

designated by the President by Executive order as the period of combatant activities in such zone for the purposes of such section, or hospitalized outside the States of the Union and the District of Columbia as a result of injury received while serving in such an area during such time, the period of time disregarded under this section, notwithstanding the limitations of subsections (a) and (c), shall include the period of service in such area, plus the period of continuous hospitalization outside the States of the Union and the District of Columbia attributable to such injury, and the next one hundred and eighty days thereafter."

Approved January 2, 1951.

[CHAPTER 1199]

AN ACT

To provide revenue by imposing a corporate excess profits tax, and for other purposes.

56 Stat. 961, 962.
26 U. S. C. § 3804 (a);
Sup. III, § 3804 (c)

January 3, 1951
[H. R. 9827]
[Public Law 909]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Excess Profits Tax Act of 1950".

Excess Profits Tax
Act of 1950.

TITLE I—EXCESS PROFITS TAX

SEC. 101. IMPOSITION OF EXCESS PROFITS TAX.

Effective with respect to taxable years ending after June 30, 1950, chapter 1 of the Internal Revenue Code is hereby amended by adding after section 424 the following new subchapter:

Ante, p. 952.

"SUBCHAPTER D—EXCESS PROFITS TAX

"Part I—Rate and Computation of Tax

"SEC. 430. IMPOSITION OF TAX.

"(a) GENERAL RULE.—In addition to other taxes imposed by this chapter, there shall be levied, collected, and paid for each taxable year ending after June 30, 1950, and beginning before July 1, 1953, upon the adjusted excess profits net income, as defined in section 431, of every corporation (except a corporation exempt under section 454) an excess profits tax equal to whichever of the following amounts is the lesser:

Post, p. 1138.

Post, p. 1184.

"(1) 30 per centum of the adjusted excess profits net income, or

"(2) an amount equal to the excess of 62 per centum of the excess profits net income for the taxable year over the tax which would be imposed for the taxable year under sections 13, 14, and 15, supplement G, and supplement Q, whichever are applicable to the taxpayer, computed (subject to section 108 and section 141, if applicable) as if the amount of the normal-tax net income and the amount of the corporation surtax net income (or the amount subject to the rate of tax in such supplement) were equal to the amount of the excess profits net income for such year.

53 Stat. 71, 98.
26 U. S. C. §§ 201-
207, 361-363.
Ante, pp. 914, 915,
920; *post*, p. 1217.

"(b) TAXABLE YEARS BEGINNING BEFORE JULY 1, 1950, AND ENDING AFTER JUNE 30, 1950.—In the case of a taxable year beginning before July 1, 1950, and ending after June 30, 1950, the tax imposed by subsection (a) shall be an amount equal to that portion of a tentative tax, determined under subsection (a), which the number of days in such taxable year after June 30, 1950, bears to the total number of days in such taxable year.

"(c) TAXABLE YEARS BEGINNING BEFORE JULY 1, 1953, AND ENDING AFTER JUNE 30, 1953.—In the case of a taxable year beginning

Ante, p. 1137.

before July 1, 1953, and ending after June 30, 1953, the tax imposed by subsection (a) shall be an amount equal to that portion of a tentative tax, determined under subsection (a), which the number of days in such taxable year before July 1, 1953, bears to the total number of days in such taxable year.

“(d) **MUTUAL INSURANCE COMPANIES.**—In the case of a mutual insurance company other than life or marine, if the gross amount received from interest, dividends, rents, and premiums (including deposits and assessments) is over \$75,000 but less than \$125,000, the tax imposed under this section shall be an amount which bears the same proportion to the amount ascertained under this section, computed without reference to this subsection, as the excess over \$75,000 of such gross amount received bears to \$50,000.

“(e) **CROSS REFERENCES.**—For special rules for computation of the tax imposed by subsection (a) in the case of—

“(1) short taxable years, see section 433 (a) (2);

“(2) corporations engaged in mining of strategic materials, see section 450 (a);

“(3) abnormalities in income in taxable period, see section 456;

“(4) corporations completing contracts under Merchant Marine Act, see section 457.

“**SEC. 431. DEFINITION OF ADJUSTED EXCESS PROFITS NET INCOME.**

“The term ‘adjusted excess profits net income’ in the case of any taxable year means the excess profits net income (as defined in section 433 (a)) minus the sum of:

“(1) **EXCESS PROFITS CREDIT.**—The amount of the excess profits credit allowed under section 434; and

“(2) **UNUSED EXCESS PROFITS CREDITS.**—The amount of the unused excess profits credit adjustment for the taxable year computed in accordance with section 432.

If such sum is less than \$25,000, it shall be increased to \$25,000.

“**SEC. 432. UNUSED EXCESS PROFITS CREDIT ADJUSTMENT.**

“(a) **COMPUTATION OF UNUSED EXCESS PROFITS CREDIT ADJUSTMENT.**—The unused excess profits credit adjustment for any taxable year shall be the aggregate of the unused excess profits credit carryovers and unused excess profits credit carry-back to such taxable year.

“(b) **DEFINITION OF UNUSED EXCESS PROFITS CREDIT.**—The term ‘unused excess profits credit’ means the excess, if any, of the excess profits credit for any taxable year ending after June 30, 1950, and beginning before July 1, 1953, over the excess profits net income for such taxable year, computed on the basis of the excess profits credit applicable to such taxable year, and computed without the allowance of any deduction under section 23 (s) (relating to net operating losses).

The unused excess profits credit for a taxable year of less than 12 months shall be an amount which is such part of the unused excess profits credit determined under the preceding sentence as the number of days in the taxable year is of the number of days in the 12 months ending with the close of the taxable year. The unused excess profits credit for a taxable year beginning before July 1, 1950, and ending after June 30, 1950, shall be an amount which is such part of the unused excess profits credit determined under the preceding provisions of this subsection as the number of days in such taxable year after June 30, 1950, is of the total number of days in such taxable year. The unused excess profits credit for a taxable year beginning before July 1, 1953, and ending after June 30, 1953, shall be an amount which is such part of the unused excess profits credit determined under the preceding provisions of this subsection as the number of days in such taxable year before July 1, 1953, is of the total number of days

Post, p. 1143.

Post, p. 1177.

Post, p. 1186.

Post, p. 1188.

Post, p. 1139.

Post, p. 1147.

Infra.

in such taxable year. There shall be no unused excess profits credit for any taxable year for which the taxpayer is exempt from taxation under this subchapter.

“(c) AMOUNT OF CARRY-BACK AND CARRY-OVER.—

“(1) UNUSED EXCESS PROFITS CREDIT CARRY-BACK.—If for any taxable year beginning after July 1, 1950, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carry-back for the preceding taxable year.

“(2) UNUSED EXCESS PROFITS CREDIT CARRY-OVER.—If for any taxable year ending after June 30, 1950, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carry-over for each of the five succeeding taxable years, except that the carry-over in the case of each such succeeding taxable year (other than the first succeeding taxable year) shall be the excess, if any, of the amount of such unused excess profits credit over the sum of the adjusted excess profits net income for each of the intervening taxable years computed—

“(A) by determining the unused excess profits credit adjustment for each intervening taxable year without regard to such unused excess profits credit or to any unused excess profits credit for any succeeding year, and

“(B) without regard to the last sentence of section 431.

For the purpose of the preceding sentence the unused excess profits credit for any taxable year beginning after July 1, 1950, shall first be reduced by the amount, if any, of the adjusted excess profits net income for the preceding taxable year computed—

“(C) by determining the unused excess profits credit adjustment for such preceding taxable year without regard to such unused excess profits credit, and

“(D) without regard to the last sentence of section 431.

If such preceding taxable year began prior to July 1, 1950, the reduction referred to in the preceding sentence shall be an amount which is such part of the reduction determined under the preceding sentence, or such part of the unused excess profits carry-back for such preceding taxable year, whichever is the lesser, as the number of days in such taxable year after June 30, 1950, is of the total number of days in such preceding taxable year.

“(d) NO CARRY-BACK TO TAXABLE YEARS ENDING PRIOR TO JULY 1, 1950.—As used in this section the term ‘preceding taxable year’ does not include any taxable year ending prior to July 1, 1950.

“(e) UNUSED EXCESS PROFITS CREDIT OF YEAR OF LIQUIDATION.—For any taxable year during which the taxpayer (1) completes the distribution of substantially all of its assets in liquidation, or (2) completes the conversion of substantially all of its assets into assets not held in good faith for the purposes of the business, then the unused excess profits credit for such year shall be an amount which is such part of the unused excess profits credit determined under the preceding provisions of this section as the number of days in the taxable year prior to the date of the completion (described in (1) or (2), whichever is earlier) is of the total number of days in the taxable year, and no part of the unused excess profits credit for such year shall be an unused excess profits credit carry-over for any succeeding taxable year.

“SEC. 433. EXCESS PROFITS NET INCOME.

“(a) TAXABLE YEARS ENDING AFTER JUNE 30, 1950.—The excess profits net income for any taxable year ending after June 30, 1950, shall be the normal-tax net income, as defined in section 13 (a) (2),

Ante, p. 1138.

Ante, p. 1138.

Ante, p. 914.

for such year increased or decreased by the following adjustments:

“(1) ADJUSTMENTS.—

“(A) Dividends Received.—The credit for dividends received shall apply, without limitation (except the limitation relating to dividends in kind), to all dividends on stock of all corporations, except that no credit for dividends received shall be allowed with respect to dividends (actual or constructive) on stock of foreign personal holding companies or dividends on stock which is not a capital asset;

“(B) Disallowance of Certain Credits.—In computing such normal-tax net income the credits provided in section 26 (h) and (i) shall not be allowed;

“(C) Gains And Losses From Sales Or Exchanges Of Capital Assets.—There shall be excluded gains and losses from sales or exchanges of capital assets;

“(D) Income From Retirement or Discharge of Bonds, and So Forth.—There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

“(E) Refunds and Interest on Agricultural Adjustment Act Taxes.—There shall be excluded income attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended, and interest upon any such refund;

“(F) Deductions on Account of Retirement or Discharge of Bonds, and So Forth.—If during the taxable year the taxpayer retires or discharges any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, the following deductions for such taxable year shall not be allowed:

“(i) The deduction allowable under section 23 (a) for expenses paid or incurred in connection with such retirement or discharge;

“(ii) The deduction for losses allowable by reason of such retirement or discharge; and

“(iii) In case the issuance was at a discount, the amount deductible for such year solely because of such retirement or discharge;

“(G) Recoveries of Bad Debts.—There shall be excluded income attributable to the recovery of a bad debt if the deduction of such debt was allowable from gross income for any taxable year beginning before January 1, 1940, or beginning after December 31, 1945, and ending before July 1, 1950, or if such debt was properly charged to a reserve for bad debts during any such taxable year;

“(H) Life Insurance Companies.—In the case of a life insurance company, there shall be deducted from the normal tax net income the excess of (1) the product of (i) the figure determined and proclaimed under section 202 (b) and (ii) the excess profits net income computed without regard to this subparagraph, over (2) the adjustment for certain reserves provided in section 202 (c). If the excess profits credit for the taxable year is computed under section 436, there shall be deducted from the normal tax net income only 50 per

Ante, p. 920.

48 Stat. 31.
7 U. S. C. § 601 note;
Sup. III, § 602 *et seq.*
Ante, p. 261.

53 Stat. 12.
26 U. S. C. § 23 (a).
Post, p. 1219.

Ante, p. 961.

56 Stat. 870.
26 U. S. C. § 202 (c).
Post, p. 1156.

centum of the amount determined under the preceding sentence;

“(I) Nontaxable Income of Certain Industries With Depletable Resources.—In the case of a producer of minerals, or a producer of logs or lumber from a timber block, or a lessor of mineral property, or a timber block, as defined in section 453, there shall be excluded nontaxable income from exempt excess output of mines and timber blocks provided in section 453; in the case of a natural gas company, as defined in section 453, there shall be excluded nontaxable income from exempt excess output provided in section 453; and in the case of a producer of minerals, or a producer of logs or lumber from a timber block, there shall be excluded nontaxable bonus income provided in section 453. In respect of nontaxable bonus income provided in section 453 (c), a corporation described in section 453 (c) (2) shall be deemed a producer of minerals for the purposes of this subparagraph;

Post, p. 1181.

“(J) Net Operating Loss Deduction Adjustment.—The net operating loss deduction shall be adjusted as follows:

“(i) In computing the net operating loss for any taxable year under section 122 (a), and the net income for any taxable year under section 122 (b), the deduction for interest shall be reduced by the amount of any reduction under subparagraph (N) or (O), whichever is applicable upon the basis of the excess profits credit for such taxable year; and

53 Stat. 867.
26 U. S. C. § 122.
Sup. III, § 122 notes.
Ante, p. 937.
Post, p. 1143.

“(ii) In lieu of the reduction provided in section 122 (c), such reduction shall be in the amount by which the excess profits net income computed with the exceptions and limitations specified in section 122 (d) (1), (2), (3), and (4), and computed without regard to subparagraph (C), without regard to any credit for dividends received, and without regard to any credit for interest received provided in section 26 (a) exceeds the excess profits net income (computed without the net operating loss deduction); and

Ante, p. 913.

Ante, p. 1140.

53 Stat. 18.
26 U. S. C. § 26 (a).

“(iii) If the excess profits credit for the first taxable year under this subchapter is computed under section 435 or is computed under section 436 (a) by use of the historical invested capital determined under section 458, the taxpayer may elect in its return for such taxable year to compute its net operating loss deduction for the purposes of this subsection for all taxable years by treating an amount equal to the base period loss adjustment (as defined in clause (iv)) as a net operating loss carry-over from the last taxable year ending before July 1, 1950, but for such purposes the net income computed under section 122 (b) for any taxable year ending before July 1, 1950, shall be determined without regard to such carry-over;

Post, pp. 1148, 1156.

Post, p. 1188.

Ante, p. 937.

“(iv) For the purposes of clause (iii), the base period loss adjustment shall be the amount of the recent loss adjustment determined under section 437 (f), using the base period as the recent loss period, and computed by limiting the amount of the net operating loss for any taxable year beginning before January 1, 1948, to an amount equal to the net operating loss carry-over from such taxable year to the taxable year immediately succeeding such taxable year; and

Post, p. 1158.

“(v) If the taxpayer makes the election provided in clause (iii) of this subparagraph, the net operating loss deduction for the purposes of this subsection for each taxable year ending after June 30, 1950 (whether or not the credit for such taxable year is computed under section 435) shall be computed without regard to the net operating loss for any taxable year ending before July 1, 1950, and the net operating loss carry-over specified in clause (iii) of this subparagraph shall not be allowed as a net operating loss carry-over to any taxable year for which the excess profits credit is not computed under section 435 and is not computed under section 436 (a) by use of the historical invested capital determined under section 458;

Post, pp. 1148, 1156.

Post, p. 1165.

