(a), 3105, 3107, 3108, 3114, 3124(a)(6), 3176, I. R. C.)

TRANSFER OF ALCOHOL IN BOND BETWEEN BONDED WAREHOUSES

SEC. 182.550. GENERAL.—Alcohol may be transferred in bond from any bonded warehouse in original packages or other approved containers, or in tank trucks, after the same has been correctly weighed and proofed to determine the exact contents of each package, unless withdrawn on the original gauge, to another bonded warehouse as hereinafter provided. (Secs. 3105, 3107, 3124(a)(6), 3176, I. R. C.)

SEC. 182.556. REPORT OF GAUGE, FORM 1440.—The proprietor will prepare Form 1440, in quadruplicate, giving the details of the regauge, or original gauge if withdrawn on such gauge, of the alcohol. The proprietor will deliver all copies of the form to the storekeeper-gauger in charge, who shall upon shipment forward one copy to the supervisor of the district in which the shipping warehouse is located, and two copies, with one copy of Form 1439, to the storekeeper-gauger in charge of the receiving warehouse, and return the remaining copy to the proprietor of the shipping warehouse, who shall file the same as a permanent withdrawal record, as provided in section 182.643(*b*). When shipment is made by tank truck as authorized by the regulations in this part, one copy each of Forms 1439 and 1440 for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to the storekeeper-gauger in charge and the remaining copy of Form 1440 will be mailed to such storekeeper-gauger in charge. (Secs. 3101, 3105, 3107, 3124(a)(6), 3176, I. R. C.)

SEC. 182.557. REPORT OF SHIPMENT, FORM 1439.—When alcohol is transferred in bond to another bonded warehouse, the proprietor shall, at the time of shipment, prepare Form 1439, in duplicate, if shipment is made to a warehouse located within the same district, or in triplicate, if shipment is made to a warehouse located in another district, and immediately deliver all copies thereof to the storekeeper-gauger in charge, who shall, on the same day, forward one copy to the supervisor of the district from which the alcohol is shipped, one copy to the supervisor of the district to which the alcohol is shipped (where shipment is to another district), and the remaining copy to the storekeeper-gauger in charge of the receiving bonded warehouse, who, upon receipt of the alcohol, will dispose of the form in accordance with section 182.494. When shipment is made by tank truck in accordance with the regulations in this part, the copy of Form 1439 for the storekeeper-gauger in charge of the receiving bonded warehouse will be disposed of as provided by section 182.556. (Secs. 3101, 3105, 3107, 3124(a)(6), 3176, I. R. C.)

WITHDRAWAL FOR DENATURATION

SEC. 182.560. SHIPMENT TO DENATURING PLANT LOCATED ON OTHER PREMISES.—Alcohol may be withdrawn from a bonded warehouse for shipment to a denaturing plant located on other premises only pursuant to withdrawal permit, Form 1463, authorizing such shipment. Alcohol may be so shipped in tank cars, drums, or other approved containers, or in tank trucks. Such shipments may not be made until the proprietor of the bonded warehouse has received from the denaturer the withdrawal permit, Form 1463, naming him as vendor, and then only in the quantity specified in the withdrawal permit. Upon shipment the proprietor of the bonded warehouse will enter the shipment on the permit and

return it to the denaturer, unless he has been authorized by the denaturer to retain the permit for the purpose of making future shipments.

(*a*) *Form 1439.*—When alcohol is shipped to a denaturing plant located on other premises, the proprietor of the warehouse shall prepare Form 1439, in duplicate, if shipment is made to a denaturing plant located in the same district, or in triplicate, if shipment is made to a denaturing plant located in another district, and immediately deliver all copies thereof to the storekeeper-gauger in charge, who shall, on the same day, forward one copy to the district supervisor of the district from which the alcohol is shipped, one copy to the district supervisor of the district to which the alcohol is shipped (where shipment is to another district), and the remaining copy to the storekeeper-gauger in charge of the denaturing plant. When the shipment is made by tank truck as authorized by these regulations, the copy of Form 1439 for the storekeeper-gauger in charge at the receiving denaturing plant will be disposed of in accordance with section 182.561(*a*). (Secs. 3070(a), 3101, 3105, 3107, 3108(a), 3114(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.561. GAUGING, MARKING, AND STAMPING UPON WITHDRAWAL.—When alcohol is transferred by pipe line, or shipped in tank cars or tank trucks, to a denaturing plant, it will be run into a weighing tank and weighed and proofed by the proprietor, in accordance with sections 182.405 and 182.407. When alcohol is transferred or shipped to a denaturing plant in other approved containers, the proprietor will regauge the packages, unless withdrawn on the original gauge, and will mark each package in accordance with sections 182.518 to 182.524: *Provided*, That where packages are transferred to a denaturing plant on the same premises the regauged markings prescribed by section 182.522 need not be placed upon the packages: *And provided further*, That where packages are filled from the receiving tanks of the industrial alcohol plant or from storage tanks in the bonded warehouse for transfer to the denaturing plant located on the same premises, and the alcohol is to be denatured immediately in such packages and the location of the receiving room, bonded warehouse, and denaturing plant is such that the packages are transferred from the receiving room or bonded warehouse to the denaturing plant in the immediate personal presence of the storekeeper-gauger and under his constant observation, the district supervisor may authorize the data, which the regulations in this part require to be marked upon the Government head or side of the package, to be placed upon a label attached to the head or side of the container, in lieu of being printed, stenciled, or cut thereon. Such label shall be destroyed when the contents of the package are denatured.

(*a*) *Form 1440.*—The proprietor will prepare Form 1440, in quadruplicate, giving the details of the regauge, or original gauge if withdrawn on such gauge, of the alcohol. The proprietor will deliver all copies of the form to the storekeeper-gauger in charge, who shall upon shipment forward one copy to the supervisor of the district in which the bonded warehouse is located, and two copies with one copy of Form 1439 to the storekeeper-gauger in charge of the denaturing plant, and return the remaining copy to the proprietor of the warehouse, who shall file the same as a permanent withdrawal record, as provided in section 182.643. When shipment is made by tank truck as authorized by the regulations in this part, one copy each of Forms 1439 and 1440 for the storekeeper-gauger in charge at the receiving denaturing plant will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to the storekeeper-gauger in charge and the remaining copy of Form 1440 will be mailed to such storekeeper-gauger in charge. (Secs. 3070(a), 3101, 3105, 3107, 3108(a), 3124(a)(6), 3176, I. R. C.)

LOSSES OF ALCOHOL

SEC. 182.635. LOSSES IN TRANSIT.—Losses in transit to bonded warehouses must be determined at the time alcohol is received at the warehouse, and the loss reported on Form 1443-A when received in tank cars or tank trucks, and on Form 1443-B when received in packages. Where the quantity lost from any tank car, tank truck, or package exceeds 1 percent (3 percent on wooden packages) of the quantity shipped therein, claim for remission of tax on the entire quantity lost from the container will be made by the proprietor, except as herein provided. If the loss does not exceed 1 percent (3 percent on wooden packages), so calculated, claim for remission of tax will not be required: *Provided*, That (*a*) claim for remission of tax will not be required for an amount less than 1 proof gallon, and

(*b*) there are no circumstances indicating that the alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3107, 3113, 3124(a)(6), 3176, I. R. C.)

RECORDS AND REPORTS OF PROPRIETOR

SEC. 182.644. FORM 1441.—The proprietor of each bonded warehouse shall, at the close of each business day, prepare and deliver to the storekeeper-gauger in charge Form 1441, "Daily Report of Transactions," summarizing the production, receipt, and disposal of all alcohol in such bonded warehouse. The form shall be made in duplicate, one copy to be retained by the proprietor and one copy delivered to the storekeeper-gauger in charge, who will forward the same to the district supervisor. All items of alcohol entered in this return on Form 1441 must be carried into the monthly warehouse account, Forms 1443–A and 1443–B, under the same date for which the Form 1441 is rendered.

(*a*) *Entries from industrial alcohol plant.*—In the column headed "Produced and deposited in warehouse" will be entered all alcohol drawn from the receiving tanks of the industrial alcohol plant on the same premises during the day for which the return is rendered. Entry must be made in this column of all alcohol removed from the receiving tanks, whether removed for storage in warehouse in tanks or packages, or whether removed for shipment in tank cars, tank trucks, cases, packages, or by pipe line to a denaturing plant.

(*b*) *Entries from other warehouses.*—The serial numbers and proof-gallon content of packages or tank cars and the State license number and proof-gallon content of tank trucks of alcohol received from other bonded warehouses will be entered in the proper columns under the heading "Received from other bonded warehouses." If there is a difference in the quantity of alcohol thus received from the quantity shipped, special notation shall be made on the Form 1441.

* * * * * * *

(Secs. 3101, 3105, 3107, 3124(a)(6), 3171, 3176, I. R. C.)

SEC. 182.645. FORM 1443–A.—The proprietor of every bonded warehouse shall keep a monthly record, Form 1443–A, "Report of Uncoopered Alcohol," and render monthly reports thereon, in triplicate, of all uncoopered alcohol produced, received, and disposed of. Before the close of the business day next succeeding the day on which the transactions occur entries shall be made in the respective columns of the quantity of alcohol produced and deposited in the warehouse, or received in bond at the bonded warehouse, or packages filled, and the quantities withdrawn for shipment uncoopered. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly.

(*a*) *Received from or produced by.*—All alcohol drawn from receiving tanks in the industrial alcohol plant located on the same premises, whether for shipment direct from such receiving tanks or for storage in the warehouse, will be entered on the form. When alcohol is received from other bonded warehouses in tank cars, the symbol and serial number of the tank car and the quantity of alcohol received will be reported. When alcohol is received from other bonded warehouses in tank trucks the State license number of the truck and the quantity of alcohol received will be reported. The amount of alcohol lost in each tank car or tank truck in transit to the warehouse will be entered on the same line with the quantity stated as received in such tank car or tank truck. Losses in transit will not be included with the losses reported in the summary.

(*b*) *Packages filled.*—Under the heading "Packages filled" will be entered the details of all packages filled, whether from receiving tanks in the industrial alcohol plant on the same premises or from storage tanks in the warehouse. Tank cars and tank trucks will not be reported under this heading.

(*c*) *Withdrawals.*—Under the heading "Withdrawal for shipment" will be entered daily the quantity of alcohol shipped in tank cars, or tank trucks, or removed by pipe line to a denaturing plant on the same premises.

(*d*) *Special entries.*—(1) *Repacking and remarking.*—When the contents of packages in warehouse are repackaged, or packages received from other warehouses are remarked, memorandum entry will be made in the statement of Packages Filled on Form 1443–A, showing the serial numbers used on the new packages.

(2) *Dumping.*—Where the contents of packages are dumped into storage tanks for storage or repackaging of a portion thereof, the quantity dumped will be entered on Form 1443–A in the statement of "Uncoopered Alcohol Received or Produced," with proper explanatory note, and any new packages therefrom

will be entered in the statement of "Packages filled" on the form in the usual manner.

(3) *Other entries.*—If alcohol is returned to an industrial alcohol plant for redistillation, appropriate entries will be made on Form 1443–A.

(*e*) *Summary.*—In the appropriate space on Form 1443–A there must be entered at the end of the month a summary of the transactions reported thereon. The actual quantity of alcohol remaining in the storage tanks in the warehouse at the end of the month will be recorded and the losses from the storage tanks must be recorded. (Secs. 3101, 3105, 3107, 3171, 3124(a)(6), 3176, I. R. C.)

Operators of Industrial Alcohol Denaturing Plants

RECEIPT OF ALCOHOL

Sec. 182.696. From Industrial Alcohol Plant or Bonded Warehouse Not Located on the Same Premises.—Upon receiving Form 1440, with Form 1439, covering alcohol shipped to the denaturing plant, the storekeeper-gauger in charge of the denaturing plant will compare the two forms and deliver Form 1440 to the proprietor of the denaturing plant. When the alcohol is received at the denaturing plant the proprietor and the storekeeper-gauger will examine the shipment and where packages bear evidence of having sustained losses in transit or the railroad tank car or tank truck bears evidence of having sustained a loss, the losses will be determined and a report of such losses and of the examination of the shipment will be made in conformity with the provisions of sections 182.492, 182.493, and 182.493a.

(*a*) *Deposit in denaturing plant.*—Upon completion of the examination of the containers, the proprietor will accurately determine the quantity received and will check in the receipt of the alcohol against Form 1440 in the presence of the storekeeper-gauger, and will execute the certificate of receipt on both copies of the form and note thereon and on Form 1468–A any loss or deficiency in the shipment. The proprietor will then file one copy of Form 1440 as a permanent record, as provided in section 182.788, and at the close of the day will deliver the other copy to the storekeeper-gauger for transmittal to the district supervisor of his district. On the day of receipt of the alcohol, the storekeeper-gauger shall fill in the certificate of receipt on Form 1439, noting any losses and discrepancies. Where a loss in transit is sustained, the storekeeper-gauger will report the total loss and, in the case of packages, the loss from each package. The storekeeper-gauger will forward the receipted Form 1439 to the district supervisor of the district from which the alcohol was shipped. Such district supervisor will check daily, on receipt, each Form 1439 covering a tank truck shipment, and make any inquiry which he deems necessary with respect to any discrepancy. In the event of failure to receive a form from the storekeeper-gauger at the consignee's premises within the time normally required for the truck to make the shipment and the form to be sent by mail, the district supervisor will make appropriate investigation. (Secs. 3070, 3105, 3107, 3108(a), 3114(a), 3124(a)(6), 3176, I. R. C.)

Sec. 182.698a. Alcohol Received in Tank Trucks.—Alcohol received in tank trucks shall be gauged in weighing tanks and transferred immediately to storage tanks or to mixing tanks for immediate denaturation. When alcohol is received in tank trucks, the seals must be broken by the storekeeper-gauger assigned to the denaturing plant and no undenatured ethyl alcohol removed from the tank truck, except in the presence of such officer. (Secs. 3105, 3107, 3124(a)(6), 3176, I. R. C.)

LOSSES OF ETHYL ALCOHOL

Sec. 182.774. Losses in Transit.—Losses in transit to denaturing plants must be determined at the time alcohol is received at the denaturing plant, and the loss reported on Form 1468–A. Where the quantity lost from any tank car, tank truck, or metal package exceeds 1 percent, or 3 percent in the case of any wooden package, of the quantity shipped therein, claim for remission of tax on the entire quantity lost from the container will be made by the proprietor, except as herein provided. If the loss does not exceed 1 percent, or 3 percent, so calculated, claim for remission of tax will not be required: *Provided*, That (*a*) claim for remission will not be required for an amount less than 1 proof gallon, and (*b*) there are no circumstances indicating that the alcohol lost, or any part thereof, was unlawfully used or removed. (Secs. 3105, 3107, 3113, 3124(a)(6), 3176, I. R. C.)

CARRIERS

SEC. 182.904. POSSESSION BY UNAUTHORIZED CARRIERS.—The transportation of tax-free or specially denatured alcohol, or of undenatured ethyl alcohol in tank trucks, by a carrier not authorized by permit to transport the same is a violation of law and renders the alcohol subject to forfeiture. (Secs. 3105, 3107, 3108(a), 3111, 3114(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.908. RESTRICTED USE OF CONTAINERS.—(*a*) *Tank wagons or tank trucks.*—Tank wagons shall not be used for the transportation of undenatured ethyl alcohol. Tank trucks shall not be used for the transportation of undenatured ethyl alcohol except for transfer in bond between industrial alcohol plants, industrial alcohol bonded warehouses, and denaturing plants as authorized by these regulations. Shipment of undenatured ethyl alcohol in tank trucks may be made only when the premises of the consignee are equipped with a sufficient number of alcohol storage tanks for the storage of such alcohol and the consignee is otherwise authorized to receive such shipment.

(*b*) *Railroad tank cars.*—Shipment of alcohol or denatured alcohol by railroad tank cars may be made only when the premises of the consignor and consignee are equipped with satisfactory railroad siding facilities and the consignee is otherwise authorized to receive such shipment. (Secs. 3105, 3107, 3111, 3114(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.909. DELIVERY.—(*a*) *By shipper to carrier.*—The consignor will be responsible for proper delivery of tax-free or specially denatured alcohol, or of undenatured alcohol for transportation in tank trucks, to a carrier holding a basic permit to transport.

(*b*) *By carrier to United States or governmental agency.*—Where tax-free or specially denatured alcohol is shipped to any department, bureau, commission, or independent office or agency of the United States Government, the same may be delivered by the carrier transporting the alcohol or denatured alcohol without the necessity of receiving copy of permit to procure such alcohol.

(1) *Receipt required.*—In such cases, however, the person transporting the tax-free or specially denatured alcohol shall procure a receipt from the consignee which receipt shall show the name and address of the consignor and the consignee, the quantity of alcohol or specially denatured alcohol in the shipment, the date of delivery, and the name of the person receiving the alcohol as agent for the consignee.

(2) *Filing of receipt.*—The receipt shall be filed by the carrier in the file or binder containing copies of withdrawal permits covering other deliveries of tax-free or specially denatured alcohol. (Secs. 3105, 3107, 3111, 3114(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.910. DELIVERY TO AGENT OF CONSIGNEE.—Where the consignee is other than a natural person, a certain agent must be specially designated in writing to receive shipments of tax-free or specially denatured alcohol, or undenatured ethyl alcohol in tank trucks, and the carrier transporting the tax-free or specially denatured alcohol, or undenatured ethyl alcohol, must receive a copy of the document making the designation before delivery. Where the consignee is a natural person, the tax-free or specially denatured alcohol or undenatured ethyl alcohol must be delivered to him personally, unless he furnishes the carrier with an affidavit to the effect that it is impracticable for him to receive the tax-free or specially denatured alcohol or undenatured ethyl alcohol personally and designating some certain agent to receive the same for him, in which event, the carrier may deliver the tax-free or specially denatured alcohol or undenatured ethyl alcohol to such agent. Such affidavits shall be filed in the same manner as receipts, in accordance with the provisions of section 182.909. (Secs. 3105, 3107, 3111, 3114(a), 3124(a)(6), 3176, I. R. C.)

SEC. 182.911. INABILITY TO DELIVER.—When tax-free or specially denatured alcohol, or undenatured ethyl alcohol in tank trucks, cannot for any reason be delivered by the carrier at the point of destination, the carrier shall return it to the original shipper in accordance with the regulations of the Interstate Commerce Commission, unless the district supervisor, upon application of the consignor, authorizes delivery of the alcohol to another permittee.

(*a*) *Notification.*—When alcohol or denatured alcohol or undenatured ethyl alcohol is so returned, the carrier shall notify the original shipper and shall forward a copy of the notification to the district supervisor of the district in which the original shipper is located with a statement of the facts. (Secs. 3105, 3107, 3111, 3114(a), 3124(a)(6), 3176, I. R. C.)

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SEC. 182.912. RECORD BOOK TO BE KEPT.—Each person holding a basic permit (Form 145) to transport tax-free or specially denatured alcohol, or undenatured ethyl alcohol in tank trucks, is required to keep at the place of shipment a record in book form containing the following information covering such alcohol received for transportation:

(*a*) Name and address of the consignor and consignee;

(*b*) Kind (tax-free, specially denatured or undenatured ethyl alcohol) and quantity of alcohol contained in each package or other container; and

(*c*) Date of shipment.

(Secs. 3105, 3107, 3114, 3124(a) (6), 3176, I. R. C.)

SEC. 182.913. CHANGE IN PROPRIETORSHIP, ETC.—Where there is a change in the proprietorship, persons interested in the business, or change in the individual, firm, or corporate name, trade name or style of a carrier holding basic permit to transport tax-free or specially denatured alcohol, or undenatured ethyl alcohol in tank trucks, the carrier must comply with the provisions of sections 182.650 to 182.652. (Secs. 3105, 3107, 3124(a) (6), 3176, I. R. C.)

3. In order to meet the needs of the industry, this Treasury Decision shall be effective upon publication in the Federal Register.

(Sections 2808, 2829, 2885, 2891, 3070, 3101, 3105, 3106, 3107, 3108, 3111, 3113, 3114, 3115, 3124(a) (6), 3170, 3171, 3176, Internal Revenue Code, and section 309(a), Tariff Act of 1930; 26 U. S. C. 2808, 2829, 2885, 2891, 3070, 3101, 3105, 3106, 3107, 3108, 3111, 3113, 3114, 3115, 3124(a) (6), 3170, 3171, 3176, and 19 U. S. C. Supp. V, 1309(a).)

DANIEL A. BOLICH,
Acting Commissioner of Internal Revenue.

Approved September 22, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 28, 1949)

REGULATIONS 3, SECTIONS 182.122, 182.270, AND 182.272. — 1949–20–13199 T. D. 5742

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 first paragraph of section 182.122, the first paragraph and paragraph (*a*) of section 182.270, and section 182.272 of Regulations 3 (26 CFR, Part 182), approved March 6, 1942, as amended, are hereby further amended by striking out the value "$1,000," wherever such value appears therein, and substituting therefor the value of "$5,000."

2. The effect of these amendments is to exempt from indemnity bond requirements land, buildings, and equipment, the value of which is less than $5,000, in certain situations in which an indemnity bond in lieu of the Government's lien is required by the existing regulations. These situations include (1) the addition of property to the industrial alcohol plant premises where an indemnity bond has been filed in lieu of the written consent of the owner or lien holder, (2) the alteration or demolishment of buildings on which a lien for taxes exists, and (3)

the removal of apparatus or equipment on which a lien for taxes exists. Indemnity bonds heretofore filed in such cases in a penal sum of less than $5,000 may be terminated as to future liability by the district supervisor upon appropriate application therefor by the distiller or the surety.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act is unnecessary in connection with the issuance of these regulations for the reason that the amendments are of a liberalizing nature.

4. This Treasury Decision shall be effective immediately upon its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 3103, 3105, 3112(a), 3124(a)(6), and 3176, Internal Revenue Code (U. S. C., title 26, sections 3103, 3105, 3112(a), 3124(a)(6), and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 9, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 15, 1949)

REGULATIONS 3, SECTIONS 182.169, ETC. 1949-23-13223
T. D. 5751

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. Sections 182.169, 182.295, 182.551(*b*), 182.653(*b*), 182.687(*b*), 182.712, 182.744(*b*), 182.806(*b*), 182.829(*b*), and 182.829(*b*)(3) of Regulations 3 (26 CFR, Part 182), approved March 6, 1942, are amended; sections 182.710a and 182.712a are added to such regulations; and section 182.710 of such regulations is revoked.

SEC. 182.169. BOND, FORM 1448.—Every person filing an application for a basic permit to use alcohol free of tax upon filing his application, Form 1447, and before issuance of permit pursuant thereto, shall execute a bond on Form 1448, "Tax-Free Alcohol User's Bond," in triplicate, in conformity with the provisions of sections 182.184 through 182.205, and file the same with the district supervisor: *Provided*, That no bond will be required where applications are filed by a State or Territory, or municipal subdivision thereof, or by the District of Columbia, or where the quantity of alcohol covered by basic permit, Form 1447, does not exceed 60 wine gallons per annum and the quantity which may be on hand, in transit, or unaccounted for at any one time does not exceed 5 wine gallons (10 proof gallons). (Secs. 3105, 3108, 3124(a)(6), 3176, I. R. C.)

SEC. 182.295. PROCEDURE APPLICABLE.—The foregoing provisions of this article respecting the action required of district supervisors in connection with applications for original basic permits will be followed, to the extent applicable, where there is a change in the individual, firm, or corporate name, or in the trade name or style, where the premises are to be operated initially under a trade name or

style, or where there is a change in the proprietorship, location, premises, construction, apparatus and equipment, or in the type of premises or operation, or where there is a change in the title to industrial alcohol plant or bonded warehouse property, or where such property becomes subject to a mortgage, judgment, or other encumbrance, or where operations are permanently discontinued: *Provided*, That in the case of industrial alcohol plants, bonded warehouses, or denaturing plants, where there is a change in the individual, firm, or corporate name of the permittee, or where an industrial alcohol plant is to be again operated under a trade name or style previously approved by the Commissioner, or where an industrial alcohol plant has been operating as a registered distillery or as a fruit distillery and is to be again operated as an industrial alcohol plant by the proprietor whose qualifications were previously approved by the Commissioner, the district supervisor may authorize the commencement of operations prior to the review of the qualifying documents by the Commissioner. In such cases, the district supervisor will notify the permittee by letter and attach one copy of such letter to the qualifying documents. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.551(*b*). *Withdrawal permit.*—If the application is approved by the district supervisor, he will issue a withdrawal permit on Part II of the Form 1436. If the applicant's basic permit on Form 1433 for his bonded warehouse limits the quantity of alcohol that may be on hand, in transit, and unaccounted for at any one time, the quantity authorized by the withdrawal permit on Form 1436 to be withdrawn during any calendar month, shall not exceed such quantity specified in the applicant's basic permit. The district supervisor will forward the original copy of the withdrawal permit to the applicant and will retain the duplicate copy for his files. When the proprietor of the receiving warehouse desires to procure alcohol, he will forward the original of the withdrawal permit to the proprietor of the bonded warehouse named therein from whom he desires to procure the alcohol. Upon shipment, the proprietor of the shipping warehouse will enter the shipment on the permit and return it to the consignee, unless he has been authorized by the consignee to retain the permit for the purpose of making future shipments. No alcohol may be shipped by a consignor named in the withdrawal permit until such permit is in his possession. Except as provided in paragraph (*d*), further like transfers may be made under such permit during the term for which it is issued.

SEC. 182.653(*b*). *Withdrawal permit.*—If the application is approved by the district supervisor, he shall issue withdrawal permit on Part II of Form 1450. The permit shall specify the quantity that may be procured during any calendar month and the total quantity that may be procured during the period for which the withdrawal permit is issued. The total quantity authorized by the withdrawal permit shall not exceed that fixed in the basic permit, Form 1447, and the quantity that may be withdrawn during any calendar month shall not exceed one-twelfth of such quantity: *Provided*, That if the withdrawal permit, Form 1450, is issued for a period of less than 12 months, the quantity authorized to be withdrawn in any calendar month shall be in proportion to the period for which the withdrawal permit is issued; for example, if the withdrawal permit is issued for a period of 6 months, not over one-sixth of the total quantity specified therein may be withdrawn during a calendar month: *And provided further*, That where the withdrawal permit is issued for a period less than that covered by the applicant's basic permit, the total quantity authorized in the withdrawal permit shall be in proportion to the unexpired term of the basic permit. The withdrawal permit shall specify the date when the same shall be available for withdrawal purposes. The district supervisor will forward the original copy of the withdrawal permit to the permittee and will retain the duplicate copy for his files.

SEC. 182.687(*b*). *Withdrawal permit.*—If the application is approved by the district supervisor, he will issue a withdrawal permit on Part II of the Form 1463. Where the applicant's basic permit limits the quantity of alcohol, specially denatured alcohol, and recovered or restored denatured alcohol that may be on hand, in transit, and unaccounted for at any one time at the denaturing plant, the quantity authorized by the withdrawal permit to be withdrawn during any calendar month shall not exceed the quantity so limited in the basic permit. The district supervisor will forward the original copy of the withdrawal permit to the applicant and will retain the duplicate copy for his files. When the proprietor of the denaturing plant desires to procure alcohol, he will forward the original of the withdrawal permit to the proprietor of the industrial alcohol plant or bonded warehouse named therein from whom he desires to procure alcohol. Upon shipment, the proprietor of the industrial alcohol plant or ware-

house will enter the shipment on the permit and return it to the denaturer, unless he has been authorized by the denaturer to retain the permit for the purpose of making future shipments. No alcohol may be shipped by a consignor named in the withdrawal permit until such permit is in his possession. Except as provided in paragraph (*d*), further like transfers may be made under such permit during the term for which it was issued.

SEC. 182.710a. FORM 1472.—A report of each sample submitted by the storekeeper-gauger for analysis shall be prepared by him on Form 1472, "Report on Denaturants," in triplicate and forwarded to the chemist. (Secs. 3070, 3102, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.712. REPORT OF ANALYSIS BY THE CHEMIST.—Upon completion of the analysis of the denaturants, the authorized chemist shall make a report of his analysis on the Form 1472, in triplicate, received from the storekeeper-gauger, note his approval or disapproval of the samples thereon, and sign the same. One copy of the Form 1472 shall be returned to the storekeeper-gauger in charge of the denaturing plant, one copy shall be forwarded to the district supervisor and the remaining copy shall be transmitted to the Commissioner. (Secs. 3070, 3102, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.712a. RETENTION OF SAMPLES.—The chemist must hold all samples of denaturing grade wood alcohol, methyl alcohol, and denaturants used for completely denatured alcohol for 6 months, and other samples of denaturants for 30 days, so that they will be available for future reference, if necessary. (Secs. 3070, 3102, 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.744(*b*). *Withdrawal permit.*—If the application is approved by the district supervisor, he will issue a withdrawal permit on Part II of Form 1464. Where the applicant's basic permit, Form 1433, limits the quantity that may be on hand, in transit, and unaccounted for at any one time at his denaturing plant, the quantity of specially denatured alcohol authorized by the permit to be withdrawn during a calendar month shall not exceed the quantity of alcohol, specially denatured alcohol, and recovered or restored denatured alcohol authorized by the applicant's basic permit to be on hand, in transit, and unaccounted for at any one time at the denaturing plant, less the quantity of ethyl alcohol authorized to be withdrawn pursuant to withdrawal permit, Form 1463. The district supervisor will forward the original copy of the withdrawal permit to the applicant and will retain the duplicate copy for his files. When the proprietor of the receiving denaturing plant desires to procure specially denatured alcohol, he will forward the original of the withdrawal permit to the proprietor of the denaturing plant named therein from whom he desires to procure specially denatured alcohol. Upon shipment, the proprietor of the shipping denaturing plant will enter the shipment on the permit and return it to the receiving denaturer, unless he has been authorized by the receiving denaturer to retain the permit for the purpose of making future shipments. No specially denatured alcohol may be shipped by a consignor named in the withdrawal permit until such permit is in his possession. Except as provided in paragraph (*d*), further like transfers may be made under such permit during the term for which it was issued.

SEC. 182.806(*b*). *Withdrawal permit.*—If the application is approved by the district supervisor, he shall issue withdrawal permit on Part II of Form 1477. The permit shall specify the quantity that may be procured during any calendar month and the total quantity that may be procured during the period for which the withdrawal permit is issued. The total quantity authorized by the withdrawal permit shall not exceed that fixed in the basic permit, Form 1476, and the quantity that may be withdrawn during any calendar month shall not exceed one-twelfth of such quantity: *Provided*, That if the withdrawal permit, Form 1477, is issued for a period of less than 12 months, the quantity authorized to be withdrawn in any calendar month shall be in proportion to the period for which the withdrawal permit is issued; for example, if the withdrawal permit is issued for a period of 6 months, not over one-sixth of the total quantity specified therein may be withdrawn during a calendar month: *And provided further*, That where the withdrawal permit is issued for a period less than that covered by the applicant's basic permit, the total quantity authorized in the withdrawal permit shall be in proportion to the unexpired term of the basic permit. The withdrawal permit shall specify the date when the same shall be available for withdrawal purposes. The district supervisor will forward the original copy of the withdrawal permit to the permittee and will retain the duplicate copy for his files.

SEC. 182.829(*b*). *Withdrawal permit.*—If the application is approved by the district supervisor, he shall issue withdrawal permit on Part II of Form 1485.

The permit shall specify the quantity that may be procured during any calendar month and the total quantity that may be procured during the period for which the withdrawal permit is issued. The total quantity of each formula authorized by the withdrawal permit shall not exceed the quantity of such formula fixed in the basic permit, Form 1481, and the quantity of such formula that may be withdrawn during any calendar month shall not exceed one-twelfth of such quantity: *Provided*, That if the withdrawal permit, Form 1485, is issued for a period of less than 12 months, the quantity authorized to be withdrawn in any calendar month shall be in proportion to the period for which the withdrawal permit is issued; for example, if the withdrawal permit is issued for a period of 6 months, not over one-sixth of the total quantity specified therein may be withdrawn during a calendar month, subject to the provisions of subparagraphs (1) and (2): *And provided further*, That where the withdrawal permit is issued for a period less than that covered by the applicant's basic permit, the total quantity authorized in the withdrawal permit shall be in proportion to the unexpired term of the basic permit. If withdrawals are to be made in drums or barrels, the permit shall be in multiples of 55 wine gallons. The withdrawal permit shall specify the date when the same shall be available for withdrawal purposes. The district supervisor will forward the original copy of the withdrawal permit to the permittee and will retain the duplicate copy for his files.

* * * * * * *

(3) *Exception.*—The district supervisor may, in his discretion, by appropriate modification or amendment of the withdrawal permit, pursuant to application on Part I of Form 1485, and, in the case of (1) and (2), upon proper showing of necessity therefor, (1) in the case of a seasonal business, authorize withdrawal during any calendar month of not to exceed a 2 months' allowance, or (2) issue to the permittee, in lieu of an annual permit, Form 1485, one or more withdrawal permits for a specified quantity or period, subject to the restrictions in this section as to the maximum quantity that may be withdrawn during any one month, or (3) where the quantity that may be withdrawn during a calendar month under paragraph (*b*) amounts to less than 1 drum (55 wine gallons), authorize the withdrawal during a calendar month of a quantity not exceeding 1 drum (55 wine gallons), or (4) where the applicant does not have on file a bond and the quantity that may be withdrawn during a calendar month under paragraph (*b*) amounts to less than 5 wine gallons, authorize the withdrawal during a calendar month of a quantity not exceeding 5 wine gallons: *Provided*, That the total quantity authorized under (1), (2), (3), or (4), pursuant to all Forms 1485 issued to any permittee, shall not exceed the quantity specified in the applicant's basic permit, Form 1481, that may be withdrawn during the period for which it is issued: *Provided further*, That such additional withdrawals shall not be authorized under (1), (2), or (3), unless the bond of the permittee is in a sufficient penal sum to cover the increased quantity in addition to the regular withdrawal allowance.

2. The amendment of section 182.169 brings this section into agreement with section 182.653(*b*)(3) in respect to bond requirements in those cases where quantities of tax-free alcohol in excess of 5 wine gallons (10 proof gallons) at one time are procured for economic reasons by permittees whose permits limit the annual withdrawal and use to 60 wine gallons.

3. The district supervisor is, under the amendment of section 182.295, authorized to permit the resumption of operations by an industrial alcohol plant which has been operating as a registered distillery or a fruit distillery and which has been previously approved by the Commissioner, prior to review of the qualifying documents by the Commissioner.

4. The requirement that the district supervisor of the receiving district prepare and furnish the district supervisor of the shipping district a copy of the withdrawal permit, in those cases involving interdistrict shipments of alcohol and specially denatured alcohol, has been deleted by the amendment of sections 182.551(*b*), 182.653(*b*), 182.687(*b*), 182.774(*b*), 182.806(*b*), and 182.829(*b*).

5. Form 1472 is prescribed for use in connection with the submission and approval of samples of denaturants, in lieu of Forms 1470 and 1472, under the provisions of sections 182.710a and 182.712. Section 182.710 relating to Form 1470 is revoked. Paragraph (*b*) of section 182.712 has been rewritten as section 182.712a.

6. The amendment of section 182.829(*b*) is for the purpose of insuring that quantities of specially denatured alcohol authorized to be withdrawn and used under basic permit, Form 1481, will be within the total authorized by all withdrawal permits, Form 1485, issued in any case.

7. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act is unnecessary in connection with the issuance of these regulations for the reason that the amendments are of a clarifying, liberalizing, and administrative nature.

8. This Treasury Decision shall be effective immediately upon its publication in the Federal Register.

9. This Treasury Decision is issued under the authority contained in sections 3070, 3102, 3105, 3108, 3124(a)(6), and 3176, Internal Revenue Code (U. S. C., title 26, sections 3070, 3102, 3105, 3108, 3124 (a)(6), and 3176).

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved October 14, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register October 20, 1949)

REGULATIONS 3, SECTIONS 182.392, ETC. 1949–19–13180
T. D. 5734

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 182.—PRODUCTION OF INDUSTRIAL ALCOHOL

Amending Regulations 3

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

To District Supervisors and Others Concerned:

1. On June 3, 1949, notice of proposed rule making regarding the withdrawal of samples of alcohol by proprietors of industrial alcohol plants was published in the Federal Register (14 F. R. 2918).

2. No objections having been received to the proposal, sections 182.392, 182.393, 182.394, 182.395, 182.397, 182.398, and 182.399 of Regulations 3 (26 CFR, Part 182), approved March 6, 1942, relating to the production of industrial alcohol, are amended to read as follows:

SEC. 182.392. UNFINISHED ALCOHOL.—Upon approval by the storekeeper-gauger in charge at the plant of a written application filed in accordance with the provisions of section 182.394(*a*), the proprietor may take samples of alcohol in the course of distillation and prior to its deposit in the receiving cistern. The size of such samples shall not exceed 1 quart, and the number of samples taken must be restricted to the minimum necessary to determine the quality of the alcohol being produced. In any case where a quart sample is considered insufficient for

the purpose for which it is intended, the district supervisor, upon receipt of a written application filed in accordance with the provisions of section 182.394(*b*), may authorize the withdrawal of samples of a size greater than 1 quart. (Secs. 3105, 3124(a)(6), and 3176, I. R. C.)

SEC. 182.393. FINISHED ALCOHOL.—Upon approval by the storekeeper-gauger in charge at the plant of a written application filed in accordance with the provisions of section 182.394(*a*), the proprietor may take samples of finished alcohol from the receiving room of the industrial alcohol plant for chemical analysis, including organoleptic examination, only. The size of such samples shall not exceed 1 quart, and the number of samples taken must be restricted to the minimum necessary for the purpose intended. In any case where a quart sample is considered insufficient for the purpose for which it is intended, the district supervisor, upon receipt of a written application filed in accordance with the provisions of section 182.394(*b*), may authorize the withdrawal of samples of a size greater than 1 quart. (Secs. 3105, 3124(a)(6), and 3176, I. R. C.)

SEC. 182.394. APPLICATION.—(*a*) *To the storekeeper-gauger.*—When the proprietor desires to procure samples of unfinished alcohol or of finished alcohol, and such samples are of a size not in excess of 1 quart, he shall make application, in triplicate, to the storekeeper-gauger in charge at the plant. The application shall be given a serial number beginning with "1" for the first application and running consecutively thereafter. The application shall specify the reasons why the samples are desired, the number and size of the samples to be taken, and the place or places of removal. Where it is desired to take samples from the plant regularly for the purpose specified, the application may be made for that purpose. No sample may be taken until the application is approved.

(*b*) *To the district supervisor.*—Where the proprietor desires to procure samples of unfinished alcohol or of finished alcohol, and such samples are of a size greater than 1 quart, he shall make application, in triplicate, to the district supervisor. The application shall be given a serial number within the series prescribed in subsection (*a*) of this section, and shall show the reasons why the samples are desired, the number and size of the samples to be taken, the place or places of removal, and the reasons why samples of a size in excess of 1 quart are considered necessary. No samples may be taken until the application is approved. (Secs. 3105, 3124(a)(6), and 3176, I. R. C.)

SEC. 182.395. APPROVAL OF APPLICATION.—(*a*) *By the storekeeper-gauger in charge at the plant.*—The storekeeper-gauger must satisfy himself as to the need for the number of samples desired and the legitimacy of the purpose for which they are to be used before approving the application. Upon approval or disapproval, the storekeeper-gauger shall note such action upon each copy of the application, return one copy to the proprietor, forward one copy to the district supervisor, and retain the original copy in his office.

(*b*) *By the district supervisor.*—The district supervisor must satisfy himself from the facts presented as to the need for the samples and the legitimacy of the purpose for which they are to be used before approving the application. Upon approving or disapproving the application, he shall retain a copy in his office and return the original and one copy to the storekeeper-gauger in charge at the plant, who shall file the original and return the copy to the applicant. (Secs. 3105, 3124(a)(6), and 3176, I. R. C.)

SEC. 182.397. LABEL.—At the time of the withdrawal of a sample the proprietor shall prepare a label and a copy thereof. The label and copy shall be prepared on paper having approximate dimensions of 3 inches by 5 inches. The proprietor shall show on the label and on the copy, in the order listed and upon separate lines, the following information:

(1) The word "Sample";

(2) The serial number of the approved application covering the withdrawal of the sample;

(3) The kind (finished or unfinished) of alcohol;

(4) The place from which the sample was removed;

(5) The name of the proprietor, followed by the registered number of the plant;

(6) The size of the sample;

(7) If the sample is to be analyzed at other than the immediate or contiguous premises of the proprietor, the name and address of the laboratory or purchaser to which the sample is to be sent.

Upon completion, the label and the copy shall be presented to the storekeeper-gauger, who shall verify the accuracy of the data thereon, date and sign both copies, and supervise the affixing of the label to the sample container. The copy

of the label shall be filed by the storekeeper-gauger in accordance with the provisions of section 182.398. (Secs. 3105, 3124(a)(6), and 3176, I. R. C.)

SEC. 182.398. OFFICE RECORD.—The proprietor shall furnish sufficient file cases for the filing and retention of sample records. The copies of labels shall be kept by the storekeeper-gauger as a record of samples removed, and shall be filed numerically by application number and chronologically by date. (Secs. 3105, 3124(a)(6), and 3176, I. R. C.)

SEC. 182.399. DISPOSITION OF SAMPLES.—The samples must be used solely for chemical analysis, including organoleptic examination. They may not be furnished to salesmen and dealers for advertising or soliciting purposes. Where alcohol is sold subject to approval as to quality, a sample taken pursuant to the provisions of sections 182.393 to 182.397, inclusive, may be furnished the purchaser. Remnants or residues of samples taken from the industrial alcohol plant or receiving room remaining after analysis or examination, and which are not desired to be retained as laboratory specimens or further analysis or examination, must be returned to vessels in the distilling system or receiving tanks, unless the condition of the remnants or residues is such as to render them unsuitable for such disposition. If such remnants or residues of samples are unsuitable for return, they should be destroyed in the presence of the storekeeper-gauger. (Secs. 3105, 3124(a)(6), and 3176, I. R. C.)

3. These amendments are designed to establish appropriate limitations and requirements for the withdrawal by proprietors of industrial alcohol plants of samples of alcohol for laboratory analysis, including organoleptic examination.

4. This Treasury Decision shall be effective on the thirty-first day following the date of its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 3105, 3124(a)(6), and 3176, Internal Revenue Code (U. S. C., title 26, sections 3105, 3124(a)(6), and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 25, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 31, 1949)

REGULATIONS 3, SECTIONS 182.455, ETC. 1949-17-13148
T. D. 5714

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 first paragraph of section 182.455, the first paragraph of section 182.645, the first paragraph of section 182.646, section 182.648(*a*), (*b*), the first paragraph of section 182.787, and the first paragraph of section 182.822 of Regulations 3 (26 CFR, Part 182), approved March 6, 1942, are amended to read as follows:

SEC. 182.455. GENERAL.—The proprietor of every industrial alcohol plant shall keep a monthly record on Forms 1442 and 1488 (if a bonded warehouse is not maintained on the industrial alcohol plant premises), in triplicate, as hereinafter provided. All of the information called for in each form, as indicated by the

headings of columns and lines of the form and the instructions printed thereon or issued in respect thereto, and as required by these regulations, will be given. Entries shall be made on the forms before the close of the business day next succeeding the day on which the transactions occur, except that summary entries will be made at the close of the month. Where the making of entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly.

* * * * * * *

SEC. 182.645. FORM 1443–A.—The proprietor of every bonded warehouse shall keep a monthly record, Form 1443–A, "Report of Uncoopered Alcohol," and render monthly reports thereon, in triplicate, of all uncoopered alcohol produced, received, and disposed of. Before the close of the business day next succeeding the day on which the transactions occur entries shall be made in the respective columns of the quantity of alcohol produced and deposited in the warehouse, or received in bond at the bonded warehouse, or packages filled, and the quantities withdrawn for shipment uncoopered. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly.

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SEC. 182.646. FORM 1443–B.—The proprietor shall keep monthly record on Form 1443–B, "Report of Alcohol in Packages," in triplicate. There shall be entered daily the quantity of alcohol transferred at the warehouse to packages or received in packages from other bonded warehouses and the quantities withdrawn for shipment in packages from the warehouse. Entries of withdrawals of alcohol for taxpayment and deposit in the tax-paid storeroom (if any) should show the disposition of such alcohol to the proprietor of the warehouse for such purpose. When alcohol is withdrawn in packages directly from receiving tanks in an industrial alcohol plant on the same premises, it shall be regarded, for accounting purposes, as having been constructively warehoused and all records of production, depositing, and withdrawal of such alcohol shall be made as for alcohol actually entered into the warehouse in original packages or in storage tanks. The required entries shall be made in the form before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly.

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SEC. 182.648. (*a*) *Time of making entries.*—Entries shall be made on Record 52 and Form 52–E, as indicated by the headings of the various columns and in accordance with instructions printed on the forms before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, the proprietor shall maintain a separate record, such as invoices, of the removals of alcohol, showing the removal data required to be entered on Record 52 or Form 52–E, and appropriate memoranda of other transactions required to be entered on such records, for the purpose of making the entries correctly.

(*b*) *Separate record of serial numbers of cases.*—Serial numbers of cases of alcohol disposed of need not be entered on Record 52 or Form 52–E provided the proprietor keeps in his place of business a separate record approved by the district supervisor showing such serial numbers with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, or bills shall be preserved for a period of 4 years and in such a manner that the required information may be ascertained readily therefrom and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The proprietor whose separate record has been approved by the district supervisor shall make a notation on Record 52 or Form 52–E in the column for reporting serial numbers as follows: "Serial numbers shown on commercial records per authority dated _____."

* * * * * * *

SEC. 182.787. FORMS 129 AND 1468–A, B, C, D, E, AND F.—The proprietor shall keep a monthly record on Forms 129 and 1468–A, B, C, D, E, and F, in triplicate, of all alcohol and denaturants used for denaturation, and removed (either before or after denaturation) during the month, and on hand the first and last of the month. Entries shall be made on the forms before the close of the business day next succeeding the day on which the transactions occur, except that summary entries will be made at the close of the month. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly.

