

and elsewhere; payment of actual transportation expenses and not to exceed \$10 per diem in lieu of subsistence and other expenses of persons serving, while away from their homes, without other compensation from the United States, in an advisory capacity to the Corporation; employment on a contract or fee basis of persons, firms, and corporations for the performance of special services, including legal services; use of the services and facilities of Federal land banks, national farm loan associations, Federal Reserve banks, and agencies of the Government as authorized by said Act of January 31, 1934; and all other necessary administrative expenses: *Provided*, That all necessary expenses (including services performed on a force account, contract or fee basis, but not including other personal services) in connection with the operation, maintenance, improvement, or disposition of real or personal property of the Corporation shall be considered as nonadministrative expenses for the purposes hereof: *Provided further*, That except for the limitations in amounts hereinbefore specified, and the restrictions in respect to travel expenses, the administrative expenses and other obligations of the Corporation shall be incurred, allowed and paid, in accordance with the provisions of said Act of January 31, 1934, as amended (U. S. C., title 12, secs. 1016-1020 (h)).

This title may be cited as the "Farm Credit Administration Appropriation Act of 1938".

Approved, June 29, 1937.

[CHAPTER 405]

AN ACT

To levy an excise tax upon carriers and certain other employers and an income tax upon their employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. That as used in this Act—

(a) The term "employer" means any carrier (as defined in subsection (i) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however*, That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus,

Special services.

48 Stat. 344.

Proviso.
Necessary expenditures considered non-administrative expenses.

Incurring, etc., obligations.

48 Stat. 344.
12 U. S. C. §§ 1016-1020h.

Short title.

June 29, 1937

[H. R. 7589]

[Public, No. 174]

Carriers Taxing Act of 1937.

Definitions.

"Employer."

Proviso.
Street, etc., electric railways excluded.

Line operated by electric power.

Inclusive of designated associations, bureaus, agencies, etc.

45 U. S. C. §§ 151-164; Supp. II, §§ 181-188.

"Employee."

Proviso.
Status of local lodge employee, etc.

Relationship, if on furlough, etc.

Persons not deemed in employment relationship.

"Employee representative."

Persons deemed in service of employer.

Proviso.
Employer not conducting principal business in United States.

"Compensation."

Tips, etc., not included.

Tax return.

"United States."

weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations.

(b) The term "employee" means any person in the service of one or more employers for compensation: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual is in the employment relation to a carrier if he is on furlough, subject to call for service within or outside the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability; all in accordance with the established rules and practices in effect on the carrier: *Provided further,* That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier not conducting the principal part of its business in the United States unless during the last pay-roll period in which he rendered service to it prior to said date, he rendered service to it in the United States.

(c) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in section 1 (a), who before or after the enactment hereof was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) An individual is in the service of an employer whether his service is rendered within or without the United States if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, which service he renders for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendering service to it in the United States.

(e) The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 2 of this Act. Compensation which is earned during the period for which the Commissioner of Internal Revenue shall require a return of taxes hereunder to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only.

(f) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(g) The term "company" includes corporations, associations, and joint-stock companies.

(h) The term "employee" includes an officer of an employer.

(i) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(j) The term "person" means an individual, a partnership, an association, a joint-stock company, or a corporation.

"Company."

"Employee" to include officer, etc.
"Carrier."

"Person."

INCOME TAX ON EMPLOYEES

SEC. 2. (a) In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation of such employee as is not in excess of \$300 for any calendar month, earned by him after December 31, 1936—

1. With respect to compensation earned during the calendar years 1937, 1938, and 1939, the rate shall be $2\frac{3}{4}$ per centum;

2. With respect to compensation earned during the calendar years 1940, 1941, and 1942, the rate shall be 3 per centum;

3. With respect to compensation earned during the calendar years 1943, 1944, and 1945, the rate shall be $3\frac{1}{4}$ per centum;

4. With respect to compensation earned during the calendar years 1946, 1947, and 1948, the rate shall be $3\frac{1}{2}$ per centum;

5. With respect to compensation earned after December 31, 1948, the rate shall be $3\frac{3}{4}$ per centum;

(b) The tax imposed by this section shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation by more than one employer with respect to any calendar month, then, under regulations made under this Act, the Commissioner of Internal Revenue may prescribe the proportion of the tax to be deducted by each employer from the compensation paid by him to the employee with respect to such month. Every employer required under this subsection to deduct the tax is hereby made liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

(c) If more or less than the correct amount of tax imposed by this section is paid with respect to any compensation payment, then, under regulations made under this Act by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent compensation payments to the same employee by the same employer.