“(K) Taxes Paid by Lessee.—If under a lease for a term of more than 20 years entered into prior to December 1, 1950, the lessee is obligated to pay any portion of the tax imposed by this chapter upon the lessor with respect to the rentals derived by such lessor from such lessee, or is obligated to reimburse the lessor for any portion of the tax imposed by this chapter upon the lessor with respect to the rentals derived by such lessor from such lessee, such payment or reimbursement of the tax imposed by this chapter shall be excluded by the lessor and a deduction therefor shall not be allowed to the lessee. For the purposes of this subparagraph an agreement for lease of railroad properties entered into prior to December 1, 1950, shall be considered to be a lease including such term as the total number of years such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into prior to December 1, 1950;

53 Stat. 36.
26 U. S. C. § 104.

“(L) Bad Debts in Case of Banks.—In the case of a bank (as defined in section 104) using the reserve method of accounting for bad debts, there shall be allowed, in lieu of the amount allowable under the reserve method for bad debts, a deduction for debts which became worthless within the taxable year, in whole or in part, within the meaning of section 23 (k);

53 Stat. 13.
26 U. S. C. § 23 (k).

“(M) Blocked Foreign Income.—There shall be excluded income derived from sources within any foreign country to the extent that such income would, but for monetary, exchange, or other restrictions imposed by such foreign country, have been includible in the gross income of the taxpayer for any taxable year which preceded its first taxable year under this subchapter. In determining the taxable year for which income derived from foreign sources would have been includible (but for such restrictions) in cases where specific identification can not be made, such determinations shall be made in accordance with regulations prescribed by the Secretary. Where income derived from sources within any foreign country is includible (without regard to this sentence) in a taxable year succeeding the first taxable year under this subchapter, and but for monetary, exchange, or other restrictions imposed by such foreign country would have been includible in the gross income of the taxpayer for its first taxable year under this subchapter, such income, in case such first taxable year began before July 1, 1950, shall be considered (in the application of this subparagraph) as having

been includible in gross income of a taxable year which preceded such first taxable year in an amount equal to that portion of such income as the number of days prior to July 1, 1950, in such first taxable year bears to the total number of days in such first taxable year. Deductions properly chargeable and allocable to income excluded under this subparagraph shall not be allowed;

“(N) Interest—Credit Based Upon Invested Capital.—If the excess profits credit for the taxable year is computed under section 436 the deduction for interest shall be reduced by an amount equal to 75 per centum of so much of such interest as represents interest on the indebtedness included in the daily amounts of borrowed capital (determined under section 439 (b)).

Post, p. 1156.

“(O) Interest—Credit Based Upon Income.—If the excess profits credit for the taxable year is computed under section 435, the deduction for interest shall be reduced by an amount which bears the same ratio to the interest on the indebtedness included in the daily amounts of borrowed capital (determined under section 439 (b)) as the excess of the amount determined under section 435 (g) (3) (C) over the aggregate, divided by the number of days in the taxable year, of the amount determined under section 435 (g) (4) (E) for each day of the taxable year, bears to the average borrowed capital for the taxable year (as defined in section 439 (a)).

Post, p. 1161.

Post, p. 1148.

Post, p. 1161.

Post, p. 1154.

Post, p. 1161.

“(P) Payments to Encourage Exploration, Development, and Mining for Defense Purposes.—An amount paid to a taxpayer by the United States (or any agency or instrumentality thereof), whether by grant or loan, and whether or not repayable, for the encouragement of exploration, development or mining of critical and strategic minerals or metals pursuant to or in connection with any undertaking approved by the United States (or any of its agencies or instrumentalities) and for which an accounting is made or required to be made to an appropriate governmental agency, and the forgiveness or discharge of any such amount, shall be excluded in computing excess profits net income; and any expenditures (other than expenditures made after the repayment of such grant or loan) attributable to such grant or loan shall not be deductible by the taxpayer as an expense nor increase the basis of the taxpayer's property either for determining gain or loss on sale, exchange, or other disposition or for computing depletion or depreciation, but upon the repayment of any portion of any such grant or loan which has been expended in accordance with the terms thereof such deductions and such increase in basis shall to the extent of such repayment be allowed as if made at the time of such repayment;

“(Q) Income From Installment Sales, Long-Term Contracts, Etc.—For adjustment, in the case of a taxpayer making an election provided in section 455, with respect to income derived from installment sales, installment sales obligations, or long-term contracts, see section 455.

Post, p. 1184.

“(2) TAXABLE YEAR LESS THAN TWELVE MONTHS.—

“(A) General Rule.—If the taxable year is a period of less than twelve months the excess profits net income for such taxable year (referred to in this paragraph as the ‘short taxable year’) shall be placed on an annual basis by multiplying the amount thereof by the number of days in the

Ante, p. 1137.

twelve months ending with the close of the short taxable year and dividing by the number of days in the short taxable year. The tax imposed by section 430 shall be such part of the tax computed on such annual basis as the number of days in the short taxable year is of the number of days in the twelve months ending with the close of the short taxable year.

“(B) Exception.—If the taxpayer establishes its adjusted excess profits net income for the period of twelve months beginning with the first day of the short taxable year, computed as if such twelve-month period were a taxable year, under the law applicable to the short taxable year, and using the credits applicable in determining the adjusted excess profits net income for such short taxable year, then the tax for the short taxable year shall be reduced to an amount which is such part of the tax computed on such adjusted excess profits net income so established as the excess profits net income for the short taxable year is of the excess profits net income for such twelve-month period. The taxpayer (other than a taxpayer to which the next sentence applies) shall compute the tax and file its return without the application of this subparagraph. If, prior to one year from the date of the beginning of the short taxable year, the taxpayer has disposed of substantially all its assets, in lieu of the twelve-month period provided in the preceding provisions of this subparagraph, the twelve-month period ending with the close of the short taxable year shall be used. For the purposes of this subparagraph, the excess profits net income for the short taxable year shall not be placed on an annual basis as provided in subparagraph (A), and the excess profits net income for the twelve-month period used shall in no case be considered less than the excess profits net income for the short taxable year. The benefits of this subparagraph shall not be allowed unless the taxpayer, at such time as regulations prescribed hereunder require, makes application therefor in accordance with such regulations, and such application, in case the return was filed without regard to this subparagraph, shall be considered a claim for credit or refund. The Secretary shall prescribe such regulations as he may deem necessary for the application of this subparagraph.

Ante, p. 1143.

“(C) Section 47 (c) Not Applicable.—The provisions of section 47 (c) shall not apply to the tax imposed by this subchapter.

53 Stat. 26.
26 U. S. C. § 47 (c).

“(b) TAXABLE YEARS IN BASE PERIOD.—For the purposes of computing the average base period net income, the excess profits net income for any taxable year shall be the normal-tax net income, as defined in section 13 (a) (2) as in effect for such taxable year, increased or decreased by the following adjustments (for additional adjustments in case of certain reorganizations, see part II of this subchapter) :

Ante, p. 914.

Post, p. 1191.

53 Stat. 867.
26 U. S. C. § 23 (s).

“(1) NET OPERATING LOSS DEDUCTION.—The net operating loss deduction provided by section 23 (s) shall not be allowed;

“(2) GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.—There shall be excluded gains and losses from sales or exchanges of capital assets and gains and losses to which section 117 (j) is applicable;

Ante, p. 933.

“(3) INCOME FROM RETIREMENT OR DISCHARGE OF BONDS, ETC.—There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for

more than 6 months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge;

"(4) DEDUCTIONS ON ACCOUNT OF RETIREMENT OR DISCHARGE OF BONDS, ETC.—If during the taxable year the taxpayer retires or discharges any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, the following deductions for such taxable year shall not be allowed:

"(A) The deduction allowable under section 23 (a) for expenses paid or incurred in connection with such retirement or discharge;

"(B) The deduction for losses allowable by reason of such retirement or discharge; and

"(C) In case the issuance was at a discount, the amount deductible for such year solely because of such retirement or discharge;

"(5) REPAYMENT OF PROCESSING TAX TO VENDEES.—The deduction under section 23 (a), for any taxable year, for expenses shall be decreased by an amount which bears the same ratio to the amount deductible on account of any repayment or credit by the corporation to its vendee of any amount attributable to any tax under the Agricultural Adjustment Act of 1933, as amended, as the excess of the aggregate of the amounts so deductible in the base period over the aggregate of the amounts attributable to taxes under such Act collected from its vendees which were includible in the corporation's gross income in the base period and which were not paid, bears to the aggregate of the amounts so deductible in the base period;

"(6) DIVIDENDS RECEIVED.—The credit for dividends received shall apply, without limitation (except the limitation relating to dividends in kind), to all dividends on stock of all corporations, except that no credit for dividends received shall be allowed with respect to dividends (actual or constructive) on stock of foreign personal holding companies or dividends on stock which is not a capital asset;

"(7) INSTALLMENT SALES.—In the case of a taxpayer which has made the election provided in section 455 (a), income from installment sales and from installment sales obligations shall be computed (in lieu of in the manner provided in section 44) under the accrual method without treating any portion of such income as unrealized at the close of any period and as if the taxpayer had reported such income on such accrual method for all taxable periods.

"(8) LONG-TERM CONTRACTS.—In the case of a taxpayer which has made the election provided in section 455 (b), income from long-term contracts shall be computed under the percentage of completion method and as if the taxpayer had reported such income on the percentage of completion method for all taxable periods.

"(9) JUDGMENTS, INTANGIBLE DRILLING AND DEVELOPMENT COSTS, CASUALTY LOSSES, AND OTHER ABNORMAL DEDUCTIONS.—If, for any taxable year or years within, or beginning or ending within, the base period, any class of deductions for the taxable year exceeded 115 per centum of the average amount of deductions of such class for the four previous taxable years (not including deductions arising from the same extraordinary event which gave rise to the deduction for the taxable year), the deductions of such class shall, subject to the rules provided in paragraph (10), be disallowed in an amount equal to such excess. For the purposes

53 Stat. 12.
26 U. S. C. § 23 (a).
Post, p. 1219.

53 Stat. 12.
26 U. S. C. § 23 (a).
Post, p. 1219.

48 Stat. 31.
7 U. S. C. § 601 note;
Sup. III, § 602 *et seq.*
Ante, p. 261.

Post, p. 1184.

53 Stat. 24.
26 U. S. C. § 44.

Post, p. 1185.

of this paragraph, each of the following groups of deductions shall constitute a class of deductions:

“(A) Deductions attributable to claims, awards, judgments, and decrees against the taxpayer, and interest on the foregoing;

“(B) Deductions attributable to intangible drilling and development costs paid or incurred in or for the drilling of wells or the preparation of wells for the production of oil or gas, and for development costs in the case of mines; and

“(C) Deductions under section 23 (f) for losses arising from fires, storms, shipwreck, or other casualty, or from theft, or arising from the demolition, abandonment, or loss of useful value of property, not compensated for by insurance or otherwise. The class of deductions under this subparagraph for any taxable year shall not include deductions which are excludible under paragraph (2) or which would be so excludible if such paragraph were applicable with respect to such taxable year.

The classification of deductions of any class not described in subparagraphs (A) to (C), inclusive, shall be subject to regulations prescribed by the Secretary.

“(10) RULES FOR APPLICATION OF PARAGRAPH (9).—For the purpose of paragraph (9)—

“(A) If the taxpayer was not in existence for four previous taxable years, then the average amount specified in such paragraph shall be determined for the previous taxable years it was in existence and the succeeding taxable years which begin before the beginning of the taxpayer's second taxable year under this subchapter. If the number of such succeeding years is greater than the number necessary to obtain an aggregate of four taxable years, there shall be omitted so many of such succeeding years, beginning with the last, as are necessary to reduce the aggregate to four.

“(B) Deductions of any class for any taxable year shall not be disallowed under such paragraph unless the amount of deductions of such class to be disallowed for such year exceeds 5 per centum of the average excess profits net income for the taxable years within, or beginning or ending within, the base period, computed without the disallowance of any class of deductions under such paragraph. Such average excess profits net income shall, for the purposes of this subparagraph, be computed by aggregating the excess profits net incomes of all such taxable years, dividing such aggregate by the total number of months in such years, and multiplying the quotient by 12. For the purposes of this subparagraph, the excess profits net income for any taxable year shall in no case be less than zero.

“(C) Deductions of any class shall not be disallowed under such paragraph unless the taxpayer establishes that the increase in such deductions—

“(i) is not a cause or a consequence of an increase in the gross income of the taxpayer in its base period or a decrease in the amount of some other deduction in its base period, which increase or decrease is substantial in relation to the amount of the increase in the deductions of such class, and

“(ii) is not a consequence of a change at any time in the type, manner of operation, size, or condition of the business engaged in by the taxpayer.

“(D) The amount of deductions of any class to be disallowed under such paragraph with respect to any taxable year shall not exceed the amount by which the deductions of such class for such taxable year exceed the deductions of such class for the taxable year for which the tax under this subchapter is being computed.

“(11) TAXES PAID BY LESSEE.—If under a lease for a term of more than 20 years entered into prior to December 1, 1950, the lessee is obligated to pay any portion of the tax imposed by this chapter upon the lessor with respect to the rentals derived by such lessor from such lessee, or is obligated to reimburse the lessor for any portion of the tax imposed by this chapter upon the lessor with respect to the rentals derived by such lessor from such lessee, such payment or reimbursement of the tax imposed by this chapter shall be excluded by the lessor and a deduction therefor shall not be allowed to the lessee. For the purposes of this paragraph an agreement for lease of railroad properties entered into prior to December 1, 1950, shall be considered to be a lease including such term as the total number of years such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into prior to December 1, 1950.

“(12) BAD DEBTS IN CASE OF BANKS.—In the case of a bank (as defined in section 104) using the reserve method of accounting for bad debts, there shall be allowed, in lieu of the amount allowable under the reserve method for bad debts, a deduction for debts which became worthless within the taxable year, in whole or in part, within the meaning of section 23 (k).

“(13) BANK ASSESSMENTS BY FEDERAL DEPOSIT INSURANCE CORPORATION.—In the case of a bank (as defined in section 104), the deduction for the assessment by the Federal Deposit Insurance Corporation shall be reduced to an amount which is such part thereof as the net assessment (after credits applicable thereto) for the taxable year for which the excess profits credit is being computed is of the gross assessment for such taxable year.

“(14) LIFE INSURANCE COMPANIES.—In the case of a life insurance company, there shall be deducted from the normal-tax net income the excess of (A) the product of (i) the figure determined and proclaimed under section 202 (b) and (ii) the excess profits net income computed without regard to this paragraph, over (B) the adjustment for certain reserves provided in section 202 (c).

“(15) CREDIT FOR INCOME SUBJECT TO PRIOR EXCESS PROFITS TAX.—The credit provided in section 26 (e) shall not be allowed.

“(c) DEFICIT IN EXCESS PROFITS NET INCOME.—For the purposes of this subchapter, the deficit in excess profits net income for any taxable year shall be the excess, if any, of—

“(1) the sum of the deductions from gross income, the credit for dividends received, the credit provided in section 26 (a) (relating to interest on certain obligations of the United States and its instrumentalities) and the amount of the decrease resulting from the adjustments provided in subsection (b), over

“(2) the sum of the gross income and the amount of the increase resulting from the adjustments provided in subsection (b).

“SEC. 434. EXCESS PROFITS CREDIT—ALLOWANCE.

“(a) DOMESTIC CORPORATIONS.—In the case of a domestic corporation, the excess profits credit for any taxable year shall be an amount computed under section 435 or section 436, whichever amount results in the lesser tax under this subchapter for the taxable year for which the tax under this subchapter is being computed.

53 Stat. 36.
26 U. S. C. § 104.

53 Stat. 13.
26 U. S. C. § 23 (k).

53 Stat. 36.
26 U. S. C. § 104.

Ante, p. 961.

55 Stat. 870.
26 U. S. C. § 202 (e).

53 Stat. 19.
26 U. S. C. § 26 (e).

53 Stat. 18.
26 U. S. C. § 26 (a).

Post, pp. 1148, 1156.

“(b) FOREIGN CORPORATIONS.—In the case of a foreign corporation engaged in trade or business within the United States, the first taxable year of which under this subchapter begins on or before July 1, 1950, which was in existence on January 1, 1946, and which at any time during each of the taxable years which began or ended during the base period was engaged in trade or business within the United States, the excess profits credit for any taxable year shall be an amount computed under section 435 or section 436, whichever amount results in the lesser tax under this subchapter for the taxable year for which the tax under this subchapter is being computed. In the case of all other foreign corporations the excess profits credit for any taxable year shall be an amount computed under section 436 (b).

Infra, post, p. 1156.