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SEC. 182.822. RECORD, FORM 1478.—Every bonded dealer holding permit to deal in specially denatured alcohol must keep Form 1478, in triplicate, covering his transactions for each month. One copy of the form shall be retained by the bonded dealer and the two remaining copies must be forwarded by the bonded dealer on or before the fifth day of the succeeding month to the district supervisor. There will be entered daily the details of all specially denatured alcohol received, and when received from a denaturing plant the number of such plant shall be entered in the column provided therefor. The amount of specially denatured alcohol lost from each lot in transit to the bonded dealer's storeroom will be entered in the proper column on the same line with the quantity reported received in such lot. The quantities reported lost in transit will not be included in the losses in the storeroom reported in the summary. Details will be entered daily of all specially denatured alcohol disposed of to manufacturers or other bonded dealers or any other disposition of such specially denatured alcohol. The number of the basic permit of the manufacturer or bonded dealer to whom specially denatured alcohol is shipped shall also be appropriately entered. Where several packages are shipped or delivered on the same day to the same person, the aggregate quantity so shipped or delivered may be stated on one line. The required entries shall be made in the form before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly.

* * * * * * *

2. These amendments are intended for the purpose of allowing additional time for making required entries in Forms 52–E, 129, 1442, 1443–A, 1443–B, 1468–A, B, C, D, E, and F, 1478, 1488, and Record 52.

3. It is found that compliance with the notice and public rulemaking procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 3070, 3101, 3103, 3121(c), 3124(a)(6), 3171, 3176, Internal Revenue Code (U. S. C., title 26, secs. 3070, 3101, 3103, 3121(c), 3124(a)(6), 3171, 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 3, SECTIONS 182.594 AND 182.595.

1949-24-13243
T. D. 5758

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. Sections 182.594 and 182.595 of Regulations 3 (26 CFR, Part 182), approved March 6, 1942, relating to industrial alcohol, are hereby amended as follows:

OPERATION OF INDUSTRIAL ALCOHOL BONDED WAREHOUSES

EXPORTATION OF ALCOHOL FREE OF TAX

SEC. 182.594. EXPORT BONDS.—Bonds covering the exportation of alcohol may be executed by the exporter on one of the following forms in the penal sums indicated:

(*a*) *Continuing direct export bond, Form 1495.*—If alcohol is to be withdrawn from time to time on one bond, a continuing bond on Form 1495 shall be filed, in triplicate. The penal sum of such bond shall be sufficient to cover the tax at the distilled spirits rate on the maximum quantity of alcohol that may remain unaccounted for at any one time, provided that the maximum penal sum of such bond shall not exceed $200,000, but in no case shall the penal sum be less than $1,000. Alcohol withdrawn for exportation shall remain unaccounted for until satisfactory proof of landing abroad, or loss at sea or in transit to the port of export, has been filed with the district supervisor, in accordance with section 182.604 or 182.612.

(*b*) *Continuing transportation for export bond, Form 1496.*—If alcohol is to be withdrawn from time to time on one transportation for export bond, a continuing bond on Form 1496 shall be executed, in triplicate. The bond will be executed in a penal sum sufficient to cover the tax at the distilled spirits rate on the maximum quantity of alcohol that may remain unaccounted for at any time, provided that the maximum penal sum of such bond shall not exceed $200,000 but in no case shall the penal sum be less than $1,000. Alcohol withdrawn for transportation for export shall remain unaccounted for until satisfactory proof of clearance of the alcohol from the port of export, or of loss in transit to the port of export, is filed with the district supervisor, in accordance with section 182.604 or 182.612.

(*c*) *Direct export bond, Form 1497.*—If the bond is intended to cover a specific lot of alcohol withdrawn for direct exportation it shall be executed on Form 1497, in triplicate. The penal sum of such bond shall be not less than the tax at the distilled spirits rate on the quantity of alcohol to be withdrawn for exportation, provided that the maximum penal sum of such bond shall not exceed $200,000.

(*d*) *Transportation for export bond, Form 1498.*—If the alcohol is to be withdrawn for transportation for export and a bond is given only for a specific lot of alcohol, the bond shall be executed on Form 1498, in triplicate. The penal sum of such bond shall be not less than the tax at the distilled spirits rate on the quantity of alcohol to be withdrawn for exportation, provided that the maximum penal sum of such bond shall not exceed $200,000. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.595. APPROVAL OF BOND AND ISSUANCE OF PERMIT.—The district supervisor will examine the bond and if it is properly executed, as provided in sections 182.184 through 182.205, and in the maximum penal sum, or in a sufficient penal sum computed as prescribed in section 182.594, to cover the tax at the distilled spirits rate on the alcohol to be exported, he shall note his approval thereon, retain one copy, forward one copy to the Commissioner, and return one copy to the principal. If the exporter has complied with the law and regulations in all respects, the district supervisor will issue permit on all copies of Form 1456 for removal and transportation of the alcohol and forward them to the storekeeper-gauger in charge of the warehouse: *Provided*, That if the exporter is not the warehouseman, the district supervisor finds that he is entitled to a permit

under section 3114, I. R. C., and section 182.106 of these regulations. (Secs. 2885, 2886, 3105, 3124(a)(6), 3170, 3176, I. R. C.)

2. The purpose of these amendments is to prescribe $200,000 as the maximum penal sum for export bonds filed on Forms 1495, 1496, 1497, and 1498.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

(Sections 2885, 2886, 3105, 3124(a)(6), 3170, and 3176 of the Internal Revenue Code (26 U. S. C., sections 2885, 2886, 3105, 3124(a)(6), 3170, and 3176).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 3, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register November 9, 1949)

REGULATIONS 3, SECTIONS 182.928, ETC. 1949–17–13149
T. D. 5726

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. Sections 182.928, 182.929, 182.930, and 182.931 of Regulations 3, "Industrial Alcohol," approved March 6, 1942 (26 CFR, Part 182), are hereby amended.

2. The purpose of these amendments is to revise the procedure for the recording of Government property and the disposition of cap seals used and removed at industrial alcohol plants, bonded warehouses, and denaturing plants.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (Public, No. 404, Seventy-ninth Congress) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of an administrative nature only.

SEC. 182.928. REMOVAL OF CAP SEALS.—Except as provided in section 182.927, cap seals which have been affixed may be removed only by a storekeeper-gauger or some other officer designated for the purpose by the district supervisor. The officer will destroy all removed cap seals in a manner sufficient to prevent their further use. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.929. STOREKEEPER-GAUGER'S RECORD OF CAP AND LOCK SEALS.—A record of cap seals received, used, and removed, and of lock seals received and used at each industrial alcohol plant, bonded warehouse, or denaturing plant, as the case may be, will be kept by storekeeper-gaugers on Form 289, "Government Officer's Record and Report of Government Property," in accordance with the

titles of the columns and lines and the instructions on the form. Form 289 will be kept in the Government cabinet when not in use. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.930. STOREKEEPER-GAUGER'S REPORT OF GOVERNMENT PROPERTY.—On or before the fifth day of the month succeeding that for which the transactions are reported, the storekeeper-gauger will prepare a monthly report on Form 289 of all Government property at the industrial alcohol plant, bonded warehouse, or denaturing plant, as the case may be. Form 289 will be prepared in duplicate, in accordance with the titles of the columns and lines and the instructions on the form. He will forward the original to the district supervisor and retain the copy for his files. (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

SEC. 182.931. DISTRICT SUPERVISOR'S REPORT OF LOCKS AND GAUGING INSTRUMENTS.—District supervisors will be held accountable for the Government locks and seals, including cap seals, supplied upon their respective requisitions, and for those received from their predecessors in office. Outgoing district supervisors will take receipts from their successors in office for the Government locks then in use and on hand, and for seals on hand in the district. District supervisors will keep an account of locks and gauging instruments and will make return thereof semiannually to the Commissioner on Form 152, "Return of Locks and Gauging Instruments." (Secs. 3105, 3124(a)(6), 3176, I. R. C.)

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

5. This Treasury Decision is issued under the authority contained in sections 3105, 3124(a)(6), and 3176, Internal Revenue Code (26 U. S. C. 3105, 3124(a)(6), and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 4, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 10, 1949)

REGULATIONS 3 (Appendix). 1949–17–13169
T. D. 5733

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 182.—INDUSTRIAL ALCOHOL

Amending appendix to Regulations 3

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

To District Supervisors and Others Concerned:

1. The appendix to Regulations 3, approved March 6, 1942 (26 CFR, Part 182), is hereby amended by authorizing the following formula for the manufacture of completely denatured alcohol:

FORMULA NO. 15

To every 100 gallons of ethyl alcohol of not less than 160 degrees proof add:
3.5 gallons of ST–115 or a compound similar thereto.
0.25 gallon of methyl isobutyl ketone.
1.0 gallon of CS–501.
1.0 gallon of kerosene.

2. The purpose of this amendment is to afford manufacturers of completely denatured alcohol more latitude in the selection of denaturants.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress) is unnecessary in connection with the issuance of these regulations for the reason that the change made liberalizes requirements imposed upon the industry by enabling it to use the new formula in lieu of formulae now prescribed for completely denatured alcohol.

4. This Treasury Decision shall be effective upon its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 3070(a), 3105(a), and 3176, Internal Revenue Code (U. S. C., title 26, secs. 3070(a), 3105(a), 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 5, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 11, 1949)

DISTILLED SPIRITS

INTERNAL REVENUE CODE

REGULATIONS 4, SECTIONS 183.3, ETC.

1949–20–13200
T. D. 5747

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 183.—PRODUCTION OF DISTILLED SPIRITS

Amending Regulations 4

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

To District Supervisors and Others Concerned:

1. On June 22, 1949, notice of proposed rule making regarding the withdrawal of samples of distilled spirits by registered distillers was published in the Federal Register (14 F. R. 3379).

2. After consideration of all such relevant matter as was presented by interested persons regarding the proposal, sections 183.3(*a*), 183.264, 183.265, 183.266, 183.267, 183.269, 183.270, 183.271, 183.275, 183.277, and 183.293 of Regulations 4 (26 CFR, Part 183), approved February 28, 1940, relating to the production of distilled spirits, are amended, and sections 183.3(*n*–1) and 183.270a are added to such regulations as follows:

SEC. 183.3. DEFINITIONS.—* * *

(*a*) "Approved containers" shall mean casks, barrels, or similar wooden packages, or drums, or similar metal packages, having a capacity of not less than 10 wine gallons each, or railroad tank cars: *Provided*, That, for the withdrawal of samples for laboratory analysis, "approved containers" shall mean any container of less than 10 wine gallons capacity.

* * * * * * *

(*n*–1) "Laboratory analysis" shall mean the determination of the composition of distilled spirits by chemical, physical, or organoleptic examination.

* * * * * * *

SEC. 183.264. UNFINISHED SPIRITS.—Upon approval by the storekeeper-gauger in charge at the distillery of an application submitted in accordance with the provisions of section 183.266, the distiller may remove for laboratory analysis samples of distilled spirits in the course of distillation and prior to their deposit in the cistern room, as follows:

(*a*) Samples, not exceeding 3 pints in the aggregate, of the product of each still in a distilling unit in each 24-hour period;

(*b*) Where a discontinuous or batch still, such as a gin still, is operated, samples, not exceeding 3 pints in the aggregate, of the product of each batch distilled;

(*c*) Where the distiller desires to obtain spot-samples from various plates of a still in the course of distilling a day's production, samples, not exceeding 1 quart in the aggregate, from each of the various plates;

(*d*) Where special conditions prevail, such as the necessity for determining the efficiency of a new still, or for other valid reasons, which require additional samples of unfinished spirits for analytical purposes during specified periods, the application required by section 183.266 shall be submitted by the storekeeper-gauger to the district supervisor for his approval prior to the withdrawal of the additional samples. The size of such samples shall not exceed 1 quart, and the number of samples must be restricted to the minimum necessary for analytical purposes;

(*e*) Where the distiller desires samples in excess of those provided for in (*a*), (*b*), (*c*), and (*d*), he may remove such samples: *Provided*, That,

if in containers of less than 1 proof gallon, such removal shall be subject to payment of tax in accordance with the provisions of section 183.270a(*b*), and, if in containers of 1 proof gallon or more, such removal shall be made pursuant to taxpayment in accordance with the provisions of section 183.293 to 183.296, inclusive. The size and number of samples taken must be restricted to the minimum necessary for the purposes for which intended. In authorizing the taking of samples, the storekeeper-gauger will exercise discretion with the view of allowing sufficient samples to enable the distiller to determine the quality of the product. (Sec. 3176, I. R. C.)

SEC. 183.265. FINISHED SPIRITS.—The distiller may take from the cistern room of the distillery samples of distilled spirits for laboratory analysis. Such samples shall not exceed 1 quart, in the aggregate, in each 24-hour period from any tank in the cistern room: *Provided*, That, when a tank is filled and emptied and filled again in the same 24-hour period, samples, not to exceed 1 quart in the aggregate, may be taken from each filling of the tank. Such samples may be withdrawn upon approval by the storekeeper-gauger in charge at the distillery of an application filed in accordance with the provisions of section 183.266. The taking of samples from the cistern room at more frequent intervals or in greater quantities shall not be authorized: *Provided*, That, where the distiller desires samples in number or quantities in excess of these limitations, he may remove samples in containers of less than 1 proof gallon subject to payment of tax in accordance with the provisions of section 183.270a(*b*), and in containers of 1 proof gallon or more upon taxpayment in accordance with the provisions of sections 183.293 to 183.296, inclusive. (Sec. 3176, I. R. C.)

SEC. 183.266. APPLICATION.—When the distiller desires to remove samples of unfinished spirits or finished spirits for laboratory analysis under the provisions of sections 183.264 and 183.265, respectively, he shall make application, in triplicate, to the storekeeper-gauger in charge at the distillery. The application shall be given a serial number beginning with "1" for the first application and running consecutively thereafter. The application should specify the reasons why the samples are desired, the number and size of the samples to be taken, and the place or places of removal. Where it is desired to remove samples regularly for the purpose specified, except samples subject to taxpayment, the application may be made for that purpose. Where samples subject to taxpayment are desired, application shall be submitted each day such samples are to be procured. No sample may be taken until the application is approved. (Sec. 3176, I. R. C.)

SEC. 183.267. APPROVAL OF APPLICATION.—The storekeeper-gauger must satisfy himself as to the need for the number of samples desired and the legitimacy of the purpose for which they are to be used before approving the application. The storekeeper-gauger, upon approval or disapproval of the application, shall return one copy to the warehouseman, forward one copy to the district supervisor, and retain the original copy in his office. (Sec. 3176, I. R. C.)

SEC. 183.269. LABEL.—At the time of the withdrawal of a sample, the proprietor shall prepare a label and a copy thereof. The label and copy shall be prepared on paper having approximate dimensions of 3 inches by 5 inches. The proprietor shall show on the label and on the copy, in the order listed and upon separate lines, the following information:

1. The word "Sample";
2. The serial number of the approved application covering the withdrawal of the sample;
3. The kind of spirits;
4. The place from which the sample was removed;
5. The name of the distiller followed by the registered number of the distillery and the name of the State in which located;
6. The size of the samples and, in regard to samples in containers of less than 1 proof gallon taken subject to payment of tax, the quantity in proof gallons extended to the fourth decimal place (the proof gallon content of other samples need not be shown on the label);
7. If the sample is to be analyzed at other than the immediate or contiguous premises of the proprietor, the name and address of the laboratory or purchaser to which the sample is to be sent.

Upon completion, the label and the copy shall be presented to the storekeeper-gauger, who shall verify the accuracy of the data thereon, date and sign both copies, and supervise the affixing of the label to the sample container. Where the label is to be placed upon a container of a sample taken subject to payment

of tax pursuant to the provisions of section 183.270a(*b*), the storekeeper-gauger shall write upon the label and the copy the words "subject to taxpayment." The copy of the label shall be filed by the storekeeper-gauger in accordance with the provisions of section 183.270. The distiller shall not be required to affix red strip stamps to containers of taxable samples of spirits. Containers of samples of spirits in quantities of 1 proof gallon or more taken subject to payment of tax, shall be marked, branded, and stamped, in accordance with the provisions of sections 183.285 to 183.296, inclusive: *Provided*, That, where it is impracticable to so mark and brand a sample container, the mandatory marks and brands may be shown on an additional label affixed to the container. (Sec. 3176, I. R. C.)

SEC. 183.270. OFFICE RECORD.—The proprietor shall furnish sufficient file cases for the filing and retention of sample records. The copies of labels shall be kept by the storekeeper-gauger as a record of samples removed and shall be filed numerically by application number and chronologically by date. If the distiller operates an internal revenue bonded warehouse on or contiguous to the distillery premises, the record of samples removed from the distillery shall be maintained separately from the record of samples removed from the warehouse. (Sec. 3176, I. R. C.)

SEC. 183.270a. REPORT OF TAXABLE SAMPLES.—(*a*) *General.*—Taxable samples shall be reported by the distiller on Form 1598 in accordance with the instructions on the form.

(*b*) *Containers of less than 1 gallon.*—Each day that samples in containers of less than 1 proof gallon are withdrawn subject to payment of tax, the storekeeper-gauger shall enter on Form 1615, "Taxable Samples of Distilled Spirits," in quadruplicate, a record of the taxable samples removed. All the information called for by the form shall be furnished. At the end of each month, the storekeeper-gauger shall complete the report, retain one copy of the form and deliver the remaining three copies to the distiller, who shall forward the three copies to the collector with remittance for the tax due. The collector shall execute his certificate of taxpayment on each copy of the form, retain one copy, and return the remaining two copies to the distiller, who shall retain one copy and deliver the other copy to the storekeeper-gauger. The storekeeper-gauger shall note the taxpayment on his retained copy and forward the other copy to the district supervisor. (Sec. 3176, I. R. C.)

SEC. 183.271. DISPOSITION OF SAMPLES.—The samples must be used solely for laboratory analysis. They may not be furnished to salesmen and dealers for advertising or soliciting purposes. Where spirits are sold subject to approval as to quality, a sample taken pursuant to the provisions of sections 183.265, 183.266, and 183.267 may be furnished the purchaser. Remnants or residues of samples taken from the distillery or cistern room not subject to taxpayment remaining after analysis or examination and which are not desired to be retained as laboratory specimens or for further analysis or examination should be returned to vessels in the distilling system, unless the condition of the remnants or residues is such as to render them unsuitable for such disposition. If such remnants or residues of samples are unsuitable for return to the distilling system, they should be destroyed. (Sec. 3176, I. R. C.)

SEC. 183.275. FOR SPIRITS UNDER SECTION 2883, I. R. C.—Distilled spirits produced at a proof in excess of 159 degrees and reduced in the receiving cisterns to not more than 159 and not less than 100 degrees of proof may be drawn from such cisterns into casks, barrels, or similar wooden packages, or into drums, or similar metal packages, having a capacity of not less than 10 wine gallons each, or into railroad tank cars, and tax-paid or transferred to any internal revenue bonded warehouse for storage therein: *Provided*, That spirits of any proof to be removed for laboratory analysis may be drawn into containers or packages having a capacity of less than 10 wine gallons each. The spirits may be drawn into railroad tank cars only in case the premises of the distiller and the consignee are equipped with suitable railroad siding facilities. Such railroad siding facilities must, in the case of transfers in bond, extend into the receiving warehouse. (Secs. 2883, 3176, I. R. C.)

SEC. 183.277. FOR SPIRITS UNDER SECTION 2878, I. R. C.—Except as otherwise provided herein, distilled spirits which before reduction in the receiving cisterns are of a composite proof of not more than 159 degrees shall be drawn into casks, barrels, or similar wooden packages, or into drums, or similar metal packages, having a capacity of not less than 10 wine gallons each. Such distilled spirits, for the purpose of exportation only may be drawn into wooden packages, each containing two or more metallic cans having a capacity of not less than 5 wine gallons each. The construction of such wooden packages for exportation, and

the filling, marking, and branding thereof, must conform to the specifications set forth in the regulations governing the warehousing of distilled spirits (26 CFR, Part 183). Such distilled spirits, either before or after reduction, for the purpose of laboratory analysis, may be drawn into containers or packages having a capacity of less than 10 wine gallons each. (Secs. 2878, 3176, I. R. C.)

SEC. 183.293. APPLICATION, FORM 179.—Whenever the distiller desires to tax-pay and remove in packages direct from the cistern room distilled spirits produced at a proof in excess of 159 degrees and reduced to not more than 159 and not less than 100 degrees of proof or when, pursuant to approved application, he desires to tax-pay and remove samples of spirits for laboratory analysis in containers of 1 proof gallon or more, he shall execute application therefor on Form 179, in quadruplicate, and deliver all copies to the storekeeper-gauger. (Secs. 2883, 3176, I. R. C.)

3. These amendments are designed to establish appropriate limitations and requirements for the withdrawal by registered distillers of samples of distilled spirits for laboratory analysis, including organoleptic examination.

4. This Treasury Decision shall be effective on the thirty-first day following the date of its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 2878, 2883, and 3176, Internal Revenue Code (U. S. C., title 26, sections 2878, 2883, and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 14, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 21, 1949)

REGULATIONS 4, SECTIONS 183.81, ETC. 1949-20-13201
T. D. 5743

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 183.—PRODUCTION OF DISTILLED SPIRITS

Amending Regulations 4

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

To District Supervisors and Others Concerned:

1. Sections 183.81, 183.145, 183.146, and 183.148 of Regulations 4 (26 CFR, Part 183), approved May 20, 1940, as amended, are hereby further amended by striking out the value "$1,000," wherever such value appears therein, and substituting therefor the value "$5,000."

2. The effect of these amendments is to exempt from indemnity bond requirements land, buildings, and equipment, the value of which is less than $5,000, in certain situations in which an indemnity bond in lieu of the Government's lien is required by the existing regulations. These situations include (1) the addition of property to the distillery premises where an indemnity bond has been filed in lieu of the written consent of the person possessing the right of redemption, or other lien holder, (2) the alteration or demolishment of buildings on which a lien for taxes exists, and (3) the removal of apparatus or equipment on which a lien for taxes exists. Indemnity bonds heretofore filed in such

cases in a penal sum of less than $5,000 may be terminated as to future liability by the district supervisor upon appropriate application therefor by the distiller or the surety.

3. It is found that compliance with the notice and public rulemaking procedure of the Administrative Procedure Act is unnecessary in connection with the issuance of these regulations for the reason that the amendments are of a liberalizing nature.

4. This Treasury Decision shall be effective immediately upon its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 2800(e), 2815, 3176, and 3180, Internal Revenue Code (U. S. C., title 26, sections 2800(e), 2815, 3176, and 3180).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 9, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 15, 1949)

REGULATIONS 4, SECTION 183.170: Procedure applicable. 1949–23–13224
T. D. 5752

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 183.—PRODUCTION OF DISTILLED SPIRITS

Amending Regulations 4

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

To District Supervisors and Others Concerned:

1. Section 183.170 of Regulations 4 (26 CFR, Part 183), approved February 28, 1940, relating to the production of distilled spirits, is hereby amended to read as follows:

SEC. 183.170. PROCEDURE APPLICABLE.—The foregoing provisions of this article respecting the action required of district supervisors in connection with the establishment of distilleries will be followed, to the extent applicable, where there is a change in the individual, firm, or corporate name of the distiller, or in the trade name or style, or where the distillery is to be operated initially under a trade name or style, or where there is a change in the proprietorship, location, premises, construction, apparatus and equipment of the distillery, or in the type of plant, or in the title to the distillery property, or where such property becomes subject to a mortgage, judgment, or other encumbrance, or where operations are permanently discontinued: *Provided*, That where there is a change in the individual, firm, or corporate name of the distiller, or where the distillery is to be again operated under a trade name or style previously approved by the Commissioner, or where the distillery is to be operated under alternating proprietorships and a former proprietor whose qualifications were previously approved by the Commissioner is again to operate the distillery, or where a registered distillery has been operating alternately as a fruit distillery or as an industrial alcohol plant and is to be again operated as a registered distillery by the proprietor whose qualifications were previously approved by the Commissioner, the district supervisor may authorize the commencement of operations prior to the review of the qualifying documents by the Commissioner. In such cases, the district supervisor will notify the distiller by letter and attach one copy of such letter to the qualifying documents. (Sec. 3176, I. R. C.)

2. The purpose of this amendment is to delegate authority to the district supervisor to permit the commencement of operations by a registered distillery which has been operating as an industrial alcohol plant or as a fruit distillery, and which has been previously approved by the Commissioner, prior to review of the qualifying documents by the Commissioner.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C., section 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the amendment is of a liberalizing character.

4. This Treasury Decision shall be effective immediately upon its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in section 3176, Internal Revenue Code (U. S. C., title 26, section 3176).

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved October 14, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register October 20, 1949)

REGULATIONS 4, SECTIONS 183.313, ETC. 1949-15-13135
T. D. 5712

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 183.—PRODUCTION OF DISTILLED SPIRITS

Amending Regulations 4

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

To District Supervisors and Others Concerned:

1. Sections 183.313, 183.314, 183.314a, 183.315, 183.322, 183.323, 183.326, 183.327, 183.328, 183.328a, 183.329, 183.331, 183.332, and 183.333 of Regulations 4 (26 CFR, Part 183), approved February 28, 1940, relating to production of distilled spirits, are hereby amended as follows:

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES IN SAME DISTRICT, EXCEPT WAREHOUSE OPERATED BY DISTILLER ON CONTIGUOUS PREMISES

SEC. 183.313. APPLICATION, FORM 236.—Where spirits are to be transferred to and entered for deposit in an internal revenue bonded warehouse located off the distillery premises in the same supervisory district, and such warehouse is not operated by the distiller on premises contiguous to the distillery premises, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle, and the type of conveyance. The name of the carrier shall not be specified on Form 236. The applicant shall prepare an original and five copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 183.314. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF WAREHOUSE BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge of the

warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185). If the bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236 and return all six copies of the form to the proprietor of the warehouse. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of distilled spirits represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all six copies of the form to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all six copies to the proprietor. The proprietor will forward all six copies of the approved Form 236 to the proprietor of the consignor-distillery. The proprietor of the warehouse will be responsible for all outstanding approved Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor and give them to the storekeeper-gauger in charge of the warehouse for cancellation and return to the proprietor of the warehouse. (Sec. 3176, I. R. C.)

SEC. 183.314a. SPIRITS TO BE TRANSFERRED.—When the distiller desires to make shipment, he will give a copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the spirits to be shipped. (Sec. 3176, I. R. C.)

SEC. 183.315. REPORT OF GAUGE.—Unless previously packaged, the spirits designated by the proprietor to be transferred will be drawn from the receiving cisterns into casks or packages, gauged, marked and branded, or into a weighing tank, gauged, and run by pipe line into a properly equipped railroad tank car. Only spirits produced at a proof in excess of 159 degrees and reduced in the receiving cisterns to not more than 159 and not less than 100 degrees of proof may be transported in railroad tank cars. The quantity transferred shall not exceed the maximum stated in the application. The details of the gauge will be entered by the storekeeper-gauger of five copies of Form 1520. (Secs. 2878, 2883, 3176, 4017, I. R. C.)

SEC. 183.322. DISTILLER'S ENTRY FOR DEPOSIT.—When the spirits have been packaged, or run into a railroad tank car and such tank car seal-locked, the storekeeper-gauger in charge will deliver the copy of Form 236 and the five copies of Form 1520 to the distiller. The distiller shall, on the same date that the spirits are to be removed from the distillery, execute on all six copies of Form 236 the description of the packages or tank car to be transferred and on all five copies of Form 1520 the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger in charge who will release the spirits for shipment. (Sec. 2879(a), 3176, I. R. C.)

SEC. 183.323. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the spirits, the storekeeper-gauger will execute his certificate of gauge and removal on Form 236. He will retain one copy of each form, furnish one copy of each to the distiller, forward one copy of each to the supervisor-consignor, and forward three copies of Form 236 and two copies of Form 1520 to the storekeeper-gauger in charge at the receiving warehouse. When shipment is made by truck, one copy each of Forms 236 and 1520 for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him, and the remaining two copies of Form 236 and one copy of Form 1520 will be mailed to such storekeeper-gauger in charge. (Secs. 2878, 2883, 3170, 3176, I. R. C.)

SEC. 183.326. STOREKEEPER-GAUGER'S RECEIPT OF SPIRITS AT WAREHOUSE.—After the spirits have been deposited in the receiving warehouse, the storekeeper-gauger will execute his receipt on the three copies of Form 236, noting thereon any losses or discrepancies reported on Form 1520 in accordance with sections 183.324 and 183.325. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520, give one copy each of Forms 236 and 1520 to the proprietor of the warehouse, and forward one copy of Form 236 to the district supervisor. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the three copies of Form 236 and the two copies of Form 1520 have been received by the storekeeper-gauger in charge. (Secs. 2878, 2883, 3176, I. R. C.)

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES, IN DIFFERENT DISTRICT

SEC. 183.327. APPLICATION, FORM 236.—Where spirits are to be transferred to and entered for deposit in an internal revenue bonded warehouse located in a different supervisory district than the distillery, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle, and the type of conveyance. The name of the carrier shall not be specified on Form 236. The applicant shall prepare an original and six copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 183.328. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF WAREHOUSE BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge at the warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185). If the bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236 and return all seven copies of the form to the proprietor of the warehouse. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of spirits represented by the Form 236, plus the quantity of spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all seven copies of the form to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all seven copies to the proprietor. The proprietor will forward all seven copies of the approved Form 236 to the proprietor of the consignor-distillery. The proprietor of the warehouse will be responsible for all outstanding approved Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor and give them to the storekeeper-gauger in charge of the warehouse for cancellation and return to the proprietor of the warehouse. (Sec. 3176, I. R. C.)

SEC. 183.328a. SPIRITS TO BE TRANSFERRED.—When the distiller desires to make shipment, he will give a copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the spirits to be shipped. (Sec. 3176, I. R. C.)

SEC. 183.329. REPORT OF GAUGE.—Unless previously packaged, the spirits designated by the proprietor to be transferred will be drawn from the receiving cisterns into casks or packages, gauged, marked and branded, or into a weighing tank, gauged, and run by pipe line into a properly equipped railroad tank car. Only spirits produced at a proof in excess of 159 degrees and reduced in the receiving cisterns to not more than 159 and not less than 100 degrees of proof may be transported in railroad tank cars. The quantity transferred shall not exceed the maximum stated in the application. The details of the gauge will be entered by the storekeeper-gauger on five copies of Form 1520. (Secs. 2878, 2883, 3176, 4017, I. R. C.)

SEC. 183.331. DISTILLER'S ENTRY FOR DEPOSIT.—When the spirits have been packaged, or run into a railroad tank car and such tank car seal-locked, the storekeeper-gauger in charge will deliver the copy of Form 236 and the five copies of Form 1520 to the distiller. The distiller shall, on the same date that the spirits are to be removed from the distillery, execute on all seven copies of Form 236 the description of the packages or tank car to be transferred and on all five copies of Form 1520 the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger in charge who will release the spirits for shipment. (Secs. 2879(a), 3176, I. R. C.)

SEC. 183.332. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the spirits, the storekeeper-gauger will execute his certificate of gauge and removal on Form 236. He will retain one copy of each form, furnish one copy of each to the distiller, forward one copy of each to the supervisor-consignor, and forward four copies of Form 236 and two copies of Form 1520 to the storekeeper-gauger in charge at the receiving warehouse. When shipment is made by truck, one copy each of Forms 236 and 1520 for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him, and the remaining three copies of Form 236 and one copy of

Form 1520 will be mailed to such storekeeper-gauger in charge. (Secs. 2878, 2883, 3170, 3176, 4017, I. R. C.)

SEC. 183.333. STOREKEEPER-GAUGER'S RECEIPT OF SPIRITS AT WAREHOUSE.—The storekeeper-gauger at the receiving warehouse will examine the shipment upon its arrival and ascertain and note on both copies of Form 1520 any losses or discrepancies as provided in sections 183.324 and 183.325. He will execute his receipt on the four copies of Form 236 noting thereon any losses or discrepancies reported on Form 1520. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520, give one copy each of Forms 236 and 1520 to the proprietor of the warehouse, and forward two copies of Form 236 to the supervisor of his district. The district supervisor will retain one copy of Form 236 and forward the remaining copy of Form 236 to the supervisor of the district from which the spirits were transferred. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the four copies of Form 236 and the two copies of Form 1520 have been received by the storekeeper-gauger in charge. (Secs. 2878, 2883, 3176, I. R. C.)

2. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

3. The purposes of the amendments are as follows:

(1) To reduce the number of copies of reports of gauge (Form 1520) prepared by storekeeper-gaugers, by discontinuing furnishing of certain copies to district supervisors, which will result in reducing the work of storekeeper-gaugers and audit clerks without jeopardy to the revenue;

(2) To expedite the receipt by the consignor-distiller of Forms 236, "Transfer of Distilled Spirits in Bond," after approval of bond coverage by the storekeeper-gauger at the consignee-warehouse, by providing that the consignee-warehouseman send them direct to the consignor-distiller in lieu of having the storekeeper-gauger at the warehouse send them to the storekeeper-gauger at the consignor-distillery for delivery to the consignor-distiller;

(3) To obviate the preparation of additional Forms 236 by the consignee-warehouseman when he desires shipments made pursuant to approved Forms 236 after the expiration of 90 days, by revoking the provision that Forms 236 will be canceled by the district supervisor upon the expiration of 90 days after approval if not used within that period or extended by the district supervisor;

(4) To obviate the need for obtaining the consent of the district supervisor when the consignor-distiller desires to ship spirits by a carrier other than the one originally designated on Form 236 by the consignee-warehouseman, by directing that the name of the carrier shall not be shown on Form 236 by the consignee-warehouseman;

(5) To facilitate the execution on all copies of Form 236 of the storekeeper-gauger's certificate of receipt at the consignee-warehouse by providing for the routing, when spirits are shipped from the distillery, of the copies of Forms 236 and 1520 for the consignee-warehouseman with the copies for the storekeeper-gauger at the consignee-warehouse, in lieu of sending them direct to the consignee-warehouseman.

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

5. (This Treasury Decision is issued under the authority contained in sections 2878, 2879(a), 2883, 3170, 3176, and 4017 of the Internal Revenue Code (U. S. C., title 26, sections 2878, 2879(a), 2883, 3170, 3176, and 4017).)

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved July 1, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register July 8, 1949)

REGULATIONS 4, SECTIONS 183.399, 183.404, AND 183.405. 1949-17-13150
T. D. 5715

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 183.—PRODUCTION OF DISTILLED SPIRITS

Amending Regulations 4

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

To District Supervisors and Others Concerned:

1. Sections 183.399, 183.404, and 183.405 of Regulations 4 (26 CFR, Part 183), approved February 28, 1940, are amended to read as follows:

SEC. 183.399. RECORD OF DISTILLERY OPERATIONS, FORM 1598.—The distiller shall keep a record of the distillery operations on Form 1598, "Distiller's Report of Operations at Distillery No. _____." Entries shall be made as indicated by the headings of the various columns and lines and in accordance with the instructions printed on the form, and as set forth in these regulations, before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as herein authorized, appropriate memoranda shall be kept for the purpose of making the entries correctly. Form 1598 will be kept at the distillery as a permanent record, in bound form, subject to inspection by Government officers at any reasonable hour. (Secs. 2841, 3171, 3176, I. R. C.)

SEC. 183.404. TIME OF MAKING ENTRIES.—Daily entries shall be made on Record 52 and Form 52-E, as indicated by the headings of the various columns and in accordance with the instructions on the forms before the close of the business day next succeeding the day on which the transactions occur. Where the proprietor of a tax-paid premises defers the making of the entries to the next business day, as authorized herein, he shall maintain a separate record, such as invoices, of the removals of distilled spirits, showing the removal data required to be entered on Record 52 or Form 52-E, and appropriate memoranda of other transactions required to be entered on such records, for the purpose of making the entries correctly. (Secs. 2857, 3176, I. R. C.)

SEC. 183.405. SEPARATE RECORD OF SERIAL NUMBERS OF CASES.—Serial numbers of cases of distilled spirits disposed of need not be entered on Record 52 or Form 52-E, provided the proprietor keeps in his place of business a separate record, approved by the district supervisor, showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of 4 years and in such a manner that the required information may be ascertained readily therefrom, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries

is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The proprietor whose separate record has been approved by the district supervisor shall make a notation in the column for reporting serial numbers, as follows: "Serial numbers shown on commercial records per authority dated _____ _____." (Secs. 2857, 3176, 4041, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries in Forms 1598, Record 52, and Form 52–E.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 2841, 2857, 3171, 3176, 4041, Internal Revenue Code (U. S. C., title 26, sections 2841, 2857, 3171, 3176, 4041).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 4, SECTIONS 183.428, ETC. 1949–17–13151
T. D. 5727

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 183.—PRODUCTION OF DISTILLED SPIRITS

Amending Regulations 4

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

To District Supervisors and Others Concerned:

1. Sections 183.428, 183.429, 183.430, and 183.431 of Regulations 4, "Production of Distilled Spirits," approved February 28, 1940 (26 CFR, Part 183), are hereby amended.

2. The purpose of these amendments is to revise the procedure for the recording of Government property, and the disposition of cap seals used and removed at registered distilleries.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (Public, No. 404, Seventy-ninth Congress) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of an administrative nature only.

SEC. 183.428. REMOVAL OF CAP SEALS.—Except as provided in section 183.427, cap seals which have been affixed may be removed only by a storekeeper-gauger or some other officer designated for the purpose by the district supervisor. The officer will destroy all removed cap seals in a manner sufficient to prevent their reuse. (Secs. 2821, 2822, 2851, and 3176, I. R. C.)

SEC. 183.429. STOREKEEPER-GAUGER'S RECORD OF CAP AND LOCK SEALS.—A record of cap seals received, used, and removed, and of lock seals received and used at each registered distillery will be kept by storekeeper-gaugers on Form 289, "Government Officer's Record and Report of Government Property," in accordance with the titles of the columns and lines and the instructions on the form. Form 289 will be kept in the Government cabinet when not in use. (Sec. 3176, I. R. C.)

SEC. 183.430. STOREKEEPER-GAUGER'S REPORT OF GOVERNMENT PROPERTY.—On or before the fifth day of the month succeeding that for which the transactions are reported, the storekeeper-gauger will prepare a monthly report on Form 289 of all Government property at the registered distillery. Form 289 will be prepared in duplicate, in accordance with the titles of the columns and lines and the instructions on the form. He will forward the original to the district supervisor and retain the copy for his files. (Sec. 3176, I. R. C.)

SEC. 183.431. DISTRICT SUPERVISOR'S REPORT OF LOCKS AND GAUGING INSTRUMENTS.—District supervisors will be held accountable for the Government locks and seals, including cap seals, supplied upon their respective requisitions, and for those received from their predecessors in office. Outgoing district supervisors will take receipts from their successors in office for the Government locks then in use and on hand, and for seals on hand in the district. District supervisors will keep an account of locks and gauging instruments, and will make return thereof semiannually to the Commissioner on Form 152, "Return of Locks and Gauging Instruments." (Sec. 3176, I. R. C.)

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

5. This Treasury Decision is issued under the authority contained in sections 2821, 2822, 2851, and 3176, Internal Revenue Code (U. S. C., title 26, sections 2821, 2822, 2851, and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 4, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 10, 1949)

REGULATIONS 5, SECTIONS 184.67d, ETC. 1949–20–13202
T. D. 5744

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 184.—PRODUCTION OF BRANDY

Amending Regulations 5

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

To District Supervisors and Others Concerned:

1. Sections 184.67d, 184.67e, 184.130, 184.131, and 184.133 of Regulations 5 (26 CFR, Part 184), approved May 20, 1940, as amended, are hereby further amended by striking out the value "$1,000," wherever such value appears therein, and substituting therefor the value "$5,000."

2. The effect of these amendments is to exempt from indemnity bond requirements land, buildings, and equipment, the value of which is less than $5,000, in certain situations in which an indemnity bond in lieu of the Government's lien is required by the existing regulations. These situations include (1) the addition of property to the distillery premises where an indemnity bond has been filed in lieu of the written

consent of the owner or lien holder, (2) the alteration or demolishment of buildings on which a lien for taxes exists, and (3) the removal of apparatus or equipment on which a lien for taxes exists. Indemnity bonds heretofore filed in such cases in a penal sum of less than $5,000 may be terminated as to future liability by the district supervisor upon appropriate application therefor by the distiller or the surety.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act is unnecessary in connection with the issuance of these regulations for the reason that the amendments are of a liberalizing nature.

4. This Treasury Decision shall be effective immediately upon its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 2800(e), 2815(b), and 3176, Internal Revenue Code (U. S. C., title 26, sections 2800(e), 2815(b), and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 9, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 15, 1949)

REGULATIONS 5, SECTION 184.151: Procedure applicable. 1949–23–13225
T. D. 5753

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 184.—PRODUCTION OF BRANDY

Amending Regulations 5

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

To District Supervisors and Others Concerned:

1. Section 184.151 of Regulations 5 (26 CFR, Part 184), approved February 28, 1940, relating to the production of brandy, is hereby amended to read as follows:

SEC. 184.151. PROCEDURE APPLICABLE.—The foregoing provisions of this article respecting the action required of district supervisors in connection with the original establishment of distilleries will be followed, to the extent applicable, where there is a change in the individual, firm, or corporate name, or in the trade name or style, where the premises are to be operated initially under a trade name or style, or where there is a change in the proprietorship, location, premises, construction, apparatus and equipment, or in the type of plant, or in the title to the distillery property, or where such property becomes subject to a mortgage, judgment, lien, or other encumbrance, or where operations are permanently discontinued: *Provided*, That where there is a change in the individual, firm, or corporate name of the distiller, or where a distillery is to be again operated under a trade name or style previously approved by the Commissioner, or where the distillery is operated under alternating proprietorships and a former proprietor whose qualifications were previously approved by the Commissioner is again to operate the distillery, or where a fruit distillery has been operated alternately as a registered distillery or as an industrial alcohol plant and is to be again operated as a fruit distillery by the proprietor whose qualifications were previously approved by the Commissioner, the district supervisor may authorize the commencement of operations prior to the review of the qualifying documents by the Commissioner. In such cases, the district supervisor will notify the distiller by letter and attach one copy of such letter to the qualifying documents. (Sec. 3176, I. R. C.)

2. The purpose of this amendment is to delegate authority to the district supervisor to authorize the commencement of operations of the distillery prior to the review of the qualifying documents by the Commissioner, (1) where the fruit distillery is operated under alternating proprietorships and a former proprietor whose qualifications were previously approved by the Commissioner is again to operate the distillery, and (2) where the fruit distillery has been operating as an industrial alcohol plant or as a registered distillery and is again to be operated as a fruit distillery.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (5 U. S. C., section 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

4. This Treasury Decision shall be effective immediately upon its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in section 3176, Internal Revenue Code (U. S. C., title 26, section 3176).

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved October 14, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register October 20, 1949)

REGULATIONS 5, SECTIONS 184.242 AND 184.245. 1949–20–13203
T. D. 5745

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 184.—PRODUCTION OF BRANDY

Amending Regulations 5

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

To District Supervisors and Others Concerned:

1. On March 23, 1949, notice of proposed rule making, regarding the production of brandy, was published in the Federal Register (14 F. R. 1301).

2. After consideration of all such relevant matter as was presented by interested persons, sections 184.242 and 184.245 of Regulations 5 (26 CFR, Part 184), approved February 28, 1940, are hereby amended as follows:

SEC. 184.242. SWEETENING PROPERTIES.—The burnt sugar or caramel added to brandy shall not contain any substantial quantity of sugar which has not been caramelized, or possess any material sweetening properties. (Secs. 3036, 3176, I. R. C.)

SEC. 184.245. ADDITION TO PACKAGES IN WAREHOUSE.—Burnt sugar or caramel may be added to packages of brandy in warehouse only where the brandy is unmerchantable by reason of being deficient in color and it is shown that the failure to properly color the brandy prior to the filling of the packages was due to no negligence or fault of the distiller. In such cases, application must be filed with the district supervisor by the distiller or warehouseman, showing the serial numbers of the barrels, the name of the producing distiller, and the necessity for the addition of the burnt sugar or caramel to the brandy. The district

supervisor may permit the addition, under the immediate supervision of the storekeeper-gauger, of burnt sugar or caramel, conforming with section 184.242, to each of the barrels, after the brandy has been regauged for taxpayment and prior to the purchase and affixing of the tax-paid stamps to the barrels. (Secs. 3036 and 3176, I. R. C.)

3. The purpose of these amendments is to simplify the procedure relating to the addition of burnt sugar or caramel to brandy at fruit distilleries and internal revenue bonded warehouses.

4. This Treasury Decision shall become effective on the thirty-first day after the date of its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 3036 and 3176, Internal Revenue Code (26 U. S. C. 3036 and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 12, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 16, 1949)

REGULATIONS 5, SECTIONS 184.255, ETC. 1949-19-13181
T. D. 5735

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 184.—PRODUCTION OF BRANDY

Amending Regulations 5

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

To District Supervisors and Others Concerned:

1. On June 1, 1949, notice of proposed rule making, regarding the withdrawal of samples of brandy by proprietors of fruit distilleries, was published in the Federal Register (14 F. R. 2856).

2. After consideration of all such relevant matter as was presented by interested persons, sections 184.255, 184.256, 184.257, 184.258, 184.259, 184.260, 184.261, 184.262, 184.263, and 184.264 of Regulations 5 (26 CFR, Part 184), approved February 28, 1940, relating to the production of brandy, are amended and paragraph (1)a is added to section 184.3, as follows:

SEC. 184.3. DEFINITIONS.—* * *

(1)a. "Laboratory analysis" shall mean the determination of the composition of brandy or fruit spirits by chemical, physical, or organoleptic examination.

* * * * * * *

TAX-FREE SAMPLES FOR LABORATORY ANALYSIS

SEC. 184.255. UNFINISHED SPIRITS.—Upon approval by the storekeeper-gauger in charge at the distillery, or by the district supervisor when no storekeeper-gauger is assigned to the distillery, of an application submitted in accordance with the provisions of section 184.259, the distiller may remove for laboratory analysis samples of brandy or fruit spirits in the course of distillation and prior to the deposit in receiving tanks as follows:

(*a*) Samples, not exceeding 3 pints in the aggregate, of the product of each still in a distilling unit in each 24-hour period;

(*b*) Where a discontinuous or batch still is operated, samples not exceeding 3 pints in the aggregate, of the product of each batch distilled;

(*c*) Where the distiller desires to obtain spot-samples from various plates of a still in the course of distilling a day's production, samples, not exceeding 1 quart in the aggregate, from each of the various plates.

The size and number of samples must be restricted to the minimum necessary for the purpose for which intended. The withdrawal of tax-free samples of unfinished spirits in excess of these limitations for laboratory analysis shall not be permitted, unless it is shown that such samples are insufficient and the Commissioner, upon receipt of a written application filed in accordance with the provisions of section 184.259(*c*), authorizes the taking of additional samples. (Secs. 3037 and 3176, I. R. C.)