Income tax on employees.

Additional to other taxes.

Rates.

Collection by employer.

Compensation paid by more than one employer.

Liability for payment.

Adjustments.

EXCISE TAX ON EMPLOYERS

SEC. 3. (a) In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation as is not in excess of \$300 for any calendar month paid by him to any employee for services rendered to him after December 31, 1936: *Provided, however,* That if an employee is paid compensation by more than one employer with respect to any such calendar month, the tax imposed by this section shall apply to not more than \$300 of the aggregate compensation paid to said employee by all said employers with respect to such calendar month, and each such employer shall be liable for that proportion of the tax with respect to such compensation which his payment to the employee with respect to such cal-

Excise tax on employers.

Additional to other taxes.

Proviso.
Compensation paid by more than one employer.

Liability for payment.

endar month bears to the aggregate compensation paid to such employee by all employers with respect to such calendar month:

Rates.

1. With respect to compensation paid to employees for services rendered during the calendar years 1937, 1938, and 1939, the rate shall be $2\frac{3}{4}$ per centum;

2. With respect to compensation paid to employees for services rendered during the calendar years 1940, 1941, and 1942, the rate shall be 3 per centum;

3. With respect to compensation paid to employees for services rendered during the calendar years 1943, 1944, and 1945, the rate shall be $3\frac{1}{4}$ per centum;

4. With respect to compensation paid to employees for services rendered during the calendar years 1946, 1947, and 1948, the rate shall be $3\frac{1}{2}$ per centum;

5. With respect to compensation paid to employees for services rendered after December 31, 1948, the rate shall be $3\frac{3}{4}$ per centum.

Adjustments.

(b) If more or less than the correct amount of the tax imposed by this section is paid with respect to any compensation payment, then, under regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent excise-tax payments made by the same employer.

REFUNDS AND DEFICIENCIES

Refunds and deficiencies.

SEC. 4. If more or less than the correct amount of the tax imposed by section 2 (a) or 3 (a) of this Act is paid or deducted with respect to any compensation payment and the overpayment or underpayment of the tax cannot be adjusted under section 2 (c) or 3 (b), the amount of the overpayment shall be refunded, or the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this Act as made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

Rules governing.

INCOME TAX ON EMPLOYEE REPRESENTATIVES

Income tax on employee representatives.

Additional to other taxes.

SEC. 5. In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation of such employee representative as is not in excess of \$300 for any calendar month, earned by him after December 31, 1936:

Rates.

1. With respect to compensation earned during the calendar years 1937, 1938, and 1939, the rate shall be $5\frac{1}{2}$ per centum;

2. With respect to compensation earned during the calendar years 1940, 1941, and 1942, the rate shall be 6 per centum;

3. With respect to compensation earned during the calendar years 1943, 1944, and 1945, the rate shall be $6\frac{1}{2}$ per centum;

4. With respect to compensation earned during the calendar years 1946, 1947, and 1948, the rate shall be 7 per centum;

5. With respect to compensation earned after December 31, 1948, the rate shall be $7\frac{1}{2}$ per centum.

Determination of compensation.

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 1 (a) of this Act.

DEDUCTIBILITY FROM INCOME TAX

SEC. 6. For the purposes of the income tax imposed by title I of the Revenue Act of 1936 or by any Act of Congress in substitution therefor, the taxes imposed by sections 2 and 5 of this Act shall not be allowed as a deduction to the taxpayer in computing his net income.

Deductibility from income tax.

Restrictions.
49 Stat. 1652.
Ante, pp. 437, 438.