“(c) SPECIAL RULE IN CONNECTION WITH REGULATED PUBLIC UTILITIES.—Notwithstanding subsection (a), in the case of a regulated public utility (as defined in section 448) the excess profits credit for any taxable year shall be an amount computed under section 435, section 436, or section 448, whichever results in the lesser tax under this subchapter for the taxable year for which the tax under this subchapter is being computed. In the case of a regulated public utility which has made and filed a consent described in section 141 (e) (8) or (j) applicable to the taxable year, the excess profits credit shall, for purposes of filing a consolidated return, be determined in accordance with such consent.

Post, p. 1174.

Infra.

Post, pp. 1156, 1174.

Post, pp. 1218, 1219.

“(d) SPECIAL RULE FOR RAILROAD LESSOR-LESSEE CORPORATIONS.—Notwithstanding the provisions of subsection (a) or (c), in the case of a railroad corporation subject to Part I of the Interstate Commerce Act, substantially all of the railroad properties of which have been leased to another such railroad corporation or corporations by an agreement or agreements entered into prior to December 1, 1950, where each lease is for a term of more than 20 years and where under one or more of the leases or agreements relating to the leased properties the lessee is, or the lessees are, required to pay the taxes of the lessor under this chapter, the aggregate of the excess profits credit and the unused excess profits credit adjustment of each of such corporations, computed without regard to this subsection, may be equitably apportioned among the lessor and each of the lessee corporations so required to pay the taxes of the lessor under this subchapter by agreement among such corporations approved by the Secretary. For the purposes of this subsection an agreement for lease of railroad properties entered into prior to December 1, 1950, shall be considered to be a lease including such term as the total number of years such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into prior to December 1, 1950.

24 Stat. 379.
49 U. S. C. §§ 1-27;
Sup. III, § 1 *et seq.*

“SEC. 435. EXCESS PROFITS CREDIT—BASED ON INCOME.

“(a) AMOUNT OF EXCESS PROFITS CREDIT.—The excess profits credit for any taxable year, computed under this section, shall be—

“(1) DOMESTIC CORPORATIONS.—In the case of a domestic corporation the sum of—

“(A) 85 per centum of the average base period net income,

“(B) if the average base period net income of the taxpayer is the amount determined under subsection (d) of this section or under section 442, 12 per centum of the amount of the base period capital addition, computed under subsection (f), and

“(C) 12 per centum of the net capital addition (as defined in subsection (g) (1)) for the taxable year,

Post, p. 1163.

minus 12 per centum of the net capital reduction (as defined in subsection (g) (2)) for the taxable year.

“(2) FOREIGN CORPORATIONS.—In the case of a foreign corporation, 85 per centum of the average base period net income.

“(3) CROSS REFERENCE.—For the computation of the excess profits credit based on income in the case of certain reorganizations, see part II of this subchapter.

Post, p. 1191.

“(b) BASE PERIOD.—As used in this subchapter the term ‘base period’ means the period beginning January 1, 1946, and ending December 31, 1949, except that in the case of a taxpayer whose first taxable year under this subchapter was preceded by a taxable year which ended after December 31, 1949, and before April 1, 1950, and which began before January 1, 1950, the term ‘base period’ means the period of 48 consecutive months ending with the close of such preceding taxable year.

“(c) AVERAGE BASE PERIOD NET INCOME—DETERMINATION.—For the purposes of this section the average base period net income of the taxpayer shall be the amount determined under subsection (d), subject to the exception that if the taxpayer is entitled to the benefits of subsection (e) of this section, or section 442, 443, 444, 445 or 446, then the average base period net income shall be the amount determined under subsection (d) or (e) or under such section, whichever results in the lesser tax under this subchapter for the taxable year for which the tax under this subchapter is being computed.

Post, pp. 1163-1170.

“(d) AVERAGE BASE PERIOD NET INCOME—GENERAL AVERAGE.—The average base period net income determined under this subsection shall be determined as follows:

“(1) By computing the excess profits net income for each month in the base period. The excess profits net income for any month during any part of which the taxpayer was in existence shall be the excess profits net income for the taxable year in which such month falls divided by the number of full calendar months in such year, but in no case shall the excess profits net income for any month be less than zero. The excess profits net income for any month during no part of which the taxpayer was in existence shall be zero.

“(2) By eliminating from the base period whichever of the following twelve months results in the higher average base period net income—

“(A) The twelve consecutive months the elimination of which produces the highest average base period net income, or

“(B) The twelve months which remain after retaining in the base period the thirty-six consecutive months which produce the highest average base period net income.

“(3) By computing the aggregate of the excess profits net income for each of the thirty-six months remaining in the base period.

“(4) By dividing by 3 the amount ascertained under paragraph (3).

“(e) AVERAGE BASE PERIOD NET INCOME—ALTERNATIVE BASED ON GROWTH.—

“(1) TAXPAYERS TO WHICH SUBSECTION APPLIES.—A taxpayer shall be entitled to the benefits of this subsection if the taxpayer commenced business before the beginning of its base period, and if either—

“(A) (i) the total assets of the taxpayer as of the first day of its base period (when added to the total assets for such day of all corporations with which the taxpayer has the privilege under section 141 of filing a consolidated return for

Post, p. 1217.

its first taxable year under this subchapter), determined under paragraph (3), did not exceed \$20,000,000, and

“(ii) the total payroll of the taxpayer (as determined under paragraph (4)) for the last half of its base period is 130 per centum or more of its total payroll for the first half of its base period, or the gross receipts of the taxpayer (as determined under paragraph (5)) for the last half of its base period is 150 per centum or more of its gross receipts for the first half of its base period; or

“(B) (i) the taxpayer's net sales for the period beginning January 1, 1950, and ending June 30, 1950, when multiplied by 2, equals or exceeds 150 per centum of its average net sales for the calendar years 1946-1947; and

“(ii) 40 per centum or more of the taxpayer's net sales for the calendar year 1950 is attributable to a product, or class of products (including any article in which such product or class of products is the principal component and including any article which is a component of such product or class of products), of a kind not generally available to the public at any time prior to January 1, 1946, and

“(iii) the amount of the taxpayer's net sales which is attributable to such product or class of similar products, for the calendar year 1946 is 5 per centum or less of the amount of its net sales so attributable for the calendar year 1949. For the purposes of this subparagraph, the term “net sales” with respect to any period means the total amount received or accrued during such period from the sale, exchange, or other disposition of stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business; reduced by the amount of discounts, returns, and allowances paid or incurred for such period.

“(2) COMPUTATION.—The average base period net income determined under this subsection shall be determined as follows:

“(A) By computing (in the manner provided by the second sentence of subsection (d) (1)) the excess profits net income for each of the last 24 months in the base period.

“(B) By computing the aggregate of the excess profits net income for each such month.

“(C) By dividing by 2 the amount ascertained under subparagraph (B).

“(D) By computing the aggregate of the excess profits net income for each of the last twelve months in the base period.

“(E) By computing (in the manner provided by the second sentence of subsection (d) (1)) the excess profits net income for each of the twelve months in the period beginning July 1, 1949, and ending June 30, 1950. For the purposes of this subparagraph and subparagraph (G) the excess profits net income for any month after December 1949 shall be the ‘weighted excess profits net income’ for the taxable year in which such month falls divided by the number of full calendar months in such year, but in no case shall such excess profits net income for any month be less than zero. The ‘weighted excess profits net income’ for any taxable year beginning before July 1, 1950, shall be—

“(i) 100 per centum of the excess profits net income for the taxable year if such year ends before July 1, 1950;

"(ii) 90 per centum of the excess profits net income for the taxable year if such year ends after June 30, 1950, and before October 1, 1950;

"(iii) 80 per centum of the excess profits net income for the taxable year if such year ends after September 30, 1950, and before April 1, 1951; and

"(iv) 70 per centum of the excess profits net income for the taxable year if such year ends after March 31, 1951.

"(F) By computing the aggregate of the excess profits net income for each of the twelve months referred to in subparagraph (E).

"(G) In the case of a taxpayer who is entitled to the benefits of this subsection only under paragraph (1) (B) and whose excess profits net income for the calendar year 1949 is not more than 25 per centum of its excess profits net income for the calendar year 1948, by computing—

"(i) in the manner provided by subparagraph (E), the excess profits net income for each of the six months in the period beginning July 1, 1948, and ending December 31, 1948, and for each of the six months in the period beginning January 1, 1950, and June 30, 1950, and

"(ii) the aggregate of the excess profits net income for each of the twelve months referred to in clause (i).

The average base period net income determined under this subsection shall be the amount ascertained under subparagraph (C), (D), or (F), whichever is the highest, except that in the case of a taxpayer described in subparagraph (G), its average base period net income determined under this subsection shall be the amount ascertained under subparagraph (C), (D), (F), or (G) (ii), whichever is the highest.

"(3) TOTAL ASSETS.—For the purposes of this subsection the taxpayer's total assets as of any day shall be determined as of the beginning of such day and shall be an amount equal to the sum of the cash and the property other than cash, held by such taxpayer for the purposes of the business. Such property shall be included in an amount equal to its adjusted basis for determining gain upon sale or exchange. In case the taxpayer has the privilege under section 141 of filing a consolidated return for its first taxable year under this subchapter, the total assets of the affiliated group as of any day shall be determined under regulations prescribed by the Secretary.

"(4) TOTAL PAYROLL.—As used in this subsection the term 'total payroll' with respect to any period means the sum of the salaries, wages, commissions, and other compensation paid or incurred by the taxpayer during such period for personal services actually rendered by employees, excluding the amount thereof which is allowable as a deduction under section 23 (p) and excluding any compensation paid in any medium other than cash. In the event that a taxable year falls partly within such period, there shall be allocated, for the purposes of this paragraph, to the portion of the year within such period an amount of the salaries, wages, commissions, and other compensation for such year in the same proportion as the number of months in such year within the period bears to the total number of months in such year.

"(5) GROSS RECEIPTS.—As used in this subsection the term 'gross receipts' with respect to any period means the sum of:

"(A) The total amount received or accrued during such period from the sale, exchange, or other disposition of stock in trade of the taxpayer or other property of a kind which

Post, p. 1217.

53 Stat. 15.
26 U. S. C. § 23 (p).

would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, and

“(B) The gross income, attributable to a trade or business regularly carried on by the taxpayer, received or accrued during such period excluding therefrom—

“(i) Gross income derived from the sale, exchange, or other disposition of property;

“(ii) Gross income derived from discharge of indebtedness of the taxpayer;

“(iii) Dividends on stocks of corporations; and

“(iv) Income attributable to recovery of bad debts.

In the event that a taxable year falls partly within such period, there shall be allocated, for the purposes of subparagraphs (A) and (B), to the portion of the year within such period an amount of the total gross receipts (as defined in such subparagraphs) for such year in the same proportion as the number of months in such year within the period bears to the total number of months in such year.

“(f) CAPITAL ADDITIONS IN BASE PERIOD.—

“(1) DEFINITION OF YEARLY BASE PERIOD CAPITAL.—For the purposes of this subsection, the yearly base period capital for any taxable year shall be the sum of the equity capital (as defined in section 437 (c)) at the beginning of such taxable year and an amount equal to 75 per centum of the daily borrowed capital (as defined in section 439 (b)) for the first day of such taxable year, reduced by the sum of—

“(A) the amount of inadmissible assets at the beginning of such taxable year, determined under section 440, minus 25 per centum of the excess, if any, of such amount over the amount of the equity capital (as defined in section 437 (c)) at the beginning of such taxable year,

“(B) 75 per centum of the amount of loans to members of a controlled group, determined under paragraph (4), and

“(C) 75 per centum of the amount of the adjustment for interest on borrowed capital, determined under paragraph (5).

“(2) COMPUTATION OF BASE PERIOD CAPITAL ADDITION—GENERAL RULE.—The amount of the base period capital addition referred to in subsection (a) (1) (B) shall, except in cases otherwise provided for in paragraph (3), be determined as follows:

“(A) By computing the yearly base period capital for each of the following years:

“(i) the first taxable year of the taxpayer under this subchapter;

“(ii) the immediately preceding taxable year; and

“(iii) the second preceding taxable year.

“(B) By computing the amount of the excess, if any, of the amount ascertained under subparagraph (A) (i) over the higher of the amounts ascertained under subparagraphs (A) (ii) and (A) (iii).

“(C) By computing the amount of the excess, if any, of the lower of the amounts ascertained under subparagraphs (A) (i) and (A) (ii) over the amount ascertained under subparagraph (A) (iii).

“(D) By adding to the amount ascertained under subparagraph (B) one-half of the amount ascertained under subparagraph (C).

Post, p. 1157.

Post, p. 1161.

Post, p. 1161.

Post, p. 1157.

“(3) SPECIAL RULES IN CASE OF ABNORMALITY DURING BASE PERIOD.—In the event that the average base period net income of the taxpayer is determined under section 442, then—

Post, p. 1163.

“(A) If its average base period net income is determined under section 442 (d), the base period capital addition shall be zero.

“(B) If its average base period net income is determined under section 442 (c) (1) by including a substitute excess profits net income for any part of its first taxable year under this subchapter or for the immediately preceding year, the base period capital addition shall be zero.

“(C) If its average base period net income is computed under section 442 (c) (1) by including a substitute excess profits net income for any part of the earlier of the taxpayer's two taxable years immediately preceding its first taxable year under this subchapter, the base period capital addition shall be the excess, if any, of the amount ascertained under paragraph (2) (A) (i) over the amount ascertained under paragraph (2) (A) (ii).

“(4) LOAN TO MEMBERS OF A CONTROLLED GROUP.—If, on the first day of any taxable year, the taxpayer and any one or more other corporations are members of the same controlled group, as defined in subsection (g) (6), the amount referred to in paragraph (1) (B) with respect to such taxable year shall be the amount of the indebtedness of such other corporation (or if more than one, such other corporations) to the taxpayer at the beginning of such day. For the purposes of this paragraph, the term ‘indebtedness’ means indebtedness which constitutes daily borrowed capital, as defined in section 439 (b) (1), of such other corporation for such day.

Post, p. 1161.

“(5) ADJUSTMENT FOR INTEREST ON BORROWED CAPITAL.—The adjustment for interest on borrowed capital referred to in paragraph (1) (C) with respect to any taxable year shall be determined as follows:

“(A) By multiplying any indebtedness of the taxpayer which constitutes daily borrowed capital (as defined in section 439 (b)) for the first day of such taxable year by the annual rate of interest payable upon such indebtedness during such taxable year.

Post, p. 1161.

“(B) By aggregating the amounts ascertained under subparagraph (A) with respect to all borrowed capital for such day.

“(C) By multiplying the aggregate amount ascertained under subparagraph (B) by 100, and dividing the product by 12.

“(6) CROSS REFERENCE.—For special rules applicable to this subsection see section 441.

Post, p. 1162.

“(g) NET CAPITAL ADDITION OR REDUCTION.—

“(1) NET CAPITAL ADDITION.—The net capital addition for the taxable year shall, for the purposes of this section, be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital addition for each day of the taxable year over the aggregate of the daily capital reduction for each day of the taxable year. If there is an increase in inadmissible assets for the taxable year, determined under paragraph (5), the net capital addition shall be the excess of the amount determined under the preceding sentence over—

“(A) unless subparagraph (B) is applicable, the amount of such increase in inadmissible assets;

“(B) if the amount of such increase in inadmissible assets is in excess of the net capital addition determined without regard to this sentence and without regard to paragraph (3) (C), the amount of such increase in inadmissible assets minus 25 per centum of such excess.

“(2) NET CAPITAL REDUCTION.—The net capital reduction for the taxable year shall, for the purposes of this section, be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital reduction for each day of the taxable year over the aggregate of the daily capital addition for each day of the taxable year. If there is a decrease in inadmissible assets for the taxable year, determined under paragraph (5), the net capital reduction shall be the excess of the amount determined under the preceding sentence over—

“(A) unless subparagraph (B) is applicable, the amount of such decrease in inadmissible assets;

“(B) if the amount of such decrease in inadmissible assets is in excess of the net capital reduction determined without regard to this sentence and without regard to paragraph (4) (C) and (E), the amount of such decrease in inadmissible assets minus 25 per centum of such excess.