SEC. 184.256. FINISHED SPIRITS.—Upon approval by the storekeeper-gauger in charge at the distillery, or by the district supervisor when no storekeeper-gauger is assigned to the distillery, of a written application filed in accordance with the provisions of section 184.259, the distiller may remove for laboratory analysis samples of brandy or fruit spirits from receiving tanks and tanks or packages in the brandy deposit room. Such samples shall not exceed: (*a*) 1 quart in the aggregate, in any 24-hour period from any receiving tank; (*b*) 1 quart from any filling of a tank in the brandy deposit room; and (*c*) 1 pint from any package stored in the brandy deposit room: *Provided*, That, when a receiving tank is filled and emptied and filled again in the same 24-hour period, samples, not to exceed 1 quart in the aggregate, may be taken from each filling of such receiving tank. The size and number of samples must be restricted to the minimum necessary for the purpose for which intended. The withdrawal in excess of these limitations of tax-free samples of brandy or fruit spirits for laboratory analysis shall not be permitted unless it is shown that such samples are insufficient for the purpose intended and the Commissioner, upon receipt of a written application filed in accordance with the provisions of section 184.259(*c*), authorizes the taking of additional samples. (Secs. 3037 and 3176, I. R. C.)

SEC. 184.257. DISPOSITION OF SAMPLES.—Tax-free samples must be used solely for laboratory analysis. Such samples may not be furnished to salesmen and dealers for advertising or soliciting purposes. Where brandy or fruit spirits are sold subject to approval as to quality, a sample taken pursuant to the provisions of sections 184.256, 184.259, 184.260, 184.261, and 184.262 may be furnished the purchaser. Remnants or residues of tax-free samples remaining after analysis and which are not desired to be retained as laboratory specimens or for further analysis or examination should be returned to the vessels in the distilling system, unless the condition of the remnants or residues is such as to render them unsuitable for such disposition. If such remnants or residues of samples are unsuitable for return to the distilling system, they should be destroyed. (Secs. 3037 and 3176, I. R. C.)

TAX-PAID SAMPLES FOR OTHER THAN LABORATORY ANALYSIS

SEC. 184.258. UNFINISHED AND FINISHED SPIRITS.—Upon approval by the storekeeper-gauger in charge at the distillery of an application submitted in accordance with the provisions of section 184.259(*a*), the distiller may take samples of brandy or fruit spirits in the course of distillation in the distillery, or from the receiving tanks, or from tanks or packages in the brandy deposit room, for other than laboratory analysis, subject to payment of tax on the quantity so removed. Such samples must be used strictly for sample purposes, and the number and size of the samples must be restricted to that necessary for bona fide sample purposes. (Secs. 3037 and 3176, I. R. C.)

GENERAL REQUIREMENTS

SEC. 184.259. APPLICATION.—(*a*) *To the storekeeper-gauger in charge.*—When the distiller desires samples of brandy or fruit spirits which, under the provisions of sections 184.255, 184.256, and 184.258, may be authorized by a storekeeper-gauger and one is assigned to the premises, application, in triplicate, shall be submitted to that officer. The application shall be given a serial number beginning with "1" for the first application and running consecutively thereafter. The application should specify whether the samples are desired for laboratory analysis tax-free or for other purposes subject to payment of tax, the reasons why the samples are desired, the number and size of the samples to be taken, and the place or places of removal. Where it is desired to take samples from the distillery regularly for laboratory analysis, except spot-samples from the

plates of a still, the application may be made for that purpose. Where spot-samples from the plates of a still or samples subject to payment of tax are desired, the application shall be submitted each day such samples are to be procured. No samples may be taken until the application is approved.

(*b*) *To the district supervisor.*—When similar samples are desired and no storekeeper-gauger is assigned to the premises the distiller shall make application, in triplicate, to the district supervisor. The application shall be given a serial number within the series prescribed in paragraph (*a*) of this section and shall show the information required therein. No samples may be taken until the application is approved.

(*c*) *To the Commissioner.*—When the distiller desires samples other than those which, under the provisions of sections 184.255, 184.256, and 184.258, may be authorized by the storekeeper-gauger he shall make application, in quadruplicate, through the district supervisor, to the Commissioner. The application shall be given a serial number within the series prescribed in paragraph (*a*) of this section and shall show the information required therein. The application must show the necessity for samples in number or quantities in excess of those which may be authorized by the storekeeper-gauger. The district supervisor shall satisfy himself as to the need for samples, note his recommendations on each copy of the application and forward all copies to the Commissioner. No sample may be taken until the application is approved. (Secs. 3037 and 3176, I. R. C.)

SEC. 184.260. APPROVAL OF APPLICATION.—(*a*) *By the storekeeper-gauger in charge at the distillery.*—Upon receipt of an application submitted in accordance with the provisions of section 184.259(*a*), the storekeeper-gauger must satisfy himself as to the need for the number of samples desired and the legitimacy of the purpose for which they are to be used before approving the application. The storekeeper-gauger upon approval or disapproval of an application, shall return one copy to the distiller, forward one copy to the district supervisor, and retain the original copy in his office.

(*b*) *By the district supervisor.*—Upon receipt of an application submitted in accordance with the provisions of section 184.259(*b*), the district supervisor must satisfy himself as to the need for the number of samples desired and the legitimacy of the purpose for which they are to be used before approving the application, and shall note upon each copy his approval or disapproval. If the application is approved he shall file a copy and furnish the original and remaining copy to the Government officer assigned to supervise the withdrawal of the samples. At the time samples are withdrawn the Government officer shall file the original copy of the application at the distillery and furnish the distiller the remaining copy. If the application is disapproved, the district supervisor shall file the original copy and return the remaining copies to the distiller.

(*c*) *By the Commissioner.*—Upon approval or disapproval of an application by the Commissioner, the original and two copies shall be returned to the district supervisor. If the application is approved, the district supervisor shall file a copy and furnish the original and remaining copy to the Government officer assigned to supervise the withdrawal of the samples. At the time samples are withdrawn, the Government officer shall file the original copy of the application at the distillery and furnish the distiller the remaining copy. If the application is disapproved, the district supervisor shall file the original copy and return the remaining copies to the distiller. (Secs. 3037 and 3176, I. R. C.)

SEC. 184.261. REMOVAL UNDER SUPERVISION.—All samples must be taken under the immediate supervision of the storekeeper-gauger assigned to the distillery or a Government officer assigned to supervise the removal of such samples. When there is no Government officer assigned to the distillery and the application is transmitted to the district supervisor pursuant to the provisions of section 182.259(*b*), the district supervisor shall authorize the taking of the samples at such time as officers visit the distillery to gauge brandy, make inspections, etc., unless in his opinion, the circumstances are such as to warrant the detailing of an officer especially to permit the distiller to obtain samples. (Secs. 3037 and 3176, I. R. C.)

SEC. 184.262. LABEL.—At the time of the withdrawal of a sample the proprietor shall prepare a label and a copy thereof. The label and the copy shall be prepared on paper having approximate dimensions of 3 inches by 5 inches. The proprietor shall show on the label and on the copy, in the order listed and upon separate lines, the following information:

(1) The word "Sample";

(2) The serial number of the approved application covering the withdrawal of the sample;

(3) The kind of spirits;

(4) The place from which the sample was removed;

(5) The name of the distiller followed by the registered number of the distillery and the name of the State in which located;

(6) A statement showing the purpose for which the sample is intended;

(7) The size of the sample and the quantity in proof gallons extended to the fourth decimal place; and

(8) If the sample is to be analyzed or used at other than the immediate or contiguous premises of the proprietor, the name and address of the laboratory or purchaser to which the sample is to be sent.

Upon completion, the label and the copy shall be presented to the storekeeper-gauger, who shall verify the accuracy of the data thereon, date and sign both copies, and supervise the affixing of the label to the sample container. Where the label is to be placed upon a container of a sample taken subject to payment of tax for other than laboratory purposes, the storekeeper-gauger shall write upon the copy of the label the words "subject to taxpayment." The distiller shall not be required to affix red strip stamps to containers of taxable samples of brandy. The copy of the label shall be filed by the storekeeper-gauger in accordance with the provisions of section 184.263. (Secs. 3037 and 3176, I. R. C.)

SEC. 184.263. OFFICE RECORD.—The proprietor shall furnish sufficient file cases for the filing and retention of sample records. The copies of labels shall be kept by the storekeeper-gauger as a record of samples removed, and shall be filed numerically by application number and chronologically by date. If the distiller operates an internal revenue bonded warehouse on or contiguous to the distillery premises, the record of samples removed from the distillery shall be maintained separately from the record of samples removed from the warehouse. (Secs. 3037 and 3176, I. R. C.)

SEC. 184.264. REPORT OF TAXABLE SAMPLES.—Each day taxable samples of brandy or fruit spirits are withdrawn, the storekeeper-gauger shall enter on Form 1615, "Taxable Samples of Distilled Spirits," in quadruplicate, a record of the taxable samples removed. All the information called for by the form shall be furnished. At the end of each month, the storekeeper-gauger shall complete the report, retain one copy of the form, and deliver the remaining three copies to the distiller, who shall forward the three copies to the collector with remittance for the tax due. The collector shall execute his certificate of taxpayment on each copy of the form, retain one copy, and return the remaining two copies to the distiller, who will retain one copy and deliver the other copy to the storekeeper-gauger. The storekeeper-gauger shall note the taxpayment on his retained copy and forward the other copy to the district supervisor. (Secs. 3037 and 3176, I. R. C.)

3. These amendments are designed to establish appropriate limitations and requirements for the withdrawal of tax-free samples of brandy and fruit spirits for laboratory analysis, including organoleptic examination, and the withdrawal of samples of brandy and fruit spirits for other bona fide sample purposes subject to taxpayment, as provided by law.

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

5. This Treasury Decision is issued under the authority contained in sections 3037 and 3176, Internal Revenue Code (U. S. C., title 26, sections 3037 and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 25, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 31, 1949)

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REGULATIONS 5, SECTIONS 184.314, ETC.

1949-15-13136
T. D. 5710

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 184.—PRODUCTION OF BRANDY

Amending Regulations 5

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

To District Supervisors and Others Concerned:

1. Sections 184.314, 184.315, 184.315a, 184.316, 184.323, 184.324, 184.327, 184.328, 184.329, 184.329a, 184.330, 184.332, 184.333, and 184.334 of Regulations 5 (26 CFR, Part 184), approved February 28, 1940, relating to production of brandy, are hereby amended as follows:

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES IN SAME DISTRICT, EXCEPT WAREHOUSE OPERATED BY DISTILLER ON CONTIGUOUS PREMISES

SEC. 184.314. APPLICATION, FORM 236.—Where brandy is to be transferred to and entered for deposit in an internal revenue bonded warehouse located off the distillery premises in the same supervisory district, and such warehouse is not operated by the distiller on premises contiguous to the distillery premises, the proprietor of the receiving warehouse shall execute an application for the transfer of the brandy on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle, and the type of conveyance. The name of the carrier shall not be specified on Form 236. The applicant shall prepare an original and five copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 184.315. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF WAREHOUSE BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge of the warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185). If the bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236 and return all six copies of the form to the proprietor of the warehouse. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of brandy represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all six copies of the form to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all six copies to the proprietor. The proprietor will forward all six copies of the approved Form 236 to the proprietor of the consignor-distillery. The proprietor of the warehouse will be responsible for all outstanding approved Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor and give them to the storekeeper-gauger in charge of the warehouse for cancellation and return to the proprietor of the warehouse. (Sec. 3176, I. R. C.)

SEC. 184.315a. BRANDY TO BE TRANSFERRED.—When the distiller desires to make shipment, he will give a copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the brandy to be shipped. (Sec. 3176, I. R. C.)

SEC. 184.316. REPORT OF GAUGE.—Unless previously packaged, the brandy designated by the proprietor to be transferred will be drawn from the receiving or storage tanks into packages, gauged, marked and branded, or into a weighing tank, gauged, and run by pipe line into a properly equipped railroad tank car. The quantity transferred shall not exceed the maximum stated in the application. The details of the gauge will be entered by the storekeeper-gauger on five copies of Form 1520. If the packages to be transferred were previously filled, the storekeeper-gauger will inspect them but will not regauge the same, unless the circumstances are such as to make a regauge advisable. Where packages

previously filled are removed on the filling gauge, the storekeeper-gauger will prepare five copies of Form 1520, copying the details from the report of the filling gauge. (Secs. 2878, 2883, 3176, 4017, I. R. C.)

SEC. 184.323. DISTILLER'S ENTRY FOR DEPOSIT.—When the brandy has been packaged, or run into a railroad tank car and such tank car seal-locked, the storekeeper-gauger in charge will deliver the copy of Form 236 and the five copies of Form 1520 to the distiller. The distiller shall, on the same date that the brandy is to be removed from the distillery, execute on all six copies of Form 236 the description of the packages or tank car to be transferred and on all five copies of Form 1520 the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger in charge who will release the brandy for shipment. (Secs. 2879(a), 3176, I. R. C.)

SEC. 184.324. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the brandy, the storekeeper-gauger will execute his certificate of gauge and removal on Form 236. He will retain one copy of each form, furnish one copy of each to the distiller, forward one copy of each to the supervisor-consignor, and forward three copies of Form 236 and two copies of Form 1520 to the storekeeper-gauger in charge at the receiving warehouse. When shipment is made by truck, one copy each of Forms 236 and 1520 for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him, and the remaining two copies of Form 236 and one copy of Form 1520 will be mailed to such storekeeper-gauger in charge. (Secs. 2878, 2883, 3170, 3176, I. R. C.)

SEC. 184.327. STOREKEEPER-GAUGER'S RECEIPT OF BRANDY AT WAREHOUSE.—After the brandy has been deposited in the receiving warehouse, the storekeeper-gauger will execute his receipt on the three copies of Form 236, noting thereon any losses or discrepancies reported on Form 1520 in accordance with sections 184.325 and 184.326. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520, give one copy each of Forms 236 and 1520 to the proprietor of the warehouse, and forward one copy of Form 236 to the district supervisor. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the three copies of Form 236 and the two copies of Form 1520 have been received by the storekeeper-gauger in charge. (Secs. 2878, 2883, 3176, I. R. C.)

TRANSFER TO WAREHOUSE OFF DISTILLERY PREMISES IN DIFFERENT DISTRICT

SEC. 184.328. APPLICATION, FORM 236.—Where brandy is to be entered for deposit in an internal revenue bonded warehouse located in a different supervisory district than the distillery, the proprietor of the receiving warehouse shall execute an application for the transfer of the brandy on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car, or other vehicle, and the type of conveyance. The name of the carrier shall not be specified on Form 236. The applicant shall prepare an original and six copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 184.329. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF WAREHOUSE BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge of the warehouse, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to Regulations 10 (26 CFR, Part 185). If the bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236 and return all seven copies of the form to the proprietor of the warehouse. If the bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of brandy represented by the Form 236, plus the quantity of spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all seven copies of the form direct to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all seven copies to the proprietor. The proprietor will forward all seven copies of the approved Form 236 to the proprietor of the consignor-distillery. The proprietor of the warehouse will be responsible for all outstanding approved Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor and give them to the storekeeper-

gauger in charge of the warehouse for cancellation and return to the proprietor of the warehouse. (Sec. 3176, I. R. C.)

SEC. 184.329a. BRANDY TO BE TRANSFERRED.—When the distiller desires to make shipment, he will give a copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the brandy to be shipped. (Sec. 3176, I. R. C.)

SEC. 184.330. REPORT OF GAUGE.—Unless previously packaged, the brandy designated by the proprietor to be transferred will be drawn from the receiving or storage tanks into casks or packages, gauged, marked and branded, or into a weighing tank, gauged, and run by pipe line into a properly equipped railroad tank car. The quantity transferred shall not exceed the quantity stated in the application. The details of the gauge will be entered by the storekeeper-gauger on five copies of Form 1520. If the packages to be transferred were previously filled, the storekeeper-gauger will inspect them but will not regauge the same, unless the circumstances are such as to make a regauge advisable. Where previously filled packages are removed on the filling gauge, the storekeeper-gauger will prepare five copies of Form 1520, copying the details from the report of the filling gauge. (Secs. 2878, 2883, 3176, 4017, I. R. C.)

SEC. 184.332. DISTILLER'S ENTRY FOR DEPOSIT.—When the brandy has been packaged, or run into a railroad tank car and such tank car seal-locked, the storekeeper-gauger in charge will deliver the copy of Form 236 and the five copies of Form 1520 to the distiller. The distiller shall, on the same date that the brandy is to be removed from the distillery, execute on all seven copies of Form 236 the description of the packages or tank car to be transferred and on all five copies of Form 1520 the entry for deposit. He shall immediately return all copies of such forms to the storekeeper-gauger in charge who will release the brandy for shipment. (Secs. 2879(a), 3176, I. R. C.)

SEC. 184.333. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the brandy, the storekeeper-gauger will execute his certificate of gauge and removal on Form 236. He will retain one copy of each form, furnish one copy of each to the distiller, forward one copy of each to the supervisor-consignor, and forward four copies of Form 236 and two copies of Form 1520 to the storekeeper-gauger in charge at the receiving warehouse. When shipment is made by truck, one copy each of Forms 236 and 1520 for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him, and the remaining three copies of Form 236 and one copy of Form 1520 will be mailed to such storekeeper-gauger in charge. (Secs. 2878, 2883, 3176, I. R. C.)

SEC. 184.334. STOREKEEPER-GAUGER'S RECEIPT OF BRANDY AT WAREHOUSE.—The storekeeper-gauger at the receiving warehouse will examine the shipment upon its arrival and ascertain and note on both copies of Form 1520 any losses or discrepancies as provided in sections 184.325 and 184.326. After the brandy has been deposited, the storekeeper-gauger will execute his receipt on the four copies of Form 236, noting thereon any losses or discrepancies reported on Form 1520. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520, give one copy each of Forms 236 and 1520 to the proprietor of the warehouse, and forward two copies of Form 236 to the supervisor of his district. The district supervisor will retain one copy of Form 236 and forward the remaining copy of Form 236 to the supervisor of the district from which the brandy was transferred. No withdrawal or transfer in bond of brandy received at the warehouse will be made until the four copies of Form 236 and the two copies of Form 1520 have been received by the storekeeper-gauger in charge. (Secs. 2878, 2883, 3170, 3176, I. R. C.)

2. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

3. The purposes of these amendments are as follows:

(1) To reduce the number of copies of reports of gauge (Form 1520) prepared by storekeeper-gaugers, by discontinuing furnishing of certain copies to district supervisors, which will result in reducing the work of storekeeper-gaugers and audit clerks without jeopardy to the revenue;

(2) To expedite the receipt by the consignor-distiller of Forms 236, "Transfer of Distilled Spirits in Bond," after approval of bond coverage by the storekeeper-gauger at the consignee-warehouse, by providing that the consignee-warehouseman send them direct to the consignor-distiller in lieu of having the storekeeper-gauger at the warehouse send them to the storekeeper-gauger at the consignor-distillery for delivery to the consignor-distiller;

(3) To obviate the preparation of additional Forms 236 by the consignee-warehouseman when he desires shipments made pursuant to approved Forms 236 after the expiration of 90 days, by revoking the provision that Forms 236 will be canceled by the district supervisor upon the expiration of 90 days after approval if not used within that period or extended by the district supervisor;

(4) To obviate the need for obtaining the consent of the district supervisor when the consignor-distiller desires to ship brandy by a carrier other than the one originally designated on Form 236 by the consignee-warehouseman, by directing that the name of the carrier shall not be shown on Form 236 by the consignee-warehouseman;

(5) To facilitate the execution on all copies of Form 236 of the storekeeper-gauger's certificate of receipt at the consignee-warehouse by providing for the routing, when brandy is shipped from the distillery, of the copies of Forms 236 and 1520 for the consignee-warehouseman with the copies for the storekeeper-gauger at the consignee-warehouse, in lieu of sending them direct to the consignee-warehouseman.

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

5. (This Treasury Decision is issued under the authority contained in sections 2878, 2879(a), 2883, 3170, 3176, and 4017 of the Internal Revenue Code (U. S. C., title 26, sections 2878, 2879(a), 2883, 3170, 3176, and 4017).)

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved July 1, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register July 8, 1949)

REGULATIONS 5, SECTIONS 184.336, ETC. 1949–19–13182
T. D. 5739

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 184.—PRODUCTION OF BRANDY

Amending Regulations 5

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

To District Supervisors and Others Concerned:

1. Sections 184.336, 184.337, 184.338, 184.341, 184.343, and 184.348 of Regulations 5 (26 CFR, Part 184), approved February 28, 1940, relating to production of brandy, are hereby amended as follows:

REMOVAL OF BRANDY IN PACKAGES FOR FORTIFICATION OF WINE

SEC. 184.336. APPLICATION, FORM 257.—Where it is desired to remove brandy in packages from a fruit distillery for the fortification of wine, application will be made by the winemaker on Form 257, "Application for the Removal of Brandy for Fortification of Wine from Fruit Distilleries and Internal Revenue Bonded Warehouses." The winemaker shall state in the application the penal sum of the bond, Form 700-A. The same application may not include brandy from more than one distillery, nor two or more lots to be removed from the same distillery at different times, except where the distillery is contiguous to the winery, as provided in section 184.341. The application shall be filed in triplicate where the winery and the distillery are in the same supervisory district, and in quadruplicate where they are in different districts. Where the premises are located in the same supervisory district and the bond of the winemaker is given in the maximum penal sum of $50,000, Form 257 will be submitted to the storekeeper-gauger if one is located at the winery, or at a contiguous fruit distillery or internal revenue bonded warehouse, as the case may be. If no storekeeper-gauger is located at such premises, the application will be submitted, at the discretion of the district supervisor, to a designated storekeeper-gauger in the vicinity of the bonded winery. The district supervisor will notify each storekeeper-gauger designated to approve Forms 257 and advise him that the winemaker's bond is given in the maximum penal sum of $50,000. He will notify each winemaker concerned where Forms 257 are to be submitted to a storekeeper-gauger. All other Forms 257, that is, (1) those covering intradistrict removals where the bond of the winemaker is in the maximum penal sum but no storekeeper-gauger has been designated to approve Forms 257, (2) those covering intradistrict removals where the bond of the winemaker is not in the maximum penal sum, and (3) those covering interdistrict removals, will be submitted direct to the supervisor of the district in which the winery is located. (Secs. 3031(a), 3033, 3176, I. R. C.)

SEC. 184.337. ACTION ON APPLICATION, FORM 257.—(*a*) *By district supervisor.*—If the application is in proper order, the quantity of brandy to be withdrawn is not in excess of the applicant's current needs or of the storage capacity of the fortifying room (see section 178.421 of Regulations 7), and the bond of the winemaker is sufficient to cover the brandy to be procured, the district supervisor will (1) where the distillery is in the same district, execute his certificate on the form and send all three copies to the proprietor of the fruit distillery; and (2) where the distillery is located in another supervisory district, execute his certificate on the form and send all four copies to the supervisor of such district, who will deliver all four copies to the proprietor of the fruit distillery. If a storekeeper-gauger is not located at the fruit distillery, the supervisor of the district in which the fruit distillery is located will designate a storekeeper-gauger to guage the brandy. If the application is not in order, the supervisor of the district in which the bonded winery is located will return all copies to the winemaker.

(*b*) *By storekeeper-gauger.*—Upon receipt of Form 257 by the storekeeper-gauger, he will compare the penal sum of the bond as stated in the application with the statement furnished by the district supervisor pursuant to section 184.336. If the bond of the winemaker is given in the maximum penal sum of $50,000, the application is in proper order, and the quantity of brandy to be withdrawn is not in excess of the applicant's current needs or of the storage capacity of the fortifying room (see section 178.421 of Regulations 7), he will certify to the sufficiency thereof on Form 257. He will send all copies of Form 257 to the proprietor of the fruit distillery. If the application is not in order, he will return all copies to the winemaker. (Secs. 3031(a), 3033, 3176, I. R. C.)

SEC. 184.338. GAUGE OF BRANDY.—The proprietor, upon receipt of Form 257, will execute his description of the brandy to be gauged, on all copies of the form. He will refer them to the storekeeper-gauger assigned to the distillery, or to the storekeeper-gauger designated by the district supervisor pursuant to section 184.337(*a*), as the case may be. Where the certificate of sufficiency of the winemaker's bond was executed by a storekeeper-gauger pursuant to section 184.337(*b*) and no storekeeper-gauger is assigned to the fruit distillery, the proprietor will request the district supervisor to designate one to gauge and release the brandy. If the brandy to be removed is contained in tanks, the designated packages will be filled, gauged, and marked and branded in accordance with the Gauging Manual.

If the packages were previously filled, they will be marked as required, and removed on the original gauge, unless a regauge is deemed advisable. The storekeeper-gauger will prepare four copies of the report of gauge, Form 1520, where the brandy is to be removed at one time to the fortifying room of a contiguous winery, five copies in all other instances where brandy is removed to a winery located in the same supervisory district, and six copies where the winery is located in another district. The storekeeper-gauger will attach one copy of Form 1520 to each copy of Form 257 and will note on the extra copies of Form 1520 the name, registered number, and address of the winery to which the brandy is to be shipped. No greater quantity of brandy may be gauged or withdrawn than stated in the application. (Secs. 2878, 3031(a), 3033, 3176, I. R. C.)

SEC. 184.341. GAUGING OFFICER'S CERTIFICATE OF MONTHLY DEPOSITS IN CONTIGUOUS WINERY.—If the distillery and winery are located on contiguous premises and brandy is to be transferred to the winery from time to time during the month under the supervision of a storekeeper-gauger, the winemaker's application on Form 257 may cover all brandy to be transferred to the winery during the month. If the storekeeper-gauger gauging the brandy supervises its transfer to and deposit in the fortifying room, he will certify to the deposit on each copy of Form 1520 as the brandy is deposited, attach one copy thereof to each copy of Form 257, forward one of the extra copies of Form 1520 to the district supervisor, and deliver one copy to the distiller. At the close of the month the storekeeper-gauger will execute his certificates of gauge and removal and receipt on Form 257, retain one copy thereof, with a copy of each Form 1520 attached, at the distillery as a permanent record, and one copy, similarly completed, at the winery for the same purpose, and forward the other copy to the district supervisor. (Secs. 3031(a), 3033, 3170, 3176, 4017, I. R. C.)

REMOVAL OF BRANDY BY PIPE LINE FOR THE FORTIFICATION OF WINE

SEC. 184.343. APPLICATION, FORM 257.—Where it is desired to transfer brandy from the receiving tanks or from storage tanks in the brandy deposit room by pipe line to the fortifying rooms of wineries on contiguous premises, application will be made by the winemaker on Form 257, in triplicate, in the same manner as when brandy is to be transferred in packages, as prescribed in section 184.336. The district supervisor, or the storekeeper-gauger, as the case may be, will execute his certificate on the form as prescribed in section 184.337, the distiller will indicate the brandy to be gauged, as prescribed in section 184.338, and the storekeeper-gauger designated to gauge the brandy will make his report of gauge and execute his certificates of gauge and removal and receipt, and complete and dispose of Forms 257 and Forms 1520, as hereinbefore prescribed in the case of removal in packages. Notation of transfer by pipe line will be made by the storekeeper-gauger on each Form 1520. (Secs. 3031(a), 3033, 3170, 3176, 4017, I. R. C.)

REMOVAL OF BRANDY IN TANK CARS FOR FORTIFICATION OF WINE

SEC. 184.348. APPLICATION, FORM 257.—Where it is desired to remove brandy in railroad tank cars to the fortifying room of a winery, application will be made by the winemaker on Form 257 in the same manner as when brandy is removed in packages, as prescribed in section 184.336. The district supervisor, or the storekeeper-gauger, as the case may be, will execute his certificate on the form as prescribed in section 184.337, the distiller will indicate the brandy to be gauged, as prescribed in section 184.338, and the storekeeper-gauger designated to gauge the brandy will make his report of gauge and execute his certificate of gauge and removal and dispose of Forms 257 and Forms 1520, as hereinbefore prescribed in the case of removal in packages. The winemaker will state on his application that the brandy is to be transported by railroad tank car. (Secs. 3031(a), 3033, 3170, 3176, 4017, I. R. C.)

2. The purposes of the amendments are as follows:

(1) To expedite the approval of Forms 257, "Application for the Removal of Brandy for Fortification of Wine from Fruit Distilleries and Internal Revenue Bonded Warehouses," by authorizing the storekeeper-gauger located at the bonded winery, or at a contiguous fruit

distillery or internal revenue bonded warehouse, or located in the immediate vicinity of the bonded winery if designated by the district supervisor, to certify to the sufficiency of the winemaker's bond to cover such removal, in lieu of the district supervisor, provided the winemaker's bond is given in the maximum penal sum and the winery and the fruit distillery or internal revenue bonded warehouse as the case may be are located in the same supervisory district.

(2) To eliminate unnecessary work on the part of the district supervisor by discontinuing the execution by him on Form 257 of an order to a storekeeper-gauger to gauge and release the brandy described in the application. The execution of the certificate of bond coverage is sufficient indication to the storekeeper-gauger at the fruit distillery or the internal revenue bonded warehouse that the brandy described in the application may be gauged and released. If a storekeeper-gauger is not assigned to the fruit distillery or the internal revenue bonded warehouse, the district supervisor will designate a storekeeper-gauger to go to such premises to gauge and release the brandy.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. (This Treasury Decision is issued under the authority contained in sections 2878, 3031(a), 3033, 3170, 3176, and 4017 of the Internal Revenue Code (U. S. C., title 26, sections 2878, 3031(a), 3033, 3170, 3176, and 4017).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 1, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 8, 1949)

REGULATIONS 5, SECTIONS 184.418, 184.423, AND 184.424. — 1949-17-13152 T. D. 5716

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 184.—PRODUCTION OF BRANDY

Amending Regulations 5

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

To District Supervisors and Others Concerned:

1. Sections 184.418, 184.423, and 184.424 of Regulations 5 (26 CFR, Part 184), approved February 28, 1940, are amended to read as follows:

SEC. 184.418. RECORD OF DISTILLERY OPERATIONS, FORM 15.—The distiller shall keep a record of the distillery operations on Form 15, "Monthly Return of Fruit Distiller." Entries shall be made as indicated by the headings of the various

columns and lines and in accordance with the instructions printed on the form, and as set forth in these regulations. Except as provided in section 184.419, the entries shall be made before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. Form 15 will be kept at the distillery as a permanent record, in bound form, subject to inspection by Government officers at any reasonable hour. (Secs. 2841, 3171, 3176, I. R. C.)

SEC. 184.423. TIME OF MAKING ENTRIES.—Daily entries shall be made on Record 52 and Form 52E, as indicated by the headings of the various columns and in accordance with instructions printed thereon before the close of business of the day next succeeding the day on which the transactions occur. Where the proprietor of a tax-paid premises defers the making of entries to the next business day, as herein authorized, he shall maintain a separate record, such as invoices, of the removals of distilled spirits showing the removal data required to be entered on Record 52 or Form 52E and appropriate memoranda of other transactions required to be entered on such records, for the purpose of making the entries correctly. (Secs. 2857, 3176, I. R. C.)

SEC. 184.424. SEPARATE RECORD OF SERIAL NUMBERS OF CASES.—Serial numbers of cases of distilled spirits disposed of need not be entered on Record 52 or Form 52E, provided the proprietor keeps in his place of business a separate record, approved by the district supervisor, showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of 4 years and in such a manner that the required information may be ascertained readily therefrom, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by revenue officers. Entries shall be made on such separate record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The proprietor whose separate record has been approved by the district supervisor shall make a notation in the column for reporting serial numbers, as follows: "Serial numbers shown on commercial records per authority dated _____." (Secs. 2857, 3176, 4041, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries in Forms 1598, Record 52, and Form 52E.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 2841, 2857, 3171, 3176, 4041, I. R. C. (U. S. C., title 26, sections 2841, 2857, 3171, 3176, 4041).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 5, SECTIONS 184.445, ETC.

1949-17-13153
T. D. 5728

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 184.—PRODUCTION OF BRANDY

Amending Regulations 5

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

To District Supervisors and Others Concerned:

1. Sections 184.445, 184.446, 184.447, and 184.448 of Regulations 5, approved February 28, 1940 (26 CFR, Part 184), are hereby amended.

2. The purpose of these amendments is to revise the procedure for the recording of Government property and the disposition of cap seals used and removed at fruit distilleries.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (Public, No. 404, Seventy-ninth Congress) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of an administrative nature only.

SEC. 184.445. REMOVAL OF CAP SEALS.—Except as provided in section 184.444, cap seals which have been affixed will be removed only by a storekeeper-gauger or some other officer designated for the purpose by the district supervisor. The officer will destroy all removed cap seals in a manner sufficient to prevent their reuse. (Secs. 2851 and 3176, I. R. C.)

SEC. 184.446. STOREKEEPER-GAUGER'S RECORD OF CAP AND LOCK SEALS.—A record of cap seals received, used, and removed, and of lock seals received and used at each fruit distillery will be kept by storekeeper-gaugers on Form 289, "Government Officer's Record and Report of Government Property," in accordance with the titles of the columns and lines and the instructions on the form. Form 289 will be kept in the Government cabinet when not in use. (Sec. 3176, I. R. C.)

SEC. 184.447. STOREKEEPER-GAUGER'S REPORT OF GOVERNMENT PROPERTY.—On or before the fifth day of the month succeeding that for which the transactions are reported, the storekeeper-gauger will prepare a monthly report on Form 289 of all Government property at the fruit distillery. Form 289 will be prepared in duplicate, in accordance with the titles of the columns and lines and the instructions on the form. He will forward the original to the district supervisor and retain the copy for his files. (Sec. 3176, I. R. C.)

SEC. 184.448. DISTRICT SUPERVISOR'S REPORT OF LOCKS AND GAUGING INSTRUMENTS.—District supervisors will be held accountable for the Government locks and seals, including cap seals, supplied upon their respective requisitions, and for those received from their predecessors in office. Outgoing district supervisors will take receipts from their successors in office for the Government locks then in use and on hand, and for seals on hand in the district. District supervisors will keep an account of locks and gauging instruments, and will make return thereof semiannually to the Commissioner on Form 152, "Return of Locks and Gauging Instruments." (Sec. 3176, I. R. C.)

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

5. This Treasury Decision is issued under the authority contained in sections 2851 and 3176, Internal Revenue Code (U. S. C., title 26, sections 2851 and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 4, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 10, 1949)

REGULATIONS 7, SECTIONS 178.390 AND 178.501.

1949-17-13154
T. D. 5717

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 178.—WINE

Amending Regulations 7

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

To District Supervisors and Others Concerned:

1. Sections 178.390 and 178.501 of Regulations 7 (26 CFR, Part 178), approved September 21, 1945, are amended to read as follows:

SEC. 178.390. COMPLETE RECORDS REQUIRED.—All the information called for in Forms 701, 702, 702-A, 702-B, and 702-C, as indicated by the headings of the columns and lines of the forms and the instructions printed thereon or issued in respect thereto, and as required by these regulations, must be reported. All operations and transactions must be entered on the forms before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as herein authorized, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The entries must be made by the proprietor, or by his agent from personal knowledge or from data furnished by the proprietor. The entries must be made from day to day during the month (1) on all three copies of each form, or (2) on one copy of each form, from which two additional copies must be prepared at the close of the month, or (3) on a rough copy of each form, from which all three copies must be prepared at the close of the month. When a rough copy is kept, the entries shall be made thereon with indelible pencil, ink, or typewriter, and the rough copy shall be filed with the copy (prepared therefrom) retained at the winery or storeroom. When the entries are made from memoranda furnished by the proprietor, such memoranda shall be filed at the winery or storeroom. Care must be used to insure the keeping of accurate and complete records. Each report should be carefully checked before being forwarded to the district supervisor. Reports prepared by persons who have no knowledge of the winery or storeroom operations and who are not furnished with the necessary data by the proprietor will not be accepted. Where forms are rendered in blank they should bear the notation "No transactions." Upon discontinuance of a bonded winery or bonded storeroom, the last reports should be marked "Final." (Secs. 3171, 3176, 3901, I. R. C.)

SEC. 178.501. PREPARATION OF THE REPORT.—Form 261 shall be prepared in accordance with the requirements of section 178.390, respecting the preparation of Forms 701, 702, 702-A, and 702-B. The entries must be made by the winemaker, or by his agent from personal knowledge or data furnished by the winemaker, before the close of the business day next succeeding the day the brandy or sweetening agents are received or used. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The report shall be subscribed and sworn to by the winemaker or his duly authorized agent. Where the form is signed by an agent, proper power of attorney authorizing the agent to execute the reports for the winemaker must be filed with the district supervisor. (Secs. 3031(a), 3032, 3033, 3171, 3176, 3901, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries in Forms 261, 701, 702, 702-A, 702-B, and 702-C.

3. It is found that compliance with the notice and public rulemaking procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 3031(a), 3032, 3033, 3171, 3176, 3901, I. R. C. (U. S. C., title 26, sections 3031(a), 3032, 3033, 3171, 3176, 3901).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 7, SECTIONS 178.450, 178.451, AND 178.454.

1949–19–13183
T. D. 5738

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 178.—WINE

Amending Regulations 7

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

To District Supervisors and Others Concerned:

1. Sections 178.450, 178.451, and 178.454 of Regulations 7 (26 CFR, Part 178), approved September 21, 1945, relating to wine, are amended as follows:

MANNER OF PROCURING BRANDY FROM FRUIT DISTILLERIES AND INTERNAL REVENUE BONDED WAREHOUSES

SEC. 178.450. APPLICATION, FORM 257.—Where it is desired to procure brandy for the fortification of wine, either from a fruit distillery or from an internal revenue bonded warehouse, application will be made by the winemaker on Form 257. The winemaker shall specify in the application whether the brandy is to be procured in packages or railroad tank cars, or by pipe line, and (1) if the brandy is to be procured in railroad tank cars, whether both the winery and distillery or warehouse from which the brandy is to be procured are equipped with suitable railroad siding facilities and weighing tanks for gauging the brandy, and (2) if the brandy is to be procured by pipe line, whether the winery and the distillery or warehouse from which the brandy is to be procured are located on contiguous premises and are equipped with a suitable weighing tank and whether the pipeline has been inspected and approved, as required by section 178.457. He shall state in the application the penal sum of the bond, Form 700–A. The same application may not include brandy from more than one distillery or warehouse or from both a distillery and a warehouse, nor two or more lots to be removed from the same distillery or warehouse at different times, except where the distillery or warehouse is contiguous to the winery, as provided in section 178.454. The application shall be filed in triplicate where the winery and the distillery or warehouse are in the same supervisory district, and in quadruplicate where they are in different districts. Where the premises are located in the same supervisory district and the bond of the winemaker is given in the maximum penal sum of $50,000, Form 257 will be submitted to the storekeeper-gauger if one is located at the winery, or at a contiguous fruit distillery or internal revenue bonded warehouse, as the case may be. If no storekeeper-gauger is located at such premises, the application will be submitted, at the discretion of the district supervisor, to a designated storekeeper-gauger in the vicinity of the bonded winery. The district supervisor will notify each storekeeper-gauger designated to approve Forms 257 and advise him that the winemaker's bond is given in the maximum penal sum of $50,000. He will also notify each winemaker concerned where Forms 257 are to be submitted to a storekeeper-gauger. All other Forms 257, that is, (1) those covering intradistrict removals where the bond of the winemaker is in the maximum penal sum but no storekeeper-gauger has been designated to approve Forms 257, (2) those covering intradistrict removals

where the bond of the winemaker is not in the maximum penal sum, and (3) those covering interdistrict removals, will be submitted direct to the supervisor of the district in which the winery is located. (Secs. 3031, 3033, 3171, 3176, 3901, I. R. C.)

SEC. 178.451. ACTION ON APPLICATION, FORM 257.—(*a*)—*By district supervisor.*—If the application is in order, the quantity of brandy to be withdrawn is not in excess of the applicant's current needs or of the storage capacity of the fortifying room (see section 178.421), and the bond of the winemaker (where not in the maximum penal sum) is sufficient to cover the tax on the brandy to be procured, in addition to the tax on the wine and brandy then on hand at the winery, the district supervisor will (1) where the distillery or warehouse is in the same district, execute his certificate on the form and send all three copies to the proprietor of the fruit distillery or internal revenue bonded warehouse, as the case may be, from which the brandy is to be removed, and (2) where the distillery or warehouse is located in another supervisory district, execute his certificate on the form and send all four copies to the supervisor of such district, who will send all four copies to the proprietor of the fruit distillery or internal revenue bonded warehouse, as the case may be. If a storekeeper-gauger is not located at the fruit distillery or internal revenue bonded warehouse, the supervisor of the district in which such premises are located will designate a storekeeper-gauger to gauge the brandy. If the application is not in order, the supervisor of the district in which the bonded winery is located will return all copies to the winemaker.

(*b*) *By storekeeper-gauger.*—Upon receipt of Form 257 by the storekeeper-gauger, he will compare the penal sum of the bond as stated in the application with the statement furnished by the district supervisor pursuant to section 178.450. If the bond of the winemaker is given in the maximum penal sum of $50,000, the application is in order, and the quantity of brandy to be withdrawn is not in excess of the applicant's current needs or of the storage capacity of the fortifying room (see section 178.421), he will certify to the sufficiency thereof on Form 257. He will send all copies of Form 257 to the proprietor of the fruit distillery or internal revenue bonded warehouse, as the case may be. If the application is not in order, he will return all copies to the winemaker. (Secs. 3031, 3033, 3176, 3901, I. R. C.)

SEC. 178.454. ONE APPLICATION FOR MONTHLY REMOVALS FROM CONTIGUOUS DISTILLERY OR WAREHOUSE.—If the distillery or warehouse and the winery are located on contiguous premises and brandy is to be transferred to the winery from time to time during the month under supervision of a storekeeper-gauger, the winemaker's application on Form 257 may cover all brandy to be transferred to the winery during the month. In such case, if the bond of the winemaker is not in the maximum penal sum, the winemaker shall specify on Form 257 the maximum quantity of brandy that will be removed from the distillery or warehouse on any one day, less the quantity on hand unused at the beginning of the day. The storekeeper-gauger supervising the removal of the brandy from the distillery or warehouse will see that this daily quantity is not exceeded. As provided in section 178.499(a), district supervisors will use such daily quantity in determining the sufficiency of the winemaker's bond.

(*a*) *Same officer at distillery or warehouse and winery.*—If the officer gauging the brandy supervises its transfer to and deposit in the fortifying room, he will certify to such deposit on each copy of Form 1520 as the brandy is deposited, and attach one copy thereof to each copy of Form 257. At the close of the month, the officer will execute his certificates on each copy of Form 257, retain one copy thereof, with a copy of each Form 1520 attached, at the winery as a permanent record, and one copy similarly completed, at the distillery or warehouse for the same purpose, and forward the other copy to the district supervisor.

(*b*) *Separate officers at distillery or warehouse and winery.*—When an officer is separately assigned to duty at the winery, the officer at the distillery or warehouse will retain one copy of Form 257 and deliver the other two copies to the officer at the winery. Each time brandy is transferred to the winery, the officer at the distillery or warehouse will attach one copy of Form 1520, covering the brandy so transferred, to his copy of Form 257, and deliver two copies of the Form 1520 to the officer at the winery, who will certify to deposit on each Form 1520, as the brandy is received and deposited in the fortifying room, and attach a copy of Form 1520 to each copy of Form 257. At the close of the month the officer at the distillery or warehouse will execute his certificate of gauge on all three copies of Form 257 and the officer at the winery will execute his certificate of receipt on all copies of the form. The forms will then be disposed of as provided in paragraph (*a*). (Secs. 3031, 3033, 3176, 3901, I. R. C.)

2. The purpose of the amendments are as follows:

(1) To expedite the approval of Forms 257, "Application for the Removal of Brandy for Fortification of Wine from Fruit Distilleries and Internal Revenue Bonded Warehouses," by authorizing the storekeeper-gauger located at the bonded winery, or at a contiguous fruit distillery or internal revenue bonded warehouse, or located in the immediate vicinity of the bonded winery if designated by the district supervisor, to certify to the sufficiency of the winemaker's bond to cover such removal, in lieu of the district supervisor, provided the winemaker's bond is given in the maximum penal sum and the winery and the fruit distillery or internal revenue bonded warehouse as the case may be are located in the same supervisory district.

(2) To eliminate unnecessary work on the part of the district supervisor by discontinuing the execution by him on Form 257 of an order to a storekeeper-gauger to gauge and release the brandy described in the application. The execution of the certificate of bond coverage is sufficient indication to the storekeeper-gauger at the fruit distillery or the internal revenue bonded warehouse that the brandy described in the application may be gauged and released. If a storekeeper-gauger is not assigned to the fruit distillery or the internal revenue bonded warehouse, the district supervisor will designate a storekeeper-gauger to go to such premises to gauge and release the brandy.

3. It is found that compliance with the notice and public rulemaking procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. (This Treasury Decision is issued under the authority contained in sections 3031, 3033, 3171, 3176, and 3901 of the Internal Revenue Code (U. S. C., title 26, sections 3031, 3033, 3171, 3176, and 3901).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 1, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 8, 1949)

REGULATIONS 10, SECTIONS 185.154, ETC. 1949–15–13137
T. D. 5713

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS

Amending Regulations 10

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

To District Supervisors and Others Concerned:

1. Sections 185.154, 185.298, 185.298a, 185.298b, 185.299, 185.300, 185.301, 185.302, 185.310, 185.311, 185.312, 185.312a, 185.312b, 185.312c,

185.313, and 185.314 of Regulations 10 (26 CFR, Part 185), approved May 20, 1940, relating to warehousing of distilled spirits, are hereby amended as follows:

Deposit of Spirits in Warehouse

SPIRITS RECEIVED IN CASKS OR OTHER APPROVED CONTAINERS

SEC. 185.154. DISPOSITION OF DEPOSIT FORMS.—Where spirits are received from a distillery operated by the proprietor on the same or contiguous premises, the storekeeper-gauger in charge at the receiving warehouse will retain the copy of Form 1520 covering the deposit of the spirits. Upon the deposit of spirits received from a distillery not operated by the proprietor of the warehouse on the same or contiguous premises, or from another bonded warehouse, the storekeeper-gauger at the receiving warehouse will follow the procedure prescribed by section 185.311 for transfers between warehouses in the same district and section 185.314 for transfers between warehouses in different districts. (Sec. 3176, I. R. C.)

Transfers in Bond Between Internal Revenue Bonded Warehouses

TRANSFERS BETWEEN WAREHOUSES IN SAME DISTRICT

SEC. 185.298. APPLICATION, FORM 236.—Where the transfer is to be made between bonded warehouses in the same supervisory district, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car or other vehicle, and the type of conveyance. The name of the carrier shall not be specified on Form 236. The applicant shall prepare an original and five copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2875, 3176, I. R. C.)