COLLECTION AND PAYMENT OF TAXES

SEC. 7. (a) The taxes imposed by this Act shall be collected by the Bureau of Internal Revenue and shall be paid into the Treasury of the United States as internal-revenue collections.

Collection and payment of taxes.

(b) The taxes imposed by this Act shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this Act as may be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury. If a tax imposed by this Act is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of this Act) interest at the rate of 6 per centum per annum from the date the tax became due until paid.

Procedure.

Interest charge on defaulted payment.

(c) All provisions of law, including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934, insofar as applicable and not inconsistent with the provisions of this Act, shall be applicable with respect to the taxes imposed by this Act.

Provisions of law applicable.
44 Stat. 93, 99; 48 Stat. 768.

(d) In the payment of any tax under this Act, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

Fraction of cent.

(e) Any tax paid under this Act by a taxpayer with respect to any period with respect to which he is not liable to tax under this Act shall be credited against the tax, if any, imposed by title VIII of the Social Security Act upon such taxpayer, and the balance, if any, shall be refunded. Any tax paid under title VIII of the Social Security Act by a taxpayer with respect to any period with respect to which he is not liable to tax under such title VIII shall be credited against the tax, if any, imposed by this Act upon such taxpayer, and the balance, if any, shall be refunded.

Adjustments.

49 Stat. 636.

COURT JURISDICTION

SEC. 8. The several district courts of the United States and the District Court of the United States for the District of Columbia, respectively, shall have jurisdiction to entertain an application by the Attorney General on behalf of the Commissioner of Internal Revenue to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this Act. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain actions at law or suits in equity in aid of the enforcement of rights or obligations arising under the provisions of this Act.

Court jurisdiction in connection with enforcement of obligations imposed.

SOCIAL SECURITY ACT

SEC. 9. (a) The term "employment", as defined in subsection (b) of section 811 of title VIII of the Social Security Act, shall not

Social Security Act.

"Employment" as defined in.
49 Stat. 639.

Periodical estimates of reduction in tax collections.

include service performed by an individual as an employee as defined in section 1 (b) or service performed as an employee representative as defined in section 1 (c).

(b) The Secretary of the Treasury at intervals of not longer than three years shall estimate the reduction in the amount of taxes collected under title VIII of the Social Security Act by reason of the operation of subsection (a) of this section and shall include such estimate in his annual report.

SEPARABILITY

Separability provisions.

SEC. 10. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

REPEAL OF PRIOR TAX ACT

Repeal of prior tax Act.
49 Stat. 974.

Moneys due under repealed Act and not heretofore paid.

Deductions by employers from employees' pay for taxes; repayments.

SEC. 11. The provisions of this Act are in substitution for the provisions of the Act of August 29, 1935, as amended, entitled "An Act to levy an excise tax upon carriers and an income tax upon their employees, and for other purposes", which is hereby repealed. All moneys payable as and for taxes under such Act of August 29, 1935, and not heretofore paid shall cease to be payable and all proceedings pending for the recovery of any such moneys shall be terminated. All sums paid into the Treasury of the United States as and for taxes under such Act shall be refunded, except so much of the sums so paid as and for taxes with respect to compensation earned after December 31, 1936, as equals the taxes imposed by this Act with respect to the same persons and the same period, and the sums not required to be so refunded shall be retained in the Treasury of the United States and credited on taxes due and payable under this Act. All sums deducted by employers from the compensation of employees as and for taxes under such Act of August 29, 1935, which have not been paid into the Treasury of the United States shall be repaid by such employers to such employees, except so much of the sums so deducted as and for taxes in respect of compensation earned after December 31, 1936, as equals the taxes imposed and required to be deducted by this Act with respect to the same persons and the same period, and the sums not required to be so repaid shall be paid into the Treasury of the United States and thereupon shall be credited on taxes due and payable under this Act. No interest shall be allowed or paid with respect to any sum refunded, credited, or repaid under the provisions of this section.

RULES AND REGULATIONS

Rules and regulations.

SEC. 12. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish such rules and regulations as may be necessary for the enforcement of this Act.

SHORT TITLE

Short title.

SEC. 13. This Act may be cited as the "Carriers Taxing Act of 1937".

Approved, June 29, 1937.