“(3) DAILY CAPITAL ADDITION.—The daily capital addition for any day of the taxable year shall, for the purposes of this section, be the sum of the following:

“(A) The aggregate of the amounts of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital, after the beginning of the taxable year and prior to such day.

“(B) The amount, if any, by which the equity capital (as defined in section 437 (c)) at the beginning of the taxable year exceeds the equity capital at the beginning of the taxpayer's first taxable year under this subchapter.

“(C) 75 per centum of the amount, if any, by which the average borrowed capital for the taxable year (as defined in section 439 (a)) exceeds the daily borrowed capital for the first day of the taxpayer's first taxable year under this subchapter.

“(4) DAILY CAPITAL REDUCTION.—The daily capital reduction for any day of the taxable year shall, for the purposes of this section, be the sum of the following:

“(A) Distributions to shareholders previously made during such taxable year which are not out of the earnings and profits of such taxable year; and

“(B) The amount, if any, by which the amount of the equity capital (as defined in section 437 (c)) at the beginning of the taxpayer's first taxable year under this subchapter exceeds the amount of the equity capital at the beginning of the taxable year; and

“(C) 75 per centum of the amount, if any, by which the daily borrowed capital (as determined under section 439 (b)) for the first day of the taxpayer's first taxable year under this subchapter exceeds the average borrowed capital for the taxable year; and

“(D) The amount determined under paragraph (6), relating to increase in certain inadmissible assets by a member of a controlled group; and

“(E) 75 per centum of the amount determined under paragraph (7), relating to increase in loans to a member of a controlled group.

Post, p. 1157.

Post, p. 1161.

Post, p. 1157.

Post, p. 1161.

"(5) DEFINITIONS WITH RESPECT TO INADMISSIBLE ASSETS.—For the purposes of this subsection—

"(A) Average Inadmissible Assets for the Taxable Year.—

The average inadmissible assets for any taxable year shall be the total of the daily amounts attributable to the inadmissible assets for such taxable year, determined under section 440 (b), divided by the number of days in such taxable year.

Post, p. 1161.

"(B) Original Inadmissible Assets.—The term 'original inadmissible assets' means the total of the inadmissible assets for the first day of the taxpayer's first taxable year under this subchapter, determined under section 440 (b).

Post, p. 1161.

"(C) Increase in Inadmissible Assets.—The term 'increase in inadmissible assets' for any taxable year means the excess of the average inadmissible assets for such taxable year over the original inadmissible assets.

"(D) Decrease in Inadmissible Assets.—The term 'decrease in inadmissible assets' for any taxable year means the excess of the original inadmissible assets over the average inadmissible assets for such year.

"(6) CONTROLLED GROUP.—If, on any day of the taxable year, the taxpayer and any one or more other corporations are members of the same controlled group, the amount added to the daily capital reduction under paragraph (4) (D) shall be whichever of the following amounts is the lesser:

"(A) The excess of the aggregate of the adjusted basis (for determining gain upon sale or exchange) of stock in such other corporation (or if more than one, in such other corporations) held by the taxpayer at the beginning of such day over the aggregate of the adjusted basis (for determining gain upon sale or exchange) of stock in such other corporation (or if more than one, in such other corporations) held by the taxpayer at the beginning of its first taxable year under this subchapter; or

"(B) The excess of the aggregate of the adjusted basis (for determining gain upon sale or exchange) of inadmissible assets held by the taxpayer at the beginning of such day, over the aggregate of the adjusted basis (for determining gain upon sale or exchange) of inadmissible assets held by the taxpayer at the beginning of its first taxable year under this subchapter.

The increase in inadmissible assets for the taxable year shall, for the purposes of paragraph (1), be determined by reducing the inadmissible assets for such day by the amount by which the daily capital reduction for such day is increased under this paragraph. As used in this paragraph, a controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if (i) more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations and (ii) the common parent corporation owns directly more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of at least one of the other corporations.

"(7) LOANS TO MEMBERS OF A CONTROLLED GROUP.—If, on any day of the taxable year, the taxpayer and any one or more other

corporations are members of the same controlled group, as defined in paragraph (6), the amount referred to in paragraph (4) (E) shall be the excess of the amount of the indebtedness of such other corporation (or if more than one, such other corporations) to the taxpayer at the beginning of such day over the amount of the indebtedness by such other corporation (or if more than one, such other corporations) to the taxpayer at the beginning of its first taxable year under this subchapter. For the purposes of this paragraph, the term 'indebtedness' means indebtedness which constitutes daily borrowed capital, as defined in section 439 (b) (1), of such other corporation for such day.

"(8) CROSS REFERENCE.—For special rules applicable to this subsection see section 441.

"SEC. 436. EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL.

"(a) GENERAL RULE.—In the case of a domestic corporation (except a corporation described in subsection (b)) the excess profits credit for any taxable year computed under this section shall be the sum of the following:

"(1) The invested capital credit computed under section 437, reduced by the amount computed under section 440 (b) (relating to inadmissible assets), and

"(2) The new capital credit, if any, computed under section 438 (a).

"(b) FOREIGN CORPORATIONS AND CORPORATIONS ENTITLED TO BENEFITS OF SECTION 251.—

"(1) COMPUTATION OF CREDIT.—In the case of a foreign corporation engaged in a trade or business within the United States, and in the case of a corporation entitled to the benefits of section 251, the excess profits credit for any taxable year computed under this section shall be determined in accordance with rules and regulations prescribed by the Secretary, under which—

"(A) General Rule.—The excess profits credit shall be the invested capital credit computed under section 437, reduced by the amount computed under section 440 (b) (relating to inadmissible assets). In computing the invested capital credit for the purposes of this subsection, (i) the invested capital for any taxable year shall (in lieu of the amount provided in section 437 (b) (1)) be the aggregate, divided by the number of days in such year, of the sum of the equity capital (determined under section 437 (c)) as of the beginning of each day of such taxable year and 75 per centum of the daily borrowed capital (determined under section 439 (b)) for each such day, (ii) the term 'assets' as used in section 437 (c) shall be considered as referring to United States assets, (iii) the term 'liabilities' as used in such section shall be considered as referring to United States liabilities, and (iv) the daily borrowed capital shall be determined under section 439 (b) by reference only to United States liabilities. In the application of section 440, the terms 'admissible assets' and 'inadmissible assets' shall include only United States assets.

"(B) Exception.—If the Secretary determines that the United States assets of the taxpayer cannot satisfactorily be segregated from its other assets or that the United States liabilities of the taxpayer cannot satisfactorily be segregated from its other liabilities, the invested capital of the taxpayer shall be an amount (in lieu of the amount ascertained under subparagraph (A)) which is the same percentage of the sum of the equity capital of the taxpayer, determined under sec-

Post, p. 1161.

Post, p. 1162.

Post, p. 1167.

Post, p. 1161.

Post, p. 1159.

Ante, p. 944.

Post, p. 1157.

Post, p. 1161.

Post, p. 1161.

tion 437 (c) as of the end of the last day of the taxable year without the application of this subparagraph, and 75 per centum of the daily borrowed capital determined under section 439 (b) for the day following such last day without the application of this subparagraph, which the net income for the taxable year from sources within the United States is of the total net income of the taxpayer for such year.

“(2) DEFINITIONS.—As used in this subsection—

“(A) the term ‘United States assets’ means assets held by the taxpayer (in good faith for the purposes of the business) in the United States, determined in accordance with rules and regulations prescribed by the Secretary.

“(B) the term ‘United States liabilities’ means the liabilities of the taxpayer which are directly related to its United States assets, determined in accordance with rules and regulations prescribed by the Secretary.

“SEC. 437. INVESTED CAPITAL CREDIT.

“(a) DEFINITION.—The invested capital credit for any taxable year shall be the amount shown in the following table:

If the invested capital for such year (as defined in subsection (b) (1)) is:	The credit shall be:
Not over \$5,000,000	12% of the invested capital.
Over \$5,000,000 but not over \$10,000,000.	\$600,000, plus 10% of the excess over \$5,000,000.
Over \$10,000,000	\$1,100,000, plus 8% of the excess over \$10,000,000.

“(b) INVESTED CAPITAL.—

“(1) ELECTION OF TAXPAYER.—The invested capital for any taxable year shall be the adjusted invested capital determined under paragraph (2), except that if the taxpayer elects in its return for such taxable year to compute its invested capital under the provisions of section 458, the invested capital for such year shall be the historical invested capital determined under section 458. For the invested capital of certain insurance companies, see paragraph (3).

“(2) ADJUSTED INVESTED CAPITAL.—The adjusted invested capital for any taxable year (hereinafter in this paragraph referred to as ‘the taxable year’) shall be the sum of—

“(A) the equity capital (as defined in subsection (c)) as of the beginning of the taxable year;

“(B) the capital addition for the taxable year computed under subsection (d);

“(C) 75 per centum of the average borrowed capital for the taxable year computed under section 439 (a); and

“(D) the recent loss adjustment computed under subsection (f),

minus the capital reduction for the taxable year computed under subsection (e). If the amount of the adjusted invested capital so computed is over \$5,000,000, such amount shall be reduced by the net new capital addition computed under section 438 (b).

“(3) MUTUAL INSURANCE COMPANY (OTHER THAN LIFE OR MARINE).—The invested capital of a mutual insurance company (other than life or marine) shall be the mean of its surplus, plus 50 per centum of the mean of all reserves required by law, both surplus and reserves being determined at the beginning and end of the taxable year, and it may include as equity capital its organization expenses. The surplus shall include all of the assets of the company other than the reserves required by law.

“(c) DEFINITION OF EQUITY CAPITAL.—The equity capital of the taxpayer as of any time shall be the total of its assets held at such time

Infra.

Post, p. 1161.

Post, p. 1188.

Post, p. 1161.

Post, p. 1159.

in good faith for the purposes of the business, reduced by the total of its liabilities at such time. For such purposes, the amount attributable to each asset shall be determined by ascertaining the adjusted basis thereof (or, in the case of money, the amount thereof) and the adjusted basis shall be the adjusted basis for determining gain upon sale or exchange. In the case of an insurance company (other than mutual and other than life or marine), 50 per centum of its reserves required by law (other than reserves used in computing borrowed capital under section 439 (b) (2)) shall be considered as equity capital and, it may include as equity capital its organization expenses. In the case of a bank (as defined in section 104) its reserves for bad debts shall not be treated as liabilities. In the case of assets subject to a mortgage or other lien, the amount of the indebtedness secured by such mortgage or lien shall be considered as a liability of the taxpayer whether or not the taxpayer assumed or agreed to pay such indebtedness.

“(d) CAPITAL ADDITION FOR THE TAXABLE YEAR.—The capital addition for the taxable year shall be the aggregate of the daily capital addition for each day of the taxable year, divided by the number of days in such year. The daily capital addition for each day of the taxable year shall be the aggregate of the amount of money and property paid in after the beginning of such taxable year and prior to such day for stock, or as paid-in surplus, or as a contribution to capital.

“(e) CAPITAL REDUCTION FOR THE TAXABLE YEAR.—The capital reduction for the taxable year shall be the aggregate of the daily capital reduction for each day of the taxable year, divided by the number of days in such year. The daily capital reduction for each day of the taxable year shall be the amount of the distributions previously made during the taxable year which are not out of the earnings and profits of such taxable year.

“(f) RECENT LOSS ADJUSTMENT.—

“(1) DETERMINATION.—The recent loss adjustment for any taxable year shall be the excess of the aggregate of the net operating loss for each taxable year in the recent loss period over the aggregate of the net income for each taxable year in such period. For purposes of this subsection, the term ‘recent loss period’ means whichever of the following periods results in a higher recent loss adjustment—

“(A) the base period, or

“(B) the period beginning January 1, 1940, and ending December 31, 1949.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) Net Operating Loss.—The net operating loss for any taxable year means the net operating loss as defined in section 122 (a), determined under the law applicable to such taxable year.

“(B) Net Income.—The net income for any taxable year means the net income computed with the exceptions, additions, and limitations provided in section 122 (d) (other than paragraph (6) of section 122 (d)), under the law applicable to such taxable year.

“(3) Special Rules.—

“(A) Only Part Of Taxable Year Included In Recent Loss Period.—For purposes of this subsection, the net operating loss or net income for a taxable year only part of which is within the recent loss period shall be such part of the net operating loss or net income for such taxable year, computed without regard to this subparagraph, as the number of months in such taxable year falling within the recent loss period is of the total number of months in such taxable year.

Post, p. 1161.

53 Stat. 36.
26 U. S. C. § 104.

53 Stat. 867.
26 U. S. C. § 122 (a).

53 Stat. 867.
26 U. S. C. § 122 (d).
Post, p. 1220.

For purposes of this subsection, a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

“(B) Recent Losses of Component Corporations.—The recent loss adjustment shall be separately computed for each corporation which is a component corporation of the taxpayer within the meaning of part II of this subchapter, and the amount so computed shall be added to the recent loss adjustment of the taxpayer. For purposes of such computation, the recent loss period of the component corporation shall not include any period after the date of the transaction in which such corporation became a component corporation of the taxpayer. The recent loss adjustment of the component corporation, for the purpose of computing the adjusted equity capital of any corporation (including the component corporation) other than the taxpayer for a taxable year ending after such date shall be reduced by the amount with respect to such component corporation which, under this subsection, is added to the recent loss adjustment of the taxpayer.

Post, p. 1191.

“SEC. 433. NEW CAPITAL CREDIT CHANGES.

“(a) NEW CAPITAL CREDIT.—The new capital credit for any taxable year shall be 12 per centum of the amount of the net new capital addition for the taxable year, except that the credit provided by this subsection shall not be allowed—

“(1) if the invested capital for the taxable year (computed without reduction by the amount of the net new capital addition) is \$5,000,000 or less;

“(2) if the invested capital for the taxable year is the historical invested capital determined under section 458;

“(3) if the taxpayer is a mutual insurance company (other than life or marine).

Post, p. 1188.

“(b) NET NEW CAPITAL ADDITION.—The net new capital addition for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily new capital addition (determined under subsection (c)) for each day of the taxable year over the aggregate of the daily new capital reduction (determined under subsection (d)) for each day of the taxable year. If there is an increase in inadmissible assets for the taxable year, determined under section 435 (g) (5), the net new capital addition shall be the excess of the amount determined under the preceding sentence over—

“(1) unless paragraph (2) is applicable, the amount of such increase in inadmissible assets;

“(2) if the amount of such increase in inadmissible assets is in excess of the net new capital addition determined without regard to this sentence and without regard to subsection (c) (3) and subsection (d) (3), the amount of such increase in inadmissible assets minus 25 per centum of such excess.

“(c) DAILY NEW CAPITAL ADDITION.—The daily new capital addition for any day of the taxable year shall, for the purposes of this section, be the sum of the following:

“(1) The aggregate of the amounts of money and property (other than excluded equity capital as defined in subsection (e)) paid in for stock, or as paid-in surplus, or as a contribution to capital, after the beginning of such taxable year and prior to such day.

“(2) The amount, if any, by which the equity capital at the beginning of the taxable year minus the amount of excluded equity capital (as defined in subsection (e)) paid in before the beginning of the taxable year and after the beginning of the

Ante, p. 1155.

taxpayer's first taxable year under this subchapter exceeds the equity capital at the beginning of such first taxable year.

"(3) 75 per centum of the amount, if any, by which the increase in the daily borrowed capital for such day exceeds the increase in the excluded borrowed capital for such day. For the purposes of this paragraph the term 'increase in the daily borrowed capital' for such day means the amount by which the daily borrowed capital for such day (as defined in section 439 (b)) exceeds the daily borrowed capital for the first day of the taxpayers' first taxable year under this subchapter, and the term 'increase in the excluded borrowed capital' for such day means the amount by which the excluded borrowed capital for such day (as defined in subsection (f)) exceeds the excluded borrowed capital for the first day of the taxpayers' first taxable year under this subchapter.