SEC. 185.298a. STOREKEEPER-GAUGER'S CERTIFICATE OF SUFFICIENCY OF BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to section 185.112a. If the warehouse bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236, and return all six copies of the form to the proprietor of the warehouse. If the warehouse bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of distilled spirits represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all six copies of the form to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all six copies to the proprietor. The proprietor will forward all six copies of the approved Form 236 to the proprietor of the consignor-warehouse. The proprietor of the consignee-warehouse will be responsible for all outstanding approved Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor and give them to the storekeeper-gauger in charge of the warehouse for cancellation and return to the proprietor of the consignee-warehouse. (Secs. 2875, 3176, I. R. C.)

SEC. 185.298b. SPIRITS TO BE TRANSFERRED.—When the proprietor of the shipping warehouse desires to make shipment, he will give a copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the spirits to be shipped. (Secs. 2875, 3176, I. R. C.)

SEC. 185.299. TRANSFERS IN PACKAGES.—If the spirits to be transferred are in original packages or in packages filled from warehouse storage tanks, or are blended brandies in packages filled in the brandy-blending department, the storekeeper-gauger shall inspect the packages designated by the proprietor to be transferred and supervise the weighing thereof as provided in the Gauging Manual. He will prepare an original and four copies of Form 1619 covering only the packages to be shipped. The quantity to be transferred shall not exceed the maximum stated in the application. In the case of blended brandies the storekeeper-gauger shall also show on Form 1619 the date and serial number of the

Form 1685 covering the blending of the brandies, the date of original entry of the oldest brandy in the blend and the date of original entry of the youngest brandy in the blend. The storekeeper-gauger in charge will give the copy of Form 236 and the five copies of Form 1619 to the proprietor, who shall, on the same date that the spirits are to be transferred, execute on the six copies of Form 236 the description of the packages to be transferred. He shall immediately return all copies of such forms to the storekeeper-gauger in charge. Immediately after the packages are weighed for transfer in bond, the proprietor may, if he so desires, take the proof of the spirits, provided such is done expeditiously and additional storekeeper-gaugers will not be required to supervise the operation. The taking of average or actual tare will not be permitted. If the warehouseman prepares a record of such commercial gauge, two copies thereof will be given to the storekeeper-gauger, who will retain one copy and forward the other to the storekeeper-gauger at the receiving warehouse, as provided in section 185.310 for reference if claim is filed for loss by theft, accident, or otherwise than by leakage or evaporation, or where claim is filed under section 2801(e)(5), Internal Revenue Code, for losses from packages of blended brandies. Upon withdrawal for transfer the packages will be marked as provided in the Gauging Manual. Forms 236 and 1619 will be disposed of in accordance with section 185.310. (Secs. 2801(e)(5), 2875, 3176, I. R. C.)

SEC. 185.300. TRANSFERS IN CASES.—If the spirits to be transferred were bottled in bond before taxpayment, the storekeeper-gauger will inspect the cases designated by the proprietor to be transferred. He will prepare an original and four copies of Form 1620 covering only the cases to be shipped. The quantity to be transferred shall not exceed the maximum stated in the application. The storekeeper-gauger in charge will give the copy of Form 236 and the five copies of Form 1620 to the proprietor who shall, on the same date that the spirits are to be transferred, execute on the six copies of Form 236 the description of the cases to be transferred. He shall immediately return all copies of such forms to the storekeeper-gauger in charge. Upon withdrawal for transfer, the word "Transferred" followed by the date of transfer, the word "To," the number of the receiving warehouse, and the State in which such warehouse is located, will be plainly and durably stenciled or stamped upon the Government side of each case in letters and figures not less than three-eighths inch in height. These marks may be abbreviated as follows:

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Where there is insufficient space on the Government side of the case, these marks may be placed upon another side of the case. Forms 236 and 1620 will be disposed of in accordance with section 185.310. (Secs. 2875, 3176, I. R. C.)

SEC. 185.301. TRANSFER IN TANK CARS.—If the spirits to be transferred are in a previously filled tank car designated by the proprietor to be transferred, the storekeeper-gauger will inspect the car and prepare an original and four copies of Form 1520, copying the details from the entry Form 1520, except that if the contents of the tank car were previously regauged owing to evidence of loss of spirits therefrom by theft, accident, or otherwise than by leakage or evaporation, the transfer Form 1520 will show both the original contents and the contents disclosed by the regauge. The quantity to be transferred shall not exceed the maximum stated in the application. The storekeeper-gauger in charge will give the copy of Form 236 and the five copies of Form 1520 to the proprietor who shall, on the same date that the spirits are to be transferred, execute on the six copies of Form 236 the description of the tank car to be transferred. He shall immediately return all copies of the forms to the storekeeper-gauger in charge. When the tank car is released, the key of each seal lock thereon will be forwarded on the date of shipment by the storekeeper-gauger in charge at the transferring warehouse to the storekeeper-gauger in charge at the receiving warehouse. Forms 236 and 1520 will be disposed of in accordance with section 185.310. (Secs. 2875, 3176, I. R. C.)

SEC. 185.302. TRANSFERS FROM STORAGE TANKS, IN PACKAGES OR TANK CARS.—If the spirits designated by the proprietor to be transferred are in storage tanks they will be drawn into packages, gauged, marked, and branded, or run into a weighing tank, gauged, and conveyed by pipe line into a railroad tank car, constructed and marked as hereinafter provided. The storekeeper-gauger will prepare a report of the gauge on an original and four copies of Form 1520, and note on each copy of the form the proof at which the spirits were distilled. The

quantity to be transferred shall not exceed the maximum stated in the application. The storekeeper-gauger in charge will give the copy of Form 236 and the five copies of Form 1520 to the proprietor, who shall, on the same date that the spirits are to be transferred, execute on the six copies of Form 236 the description of the packages or tank car to be transferred. He shall immediately return all copies of the forms to the storekeeper-gauger in charge. Forms 236 and 1520 will be disposed of in accordance with section 185.310. (Secs. 2875, 3176, I. R. C.)

SEC. 185.310. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the spirits, the storekeeper-gauger will execute his report of inspection or gauge and removal on the six copies of Form 236. The storekeeper-gauger in charge will retain one copy of Forms 236 and 1520, 1619, or 1620, as the case may be, furnish one copy each of such forms to the proprieter of the shipping warehouse, forward one copy of each form to the supervisor-consignor, and forward three copies of Form 236 and two copies of Form 1520, 1619, or 1620 to the storekeeper-gauger in charge of the receiving warehouse, with a copy of the proprietor's commercial gauge (if any) of packages. Where shipment of packages or cases is made by truck, one copy each of Forms 236 and 1520, 1619, or 1620, for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him, and the remaining two copies of Form 236 and one copy of Form 1520, 1619, or 1620 will be mailed to such storekeeper-gauger in charge. (Secs. 2875, 3170, 3176, I. R. C.)

SEC. 185.311. STOREKEEPER-GAUGER'S RECEIPT OF SPIRITS AT WAREHOUSE.—Upon receipt of the spirits at the receiving warehouse, the storekeeper-gauger will examine the shipment and will ascertain and note on Form 1520, 1619, or 1620, as the case may be, losses or discrepancies, as provided in sections 185.151, 185.152, and 185.153. The proprietor may weigh and take the proof of the spirits, if desired, under the conditions specified in section 185.150. The storekeeper-gauger will execute his certificate of receipt on each copy of Form 236, noting thereon any losses or discrepancies reported on the corresponding Form 1520, 1619, or 1620. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520, 1619, or 1620, give one copy of each form to the proprietor of the warehouse, and forward one copy of Form 236 to the district supervisor. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the three copies of Form 236 and the two copies of Form 1520, 1619, or 1620, as the case may be, have been received by the storekeeper-gauger in charge. The storekeeper-gauger will report on Form 1513 the original tax gallons contained in all packages received regardless of any losses in transit. However, any package lost in transit will not be reported on Form 1513 but will be reported by the district supervisor in the warehouse account, Form 1514, for the State in which the receiving warehouse is located, in the manner indicated by the form. (Secs. 2875, 3176, I. R. C.)

TRANSFERS IN BOND BETWEEN INTERNAL REVENUE BONDED WAREHOUSES IN DIFFERENT DISTRICTS

SEC. 185.312. APPLICATION, FORM 236.—Where the transfer is to be made between bonded warehouses in different supervisory districts, the proprietor of the receiving warehouse shall execute an application for the transfer of the spirits on Form 236. The applicant shall enter all applicable data indicated by the form including the maximum quantity in tax gallons to be transferred in any one truck, railroad car or other vehicle, and the type of conveyance. The name of the carrier shall not be specified on Form 236. The applicant shall prepare an original and six copies of Form 236 and give them to the storekeeper-gauger in charge of the receiving warehouse. (Secs. 2875, 3176, I. R. C.)

SEC. 185.312a. CERTIFICATE OF SUFFICIENCY OF BOND.—Upon receipt of Form 236 by the storekeeper-gauger in charge, he will compare the penal sum of the bond as stated in the application with his record furnished by the district supervisor pursuant to section 185.112a. If the warehouse bond is given in the maximum penal sum of $200,000, he will certify to the sufficiency thereof on Form 236, and return all seven copies of the form to the proprietor of the warehouse. If the warehouse bond is given in less than the maximum penal sum, the storekeeper-gauger in charge will determine from his records whether the tax liability on the quantity of distilled spirits represented by the Form 236, plus the quantity of distilled spirits stored in the warehouse, plus the quantity represented by all

outstanding approved Forms 236, is within the limits of the penal sum of the transportation and warehousing bond. If so, he will certify to the sufficiency of the bond on Form 236, record such certification in his records, and return all seven copies of the form to the proprietor. If the transportation and warehousing bond is not sufficient, he will certify to that fact on Form 236 and return all seven copies to the proprietor. The proprietor will forward all seven copies of the approved Form 236 to the proprietor of the consignor-warehouse. The proprietor of the consignee-warehouse will be responsible for all outstanding approved Forms 236. If, at any time, he decides not to use one, he will obtain all copies from the consignor-warehouseman and give them to the storekeeper-gauger in charge of the warehouse for cancellation and return to the proprietor of the consignee-warehouse. (Secs. 2875, 3176, I. R. C.)

SEC. 185.312b. SPIRITS TO BE TRANSFERRED.—When the proprietor of the shipping warehouse desires to make shipment, he will give a copy of Form 236 to the storekeeper-gauger in charge and furnish him a complete description of the spirits to be shipped. (Secs. 2875, 3176, I. R. C.)

SEC. 185.312c. TRANSFERS IN PACKAGES, CASES, AND TANK CAR.—Spirits in original packages, or in packages filled from warehouse storage tanks, will be transferred in accordance with the provisions of section 185.299. Spirits in cases, bottled in bond before taxpayment, will be transferred in accordance with the provisions of section 185.300. Spirits in a previously filled tank car will be transferred in accordance with the provisions of section 185.301. If spirits to be transferred are in storage tanks, they will be drawn into packages or into a tank car and then transferred in accordance with the provisions of section 185.302. Forms 236 and 1520, 1619, or 1620 will be disposed of in accordance with section 185.313. (Secs. 2875, 3176, I. R. C.)

SEC. 185.313. STOREKEEPER-GAUGER'S CERTIFICATE OF REMOVAL.—Upon removal of the spirits, the storekeeper-gauger will execute his report of inspection or gauge and removal on the seven copies of Form 236. The storekeeper-gauger in charge will retain one copy of Forms 236 and 1520, 1619, or 1620, as the case may be, furnish one copy each of such forms to the proprietor at the shipping warehouse, forward one copy to the supervisor-consignor, and forward four copies of Form 236 and two copies of Form 1520, 1619, or 1620 to the storekeeper-gauger in charge of the receiving warehouse, with a copy of the proprietor's commercial gauge (if any) of packages. Where shipment of packages or cases is made by truck, one copy each of Forms 236 and 1619 or 1620 for the storekeeper-gauger in charge at the receiving warehouse will be sealed in an envelope addressed to such storekeeper-gauger in charge and handed to the person in charge of the truck for delivery to him, and the remaining three copies of Form 236 and one copy of Form 1619 or 1620 will be mailed to such storekeeper-gauger in charge. (Secs. 2875, 3176, I. R. C.)

SEC. 185.314. STOREKEEPER-GAUGER'S RECEIPT OF SPIRITS AT RECEIVING WAREHOUSE.—Upon receipt of the spirits at the receiving warehouse, the storekeeper-gauger will examine the shipment and will ascertain and note on Form 1520, 1619, or 1620, as the case may be, losses or discrepancies, as provided in sections 185.151, 185.152, and 185.153. The proprietor may weigh and take the proof of the spirits, if desired, under the conditions specified in section 185.150. The storekeeper-gauger will execute his certificate of receipt on each copy of Form 236, noting thereon any losses or discrepancies reported on the corresponding Form 1520, 1619, or 1620. The storekeeper-gauger in charge will retain one copy each of Forms 236 and 1520, 1619, or 1620, give one copy of each form to the proprietor of the warehouse, and forward two copies of Form 236 to the supervisor of his district. The district supervisor will retain one copy of Form 236 and forward the remaining copy of Form 236 to the supervisor of the district from which the spirits were transferred. No withdrawal or transfer in bond of spirits received at the warehouse will be made until the four copies of Form 236 and the two copies of Form 1520, 1619, or 1620, as the case may be, have been received by the storekeeper-gauger in charge. The storekeeper-gauger will report on Form 1513 the original tax gallons contained in all packages received regardless of any losses in transit. However, any package lost in transit will not be reported on Form 1513 but will be reported by the supervisor-consignee in the warehouse account, Form 1514, for the State in which the receiving warehouse is located in the manner indicated by the form. (Secs. 2875, 3176, I. R. C.)

2. It is found that compliance with the notice and public rulemaking procedure of the Administrative Procedure Act (5 U. S. C.

1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

3. The purposes of the amendments are as follows:

(1) To reduce the number of copies of reports of tank cars of distilled spirits transferred to an internal revenue bonded warehouse (Form 1520) and reports of packages and cases transferred between internal revenue bonded warehouses (Forms 1619 and 1620) prepared by storekeeper-gaugers, by discontinuing furnishing of certain copies to district supervisors, which will result in reducing the work of storekeeper-gaugers and audit clerks without jeopardy to the revenue;

(2) To expedite the receipt by the consignor-warehouseman of Forms 236, "Transfer of Distilled Spirits in Bond," after approval by the storekeeper-gauger at the consignee-warehouse, by providing that the consignee-warehouseman send them direct to the consignor-warehouseman in lieu of having the storekeeper-gauger at the consignee-warehouse send them to the storekeeper-gauger at the consignor-warehouse for delivery to the consignor-warehouseman;

(3) To obviate the preparation of additional Forms 236 by the consignee-warehouseman when he desires shipments made pursuant to approved Forms 236 after the expiration of 90 days, by revoking the provision that Forms 236 will be canceled by the district supervisor upon the expiration of 90 days after approval if not used within that period or extended by the district supervisor;

(4) To obviate the need for obtaining the consent of the district supervisor when the consignor-warehouseman desires to ship spirits by a carrier other than the one originally designated on Form 236 by the consignee-warehouseman, by directing that the name of the carrier shall not be shown on Form 236 by the consignee-warehouseman;

(5) To facilitate the execution on all copies of Form 236 of the storekeeper-gauger's certificate of receipt at the consignee-warehouse by providing for the routing, when spirits are shipped from the consignor-warehouse, of the copies of Forms 236 and 1619 or 1620 for the consignee-warehouseman with the copies for the storekeeper-gauger at the consignee-warehouse, in lieu of sending them direct to the consignee-warehouseman.

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

5. (This Treasury Decision is issued under the authority contained in sections 2801(e)(5), 2875, 2879, 3170, and 3176 of the Internal Revenue Code (U. S. C., title 26, sections 2801(e)(5), 2875, 2879, 3170, and 3176).)

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved July 1, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register July 8, 1949)

REGULATIONS 10, SECTIONS 185.217, ETC.

1949-14-13123
T. D. 5705

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS

Amending Regulations 10

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

To District Supervisors and Others Concerned:

1. On March 3, 1949, notice of proposed rule making, regarding the withdrawal of samples of distilled spirits by proprietors of internal revenue bonded warehouses, was published in the Federal Register (14 F. R. 959).

2. After consideration of all such relevant matter as was presented by interested persons, section 185.237 of Regulations 10 (26 CFR, Part 185), approved May 20, 1940, relating to the warehousing of distilled spirits, is revoked, and sections 185.217, 185.234, 185.238, 185.239, 185.240, 185.241, 185.243, 185.244, 185.247, and 185.248 of such regulations are amended to read as follows:

SEC. 185.217. REMISSION OF TAX.—If the entire contents of a container are lost by theft, accident, or otherwise than by leakage or evaporation, and a claim for remission of the tax is allowed, the district supervisor will take credit for the allowance upon receipt of notice from the Commissioner of the allowance. If the tax is remitted on a portion of the contents of a container still in bond, the district supervisor will instruct the storekeeper-gauger to affix to the container a label showing the number of proof gallons on which the tax has been remitted, the date of allowance, and bearing the signature and title of the storekeeper-gauger. The storekeeper-gauger will, upon labeling the container, note such data on the Form 1520, 1619, or 1620, covering the deposit of the spirits in the warehouse. In the event any such container is transferred in bond to another warehouse, the data relating to remission of the tax will be transcribed by the storekeeper-gauger to Form 1619 or 1620, covering the transfer. (Secs. 3170, 3176, and 3953(a), I. R. C.)

SEC. 185.234. NUMBER AND SIZE.—Samples of brandy or fruit spirits for laboratory analysis (including organoleptic examination) must be taken from packages designated as sample packages or from storage tanks. Except upon authority of the district supervisor or the Commissioner, not more than one sample may be removed from any sample package or from the same lot of brandy or fruit spirits in a storage tank in a period of 6 months. The number of packages that may be designated as sample packages shall be limited, as to each kind of brandy or fruit spirits and each type of cooperage (as designated by the mandatory marks and brands on the packages), to not more than 1 in each 25 packages of any such lot of brandy or fruit spirits of the same entry gauge on storage in the warehouse: *Provided*, That where less than 25 packages of any such lot of brandy or fruit spirits are on storage, 1 package in the lot may be designated as a sample package. Samples for organoleptic examination only may not exceed one-half pint. Samples for laboratory analysis may not exceed 1 pint. Such samples may be withdrawn upon approval by the storekeeper-gauger in charge at the warehouse of a written application filed in accordance with the provisions of section 185.240. In any instance where a 1-pint sample is found to be an insufficient quantity for laboratory analysis, the district supervisor, upon receipt of a statement showing the necessity for an additional quantity, may authorize the withdrawal of an additional sample, not to exceed 1 pint, from any designated sample package or storage tank. The withdrawal in excess of these limitations of tax-free samples of brandy or fruit spirits shall not be permitted, unless it is shown that such samples are insufficient for the purpose intended, and the Commissioner authorizes the withdrawal of additional samples. (Secs. 3037, 3176, I. R. C.)

SEC. 185.238. LIMITATION ON NUMBER, SIZE, AND USE OF SAMPLES OF DISTILLED SPIRITS OTHER THAN BRANDY OR FRUIT SPIRITS.—Samples of distilled spirits other

than brandy or fruit spirits may be taken only for organoleptic examination or analytical purposes from packages designated as sample packages and from storage tanks. Except upon authority of the district supervisor or the Commissioner, not more than one sample may be removed from any sample package or from the same lot of spirits in a storage tank in a period of 6 months. The number of packages that may be designated as sample packages shall be limited, as to each kind of spirits and each type of cooperage (as designated by the mandatory marks and brands on the packages), to not more than 1 in each 25 packages of any lot of spirits of the same day's production on storage in the warehouse: *Provided,* That where less than 25 packages of any such lot of spirits are on storage, 1 package in the lot may be designated as a sample package. Samples for organoleptic examination may not exceed one-half pint from any package or storage tank. Samples for laboratory analysis may not exceed 1 pint from any package or storage tank. Such samples may be withdrawn upon approval by the storekeeper-gauger in charge at the warehouse of a written application filed in accordance with the provisions of section 185.240. In any instance where a 1-pint sample is found to be an insufficient quantity for laboratory analysis, the district supervisor, upon receipt of a statement showing the necessity for an additional quantity, may authorize the withdrawal of an additional sample, not to exceed 1 pint, from any designated sample package or storage tank. The withdrawal of samples in excess of these limitations shall not be authorized unless it is shown that such samples are insufficient for the purpose intended, and the Commissioner authorizes the withdrawal of additional samples. (Sec. 3176, I. R. C.)

SEC. 185.239. DISPOSITION OF SAMPLES.—Samples of distilled spirits other than brandy or fruit spirits must be used solely for chemical analysis or organoleptic examination. They may not be furnished to salesmen and dealers for advertising or soliciting purposes. Where spirits are sold subject to approval as to quality, a sample taken pursuant to the provisions of sections 185.238, 185.240, and 185.241 may be furnished the purchaser. Remnants of residues of samples remaining after analysis or examination and which are not desired for retention as laboratory specimens or for further analysis or examination, should be returned to vessels in the distilling system containing similar spirits where the warehouse is on or contiguous to the distillery premises, unless the condition of the remnants or residues is such as to render them unsuitable for such disposition. If such remnants or residues of samples are not returned to the distilling system, they should be destroyed. (Sec. 3176, I. R. C.)

SEC. 185.240. APPLICATION.—(*a*) *Samples for organoleptic examination or laboratory analysis, and tax-paid samples of brandy for other purposes.*—When the warehouseman desires to procure samples for organoleptic examination, samples not in excess of 1 pint for laboratory analysis, or tax-paid samples of brandy or fruit spirits for other purposes, he shall make application in triplicate to the storekeeper-gauger in charge at the warehouse. The application shall be given a serial number, beginning with "1" for the first application and running consecutively thereafter. The application shall show (1) the kind of spirits, (2) the name of the distiller, (3) the registered number of the distillery and the State in which located, (4) the serial numbers of the packages or storage tanks from which the samples are to be removed, (5) the dates of entry for deposit, (6) the type of cooperage, (7) if the samples are to be removed from sample packages, the dates the packages were received in the warehouse, (8) whether, in the case of brandy or fruit spirits, the samples are desired for organoleptic examination or laboratory analysis tax-free, or for other purposes subject to payment of tax, (9) whether, in the case of spirits other than brandy or fruit spirits, the samples are required for organoleptic examination or for laboratory analysis, (10) the reasons why the samples are desired, and (11) the size of each sample to be taken.

(*b*) *Additional samples for laboratory analysis.*—Where the warehouseman has found a pint sample to have been an insufficient quantity for analysis, and desires an additional 1-pint sample, he shall make application in triplicate, through the storekeeper-gauger in charge at the warehouse, to the district supervisor. The application shall be given a serial number within the series prescribed in subsection (*a*) of this section. The application shall show the information called for in items 1 through 11 of subsection (*a*).

(*c*) *Other samples.*—Where the warehouseman desires samples in excess of the number or quantities which may be authorized by the storekeeper-gauger or the district supervisor, he shall make application, in quadruplicate, through the storekeeper-gauger in charge at the warehouse, to the Commissioner. The application shall be given a serial number within the series prescribed in sub-

section (*a*) of this section and shall show the information called for in items 1 through 11 of subsection (*a*). (Secs. 3037, 3176, I. R. C.)

SEC. 185.241. APPROVAL OF APPLICATION.—(*a*) *By the storekeeper-gauger in charge at the warehouse.*—Upon receipt of an application for the withdrawal of samples in quantities not to exceed one-half pint for organoleptic examination or in quantities not to exceed 1 pint for laboratory analysis, or for the withdrawal of tax-paid samples of brandy or fruit spirits from any package or storage tank, the storekeeper-gauger shall determine from his records whether, in the case of packages, the designated packages are eligible for sampling or, in the case of spirits in storage tanks, the lot of spirits contained in a tank is eligible for sampling. If he shall find the number and quantities of samples to be taken do not exceed the number and quantities permitted under sections 185.234, 185.236, or 185.238, as the case may be, he may authorize the withdrawal of the samples. In the case of samples for laboratory analysis, the storekeeper-gauger should assure himself of the propriety of the request. If he finds upon examination of his records that the number or quantities desired are in excess of the number or quantities permitted, he shall write upon each copy of the application a statement disclosing the reasons why the samples may not be removed. The storekeeper-gauger, upon approval or disapproval of the application, shall return one copy to the warehouseman, forward one copy to the district supervisor, and retain the original copy in his office.

(*b*) *By the district supervisor.*—Upon receipt of an application for an additional sample for laboratory analysis, the storekeeper-gauger shall determine from his records whether an additional sample may be authorized under the limitations of section 185.234 or 185.238, as the case may be. If he finds the additional sample may not be authorized under the limitations, he shall write upon each copy of the application, over his signature, a statement showing the reasons why the sample may not be withdrawn. In such case, he shall return one copy to the proprietor, forward one copy to the district supervisor, and retain the original in his office. If he finds the additional sample may be authorized, he shall note such fact upon the application, over his signature, and shall forward the application to the district supervisor with his recommendation. The district supervisor shall determine from the facts presented whether the additional sample is necessary for the proposed type of laboratory analysis and shall thereupon approve or disapprove the application. He shall retain a copy in his office and return the original and one copy to the storekeeper-gauger at the warehouse, who shall file the original and return the copy to the applicant.

(*c*) *By the Commissioner.*—Upon receipt of an application to the Commissioner for authorization to withdraw samples, the storekeeper-gauger shall note upon each copy of the application the number and quantities of samples which have been removed from each package and from each lot represented. The storekeeper-gauger shall thereupon forward all copies of the application to the district supervisor, who shall transmit all copies to the Commissioner with his recommendation. Upon approval or disapproval of the application, three copies shall be returned to the district supervisor, who shall retain a copy and return the original and one copy to the storekeeper-gauger at the warehouse. The storekeeper-gauger shall file the original and return the remaining copy to the applicant. (Secs. 3037, 3176, I. R. C.)

SEC. 185.243. LABEL.—At the time of the withdrawal of a sample the proprietor shall prepare a label and a copy thereof. The label and copy shall be prepared on paper having approximate dimensions of 3 inches by 5 inches. The proprietor shall show on the label and on the copy, in the order listed and upon separate lines, the following information:

1. The word "Sample";
2. The serial number of the approved application covering the withdrawal of the spirits;
3. The kind of spirits;
4. The serial number of the container from which removed;
5. The name of the distiller, followed by the registered number of the distillery and the name of the State in which located;
6. The purpose for which the sample is intended; and, if for laboratory analysis, the name and address of the laboratory or person making the analysis (unless the analysis is to be made by the warehouseman at the warehouse premises, or premises contiguous thereto);
7. The size of the sample and, in regard to fruit spirits and brandy, the quantity in proof gallons extended to the fourth decimal place (the proof gallon content need not be shown on samples of other spirits);

8. The name of the warehouseman, followed by the registered number of the warehouse and the name of the State in which located.

Upon completion, the label and the copy shall be presented to the storekeeper-gauger, who shall verify the accuracy of the data thereon, date and sign both copies, and supervise the affixing of the label to the sample container. Where the sample is taken from a container of fruit spirits or brandy, the storekeeper-gauger shall write upon the copy of the label a statement showing whether the sample was procured tax-free or subject to payment of tax. The copy of the label shall be filed by the storekeeper-gauger in accordance with the provisions of section 185.244. (Secs. 3037, 3176, I. R. C.)

SEC. 185.244. OFFICE RECORD.—The proprietor shall furnish sufficient file cases for the filing and retention of sample records. The copies of the labels shall be kept by the storekeeper-gauger as a record of samples removed and shall be filed numerically by package or tank serial number under the name and number of the producing distiller. The record shall be maintained as an active file for each sample package and for each storage tank from which samples are withdrawn, during the period such packages or spirits contained in such storage tanks are on storage in the warehouse. At the time of preparing Form 1520 or Form 1619 covering the removal of a sample package, or upon the emptying of a storage tank from which samples had been taken, the copies of labels covering samples removed from such package or storage tank shall be removed from the active file to an inactive file for storage. (Secs. 3037, 3176, I. R. C.)

SEC. 185.247. CREDIT UPON WITHDRAWAL OF BRANDY OR FRUIT SPIRITS.—Upon the withdrawal from bond of a package of brandy or fruit spirits from which samples have been removed, the storekeeper-gauger shall interline in appropriate places on the withdrawal application, Forms 179, 206, 257, 655, or 1518, or permit, Form 1508, and in the loss allowed column of the report of withdrawal gauge, Form 1520, the total quantity (fractions of less than one-tenth gallon being disregarded) of the taxable samples and, separately, the total quantity (fractions of less than one-tenth gallon being disregarded) of tax-free samples removed from the package followed by the words "samples tax-paid" and "samples tax-free," respectively. The total quantity of all samples taken from the package shall be deducted with the allowable loss in calculating (1) the taxable gallons if the package is withdrawn upon payment of tax, or (2) the taxable loss, if any, if the package is withdrawn without payment of tax. Should the package be transferred in bond to another warehouse the storekeeper-gauger shall make like entries on Form 1619 in order that similar adjustments may be made when the package is withdrawn from the receiving warehouse. Upon the removal of a package from bond, the quantity withdrawn as samples shall also be entered by the storekeeper-gauger on Form 1513 as withdrawn tax-paid or tax-free, as the case may be. Credit shall be given similarly upon the emptying of a storage tank from which samples of brandy or fruit spirits were taken. (Secs. 3037, 3176, I. R. C.)

SEC. 185.248. REPORT OF TAXABLE SAMPLES.—Each day taxable samples of brandy or fruit spirits are withdrawn the storekeeper-gauger shall enter on Form 1615, in quadruplicate, a record of the taxable samples removed. All the information called for by the form shall be furnished. At the end of each month the storekeeper-gauger shall complete the report, retain one copy of the form and deliver the remaining three copies to the warehouseman, who shall forward the three copies to the collector with remittance for the tax due. The collector shall execute his certificate of taxpayment on each copy of the form, retain one copy, and return the remaining two copies to the warehouseman, who will retain one copy and deliver the other copy to the storekeeper-gauger. The storekeeper-gauger shall note the taxpayment on his retained copy and forward the other copy to the district supervisor. (Secs. 3037, 3176, I. R. C.)

3. The amendment of section 185.217 is for the purpose of requiring the storekeeper-gauger to note the records covering the transfer of packages in bond to show, for credit purposes, the quantity of distilled spirits allowed pursuant to a claim for remission of tax where a loss has been sustained. The remaining amendments are designed to establish appropriate limitations and requirements for the withdrawal by proprietors of samples of distilled spirits stored in internal revenue bonded warehouses in packages and tanks for laboratory

analysis (including organoleptic examination), and for other purposes in the case of brandy and fruit spirits as provided by law.

4. This Treasury Decision shall be effective on the thirty-first day following the date of its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 3037, 3170, 3176, and 3953(a), Internal Revenue Code (26 U. S. C. 3037, 3170, 3176, and 3953(a)).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved June 16, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register June 22, 1949)

REGULATIONS 10, SECTIONS 185.435, ETC. 1949-19-13184
T. D. 5737

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS

Amending Regulations 10

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

To District Supervisors and Others Concerned:

1. Sections 185.435, 185.436, 185.437, 185.441, 185.443, and 185.448 of Regulations 10 (26 CFR, Part 185), approved May 20, 1940, relating to warehousing of distilled spirits, are hereby amended as follows:

WITHDRAWAL OF BRANDY FOR FORTIFICATION OF WINE

WITHDRAWAL IN PACKAGES

SEC. 185.435. APPLICATION, FORM 257.—Where it is desired to remove brandy in packages from an internal revenue bonded warehouse for the fortification of wine, application will be made by the winemaker on Form 257, "Application for the Removal of Brandy for Fortification of Wine from Fruit Distilleries and Internal Revenue Bonded Warehouses." The winemaker shall state in the application the penal sum of the bond, Form 700-A. The same application may not include brandy produced by different distillers, nor two or more lots to be removed from the same bonded warehouse at different times, except where the warehouse is contiguous to the winery as provided in section 184.441. The application shall be filed in triplicate where the winery and the bonded warehouse are in the same supervisory district, and in quadruplicate where they are in different districts. Where the premises are located in the same supervisory district and the bond of the winemaker is given in the maximum penal sum of $50,000, Form 257 will be submitted to the storekeeper-gauger if one is located at the winery, or at a contiguous fruit distillery or internal revenue bonded warehouse, as the case may be. If no storekeeper-gauger is located at such premises, the application will be submitted, at the discretion of the district supervisor, to a designated storekeeper-gauger in the vicinity of the bonded winery. The district supervisor will notify each storekeeper-gauger designated to approve Forms 257 and advise him that the winemaker's bond is given in the maximum penal sum of $50,000. He will notify each winemaker concerned where Forms 257 are to be submitted to a storekeeper-gauger. All other Forms 257, that is, (1) those covering intradistrict removals where the bond of the winemaker is in the maximum penal sum but no storekeeper-gauger has been designated to approve Forms 257, (2) those covering intradistrict removals where the bond of the winemaker is not in the maximum penal sum, and (3) those covering interdistrict removals, will be

submitted direct to the supervisor of the district in which the winery is located. (Secs. 3031(a), 3033, 3176, I. R. C.)

SEC. 185.436. ACTION ON APPLICATION, FORM 257.—(*a*) *By district supervisor.*—If the application is in order, the quantity of brandy to be withdrawn is not in excess of the applicant's current needs or of the storage capacity of the fortifying room (see section 178.421 of Regulations 7), and the bond of the winemaker is sufficient to cover the brandy to be procured, the district supervisor will (1) where the warehouse is in the same district, execute his certificate on the form and send all three copies to the proprietor of the internal revenue bonded warehouse; and (2) where the warehouse is located in another supervisory district, execute his certificate on the form and send all four copies to the supervisor of such district, who will send all four copies to the proprietor of the internal revenue bonded warehouse from which the brandy is to be removed. If a storekeeper-gauger is not located at the internal revenue bonded warehouse, the supervisor of the district in which the warehouse is located will designate a storekeeper-gauger to gauge the brandy. If the application is not in order, the supervisor of the district in which the bonded winery is located will return all copies to the winemaker.

(*b*) *By storekeeper-gauger.*—Upon receipt of Form 257 by the storekeeper-gauger, he will compare the penal sum of the bond as stated in the application with the statement furnished by the district supervisor pursuant to section 185.435. If the bond of the winemaker is given in the maximum penal sum of $50,000, the application is in proper order, and the quantity of brandy to be withdrawn is not in excess of the applicant's current needs or of the storage capacity of the fortifying room (see section 178.421 of Regulations 7), he will certify to the sufficiency thereof on Form 257. He will send all copies of Form 257 to the proprietor of the internal revenue bonded warehouse from which the brandy is to be removed. If the application is not in order he will return all copies to the winemaker. (Secs. 3031(a), 3033, 3176, I. R. C.)

SEC. 185.437. GAUGE OF BRANDY.—The proprietor, upon receipt of Form 257, will execute his description of the brandy to be gauged on all copies of the form. He will refer them to the storekeeper-gauger assigned to the warehouse, or to the storekeeper-gauger designated by the district supervisor pursuant to section 185.436(*a*), as the case may be. Where the certificate of sufficiency of the winemaker's bond was executed by a storekeeper-gauger pursuant to section 185.436(*b*) and no storekeeper-gauger is assigned to the warehouse, the proprietor will request the district supervisor to designate one to gauge and release the brandy. If the brandy to be removed is contained in storage tanks, the designated packages will be filled, gauged, serially numbered, and marked and branded in accordance with the Gauging Manual and these regulations. If the packages were previously filled they will be regauged unless withdrawn on the original gauge, as provided in the Gauging Manual, and marked as required. The storekeeper-gauger will prepare four copies of the report of gauge, Form 1520, where the brandy is to be removed at one time to the fortifying room of a contiguous winery, five copies in all other instances where brandy is to be removed to a winery located in the same supervisory district, and six copies where the winery is located in another district. The storekeeper-gauger will attach one copy of Form 1520 to each copy of Form 257 and will note on the extra copies of Form 1520 the name, registered number, and address of the winery to which the brandy is to be shipped. No greater quantity of brandy may be gauged or withdrawn than stated in the application. (Secs. 3031(a), 3033, 3176, I. R. C.)

SEC. 185.441. GAUGING OFFICER'S CERTIFICATE OF MONTHLY DEPOSITS IN CONTIGUOUS WINERIES.—If the warehouse and winery are located on contiguous premises and brandy is to be transferred to the winery from time to time during the month under the supervision of a storekeeper-gauger, the winemaker's application on Form 257 may cover all brandy to be transferred to the winery during the month. If the storekeeper-gauger gauging the brandy supervises its transfer to and deposit in the fortifying room, he will certify to the deposit on each copy of Form 1520 as the brandy is deposited, attach one copy thereof to each copy of Form 257, forward one of the extra copies of Form 1520 to the district supervisor, and deliver one copy to the warehouseman. At the close of the month the storekeeper-gauger will execute his certificates of gauge and removal and receipt on Form 257, retain one copy thereof, with a copy of each Form 1520 attached, at the warehouse as a permanent record, and one copy, similarly completed, at the winery for the same purpose, and forward the other copy to the district supervisor. (Secs. 3031(a), 3033, 3170, 3176, I. R. C.)

WITHDRAWAL BY PIPE LINE

SEC. 185.443. APPLICATION, FORM 257.—Where it is desired to transfer brandy by pipe line from storage tanks in an internal revenue bonded warehouse on the distillery premises to the fortifying rooms of wineries on contiguous premises, application will be made by the winemaker on Form 257, in triplicate, in the same manner as when brandy is to be transferred in packages, as prescribed in section 185.435. The district supervisor, or the storekeeper-gauger, as the case may be, will execute his certificate on the form as prescribed in section 185.436, the warehouseman will indicate the brandy to be gauged, as prescribed in section 185.437, and the storekeeper-gauger designated to gauge the brandy will make his report of gauge and execute his certificates of gauge and removal and receipt and complete and dispose of Forms 257 and Forms 1520, as hereinbefore prescribed in the case of removal in packages. Notation of transfer by pipe line will be made by the storekeeper-gauger on each Form 1520. (Secs. 2883, 3031(a), 3176, I. R. C.)

WITHDRAWAL FOR REMOVAL IN TANK CARS

SEC. 185.448. APPLICATION, FORM 257.—Where it is desired to withdraw brandy from warehouse storage tanks for removal in railroad tank cars to the fortifying room of a winery, application will be made by the winemaker on Form 257 in the same manner as when brandy is removed in packages, as prescribed in section 185.435. The district supervisor, or the storekeeper-gauger, as the case may be, will execute his certificate on the form as prescribed by section 185.436, the warehouseman will indicate the brandy to be gauged, as prescribed in section 185.437, and the storekeeper-gauger designated to gauge the brandy will make his report of gauge and execute his certificate of gauge and removal and dispose of Forms 257 and Forms 1520, as hereinbefore prescribed in the case of removal in packages. The winemaker will state on his application that the brandy is to be transported by railroad tank car. (Secs. 3031(a), 3176, I. R. C.)

2. The purposes of the amendments are as follows:

(1) To expedite the approval of Forms 257, "Application for the Removal of Brandy for Fortification of Wine from Fruit Distilleries and Internal Revenue Bonded Warehouses," by authorizing the storekeeper-gauger located at the bonded winery, or at a contiguous fruit distillery or internal revenue bonded warehouse, or located in the immediate vicinity of the bonded winery if designated by the district supervisor, to certify to the sufficiency of the winemaker's bond to cover such removal, in lieu of the district supervisor, provided the winemaker's bond is given in the maximum penal sum and the winery and the fruit distillery or internal revenue bonded warehouse as the case may be are located in the same supervisory district.

(2) To eliminate unnecessary work on the part of the district supervisor by discontinuing the execution by him on Form 257 of an order to a storekeeper-gauger to gauge and release the brandy described in the application. The execution of the certificate of bond coverage is sufficient indication to the storekeeper-gauger at the fruit distillery or the internal revenue bonded warehouse that the brandy described in the application may be gauged and released. If a storekeeper-gauger is not assigned to the fruit distillery or the internal revenue bonded warehouse, the district supervisor will designate a storekeeper-gauger to go to such premises to gauge and release the brandy.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. (This Treasury Decision is issued under the authority contained in sections 2883, 3031(a), 3033, 3170, and 3176 of the Internal Revenue Code (U. S. C., title 26, sections 2883, 3031(a), 3033, 3170, and 3176).)

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved September 1, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 8, 1949)

REGULATIONS 10, SECTIONS 185.476 AND 185.477. 1949–17–13155
T. D. 5718

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS

Amending Regulations 10

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

To District Supervisors and Others Concerned:

1. Sections 185.476 and 185.477 of Regulations 10 (26 CFR, Part 185) are amended to read as follows:

SEC. 185.476. TIME OF MAKING ENTRIES.—Daily entries shall be made on Record 52 and Forms 52C and 52E, as indicated by the headings of the various columns and in accordance with instructions printed on the forms before the close of the business day next succeeding the day on which the transactions occur. Where the proprietor of a tax-paid premises defers the making of entries to the next business day, as authorized herein, he shall maintain a separate record, such as invoices, of the removals of distilled spirits showing the removal data required to be entered on Record 52 or Form 52E, and appropriate memoranda of other transactions required to be entered on such records for the purpose of correctly making the entries. Where the making of the entries on Form 52C is deferred to the next business day, as authorized herein, the proprietor of the internal revenue bonded warehouse shall maintain appropriate memoranda for the purpose of making the entries correctly. (Secs. 2857, 2859, 3176, I. R. C.)

SEC. 185.477. SEPARATE RECORD OF SERIAL NUMBERS OF CASES.—Serial numbers of cases of distilled spirits disposed of need not be entered on Record 52 or Form 52E, provided the proprietor keeps in his place of business a separate record, approved by the district supervisor, showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of 4 years and in such a manner that the required information may be ascertained readily therefrom, and during such period, shall be available during business hours for inspection and the taking of abstracts therefrom by internal revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The proprietor, whose separate record has been approved by the district supervisor, shall make a notation in the column for reporting serial numbers, as follows: "Serial numbers shown on commercial records per authority, dated _____." (Secs. 2857, 3176, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries in Record 52, and in Forms 52C and 52E.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 2857, 2859, and 3176, I. R. C. (26 U. S. C. 2857, 2859, 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 10, SECTIONS 185.493, ETC. 1949-17-13156
T. D. 5729

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 185.—WAREHOUSING OF DISTILLED SPIRITS

Amending Regulations 10

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

To District Supervisors and Others Concerned:

1. Sections 185.493, 185.494, 185.495, and 185.496 of Regulations 10, approved May 20, 1940 (26 CFR, Part 185), are hereby amended.

2. The purpose of these amendments is to revise the procedure for the recording of Government property and the disposition of cap seals used and removed at internal revenue bonded warehouses.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (Public, No. 404, Seventy-ninth Congress) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of an administrative nature only.

SEC. 185.493. REMOVAL OF CAP SEALS.—Except as provided in section 185.492, cap seals which have been affixed will be removed only by a storekeeper-gauger or some other officer designated for the purpose by the district supervisor. The officer will destroy all removed cap seals in a manner sufficient to prevent their reuse. (Sec. 3176, I. R. C.)

SEC. 185.494. STOREKEEPER-GAUGER'S RECORD OF CAP AND LOCK SEALS.—A record of cap seals received, used, and removed, and of lock seals received and used at each internal revenue bonded warehouse will be kept by storekeeper-gaugers on Form 289, "Government Officer's Record and Report of Government Property," in accordance with the titles of the columns and lines and the instructions on the form. Form 289 will be kept in the Government cabinet when not in use. (Sec. 3176, I. R. C.)

SEC. 185.495. STOREKEEPER-GAUGER'S REPORT OF GOVERNMENT PROPERTY.—On or before the fifth day of the month succeeding that for which the transactions are reported, the storekeeper-gauger will prepare a monthly report on Form 289 of all Government property at the warehouse. Form 289 will be prepared in duplicate, in accordance with the titles of the columns and lines and the instructions on the form. He will forward the original to the district supervisor and retain the copy for his files. (Sec. 3176, I. R. C.)

SEC. 185.496. DISTRICT SUPERVISOR'S REPORT OF LOCKS AND GAUGING INSTRUMENTS.—District supervisors will be held accountable for the Government locks and seals, including cap seals, supplied upon their respective requisitions, and for those received from their predecessors in office. Outgoing district supervisors will take receipts from their successors in office for the Government locks then in use and on hand, and for seals on hand in the district. District supervisors will keep an account of locks and gauging instruments, and will make return thereof semiannually to the Commissioner on Form 152, "Return of Locks and Gauging Instruments." (Sec. 3176, I. R. C.)

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

5. This Treasury Decision is issued under the authority contained in section 3176, Internal Revenue Code (U. S. C., title 26, section 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 4, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 10, 1949)

REGULATIONS 11, SECTIONS 189.22, ETC. 1949–26–13260
T. D. 5761

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, 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:

1. Sections 189.22, 189.72, 189.73, 189.74, 189.75, and 189.90 of Regulations 11 (26 CFR, Part 189), relating to the bottling of tax-paid distilled spirits, are amended to read as follows:

SEC. 189.22. PIPE LINES.—Pipe lines used for the conveyance of tax-paid spirits from bottling tanks in a contiguous rectifying plant to bottling tanks in the tax-paid bottling house must be constructed, secured, painted, and marked in accordance with the requirements of Regulations 15 (26 CFR, Part 190). Pipe lines used for the conveyance of tax-paid distilled spirits from the cistern room of a distillery to the bottling tanks or storage tanks in the tax-paid bottling house must be constructed, secured, painted, and marked in accordance with the requirements of Regulations 4 (26 CFR, Part 183). Pipe lines used for the conveyance of distilled water to contiguous establishments operated under the internal revenue laws and regulations must be independent ones, without any connection with any other pipe, tank, vessel, or utensil on the tax-paid bottling house premises, except the distilled water storage tank: *Provided*, That, where distilled water is to be so conveyed from two or more distilled water storage tanks, the pipe line may be connected with such tanks by permanent manifold connections. Such pipe lines must be constructed of metal, and exposed to view throughout their entire lengths. The metal pipe lines in the tax-paid bottling house used for conveying the following substances shall be kept painted in the colors indicated:

Black	Spirits.
White	Water.
Aluminum	Steam.
Orange	Air.
Purple	Refrigerants.

These colors are intended for such pipe lines only, and are prescribed for the purpose of distinguishing such pipe lines from each other, and from all other pipe lines on the premises which are painted, but for which colors are not prescribed. The painting in one of the prescribed colors, or a color similar thereto, of a pipe line for which a color is not prescribed, is prohibited. Pipe lines for which colors are not prescribed may be painted in sections of contrasting colors. (Secs. 2829, 2871, 3176, I. R. C.)

SEC. 189.72. SPIRITS RECEIVED BY PIPE LINE.—Where a rectifying plant and a tax-paid bottling house are operated on contiguous premises, the district supervisor may, in his discretion, authorize the transfer of spirits, on which the rectification tax (if any is due) has been paid, from the bottling tanks in the rectifying plant to the bottling tanks in the tax-paid bottling house by pipe line, constructed in accordance with the provisions of Regulations 15 (26 CFR, Part 190) and section 189.22 of these regulations. (Secs. 2803, 2871, 3176, I. R. C.)

SEC. 189.73. EXTRA FORM 237 OR FORM 230.—When rectified spirits are authorized to be transferred by pipe line from a rectifying plant to a tax-paid bottling house on contiguous premises, an extra copy of Form 237 will be prepared by the rectifier and the same will be fully executed in the same manner as the original Form 237, including the storekeeper-gauger's certificate of tax-payment, if the spirits are subject to the rectification tax; or the storekeeper-gauger's certificate of exemption from the rectification tax, if the spirits are not subject to such tax. When spirits other than rectified spirits are to be so transferred, an extra copy of Form 230 will be fully executed in the same manner as the original Form 230. (Secs. 2803, 2871, 3176, I. R. C.)

SEC. 189.74. COMPLETION AND DISPOSITION OF FORM 237 OR FORM 230.—Upon completion of the transfer of spirits to the tax-paid bottling house, there shall be entered under the certificate of cases filled on all copies of Form 237 or Form 230 a statement that the spirits described on the reverse side of the form have been transferred by pipe line to bottling tank No. _____ in the contiguous tax-paid bottling house operated by _____, together with the date of transfer. When Form 230 authorizing the bottling of such spirits has been approved, as hereinafter provided, the serial number of such Form 230 will be noted on all copies of Form 237 or Form 230, as the case may be. The extra copy of Form 237 or Form 230 will be securely attached by means of a staple, eyelet, or similar device to the original Form 230 as evidence that the proper tax on the spirits described therein has been paid. (Secs. 2803, 2871, 3176, I. R. C.)

SEC. 189.75. APPROVAL BY STOREKEEPER-GAUGER.—The proprietor will submit both copies of Form 230 for the approval of the storekeeper-gauger assigned to supervise operations at the tax-paid bottling house. The storekeeper-gauger will examine the packages described in the application and the scalped portions of tax-paid stamps, or the affidavit or statement in lieu thereof, or Form 237 or Form 230, as the case may be (as provided in section 189.74), attached to the original copy of Form 230, and if he finds that the spirits to be bottled are as described and have been lawfully tax-paid, and the forms are properly prepared, he will execute his certificate and the authorization for bottling, and return both copies to the proprietor. (Secs. 2803, 2871, 3176, I. R. C.)

SEC. 189.90. DISPOSITION OF FORM 230.—Immediately after the completion of the bottling and the proper completion of Form 230, the proprietor will forward the original copy of the form, with the cut-out portions of the tax-paid stamps, or the affidavit or statements required in lieu thereof, to the district supervisor, and will file the remaining copy as a permanent record at the plant, available for inspection by Government officers. Where Form 237 or Form 230 is attached to one copy of Form 230 as evidence that the proper tax on the spirits transferred from a rectifying plant has been paid, as provided in section 189.74, such copy of Form 230 with Form 237 or Form 230 attached will be forwarded to the district supervisor. (Secs. 2803, 2871, 3176, I. R. C.)

2. The purpose of these amendments is to authorize the transfer of unrectified spirits by pipe line from a rectifying plant to a contiguous tax-paid bottling house for bottling, in the same manner as rectified spirits are permitted to be transferred for bottling.

3. It is determined that compliance with the notice and public rulemaking procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

4. This Treasury Decision shall be effective immediately upon the date of its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 2803, 2829, 2871, and 3176, Internal Revenue Code (U. S. C., title 26, sections 2803, 2829, 2871, and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 23, 1949.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

(Published in the Federal Register December 1, 1949)

REGULATIONS 11, SECTIONS 189.133 AND 189.134. 1949–17–13157
T. D. 5719

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, 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:

1. Sections 189.133 and 189.134 of Regulations 11 (26 CFR, Part 189), approved May 20, 1940, are amended to read as follows:

SEC. 189.133. TIME OF MAKING ENTRIES.—Daily entries shall be made on Form 52D and Record 52 as indicated by the headings of the various columns and in accordance with the instructions printed thereon, before the close of the business day next succeeding the day on which the transactions occur. Where the proprietor of a tax-paid bottling house defers the making of the entries to the next business day, as authorized herein, he shall keep a separate record, such as invoices, of the removals of distilled spirits, showing the removal data required to be entered on Form 52D and Record 52, and appropriate memoranda of other transactions required to be entered in such records, for the purpose of making the entries correctly. (Secs. 2871, 3176, 4041, I. R. C.)

SEC. 189.134. SEPARATE RECORD OF SERIAL NUMBERS OF CASES.—Serial numbers of cases of distilled spirits disposed of by the proprietor of a tax-paid bottling house need not be entered on Form 52D and Record 52, provided the proprietor keeps in his place of business a separate record, approved by the district supervisor, showing such serial numbers with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of 4 years and in such a manner that the required information may be ascertained readily therefrom, and during such period shall be available during business hours for inspection and the taking of abstracts therefrom by revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The proprietor whose separate record has been approved by the district supervisor shall make a notation in the column on Form 52D and Record 52 for reporting serial numbers as follows: "Serial numbers shown on commercial records per authority dated ----------." (Secs. 2857, 2871, 3176, 4041, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries in Form 52D and Record 52.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 2857, 2871, 3176, 4041, Internal Revenue Code (U. S. C., title 26, sections 2857, 2871, 3176, 4041).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 11, SECTIONS 189.138a AND 189.139a. 1949–17–13158
T. D. 5730

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, 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:

1. Sections 189.138a and 189.139a are hereby added to Regulations 11, approved May 20, 1940 (26 CFR, Part 189). The title of Article XXVI of such regulations is changed to "Storekeeper-Gauger's Records and Reports," and the title of Article XXVII is changed to "District Supervisor's Reports."

2. The purpose of these amendments is to provide a record for the recording of Government property used at tax-paid bottling plants.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (Public, No. 404, Seventy-ninth Congress) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of an administrative nature only.

SEC. 189.138a. STOREKEEPER-GAUGER'S REPORT OF GOVERNMENT PROPERTY.—A record of locks and lock seals received and used at each tax-paid bottling plant will be kept by storekeeper-gaugers on Form 289, "Government Officer's Record and Report of Government Property," in accordance with the titles of the columns and lines and the instructions on the form. In any case where cap seals are used, they will also be reported on Form 289. The storekeeper-gauger will destroy all removed cap seals in a manner sufficient to prevent their reuse. Form 289 will be kept in the Government cabinet when not in use. On or before the fifth day of the month succeeding that for which the transactions are reported, the storekeeper-gauger will prepare his monthly report, on Form 289, of all Government property at the tax-paid bottling house. Form 289 will be prepared in duplicate, in accordance with the titles of the columns and lines and the instructions on the form. The officer will forward the original to the district supervisor and retain one copy for his files. (Secs. 3176 and 4041(a), I. R. C.)

SEC. 189.139a. DISTRICT SUPERVISOR'S REPORT OF LOCKS AND GAUGING INSTRUMENTS, FORM 152.—District supervisors will be held accountable for the Government locks and seals, including cap seals, supplied upon their respective requisitions, and for those received from their predecessors in office. Outgoing district supervisors will take receipts from their successors in office for the Government locks then in use and on hand, and for seals on hand, in the district. District supervisors will keep an account of locks and gauging instruments, and will make return thereof semiannually to the Commissioner on Form 152, "Return of Locks and Gauging Instruments." (Secs. 3176 and 4041(a), I. R. C.)

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

5. This Treasury Decision is issued under the authority contained in sections 3176 and 4041(a), Internal Revenue Code (26 U. S. C. 3176 and 4041(a)).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 4, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 10, 1949)

REGULATIONS 15, SECTIONS 190.12, ETC. 1949-26-13261
T. D. 5762

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, 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:

1. Sections 190.12, 190.33, 190.42, 190.45(*b*), 190.100, 190.332, 190.333, 190.335, 190.336, 190.340, 190.344, and 190.357 of Regulations 15 (26 CFR, Part 190), relating to the rectification of spirits and wines, and the title of Article XXXII of such regulations are amended, and section 190.349a is added to read as follows:

SEC. 190.12. RESTRICTIONS.—Rectifying plants for the rectification of distilled spirits or wine may not be located on board of any vessel or boat, or within 600 feet in a direct line of a vinegar factory using the vaporizing process, or, except as provided by the regulations in this part, within 600 feet in a direct line of a distillery or volatile fruit-flavor concentrate plant. The provisions of sections 190.13, 190.14, 190.17, 190.49, 190.96, and 190.119, relating to the carrying on of the business of rectifying spirits or wine at a distance of less than 600 feet in a direct line from a distillery, shall apply equally to the carrying on of such business at a distance of less than 600 feet in a direct line from a volatile fruit-flavor concentrate plant. (Secs. 2801(e)(1), 2819, 2832, 2834, 3170, 3176, 3182, I. R. C.)

SEC. 190.33. STORAGE TANKS.—If spirits are received in tank cars, or by pipe line from the cistern room of a contiguous distillery or distillery in the immediate vicinity of the rectifying plant, or by pipe line from a contiguous bonded warehouse or bonded warehouse in the immediate vicinity of the rectifying plant, suitable storage tanks must be provided in the receiving room within which to store such spirits, except that such storage tanks will not be required in the

case of spirits received in tank cars which are transferred directly to processing and bottling tanks in accordance with section 190.170(*a*). Each storage tank shall be constructed of metal and be of uniform dimensions from top to bottom. Each such tank shall be equipped with a suitable measuring device, or mounted on scales, whereby the actual contents will be correctly indicated. There shall be painted on each tank the words, "Storage Tank," followed by its serial number and capacity in wine gallons. A suitable board shall be provided on each storage tank for the attachment of Forms 1520 and 1440, as hereinafter provided. Manheads, inlets, and outlets of the tanks must be provided with facilities for locking with Government locks. Stopcocks must be provided and so arranged as to control completely the flow of spirits, both into and out of the tank. The construction of the valves must be such that they can be secured with Government locks. The pipe connections containing such stopcocks or valves must be brazed, welded, or otherwise secured, to the tanks in such a manner that they cannot be detached or altered without showing evidence of tampering. Storage tanks may be permanently connected with pipe lines for the conveyance thereto of air and distilled water, but the distilled water pipe line must be affixed to the top of the tank. Such pipe lines must be equipped with a control valve which may be locked with a Government lock. Pipe lines used for the conveyance of air must also be equipped with a check valve located near the point of entry to the tank in order to effectively prevent any abstraction of spirits from the tank. Other pipe lines, except those used for the conveyance of spirits, may not be permanently connected with such tanks. (Secs. 2801(e)(1), 2829, 3176, I. R. C.)

SEC. 190.42. STILLS.—All stills in the rectifying plant shall be located in the rectifying room and shall be of substantial construction and must have a clear space of not less than 1 foot around them. Every still must have plainly and legibly painted thereon words indicating its use, or uses, as "Gin Still," "Cordial Still," "Water Still," etc., followed by its serial number and capacity in wine gallons. All stills, except cordial stills of not more than 250-wine-gallon capacity and water stills, shall be connected with the receiving tanks by continuous permanent pipe lines: *Provided*, That, where such receiving tank is mounted on scales, the pipe line may be connected with the tank by means of flexible connections with the ends permanently attached and secured by means of Government cap seals, or by brazing or welding, to the inlet of the tank and to the pipe line. If the gin still is equipped with a pipe line to bypass the berry basket, such pipe line must be equipped with a valve for locking with a Government lock. (Secs. 2801(e)(1), 3176, I. R. C.)

SEC. 190.45. PIPE LINES.—(*a*) *Connecting bottling tanks and bottling machine.*—* * *

(*b*) *To contiguous tax-paid bottling house or rectifying plant.*—Pipe lines used for the conveyance of spirits to a contiguous tax-paid bottling house or rectifying plant for bottling, as provided in sections 190.332–190.336, shall be of a fixed and permanent character, constructed of metal and so arranged as to be exposed to view throughout their entire lengths, and all connections, valves, flanges, unions, etc., shall be brazed, welded, or otherwise secured. A separate and permanent pipe line must be installed to connect the bottling tank in the rectifying plant with the bottling tank in the contiguous tax-paid bottling house or rectifying plant, from and to which spirits are to be transferred, and each such pipe line must be equipped with a valve, in the transferring rectifying plant, capable of being locked with a Government lock: *Provided*, That, where spirits are to be conveyed from two or more bottling tanks in the rectifying plant or to two or more bottling tanks in the contiguous tax-paid bottling house or rectifying plant, the pipe line may be connected with the bottling tanks by manifold connections so arranged as to control the flow of spirits from or into each tank. There shall be painted on each pipe line extending from the manifold to the bottling tanks a number corresponding with the serial number of the bottling tank with which the pipe line is connected, unless the arrangement of the pipe line is such that the identity of the tank with which it is connected is apparent. Where the bottling tank is mounted on scales, the pipe line may be connected therewith by means of short, detachable hose connections if the end of the pipe line is equipped with a valve which may be locked with a Government lock.

SEC. 190.100. PIPE LINES TO CONTIGUOUS TAX-PAID BOTTLING HOUSE OR RECTIFYING PLANT.—The plans shall show pipe lines used to transfer spirits to a contiguous tax-paid bottling house or rectifying plant for bottling, the

relative location of the rectifying plant and the contiguous tax-paid bottling house or rectifying plant, and the bottling tanks to which such pipe lines are connected. (Secs. 2801(e)(1), 3176, I. R. C.)

ARTICLE XXXII.—TRANSFER OF SPIRITS BY PIPE LINE FROM RECTIFYING PLANT TO CONTIGUOUS TAX-PAID BOTTLING HOUSE OR RECTIFYING PLANT FOR BOTTLING

SEC. 190.332. DISTRICT SUPERVISOR MAY AUTHORIZE.—The district supervisor may, in his discretion, authorize the installation of a pipe line for the transfer of spirits from the bottling tanks in the rectifying plant to bottling tanks in a contiguous tax-paid bottling house or rectifying plant for bottling. (Secs. 2801(e)(1), 3176, I. R. C.)

SEC. 190.333. APPLICATION.—A rectifier who desires to transfer spirits by pipe line to a contiguous tax-paid bottling house or rectifying plant for bottling, must file application, in triplicate, with the district supervisor, showing the relative position of the plants and the ownership thereof, and giving a description of the proposed pipe line and the reasons why it is desired to transfer spirits to the contiguous tax-paid bottling house or rectifying plant for bottling. (Secs. 2801(e)(1), 3176, I. R. C.)

SEC. 190.335. REQUEST FOR TRANSFER OF SPIRITS.—Where the transfer of spirits by pipe line from bottling tanks in the rectifying plant to bottling tanks in the contiguous tax-paid bottling house or rectifying plant is authorized, the rectifier will, whenever he desires to so transfer spirits, submit Form 237 or Form 230 to the Government officer and request him to unlock the valve in the pipe line and to supervise the transfer of the spirits. Where the spirits to be transferred are subject to tax, the officer will not permit the transfer thereof to the bottling tanks in the contiguous tax-paid bottling house or rectifying plant unless all tax due has been paid. (Secs. 2801(e)(1), 3176, I. R. C.)

SEC. 190.336. TRANSFER OF SPIRITS.—When spirits are to be so transferred, the Government officer will see whether the contents of the bottling tank agree with the Form 237 or Form 230, and if found in agreement, and if all taxes due on the spirits have been paid, he will unlock the valve or valves in the pipe line controlling the flow of spirits to the bottling tanks in the contiguous tax-paid bottling house or rectifying plant and permit the rectifier to transfer the spirits under his supervision. Immediately the spirits have been transferred, the proprietor will close the pipe line valve or valves and the Government officer will apply the Government locks thereto. Form 237, prepared as required by applicable regulations in this part, will be completed and disposed of as provided in sections 190.298 and 190.307. Form 230, likewise prepared, will be completed and disposed of as provided in section 190.349a. (Secs. 2801(e)(1), 3176, I. R. C.)

ARTICLE XXXIV.—BOTTLING OF UNRECTIFIED SPIRITS AND WINES

SEC. 190.340. APPLICATION, FORM 230.—Proprietors of rectifying plants desiring to bottle tax-paid distilled spirits or wines without rectification will execute application on Form 230, in duplicate, or in triplicate if the spirits are to be transferred for bottling, 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. 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. (Secs. 2801(e) (1), (2), 3176, I. R. C.)

SEC. 190.344. APPROVAL BY OFFICER.—All copies of Form 230 will be submitted to the Government officer assigned to the plant for approval, with a request to unlock and lock the stopcocks on the bottling tank. The Government officer will examine the containers described on the form and the cut-out portions of the tax-paid stamps, or the affidavit or statement in lieu thereof, attached to one copy of the form, or, in the case of spirits transferred for bottling from a contiguous rectifying plant, the extra copy of Form 230, or Form 237, as the case may be, and if he finds that the spirits to be bottled have been lawfully tax-paid, and the forms are properly prepared, he will execute his certificate and the authorization for bottling and return all copies to the rectifier. (Secs. 2801(e)(1), 3176, I. R. C.)

SEC. 190.349a. DISPOSITION OF FORM 230—TRANSFER.—Upon completion of transfer of the spirits to the tax-paid bottling house or rectifying plant, there shall be entered on all copies of Form 230 a statement that the spirits described on

such form have been transferred by pipe line to "Bottling Tank No. _____" in the contiguous tax-paid bottling house or rectifying plant operated by _____, together with the date of such transfer and the serial number of the Form 230 to which the extra copy of Form 230 is to be attached in the bottling house. After execution of such statement, the rectifier will submit the form to the Government officer, who will, after proper verification, sign and date the verification in the space provided therefor. The rectifier will retain his bottling tank copy of the form at the rectifying plant, available for inspection by Government officers, and will immediately forward the original copy of Form 230, with the cut-out portions of the tax-paid stamps, or the statements, or affidavit and statement required in lieu thereof, to the district supervisor who will determine that such stamps, etc., are attached to the form. (Secs. 2801(e)(1), 3176, I. R. C.)

SEC. 190.357. DISPOSITION OF FORM 230—BOTTLING.—Immediately after the completion of the bottling and the proper completion of Form 230, the rectifier will forward the original copy of the form, with the cut-out portions of the tax-paid stamps, or the statements, or affidavit and statement, required in lieu thereof, to the district supervisor, and will file the remaining copy as a permanent record at the plant available for inspection by Government officers. Upon receipt of Form 230, the district supervisor will see that the requisite scalped stamps, or statements, or affidavit and statement, in lieu thereof, are attached to the form. Where the spirits were transferred to the rectifying plant for bottling from a contiguous rectifying plant, the extra copy of Form 230 or Form 237, attached to the bottling Form 230 as evidence of the tax-paid status of the spirits, as provided by sections 190.298, 190.307, and 190.349a, will be forwarded to the district supervisor with the bottling Form 230. (Secs. 2801(e)(1), 3176, I. R. C.)

2. The principal purpose of these amendments is to authorize the transfer of unrectified spirits by pipe line from a rectifying plant to a contiguous tax-paid bottling plant or rectifying plant for bottling, in the same manner as rectified spirits are permitted to be transferred for bottling. The purpose of the amendment of section 190.12 is to make provision whereby a rectifying plant may be located less than 600 feet from a volatile fruit-flavor concentrate plant, in the same manner as from a distillery, pursuant to the provisions of section 3182, I. R. C. The purpose of the amendments of sections 190.33 and 190.42 is to clarify the sections by removing the limitations as to air and distilled water lines being permanently connected to storage tanks and as to capacity with respect to water stills.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing and clarifying character.

4. This Treasury Decision shall be effective immediately upon the date of its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 2801(e) (1), (2), 2819, 2829, 2832, 2834, 3170, 3176, and 3182, I. R. C. (U. S. C., title 26, sections 2801(e) (1), (2), 2819, 2829, 2832, 2834, 3170, 3176, and 3182).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved November 23, 1949.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

(Published in the Federal Register December 1, 1949)

REGULATIONS 15, SECTIONS 190.186, 190.430, AND 190.431.

1949-17-13159
T. D. 5720

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, 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:

1. Sections 190.186, 190.430, and 190.431 of Regulations 15 (26 CFR, Part 190), approved May 20, 1940, are amended to read as follows:

SEC. 190.186. APPROVAL OF OFFICER.—The rectifier will submit both copies of Form 122 to the Government officer. The officer will inspect the spirits described in the application and verify the entries. If he is satisfied that the spirits are tax-paid and that the entries are correct, he will authorize the rectifier to dump the spirits described in the form by signing the approval statement on both copies, and will return the same to the rectifier. (Secs. 2801(e)(1), 3176, I. R. C.)

SEC. 190.430. TIME OF MAKING ENTRIES.—Daily entries shall be made on Form 45 and Record 52, as indicated by the headings of the various columns and in accordance with the instructions printed thereon, before the close of the business day next succeeding the day on which the transactions occur. Where the proprietor defers the making of the entries to the next business day, as authorized herein, he shall keep a separate record, such as invoices, of the removals of distilled spirits, showing the removal data required to be entered on Form 45 or Record 52, respectively, and appropriate memoranda of other transactions required to be entered on such records, for the purpose of making the entries correctly. (Secs. 2801(e)(1), 2855, 2857, 3171, I. R. C.)

SEC. 190.431. SEPARATE RECORD OF SERIAL NUMBERS OF CASES.—Serial numbers of cases of distilled spirits disposed of need not be entered on Form 45 or Record 52, provided the proprietor keeps in his place of business a separate record, approved by the district supervisor, showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, or bills shall be preserved for a period of 4 years and in such a manner that the required information may be ascertained readily therefrom, and during such period, shall be available during business hours for inspection and the taking of abstracts therefrom by revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The proprietor whose separate record has been approved by the district supervisor shall make a notation in the column for reporting serial numbers, as follows: "Serial numbers shown on commercial records per authority dated _____." (Secs. 2801(e)(1), 2855, 2857, 3176, I. R. C.)

2. These amendments are for the purpose of (1) simplifying approval of Forms 122 by the Government officer and (2) allowing additional time for making required entries in Form 45 and Record 52.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 2801(e)(1), 2855, 2857, 3171, 3176, Internal Revenue Code (U. S. C., title 26, sections 2801(e)(1), 2855, 2857, 3171, 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 15, SECTIONS 190.481 AND 190.482. 1949–17–13160
T. D. 5731

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, 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:

1. Sections 190.481 and 190.482 of Regulations 15, approved May 20, 1940 (26 CFR, Part 190), are hereby amended.

2. The purpose of these amendments is to provide appropriate instructions for the recording of Government property used at rectifying plants.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of an administrative nature.

SEC. 190.481. STOREKEEPER-GAUGER'S REPORT OF GOVERNMENT PROPERTY.—A record of locks and lock seals received and used at each rectifying plant will be kept by storekeeper-gaugers on Form 289, "Government Officer's Record and Report of Government Property," in accordance with the titles of the columns and lines and the instructions on the form. In any case where cap seals are used in lieu of locks, the cap seals will also be reported on Form 289. The storekeeper-gauger will destroy all removed cap seals in a manner sufficient to prevent their reuse. Form 289 will be kept in the Government cabinet when not in use. On or before the fifth day of the month succeeding that for which the transactions are reported, the storekeeper-gauger will prepare his monthly report on Form 289 of all Government property at the rectifying plant. Form 289 will be prepared in duplicate, in accordance with the titles of the columns and lines and the instructions on the form. The officer will forward the original to the district supervisor and retain the copy for his files. (Secs. 2801(e)(5), 3176, I. R. C.)

SEC. 190.482. DISTRICT SUPERVISOR'S REPORT OF LOCKS AND GAUGING INSTRUMENTS, FORM 152.—District supervisors will be held accountable for the Government locks and seals, including cap seals, supplied upon their respective requisitions, and for those received from their predecessors in office. Outgoing district supervisors will take receipts from their successors in office for the Government locks then in use and on hand, and for seals on hand, in the district. District supervisors will keep an account of locks and gauging instruments, and will make return thereof semiannually to the Commissioner on Form 152, "Return of Locks and Gauging Instruments." (Secs. 2801(e)(5), 3176, I. R. C.)

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

5. This Treasury Decision is issued under the authority contained in sections 2801(e)(5) and 3176, Internal Revenue Code (U. S. C., title 26, 2801(e)(5) and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 4, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 10, 1949)

REGULATIONS 16, SECTIONS 187.53, 187.55, AND 187.56.

1949-26-13266
T. D. 5766

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 187.—DENATURATION OF RUM

Amending Regulations 16

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

To District Supervisors and Others Concerned:

1. Sections 187.53, 187.55, and 187.56 of Regulations 16 (26 CFR, Part 187), approved May 20, 1940, are amended and section 187.56a is added to such regulations, to read as follows:

SEC. 187.53. CONTAINER TO BE SEALED.—After taking the sample the storekeeper-gauger will securely close and seal the tank or package from which it was obtained, and no part of the contents of such tank or package may be used until the sample has been officially tested and approved, and report on Form 1472 of such test is received by the storekeeper-gauger in charge of a plant. (Secs. 3070, 3176, I. R. C.)

SEC. 187.55. SHIPMENT OF SAMPLES TO AUTHORIZED CHEMIST.—The samples of denaturants, after being securely packed and sealed, shall be sent to the most convenient authorized chemist for examination and report. District supervisors will furnish proprietors of denaturing bonded warehouses and storekeeper-gaugers with the names and addresses of authorized chemists. All expenses in connection with the forwarding and testing of samples must be borne by the proprietor. A report of each sample submitted by the storekeeper-gauger for analysis shall be prepared by him on Form 1472, "Report on Denaturants," in triplicate, and forwarded to the authorized chemist. (Secs. 3070, 3176, I. R. C.)

SEC. 187.56. REPORT OF ANALYSIS BY THE CHEMIST.—Upon completion of the analysis of the denaturants, the authorized chemist shall make a report of his analysis on the Form 1472, in triplicate, received from the storekeeper-gauger, note his approval or disapproval of the samples thereon, and sign the same. One copy of the Form 1472 shall be returned to the storekeeper-gauger in charge of the denaturing bonded warehouse, one copy shall be forwarded to the district supervisor of the district in which the warehouse is located, and the remaining copy shall be transmitted to the Commissioner. (Secs. 3070, 3176, I. R. C.)

SEC. 187.56a. RETENTION OF SAMPLES.—The authorized chemist must retain all samples of rum denaturants for a period of 30 days so that they will be available for reference. (Secs. 3070, 3176, I. R. C.)

2. These amendments are for the purpose of prescribing Form 1472 for use in connection with the submission and approval of samples of denaturants in lieu of Forms 1470 and 1472. The last sentence of section 187.56 prior to this amendment has been rewritten as section 187.56a.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Pro-

cedure Act is unnecessary in connection with the issuance of these regulations for the reason that the amendments merely simplify existing requirements.

4. This Treasury Decision shall be effective immediately upon its publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 3070 and 3176, Internal Revenue Code (U. S. C., title 26, sections 3070 and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved December 8, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register December 13, 1949)

REGULATIONS 16, SECTION 187.120: Record No. 129. 1949–17–13161
T. D. 5721

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 187.—DENATURATION OF RUM

Amending Regulations 16

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

To District Supervisors and Others Concerned:

1. Section 187.120 of Regulations 16 (26 CFR, Part 187), approved May 20, 1940, is amended to read as follows:

SEC. 187.120. RECORD NO. 129.—The proprietor of every distillery denaturing bonded warehouse shall keep a monthly record on Record No. 129 of all denaturants received and used at such bonded warehouse or removal therefrom, of all samples of denaturants forwarded to the authorized chemist for analysis, and of the chemist's reports of all analyses. Daily entries shall be made on Record No. 129 as indicated by the headings of the columns and lines of the form before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be kept for the purpose of making the entries correctly. A monthly summary of the denaturants received and used or removed shall be made on such record at the end of the month. Record No. 129 shall be bound by the proprietor as a permanent record and kept available for inspection by Government officers. (Secs. 3070, 3171, and 3176, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries in Record No. 129.

3. It is found that compliance with the notice and public rulemaking procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 3070, 3171, 3176, Internal Revenue Code (U. S. C., title 26, sections 3070, 3171, 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 18, SECTION 192.227: Signing of landing certificate. 1949-19-13185
T. D. 5736

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 192.—FERMENTED MALT LIQUOR

Amending Regulations 18

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

To District Supervisors and Others Concerned:

1. Section 192.227 of Regulations 18, approved May 20, 1940 (26 CFR, Part 192), is hereby amended.

2. The purpose of this amendment is to liberalize the requirement regarding the signing of landing certificates covering beer exported free of tax.

3. It is found that compliance with the notice, public rule-making procedure, and effective date requirements of the Administrative Procedure Act (Public Law 404, Seventy-ninth Congress) is unnecessary in connection with the issuance of these regulations for the reason that the change made liberalizes a requirement imposed upon the industry.

SEC. 192.227. SIGNING OF LANDING CERTIFICATE.—The landing certificate shall be signed by a revenue officer of the foreign country to which the merchandise is exported, by the master of the vessel, or by the vessel's agent at the place of landing. The certificate must be filed within 6 months from the date of exportation of the merchandise. (Secs. 3153(b), 3176, I. R. C.)

4. This Treasury Decision shall be effective upon publication in the Federal Register.

5. This Treasury Decision is issued under the authority contained in sections 3153(b) and 3176, Internal Revenue Code (U. S. C., title 26, sections 3153(b) and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 31, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register September 7, 1949)

REGULATIONS 18, SECTION 192.256: Slaight locks for conduits and tunnels. 1949-17-13162 T. D. 5732

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 192.—FERMENTED MALT LIQUOR

Amending Regulations 18

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

To District Supervisors and Others Concerned:

1. Section 192.256 of Regulations 18, "Fermented Malt Liquor," approved May 20, 1940 (26 CFR, Part 192), is hereby amended.

2. The purpose of this amendment is to require the reporting of Government locks used at breweries on Form 152 by district supervisors semiannually instead of quarterly in accordance with an appropriate revision of such form.

3. It is found that compliance with the notice, public rule-making, and effective date requirements of the Administrative Procedure Act (Public, No. 404, Seventy-ninth Congress) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of an administrative nature only.

SEC. 192.256. SLAIGHT LOCKS FOR CONDUITS AND TUNNELS.—Slaight seal locks are prescribed for use in securing the doors of conduits and tunnels through which pipes carry beer from the brewery to the bottling house. Requisition for such locks and seals will be addressed to the Commissioner by the supervisor. The supervisor shall keep a record of the locks received and make return thereof semiannually to the Commissioner on Form 152, "Return of Locks and Gauging Instruments." Seals will be used consecutively in the order in which they are numbered. (Secs. 3157(a), 3176, I. R. C.)

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

5. This Treasury Decision is issued under the authority contained in sections 3157(a) and 3176, Internal Revenue Code (26 U. S. C. 3157(a) and 3176).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 4, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 10, 1949)

REGULATIONS 19, SECTION 195.88: General. 1949-17-13163 T. D. 5722

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 195.—PRODUCTION OF VINEGAR

Amending Regulations 19

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

To District Supervisors and Others Concerned:

1. Section 195.88 of Regulations 19 (26 CFR, Part 195), approved November 5, 1940, is amended to read as follows:

SEC. 195.88. GENERAL.—The proprietor of every vinegar factory shall keep monthly records and render reports on Form 1623 as hereinafter provided. Entries shall be made as indicated by the headings of the various columns and lines, and in accordance with the instructions on the form and as set forth in these regulations. The entries shall be made before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. At the close of the month, but in no case later than the fifth day of the succeeding month, the proprietor shall prepare and forward two copies of Form 1623 to the district supervisor. (Secs. 3176, 4041, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries on Form 1623.

3. It is found that compliance with the notice and public rulemaking procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 3176, 4041, Internal Revenue Code (U. S. C., title 26, sections 3176, 4041).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 20, SECTIONS 194.75 AND 194.76. 1949-17-13164
T. D. 5723

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 194.—WHOLESALE AND RETAIL DEALERS IN LIQUORS

Amending Regulations 20

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

To District Supervisors and Others Concerned:

1. Paragraph (*a*) of section 194.75 and paragraph (*d*) of section 194.76 of Regulations 20 (26 CFR, Part 194), approved June 6, 1940, are amended to read as follows:

SEC. 194.75. RECORDS TO BE KEPT BY WHOLESALE LIQUOR DEALERS.—(*a*) Except as provided in paragraph (*e*) of this section, every wholesale dealer in liquors who sells distilled spirits shall keep Record 52, "Wholesale Liquor Dealer's Record," and render monthly transcripts, Forms 52-A and 52-B, "Wholesale Liquor Dealer's Monthly Report," and Form 338, "Wholesale Liquor Dealer's Monthly Report (Summary of Forms 52-A and 52-B)," of the physical receipt and disposition of distilled spirits by him. Daily entries shall be made on Record 52 of all distilled spirits received and disposed of as indicated by the headings of the columns and lines of the form and the instructions printed thereon or issued in respect thereto, as required by these regulations, before the close of the business day next succeeding the day on which the transactions occur. Where the wholesale dealer defers the making of the entries to the next

business day, as authorized herein, he shall keep a separate record such as invoices, of the removals of distilled spirits, showing the removal data required to be entered on Record 52, and appropriate memoranda of other transactions required to be entered on such record, for the purpose of making the entries correctly.

SEC. 194.76. SEPARATE RECORDS.—* * *

(*d*) The separate records prescribed by paragraphs (*b*) and (*c*) of this section may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of 4 years and in such manner that the required information may be readily ascertained therefrom, and, during such period, shall be available during business hours for inspection and the taking of abstracts therefrom by internal revenue officers. If a record in book form is kept, entry shall be made on such separate record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The dealer shall note on Record 52, and on Form 52–F, in the column for reporting serial numbers, "Serial numbers shown on commercial record per authority, dated _____." (Secs. 2857, 2858, 3176, 3254, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries in Record 52 and Form 52–F.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 2857, 2858, 3176, and 3254, Internal Revenue Code (U. S. C., title 26, sections 2857, 2858, 3176, and 3254).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 20, SECTIONS 194.79a AND 194.80. 1949–23–13226
T. D. 5754

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 194.—WHOLESALE AND RETAIL DEALERS IN LIQUORS

Amending Regulations 20

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

To District Supervisors and Others Concerned:

1. On August 12, 1949, notice of proposed rule making regarding the preparation of Record 52, "Wholesale Liquor Dealer's Record," by persons engaged in the business of selling distilled spirits primarily

at retail but also selling occasionally in wholesale quantities, was published in the Federal Register (14 F. R. 4984).

2. No objections to the rule having been received, Regulations 20 (26 CFR, Part 194), approved June 6, 1940, are hereby amended by adding section 194.79a and amending section 194.80, as follows:

SEC. 194.79a. RETAIL LIQUOR DEALERS MAINTAINING A WHOLESALE DEPARTMENT.—(*a*) A liquor dealer engaged in the business of selling primarily at retail, who at the same premises also makes occasional sales of distilled spirits in quantities of 5 wine gallons or more in his capacity of a wholesale liquor dealer, need not enter in Record 52 all distilled spirits received at the premises as required by section 194.79. As used herein, the term "selling primarily at retail" shall mean that sales at retail must normally represent at least 90 percent of the volume of distilled spirits sold during a month. Where a liquor dealer is engaged in such business, all distilled spirits at the premises may be considered as having been received in the retail department. When a sale of 5 wine gallons or more is made, the distilled spirits involved in the transaction must be shown in Record 52 as received from the retail department and as disposed of. Entries will be made in the various columns of the record pursuant to the provisions of sections 194.75 and 194.77. The provisions of sections 194.76, 194.80(*a*), and 194.80a, relative respectively to separate records, the daily filing of transcripts of Record 52 and certain additional requirements are not applicable to such liquor dealers.

(*b*) The wholesale department need not be maintained in a separate room or be partitioned off from the retail department, but sales at wholesale must be made in a part of the premises designated as the wholesale department. (Sec. 2857, I. R. C.)

SEC. 194.80. REPORTS.

* * * * * * *

(*b*) If there were no receipts and disposals of distilled spirits by a wholesale liquor dealer during a month, it will not be necessary to prepare Forms 52A and 52B. However, a summary on Form 338 must be prepared and forwarded to the district supervisor, showing the quantity on hand the first day of the month and the quantity on hand the last day of the month and marked "No transactions during month." Wholesale liquor dealers maintaining records in the simplified manner prescribed by section 194.79a should show in the summary on Form 338 that no distilled spirits were on hand the first day and the last day of the month. When a wholesale liquor dealer discontinues business as such, he shall render monthly reports, Forms 52A and 52B and the summary report on Form 338, covering transactions for the month in which business is discontinued, and mark such reports "Final." Record 52 shall be preserved by the dealer for a period of 4 years. (Sec. 2857, I. R. C.)

3. These amendments are designed to simplify the preparation of Record 52, "Wholesale Liquor Dealer's Record," by persons engaged in the business of selling distilled spirits primarily at retail but also selling occasionally in wholesale quantities.

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

5. This Treasury Decision is issued under the authority of section 2857, Internal Revenue Code (26 U. S. C. 2857).

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved October 14, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register October 20, 1949)

REGULATIONS 21, SECTIONS 191.59 AND 191.60.

1949-17-13165
T. D. 5724

TITLE 26—INTERNAL REVENUE.—CHAPTER 1, SUBCHAPTER C, PART 191.—IMPORTATION OF DISTILLED SPIRITS AND WINES

Amending Regulations 21

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

To District Supervisors and Others Concerned:

1. Sections 191.59 and 191.60 of Regulations 21 (26 CFR, Part 191), approved October 16, 1940, are amended to read as follows:

SEC. 191.59. TIME OF MAKING ENTRIES.—Daily entries shall be made on Record 52 and Form 52E, as indicated by the headings of the various columns, and in accordance with instructions printed thereon, before the close of the business day next succeeding the day on which the transactions occur. Where the importer defers the making of the entries to the next business day, as authorized herein, he shall keep a separate record, such as invoices, of the removals of distilled spirits showing the removal data required to be entered on Record 52 and Form 52E, and appropriate memoranda of other transactions required to be entered on such records, for the purpose of making the entries correctly. (Secs. 2857, 2858, 3171, 3176, 3254, I. R. C.)

SEC. 191.60. SEPARATE RECORD OF SERIAL NUMBERS OF CASES.—Serial numbers of cases of distilled spirits disposed of need not be entered on Record 52 or Form 52E, "Monthly Record and Report of Importer or Proprietor of Tax-Paid Premises," provided the respective proprietor keeps in his place of business a separate record, approved by the district supervisor, showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of 4 years and in such a manner that the required information may be ascertained readily therefrom, and during such period, shall be available during business hours for inspection and the taking of abstracts therefrom by internal revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. The importer, whose separate record has been approved by the district supervisor, shall note in the column for reporting serial numbers that, "Serial numbers shown on commercial records per authority, dated ----------." (Secs. 2857, 2858, 3171, 3176, 3254, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries in Record 52 and Form 52E.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 2857, 2858, 3171, 3176, 3254, Internal Revenue Code (U. S. C., title 26, sections 2857, 2858, 3171, 3176, 3254).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 24, SECTIONS 180.90, ETC. 1949-17-13166
T. D. 5725

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 180.—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Amending Regulations 24

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

To District Supervisors and Others Concerned:

1. Sections 180.90, 180.91, 180.142, and 180.143 of Regulations 24 (26 CFR, Part 180), approved June 16, 1941, are amended to read as follows:

SUBPART I

PRODUCTS COMING INTO THE UNITED STATES FROM PUERTO RICO

ARTICLE XI.—RECORDS AND REPORTS

SEC. 180.90. TIME OF MAKING ENTRIES.—Daily entries shall be made on Record 52 and Form 52E, as indicated by the headings of the various columns, and in accordance with instructions printed thereon, before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, a separate record, such as invoices, shall be kept, of the removals of distilled spirits, showing the removal data required to be entered on Record 52 and Form 52E, and appropriate memoranda of other transactions required to be entered on such records, for the purpose of making the entries correctly. (Secs. 2857, 2858, 3171, 3176, 3254, 3360, I. R. C.)

SEC. 180.91. SEPARATE RECORD OF SERIAL NUMBERS OF CASES.—Serial numbers of cases of distilled spirits disposed of need not be entered on Form 52E, provided the respective proprietor keeps in his place of business a separate record, approved by the district supervisor, showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of 4 years and in such a manner that the required information may be ascertained readily therefrom, and, during such period, shall be available during business hours for inspection and the taking of abstracts therefrom by internal revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly.

Where a separate record has been approved by the district supervisor, notation shall be made in the column for reporting serial numbers that "Serial numbers shown on commercial records per authority, dated ----------." (Secs. 2857, 2858, 3171, 3176, 3254, 3360, 4041, I. R. C.)

SUBPART II

PRODUCTS COMING INTO THE UNITED STATES FROM THE VIRGIN ISLANDS

ARTICLE XVI.—RECORDS AND REPORTS

SEC. 180.142. TIME OF MAKING ENTRIES.—Daily entries shall be made on Record 52 and Form 52E, as indicated by the headings of the various columns, and in accordance with instructions printed thereon, before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, a separate record, such as invoices, shall be kept, of the removals of distilled spirits, showing the removal data required to be entered on Record 52 and Form 52E, and appropriate memoranda of other transactions required to be entered on such records for the purpose of making the entries correctly. (Secs. 2857, 2858, 3171, 3176, 3254, 3350, 4041, I. R. C.)

SEC. 180.143. SEPARATE RECORD OF SERIAL NUMBERS OF CASES.—Serial numbers of cases of distilled spirits disposed of need not be entered on Form 52E, provided the respective proprietor keeps in his place of business a separate record, approved by the district supervisor showing such serial numbers, with necessary identifying data, including the date of removal and the name and address of the consignee. Such separate record may be kept in book form (including loose-leaf books) or may consist of commercial papers, such as invoices or bills. Such books, invoices, and bills shall be preserved for a period of 4 years and in such a manner that the required information may be ascertained readily therefrom, and, during such period, shall be available during business hours for inspection and the taking of abstracts therefrom by internal revenue officers. Entries shall be made on such separate approved record before the close of the business day next succeeding the day on which the transactions occur. Where the making of the entries is deferred to the next business day, as authorized herein, appropriate memoranda shall be maintained for the purpose of making the entries correctly. Where a separate record has been approved by the district supervisor, notation shall be made in the column for reporting serial numbers that "Serial numbers shown on commercial records per authority, dated ----------." (Secs. 2857, 2858, 3171, 3254, 3350, 4041, I. R. C.)

2. These amendments are intended for the purpose of allowing additional time for making required entries in Record 52 and Form 52E.

3. It is found that compliance with the notice and public rulemaking procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these regulations for the reason that the changes made are of a liberalizing character.

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

5. This Treasury Decision is issued under the authority contained in sections 2857, 2858, 3171, 3176, 3254, 3350, 3360, 4041, Internal Revenue Code (U. S. C., title 26, sections 2857, 2858, 3171, 3176, 3254, 3350, 3360, 4041).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved August 2, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register August 9, 1949)

REGULATIONS 24, SECTION 180.93a: Requirements. 1949–14–13124
T. D. 5706

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 180.—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Amending Regulations 24

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

To District Supervisors, Collectors of Customs, and Others Concerned:

1. On February 10, 1949, notice of proposed rule making regarding the taxpayment of distilled spirits in Puerto Rico for shipment to the United States was published in the Federal Register (14–FR–596).

2. After consideration of all such relevant matter as was presented by interested persons regarding the proposal, Regulations 24 (26 CFR, Part 180), approved June 16, 1941, are amended by adding to subpart I thereof a new article, numbered and titled "XI–A—Taxpayment in Puerto Rico Upon Withdrawal After Rectification or Bottling" and a new section numbered "93a," as follows:

ARTICLE XI–A.—TAXPAYMENT IN PUERTO RICO UPON WITHDRAWAL AFTER RECTIFICATION OR BOTTLING

SEC. 180.93a. REQUIREMENTS.—(*a*) *Applicable procedure.*—Distilled spirits of less than 190 degrees of proof, wines and fermented malt liquor (hereinafter referred to as "liquors," unless otherwise indicated) intended for shipment to the United States, which are withdrawn from producing or storage premises for entry into bonded rectification sections, bottling sections, or bonded warehouses, in accordance with the Spirits and Alcoholic Beverages Act, as amended, of Puerto Rico, shall be subject to the requirements of this section, and sections 180.1 to 180.93, inclusive, insofar as such sections may be applicable.

(*b*) *Formula.*—Following entry into a bonded rectification or bottling section for rectification or bottling, all liquors shall be rectified and/or bottled in accordance with an approved formula prescribed by sections 180.13 to 180.17, inclusive.

(*c*) *Gauging.*—The alcoholic constituents of all liquors constituting a specific bottling lot shall be ascertainable from records maintained in accordance with insular requirements. In gauging liquors for taxpayment, the insular internal revenue agent will prepare Form 1520 to show separately all distilled spirits and wines according to taxable gallonage. See paragraph (*d*) hereof, and sections 180.31, 180.32, and 180.43. The formula number under which the liquors were produced or manufactured for shipment to the United States will also be shown on the Form 1520.

(*d*) *Basis for taxpayment.*—The taxes on distilled spirits shall be paid on the basis of wine gallons, if below proof, or proof gallons, if 100 proof or above, in accordance with the proof ascertained by the insular gauger prior to entry of the spirits into the bonded rectification section, or bonded bottling section, pursuant to appropriate entries in records prescribed by the insular authorities.

(*e*) *Taxpayment.*—Taxpayment shall be made at the rate prescribed by law. The prescribed taxes shall be paid at the time of withdrawal of the liquors pursuant to issuance of the appropriate insular permit. A copy of the Form 1520 covering the gauging of the liquors shall accompany the insular permit, Form 487A, when presented to the deputy collector for taxpayment. See sections 180.32, 180.36, 180.39, and 180.44.