"(d) DAILY NEW CAPITAL REDUCTION.—The daily new capital reduction for any day of the taxable year shall be the sum of the following:

"(1) Distributions to shareholders previously made during such taxable year which are not out of the earnings and profits of such taxable year; and

"(2) The amount, if any, by which the equity capital at the beginning of the taxpayer's first taxable year under this subchapter plus the total amount of excluded equity capital paid in after the beginning of such first taxable year and before the beginning of the taxable year exceeds the amount of the equity capital at the beginning of the taxable year; and

"(3) 75 per centum of the amount, if any, by which the daily borrowed capital (as defined in section 439 (b)) for the first day of the taxpayer's first taxable year under this subchapter exceeds the daily borrowed capital for such day.

"(e) DEFINITION OF EXCLUDED CAPITAL.—The term 'excluded equity capital' means the amount of money or property paid in for stock, or as paid-in surplus, or as a contribution to capital, to the taxpayer—

"(1) by a corporation in an exchange to which section 112 (b) (3), (4), (5), or (10), or so much of section 112 (c), (d), or (e) as refers to section 112 (b) (3), (4), (5), or (10), is applicable (or would be applicable except for section 371 (g)), or would have been applicable if the term 'control' had been defined in section 112 (h) to mean the ownership of stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote or more than 50 per centum of the total value of shares of all classes of stock.

"(2) by a transferor corporation if immediately after such transaction the transferor and the taxpayer are members of the same controlled group. As used in this paragraph, a controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if (A) more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations, and (B) the common parent corporation owns directly more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of at least one of the other corporations.

"(f) DEFINITION OF EXCLUDED BORROWED CAPITAL.—The term 'excluded borrowed capital' for any day of any taxable year means so much of the daily borrowed capital for such day as consists of out-

Post, p. 1161.

Post, p. 1161.

53 Stat. 37.
26 U. S. C. § 112.

53 Stat. 101.
26 U. S. C. § 371 (g).

standing indebtedness to a member of a controlled group, as defined in subsection (e) (2), which includes the taxpayer.

“SEC. 439. BORROWED CAPITAL.

“(a) **AVERAGE BORROWED CAPITAL.**—For the purposes of this subchapter, the average borrowed capital for any taxable year shall be the aggregate of the daily borrowed capital for each day of such taxable year, divided by the number of days in such taxable year.

“(b) **DAILY BORROWED CAPITAL.**—For the purposes of this subchapter, the daily 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) of the taxpayer, incurred in good faith for the purposes of the business, which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortgage, deed of trust, bank loan agreement, or conditional sales contract. In the case of property of the taxpayer subject to a mortgage or other lien, the amount of indebtedness secured by such mortgage or lien shall be considered as an indebtedness of the taxpayer whether or not the taxpayer assumed or agreed to pay such indebtedness, plus

“(2) In the case of an insurance company, an amount equal to $66\frac{2}{3}$ per centum of the mean of the amount of the pro rata unearned premiums determined at the beginning and end of the taxable year, plus,

“(3) In the case of a life insurance company, an amount equal to $66\frac{2}{3}$ per centum of the mean of the amount of the adjusted reserves, and an amount equal to $66\frac{2}{3}$ per centum of the mean of the amount of the reserves on insurance or annuity contracts (or contracts arising out of insurance or annuity contracts) which do not involve, at the time with reference to which the computation was made, life, health, or accident contingencies, determined at the beginning and end of the taxable year; plus

“(4) In the case of a face-amount certificate company as defined in section 4 (1) of the Investment Company Act of 1940 (15 U. S. C., Sec. 80a-4), an amount equal to $66\frac{2}{3}$ per centum of the mean of the amount of reserves on its outstanding investment certificates, determined at the beginning and end of the taxable year.

54 Stat. 799.

“SEC. 440. ADMISSIBLE AND INADMISSIBLE ASSETS.

“(a) **DEFINITIONS.**—For the purposes of this subchapter—

“(1) The term ‘inadmissible assets’ means—

“(A) Stock in corporations, except stock in a foreign personal holding company, and except stock which is not a capital asset; and

“(B) Obligations described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income.

“(2) The term ‘admissible assets’ means all assets other than inadmissible assets.

“(b) **RATIO OF INADMISSIBLES TO TOTAL ASSETS.**—In the case of any amount which is required to be reduced by reference to this subsection, the reduction shall be the same percentage of such amount as the percentage which the total of the inadmissible assets is of the total of admissible and inadmissible assets. For such purposes, the amount attributable to each asset held at any time during such taxable year shall be determined by ascertaining the adjusted basis thereof (or, in the case of money, the amount thereof) for each day

53 Stat. 10.
26 U. S. C. § 22 (b)
(4).

of such taxable year so held and adding such daily amounts. The determination of such daily amounts shall be made as of the beginning of each day under regulations prescribed by the Secretary. The adjusted basis shall be the adjusted basis for determining gain upon sale or exchange as determined under section 113.

Ante, pp. 928, 929, 931.

"SEC. 441. RULES FOR DETERMINING CREDIT.

Ante, pp. 1148-1161.

"For the purposes of this section, section 435, section 437, section 438, and section 440—

Ante, p. 1157.

"(a) **EQUITY CAPITAL.**—The term 'equity capital' means the equity capital as defined in section 437 (c).

"(b) **PROPERTY PAID-IN.**—For the purpose of determining the amount of property paid in for stock, or as paid-in surplus, or as a contribution to capital, such property shall be included in an amount equal to its basis (unadjusted) for determining gain upon sale or exchange. If the unadjusted basis of the property is a substituted basis, such basis shall be adjusted, with respect to the period before the property was paid in, by an amount equal to the adjustments proper under section 113 (b) (2).

58 Stat. 44.
26 U. S. C. § 113 (b)
(2).

"(c) **MONEY AND PROPERTY PAID-IN.**—For the purpose of determining the amount of money and property paid in for stock, or as paid-in surplus, or as a contribution to capital, there shall be included only money and property paid in good faith for the purposes of the taxpayer's business.

"(d) **DISTRIBUTIONS TO SHAREHOLDERS.**—A distribution by a corporation of its stock or rights to acquire its stock shall not be regarded as money or property paid in for stock, or as paid-in surplus, or as a contribution to capital, and such a distribution shall not be considered as a distribution by a corporation to its shareholders.

"(e) **DISTRIBUTIONS IN FIRST 60 DAYS OF TAXABLE YEAR.**—So much of the distributions (taken in the order of time) to shareholders made during the first 60 days of any taxable year as does not exceed the accumulated earnings and profits as of the beginning thereof (computed without regard to this paragraph) shall be considered to have been made on the last day of the preceding taxable year. This paragraph shall not apply with respect to distributions made during the first 60 days of the taxpayer's first taxable year under this subchapter.

"(f) **COMPUTATION OF EARNINGS AND PROFITS OF TAXABLE YEAR.**—In determining whether a distribution is out of the earnings and profits of any taxable year, such earnings and profits shall be computed as of the close of such taxable year without diminution by reason of any distribution made during such taxable year or by reason of the tax under this chapter for such year and the determination shall be made without regard to the amount of earnings and profits at the time the distribution was made.

"(g) **EXCHANGES.**—For the purpose of determining the amount of property paid in for stock, or as paid-in surplus, or as a contribution to capital—

"(1) If the basis (unadjusted) of the property for determining gain upon a sale or exchange is determined by reference to the basis of the property in the hands of the transferor, proper adjustment shall be made for the amount of any liability of the transferor assumed upon the exchange and of any liability subject to which such property was so received, for the amount of any other liability of the taxpayer constituting consideration for the property so received, and for the aggregate of the amount of money and the fair market value of other property (other than such stock and other than such liabilities) transferred to the transferor.

"(2) If an indebtedness of the taxpayer is canceled or released in exchange for stock, or as paid-in surplus, or as a contribution

to capital, the amount paid in shall be considered equal to the amount of the indebtedness.

“(h) ELECTION UNDER SECTION 455.—In the case of a taxpayer electing under section 455, the invested capital, the net new capital addition, the base period capital addition determined under section 435 (f), and the net capital addition or reduction determined under section 435 (g) shall be computed in a manner consistent with the method of accounting so elected, except as to installment sales made (or installment sales obligations acquired) prior to the first taxable year under this subchapter in the case of a taxpayer electing under section 455 (a), and except as to contracts begun before the first taxable year under this subchapter in the case of a taxpayer electing under section 455 (b).

Post, p. 1184.

Ante, pp. 1152, 1153.

“(i) EFFECT OF INTANGIBLE PROPERTY ON DETERMINATION OF CREDIT.—In the case of intangible property, the basis (unadjusted) and the adjusted basis for determining gain upon sale or exchange shall be determined without regard to the value of the property as of March 1, 1913. For the purposes of this subsection, the term ‘intangible property’ means secret processes and formulae, good will, trademarks, trade brands, franchises, and other like property. The provisions of this subsection shall not apply in determining the amount of gain realized upon the sale, exchange, or other disposition of such property.

“(j) IMPROVEMENTS BY LESSEE TO PROPERTIES OF LESSOR RAILROAD CORPORATION.—For the purposes of section 437 (c), the fair value of additions and betterments made by the lessee to the physical properties of a lessor railroad corporation which have become the property of the lessor corporation by rejection of its lease (such fair value being determined as of the date such additions and betterments became the property of the lessor) shall be included in determining the basis (unadjusted) of such property; and where the value of such improvements cannot be accurately determined by the old records thereof, because lost, incomplete, or inaccurate, the value of such improvements determined by the Interstate Commerce Commission for rate-making purposes shall be used in lieu of such fair value.

Ante, p. 1157.

“SEC. 442. AVERAGE BASE PERIOD NET INCOME—ABNORMALITIES DURING BASE PERIOD.

“(a) IN GENERAL.—If a taxpayer which commenced business on or before the first day of its base period establishes that, for any taxable year within, or beginning or ending within, its base period:

“(1) normal production, output, or operation was interrupted or diminished because of the occurrence, either immediately prior to, or during such taxable year, of events unusual and peculiar in the experience of such taxpayer, or

“(2) the business of the taxpayer was depressed because of temporary economic circumstances unusual in the case of such taxpayer,

the taxpayer's average base period net income determined under this section shall be the amount computed under subsection (c) or (d), whichever is applicable.

“(b) PERIOD SUBJECT TO ADJUSTMENT.—The period subject to adjustment under this section shall be determined as follows:

“(1) By computing the excess profits net income or deficit in excess profits net income for each month in the base period. The excess profits net income or the deficit in excess profits net income for any month shall be the excess profits net income or deficit in excess profits net income, as the case may be, for the taxable year in which such month falls divided by the number of calendar months in such year.

“(2) By eliminating from the base period whichever of the following 12 months results in the higher remaining aggregate

excess profits net income or the lower remaining aggregate deficit in excess profits net income—

“(A) The 12 consecutive months the elimination of which produces the highest remaining aggregate excess profits net income, or the lowest remaining aggregate deficit in excess profits net income, or

“(B) The 12 months which remain after retaining in the base period the 36 consecutive months which produce the highest remaining aggregate excess profits net income or the lowest remaining aggregate deficit in excess profits net income.

“(c) **TWELVE OR FEWER MONTHS AFFECTED BY ABNORMALITIES.**—If no more than 12 of the months remaining after the application of subsection (b) (2) fall within taxable years the excess profits net income of which was reduced (or the deficit in excess profits net income of which was increased) by reason of an abnormality determined to exist under subsection (a), the average base period net income determined under this section shall be computed as follows:

“(1) By computing the excess profits net income, determined in accordance with section 435 (d) (1), for each of the 36 months remaining after the application of subsection (b) (2) of this section.

“(2) By computing, for each such month which falls within any taxable year the excess profits net income of which was reduced (or the deficit in excess profits net income of which was increased) by reason of an abnormality determined to exist under subsection (a), the substitute excess profits net income provided under subsection (e).

“(3) By identifying the months described in paragraph (2) for which the amount of the substitute excess profits net income ascertained under such paragraph exceeds 110 per centum of the amount of the excess profits net income ascertained under paragraph (1).

“(4) By computing the sum of (A) the aggregate of the substitute excess profits net income for each of the months identified under paragraph (3) and (B) the aggregate of the excess profits net income (ascertained under paragraph (1)) for each of the other months remaining after the application of subsection (b) (2).

“(5) By dividing by 3 the amount ascertained under paragraph (4).

“(d) **MORE THAN TWELVE MONTHS AFFECTED BY ABNORMALITIES.**—If more than 12 of the months remaining after the application of subsection (b) (2) fall within taxable years the excess profits net income of which was reduced (or the deficit in excess profits net income of which was increased) by reason of an abnormality determined to exist under subsection (a), the average base period net income determined under this section shall be computed as follows:

“(1) By determining the amount of the taxpayer's total assets for the last day of each of its taxable years ending after the first day of its base period and prior to the first day of its first taxable year under this subchapter.

“(2) By computing the average of the amounts ascertained under paragraph (1).

“(3) By multiplying the amount ascertained under paragraph (2) by the base period rate of return, proclaimed by the Secretary under section 447, for the taxpayer's industry classification.

“(4) By determining the aggregate amount of interest paid or incurred by the taxpayer for all taxable years ending after the first day of its base period and prior to the first day of its first

Ante, p. 1146.

Post, p. 1172.

taxable year under this subchapter, dividing such aggregate by the total number of months in such years, and multiplying the quotient by 12.

“(5) By subtracting the amount ascertained under paragraph (4) from the amount ascertained under paragraph (3).

This subsection shall have no application with respect to any taxpayer unless the amount of the taxpayer's average base period net income determined under this subsection exceeds 110 per centum of the taxpayer's average base period net income computed under section 435 (d).

“(e) **SUBSTITUTE EXCESS PROFITS NET INCOME.**—

“(1) **COMPUTATION.**—For the purposes of subsection (c) (2), the substitute excess profits net income for any month shall be computed as follows:

“(A) By multiplying the amount of the taxpayer's total assets for the last day of the taxable year in which such month falls or for the last day of its taxable year immediately preceding its first taxable year under this subchapter, whichever day is earlier, by the rate of return provided under paragraph (2).

“(B) By reducing the amount ascertained under subparagraph (A) by the total interest paid or incurred by the taxpayer for the 12 months beginning with the first day of the taxable year within which such month falls.

“(C) By dividing by 12 the amount ascertained under subparagraph (B).

“(2) **BASE PERIOD YEARLY RATE OF RETURN.**—The rate of return to be used under paragraph (1) (A) shall be the base period yearly rate of return, proclaimed by the Secretary under section 447 for the taxpayer's industry classification, for the following year—

“(A) in the case of a taxable year of the taxpayer beginning in 1945 and ending in 1946—for the year 1946;

“(B) in the case of a taxable year of the taxpayer beginning in 1949 and ending in 1950—for the year 1949; and

“(C) in the case of any other taxable year of the taxpayer—for the year in which falls the greater number of days in such taxable year.

“(f) **TOTAL ASSETS.**—For the purposes of this section, the taxpayer's total assets for any day shall be determined as of the end of such day and shall be an amount equal to the sum of the cash and the property (other than cash, inadmissible assets, and loans to members of a controlled group as defined in section 435 (f) (4)) held by the taxpayer in good faith for the purposes of the business. Such property shall be included in an amount equal to its adjusted basis for determining gain upon sale or exchange, determined under the rules provided in section 441.

“(g) **TAXPAYER'S INDUSTRY CLASSIFICATION.**—The taxpayer's industry classification shall be determined, for the purposes of subsection (d), by reference to the last taxable year within or beginning within its base period, and, for the purposes of subsection (e), by reference to the taxable year within which falls the last month for which a substitute excess profits net income is determined; and, in either case, shall be the industry classification under section 447 to which is attributable the largest amount of the taxpayer's gross receipts for such taxable year.

“(h) **RULES FOR APPLICATION OF SECTION.**—The benefits of this section shall not be allowed unless the taxpayer makes application therefor in accordance with section 447 (e).

Ante, p. 1140.

Post, p. 1172.

Ante, p. 1163.

Ante, p. 1162.

Post, p. 1172.

Post, p. 1174.

Ante, p. 1151.

Ante, p. 1153.

Post, p. 1191.

“(i) **CROSS REFERENCES.**—

“(1) For definition of gross receipts, see section 435 (e) (5).

“(2) For computation of capital additions in the base period, see section 435 (f) (3).

“(3) For computation of excess profits credit based on income in the case of certain reorganizations, see Part II of this subchapter.

“**SEC. 443. AVERAGE BASE PERIOD NET INCOME—CHANGE IN PRODUCTS OR SERVICES.**

“(a) **IN GENERAL.**—If a taxpayer which commenced business on or before the first day of its base period establishes with respect to any taxable year that—

“(1) During so much of its three immediately preceding taxable years as falls within the 36-month period ending on the last day of its base period, there was a substantial change in the products or services furnished by the taxpayer,

“(2) More than 40 per centum of its gross income or 33 per centum of its net income for such taxable year is attributable to one or more of the new products or services, and

“(3) Its average monthly excess profits net income (determined under subsection (e)) for such taxable year exceeds 125 per centum of its average monthly excess profits net income (determined under subsection (e)) for the taxable years ending within its base period and prior to the taxable year in which the first change to which gross income is attributed for the purpose of this subsection occurred,

then, in computing its excess profits credit for taxable years under this subchapter which end on or after the last day of the earliest taxable year with respect to which the requirements of paragraphs (1), (2), and (3) are satisfied, its average base period net income determined under this section shall be the amount computed under subsection (b).

“(b) **AVERAGE BASE PERIOD NET INCOME.**—The average base period net income determined under this section shall be computed as follows:

“(1) By multiplying the amount of the taxpayer's total assets for (A) the last day of its taxable year immediately preceding its first taxable year under this subchapter, or (B) the last day of the taxable year in which the taxpayer first meets the requirements of subsection (a), whichever day is later, by the base period rate of return, proclaimed by the Secretary under section 447, for the taxpayer's industry classification.

“(2) By subtracting from the amount ascertained under paragraph (1) the total interest paid or incurred by the taxpayer for the 12 months ending with whichever day is used under such paragraph.

“(c) **TAXPAYER'S INDUSTRY CLASSIFICATION.**—For the purposes of this section, the taxpayer's industry classification shall be the industry classification under section 447 to which is attributable the largest amount of the taxpayer's gross receipts for the taxable year which includes whichever day is used under subsection (b).

“(d) **CAPITAL ADDITION OR REDUCTION.**—If the average base period net income of the taxpayer is determined under this section—

“(1) the excess profits credit for the taxable year in which the taxpayer first meets the requirements of subsection (a) shall not include any net capital addition or reduction determined under section 435 (g), and

“(2) in determining the net capital addition or reduction under section 435 (g) for any subsequent taxable year, the expression ‘the first day of the taxpayer's first taxable year under this sub-

Post, p. 1172.

Post, p. 1172.

Ante, p. 1153.

Ante, p. 1153.

chapter' shall be read as 'the first day of the taxpayer's first taxable year under this subchapter or the day following the close of the taxable year in which the taxpayer first met the requirements of section 443 (a), whichever day is later'.

"(e) AVERAGE MONTHLY EXCESS PROFITS NET INCOME.—For the purposes of subsection (a) (3)—

"(1) The excess profits net income for any year shall be computed by making the adjustments provided in section 433 (b) as though such section were applicable to all taxable years.

"(2) The average monthly excess profits net income for any period of two or more taxable years shall be determined (A) by computing the aggregate of the excess profits net income for all taxable years within such period, (B) by subtracting from such aggregate the aggregate amount of the deficits in excess profits net income for all taxable years within such period, and (C) by dividing the amount ascertained under (B) by the total number of months in such taxable years.

"(3) The average monthly excess profits net income determined for any period shall in no case be less than zero.

"(f) RULES FOR APPLICATION OF SECTION.—The benefits of this section shall not be allowed unless the taxpayer makes application therefor in accordance with section 447 (e).

"(g) CROSS REFERENCES.—

"(1) For definition of gross receipts, see section 435 (e) (5).

"(2) For definition of total assets, see section 442 (f).

"(3) For computation of excess profits credit based on income in the case of certain reorganizations, see Part II of this subchapter.

"SEC. 444. AVERAGE BASE PERIOD NET INCOME—INCREASE IN CAPACITY FOR PRODUCTION OR OPERATION.

"(a) IN GENERAL.—If a taxpayer which commenced business on or before the first day of its base period establishes that, during the 36-month period ending on the last day of its base period, there was an increase, as defined in subsection (b), in its capacity for production or operation, the taxpayer's average base period net income determined under this section shall be the amount computed under subsection (c).

"(b) INCREASE IN CAPACITY.—An increase in capacity for production or operation shall be deemed to have occurred, for the purposes of this section, if the taxpayer establishes that it made an addition or additions to its facilities (as defined in subsection (d)) or replaced all or a part of its existing facilities, and that:

"(1) as a result of such additions or replacements, its capacity for production or operation on the last day of its base period was 200 per centum or more of its capacity for production or operation on the day prior to the beginning of such 36-month period, or

"(2) (A) as a result of such additions or replacements, its capacity for production or operation on the last day of its base period was 150 per centum or more of its capacity for production or operation on the day prior to the beginning of such 36-month period, and (B) the adjusted basis for determining gain upon sale or exchange of its total facilities on the last day of its base period was 150 per centum or more of the adjusted basis for determining gain upon sale or exchange of its total facilities on the day prior to the beginning of such 36-month period, or

"(3) the basis (unadjusted) for determining gain upon sale or exchange of its total facilities on the last day of its base period was 200 per centum or more of the basis (unadjusted) for determining gain upon sale or exchange of its total facilities on the day prior to the beginning of such 36-month period.

Ante, p. 1166.

Ante, p. 1144.

Post, p. 1174.

Ante, p. 1151.

Ante, p. 1165.

Post, p. 1191.

“(c) **AVERAGE BASE PERIOD NET INCOME.**—The average base period net income determined under this section shall be computed as follows:

Post, p. 1172.

“(1) By multiplying the amount of the taxpayer's total assets for the last day of its taxable year immediately preceding its first taxable year under this subchapter by the base period rate of return, proclaimed by the Secretary under section 447, for the taxpayer's industry.

“(2) By subtracting from the amount ascertained under paragraph (1) an amount equal to the total interest paid or incurred by the taxpayer for the 12 months ending with the end of such immediately preceding taxable year.

“(d) **FACILITIES.**—For the purposes of this section, the term ‘facilities’ means real property and depreciable tangible property, held by the taxpayer in good faith for the purposes of the business.

Post, p. 1172.

“(e) **TAXPAYER'S INDUSTRY CLASSIFICATION.**—For the purposes of this section, the taxpayer's industry classification shall be the industry classification under section 447 to which is attributable the largest amount of the taxpayer's gross receipts for its taxable year immediately preceding its first taxable year under this subchapter.

Post, p. 1174.

“(f) **RULES FOR APPLICATION OF SECTION.**—The benefits of this section shall not be allowed unless the taxpayer makes application therefor in accordance with section 447 (e).

Ante, p. 1151.

“(g) **CROSS REFERENCES.**—

Ante, p. 1165.

“(1) For definition of gross receipts, see section 435 (e) (5).

“(2) For definition of total assets, see section 442 (f).

Post, p. 1191.

“(3) For computation of excess profits credit based on income in the case of certain reorganizations, see Part II of this subchapter.

“**SEC. 445. AVERAGE BASE PERIOD NET INCOME—NEW CORPORATION.**

“(a) **NEW CORPORATION.**—A taxpayer which commenced business after the first day of its base period shall, except as provided in subsection (g), be considered a new corporation for the purposes of this section, and its average base period net income determined under this section shall be the amount computed under subsection (b).

“(b) **AVERAGE BASE PERIOD NET INCOME.**—The average base period net income of a new corporation determined under this section shall be computed as follows:

Post, p. 1172.

“(1) For the purpose of determining the excess profits credit for any of the taxpayer's first three taxable years which is a taxable year under this subchapter—

“(A) By multiplying the amount of the total assets for such taxable year (determined under subsection (c)), held by the taxpayer in good faith for the purposes of the business, by the base period rate of return, proclaimed by the Secretary under section 447, for the taxpayer's industry classification.

“(B) By subtracting from the amount ascertained under subparagraph (A) the total interest paid or incurred by the taxpayer for the 12 months ending with the last day of such taxable year.

“(2) For the purpose of determining the excess profits credit for any taxable year under this subchapter other than a taxable year described in paragraph (1)—

Ante, p. 1165.

“(A) By multiplying the amount of the taxpayer's total assets (as defined in section 442 (f)) for (i) the last day of its taxable year immediately preceding its first taxable year under this subchapter, or (ii) the last day of its third taxable year, whichever day is later, by the base period rate of return,

proclaimed by the Secretary under section 447, for the taxpayer's industry classification.

"(B) By subtracting from the amount ascertained under subparagraph (A) the total interest paid or incurred by the taxpayer for the 12 months ending with whichever day is used under such subparagraph.

For the purposes of this section, the taxable year of the taxpayer in which it commenced business and its two succeeding taxable years shall be considered to be its first three taxable years.

"(c) TOTAL ASSETS FOR FIRST THREE YEARS.—The amount of the total assets for any taxable year referred to in subsection (b) (1), shall, for the purposes of such subsection, be the sum of

"(1) the total assets (as defined in section 442 (f)) for the last day of the taxpayer's taxable year immediately preceding its first taxable year under this subchapter, and

"(2) the net capital addition (determined under section 435 (g)) for such taxable year referred to in subsection (b) (1), minus the net capital reduction (determined under section 435 (g)) for such taxable year referred to in subsection (b) (1).

"(d) TAXPAYER'S INDUSTRY CLASSIFICATION.—The taxpayer's industry classification shall be determined, for the purposes of subsection (b) (1), by reference to the particular taxable year for which the excess profits credit is thereunder determined, and, for the purposes of subsection (b) (2), by reference to the taxpayer's third taxable year; and, in either case, shall be the industry classification under section 447 to which is attributable the largest amount of the taxpayer's gross receipts for such taxable year.

"(e) CAPITAL ADDITION OR REDUCTION.—If the average base period net income of the taxpayer is determined under this section—

"(1) the excess profits credit for any taxable year for which such determination is made under subsection (b) (1) shall not include any net capital addition or reduction determined under section 435 (g), and

"(2) in computing the net capital addition or reduction under section 435 (g) for any taxable year for which such determination is made under subsection (b) (2), the expression 'the first day of the taxpayer's first taxable year under this subchapter' shall be read as 'the first day of the taxpayer's first taxable year under this subchapter or the day following the close of the taxpayer's third taxable year, whichever day is later'.

"(f) RULES FOR APPLICATION OF SECTION.—The benefits of this section shall not be allowed unless the taxpayer makes application therefor in accordance with section 447 (e).

"(g) INELIGIBLE CORPORATIONS.—

"(1) If a taxpayer, on or after December 1, 1950, and prior to the end of its third taxable year, acquires any properties in any of the transactions described in paragraph (2), it shall not, for the taxable year in which such acquisition occurs or for succeeding taxable years, be entitled to the benefits of this section except under the circumstances and subject to the limitations provided in section 462 (g).

"(2) The transactions to which paragraph (1) applies are as follows:

"(A) The acquisition by the taxpayer from another corporation of properties the basis of which in its hands is determined by reference to the basis of such properties to the transferor;

"(B) The acquisition by the taxpayer of a substantial part of its assets from another corporation, or of a substantial

Post, p. 1172.

Ante, p. 1165.

Ante, p. 1163.

Ante, p. 1163.

Post, p. 1172.

Ante, p. 1163.

Ante, p. 1163.

Post, p. 1174.

Post, p. 1261.

part of the properties of another corporation, if 50 per centum or more in value of the outstanding stock or outstanding voting stock of the taxpayer is directly or indirectly owned, at the time of such acquisition, by individuals owning directly or indirectly 50 per centum or more in value of the outstanding stock, or outstanding voting stock of the transferor;

“(C) The acquisition by the taxpayer of a substantial part of the properties distributed on or after December 1, 1950, by another corporation, if such properties constituted a substantial part of the business assets of such other corporation, and if 50 per centum or more in value of the outstanding stock or outstanding voting stock of the taxpayer is owned directly or indirectly by individuals who at the time of such distribution owned directly or indirectly 50 per centum or more in value of the outstanding stock or outstanding voting stock of such other corporation;

“(3) For the purposes of this subsection, the provisions of section 503 shall be applicable in the determination of ownership of stock.

“(h) CROSS REFERENCES.—

“(1) For definition of gross receipts, see section 435 (e) (5).

“(2) For computation of excess profits credit based on income in the case of certain reorganizations, see Part II of this subchapter.

“SEC. 446. AVERAGE BASE PERIOD NET INCOME—DEPRESSED INDUSTRY SUBGROUPS.

“(a) IN GENERAL.—If a taxpayer which commenced business on or before the first day of its base period is a member of a depressed industry subgroup, as defined in subsection (c), its average base period net income determined under this section shall be the amount computed under subsection (b).

“(b) AVERAGE BASE PERIOD NET INCOME.—The average base period net income determined under this section shall be computed as follows:

“(1) By determining the amount of the taxpayer's total assets for the last day of each of its taxable years ending after the first day of its base period and prior to the first day of its first taxable year under this subchapter.

“(2) By computing the average of the amounts ascertained under paragraph (1).

“(3) By multiplying the amount ascertained under paragraph (2) by the adjusted rate of return, proclaimed by the Secretary under subsection (e), for the taxpayer's industry subgroup.

“(4) By determining the aggregate amount of interest paid or incurred by the taxpayer for all taxable years ending after the first day of its base period and prior to the first day of its first taxable year under this subchapter, dividing such aggregate by the total number of months in such years, and multiplying the quotient by 12.

“(5) By subtracting the amount ascertained under paragraph (4) from the amount ascertained under paragraph (3).

“(c) DEPRESSED INDUSTRY SUBGROUPS.—The Secretary shall determine and proclaim as a depressed industry subgroup any industry subgroup (defined in accordance with subsection (f)) having a rate of return (determined under subsection (d) (1)) for the period 1946 through 1948 which is less than 63 per centum of its rate of return (determined under subsection (d) (2)) for the period 1938 through 1948.

53 Stat. 106.
26 U. S. C. § 503.

Ante, p. 1151.

Post, p. 1191.

“(d) RATES OF RETURN FOR INDUSTRY SUBGROUPS.—

“(1) PERIOD 1946-1948.—The rate of return for an industry subgroup for the 3-year period 1946 through 1948 shall be obtained by dividing the sum of the aggregate net income (computed without regard to the net operating loss deduction provided in section 23 (s)) for the 3 years 1946 through 1948 and the aggregate interest deduction for such years shown on the income tax returns filed by the corporations in such industry subgroup submitting balance sheets, by the aggregate assets for such years of such corporations as of the close of the taxable years for which such returns were filed. Such aggregate net income, interest deduction and total assets shall include the amounts reported on the income tax returns for the calendar years 1946, 1947, and 1948, and the amounts reported on returns for other taxable years the greater part of which falls in such calendar years.

53 Stat. 867.
26 U. S. C. § 23 (s).

“(2) PERIOD 1938-1948.—The rate of return for an industry subgroup for the 11-year period 1938 through 1948 shall be determined in the same manner as is provided in paragraph (1) with the substitution of the years 1938 through 1948 for the years 1946 through 1948.