(*f*) *Red strip stamps.*—United States internal revenue red strip stamps will be procured from the deputy collector for affixing to bottles of spirits intended for shipment to the United States. Where the tax is paid in accordance with paragraph (*e*), such stamps may be affixed to the bottles prior to taxpayment. The provisions of sections 180.66 to 180.78, inclusive, shall govern the purchase, overprinting, affixing, reporting, etc., of red strip stamps procured and used under this section.

(*g*) *Withdrawal for shipment to United States.*—Withdrawal of liquors for shipment to the United States may be made only after taxpayment, if so

required by the insular withdrawal permit, Form 487B. Any liquors, upon which the United States internal revenue taxes have not been paid, intended for shipment to the United States, must be withdrawn, shipped, and tax-paid upon arrival in the United States, in accordance with applicable provisions of sections 180.1 to 180.93, inclusive. (Secs. 2800, 2803, 3030, 3176, 3360, and 4041, I. R. C.)

3. These amendments are designed to establish a procedure for the taxpayment of distilled spirits and other alcoholic beverages in Puerto Rico after withdrawal for rectification or bottling, in order to make stocks of such liquors available for shipment to the United States under the Puerto Rican law as amended.

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

5. This Treasury Decision is issued under authority contained in sections 2800, 2803, 3030, 3176, 3360, and 4041, Internal Revenue Code (U. S. C., title 26, sections 2800, 2803, 3030, 3176, 3360, and 4041).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved June 21, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register June 24, 1949)

REGULATIONS 24, SECTIONS 180.93b, ETC. 1949–26–13263
T. D. 5764

TITLE 26—INTERNAL REVENUE.—CHAPTER I, SUBCHAPTER C, PART 180.—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Amending Regulations 24

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

To District Supervisors and Others Concerned:

1. Regulations 24 (26 CFR, Part 180), approved June 16, 1941, as amended, are hereby further amended by adding to subpart I thereof sections 180.93b, 180.93c, 180.93d, and 180.93e, as follows:

TAX-PAYMENT BY CERTIFICATE

SEC. 180.93b. TAX-PAID CERTIFICATE IN LIEU OF STAMPS.—(*a*) *Spirits to be tax-paid.*—Where bottled distilled spirits are to be tax-paid upon withdrawal in cases as provided by section 180.93a, or where distilled spirits to be bottled before shipment to the United States are to be tax-paid prior to bottling as permitted by section 180.21 or 180.32, the deputy collector of internal revenue shall collect the tax pursuant to appropriate application, and shall issue a tax-paid certificate in lieu of tax-paid stamps, as provided by paragraphs (*b*) and (*c*) hereof.

(*b*) *Application, Form 1594.*—The taxpayer, when submitting Form 487–A, "Application and Permit to Tax-Pay Liquors for Shipment to the United States," and Form 1520, as provided by section 180.21, or section 180.32, shall prepare and forward with such application, an application on Form 1594, "Application for Collector's Certificate of Tax-Payment of Distilled Spirits for Shipment in Tank Cars," in triplicate. The application, Form 1594, shall be appropriately modified to show that the spirits are to be tax-paid in Puerto Rico (in lieu of "For shipment in tank cars"), and shall show, in addition to all applicable data, the serial number and date of the Form 487–A. Request should be made in the application that the certificate be forwarded to the treasurer. The application, Form 1594, shall be accompanied by proper remittance for the tax. The deputy

collector may, in his discretion, accept uncertified checks in payment of the tax where certificates are issued in lieu of stamps.

(*c*) *Issuance of certificate Form 1595.*—The deputy collector will issue Form 1595, "Certificate of Tax-Payment of Distilled Spirits for Shipment in Tank Cars," appropriately modified to show that the spirits are tax-paid in Puerto Rico in lieu of "For shipment in tank cars," and shall show the serial number and date of the Form 487–A. The deputy collector will fill in all applicable data in the blank spaces on the certificate and date and sign the certificate in the same manner as a tax-paid stamp is required by section 180.22 to be filled in, dated, and signed. This certificate is not negotiable and shall not reflect tax-payment of any distilled spirits except those described therein and in the accompanying Forms 487–A and 1520. The deputy collector will enter on the original and the copies of Form 1594, in the space provided, the serial number, date, and amount of the certificate issued. The deputy collector will retain one copy each of Form 487–A, and Form 1520 and the original of Form 1594. He will mail or deliver the certificate, Form 1595, and one copy each of Form 487–A and Form 1520 to the treasurer, and will return one copy of the application, Form 1594, to the taxpayer. The deputy collector will forward the remaining copy of Form 1594 to the Collector of Internal Revenue, Baltimore, Md. (Secs. 3300(a), 3360, and 4041, I. R. C.)

SEC. 180.93c. DISPOSITION OF CERTIFICATES BY TREASURER.—Upon receipt of tax-paid certificates issued in accordance with section 180.93b, the treasurer will cancel such certificates by perforating therein or stamping thereon the word "canceled." The canceled certificate will be securely attached to the Forms 487–A and 1520 covering the regauge and withdrawal of the packages or cases represented by the certificate and filed in the office of the treasurer. These certificates and forms will be available for inspection by United States internal revenue officers. (Secs. 3360 and 4041, I. R. C.)

SEC. 180.93d. NOTICE OF TAX-PAYMENT BY TREASURER.—When the tax-paid certificate has been canceled as provided in section 180.93c, the treasurer will notify the proper insular internal revenue agent of the tax-payment of the spirits and authorize their withdrawal for bottling or shipment as the case may be. The notice to the insular internal revenue agent must describe fully the liquors to be released. Thereafter, the spirits will be released for bottling or withdrawal in accordance with the procedure prescribed in the regulations in this part in respect of spirits upon which the tax has been paid. (Secs. 3360 and 4041, I. R. C.)

SEC. 180.93e. USE OF CERTIFICATES.—The use of certificates in respect of payment of the rectification tax or wine tax, or the tax on distilled spirits to be withdrawn and shipped to the United States in packages, is not authorized and tax-paid stamps therefor will continue to be issued in the manner provided by the regulations in this part. (Secs. 3360 and 4041, I. R. C.)

2. The purpose of these amendments is to provide for the issuance of certificates, in lieu of tax-paid stamps by the deputy collector to connote tax-payment of distilled spirits in Puerto Rico to be bottled, or withdrawn, for shipment to the United States.

3. It is found that compliance with the notice and public rule-making procedure of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of these amendments for the reason that the amendments relate basically to agency policy and practice.

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

5. This Treasury Decision is issued under the authority contained in sections 3300(a), 3360, and 4041, Internal Revenue Code (U. S. C., title 26, sections 3300(a), 3360, and 4041).

GEO. J. SCHOENEMAN,
Commissioner of Internal Revenue.

Approved December 2, 1949.

JOHN S. GRAHAM,
Acting Secretary of the Treasury.

(Published in the Federal Register December 9, 1949)

MISCELLANEOUS

INTOXICATING LIQUORS

REGULATIONS No. 5 (ALCOHOL TAX ACT). 1949-14-13125
T. D. 5707

TITLE 27—INTOXICATING LIQUORS.—CHAPTER 1, PART 5.—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Amending Regulations No. 5 under the Federal Alcohol Administration Act.

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

To District Supervisors and Others Concerned:

Notices of public hearings to be held in Washington, D. C., on October 18 and 25, 1948, and in San Francisco, Calif., on October 6, 1948, with respect to certain proposals to amend Regulations No. 5, Relating to Labeling and Advertising of Distilled Spirits, were published in the Federal Register on August 25, 1948 (13 F. R. 4924 and 4926).

Upon the conclusion of the said hearing and after consideration of all relevant material submitted by interested persons in connection therewith regarding proposals numbered 1–15, inclusive, of the notice of hearing on the proposals "with respect to Scotch, Irish, and Canadian whiskies and types thereof and to other matters" and proposals numbered 1–12, inclusive, of the notice of hearing with respect to "prescribing a standard of identity for vodka and for other purposes," the following amendments to section 21, classes 1, 2(*n*), 2(*o*), 6, 8, and 9(*a*), section 34 (*b*), (*d*), (*e*), and (*f*), section 38(*d*), section 39 (*a*), (*c*), and (*e*), and section 64(*c*) of said Regulations No. 5 are hereby adopted, to become effective as stated:

1. In order to permit the labeling of "blended Scotch type whisky" with an unqualified age statement, instead of a statement of storage, for any "whisky" therein which was stored in reused cooperage, even though such whisky was produced in the United States, and to permit a statement of the age and percentage of each of the component whiskies, the final unnumbered paragraph of section 39(*a*) (27 CFR 5.39(a)) is amended by changing the period at the end thereof to a colon and adding the following proviso:

Provided, That this paragraph shall not apply to "blended Scotch type whisky" or to any whisky properly contained therein.

Section 39(*c*)(1) (27 CFR 5.39(c)(1)) is amended by deleting the first two sentences and inserting in lieu thereof the following:

(1) In the case of blended Scotch type whisky, there shall be stated the age of the malt whisky (or if there be two or more malt whiskies, the youngest thereof) and the age of the other whisky (or if there be two or more other whiskies, the youngest of such other whiskies) together with the percentages by volume of the malt whisky and of the other whisky therein. The statement of ages and percentages shall be in the following form: "The malt whisky in this product is ------ (years and/or months) old; ------ percent malt whisky, ------ percent whisky, ------ (years and/or months) old" or, if more than one malt whisky or more than one other whisky is in the blend, the relevant portion of such statement shall read "The malt

whiskies in this product are ------ (years and/or months) or more old" and "------ percent whisky ------ (years and/or months) or more old," as the case may be.

and section 39(*c*) (1) (27 CFR 5.39 (c) (1)) is also further amended by adding the following paragraph thereto:

In addition (but not as a substitute for the foregoing statement) a statement may be made of the ages and percentages of all of the malt whiskies and whiskies in the product. Such statement, if made, shall be in the following form: "------ percent malt whisky, ------ years old; ------ percent malt whisky, ------ years old; ------ percent whisky, ------ years old; and ------ percent whisky, ------ years old." The age and percentage blanks shall be filled with the respective ages and percentages of each of the malt whiskies and whiskies in the product.

These amendments relieve restrictions formerly contained in the regulations and shall become effective on the date of their publication in the Federal Register.

2. In order to require that "blended Scotch type whisky" be composed entirely of whiskies by eliminating the present provisions permitting the use of not more than 80 percent by volume of neutral spirits and to require that all of the whisky in "blended Scotch type whisky" be aged for not less than 3 years in new plain, or reused, oak containers, section 21, class 2(*n*) (27 CFR 5.21(b) (14)) is amended to read:

(*n*) "Blended Scotch type whisky" (Scotch type whisky—a blend) is a mixture made outside Great Britain and composed of—

(1) Not less than 20 percent by volume of 100° proof malt whisky or whiskies distilled in pot stills at not more than 160° proof (whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof) solely from a fermented mash of malted barley dried over peat fire and aged for not less than 3 years in new plain, or reused, oak containers, and

(2) Not more than 80 percent by volume of whisky distilled at more than 180° proof (whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof) aged for not less than 3 years in new plain, or reused, oak containers.

and section 39(*c*) (1) (27 CFR 5.39(c) (1)) is further amended by deleting the third and fourth sentences thereof.

These amendments shall become effective 3 years and 6 months after the date of publication in the Federal Register.

3. In order to remove from the standards of identity the standard for "blended Irish type whisky" (Irish type whisky—a blend), and to remove from the regulations any recognition of this product as a type of whisky, section 21, class 2 (27 CFR 5.21(b)) is amended by deleting subparagraph (*o*) (27 CFR 5.21(b) (15)) thereof, section 34(*f*) (27 CFR, Cum. Supp., 5.34(f)) is amended by changing the parenthetical phrase in the third sentence thereof to read:

(other than American type whisky and blended Scotch type whisky)

and section 39(*c*) (27 CFR 5.39(c)) is amended by deleting the words "*and blended Irish type whisky*" from the heading of this subsection and deleting paragraphs numbered (2) and (3) thereof.

These amendments shall become effective 6 months after the date of publication in the Federal Register.

4. In order to require, where any of the specified types of whisky is composed of whisky or whiskies which were produced in a country other than that indicated by the required type designation, that there be stated on the Government label the country of origin of such whisky or whiskies and the percentage thereof in the product, section 21,

class 9(*a*) (27 CFR 5.21(i)(1)) is amended by adding the following at the end thereof:

If whisky of any of these types is composed in part of whisky or whiskies produced in a foreign country there shall be stated, on the Government label, the percentage of such whisky and the country of origin thereof. Such statement shall appear as a part of, or in direct conjunction with, any age or percentage statement which may be required under section 39 (27 CFR 5.39).

and section 34(*f*) (27 CFR, Cum. Supp., 5.34(f)) is further amended by inserting the following between the second and third sentences thereof:

In the case of any of the types of whisky defined in any of the subsections of section 21, class 2 (27 CFR 5.21(b)) which contains any whisky or whiskies produced in a country other than that indicated by the type designation, there shall be stated on the Government label the percentage of such whisky and the country of origin thereof. If any age or percentage statement is required under section 39 (27 CFR 5.39) the statement herein required shall appear as a part of, or in direct conjunction with, such age and percentage statement.

These amendments shall become effective 6 months after the date of publication in the Federal Register.

5. In order to specifically prohibit the use of the words "Scotch" or "Highlands" and similar words to designate products, other than Scotch type whisky, which were not produced in Scotland, section 21, class 8 (27 CFR 5.21(h)) is amended by adding thereto a new subsection (*d*) as follows:

(*d*) The words "Scotch," "Scots," "Highland," or "Highlands" and similar words connoting, indicating, or commonly associated with Scotland, shall not (except for the use of the word "Scotch" in the type designation "blended Scotch type whisky") be used to designate any product not wholly produced in Scotland.

This amendment shall become effective 6 months after the date of publication in the Federal Register.

6. In order to provide a standard of identity for vodka section 21, class 1 (27 CFR, Cum. Supp., 5.21(a)) is amended by adding thereto a new subsection (*a*) to read as follows:

(*a*) "Vodka" is neutral spirits distilled from any material at or above 190° proof, reduced to not more than 110° proof and not less than 80° proof and, after such reduction in proof, so treated by one of the following methods as to be without distinctive character, aroma, or taste:

(1) By causing the distillate to flow continuously through a tank or a series of tanks containing at least 1½ pounds of charcoal for each gallon of distillate contained therein at any one time so that the distillate is in intimate contact with the charcoal for a period of not less than 8 hours, not less than 10 percent of the charcoal being replaced by new charcoal at the expiration of each 40 hours of operation, at a rate which will replace at least 6 pounds of charcoal for every 100 gallons of spirits treated;

(2) By keeping the distillate in constant movement by mechanical means in contact for not less than 8 hours with at least 6 pounds of new charcoal for every 100 gallons of distillate;

(3) By purifying or refining the distillate by any other method which the Deputy Commissioner finds will result in a product equally without distinctive character, aroma, or taste, and which has been approved by him.

After such treatment the distillate is stored in metal, porcelain or glass containers or paraffin-lined tanks, and bottled at not less than 80° proof. If any flavoring material is added to the distillate it shall be designated "flavored vodka" and may be further qualified with the name of the flavoring material used.

This amendment shall become effective 1 year after date of publication in the Federal Register.

7. In order to prescribe standards of identity for bourbon and rye liqueurs and for "rock and rye," "rock and bourbon," "rock and rum," and "rock and brandy," section 21, class 6 (27 CFR 5.21(f)) is amended

by adding at the end thereof the following two new subsections (*e*) and (*f*):

(*e*) *Rye liqueur, bourbon liqueur.*—"Rye liqueur," "bourbon liqueur" (rye, bourbon cordial) are liqueurs, bottled at not less than 60° proof, in which not less that 51 percent, on a proof basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and which possess a predominant characteristic bourbon or rye flavor derived from such whisky.

(*f*) *Rock and rye, rock and bourbon, rock and brandy, rock and rum.*—"Rock and rye," "rock and bourbon," "rock and brandy," "rock and rum" are liqueurs, bottled at not less than 48° proof, in which, in the case of rock and rye and rock and bourbon, not less than 51 percent, on a proof basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and, in the case of rock and brandy and rock and rum, the distilled spirits used are all grape brandy distilled at not in excess of 170° proof or rum, respectively; containing rock candy or sugar sirup, with or without the addition of fruit, fruit juices, or other natural flavoring materials, and possessing, respectively, a predominant characteristic rye, bourbon, brandy, or rum flavor derived from the distilled spirits used.

This amendment shall become effective 6 months after date of publication in the Federal Register.

8. In order to prohibit a bottled highball, cocktail, or other prepared specialty from bearing a designation indicating that it is composed of a certain class or type of distilled spirits unless it is in fact so composed, section 34(*b*) (27 CFR, Cum. Supp., 5.34(b)) is amended by adding the following sentence at the end thereof:

No highball, cocktail, or other prepared specialty shall bear a designation, whether through trade understanding or otherwise, which indicates that it is composed of a certain class or type of distilled spirits, unless, in fact, the distilled spirits used in its preparation conform to such class or type.

This amendment shall become effective 6 months after date of publication in the Federal Register.

9. In order to require that, as to distilled spirits treated with wood chips or stored in reused cooperage in the future, the statements "colored and flavored with wood chips" and "distilled from rye (or bourbon, wheat, malt, or rye malt) mash," now required by sections 34(*d*) and 34(*e*) (27 CFR, Cum. Supp., 5.34(d) and 27 CFR 5.34(e)) to be stated in direct conjunction with the class and type designations of certain distilled spirits, be stated as a part of such class and type designation, section 34(*d*) (27 CFR, Cum. Supp., 5.34(d)) and section 34(*e*) (27 CFR 5.34(e)) are amended by deleting the words "in direct conjunction with" appearing in each of these subsections in the phrase "* * * there shall be stated in direct conjunction with the class and type designation * * *" and inserting in lieu thereof the words "as a part of".

This amendment shall become effective 1 month after date of publication in the Federal Register but shall have no effect upon the labeling of existing stocks of distilled spirits so treated or stored prior to that date.

10. In order to permit, only in the case of such whiskies and brandies as may be, but are not required to be, labeled with an age statement, general inconspicuous references to age and maturity regardless of whether or not the labels of the products contain the optional age statement, section 39(*e*)(5) (27 CFR 5.39(e)(5)) is amended by changing the period at the end of the first sentence to a colon and adding the following proviso:

Provided, That the labels of such whiskies and brandies as are not required to bear a statement of age on the label may contain general inconspicuous age, maturity or other similar representations even though the label does not bear the optional age statement.

and section 64(*c*) (27 CFR 5.64(c)) is amended by adding at the end thereof the following sentence:

An advertisement for any whisky or brandy which is not required to bear a statement of age on the label may, however, contain general inconspicuous age, maturity or other similar representations even though the optional age statement does not appear on the label of the advertised product and in the advertisement itself.

These amendments relieve restrictions previously contained in the regulations and shall become effective on the date of publication in the Federal Register.

11. In order to permit the elimination of the word "other," as applied to whiskies other than straight whiskies, in the age and percentage statement required to appear on the labels of blended whiskies, section 39(*a*)(3) (27 CFR 5.39(a)(3)) is amended by deleting the word "other" from the required age and percentage statements set forth in quotation marks in the second paragraph thereof.

This amendment relieves a restriction previously contained in the regulations and shall become effective on the date of publication in the Federal Register.

12. In order to permit a statement of the predominant type of straight whisky in the designation of blends of straight whiskies which are composed of 51 percent or more of one type of straight whisky, if the percentage of this type in the blend appears on the back label, section 39(*a*)(4) (27 CFR 5.39(a)(4)) is amended by changing the period at the end of the second sentence thereof to a colon and adding the following proviso to that sentence:

Provided, That, if the product is composed of 51 percent or more, but less than 100 percent, of one type of straight whisky and the class and type designation contains a reference to this predominant type, the required statement shall contain a statement of the percentage of this predominant type in the product as follows: "The straight whiskies in this product are _____ (years and/or months) or more old, _____ percent straight _____ whisky," the blanks to be filled in with the appropriate age, percentage, and type statements.

This amendment conforms to the present administrative interpretation of the regulations, imposes no new restrictions, and shall become effective on the date of publication in the Federal Register.

13. In order to permit the statement "certified color added" in lieu of the statement "artificially colored" upon the labels of distilled spirits where the latter statement would be required solely because the product contains coloring materials which have been certified as suitable for use in foods by the Food and Drug Administration, section 38(*d*) (27 CFR, Cum. Supp., 5.38(d)) is amended by changing the period at the end thereof to a colon and adding the following further proviso:

And provided further, That where such statement would be required solely by reason of the use of coloring materials which have been certified as suitable for use in foods by the Food and Drug Administration, there may be stated, in lieu of "artificially colored," the phrase "certified color added."

This amendment relieves a restriction presently contained in the regulations and shall become effective on the date of publication in the Federal Register.

(This Treasury Decision is issued pursuant to and under the authority contained in section 5 (e) and (f) of the Federal Alcohol Administration Act, as amended (27 U. S. C. 205 (e) and (f)), Reorganization Plan No. III, paragraph 2 (54 Stat. 1232), section 3170 of the Internal Revenue Code (53 Stat. 373) and section 161 of the Revised Statutes (5 U. S. C. 22).)

CARROLL E. MEALEY,
Deputy Commissioner of Internal Revenue.

Approved June 22, 1949.

FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register June 29, 1949)

REGULATIONS NO. 7 (ALCOHOL TAX ACT). 1949–23–13227
T. D. 5755

TITLE 27—INTOXICATING LIQUORS.—CHAPTER 1, PART 7.—LABELING AND ADVERTISING OF MALT BEVERAGES

Amending Regulations No. 7 under the Federal Alcohol Administration Act.

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

To District Supervisors and Others Concerned:

In view of the amendment of section 3157(a) of the Internal Revenue Code by Public Law 261, approved August 23, 1949 [page 270, this Bulletin], providing for the bottling of malt beverages on brewery premises before the tax thereon is paid, section 22 of Regulations No. 7, Relating to the Labeling and Advertising of Malt Beverages (27 CFR, section 7.22), is amended as follows:

1. Paragraph "(a)" is amended by striking out subparagraph "(4)" thereof and by renumbering subparagraph "(5)" as "(4)". Labels or containers bearing the data heretofore prescribed by subparagraph "(4)" may be used until March 1, 1950, the effective date of the amendment of section 3157(a) of the Internal Revenue Code.

2. It is found that compliance with the notice and public rule-making procedure of section 5 of the Federal Alcohol Administration Act (27 U. S. C. 205) and of the Administrative Procedure Act (5 U. S. C. 1001 et seq.) is unnecessary in connection with the issuance of this amendment, since the change is required to conform the regulations to changes in the applicable law.

3. This regulation shall be effective on the date of its publication in the Federal Register.

W. H. KENNEDY,
Acting Deputy Commissioner of Internal Revenue.

Approved October 17, 1949.

DANIEL A. BOLICH,
Acting Commissioner of Internal Revenue.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

(Published in the Federal Register October 21, 1949)

OLEOMARGARINE [a]

1949–14–13126
MS. 336

Schedule of oleomargarine produced and materials used during the month of May, 1949, as compared with May, 1948

	May, 1949	May, 1948
	Pounds	*Pounds*
Total production of uncolored oleomargarine	49, 185, 173	76, 718, 271
Total withdrawn tax-paid	50, 362, 940	74, 863, 462
Ingredient schedule of uncolored oleomargarine:		
Butter flavor	7, 642	542
Coconut oil		18, 500
Corn oil	5, 550	118, 849
Cottonseed oil	25, 686, 672	36, 898, 572
Derivative of glycerin	71, 051	127, 807
Diacetyl	74	303
Lecithin	88, 068	109, 554
Milk	8, 296, 118	12, 926, 952
Monostearine	43, 341	69, 303
Neutral lard	334, 159	41, 745
Oleo oil	274, 743	236, 980
Oleo stearine	270, 011	225, 118
Oleo stock	67, 750	1, 035
Peanut oil	1, 213	1, 692, 878
Salt	1, 481, 344	2, 333, 193
Soda (benzoate of)	34, 810	58, 308
Soybean flakes	480	240
Soybean oil	13, 493, 175	23, 058, 177
Sodium sulpho acetate	4, 191	6, 044
Soybean stearine		81
Vitamin concentrate	7, 573	10, 898
Total	50, 167, 965	77, 935, 079
Total production of colored oleomargarine	10, 427, 486	7, 245, 554
Total withdrawn tax-paid	10, 052, 547	5, 944, 079
Ingredient schedule of colored oleomargarine:		
Butter flavor	4, 901	106
Coconut oil		466, 700
Color	5, 854	3, 849
Corn oil		4, 601
Cottonseed oil	4, 873, 571	3, 151, 706
Derivative of glycerin	14, 262	10, 810
Diacetyl	12	80
Lecithin	19, 138	10, 480
Milk	1, 749, 958	1, 232, 911
Monostearine	5, 421	3, 431
Neutral lard	16, 420	
Oleo oil	24, 986	
Oleo stock	9, 150	
Peanut oil	1, 566	74, 456
Salt	319, 291	228, 247
Soda (benzoate of)	6, 014	3, 511
Soybean oil	3, 528, 703	2, 125, 098
Soybean stearine		9
Vitamin concentrate	1, 490	737
Total	10, 580, 737	7, 316, 732

[a] All figures are subject to revision until published in the Commissioner's annual report.

1949-17-13167
MS. 337

Schedule of oleomargarine produced and materials used during the month of June, 1949, as compared with June, 1948

	June, 1949	June, 1948
	Pounds	*Pounds*
Total production of uncolored oleomargarine	51,435,110	69,484,342
Total withdrawn tax-paid	50,826,300	64,430,429
Ingredient schedule of uncolored oleomargarine:		
Butter flavor	4,792	2,046
Coconut oil		156,880
Corn oil	9,932	76,458
Cottonseed oil	27,023,180	28,981,101
Derivative of glycerine	76,990	109,286
Diacetyl	97	353
Lecithin	92,577	98,825
Milk	8,648,708	11,719,072
Monostearine	46,221	59,936
Neutral lard	335,962	540,940
Oleo oil	278,509	316,875
Oleo stearine	298,511	300,790
Oleo stock	56,950	46,847
Peanut oil	915	2,377,538
Salt	1,549,774	2,235,345
Soda (benzoate of)	38,489	51,937
Soya bean flakes	425	95
Soya bean oil	13,728,740	23,764,140
Sodium sulpho acetate		6,793
Soya bean stearine		100
Vitamin concentrate	8,320	10,670
Total	52,199,092	70,856,027
Total production of colored oleomargarine	12,155,163	6,385,042
Total withdrawn tax-paid	11,151,736	4,971,279
Ingredient schedule of colored oleomargarine:		
Butter flavor	4,401	169
Coconut oil		68,095
Color	7,134	4,427
Cottonseed oil	5,705,142	2,368,420
Derivative of glycerine	14,933	11,857
Diacetyl	35	
Lecithin	22,329	8,128
Milk	2,018,925	1,066,889
Monostearine	8,889	2,172
Neutral lard	28,253	5,851
Oleo oil	43,826	5,275
Oleo stock	16,200	100
Peanut oil	2,112	155,132
Salt	374,033	198,552
Soda (benzoate of)	8,910	3,358
Soya bean oil	4,061,458	2,559,743
Soya bean stearine		125
Soya bean flakes	150	2,805
Vitamin concentrate	1,790	1,155
Total	12,318,520	6,462,244

1949–19–13186
MS. 338

Schedule of oleomargarine produced and materials used during the month of July, 1949, as compared with July, 1948

	July, 1949	July, 1948
	Pounds	*Pounds*
Total production of uncolored oleomargarine	45, 426, 122	44, 068, 288
Total withdrawn tax-paid	44, 974, 648	48, 459, 117
Ingredient schedule of uncolored oleomargarine:		
Butter flavor	5, 481	1, 425
Coconut oil	----------	27, 210
Corn oil	12, 425	394, 957
Cottonseed oil	24, 093, 490	17, 195, 297
Derivative of glycerine	65, 825	64, 079
Diacetyl	36	177
Lecithin	82, 405	63, 856
Milk	7, 605, 459	7, 388, 294
Monostearine	40, 215	39, 621
Neutral lard	224, 254	59, 006
Oleo oil	184, 082	85, 070
Oleo stearine	176, 922	275, 953
Oleo stock	42, 900	15, 250
Peanut oil	10, 580	1, 718, 154
Salt	1, 379, 788	1, 360, 748
Soda (benzoate of)	33, 941	32, 573
Sodium sulpho acetate	----------	3, 906
Soya bean flakes	335	1, 349
Soya bean oil	12, 157, 797	15, 973, 162
Vitamin concentrate	7, 617	6, 402
Total	46, 123, 552	44, 706, 489
Total production of colored oleomargarine	10, 691, 497	8, 485, 697
Total withdrawn tax-paid	10, 391, 562	7, 395, 559
Ingredient schedule of colored oleomargarine:		
Butter flavor	2, 729	785
Coconut oil	----------	223, 740
Color	5, 958	6, 792
Corn oil	100	15, 785
Cottonseed oil	4, 788, 762	3, 118, 573
Derivative of glycerine	14, 676	14, 148
Diacetyl	15	13
Lecithin	20, 442	10, 402
Milk	1, 760, 073	1, 425, 164
Monostearine	6, 034	3, 986
Neutral lard	8, 170	37, 055
Oleo oil	11, 785	20, 452
Oleo stock	3, 200	650
Peanut oil	1, 222	144, 100
Salt	332, 123	260, 235
Soda (benzoate of)	6, 465	4, 583
Soya bean oil	3, 860, 997	3, 307, 478
Soya bean flakes	----------	2, 461
Vitamin concentrate	1, 677	1, 180
Total	10, 824, 428	8, 597, 582

1949-21-13212
MS. 339

Schedule of oleomargarine produced and materials used during the month of August, 1949, as compared with August, 1948

	August, 1949	August, 1948
	Pounds	*Pounds*
Total production of uncolored oleomargarine	63, 245, 187	65, 556, 399
Total withdrawn tax-paid	64, 334, 954	66, 225, 419
Ingredient schedule of uncolored oleomargarine:		
Butter flavor	7, 823	1, 717
Coconut oil		49, 000
Corn oil	43, 504	435, 857
Cottonseed oil	30, 526, 240	27, 896, 160
Derivative of glycerine	97, 244	101, 310
Diacetyl	66	338
Lecithin	114, 109	98, 134
Milk	10, 575, 621	10, 993, 652
Monostearine	122, 363	59, 203
Neutral lard	400, 960	346, 441
Oleo oil	313, 028	254, 383
Oleo stearine	264, 740	239, 715
Oleo stock	71, 360	42, 590
Peanut oil	236	1, 239, 017
Salt	1, 974, 808	2, 034, 649
Soda (benzoate of)	50, 945	47, 164
Sodium sulpho acetate		5, 749
Soya bean flakes	475	687
Soya bean oil	19, 643, 788	22, 965, 302
Vitamin concentrate	10, 304	9, 808
Total	64, 217, 614	66, 820, 879
Total production of colored oleomargarine	15, 861, 106	7, 778, 620
Total withdrawn tax-paid	15, 011, 400	6, 632, 829
Ingredient schedule of colored oleomargarine:		
Butter flavor	3, 132	120
Coconut oil		156, 820
Color	9, 479	3, 891
Corn oil	3, 214	22, 372
Cottonseed oil	7, 003, 811	3, 042, 064
Derivative of glycerine	21, 996	12, 926
Diacetyl	24	9
Lecithin	27, 930	10, 535
Milk	2, 475, 585	1, 333, 513
Monostearine	11, 151	3, 258
Neutral lard	28, 874	16, 529
Oleo oil	44, 962	148, 744
Oleo stock	16, 650	2, 400
Peanut oil	349	46, 260
Salt	505, 277	245, 443
Soda (benzoate of)	10, 470	4, 437
Soya bean flakes	1, 095	3, 375
Soya bean oil	5, 779, 547	2, 948, 561
Vitamin concentrate	2, 400	1, 100
Total	15, 945, 946	8, 002, 407

1949–23–13228
MS. 340

Schedule of oleomargarine produced and materials used during the month of October, 1949, as compared with October 1948

	September, 1949	September, 1948
	Pounds	*Pounds*
Total production of uncolored oleomargarine	56, 967, 834	71, 071, 081
Total withdrawn tax-paid	55, 648. 782	68, 163, 566
Ingredient schedule of uncolored oleomargarine:		
Butter flavor	6, 435	1, 576
Coconut oil	----------	51, 905
Corn oil	27, 027	32, 572
Cottonseed oil	24, 478, 595	35, 771, 204
Derivative of glycerine	94, 735	119, 881
Diacetyl	188	377
Lecithin	108, 191	105, 379
Milk	9, 537, 525	11, 849, 241
Monostearine	44, 468	63, 617
Neutral lard	254, 817	276, 942
Oleo oil	217, 914	228, 892
Oleo stearine	275, 286	305, 014
Oleo stock	49, 410	36, 245
Peanut oil	642	385, 633
Salt	1, 715, 556	2, 174, 434
Soda (benzoate of)	44, 408	51, 408
Sodium sulpho acetate	----------	5, 225
Soya bean flakes	865	285
Soya bean oil	20, 977, 032	20, 536, 408
Vitamin concentrate	9, 315	10, 515
Total	57, 842, 409	72, 006, 753
Total production of colored oleomargarine	17, 440, 044	9, 362, 232
Total withdrawn tax-paid	15, 523, 237	7, 693, 585
Ingredient schedule of colored oleomargarine:		
Butter flavor	3, 313	256
Coconut oil	----------	248, 440
Color	9, 561	7, 578
Corn oil	75	4, 204
Cottonseed oil	7, 597, 820	3, 706, 904
Derivative of glycerine	23, 985	16, 893
Diacetyl	45	33
Lecithin	33, 734	13, 430
Milk	2, 949, 894	1, 647, 483
Monostearine	13, 003	4, 347
Neutral lard	13, 920	16, 074
Oleo oil	20, 986	11, 886
Oleo stock	7, 650	2, 100
Peanut oil	193	11, 598
Salt	542, 577	289, 546
Soda (benzoate of)	12, 834	5, 067
Soya bean oil	6, 763, 935	3, 486, 322
Soya bean flakes	----------	3, 870
Vitamin concentrate	2, 817	1, 273
Total	17, 996, 342	9, 477, 304

1949-25-13256
MS. 341

Schedule of oleomargarine produced and materials used during the month of October, 1949, as compared with October, 1948

	October, 1949	October, 1948
	Pounds	*Pounds*
Total production of uncolored oleomargarine	57, 233, 966	70, 285, 346
Total withdrawn tax-paid	56, 104, 288	69, 691, 493
Ingredient schedule of uncolored oleomargarine:		
Butter flavor	5, 263	1, 659
Coconut oil	12, 475	4, 330
Corn oil	23, 341	1, 908
Cottonseed oil	26, 422, 406	40, 435, 028
Derivative of glycerine	94, 615	108, 544
Diacetyl	138	358
Lecithin	109, 373	110, 443
Milk	9, 622, 070	11, 647, 762
Monostearine	45, 873	61, 327
Neutral lard	299, 142	328, 069
Oleo oil	229, 369	231, 687
Oleo stearine	242, 570	147, 804
Oleo stock	27, 420	30, 175
Peanut oil	352	59, 881
Salt	1, 729, 489	2, 129, 598
Soda (benzoate of)	40, 708	50, 956
Sodium sulpho acetate		5, 136
Soya bean flakes	380	430
Soya bean oil	19, 171, 029	15, 830, 828
Vitamin concentrate	9, 049	10, 198
Total	58, 085, 062	71, 196, 121
Total production of colored oleomargarine	18, 236, 746	9, 340, 777
Total withdrawn tax-paid	17, 834, 150	8, 630, 742
Ingredient schedule of colored oleomargarine:		
Butter flavor	3, 305	127
Coconut oil		49, 362
Color	10, 925	4, 898
Corn oil		911
Cottonseed oil	9, 305, 158	5, 291, 365
Derivative of glycerine	24, 231	13, 850
Diacetyl	33	42
Lecithin	33, 273	13, 720
Milk	3, 053, 449	1, 583, 077
Monostearine	15, 097	4, 677
Neutral lard	24, 769	3, 100
Oleo oil	33, 060	4, 700
Oleo stock	7, 250	2, 200
Peanut oil	2, 274	2, 326
Salt	565, 087	287, 487
Soda (benzoate of)	13, 491	5, 260
Soya bean flakes		3, 395
Soya bean oil	5, 459, 911	2, 194, 364
Vitamin concentrate	3, 011	1, 219
Total	18, 554, 324	9, 466, 080

TOBACCO [a]

1949–16–13141
T. 239

Manufactured tobacco produced and removed for consumption, by classes, during the months January through May, 1949, compared with the same months of 1948

	Production		Removed			
			Tax-paid		Tax-free	
	January, 1949	January, 1948	January, 1949	January, 1948	January, 1949	January, 1948
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3,107,865	3,516,378	3,642,349	3,833,832	163,634	125,822
Twist	475,696	464,117	440,789	464,945	57,005	56,740
Fine cut	227,891	363,354	215,219	326,755	----------	----------
Scrap chewing	3,406,115	3,383,002	3,216,838	3,204,522	1,349	1,501
Smoking	7,385,824	8,016,503	7,266,434	7,936,351	130,386	153,385
Snuff	3,427,486	3,488,974	3,435,815	3,481,393	----------	648
Total	18,030,877	19,232,328	18,217,444	19,247,798	352,374	338,096
	February, 1949	February, 1948	February, 1949	February, 1948	February, 1949	February, 1948
Plug	3,009,434	3,521,797	2,835,662	3,219,060	179,435	118,948
Twist	454,286	453,913	372,050	413,523	58,650	36,885
Fine cut	206,868	334,305	208,867	297,419	----------	2
Scrap chewing	3,097,003	3,183,326	2,924,284	3,061,699	1,754	479
Smoking	7,548,300	7,791,083	7,263,171	7,474,367	150,748	313,608
Snuff	3,260,161	3,264,989	3,268,807	3,227,774	1,458	1,377
Total	17,576,052	18,549,413	16,872,841	17,693,842	392,045	471,299
	March, 1949	March, 1948	March, 1949	March, 1948	March, 1949	March, 1948
Plug	3,729,133	3,910,307	3,409,574	3,622,552	111,306	188,713
Twist	534,368	473,297	432,342	421,302	69,015	33,104
Fine cut	213,076	322,188	222,474	394,988	----------	----------
Scrap chewing	3,141,423	3,560,150	3,364,290	3,492,491	1,930	1,054
Smoking	9,567,237	8,910,408	9,382,388	8,819,143	191,478	227,962
Snuff	3,695,195	3,878,937	3,686,211	3,834,595	2,119	870
Total	20,880,432	21,055,287	20,497,279	20,585,071	375,848	451,703
	April, 1949	April, 1948	April, 1949	April, 1948	April, 1949	April, 1948
Plug	3,365,920	4,199,537	3,211,364	3,663,185	337,133	213,426
Twist	457,585	461,587	390,628	395,277	55,242	57,845
Fine cut	201,689	220,184	211,449	220,633	----------	----------
Scrap chewing	2,915,108	3,376,808	2,939,733	3,323,523	818	1,339
Smoking	8,534,807	9,692,591	8,318,901	9,402,168	260,003	267,241
Snuff	3,253,556	3,389,562	3,274,723	3,449,623	621	1,707
Total	18,728,665	21,340,269	18,346,798	20,454,409	653,817	541,558
	May, 1949	May, 1948	May, 1949	May, 1948	May, 1949	May, 1948
Plug	3,655,075	3,414,895	3,419,058	3,389,051	30,808	138,369
Twist	490,254	443,319	392,900	407,716	103,380	53,260
Fine cut	256,088	217,318	255,226	228,934	----------	----------
Scrap chewing	2,824,576	3,270,114	2,934,155	3,361,050	967	1,380
Smoking	10,119,557	9,014,972	9,777,307	9,081,710	184,400	237,655
Snuff	3,245,867	3,175,719	3,340,061	3,213,778	1,660	756
Total	20,591,417	19,536,337	20,118,707	19,682,239	321,215	431,420

[a] All figures are subject to revision until published in the Commissioner's annual report.

1949–17–13168
T. 241

Manufactured tobacco produced and removed for consumption, by classes, during the month of June, 1949, compared with June, 1948

	Production		Removed			
			Tax-paid		Tax-free	
	June, 1949	June, 1948	June, 1949	June, 1948	June, 1949	June, 1948
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	4,000,505	3,704,049	3,724,868	3,691,869	150,336	226,496
Twist	500,947	481,163	421,498	426,609	80,179	76,986
Fine-cut chewing	250,812	256,647	251,994	258,377		
Scrap chewing	3,805,800	3,733,302	3,767,945	3,743,771	1,469	701
Smoking	9,746,957	9,251,250	9,640,896	9,124,850	186,807	159,489
Snuff	3,435,133	3,510,795	3,378,580	3,537,486	1,210	1,099
Total	21,740,154	20,937,206	21,185,781	20,782,962	420,001	464,771

1949–19–13187
T. 243

Manufactured tobacco produced and removed for consumption, by classes, during the month of July, 1949, compared with July, 1948

	Production		Removed			
			Tax-paid		Tax-free	
	July, 1949	July, 1948	July, 1949	July, 1948	July, 1949	July, 1948
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3,360,673	3,591,297	3,491,198	3,815,845	132,238	150,559
Twist	388,514	454,174	328,495	394,376	4,000	24,570
Fine-cut chewing	207,231	229,836	199,588	222,616		
Scrap chewing	2,961,287	3,116,039	3,286,459	3,127,041	1,817	497
Smoking	7,311,260	7,548,216	7,202,132	7,359,300	197,093	138,980
Snuff	2,395,732	2,949,764	2,418,030	2,942,030	1,014	357
Total	16,624,697	17,889,326	16,925,902	17,861,208	336,162	314,963

1949–21–13213
T. 245

Manufactured tobacco produced and removed for consumption, by classes, during the month of August, 1949, compared with August, 1948

	Production		Removed			
			Tax-paid		Tax-free	
	August, 1949	August, 1948	August, 1949	August, 1948	August, 1949	August, 1948
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	4,019,608	4,214,934	3,835,138	3,884,694	31,628	283,351
Twist	456,359	453,889	389,635	430,977	79,285	26,556
Fine-cut chewing	265,041	251,411	270,452	255,036		
Scrap chewing	4,098,454	3,957,930	4,028,889	3,877,502	7,978	1,510
Smoking	10,308,102	9,389,675	9,796,866	8,997,491	274,538	214,139
Snuff	3,838,167	3,342,382	3,798,008	3,271,815	2,536	1,012
Total	22,985,731	21,610,221	22,118,988	20,717,515	395,965	526,568

1949–23–13233
T. 247

Manufactured tobacco produced and removed for consumption, by classes, during the month of September, 1949, compared with September, 1948

	Production		Removed			
			Tax-paid		Tax-free	
	September, 1949	September, 1948	September, 1949	September, 1948	September, 1949	September, 1948
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3,850,000	4,157,330	3,814,998	4,129,460	135,433	155,167
Twist	470,510	486,204	387,150	439,845	85,875	81,439
Fine-cut chewing	259,260	255,471	249,891	256,981		
Scrap chewing	3,765,347	3,780,348	3,673,312	3,794,375	4,332	1,139
Smoking	10,579,289	10,665,700	10,470,020	10,524,526	211,594	185,961
Snuff	3,640,565	3,471,094	3,667,320	3,465,872	1,187	6,291
Total	22,564,971	22,816,147	22,262,691	22,611,059	438,421	429,997

1949–26–13265
T. 249

Manufactured tobacco produced and removed for consumption, by classes, during the month of October, 1949, compared with October, 1948

	Production		Removed			
			Tax-paid		Tax-free	
	October, 1949	October, 1948	October, 1949	October, 1948	October, 1949	October, 1948
	Pounds	*Pounds*	*Pounds*	*Pounds*	*Pounds*	*Pounds*
Plug	3,566,702	4,112,414	3,250,572	3,826,130	18,926	179,066
Twist	462,735	531,627	375,603	446,963	95,693	88,600
Fine-cut chewing	237,679	237,050	232,807	242,393		
Scrap chewing	3,506,759	3,924,341	3,282,596	3,914,987	2,302	430
Smoking	10,996,571	11,743,385	10,617,442	11,440,182	200,584	277,208
Snuff	3,663,847	3,450,555	3,632,438	3,433,788	2,851	863
Total	22,434,293	23,999,372	21,391,458	23,304,443	320,356	496,167

CIGARETTES [a]

1949–16–13142
T. 240

Preliminary statement of small cigarettes removed for consumption during the month of June, 1949, as compared with removals for the same month of 1948

Removals	June, 1949	June, 1948
	Number	*Number*
Tax-paid	32, 848, 798, 805	31, 268, 736, 705
Tax-free	3, 236, 117, 602	3, 249, 518, 501
Total	36, 084, 916, 407	34, 518, 255, 206

1949–18–13175
T. 242

Preliminary statement of small cigarettes produced and removed for consumption during the months January through July, 1949, compared with the same months of 1948

	Manufactured	Removed	
		Tax-paid	Tax-free
January, 1949	30, 512, 575, 974	27, 967, 149, 235	2, 207, 564, 607
January, 1948	30, 607, 938, 511	27, 273, 180, 851	2, 212, 577, 867
February, 1949	27, 578, 994, 094	25, 024, 281, 200	2, 570, 416, 470
February, 1948	27, 125, 627, 151	23, 472, 484, 851	3, 577, 822, 404
March, 1949	34, 826, 563, 727	31, 447, 908, 600	3, 168, 313, 697
March, 1948	32, 243, 811, 612	29, 252, 186, 770	3, 196, 672, 680
April, 1949	30, 695, 625, 136	27, 307, 056, 215	3, 567, 880, 110
April, 1948	34, 173, 868, 291	31, 617, 679, 245	2, 422, 121, 631
May, 1949	33, 959, 338, 559	30, 690, 544, 811	3, 172, 404, 347
May, 1948	31, 315, 477, 473	29, 091, 662, 975	2, 363, 442, 668
June, 1949	36, 112, 881, 430	32, 848, 798, 805	3, 236, 117, 602
June, 1948	34, 613, 304, 720	31, 268, 736, 705	3, 249, 518, 501
July, 1949	27, 804, 456, 353	25, 806, 412, 535	2, 154, 641, 448
July, 1948	30, 305, 750, 722	27, 204, 954, 494	3, 067, 834, 196

1949–20–13205
T. 244

Preliminary statement of small cigarettes produced and removed for consumption during the month of August, 1949, compared with the same month of 1948

	Manufactured	Removed	
		Tax-paid	Tax-free
August, 1949	38, 417, 321, 529	35, 346, 555, 084	3, 041, 178, 716
August, 1948	37, 788, 909, 676	34, 192, 166, 925	3, 546, 731, 368

[a] All figures are subject to revision until published in the Commissioner's annual report.