“(e) ADJUSTED RATES OF RETURN FOR DEPRESSED INDUSTRY SUBGROUPS.—The adjusted rate of return for a depressed industry subgroup shall be a rate equal to four-fifths of the rate of return for such industry subgroup for the 11-year period 1938 through 1948 as determined under subsection (d) (2). The Secretary shall determine and proclaim the adjusted rate of return (computed to the nearest thousandth) for each industry subgroup determined and proclaimed to be depressed under subsection (c).

“(f) INDUSTRY SUBGROUPS.—For the purposes of this section, industry subgroups shall be generally in accord with the industry subgroups regularly used by the Treasury Department in compiling published statistics from income tax returns, but with such combinations of subgroups as the Secretary determines are necessary to provide reasonably comparable data over the period 1938 through 1948.

“(g) MEMBERS OF INDUSTRY SUBGROUP.—For the purposes of this section, a taxpayer is a member of an industry subgroup if more than fifty per centum of the taxpayer's gross receipts (as defined in section 435 (e) (5)) for the taxable years beginning with or within its base period is attributable to such industry subgroup.

Ante, p. 1151.

“(h) TENTATIVE DETERMINATIONS OF DEPRESSED INDUSTRY SUBGROUPS AND ADJUSTED RATES OF RETURN.—The Secretary, not later than March 1, 1951, shall proclaim the industry subgroups tentatively determined to be depressed in accordance with subsection (c) and the tentative adjusted rates of return (computed to the nearest thousandth), determined under subsection (d), for such industry subgroups. Such tentative determinations shall be effective until such time as final determinations are proclaimed by the Secretary. Such final determinations shall relate back as though such determinations had been in effect in place of the tentative determinations. If the application of this section is made in accordance with a tentative determination, such application shall be redetermined in accordance with the final determination when proclaimed. The period of limitation prescribed under sections 275, 276, and 322 shall not begin to run with respect to overpayments or deficiencies in tax caused by such redetermination prior to such time as the final determination is proclaimed by the Secretary.

53 Stat. 86, 87, 91.
26 U. S. C. §§ 275,
276, 322.
Ante, pp. 464, 538.

“(i) RULES FOR APPLICATION OF SECTION.—The benefits of this section shall not be allowed unless the taxpayer makes application therefor in accordance with section 447 (e). The determinations by the Secretary

Post, p. 1174.

required under this section shall be made on the basis of returns regularly used by the Treasury Department in compiling published statistics from income tax returns. For the purposes of this section, rates of return shall be determined after giving effect to renegotiation of contracts in accordance with renegotiation statistics published in the statistics compiled with respect to industry subgroups.

“SEC. 447. INDUSTRY BASE PERIOD RATES OF RETURN.

“(a) **BASE PERIOD YEARLY RATE OF RETURN.**—The Secretary shall determine and proclaim for each industry classification in subsection (c) a rate of return (computed to the nearest thousandth) for each of the four years 1946 through 1949. The yearly rate of return for each industry classification shall be obtained by dividing the sum of the aggregate net income (computed without regard to the net operating loss deduction provided in section 23 (s)) and the aggregate interest deduction shown on the income tax returns filed by the corporations in such classification submitting balance sheets, by the aggregate total assets of such corporations as of the close of the taxable year for which such returns were filed. Such aggregate net income, interest deduction and total assets for each such year shall include the amounts reported on the income tax returns for the calendar year and the amounts reported on returns for other taxable years the greater part of which falls in such calendar year. The determinations by the Secretary required under this section shall be made on the basis of returns regularly used by the Treasury Department in compiling published statistics from income tax returns, computing all rates of return after giving effect to renegotiation of contracts in accordance with renegotiation statistics published in the statistics compiled with respect to industry classifications.

53 Stat. 867.
26 U. S. C. § 23 (s).

“(b) **BASE PERIOD RATE OF RETURN.**—The Secretary shall determine and proclaim for each industry classification in subsection (c) a rate of return (computed to the nearest thousandth) for the four year period 1946 through 1949. Such base period rate of return for each industry classification shall be obtained by aggregating the net income and interest deduction (such amounts being determined as provided under subsection (a)) for such four years and dividing the aggregate by the sum of the total assets (determined as provided under subsection (a)) for such four years.

“(c) **INDUSTRY CLASSIFICATION.**—For purposes of this subchapter the classification of taxpayers by industry shall be as provided in the table below. Each such industry classification is defined in accordance with the specifications shown in the Standard Industrial Classification Manual (prepared by the Division of Statistical Standards, Bureau of the Budget) for the major industry group or groups the numbers of which appear opposite such classification.

INDUSTRY CLASSIFICATIONS

AGRICULTURE, FORESTRY, AND FISHERIES	Major group number
Farms and agricultural services, hunting, trapping.....	01 and 07
Forestry.....	08
Fisheries.....	09
MINING	
Metal mining.....	10
Anthracite mining.....	11
Bituminous coal and lignite mining.....	12
Crude petroleum and natural gas extraction.....	13
Nonmetallic minerals except fuels.....	14
CONTRACT CONSTRUCTION	
General contractors.....	15 and 16
Special trade contractors.....	17

INDUSTRY CLASSIFICATIONS—(Continued)

	Major group number
MANUFACTURING	
Ordnance and accessories.....	19
Food and kindred products.....	20
Tobacco manufactures.....	21
Textile mill products.....	22
Apparel and other finished products made from fabrics.....	23
Lumber and wood products.....	24
Furniture and fixtures.....	25
Paper and allied products.....	26
Printing, publishing, and allied industries.....	27
Chemicals and allied products.....	28
Products of petroleum and coal.....	29
Rubber products.....	30
Leather and leather products.....	31
Stone, clay, and glass products.....	32
Primary metal industries and fabricated metal products (except ord- nance, machinery, and transportation equipment).....	33 and 34
Machinery (except electrical).....	35
Electrical machinery, equipment, and supplies.....	36
Transportation equipment.....	37
Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks; including miscellaneous manu- facturing industries.....	38 and 39
TRANSPORTATION, COMMUNICATION, AND OTHER PUBLIC UTILITIES	
Railroads.....	40
Local and interurban railways and bus lines.....	41
Trucking and warehousing.....	42
Highway transportation not elsewhere classified.....	43
Water transportation.....	44
Transportation by air.....	45
Pipe line transportation.....	46
Services incidental to transportation.....	47
Telecommunications.....	48
Utilities and sanitary services.....	49
WHOLESALE TRADE	
Wholesale trade.....	50 and 51
RETAIL TRADE	
Building materials and farm equipment.....	52
General merchandise.....	53
Food.....	54
Automotive dealers and gasoline service stations.....	55
Apparel and accessories.....	56
Furniture, home furnishings, and equipment.....	57
Eating and drinking places.....	58
Miscellaneous retail stores.....	59
FINANCE, INSURANCE, AND REAL ESTATE	
Banking.....	60
Credit agencies other than banks.....	61
Security and commodity brokers, dealers, exchanges, and services.....	62
Insurance carriers.....	63
Insurance agents, brokers, and service.....	64
Real estate.....	65
Holding and other investment companies.....	67
SERVICES	
Hotels, rooming houses, camps, and other lodging places.....	70
Personal services.....	72
Miscellaneous business services.....	73
Automobile repair services and garages.....	75
Miscellaneous repair services.....	76
Radio broadcasting, including facsimile broadcasting, and television.....	77
Motion pictures.....	78
Amusement and recreation services except motion pictures.....	79
Other services.....	80, 81, 82, 84, 86, and 89

“(d) **TENTATIVE RATES OF RETURN.**—The Secretary, not later than March 1, 1951, shall determine and proclaim for each industry classification, tentative base period yearly rates of return and a tentative base period rate of return (each computed to the nearest thousandth). Such tentative rates of return shall be effective until such time as the base period yearly rates of return and base period rates of return are determined and proclaimed. The base period yearly rates of return and base period rates of return, upon proclamation thereof by the Secretary, shall relate back as though such rates had been in effect in place of the tentative rates of return. If the application of section 442, 443, 444, 445, or 446 is made in accordance with tentative rates of return, such application shall be redetermined in accordance with the base period yearly rate of return or the base period rate of return when determined and proclaimed. The period of limitation prescribed under section 322 and sections 275 and 276 shall not begin to run with respect to overpayments or deficiencies in tax caused by such redetermination prior to such time as the base period yearly rates of return and the base period rates of return are determined and proclaimed by the Secretary.

Ante, pp. 1163-1170.

53 Stat. 91, 86, 87.
26 U. S. C. §§ 322,
275, 276.
Ante, pp. 464, 538.

“(e) **APPLICATION FOR BENEFITS OF SECTION 442, 443, 444, 445, OR 446.**—The tax for any taxable year under this subchapter shall be determined without regard to section 442, 443, 444, 445, or 446 unless an application for the benefits of such section, setting forth the grounds for the application of such section in such detail and in such manner as the Secretary may prescribe, is filed by the taxpayer—

Ante, pp. 1163-1170.

“(A) With its return for the taxable year, or

53 Stat. 91.
26 U. S. C. § 322.
Ante, pp. 464, 538.
Ante, p. 1171.

“(B) Within the period of time prescribed by section 322 (as extended under the last sentence of subsection (d) of this section or of section 446 (h)) for filing claim for credit or refund, and in such case the application of section 442, 443, 444, 445, or 446, shall be subject to the limitations as to amount of credit or refund prescribed in section 322, or

Ante, pp. 1163-1170.

“(C) After the period described in paragraph (B), if within the period of limitations for the assessment of a deficiency (as extended under the last sentence of subsection (d) of this section or of section 446 (h)) in the tax imposed by this chapter for the taxable year, and in such case the application of section 442, 443, 444, 445, or 446 shall not reduce the tax by an amount greater than the deficiency determined without regard to the application of such section,

Ante, 1171.

Ante, pp. 1163-1170.

except that if a petition is filed with the Tax Court for the redetermination of the tax under this chapter for the taxable year, the application for the benefits of section 442, 443, 444, 445, or 446, shall be effective only if filed not later than the date on which such petition is filed. Section 442, 443, 444, 445, or 446, shall not be applied upon the basis of any grounds other than those set forth in an application filed within the period prescribed in this subsection.

Ante, pp. 1163-1170.

“SEC. 448. EXCESS PROFITS CREDIT—REGULATED PUBLIC UTILITIES.

“(a) **AMOUNT OF CREDIT.**—In the case of a regulated public utility (as defined in subsection (d)), the excess profits credit for any taxable year computed under this section shall be the sum of the tax imposed by sections 13, 14, 15, and 141 (c), for such taxable year and the amount determined under subsection (b).

Ante, pp. 914, 915;
post, pp. 1216, 1217.

“(b) **COMPUTATION.**—The amount referred to in subsection (a) for any taxable year shall be determined as follows:

“(1) by applying to the sum of the following the per centum prescribed in subsection (c):

“(A) the adjusted invested capital for such taxable year,
and

“(B) the average borrowed capital for such taxable year as defined in section 439.

Ante, p. 1161.

For the purposes of this paragraph the adjusted invested capital for any taxable year shall be the amount computed for such year under section 437 (b) (2) without reduction by the amount of the net new capital addition and without regard to section 437 (b) (2) (C); except that in the case of a corporation described in subsection (c) (1) (A), (c) (1) (B), (c) (2), or (c) (4), the corporate books of account of which are maintained in accordance with systems of accounts prescribed by an appropriate regulatory body (or, if not so prescribed, are maintained in accordance with the uniform systems of accounts prescribed by the Federal Power Commission or the National Association of Railway and Utility Commissioners), the adjusted invested capital for such year shall be the sum of the average outstanding common and preferred capital stock accounts and the capital surplus and earned surplus accounts for such taxable year as recorded on such corporate books of account.

Ante, p. 1157.

“(2) by reducing the amount ascertained under paragraph (1) by the deduction allowable for such year with respect to interest on indebtedness included in borrowed capital under section 439.

Ante, p. 1161.

“(3) by reducing the amount ascertained under paragraph (2) by the amount computed under section 440 (b) (relating to inadmissible assets); except that in the case of a corporation described in subsection (c) (1) (A), (c) (1) (B), (c) (2), or (c) (4), the corporate books of account of which are maintained in accordance with systems of accounts prescribed by an appropriate regulatory body (or, if not so prescribed, are maintained in accordance with the uniform systems of accounts prescribed by the Federal Power Commission or the National Association of Railway and Utility Commissioners), in determining the amount computed under section 440, the amount attributable to each asset held at any time during such taxable year shall be determined according to such corporate books of account.

Ante, p. 1161.

“(c) The per centum referred to in subsection (b) (1) shall be—

“(1) 6 per centum in the case of a corporation engaged in the furnishing or sale of—

“(A) electric energy, gas, water, or sewerage disposal services, or

“(B) transportation (not included in paragraph (3)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

“(C) transportation (not included in subparagraph (B)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof.

“(2) 6 per centum in the case of a corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipe line, if subject to the jurisdiction of the Federal Power Commission.

“(3) 6 per centum in the case of a corporation engaged as a common carrier in the furnishing or sale of transportation by railroad, or in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipe line, sub-

ject to the jurisdiction of the Interstate Commerce Commission.

"(4) 7 per centum in the case of a corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of paragraph (1).

"(5) 7 per centum in the case of a corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Civil Aeronautics Board.

"(6) 6 per centum in the case of a corporation engaged in the furnishing or sale of transportation by common carrier by water, subject to the jurisdiction of the Interstate Commerce Act, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933.

"(d) For the purposes of this subchapter the term 'regulated public utility' means (except as provided in subsection (e)) a corporation described in subsection (c), but only if 80 per centum or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subsection (c). If the taxpayer establishes to the satisfaction of the Secretary that—

"(1) its revenue from regulated rates described in subsection (c) (1) or (4) and its revenue derived from unregulated rates are derived from its operation of a single interconnected and coordinated system or from the operation of more than one such system, and

"(2) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, such revenue from such unregulated rates shall be considered, for the purposes of this subsection, as income derived from sources described in subsection (c) (1) or (4).

"(e) CONSOLIDATED RETURNS OF REGULATED PUBLIC UTILITIES.—For provisions applicable to consolidated returns of regulated public utilities computing their excess profits credit under this section, see subsections (e) and (j) of section 141. For purposes of filing a consolidated return, a common parent corporation shall be deemed a regulated public utility if at least 80 per centum of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subsection (c). For the purposes of the preceding sentence dividends or interest received from a regulated public utility shall be considered as derived from sources described in subsection (c) if the regulated public utility is a member of an affiliated group (as defined in section 141 (d)) which includes the common parent corporation.

"SEC. 449. PERSONAL SERVICE CORPORATIONS.

"(a) DEFINITION.—As used in this subchapter, the term 'personal service corporation' means a corporation whose income is to be ascribed primarily to the activities of shareholders who are regularly engaged in the active conduct of the affairs of the corporation and are the owners at all times during the taxable year of at least 70 per centum in value of each class of stock of the corporation, and in which capital is not a material income-producing factor; but does not include any foreign corporation, nor any corporation 50 per centum or more of whose gross income consists of gains, profits, or income derived from trading as a principal. For the purposes of this subsection, an individual shall be considered as owning, at any time, the stock owned at such time by his spouse or minor child or by any guardian or trustee representing them.

54 Stat. 929.
49 U. S. C. §§ 901-
923; Supp. III, § 903
et seq.
47 Stat. 1425.
46 U. S. C. §§ 843-
848.

Post, pp. 1218, 1219.

Post, p. 1218.