1949–22–13220
T. 246

Preliminary statement of small cigarettes produced and removed for consumption during the month of September, 1949, compared with the same month of 1948

	Manufactured	Removed	
		Tax-paid	Tax-free
September, 1949	34, 436, 523, 967	31, 742, 506, 231	2, 680, 305, 390
September, 1948	34, 124, 403, 925	29, 983, 146, 215	4, 103, 393, 133

1949–25–13257
T. 248

Preliminary statement of small cigarettes produced and removed for consumption during the month of October, 1949, compared with the same month of 1948

	Manufactured	Removed	
		Tax-paid	Tax-free
October, 1949	31, 963, 981, 235	29, 194, 044, 767	2, 777, 327, 633
October, 1948	34, 961, 811, 049	31, 079, 228, 801	4, 029, 914, 698

LEGISLATION

1949–15–13138

H. J. RES. 276. PUBLIC LAW 137, EIGHTY-FIRST CONGRESS
[CHAPTER 268, FIRST SESSION]

Joint Resolution Granting certain extensions of time for tax purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 403(d)(3) and 452(c) of the Revenue Act of 1942 (relating to release of certain powers of appointment in the case of the estate and gift taxes) are hereby amended by striking out "1949" wherever appearing therein and inserting in lieu thereof "1950".

SEC. 2. (a) Subsection (j) of the Renegotiation Act, as amended (U. S. C., 1946 edition, Supp. I, title 50 App., sec. 1191(j)), is hereby amended by striking out "June 30, 1949" and inserting in lieu thereof "June 30, 1950".

(b) Section 283 of title 18 of the United States Code is hereby amended by inserting after the first paragraph thereof a new paragraph as follows:

Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any such retired officer within two years next after his retirement to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status, or to allow any such retired officer to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active-duty status.

Approved June 28, 1949.

1949–19–13188

H. R. 5831. PUBLIC LAW 240, EIGHTY-FIRST CONGRESS
[CHAPTER 453, FIRST SESSION]

An Act To exempt certain volatile fruit-flavor concentrates from the tax on liquors.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subchapter E of chapter 26 of the Internal Revenue Code (miscellaneous general provisions relating to the tax on liquors) is hereby amended by adding at the end thereof the following new section:

SEC. 3182. VOLATILE FRUIT-FLAVOR CONCENTRATES.

(a) EXEMPTION.—The provisions of this chapter (other than sections 2810, 2819, and 2823 and other than sections 2827 to 2830, both inclusive) shall not be applicable with respect to the manufacture, by any process which includes evap-

orations from the mash or juice of any fruit, of any volatile fruit-flavor concentrate if—

(1) such concentrate, and the mash or juice from which it is produced, contains no more alcohol than is reasonably unavoidable in the manufacture of such concentrate; and

(2) such concentrate is rendered unfit for use as a beverage before removal from the place of manufacture; and

(3) the manufacturer thereof keeps such records, renders such reports, files such bonds, and complies with such other rules and regulations with respect to the production, removal, sale, transportation, and use of such concentrate and of the mash or juice from which such concentrate is produced, as the Commissioner, with the approval of the Secretary, may prescribe as necessary for the protection of the revenues imposed by this chapter.

(b) CONTROL AFTER TAX-FREE MANUFACTURE.—If any volatile fruit-flavor concentrate (or any fruit mash or juice from which such concentrate is produced) containing one-half of 1 per centum or more of alcohol by volume, which is manufactured free from tax under the provisions of subsection (a), is sold, transported, or used by any person in violation of the provisions of this chapter or regulations promulgated thereunder, such person and such concentrate, mash, or juice shall be subject to all provisions of this chapter pertaining to distilled spirits and wines, including those requiring the payment of tax thereon; and the person so selling, transporting, or using such concentrate, mash, or juice shall be required to pay such tax.

Approved August 17, 1949.

1949–19–13189

H. R. 5114. PUBLIC LAW 261, EIGHTY-FIRST CONGRESS
[CHAPTER 498, FIRST SESSION]

An Act To amend the Internal Revenue Code to permit the use of additional means, including stamp machines, for payment of tax on fermented malt liquors, provide for the establishment of brewery bottling house on brewery premises, 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 3150(b) of the Internal Revenue Code is amended by changing the designation of paragraph "(2)" to "(4)" and by the insertion of two new paragraphs designated "(2)" and "(3)" to read as follows:

(2) METHOD OF PAYMENT.—The tax on fermented malt liquor brewed or manufactured and sold, or removed for consumption or sale, within the United States, shall be paid by stamp, under such rules and regulations, permits, bonds, records, and returns, and with the use of such tax-stamp machines or metering or other devices and apparatus, as the Commissioner with the approval of the Secretary shall prescribe.

(3) PENALTIES.—Whoever manufactures, procures, possesses, uses or tampers with a tax-stamp machine which may be required under this section with intent to evade the internal-revenue tax imposed upon fermented malt liquors, and whoever, with intent to defraud, makes, alters, simulates, or counterfeits any stamp of the character imprinted by such stamp machine, or who procures, possesses, uses, or sells any forged, altered, counterfeited, or simulated tax stamp or any plate, die, or device intended for use in forging, altering, counterfeiting, or simulating any such stamp, or who otherwise violates the provisions of this section, or the regulations issued pursuant thereto, shall pay a penalty of $5,000 and shall be fined not more than $10,000 or be imprisoned not more than five years, or both, and any machine, device, equipment, or materials used in violation of this section shall be forfeited to the United States and after condemnation shall be destroyed. But this provision shall not exclude any other penalty or forfeiture provided by law.

SEC. 2. Section 3152 of the Internal Revenue Code is amended by striking out subsections (a) and (c) and by relettering subsections "(b)", "(d)", "(e)", "(f)", and "(g)" as "(a)", "(b)", "(c)", "(d)", and "(e)", respectively.

SEC. 3. Section 3157(a) of the Internal Revenue Code is amended to read as follows:

(a) REQUIREMENTS.—Every person who withdraws any fermented malt liquor from any hogshead, barrel, or keg upon which the proper stamp has not been affixed for the purpose of bottling the same, or who carries on or attempts to carry on the business of bottling fermented malt liquor in any brewery or other place in which fermented malt liquor is made, or upon any premises having communication with such brewery, or any warehouse, shall be liable to a fine of $500, and the property used in such bottling or business shall be liable to forfeiture: *Provided, however*, That this section shall not be construed to prevent the transfer of any unfermented, partially fermented, or fermented malt liquors from any of the vats or tanks in any brewery by way of a pipe line or other conduit to another building or place on the brewery premises for the sole purpose of bottling the same, such pipe line or conduit to be constructed and operated in such manner and with such cisterns, vats, tanks, valves, cocks, faucets, meters, and gages, or other utensils or apparatus, either in the brewery or in the bottling house, and with such changes of or additions thereto, and such locks, seals, or other fastenings, and under such rules and regulations as shall be from time to time prescribed by the Commissioner, subject to the approval of the Secretary: *Provided further*, That the tax imposed by law on fermented malt liquor shall be paid on all bottled fermented malt liquor at the time of removal for consumption or sale, in such manner as may be prescribed by regulations pursuant to section 3150(b)(2). And any violation of the rules and regulations prescribed by the Commissioner, with the approval of the Secretary, in pursuance of these provisions shall be subject to the penalties above provided by this section. Every owner, agent, or superintendent of any brewery or bottling house who removes, or connives at the removal of, any fermented malt liquor through a pipe line or conduit, with the intent to defraud the revenue, shall forfeit all the liquors made by and for him, and all the vessels, utensils, and apparatus used in making the same.

SEC. 4. Section 3158 of the Internal Revenue Code is amended to read as follows:

The brewery premises shall consist of the land and buildings described in the brewer's notice and shall be used solely for the purpose of manufacturing beer, lager beer, ale, porter, and similar fermented malt liquors, cereal beverages containing less than one-half of 1 per centum of alcohol by volume, vitamins, ice, malt, malt sirup, and other byproducts; of bottling fermented malt liquors and cereal beverages as hereinafter provided; of drying spent grain from the brewery; of recovering carbon dioxide and yeast; and of storing bottles, packages, and supplies necessary or incidental to all such manufacture: *Provided*, That undelivered tax-paid fermented malt liquor in stamped barrels or kegs returned to a brewery may be temporarily stored therein, subject to such conditions and under such regulations as the Commissioner, with the approval of the Secretary, shall prescribe. The bottling of fermented malt liquors and cereal beverages on the brewery premises shall be conducted only in the brewery bottling house which shall be located on such premises. The brewery bottling house shall be separated from the brewery in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe. The brewery bottling house shall be used solely for the purpose of bottling beer, lager beer, ale, porter, and similar fermented malt liquors, and cereal beverages containing less than one-half of 1 per centum of alcohol by volume; and for the storage of bottles, tools, and supplies necessary or incidental to the manufacture or bottling of fermented malt liquor and cereal beverages. Notwithstanding the foregoing provisions, where any such brewery premises or brewery bottling house was, on June 26, 1936, being used by any brewer for purposes other than those herein described, or the brewery bottling house was, on such date, being used for the bottling of soft drinks, the use of the brewery and bottling-house premises for such purposes may be continued by such brewer. The brewery bottling house of any brewery shall not be used for the bottling of the product of any other brewery. Any brewer who uses his brewery or bottling house contrary to the provisions of this subsection shall be fined not more than $50 with respect to each day upon which any such use occurs.

SEC. 5. Section 3159 of the Internal Revenue Code is amended by relettering subsections "(j)", "(k)", and "(l)" as "(k)", "(l)", and

"(m)" and by the insertion of a new subsection designated "(j)" to read as follows:

(j) FRAUDULENT REMOVAL OF BOTTLED FERMENTED MALT LIQUORS.—Any brewer or other person who removes or in any way aids in the removal from any brewery or brewery bottling house of any bottled fermented malt liquors on which the required tax has not been paid shall be fined $100 and imprisoned for not more than one year.

SEC. 6. Section 3151, the first sentence of the second paragraph of section 3153(a), and section 3154 of the Internal Revenue Code are repealed: *Provided*, That section 3154 shall continue in effect as to any claim accruing thereunder prior to the effective date of this Act.

SEC. 7. The amendments made by this Act shall take effect on the first day of the first month which begins six months or more after the date of the enactment of this Act.

Approved August 23, 1949.

1949–19–13177

H. R. 5086. PUBLIC LAW 271, EIGHTY-FIRST CONGRESS
[CHAPTER 517, FIRST SESSION]

An Act To accord privileges of free importation to members of the armed forces of other nations, to grant certain extensions of time for tax purposes, and to facilitate tax administration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) articles entered, or withdrawn from warehouse, for consumption in the United States, its Territories, or possessions for the official use of persons who are on duty in the United States, its Territories, or possessions as members of the armed forces of any foreign country, or for the personal use of any such person or of any member of his immediate family, shall be admitted free of all duties and internal revenue taxes imposed upon or by reason of importation (including taxes imposed by sections 3350 and 3360 of the Internal Revenue Code) and of all customs charges and exactions: *Provided*, That if the Secretary of the Treasury shall find that any such foreign country does not accord similar treatment with respect to members of the armed forces of the United States or members of their immediate families, the privileges herein granted shall, after collectors of customs have been officially advised of such finding, be accorded with respect to members of the armed forces of such foreign country, or members of their immediate families, only to the extent that similar treatment is accorded by that country with respect to members of the armed forces of the United States or members of their immediate families.

(b) The exemptions from duties, taxes, charges, and exactions provided for by this section shall be subject to compliance with such regulations as the Secretary of the Treasury shall prescribe.

(c) This section shall be effective as to articles entered for consumption or withdrawn from warehouse for consumption on or after the day following the date of enactment of this Act.

SEC. 2. EXTENSION OF TIME FOR CLAIMING REFUND WITH RESPECT TO WAR LOSSES.

The joint resolution of June 29, 1948 (Public Law 828, Eightieth Congress), is hereby amended by striking out "1949" wherever appearing therein and inserting in lieu thereof "1950".

SEC. 3. EXTENSION OF TIME IN THE CASE OF DISCHARGE OF INDEBTEDNESS.

Section 22(b)(9) and section 22(b)(10) of the Internal Revenue Code are hereby amended by striking out "1949" and inserting in lieu thereof "1950".

SEC. 4. VERIFICATION OF RETURNS.

(a) Chapter 38 of the Internal Revenue Code is hereby amended by inserting at the end thereof the following new section:

SEC. 3809. VERIFICATION OF RETURNS; PENALTIES OF PERJURY.

(a) PENALTIES.—Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(b) SIGNATURE PRESUMED CORRECT.—The fact that an individual's name is signed to a return, statement, or other document filed shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

(c) VERIFICATION IN LIEU OF OATH.—The Commissioner, under regulations prescribed by him with the approval of the Secretary, may require that any return, statement, or other document required to be filed under any provision of the internal revenue laws shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of any oath otherwise required.

(b) Sections 51(d), 145(c), and 1630 of such code are hereby repealed.

(c) The amendments made by this section shall be applicable with respect to any return, statement, or document filed after the date of the enactment of this Act.

SEC. 5. REPORTS OF COMPENSATION.

Section 148(f) of the Internal Revenue Code (relating to reports of compensation of corporate officers and employees exceeding $75,000) is hereby repealed.

SEC. 6. FAILURE TO FILE RETURN OR PAY TAX.

Section 1626(c) of the Internal Revenue Code is hereby repealed, and section 1631 of such code is hereby amended to read as follows:

SEC. 1631. FAILURE OF EMPLOYER TO FILE RETURN OR PAY TAX.

In case of a failure to make and file any return, or a failure to pay any tax, required by this chapter, or both, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, the addition to the tax shall not be less than $5.

SEC. 7. RETURNS AND PAYMENT OF EXCISE TAXES.

(a) Section 3310 of the Internal Revenue Code (relating to returns and payment of tax) is hereby amended by adding at the end thereof the following new subsection:

(f) DISCRETION ALLOWED COMMISSIONER.—

(1) RETURNS AND PAYMENT OF TAX.—Notwithstanding any other provision of law relating to the filing of returns or payment of any tax imposed by chapter 9, 9A, 10, 12, 19, 21, 30, 32, subchapter A of chapter 25, or subchapter A of chapter 29, the Commissioner may by regulations approved by the Secretary prescribe the period for which the return for such tax shall be

filed, the time for the filing of such return, the time for the payment of such tax, and the number of copies of the return required to be filed.

(2) USE OF GOVERNMENT DEPOSITARIES.—The Secretary may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed by this title, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the collector.

(b) Section 8 of the Second Liberty Bond Act, as amended (31 U. S. C., sec. 771), is hereby amended by striking out "income and excess profits taxes" and inserting in lieu thereof "internal revenue taxes".

SEC. 8. DELEGATION OF ASSESSMENT AUTHORITY.

Chapter 35 of the Internal Revenue Code is hereby amended by adding at the end thereof the following new section:

SEC. 3647. DELEGATION OF ASSESSMENT AUTHORITY.

The Commissioner, under regulations approved by the Secretary, is authorized to delegate to any officer or employee of the Bureau of Internal Revenue, including the field service, any authority, duty, or function which the Commissioner is authorized or required to exercise or perform under section 3640, 3641, or 3642.

SEC. 9. CREDIT OR REFUND OF OVERPAYMENT OF TAX.

(a) Section 3770(a) of the Internal Revenue Code is hereby amended by renumbering paragraph (5) as paragraph (6), and by amending paragraph (4) to read as follows:

(4) CREDIT OF OVERPAYMENT OF ONE CLASS OF TAX AGAINST ANOTHER CLASS OF TAX DUE.—Notwithstanding any provision of law to the contrary, the Commissioner may, in his discretion, in lieu of refunding an overpayment of tax imposed by any provision of this title, credit such overpayment against any tax due from the taxpayer under any other provision of this title.

(5) DELEGATION OF AUTHORITY TO COLLECTORS TO MAKE REFUNDS.—The Commissioner, with the approval of the Secretary, is authorized to delegate to collectors any authority, duty, or function which the Commissioner is authorized or required to exercise or perform under paragraph (1), (2), (3), or (4) of this subsection, or under section 322 or 1027, where the amount involved (exclusive of interest, penalties, additions to the tax, and additional amounts) does not exceed $10,000.

(b) Section 3772 of such Code is hereby amended by adding at the end thereof the following new subsection:

(e) CREDIT TREATED AS PAYMENT.—The credit of an overpayment of any tax in satisfaction of any tax liability shall, for the purpose of any suit for refund of such tax liability so satisfied, be deemed to be a payment in respect of such tax liability to the collector in office at the time such credit is allowed.

SEC. 10. REPORTS TO CONGRESS OF REFUNDS.

(a) Section 3776 of the Internal Revenue Code (relating to reports to Congress of refunds) is hereby repealed.

(b) Section 3777 of such Code (relating to review of refunds and credits by the Joint Committee on Internal Revenue Taxation) is hereby amended by striking out "$75,000" wherever appearing therein and inserting in lieu thereof "$200,000".

SEC. 11. COLLECTORS' SALARIES.

Section 3944(b) of the Internal Revenue Code (relating to adjustment and limit of collectors' salaries) is hereby amended to read as follows:

(b) ADJUSTMENT AND LIMIT OF SALARIES.—The salaries of collectors may be readjusted and increased under such regulations as may be prescribed by the Commissioner, subject to the approval of the Secretary, but no collector shall receive a salary in excess of the highest scheduled rate of compensation established by the Classification Act of 1923, as amended, or by any law hereafter enacted superseding such Act.

SEC. 12. EXPENSES OF DETECTION OF FRAUDS.

Section 3792 of the Internal Revenue Code is hereby amended by inserting after the words "The Commissioner," the following "under regulations prescribed by him".

Approved August 27, 1949.

1949–23–13229

H. R. 5268. PUBLIC LAW 378, EIGHTY-FIRST CONGRESS
[CHAPTER 720, FIRST SESSION]

An Act To amend certain provisions of the Internal Revenue Code

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

SECTION 1. FARMERS' RETURNS AS DECLARATIONS OF ESTIMATED TAX.

Section 60(a) of the Internal Revenue Code (relating to declaration of estimated tax by farmers) is hereby amended by striking out the period at the end thereof and inserting in lieu thereof the following: "; and if such an individual files a return on or before January 31 of the succeeding taxable year, and pays in full the amount computed on the return as payable, such return shall have the same effect as that prescribed in section 58(d)(3) in the case of a return filed on or before January 15."

SEC. 2. FOREIGN TAX CREDIT.

(a) Section 131(c) of the Internal Revenue Code (relating to adjustments on payment of accrued taxes) is hereby amended by adding at the end thereof the following new sentences: "In such redetermination by the Commissioner of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in subsection (a) imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this section, and no deduction under section 23, shall be allowed for any taxable year with respect to such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due upon any redetermination by the Commissioner, resulting from a refund to the taxpayer, for any period prior to the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period."

(b) The amendment made by subsection (a) shall be applicable with respect to taxable years beginning after December 31, 1938. If the allowance of a credit or refund of any overpayment of tax resulting from the application of the amendment made by subsection (a) is prevented on the date of the enactment of this Act, or within one year from such date, by the operation of any law or rule of law (other than

section 3761 of the Internal Revenue Code, relating to compromises), credit or refund of such overpayment may, nevertheless, be allowed or made if claim therefor is filed within one year from the date of the enactment of this Act.

SEC. 3. CHARITABLE CONTRIBUTIONS BY CORPORATIONS ON ACCRUAL BASIS.

(a) Section 23(q) of the Internal Revenue Code (relating to charitable and other contributions) is hereby amended by adding at the end thereof the following:

In the case of a corporation reporting its net income on the accrual basis, at the election of the taxpayer any contribution or gift payment of which is made after the close of the taxable year and on or before the 15th day of the third month following the close of such year shall, for the purposes of this subsection, be considered as paid during such taxable year if, during such year, the board of directors authorized such contribution or gift. Such election shall be made only at the time of the filing of the return for the taxable year, and shall be signified in such manner as the Commissioner, with the approval of the Secretary, shall by regulations prescribe.

(b) Section 102(d)(1)(B) of the Internal Revenue Code (relating to section 102 net income), section 336(a)(2) of such Code (relating to net income of foreign personal holding companies), and section 505(a)(2) of such Code (relating to net income of domestic personal holding companies) are each amended by adding at the end thereof the following new sentence: "For the purposes of the preceding sentence, payment of any contribution or gift shall be considered as made within the taxable year if and only if it is considered for the purposes of section 23(q) as made within such year.".

(c) The amendments made by this section shall be applicable with respect to taxable years beginning after December 31, 1942. If the election provided for in such amendments is made for any taxable year beginning before January 1, 1949—

(1) the election for such year may be made (in lieu of at the time of the filing of the return for such year) at any time within one year after the date of the enactment of this Act; but

(2) such election shall not be allowed unless the taxpayer, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, consents in writing to the assessment (within such period as may be agreed upon) of any deficiency, to the extent resulting from such election, for any other taxable year of the taxpayer, even though on the date of the filing of such consent such assessment is otherwise prevented by the operation of any law or rule of law.

SEC. 4. TRANSFERS OF STOCK BETWEEN CORPORATION AND NOMINEE.

(a) Section 1802(b) of the Internal Revenue Code (relating to stamp taxes on sales and transfers of stock) is hereby amended by striking out the period at the end of clause (2) and inserting in lieu thereof a semicolon, and by inserting after clause (2) the following new clause:

(3) From a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such corporation; or from such nominee to such corporation.

(b) In the case of the death before the date of the enactment of this Act of a nominee of a corporation (whether or not such nominee was registered), the tax under section 1802(b) of the Internal Revenue Code shall not be imposed upon any delivery or transfer of stock from the executor or administrator of such nominee to such corporation if such delivery or transfer is made on or before the date of the enactment of this Act or within one year after such date.

SEC. 5. EMPLOYEE ANNUITY CONTRACTS.

(a) Section 165 of the Internal Revenue Code (relating to employees' trusts) is hereby amended by adding at the end thereof the following new subsection:

(d) CERTAIN EMPLOYEES' ANNUITIES.—Notwithstanding subsection (c) or any other provision of this chapter, a contribution to a trust by an employer shall not be included in the income of the employee in the year in which the contribution is made if—

(1) such contribution is to be applied by the trustee for the purchase of annuity contracts for the benefit of such employee;

(2) such contribution is made to the trustee pursuant to a written agreement entered into prior to October 21, 1942, between the employer and the trustee, or between the employer and the employee; and

(3) under the terms of the trust agreement the employee is not entitled during his lifetime, except with the consent of the trustee, to any payments under annuity contracts purchased by the trustee other than annuity payments.

The amount so contributed by the employer shall not constitute consideration paid by the employee for such annuity contract in determining the amount of annuity payments required to be included in his gross income under section 22(b)(2); except that if the tax imposed by this chapter for any taxable year beginning before January 1, 1949, has been paid by the employee with respect to such contribution for such year, and not credited or refunded, the amount so contributed for such year shall constitute consideration paid by the employee for such annuity contract. This subsection shall have no application with respect to amounts contributed to a trust after June 1, 1949, if the trust on such date was exempt under subsection (a). For the purposes of this subsection, amounts paid by an employer for the purchase of annuity contracts which are transferred to the trustee shall be deemed to be contributions made to a trust or trustee and contributions applied by the trustee for the purchase of annuity contracts; the term "annuity contracts purchased by the trustee" shall include annuity contracts so purchased by the employer and transferred to the trustee; and the term "employee" shall include only a person who was in the employ of the employer, and was covered by the agreement referred to in paragraph (2), prior to October 21, 1942.

(b) The amendment made by subsection (a) shall be applicable to taxable years beginning after December 31, 1938.

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

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

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

made. This subsection shall apply only if, at the time such person made the aforesaid reciprocal transfer of property, a law was in effect imposing a tax upon the transfer of property by gift and a gift tax was paid with respect to such reciprocal transfer, and not credited or refunded.

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

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

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

SEC. 7. TRANSFERS TAKING EFFECT AT DEATH.

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

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

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

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

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

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

(2) TRANSFERS TAKING EFFECT AT DEATH—TRANSFERS PRIOR TO OCTOBER 8, 1949.—An interest in property of which the decedent made a transfer, on or before October 7, 1949, intended to take effect in possession or enjoyment at or after his death shall not be included in his gross estate under paragraph (1)(C) of this subsection unless the decedent has retained a reversionary interest in the property, arising by the express terms of the instrument of transfer and not by operation of law, and the value of such reversionary

interest immediately before the death of the decedent exceeds 5 per centum of the value of such property. For the purposes of this paragraph, the term "reversionary interest" includes a possibility that property transferred by the decedent (A) may return to him or his estate, or (B) may be subject to a power of disposition by him, but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Commissioner with the approval of the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate.

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

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

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

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

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

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

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

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

(c) If refund or credit of any overpayment resulting from the application of subsections (a) and (b) is prevented on the date of the enactment of this Act, or within one year from such date, by the operation of any law or rule of law (other than section 3760 of the Internal Revenue Code, relating to closing agreements, and other than section 3761 of such Code, relating to compromises), refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed within one year from the date of enactment of this Act. This subsection shall not apply with respect to a transfer of property in case the decedent retained for his life or for any period not ascertainable without reference to his death or for any period

which did not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who should possess or enjoy the property or the income therefrom.

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

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

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

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

SEC. 9. Paragraph 1798 of the Tariff Act of 1930, as amended, is hereby amended by striking out the figure "$100" in the third proviso and inserting in lieu thereof the figure "$200".

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

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

SEC. 939. CERTAIN MEMBERS OF ARMED FORCES.

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

(1) was killed in action; or

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

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

Approved October 25, 1949.

1949-24-13244

H. R. 4146. PUBLIC LAW 434, EIGHTY-FIRST CONGRESS
[CHAPTER 787, FIRST SESSION]

An Act Making appropriations for the National Security Council, the National Security Resources Board, and for military functions administered by the National Military Establishment for the fiscal year ending June 30, 1950, 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 following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1950, for the National Security Council, the National Security Resources Board, and for military functions administered by the National Military Establishment, and for other purposes, namely:

* * * * * * *

SEC. 622. (a) All negotiated contracts for procurement in excess of $1,000 entered into during the fiscal year 1950 by or on behalf of the Department of Defense (including the Department of the Army, Department of the Navy, and Department of the Air Force), and all subcontracts thereunder in excess of $1,000, are hereby made subject to the Renegotiation Act of 1948 in the same manner and to the same extent as if such contracts and subcontracts were required by such Act to contain the renegotiation article prescribed in subsection (a) of such Act. Each contract and subcontract made subject to the Renegotiation Act of 1948 by this section shall contain an article stating that it is subject to the Renegotiation Act of 1948. In determining whether the amounts received or accrued to a contractor or subcontractor during his fiscal year from contracts and subcontracts subject to the Renegotiation Act of 1948 amount in the aggregate to $100,000, receipts or accruals from contracts and subcontracts made subject to such Act by this section shall be added to receipts or accruals from all other contracts and subcontracts subject to such Act.

(b) Notwithstanding any agreement to the contrary, the profit limitation provisions of the Act of March 27, 1934 (48 Stat. 503, 505), as amended and supplemented, shall not apply to any contract or subcontract which is subject to the Renegotiation Act of 1948.

* * * * * * *

SEC. 634. This Act may be cited as the "National Military Establishment Appropriation Act, 1950".

* * * * * * *

Approved October 25, 1949.

COMMITTEE REPORTS

1949–19–13179

RECIPROCAL PRIVILEGES OF FREE IMPORTATION TO MEMBERS OF THE ARMED FORCES OF OTHER NATIONS

[Senate Report No. 685, Eighty-first Congress, First Session. Calendar No. 687]

[July 15 (legislative day, June 2), 1949]

Mr. George, from the Committee on Finance, submitted the following report (to accompany H. R. 5086):

The Committee on Finance, to whom was referred the bill (H. R. 5086) to accord privileges of free importation to members of the armed forces of other nations, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

I. House Bill

SECTION 1. RECIPROCAL PRIVILEGES OF FREE IMPORTATION TO MEMBERS OF THE ARMED FORCES OF OTHER NATIONS

The purpose of the first section of this bill is to extend to members of the armed forces of any foreign country on duty in the United States, its Territories or possessions (of whom there are now less than 600) exemption from duties and internal-revenue taxes imposed upon or by reason of the importation or withdrawal from warehouse of articles, for the official use of a member of the armed forces of a foreign country, or for the personal use of himself or any member of his immediate family. The exemption is conditioned upon reciprocal treatment being accorded to members of the armed forces of the United States (of whom there are now approximately 7,100 serving in foreign countries other than occupied territory) and members of their immediate families.

Personnel of the armed forces of the United States and members of their immediate families are in most, if not all, cases accorded exemptions by the foreign country in which they are stationed comparable to those provided in the bill, but the continuation of such privileges is jeopardized by the termination on June 30, 1948, of a wartime statute (Public Law 635, 75th Cong., 56 Stat. 462) limited to members of the armed forces of the United Nations stationed in this country.

Subsection (a) of this section would exempt from duties and internal revenue taxes imposed upon or by reason of importation or withdrawal from warehouse (including taxes imposed by secs. 3350 and 3360 of the Internal Revenue Code upon articles coming into the United States from the Virgin Islands and Puerto Rico), and from all customs charges and exactions, imported articles which are—

(1) for the official use of persons who are on duty in the United States, its Territories, or possessions as members of the armed forces of any foreign country, or

(2) for the personal use of such persons or members of their immediate families.

This subsection contains a proviso that, when the Secretary of the Treasury shall find and officially advise collectors of customs that members of the armed forces of the United States, or members of their immediate families, are not being accorded reciprocal privileges by a foreign country, the privileges granted by the United States shall thereafter be accorded to members of the armed forces of such foreign country, or to members of their immediate families, only to the extent that similar treatment is being accorded by that country to members of the armed forces of the United States or members of their immediate families.

Subsection (b) of this section provides that the exemptions from duties, taxes, charges, and exactions shall be subject to compliance with such regulations as the Secretary of the Treasury shall prescribe, and subsection (c) provides that the act shall be effective as to articles entered for consumption, or withdrawn from warehouse for consumption, on or after the day following the date of its enactment.

The Secretary of Defense included this legislation in the legislative program of the National Military Establishment. The measure has been coordinated with the Departments of the Army, Navy, and Air Force, and with the Treasury Department.

The Department of State in a communication to the Secretary of the Navy recommended that legislation of this character be sought. The Bureau of the Budget has interposed no objection to its enactment.

II. Finance Committee Amendments

Your committee has amended the bill by adding the following new sections to grant certain extensions of time for tax purposes, and to provide certain administrative amendments designed to facilitate and improve the operations of the Bureau of Internal Revenue. These amendments do not provide for general tax revision since they do not change tax liability. The amendments have the approval of the Treasury Department and staff of the Joint Committee on Internal Revenue Taxation. The Treasury Department is particularly anxious that the administrative amendments be enacted as soon as possible.

SECTION 2. EXTENSION OF TIME FOR CLAIMING REFUND WITH RESPECT TO WAR LOSSES

This section extends to December 31, 1950, the time for filing claims for credit or refund with respect to war losses sustained in taxable years beginning in 1941 and 1942. A similar extension, provided last year, expires December 31, 1949. The treatment of war-loss recoveries has been under study for several years and may require legislation. Until the treatment of recoveries is finally determined upon, the proposed extension for the taking of deductions seems appropriate.

SECTION 3. EXTENSION OF TIME IN THE CASE OF DISCHARGE OF INDEBTEDNESS

This section extends for 1 year the application of sections 22(b) (9) and (10) of the Internal Revenue Code, which permit a corporation to exclude from income amounts attributable to discharge of indebtedness. The application of these two subsections was in 1947 extended to December 31, 1949, because it was considered that the whole problem of the tax treatment of income realized from the cancellation of indebtedness should be studied in connection with a general tax revenue bill.

SECTION 4. VERIFICATION OF RETURNS

This section gives the Commissioner authority to eliminate the oath in the case of corporate, fiduciary, partnership, estate, and gift-tax returns, and other returns or statements. The present law eliminates the oath in the case of individual income-tax returns and employment-tax returns. These changes will not only relieve the taxpayers of the burden of notarizing their returns but will expedite the processing by the Bureau of returns which might otherwise have to be sent back for compliance with the oath requirement.

SECTION 5. REPORTS OF COMPENSATION

This section would repeal section 148(f) of the Internal Revenue Code. Under section 148(f) the Commissioner is required to prepare an annual list, to be made available to the public, of compensation paid by corporations to all individuals whose compensation exceeds $75,000. The list for 1946 included names of 964 individuals. The statutory requirement for the compilation of the annual list involves the examination of over 600,000 corporate returns, and represents an administrative burden which does not seem commensurate with the value of the information obtained. Much of this information is already available to the public through reports required to be filed with the Securities and Exchange Commission. Information with respect to salaries of corporate officers is required to be shown on corporate returns and is available to congressional committees under section 55(d) of the Code.

SECTION 6. FAILURE TO FILE RETURN OR PAY TAX

At present, in the event of failure to file return or pay over the income tax withheld at source, section 1626(c) provides that the addition to the tax shall not be less than $10. There is no comparable provision with respect to the Social Security taxes and the Railroad Retirement tax. The Bureau of Internal

Revenue is planning to combine administratively the income-tax withholding return with the return under the Federal Insurance Contributions Act. This combined form will result in some additional convenience for the employers and less expense for the Government. When these returns are combined, it is desirable to have a uniform minimum addition for each of the two classes of tax.

However, the present $10 minimum addition in respect to withholding appears to be high in relation to the many small amounts of tax, particularly under the Federal Insurance Contributions Act. Therefore, this minimum should be reduced to $5 for withholding and should be adopted also as minimum for the other employment taxes. The provision has considerable advantage in that it compensates to some extent the expense of the deputy collector in going out and obtaining the return form.

Accordingly, this section would provide a minimum addition to the tax of $5 for each employment tax (including the income tax withheld on wages).

SECTION 7. RETURNS AND PAYMENTS OF EXCISE TAXES

Many of the excise taxes are specifically required by statute to be returned on a monthly basis. The filing of the returns at less frequent intervals would reduce the administrative work in the collector's offices and ease the taxpayer's burden of compliance. With respect to certain excises, such as the admissions tax, the Commissioner has the authority to determine the period for which tax returns should be made. This section would give to the Commissioner similar authority with respect to those excises as to which monthly returns are now required by statute. This would permit the shifting from a monthly to, for example, a quarterly return basis for a particular excise tax.

In order to assure current collection of these excise taxes and in the interest of efficiency and protection of the revenue, the amendment would also authorize the Commissioner to require the use of Government depositaries as he may now do in connection with the payment of employment taxes.

SECTION 8. DELEGATION OF ASSESSMENT AUTHORITY

This section of the bill would grant to the Commissioner the authority to delegate to any officer or employee of the Bureau of Internal Revenue, including the field service, the power under sections 3640, 3641, and 3642 of the Internal Revenue Code relating to the making of assessments. This would permit assessment lists to be signed in the field by duly authorized officers and thus eliminate the administrative burdens and delays incident to the processing of all assessment schedules in Washington. The bulk of the work is handled in the field, and the proposed delegation to officers in the field would be consistent with the decentralized tax administration now in effect.

SECTION 9. CREDIT OR REFUND OF OVERPAYMENT OF TAX

This section would add to the Internal Revenue Code a provision authorizing the Commissioner of Internal Revenue to credit the overpayment of one class of tax against taxes of other classes then due. Such crediting is not now possible under the Code. By recognizing the over-all tax liability of taxpayers, the amendment will facilitate the collection of taxes and expedite the adjustment of cases involving overpayments and underpayments of tax. This section would also amend section 3772 to provide that the credit of an overpayment of any tax shall for the purpose of any suit for refund be deemed to be a payment of tax to the collector in office at the time the credit is allowed.

It would also amend section 3770(a)(4) of the Internal Revenue Code to facilitate the making of abatements, credits, and refunds by raising the present limitation of $1,000 to $10,000 on the amount of abatements, credits, and refunds of internal revenue taxes which may be made by collectors, when so authorized by the Commissioner. Section 3770(a)(4) was added by section 4(c) of the current Tax Payment Act of 1943 when a large increase in the number of income-tax refunds was anticipated. The experience of the Bureau under this section in the making of credits and refunds in the field in income tax cases involving less than $1,000 has been satisfactory. It would appear to be in the interest of administrative efficiency, without adversely affecting the revenue, to raise the limitation from $1,000 to $10,000.

SECTION 10. REPORTS TO CONGRESS OF REFUNDS

Section 3776 of the Internal Revenue Code requires the Commissioner to make report to Congress, at the beginning of each regular session, by internal-revenue districts and alphabetically arranged, of all refunds in excess of $500. The preparation of the report imposes a considerable administrative burden which

would be eliminated by repealing this provision, as provided by this section. During the fiscal year 1948 there were some 180,000 refunds in excess of $500, the listing of which required the examination of some 30,000,000 returns.

Under present law (sec. 3777 of the Internal Revenue Code) the Commissioner of Internal Revenue is prohibited from making any refund or credit of income, estate, or gift taxes in excess of $75,000 until 30 days after a report on such refund or credit is made to the Joint Committee on Internal Revenue Taxation. This requires the Commissioner to prepare a special report on each such case and imposes upon the joint committee the responsibility of examining each of these refunds and credits. This procedure involving reviews at various levels necessarily occasions considerable delay in the closing of cases and results in unnecessary and excessive interest charges. Such additional review and delay is not warranted in the smaller refund cases. Accordingly, the amendment raises the report requirement from $75,000 to $200,000. This would eliminate considerable work in the Bureau of Internal Revenue and would allow the staff of the joint committee more time to concentrate on the large refunds.

SECTION 11. COLLECTORS' SALARIES

Section 3944(b) of the Internal Revenue Code imposes a limitation of $7,500 on salaries of collectors of internal revenue. The position of Collector of Internal Revenue was administratively classified as grade CAF–14 under section 13 of the Classification Act of 1923, which places a maximum limitation of $7,500 on salaries within the grade "unless a higher rate is specifically authorized by law." Collectors are now receiving the pay increases provided by section 405, Federal Employees Pay Act of 1945, and section 2(a), Federal Employees Pay Act of 1946. However, the $7,500 limitation contained in section 3944(b) prevents the position of collector from being reallocated beyond grade CAF–14.

Accordingly, the amendment would eliminate the $7,500 limitation so as to permit collectors of internal revenue to be given compensation commensurate with the salaries paid other officers in the classified service such as, for example, internal revenue agents in charge, special agents in charge, technical staff heads, and division counsel.

SECTION 12. EXPENSES OF DETECTION OF FRAUDS

Under section 3792 of the Internal Revenue Code the granting of each informer's reward must be approved by the Secretary of the Treasury. To permit a simplification of administrative procedures, this section would amend section 3792 of the Code to substitute for the requirement of approval of each reward by the Secretary a rule that such rewards are to be made by the Commissioner of Internal Revenue under regulations approved by the Secretary.

1949–23–13230

AMENDING CERTAIN PROVISIONS OF THE INTERNAL REVENUE CODE

[House of Representatives Report No. 920, Eighty-first Congress, First Session]

[June 27, 1949]

Mr. Camp, from the Committee on Ways and Means, submitted the following report [to accompany H. R. 5268]:

The Committee on Ways and Means, to whom was referred the bill (H. R. 5268) to amend certain provisions of the Internal Revenue Code, having had the same under consideration, report favorably thereon and recommend that the bill do pass.

I. GENERAL STATEMENT

H. R. 5268 contains six provisions which, in the opinion of your committee, remove certain inequalities or hardships in the present Federal tax laws. Five of the six were in the tax-revision bill (H. R. 6712) passed by the House in the second session of the Eightieth Congress. The remaining provision (sec. 4) has been called to the attention of your committee since that time.

II. DETAILED DISCUSSION OF THE BILL

1. Farmers' returns.—Present law does not require farmers to file a declaration of estimated tax under the current tax-payment system until January 15 of the

year following the year in which the liability is incurred. The reason for this is that their income is more uncertain and subject to greater fluctuation than the income of most other taxpayers, and thus more difficult to estimate before the close of the taxable year. Also, since many farmers realize relatively little income before the latter part of the year, it would be a real financial hardship to them to require the advance payment of part of their tax in the forepart of the year.

Since the January 15 date is relatively close to the March 15 date, when final returns must be filed, many farmers have preferred to file their final returns by January 15 in lieu of making a separate declaration of estimated tax. Because farmers often insist on filing final returns, or precise estimates, by January 15, the accountants, lawyers, and other tax advisers in the towns and smaller cities who customarily aid farmers in making out their returns have been deluged with work during the first 15 days of January.

In an effort to relieve this situation, section 1 of the bill amends section 60(a) of the Internal Revenue Code to provide that if a farmer on a calendar-year basis files his income-tax return on or before January 31 following the close of the year, and pays in full the amount computed on the return as payable, such return and payment shall also be considered as the declaration and payment of estimated tax now required to be made on or before January 15. The present right of farmers to file a declaration of estimated tax by January 15 and a final return by March 15 is unchanged. Under present law, farmers also have the alternative of filing a final return by January 15, which return is also considered as the necessary declaration of estimated tax. The bill liberalizes this alternative by extending this final filing date to January 31. Comparable treatment is also accorded farmers making returns on a fiscal-year basis.

2. Adjustment to foreign tax credit in case of refund of foreign taxes.

Section 2 of the bill amends section 131 of the Internal Revenue Code relating to credits for taxes of foreign countries and possessions of the United States. Section 131 provides, subject to limitations, that there shall be credited against United States income tax the amount of any income and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States. Section 131 further provides that, if any foreign tax paid is refunded, the amount of the United States tax for the year or years affected shall be redetermined, with an adjustment in the credit to reflect the amount of the foreign tax refunded. This results in a deficiency in the United States tax payable by the taxpayer.

In some countries, however, a tax refund may itself (for reasons peculiar to the tax structure of the particular country) be subject to a tax for the year in which the refund is made. For example, assume a taxpayer has received credit against the United States tax in the year 1945 for $1,000, the income tax paid to a foreign country. In 1947 the foreign country allows a refund of the $1,000 tax paid in 1945, but imposes for the year 1947 a $300 tax on the amount of the refund. It is not clear under section 131 whether the United States foreign tax credit for 1945 should be reduced by the gross amount of the refund ($1,000) or by the net amount ($700). Section 2 of the bill clarifies the problem by providing, in adjusting the foreign tax credit, that only the net amount be considered as having been refunded.

Section 2 of this bill accordingly provides that, in this redetermination of the amount due to the United States from the taxpayer for the year or years affected by a refund, the amount of taxes refunded (for which credit has been allowed) shall be reduced by the amount of any tax imposed by the foreign country or possession on such refund. However, no foreign tax credit and no deduction for any taxable year shall be allowed with respect to the tax imposed on the refund by the foreign country or possession. This is done to prevent the double allowance of the tax paid the foreign country on the refund, since, under this provision the credit is in effect allowed for the earlier year.

Your committee's attention has also been directed to the fact that some foreign countries either do not pay interest on refunds of income and excess-profits taxes or their interest rates are lower than the rate of interest on a deficiency determined under United States law. When a refund is made by a foreign country with respect to a tax for which credit has been allowed under section 131 of the Code, interest must be paid on the resulting deficiency in United States tax. This may result in the taxpayer paying more interest to the United States with respect to the deficiency than he has received from the foreign country on the refund which gave rise to the deficiency. Your committee believes that it is only equitable to limit the amount of interest due on a deficiency resulting from such refund.

Accordingly, section 131 has been amended to provide that no interest shall be collected for any period prior to the receipt of the refund except to the extent interest for such period was paid by the foreign country or possession on the amount of such refund.

Section 2 also provides that both of these amendments shall be applicable to taxable years beginning after December 31, 1938, and if the application of these amendments results in a refund to the taxpayer such refund shall be made irrespective of any provision or rule of law if a claim for refund is filed within the period prescribed by section 322 of the Code or within 1 year from the enactment of the bill, whichever is later.

3. Deduction of charitable contributions by corporations.

Section 3 of the bill amends section 23(q) of the Internal Revenue Code, which allows (subject to the 5 percent of net income limitation) a deduction for charitable, etc., contributions paid by corporations. Section 23(q) of the Code now allows this deduction only where payment is actually made within the taxable year.

The amendment liberalizes the rule respecting time for payment by adding a rule that any such contribution will, in the case of a corporation on the accrual basis, and at the election of the taxpayer, made at the time the return is filed, be considered as paid during the taxable year if payment is actually made on or before the fifteenth day of the third month following the close of the taxable year, and if the contribution has during the taxable year been authorized by the board of directors.

Your committee believes this amendment is desirable because corporations intending to make the maximum charitable contributions allowable as deductions have experienced difficulty in determining before the end of the taxable year what constitutes 5 percent of their net income.

Section 3 also amends section 102(d)(1)(B) of the Code (relating to section 102 net income); section 336(a)(2) (relating to net income of foreign personal holding companies); and section 505(a)(2) (relating to net income of domestic personal holding companies), so as to integrate provisions of these sections relating to charitable contributions with the amendment to section 23(q).

The amendments made by this section are applicable with respect to taxable years beginning after December 31, 1942. In the case of any taxable year beginning before January 1, 1949, the election for such year may be made (in lieu of at the time of the filing of the return for such year) at any time within 1 year after the date of the enactment of this bill, but not unless the taxpayer consents in writing to the assessment of any resulting deficiency for any other taxable year.

4. Exemption from stock transfer taxes.

Section 4 of the bill amends section 1802(b) of the Internal Revenue Code (relating to stamp taxes on transfers of stock) to exempt from tax transfers from a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, provided the shares of certificates are held by the nominee for the same purpose for which they would be held if retained by the corporation. Transfers by the nominee back to the corporation are also exempted from tax.

The provision is considered desirable because, although the transfers described above represent changes in legal title, they do not represent a real change of interest. Corporations frequently find it convenient to make use of nominees in order to facilitate stock transfers. The use of nominees makes it unnecessary to obtain the vote of the board of directors before making a sale or transfer of stock. This method of achieving flexibility in handling investments is believed to be desirable since no real change in interest occurs.

Section 4 also provides that in the case of the death before the date of the enactment of this bill of a nominee of a corporation, no tax shall be imposed upon any transfer of stock from his executor or administrator to the corporation, if such transfer is made on or before the date of the enactment of this bill or within 1 year after such date.

5. Contributions to certain trusteed plans providing employee annuities.

Section 5 of this bill adds a new subsection (d) to section 165 of the Internal Revenue Code to provide that contributions to certain employee annuity trusts by employers shall not be included in the income of the employees in the year in which the contributions were made, despite the fact that such trusts are not qualified under section 165(a). The application of the provision is limited to trust agreements entered into prior to October 21, 1942, the effective date of the

Revenue Act of 1942, which specified the present qualifications for employees' trusts under which contributions by employers are not taxable to employees as income in the year in which acquired by the trust. The application of the provision is further limited to trusts under which (1) the contributions are to be applied by the trustee for the purchase of annuity contracts for the benefit of employees, and (2) the employee, except with the consent of the trustee, is not entitled to any payments under the annuity contracts except annuity payments. Thus, under this provision, the employees are given essentially the same treatment as those covered by plans qualifying under section 165(a). Your committee believes this is desirable, since these contributions are not currently available, without the consent of the trustee, to the employee (making it necessary for him to look to other sources for funds to pay the tax on the employer's contribution), and since the employee might not have been on notice at the time of entering into such a contract that employer contributions under the plan would represent income currently taxable to him.

This section of the bill also contemplates that the employer's contributions to such a trust will be taxable to the employee, when received in later years, as an annuity (pursuant to section 22(b)(2) of the Code). To this end it is provided that the amount contributed to such a trust by an employer shall not constitute consideration paid by the employee for such annuity contract in determining the amount of annuity payments required to be included in his gross income under section 22(b)(2). An exception to this rule will be applicable in cases where income tax for any taxable year beginning before January 1, 1949, has been paid by the employee with respect to a contribution made by the employer for such year and such tax is not credited or refunded to the employee. In such event, the amount contributed by the employer for such year shall constitute consideration paid by the employee for such annuity contract in determining the employee's tax liability under section 22(b)(2).

The amendments are applicable to taxable years beginning after December 31, 1938, but have no application with respect to amounts contributed to a trust after June 1, 1949, if the trust on that date was exempt under section 165(a) of the Code. This latter provision is to prevent employers who have plans which have been amended to meet the requirements of section 165(a) from removing the amendments and permitting the plans to revert to their former status.

6. Reciprocal trusts.

Prior to 1940 certain reciprocal trusts were established with the apparent intent of minimizing estate taxes by what were then considered effective means. For example, an individual might establish a trust providing that the corpus of the trust would be payable to his children upon his death. Under the general plan followed, certain rights in the trust were also given to his wife. These rights might consist of a general power to invade the corpus, to change the beneficiaries or to change the amount which they would receive. At the same time or a short time after the husband set up the trust, his wife would also establish a trust with assets of a similar amount, vesting in him powers equivalent to those he had vested in her. By this reciprocal device it was thought that two persons could transfer property to their heirs without diminishing effective control during life but still paying the gift tax rather than the estate tax.

The acceptance by the Treasury, prior to 1939, of the gift taxes paid (and, it is claimed, the assertion of occasional deficiencies) caused some taxpayers to believe this was a legitimate device.

In 1940 in the Lehman case, however, the Circuit Court of Appeals for the Second Circuit held that where trusts are found to have been created each in consideration of the other, the nominal grantors are to be interchanged for tax purposes. Thus, in the type of case discussed above, the husband would be considered the grantor of the trust created by the wife, and vice versa. This means that the husband is considered to have reserved powers in the trust nominally set up by his wife. This, under present law, is sufficient to require inclusion of the entire trust corpus in his gross estate upon his death.

The court decisions in 1940 and subsequent years put taxpayers on notice as to the probable tax consequences of reciprocal trusts in the future. However, the situation is different with respect to trusts created before 1940, the year of the Lehman decision. If taxpayers release their powers, they become subject to the gift tax, although one gift tax may already have been paid. If they retain the powers, the trust property will be included in the gross estate upon their death, even though a gift tax may have been paid.

Section 6 of this bill removes hardship by extending relief to persons who created reciprocal trusts, vesting powers in each other, before January 1, 1940. It provides that the relinquishment of such a power on or before December 31, 1950, will (1) not be subject to the gift tax, and (2) not be considered, for the purpose of the estate tax, as having been made in contemplation of death. However, the relief provided from the estate tax would apply only if the person who relinquished the power died after December 31, 1939. Section 6 also provides that, if either grantor relinquishes his power, the other reciprocal trust created by him must, for all gift tax purposes, be treated as a completed gift when made.

Section 6 does not apply, however, to a relinquishment by a person who made his reciprocal transfer while a gift tax law was in effect unless (1) gift tax was paid upon such reciprocal transfer and not credited or refunded, or (2) a timely gift tax return was made by such person on account of such reciprocal transfer but no gift tax was paid upon such transfer because of deductions and exclusions claimed on the return. It also does not apply to the assignment of a life estate or other interest (as distinguished from the relinquishment of a power) which has been created in a reciprocal trust.

1949–23–13231

AMENDING CERTAIN PROVISIONS OF THE INTERNAL REVENUE CODE

[Senate Report No. 831, Eighty-first Congress, First Session. Calendar No. 838]

[August 3 (legislative day, June 2), 1949]

Mr. George, from the Committee on Finance, submitted the following report [to accompany H. R. 5268]:

The Committee on Finance, to whom was referred the bill (H. R. 5268) amending certain provisions of the Internal Revenue Code, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

I. GENERAL STATEMENT

H. R. 5268 contains nine provisions which in the opinion of your committee, remove certain inequities or hardships in the present Federal tax laws. Six of the nine (all but sections 4, 7, and 9) were in the revenue revision bill (H. R. 6712) passed by the House but not considered by your committee in the second session of the Eightieth Congress. Your committee added the last three sections of the bill and amended sections 5 and 6. The remaining sections are the same as they were in the bill as it passed in the House.

II. DETAILED DISCUSSION OF THE BILL

1. Farmers' returns.

Present law does not require farmers to file a declaration of estimated tax under the current tax-payment system until January 15 of the year following the year in which the liability is incurred. The reason for this is that their income is more uncertain and subject to greater fluctuation than the income of most other taxpayers, and thus more difficult to estimate before the close of the taxable year. Also, since many farmers realize relatively little income before the latter part of the year, it would be a real financial hardship to them to require the advance payment of part of their tax in the forepart of the year.

Since the January 15 date is relatively close to the March 15 date, when final returns must be filed, many farmers have preferred to file their final returns by January 15 in lieu of making a separate declaration of estimated tax. Because farmers often insist on filing final returns, or precise estimates, by January 15, the accountants, lawyers, and other tax advisers in the towns and smaller cities who customarily aid farmers in making out their returns have been deluged with work during the first 15 days of January.

In an effort to relieve this situation, section 1 of the bill amends section 60(a) of the Internal Revenue Code to provide that if a farmer on a calendar-year basis files his income-tax return on or before January 31 following the close of the year, and pays in full the amount computed on the return as payable, such return and payment shall also be considered as the declaration and payment of estimated tax now required to be made on or before January 15. The present

right of farmers to file a declaration of estimated tax by January 15 and a final return by March 15 is unchanged. Under present law, farmers also have the alternative of filing a final return by January 15, which return is also considered as the necessary declaration of estimated tax. The bill liberalizes this alternative by extending this final filing date to January 31. Comparable treatment is also accorded farmers making returns on a fiscal-year basis.

2. Adjustment to foreign tax credit in case of refund of foreign taxes.

Section 2 of the bill amends section 131 of the Internal Revenue Code relating to credits for taxes of foreign countries and possessions of the United States. Section 131 provides, subject to limitations, that there shall be credited against United States income tax the amount of any income and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States. Section 131 further provides that, if any foreign tax paid is refunded, the amount of the United States tax for the year or years affected shall be redetermined, with an adjustment in the credit to reflect the amount of the foreign tax refunded. This results in a deficiency in the United States tax payable by the taxpayer.

In some countries, however, a tax refund may itself (for reasons peculiar to the tax structure of the particular country) be subject to a tax for the year in which the refund is made. For example, assume a taxpayer has received credit against the United States tax in the year 1945 for $1,000, the income tax paid to a foreign country. In 1947 the foreign country allows a refund of the $1,000 tax paid in 1945, but imposes for the year 1947 a $300 tax on the amount of the refund. It is not clear under section 131 whether the United States foreign tax credit for 1945 should be reduced by the gross amount of the refund ($1,000) or by the net amount ($700). Section 2 of the bill clarifies the problem by providing, in adjusting the foreign tax credit, that only the net amount be considered as having been refunded.

Section 2 of this bill accordingly provides that, in this redetermination of the amount due to the United States from the taxpayer for the year or years affected by a refund, the amount of taxes refunded (for which credit has been allowed) shall be reduced by the amount of any tax imposed by the foreign country or possession on such refund. However, no foreign tax credit and no deduction for any taxable year shall be allowed with respect to the tax imposed on the refund by the foreign country or possession. This is done to prevent the double allowance of the tax paid the foreign country on the refund, since, under this provision the credit is in effect allowed for the earlier year.

Your committee's attention has also been directed to the fact that some foreign countries either do not pay interest on refunds of income and excess profits taxes or their interest rates are lower than the rate of interest on a deficiency determined under United States law. When a refund is made by a foreign country with respect to a tax for which credit has been allowed under section 131 of the Code, interest must be paid on the resulting deficiency in United States tax. This may result in the taxpayer paying more interest to the United States with respect to the deficiency than he has received from the foreign country on the refund which gave rise to the deficiency. Your committee believes that it is only equitable to limit the amount of interest due on a deficiency resulting from such refund. Accordingly, section 131 has been amended to provide that no interest shall be collected for any period prior to the receipt of the refund except to the extent interest for such period was paid by the foreign country or possession on the amount of such refund.

Section 2 also provides that both of these amendments shall be applicable to taxable years beginning after December 31, 1938, and if the application of these amendments results in a refund to the taxpayer such refund shall be made irrespective of any provision or rule of law if a claim for refund is filed within the period prescribed by section 322 of the Code or within 1 year from the enactment of the bill, whichever is later.

3. Deduction of charitable contributions by corporations.

Section 3 of the bill amends section 23(q) of the Internal Revenue Code, which allows (subject to the 5 percent of net income limitation) a deduction for charitable, etc., contributions paid by corporations. Section 23(q) of the Code now allows this deduction only where payment is actually made within the taxable year.

The amendment liberalizes the rule respecting time for payment by adding a rule that any such contribution will, in the case of a corporation on the accrual basis, and at the election of the taxpayer, made at the time the return

is filed, be considered as paid during the taxable year if payment is actually made on or before the fifteenth day of the third month following the close of the taxable year, and if the contribution has during the taxable year been authorized by the board of directors.

Your committee believes this amendment is desirable because corporations intending to make the maximum charitable contributions allowable as deductions have experienced difficulty in determining before the end of the taxable year what constitutes 5 percent of their net income.

Section 3 also amends section 102(d)(1)(B) of the Code (relating to section 102 net income); section 336(a)(2) (relating to net income of foreign personal holding companies); and section 505(a)(2) (relating to net income of domestic personal holding companies), so as to integrate provisions of these sections relating to charitable contributions with the amendment to section 23(q).

The amendments made by this section are applicable with respect to taxable years beginning after December 31, 1942. In the case of any taxable year beginning before January 1, 1949, the election for such year may be made (in lieu of at the time of the filing of the return for such year) at any time within 1 year after the date of the enactment of this bill, but not unless the taxpayer consents in writing to the assessment of any resulting deficiency for any other taxable year.

4. Exemption from stock transfer taxes.

Section 4 of the bill amends section 1802(b) of the Internal Revenue Code (relating to stamp taxes on transfers of stock) to exempt from tax transfers from a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, provided the shares or certificates are held by the nominee for the same purpose for which they would be held if retained by the corporation. Transfers by the nominee back to the corporation are also exempted from tax.

The provision is considered desirable because, although the transfers described above represent changes in legal title, they do not represent a real change of interest. Corporations frequently find it convenient to make use of nominees in order to facilitate stock transfers. The use of nominees makes it unnecessary to obtain the vote of the board of directors before making a sale or transfer of stock. This method of achieving flexibility in handling investments is believed to be desirable since no real change in interest occurs.

Section 4 also provides that in the case of the death before the date of the enactment of this bill of a nominee of a corporation, no tax shall be imposed upon any transfer of stock from his executor or administrator to the corporation, if such transfer is made on or before the date of the enactment of this bill or within 1 year after such date.

5. Contributions to certain trusteed plans providing employee annuities.

Section 5 of this bill as passed by the House adds a new subsection (d) to section 165 of the Internal Revenue Code to provide that contributions to certain employee annuity trusts by employers shall not be included in the income of the employees in the year in which the contributions were made, despite the fact that such trusts are not qualified under section 165(a). The application of the provision is limited to trust agreements entered into prior to October 21, 1942, the effective date of the Revenue Act of 1942, which specified the present qualifications for employees' trusts under which contributions by employers are not taxable to employees as income in the year in which acquired by the trust. The application of the provision is further limited to trusts under which (1) the contributions are to be applied by the trustee for the purchase of annuity contracts for the benefit of employees, and (2) the employee, except with the consent of the trustee, is not entitled to any payments under the annuity contracts except annuity payments. Thus, under this provision, the employees are given essentially the same treatment as those covered by plans qualifying under section 165(a). Your committee believes this is desirable, since these contributions are not currently available, without the consent of the trustee, to the employee (making it necessary for him to look to other sources for funds to pay the tax on the employer's contribution), and since the employee might not have been on notice at the time of entering into such a contract that employer contributions under the plan would represent income currently taxable to him.

As indicated above this section as passed by the House would have postponed the taxing to employees of contributions by employers for annuity contracts (under the conditions specified) only where the employer made the contributions to the trust, and the trustee purchased the annuity contracts for the benefit of the

employees. Your committee has amended this section of the bill to extend similar treatment to amounts which the employer himself used to purchase the annuity contracts subsequently transferred to the trust. Your committee believes that there is no significant difference between these two types of cases and proposes, therefore, that the prospective annuitants in these cases be given the same tax treatment. The section was also amended to require that the employee be in the employ of the employer and covered by an agreement prior to October 21, 1942. Otherwise it would be possible to bring under this provision employees who were on notice at the time of entering into such a contract (after the passage of the Revenue Act of 1942) that employer contributions under the plan would represent income currently taxable to them. The Ways and Means Committee report indicated that this was not the intent of the House. Since your committee agrees that this is one of the principal reasons for proposing this provision, it has amended this section to limit the application of this provision as outlined above.

This section of the bill also contemplates that the employer's contributions to such a trust, or for the purchase of annuity contracts turned over to the trust, will be taxable to the employee, when received in later years, as an annuity (pursuant to section 22(b)(2) of the Code). To this end it is provided that the amount so contributed by an employer shall not constitute consideration paid by the employee for such annuity contract in determining the amount of annuity payments required to be included in his gross income under section 22(b)(2). An exception to this rule will be applicable in cases where income tax for any taxable year beginning before January 1, 1949, has been paid by the employee with respect to a contribution made by the employer for such year and such tax is not credited or refunded to the employee. In such event, the amount contributed by the employer for such year shall constitute consideration paid by the employee for such annuity contract in determining the employee's tax liability under section 22(b)(2).

The provisions of this section are applicable to taxable years beginning after December 31, 1938, but have no application with respect to amounts contributed to a trust after June 1, 1949, if the trust on that date was exempt under section 165(a) of the Code. This latter provision is to prevent employers who have plans which have been amended to meet the requirements of section 165(a) from removing the amendments and permitting the plans to revert to their former status. In the case of employer-purchased annuity contracts which are transferred to the trustee, the time of the purchase of the annuity contract, rather than the time of transfer to the trustee, will govern the determination of whether or not the contribution was made to the trust before or after June 1, 1949.

6. Reciprocal trusts.

Prior to 1940 certain reciprocal trusts were established with the apparent intent of minimizing estate taxes by what were then considered effective means. For example, an individual might establish a trust providing that the corpus of the trust would be payable to his children upon his death. Under the general plan followed, certain rights in the trust were also given to his wife. These rights might consist of a general power to invade the corpus, to change the beneficiaries or to change the amount which they would receive. At the same time or a short time after the husband set up the trust, his wife would also establish a trust with assets of a similar amount, vesting in him powers equivalent to those he had vested in her. By this reciprocal device it was thought that two persons could transfer property to their heirs without diminishing effective control during life but still paying the gift tax rather than the estate tax.

The acceptance by the Treasury, prior to 1939, of the gift taxes paid (and, it is claimed, the assertion of occasional deficiencies) caused some taxpayers to believe this was a legitimate device.

However, in 1940 in *Lehman* v. *Commissioner*, 109 Fed. (2d) 99, the Circuit Court of Appeals for the Second Circuit held that where trusts are found to have been created each in consideration of the other, the nominal grantors are to be interchanged for tax purposes. Thus, in the type of case discussed above, the husband would be considered the grantor of the trust created by the wife, and vice versa. This means that the husband is considered to have reserved powers in the trust nominally set up by his wife. This, under present law, is sufficient to require inclusion of the entire trust corpus in his gross estate upon his death.

The court decisions in 1940 and subsequent years put taxpayers on notice as to the probable tax consequences of reciprocal trusts in the future. However,

the situation is different with respect to trusts created before 1940, the year of the Lehman decision. If taxpayers release their powers, they become subject to the gift tax, although one gift tax may already have been paid. If they retain the powers, the trust property will be included in the gross estate upon their death, even though a gift tax may have been paid.

Section 6 of this bill removes hardship by extending relief to persons who created reciprocal trusts, vesting powers in each other, before January 1, 1940. This section amends section 1000 of the Internal Revenue Code and corresponding provisions of prior law to provide that the relinquishment of such a power on or before December 31, 1950, will not be subject to the gift tax. This section also provides that such a relinquishment is not to be considered, for the purpose of the estate tax, as having been made in contemplation of death, but only if the person who made the relinquishment died after February 10, 1939. This last date was substituted for December 31, 1939, to coincide with the date of the enactment of the Internal Revenue Code. If either grantor relinquishes his power, the other reciprocal trust created by him must, for all gift-tax purposes, be treated as a completed gift when made.

This section does not apply, however, to the assignment of a life estate or other interest (as distinguished from the relinquishment of a power) which has been created in a reciprocal trust.

This section as amended by your committee applies only to a relinquishment by a person who made a reciprocal transfer upon which gift tax was paid and not credited or refunded. This section as passed by the House also applied where the reciprocal transfer was made (1) while no gift-tax law was in effect, or (2) while a gift-tax law was in effect but no gift tax was paid because of deductions and exclusions claimed on the return. Your committee has limited the scope of the provisions to cases where a prior gift tax was paid, since only in such cases would there be a double gift tax under present law as the result of the relinquishment of the trust powers.

7. Transfers prior to March 4, 1931, with life estate retained.

Section 7, which your committee has added to the House bill, amends section 811(c) of the Internal Revenue Code (relating to the estate tax treatment of transfers in contemplation of, or intended to take effect in possession or enjoyment at or after, the decedent's death) to provide that property transferred before March 4, 1931, shall not be included in the transferor's gross estate by reason of the fact that he retained an estate for his life in the transferred property.

This amendment is made necessary by the recent decision of the Supreme Court, by a divided Court, in the case of *Commissioner* v. *Church* (335 U. S. 632 (January 17, 1949)), holding property transferred by the decedent prior to 1931 to be includible in his gross estate because he retained the income from the property for life. This result was reached by overruling *May* v. *Heiner* (281 U. S. 238 (1930)), and three per curiam opinions handed down on March 2, 1931, in which the Court had held that transfers in which the decedent retained a life estate were not taxable. The Congress in enacting a joint resolution on March 3, 1931, to overcome the effect of *May* v. *Heiner* and related cases did not intend to apply the legislation retroactively. In fact, Mr. Garner, in explaining on March 3, 1931, the joint resolution reported by the Ways and Means Committee, stated:

"We did not make it retroactive for the reason that we were afraid that the Senate would not agree to it."

The Supreme Court itself held, in *Hassett* v. *Welch* (303 U. S. 303 (1938)), that the language of the joint resolution and its subsequent reenactment was not meant to apply retroactively to transfers made before its enactment.

Despite the fact that Congress has not seen fit to limit the effect of *May* v. *Heiner* with respect to transfers before March 4, 1931, the present Supreme Court had, after eighteen years, decided that its statutory construction in *May* v. *Heiner* was incorrect. In the words of Mr. Justice Reed's dissent from the Church decision:

"In reliance upon a long settled course of legislative and judicial construction, donors have made property arrangements that should not now be upset summarily with no stronger reasons for doing so than that former courts and the Congress did not interpret the legislation in the same way as this Court now does."

In the joint resolution of March 3, 1931, Congress created a new estate tax rule with respect to transfers after March 3. It left unchanged the rule in effect for transfers before that date. It is the opinion of your committee that the old

rule should have been continued in effect with respect to such transfers until changed by legislation. Since the rule has been changed by the Supreme Court in the Church opinion, your committee believes that the Congress should act to restore the estate tax law to what it was prior to the Church opinion.

Some persons might have surrendered their life estates after 1931 had they not relied on the interpretation of the estate tax law which has now been overruled and in some cases considerable hardship may result from application of the new interpretation presented in the Church case. It is the opinion of your committee that after all of these years these persons are entitled to rely upon the long standing interpretation in *May* v. *Heiner*, and the proposed amendment is accordingly intended to assure that result. While the Treasury has proposed regulations which would relieve, in some cases, the hardship arising from application of the Church opinion, it would be beyond the power of the Treasury to alleviate the full effects of this opinion, and legislation is necessary to accomplish this.

The operation of the amendment made by this section may be illustrated by the following example: A, in 1928, transferred property in trust retaining a life estate and giving the remainder indefeasibly to B and his heirs. Since the transfer was made before March 4, 1931, and the only right or interest retained by the decedent in the property consists of an estate for his life, the transfer is not "intended to take effect in possession or enjoyment at or after his death" within the meaning of section 811(c) as amended by this section of the bill. Hence, the property is not includible in the gross estate unless the transfer was made in contemplation of death or unless the property falls within some other subdivision of section 811.

The amendment made to section 811(c) by this section of the bill does not, however, similarly change the estate-tax treatment of a transfer made before March 4, 1931, in case the decedent retained both a life estate and some other right or interest in the transferred property. Thus, assume that A, in 1928, transferred property in trust retaining a life estate and giving the remainder to B if living at A's death. In this case, since the property will revert to A by operation of law if he should survive B, A has retained more than a life estate. Accordingly, this section of the bill does not relieve A's estate from liability under the estate tax with respect to this property.

The amendment made by this section is applicable with respect to estates of decedents dying after February 10, 1939, the date of the enactment of the Internal Revenue Code.

8. Reverters under the estate tax.

Under the present interpretation of the estate-tax law, the full value of property transferred by the decedent during his lifetime is included in his gross estate if the following two conditions coexist: (1) Possession and enjoyment of the transferred interest can be obtained only by beneficiaries who must survive the decedent; and (2) the decedent or his estate possesses a right or interest in the property. It has been held by the courts that the second of these conditions is satisfied where the decedent's interest is only a right of reverter. This is illustrated in a recent Supreme Court decision (*Estate of Spiegel* v. *Commissioner*, 335 U. S. 701). In this case Spiegel established a trust when he was 47 years old and his three children were aged 25, 15, and 13. At his death 20 years later the children were still living and there were three grandchildren. Despite the fact that the corpus of the trust would revert to Spiegel only if he survived all of his children and grandchildren, the entire value of this property was included in his gross estate. One of the justices in a dissenting opinion pointed out that, given the facts of the Spiegel case, the value to a settlor just prior to death of a reverter on a $1,000,000 trust fund (the Spiegel trust fund was about $1,140,000) would be about $70. As he phrased it: "The relation of $70 to $1,000,000 ordinarily would be de minimis and certainly not one which would induce Congress to permit the assessment of a tax of over $450,000 because of its existence."

Section 8, which your committee has added to the House bill, further amends section 811(c) of the Internal Revenue Code, to provide that the amount of the transferred property to be included in the gross estate shall not exceed the actuarial value of the decedent's reversionary interest immediately before his death. It applies only in case the property transferred by the decedent would not be includible under section 811(c) in determining the value of his gross estate except by reason of the fact that he retained a reversionary interest in the property. The term "reversionary interest" is defined so as to include both a possibility that the transferred property or a portion thereof may return to the dece-

dent or his estate and a possibility that the transferred property or a portion thereof may pass under the exercise of a power by the decedent. The latter possibility may be illustrated by assuming that A transferred property in trust to accumulate the income until his death and then to pay the accumulated fund to B if living; but if B should predecease A, then the fund is to be paid to whomsoever A shall appoint by will. Under the existing construction of section 811(c), the entire fund is includible in A's gross estate in the event of his death during B's lifetime. The effect of this section of the bill is to limit the amount includible to the value, immediately before A's death, of the interest which he can appoint by will; except where the transfer was made in contemplation of death or where the property falls within some other subdivision of section 811.

The amendment made by this section is applicable only with respect to estates of decedents dying after the date of enactment of the bill.

9. Percentage depletion for perlite and diatomaceous earth.

Section 9, which was not contained in the House bill, amends section 114(b) of the Internal Revenue Code to provide a different basis for allowance of depletion in the case of mines or deposits of perlite and diatomaceous earth. The effect of the amendments made by this section of the bill is to add mines or deposits of perlite and diatomaceous earth to the list of nonmetallic mines or deposits which are allowed depletion in the amount of 15 percent of the gross income derived therefrom, and to make inapplicable to these mines or deposits the allowance of depletion upon the basis of discovery value. It is proposed to allow percentage depletion only with respect to perlite and diatomaceous earth in the dried crude mineral form, before grinding or any other preparation for any particular market. Perlite is a volcanic glass, and diatomaceous earth, a chalk-like, or clay-like material which is the silicified skeleton remains of colonial algae.

The Director of the Bureau of Mines reports that although the Bureau does not have a detailed statistical record which would completely define the degree of competition of these minerals with those now accorded percentage depletion, "such competition is known to exist." He further reports:

"For example, diatomaceous earth is used as a heat-insulating material and as such competes with vermiculite in some applications. Diatomaceous earth is also used as a filler in a wide variety of products, and therefore competes in varying degree with other minerals that serve this market, such as china clay, bentonite, talc, and barite, all of which are allowed percentage depletion.

"Similarly, perlite competes with vermiculite in the lightweight aggregate market."

Other reports indicate that perlite or diatomaceous earth, or both are also competitive with ball and sagger clay, feldspar, mica, and pyrophyllite. Since all of these minerals, as well as those mentioned above by the Director of Mines, receive percentage depletion, your committee believes that the benefits of percentage depletion should also be extended to perlite and diatomaceous earth to remove any tax differential which might prevent them from competing on an equal basis with these other minerals.

It is not proposed to allow percentage depletion with respect to the value added as the result of grinding or other special preparation because many of the extractors do not themselves carry on this process, but rather sell these minerals in crude form and let others carry on any processing required. Thus to allow percentage depletion with respect to this added value would discriminate against those selling these minerals in crude form, since percentage depletion is not allowable to processors.

The amendments made by this section are applicable with respect to taxable years beginning after December 31, 1948.

1949–23–13232

INTERNAL REVENUE CODE AMENDMENTS

[House of Representatives Report No. 1412, Eighty-first Congress, First Session]

[October 11, 1949]

Mr. Doughton, from the committee of conference, submitted the following conference report to accompany H. R. 5268:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 5268) to amend certain provisions

of the Internal Revenue Code, 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. 5268) to amend certain provisions of the Internal Revenue Code, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

Amendment No. 1: The House bill amended section 165 of the Internal Revenue Code to provide that contributions made by an employer to a trust to be applied by the trustee for the purchase of annuity contracts for the benefit of an employee shall not be included, under certain conditions, in the income of the employee in the year in which the contribution is made, even though the trust is not qualified under section 165(a). The Senate amendment extends the application of this provision of the House bill to cases where the employer purchased an annuity contract and transferred it to the trustee. The House bill limited the application of the amendment to section 165 to contributions made pursuant to a written agreement entered into prior to October 21, 1942. The Senate amendment further limits the application of the provision by providing that the term "employee" shall include only a person who was in the employ of the employer, and was covered by the written agreement, prior to October 21, 1942. The House recedes.

Amendments Nos. 2 and 3: The House bill provided, with respect to certain reciprocal trusts, for the relinquishment free of gift tax of any power over the property in trust or over the income therefrom, if the relinquishment is made on or before December 31, 1950. The House provision was not to apply if at the time of the transfer in trust a law was in effect imposing a gift tax unless (1) a gift tax was paid or (2) a gift tax return was made but no gift tax was paid because of deductions and exclusions. The Senate amendments limit the application of the House bill to cases where the original transfer in trust was made at a time when a law was in effect imposing a gift tax and a gift tax was paid with respect to the transfer. The House recedes.

Amendment No. 4: This is a clerical amendment and the House recedes.

Amendment No. 5: The House bill provided, in connection with its provisions for relinquishment free of gift tax of a power over a reciprocal trust, that the relinquishment of the power shall be deemed not to have been made in contemplation of death for the purposes of the estate tax. This provision in the House bill was applicable with respect to decedents dying after December 31, 1939. The Senate amendment makes the provision applicable to decedents dying after February 10, 1939, the date of the enactment of the Internal Revenue Code. The House recedes.

Amendments Nos. 6 and 7: These Senate amendments, for which there are no corresponding provisions in the House bill, amend section 811(c) of the Internal Revenue Code to change the estate-tax treatment of transfers of property during life which are intended to take effect in possession or enjoyment at or after the transferor's death. Amendment No. 6 provides that property so transferred before June 7, 1932, shall not be included in the transferor's gross estate for estate-tax purposes by reason of the fact that he retained a life estate or similar rights in the income from the property unless the transfer was made after March 3, 1931, and before June 7, 1932, and is includible in his gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516). Amendment No. 7 provides that property so transferred shall not be included in the transferor's gross estate, by reason of the fact that he retained a reversionary interest in the property, except to the extent of the value of such reversionary interest immediately before his death. Both amendments apply only to estates of decedents dying after February 10, 1939, the date of enactment of the Internal Revenue Code. In certain cases affected only by amendment No. 7, a 1-year period is provided for filing claims for refunds which would otherwise be barred. The House recedes with amendments.

The conference amendments make two changes in the Senate amendments relating to transfers of property made before March 4, 1931, in which the decedent reserved a life estate or other income interest. Under the Senate amendments, such transfers are not, by reason of such reservation, includible in the decedent's gross estate. Under the conference amendments, such transfers are excluded

from the decedent's gross estate only if his death occurs before January 1, 1950. If the transferor dies after December 31, 1949, the property will be includible, under the conference amendments, in his gross estate under subparagraph (B) of section 811(c)(1) of the Code; but such a transferor is given certain tax-free privileges if he disposes of his income interest prior to 1951. Specifically, the conference amendments provide that persons who made such transfers prior to March 4, 1931, may assign or relinquish their income interests during 1949 and 1950 free of gift tax, and also provide that such assignments or relinquishments shall, if made at any time prior to 1951, not be deemed to have been made in contemplation of death. This privilege of tax-free assignment or relinquishment is available without regard to whether the transferor also has a reversionary interest in the property, but is not available where the transferor had on October 7, 1949, a power over the transferred property, and not over the income interest only, which would require the inclusion of the property under section 811(d) of the Code. In the case of reciprocal trusts which were created each in consideration of the other, these tax-free privileges are available to a life tenant of a trust which he constructively created. The tax immunities provided by these conference amendments also apply to a transfer made after March 3, 1931, and before June 7, 1932, with reservation by the transferor of an income interest which would not render the transferred property includible in his gross estate by reason of the amendatory language in the joint resolution of March 3, 1931.

The Senate amendments provide that if property transferred by the decedent would be includible in his gross estate only by reason of the retention by him of a reversionary interest in the property, the amount to be included shall not exceed the value of such interest immediately before his death. While the Senate amendments apply to transfers whenever made, the conference amendments provide one rule for transfers made prior to October 8, 1949, and a different rule for subsequent transfers.

With respect to the transfer before October 8, 1949, of an interest intended to take effect in possession or enjoyment at or after the decedent's death, the conference amendments retain the present rule that the entire value of the interest is included in the decedent's gross estate, but restricts the application of such rule to cases in which the decedent expressly retained a reversionary interest having a value immediately before the decedent's death in excess of 5 percent of the value of the transferred property. Where the reversionary interest has a value of not more than 5 percent of the value of the transferred property, or where it arises by operation of law (regardless of its value), it will not cause the property to be included in the decedent's gross estate to any extent.

The term "reversionary interest" includes a possibility, whether vested or contingent, that transferred property may return to the decedent or his estate or that transferred property may become subject to a power of disposition by the decedent. The term does not, however, include rights to income only, such as the right to receive the income from a trust after the death of another person.

In determining whether the value of the reversionary interest exceeds 5 percent, it is to be compared with the entire value of the transferred property, including interests which are not dependent upon survivorship of the decedent. Thus if A transferred property in trust with the income payable to B for B's life with remainder to X unless B predeceases A, in which event the property shall return to A, and A dies during B's life, the value of A's reversionary interest immediately before his death shall be compared with the entire value of the trust corpus, without deduction of the value of B's outstanding life estate. A reversionary interest which, for example, exists in only one-half of the corpus of a trust shall be computed as a percentage of the value of such one-half. The value is to be computed as of the moment immediately prior to the decedent's death without regard to whether his executor elects to have the gross estate valued as provided under section 811(j) of the Code. A possibility that the decedent may be able to dispose of property under certain conditions shall be deemed to be as valuable as a right to the return of the property to him under those conditions.

The decedent's reversionary interest is to be valued by recognized valuation principles, pursuant to regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, and, of course, without regard to the fact of the decedent's death. The value shall be ascertained as though the decedent were, immediately before his death, making a gift of the property and retaining the reversionary interest. The rule of *Robinette* v. *Helvering* (318 U. S. 184), under which a reversionary interest not having an ascertainable value under recognized valuation principles is considered to have a value of zero, is to apply. Thus, if a reversionary interest consisting of a right

enforceable in equity to compel a trustee to apply trust corpus for the support and maintenance of the grantor would be considered to have a value of zero for gift tax purposes were it being retained under a transfer by gift, it is to be similarly valued for the purpose of the conference amendments.

The amendments last described apply only where possession or enjoyment of the transferred interest cannot be obtained except by beneficiaries who must survive the decedent. The existing rule that a transfer of a property interest is not intended to take effect in possession or enjoyment at or after the decedent's death unless the beneficiaries must survive the decedent to obtain possession or enjoyment is not disturbed.

The following examples illustrate the application of the conference amendments to transfers made prior to October 8, 1949:

Example (1): The decedent, prior to October 8, 1949, transferred property in trust, giving the income therefrom to his son for life and the remainder to his son's surviving issue. It was further provided that if no issue survived the son, the property was to revert to the decedent or his estate. In this case, neither the son nor his issue need survive the decedent in order to obtain possession or enjoyment of the property. Therefore, the transfer is not taxable to any extent under section 811(c) as amended in conference (nor under the existing rule), the value of the reversionary interest being immaterial for this purpose.

Example (2): The decedent, prior to October 8, 1949, transferred property in trust to accumulate the income during his life, and at his death to pay the principal and accumulated income to his son if living; if not, to the decedent or his estate. In this case the son cannot obtain possession or enjoyment of the property unless he survives the decedent. Under the conference amendments the entire value of the transferred property is, therefore, includible in the decedent's gross estate if the value of his reversionary interest immediately before his death exceeds 5 percent of the value of the trust property.

Example (3): The decedent in 1929 transferred property in trust reserving to himself the income for his life, with the remainder to those five named grandchildren who survive him. The trust instrument specifically provided that if none of the grandchildren survives him, the property is to return to him. The decedent died in 1948 survived by the five grandchildren. Under the conference amendments the transferred property is not includible (under section 811(c)(1)(B)) in the decedent's gross estate by reason of his life estate since he died prior to 1950. Nor is the property includible (under section 811(c)(1)(C)) by reason of his reversionary interest since its value immediately before his death was less than 5 percent of the value of the trust property.

Under the conference amendments, the test of whether possession or enjoyment must await the transferor's death will also apply to transfers made after October 7, 1949. The taxability of such transfers is, however, not dependent upon the retention by the transferor of an interest in the property, thus rendering inapplicable the contrary rule enunciated by the Supreme Court in *Reinecke* v. *Northern Trust Co.* (278 U. S. 339) that the property must pass from the possession or control of the transferor at his death.

A twofold rule applies to transfers made after October 7, 1949, for the purpose of determining whether the transfer is intended to take effect in possession or enjoyment at or after the decedent's death. The first of these rules is that an interest in property transferred by the decedent is includible in his gross estate if possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent. Where separate interests are transferred to each of several beneficiaries the above rule is to be separately applied to each interest. Thus, if beneficiary A receives an interest which enables him to obtain possession or enjoyment of the property without surviving the decedent and beneficiary B obtains an interest which enables him to obtain possession or enjoyment of the property only by surviving the decedent, it is only the transfer of the interest to beneficiary B which is intended to take effect in possession or enjoyment at or after the decedent's death. Likewise, if the transferor gives his son the immediate right to receive the income from the property until 5 years after the transferor's death, and the right to the corpus upon the expiration of such term, it is only the transfer of the latter interest which is intended to take effect in possession or enjoyment at or after the transferor's death.

The second rule is that an interest in property transferred by the decedent after October 7, 1949, shall be included in his gross estate if, under alternative contingencies provided by the terms of the transfer, possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the earlier to occur of (1) the decedent's death or (2) some other

event; and such other event did not in fact occur during the decedent's life. This rule, like the first rule, is to be applied in the light of the circumstances existing immediately prior to the decedent's death. The expression "some other event" is intended to include the expiration of a term of years or the happening or failure to happen of a certain or uncertain event (including the possible exercise of a power which is not a taxable power of appointment as defined in section 811(f)(2) of the Code).

Neither of the above rules, however, draws into the decedent's gross estate an interest in property transferred by him if possession or enjoyement of the property was obtainable during the decedent's life through the exercise of a power of appointment as defined in section 811(f)(2) of the Code and such power was in fact exercisable immediately prior to decedent's death.

The following examples illustrate the application of the conference amendments to transfers made after October 7, 1949:

Example (1): The decedent, after October 7, 1949, transferred property in trust, providing for an estate for life in his daughter, and a remainder to the children of the daughter. No part of the property is includible. The daughter can possess and enjoy the property through ownership of the life estate without surviving the decedent. The same is true of the daughter's children with respect to their remainder interest.

Example (2): The decedent, after October 7, 1949, transferred property in trust, to pay the income to his wife during her life, and at her death to pay the corpus to the decedent if living, and if not, to his children. The decedent was survived by his wife. The transferred property, less the outstanding life estate in the wife, is includible in the decedent's gross estate since the children cannot obtain possession or enjoyment of the property, through ownership of their interest, except by surviving the decedent.

Example (3): The decedent, after October 7, 1949, transferred property in trust to accumulate the income during his life and at his death to distribute the principal and accumulated income to his son or the son's estate. While the decedent has retained no right or interest in the property, the transfer is taxable since possession or enjoyment of the property cannot be obtained except by surviving the decedent.

Example (4): The decedent, after October 7, 1949, transferred property in trust providing for payment of the income to his wife until her death, at which time the son would receive the corpus. If the son predeceased the wife the corpus was to revert to the decedent if living at his wife's death; and if the decedent was not then living, it was to pass to X or X's estate. The decedent was survived by his wife, his son, and X. Neither the interest transferred to the wife nor to the son is includible in the decedent's gross estate since each could, through ownership of his interest, obtain possession or enjoyment of the property even though the decedent was living. The interest transferred to X, however, is includible under section 811(c)(3)(A) (to the extent of the value of X's interest immediately after the decedent's death) since X's possession or enjoyment of the property, if it materializes, could be obtained only by surviving the decedent. Section 811(c)(3)(B) has no application to this example.

Example (5): The decedent, after October 7, 1949, transferred property in trust, to accumulate the income until his son reached the age of 30, or until the decedent's prior death. Upon the first to occur of these events the son was to receive the corpus. The decedent's death in fact occurred before his son attained the age of 30. The transfer is taxable under section 811(c)(3)(B) since the son could obtain possession or enjoyment only by surviving the earlier to occur of the decedent's death or the son's attaining age 30, and since the decedent's death in fact occurred first.

Example (6): The decedent, after October 7, 1949, transferred property in trust providing for accumulation of the income during his life, and at his death to pay the entire fund to his children or their issue. His wife was given the unrestricted power to alter, amend, or revoke the trust. The wife survived the decedent and did not in fact exercise her power during the decedent's life. Under the last sentence of section 811(c)(3) the transfer is not taxable since possession or enjoyment of the property was obtainable during the decedent's life through the exercise of the wife's power, which was a power of appointment as defined in section 811(f)(2) of the Code, and was in fact exercisable immediately prior to the decedent's death.

In order to effectuate the changes made by the conference amendments such amendments subdivide section 811(c) of the Code into three paragraphs. Para-

graph (1) merely states the existing general rule that transferred property is includible in the decedent's gross estate if made (A) in contemplation of death, (B) with reservation of an income interest, or (C) if intended to take effect in possession or enjoyment at or after his death. Paragraph (2) provides a limiting requirement (the 5 percent rule explained above) in the case of transfers intended to take effect in possession or enjoyment at or after the decedent's death if made before October 8, 1949. Paragraph (3) contains the rules, heretofore explained, under which a transfer shall be considered to be intended to take effect in possession or enjoyment at or after the decedent's death if made after October 7, 1949.

Paragraph (1)(B) of section 811(c), as thus subdivided, contains the amendatory language enacted into the estate tax law by section 803(a) of the Revenue Act of 1932, relating to transfers in which an income interest is retained. Prior to *Commissioner* v. *Church* (335 U. S. 632) the Supreme Court had held in the case of *Hassett* v. *Welch* (303 U. S. 303) that such amendatory 1932 language did not apply to transfers made prior to its enactment. However, the Church decision held that this same type of transfer was taxable without regard to the time of the transfer under the intended to take effect in possession or enjoyment clause. For the sake of clarity, the conference amendments make applicable the amendatory language of the 1932 act to transfers whenever made in cases of decedents dying after 1949, thus retaining the result of the Church decision for the future. At the same time the conference amendments also provide certain relief against hardship as already explained.

The income interests described by section 811(c)(1)(B) and by similar language elsewhere in the conference amendments include reserved rights to the income from transferred property and rights to possess or enjoy non-income-producing property. Such interests also include a reserved power to designate the persons who shall, during the decedent's life or during any lesser period described in section 811(c)(1)(B), receive the income from transferred property or who shall, during any such period, possess or enjoy non-income-producing property. Such interests do not, however, include powers over the transferred property itself not affecting the enjoyment of the income during the decedent's life. The expression "not ascertainable without reference to his death" as used in section 811(c)(1)(B) and elsewhere in the conference amendments includes the right to receive the income from transferred property after the death of another person who in fact survived the transferor; but in such a case the amount to be included under section 811(c)(1)(B) in the transferor's gross estate does not include the value of the outstanding income interest in such other person.

The conference amendments, in conformity with the Senate amendments, do not apply to decedents who died on or before February 10, 1939. No interest shall be allowed or paid on any overpayment resulting from the enactment of the conference amendments with respect to any payment made prior to the date of such enactment.

The conference amendments, like the Senate amendments, provide a rule for cases in which the refund or credit of an overpayment resulting from the enactment of the amendments is prevented on the date of such enactment, or within one year from such date, by the operation of any law or rule of law (including a judicial determination, but not including section 3760 or 3761 of the Code). The refund or credit is, nevertheless, to be made or allowed if it results from the application of the amendments to a transfer of property in which the decedent did not retain any income interest described in section 811(c)(1)(B), if claim therefor is filed within one year from the date of the enactment of the bill. However, a refund or credit which is so prevented may not be allowed if it results from the application of the amendments to a transfer of property in which the decedent retained any such income interest.

Amendment No. 8: The Senate amendment added a new section to the House bill amending section 114(b) of the Code to provide percentage depletion at the rate of 15 percent in the case of perlite, diatomaceous earth, tripoli, granite, marble, borax mines and deposits, sand, gravel, stone, calcium and magnesium carbonates, and all other nonmetallic clays and minerals. The conferees agreed to eliminate this amendment with the understanding that the entire matter of percentage depletion will be considered early next year after full study and hearings. The Senate recedes.

Amendment No. 9: The Senate amendment added a new section to the House bill amending paragraph 1798 of the Tariff Act of 1930 which now provides that $100 in value of articles may be brought into this country free of duty by a resident of the United States returning from abroad if such articles are for personal

use and other restrictive conditions are met. The Senate amendment increases to $200 the existing exemption of $100. The House recedes with a change in section number.

Amendment No. 10: The Senate amendment added a new section to the bill to provide that if stock in a corporation was exchanged after March 11, 1941, and prior to July 1, 1945, by a testamentary trust for stock and other securities in such corporation in pursuance of a recapitalization under State law of that corporation, and if the stock and securities so received by the trust are surrendered prior to January 1, 1950, to the corporation solely in exchange for stock identical in character and amount with that previously held by the trust, no gain, profit, income, loss or deduction from such exchange or reexchange shall be recognized, for income tax purposes, to the corporation or the trust. The Senate recedes.

Amendment No. 11: The Senate amendment added a new section to the House bill to provide that where a new corporation is formed, pursuant to a plan of reorganization, by using part of the assets of an existing corporation, and the stock of the new corporation is distributed to the stockholders of the existing corporation without surrender of the stock in the existing corporation, no tax effect is recognized with respect to the stockholder as a result of the reorganization. The Senate recedes.

Amendment No. 12: The Senate amendment added a new section to the House bill amending subchapter B of Chapter 3 of the Internal Revenue Code to provide that the additional estate tax imposed by section 935 does not apply in the case of a citizen or resident dying between December 6, 1941, and January 1, 1947, while in military service of the United States or any of the United Nations, if the decedent was killed in action or died as the result of injuries or of disease "suffered in line of duty by reason of a hazard to which he was subjected as an incident of military or naval service." No interest is to be paid on any refund resulting from the amendment. The amendment further provides that if the making of a refund resulting from the amendment is barred on the date of the enactment of the bill, or within 1 year from such date, by the operation of any law or rule of law (including a judicial determination but not including section 3761 of the Code) the refund shall, nevertheless, be made if claim therefor is filed within 1 year from the date of the enactment of the bill. The House recedes with a change in section number.

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