“(b) **ELECTION AS TO TAXABILITY.**—If a personal service corporation signifies, in its return under this chapter for any taxable year, its desire not to be subject to the tax imposed under this subchapter for such taxable year, it shall be exempt from such tax for such year, and the provisions of Supplement S of this chapter shall apply to the shareholders in such corporation who were such shareholders on the last day of such taxable year of the corporation. Such corporation shall not be exempt for such year if it is a member of an affiliated group of corporations filing consolidated returns under section 141.

Post, p. 1220.

Post, p. 1217.

“SEC. 450. CORPORATIONS ENGAGED IN MINING OF STRATEGIC MINERALS.

“(a) **EXEMPTION FROM TAX.**—In the case of any domestic corporation engaged in the mining of a strategic mineral, the portion of the adjusted excess profits net income attributable to such mining in the United States shall be exempt from the tax imposed by this subchapter. The tax on the remaining portion of such adjusted excess profits net income shall be an amount which bears the same ratio to the tax computed without regard to this section as such remaining portion bears to the entire adjusted excess profits net income.

“(b) **DEFINITIONS.**—For the purposes of this section—

“(1) the term ‘strategic mineral’ means antimony, chromite, manganese, nickel, platinum (including the platinum group metals), quicksilver, sheet mica, tantalum, tin, tungsten, vanadium, fluor spar, flake graphite, vermiculite, perlite, long-fibre asbestos in the form of amosite, chrysotile or crocidolite, beryl, cobalt, columbite, corundum, diamonds, kyanite (if equivalent in grade to Indian kyanite), molybdenum, monazite, quartz crystals, and uranium, and any other mineral which the certifying agency has certified to the Secretary as being essential to the defense effort of the United States and as not having been normally produced in appreciable quantities within the United States.

“(2) The term ‘certifying agency’ means the department, official, corporation, or agency utilized or created to carry out the authority of the President under section 303 (a) of the Defense Production Act of 1950 to make provision for the encouragement of exploration, development, and mining of critical and strategic minerals and metals.

Ante, p. 801.

“(c) **CERTIFICATION DURING TAXABLE YEAR OF TAXPAYER.**—In determining under subsection (a) the portion of the adjusted excess profits net income which is attributable to the mining of a mineral which is a strategic mineral by reason of a certification made during the taxable year, such portion shall be an amount which bears the same ratio to the portion of the adjusted excess profits net income, determined without regard to this subsection, attributable to such mining during the entire taxable year as the number of days for which the taxpayer held the mineral property during the taxable year and after the date of the making of the certification bears to the number of days for which the taxpayer held the property during such taxable year.

“(d) **APPLICATION OF SECTION TO LESSOR.**—In the case of a mining property operated under a lease, income attributable to such property derived by a lessor corporation shall, for the purposes of this section, be considered to be income of a corporation engaged in mining.

“SEC. 451. CAPITALIZATION OF ADVERTISING, ETC., EXPENDITURES.

“(a) **ELECTION TO CHARGE TO CAPITAL ACCOUNT.**—For the purpose of computing the excess profits credit, a taxpayer may elect, within six months after the date prescribed by law for filing its return for its

first taxable year under this subchapter, to charge to capital account so much of the deductions for taxable years in its applicable base period on account of expenditures for advertising or the promotion of good will, as, under rules and regulations prescribed by the Secretary, may be regarded as capital investments. Such election must be the same for all such taxable years, and must be for the total amount of such expenditures which may be so regarded as capital investments. In computing the excess profits credit, no amount on account of such expenditures shall be charged to capital account:

"(1) For taxable years in the base period unless the election authorized in this subsection is exercised, or

"(2) For any taxable year prior to the beginning of the base period.

The election provided by this subsection shall be available with respect to expenditures to establish, maintain or increase the circulation of a newspaper, magazine or other periodical notwithstanding the provisions of section 204 (b) (2) of the Revenue Act of 1950.

"(b) EFFECT OF ELECTION.—If the taxpayer exercises the election authorized under subsection (a)—

"(1) The net income for each taxable year in the base period shall be considered to be the net income computed with such deductions disallowed, and such deductions shall not be considered as having diminished earnings and profits. This paragraph shall be retroactively applied as if it were a part of the law applicable to each taxable year in the base period; and

"(2) The treatment of such expenditures as deductions for a taxable year in the base period shall, for the purposes of section 452 (b) be considered treatment which was not correct under the law applicable to such year.

"SEC. 452. ADJUSTMENT IN CASE OF POSITION INCONSISTENT WITH PRIOR INCOME TAX LIABILITY.

"(a) DEFINITIONS.—For the purposes of this section—

"(1) TAXPAYER.—The term 'taxpayer' means any person subject to a tax under the applicable revenue act.

"(2) INCOME TAX.—The term 'income tax' means an income tax imposed by this chapter or subchapter A of chapter 2 of this title; Title I and Title IA of the Revenue Acts of 1938, 1936, and 1934; Title I of the Revenue Acts of 1932 and 1928; Title II of the Revenue Acts of 1926 and 1924; Title II of the Revenue Acts of 1921 and 1918; Title I of the Revenue Act of 1917; Title I of the Revenue Act of 1916; or section II of the Act of October 3, 1913; a war profits or excess profits tax imposed by chapter 2E of this title; Title III of the Revenue Acts of 1921 and 1918; or Title II of the Revenue Act of 1917; or an income, war profits, or excess profits tax imposed by any of the foregoing provisions, as amended or supplemented.

"(3) PRIOR TAXABLE YEAR.—A taxable year ending after June 30, 1950, shall not be considered a prior taxable year.

"(4) The term 'predecessor of the taxpayer' means—

"(A) A person which is a component corporation of the taxpayer within the meaning of Part II; and

"(B) A person which on July 1, 1950, or at any time thereafter, controlled the taxpayer. The term 'controlled' as herein used shall have the same meaning as 'control' under section 112 (h); and

"(C) Any person in an unbroken series ending with the taxpayer if subparagraph (A) or (B) would apply to the relationship between the parties.

Ante, p. 929.

Post, p. 1179.

53 Stat. 104.
26 U. S. C. §§ 500-511; Sup III, § 505 (a).
Ante, pp. 428, 429, 947, 959.
26 U. S. C. note prec. § 1.

54 Stat. 975.
26 U. S. C. §§ 710-752.

Post, p. 1191.

53 Stat. 40.
26 U. S. C. § 112 (h).

“(b) CIRCUMSTANCES OF ADJUSTMENT.—

“(1) If—

“(A) in determining at any time the tax of a taxpayer under this subchapter an item affecting the determination of the excess profits credit is treated in a manner inconsistent with the treatment accorded such item in the determination of the income-tax liability of such taxpayer or a predecessor for a prior taxable year or years, and

“(B) the treatment of such item in the prior taxable year or years consistently with the determination under this subchapter would effect an increase or decrease in the amount of the income taxes previously determined for such taxable year or years, and

“(C) on the date of such determination of the tax under this subchapter correction of the effect of the inconsistent treatment in any one or more of the prior taxable years is prevented (except for the provisions of section 3801) by the operation of any law or rule of law (other than section 3761, relating to compromises),

then the correction shall be made by an adjustment under this section. If in a subsequent determination of the tax under this subchapter for such taxable year such inconsistent treatment is not adopted, then the correction shall not be made in connection with such subsequent determination.

“(2) Such adjustment shall be made only if there is adopted in the determination a position maintained by the Secretary (in case the net effect of the adjustment would be a decrease in the income taxes previously determined for such year or years) or by the taxpayer with respect to whom the determination is made (in case the net effect of the adjustment would be an increase in the income taxes previously determined for such year or years) which position is inconsistent with the treatment accorded such item in the prior taxable year or years which was not correct under the law applicable to such year.

“(3) BURDEN OF PROOF.—In any proceeding before the Tax Court or any other court the burden of proof in establishing that an inconsistent position has been taken (A) shall be upon the Secretary, in case the net effect of the adjustment would be an increase in the income taxes previously determined for the prior taxable year or years, or (B) shall be upon the taxpayer, in case the net effect of the adjustment would be a decrease in the income taxes previously determined for the prior taxable year or years.

“(c) METHOD AND EFFECT OF ADJUSTMENT.—

“(1) The adjustment authorized by subsection (b), in the amount ascertained as provided in subsection (d), if a net increase, shall be added to, and, if a net decrease, shall be subtracted from, the tax otherwise computed under this subchapter for the taxable year with respect to which such inconsistent position is adopted.

“(2) If more than one adjustment under this section is made because more than one inconsistent position is adopted with respect to one taxable year under this subchapter, the separate adjustments, each an amount ascertained as provided in subsection (d), shall be aggregated, and the aggregate net increase or decrease shall be added to or subtracted from the tax otherwise computed under this subchapter for the taxable year with respect to which such inconsistent positions are adopted.

“(3) If all the adjustments under this section, made on account of the adoption of an inconsistent position or positions with respect to one taxable year under this subchapter, result in an aggregate net increase, the tax imposed by this subchapter shall

Ante, p. 544.
53 Stat. 462.
26 U. S. C. § 3761.

in no case be less than the amount of such aggregate net increase.

"(4) If all the adjustments under this section, made on account of the adoption of an inconsistent position or positions with respect to a taxable year under this subchapter (hereinafter in this paragraph called the current taxable year), result in an aggregate net decrease, and the amount of such decrease exceeds the tax imposed by this subchapter (without regard to the provisions of this section) for the current taxable year, such excess shall be subtracted from the tax imposed by this subchapter for each succeeding taxable year, but the amount of the excess to be so subtracted shall be reduced by the reduction in tax for intervening taxable years which has resulted from the subtraction of such excess from the tax imposed for each such year.

"(d) ASCERTAINMENT OF AMOUNT OF ADJUSTMENT.—In computing the amount of an adjustment under this section there shall first be ascertained the amount of the income taxes previously determined for each of the prior taxable years for which correction is prevented. The amount of each such tax previously determined for each such taxable year shall be (1) the tax shown by the taxpayer, or by the predecessor, upon the return for such prior taxable year, increased by the amounts previously assessed (or collected without assessment) as deficiencies and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or (2) if no amount was shown as the tax by such taxpayer or such predecessor upon the return, or if no return was made by such taxpayer or such predecessor, then the amounts previously assessed (or collected without assessment) as deficiencies, but such amounts previously assessed, or collected without assessment, shall be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. There shall then be ascertained the increase or decrease in each such tax previously determined for each such year which results solely from the treatment of the item consistently with the treatment accorded such item in the determination of the tax liability under this subchapter. To the increase or decrease so ascertained for each such tax for each such year there shall be added interest thereon computed as if the increase or decrease constituted a deficiency or an overpayment, as the case may be, for such prior taxable year. Such interest shall be computed to the fifteenth day of the third month following the close of the excess profits tax taxable year with respect to which the determination is made. There shall be ascertained the difference between the aggregate of such increases, plus the interest attributable to each, and the aggregate of such decreases, plus the interest attributable to each, and the net increase or decrease so ascertained shall be the amount of the adjustment under this section with respect to the inconsistent treatment of such item.

"(e) INTEREST IN CASE OF NET INCREASE OR DECREASE.—

"(1) If an adjustment under this section results in a net decrease, or more than one adjustment results in an aggregate net decrease, the portion of such net decrease or aggregate net decrease, as the case may be, subtracted from the tax which represents interest shall be included in gross income of the taxable year in which falls the date prescribed for the payment of the tax under this subchapter.

"(2) If an adjustment under this section results in a net increase, or more than one adjustment results in an aggregate net increase, the portion of such net increase or aggregate net increase, as the case may be, which represents interest shall be allowed as a deduction in computing net income for the taxable year in which falls the date prescribed for the payment of the tax under this subchapter.

"SEC. 453. NONTAXABLE INCOME FROM CERTAIN MINING AND TIMBER OPERATIONS, AND FROM NATURAL GAS PROPERTIES.

"(a) DEFINITIONS.—For the purposes of this section and section 433 (a)—

Ante, p. 1139.

"(1) PRODUCER; LESSOR; NATURAL GAS COMPANY.—The term 'producer' means a corporation which extracts minerals from a mineral property, or which cuts logs from a timber block, in which an economic interest is owned by such corporation. The term 'lessor' means a corporation which owns an economic interest in a mineral property or a timber block, and is paid in accordance with the number of mineral units or timber units recovered therefrom by the person to which such property or block is leased. The term 'natural gas company' means a corporation engaged in the withdrawal, or transportation by pipe line, of natural gas.

"(2) MINERAL UNIT, NATURAL GAS UNIT, AND TIMBER UNIT.—The term 'mineral unit' means a unit of metal, coal, or nonmetallic substance in the minerals recovered from the operation of a mineral property. The term 'natural gas unit' means a unit of natural gas sold by a natural gas company. The term 'timber unit' means a unit of timber recovered from the operation of a timber block.

"(3) EXCESS OUTPUT.—The term 'excess output' means the excess of the mineral units, natural gas units, or timber units for the taxable year over the normal output.

"(4) NORMAL OUTPUT.—The term 'normal output' means the average annual mineral units, or the average annual timber units, as the case may be, recovered in the taxable years beginning after December 31, 1945, and not ending after June 30, 1950, (hereinafter in this section called 'normal period'), of the person owning the mineral property or the timber block (whether or not the taxpayer). The term 'normal output', in the case of a natural gas company, means the average annual natural gas units sold in the taxable years beginning after December 31, 1945, and not ending after June 30, 1950, (hereinafter in this section called 'normal period'), of the person owning the natural gas property (whether or not the taxpayer). The average annual mineral units, natural gas units, or timber units shall be computed by dividing the aggregate of such mineral units, natural gas units, or timber units for the normal period by the number of months for which the mineral property, natural gas property, or timber block was in operation during the normal period and by multiplying the amount so ascertained by twelve. In any case in which the taxpayer establishes, under regulations prescribed by the Secretary, that the operation of any mineral property, natural gas property, or timber block is normally prevented for a specified period each year by physical events outside the control of the taxpayer, the number of months during which such mineral property, natural gas property, or timber block is regularly in operation during a taxable year shall be used in computing the average annual mineral units, natural gas units, or timber units, instead of twelve. Any mineral property, natural gas property, or timber block, which was in operation for less than six months during the normal period, shall, for the purposes of this section, be deemed not to have been in operation during the normal period.

"(5) NATURAL GAS PROPERTY.—The term 'natural gas property' means the property of a natural gas company used for the withdrawal, storage, and transportation by pipe line, of natural gas, excluding any part of such property which is an emergency facility under section 124A.

Ante, p. 939.

“(6) **MINERAL PROPERTY.**—The term ‘mineral property’ means a mineral deposit, the development and plant necessary for the extraction of the deposit, and so much of the surface of the land as is necessary for purposes of such extraction.

“(7) **MINERALS.**—The term ‘minerals’ means ores of the metals, coal, and such nonmetallic substances as abrasives, asbestos, asphaltum, barytes, borax, building stone, cement rock, clay, crushed stone, feldspar, fluorspar, fuller’s earth, graphite, gravel, gypsum, limestone, magnesite, marl, mica, mineral pigments, peat, potash, precious stones, refractories, rock phosphate, salt, sand, shell, silica, slate, soapstone, soda, sulphur, and talc.

“(8) **TIMBER BLOCK.**—The term ‘timber block’ means an operation unit which includes all the taxpayer’s timber which would logically go to a single given point of manufacture.

“(9) **NORMAL UNIT PROFIT.**—The term ‘normal unit profit’ means the average profit for the normal period per mineral unit for such period, determined by dividing the net income with respect to minerals recovered from the mineral property (computed with the allowance for depletion computed in accordance with the basis for depletion applicable to the current taxable year) during the normal period by the number of mineral units recovered from the mineral property during the normal period.

“(10) **ALTERNATIVE COMPUTATION.**—In any case in which more than one mineral property is owned or operated by a lessor or producer as defined in (a) (1) of this section, such lessor or producer may treat the mineral properties as one property for purposes of computing exempt excess output under this section.

“(11) **ESTIMATED RECOVERABLE UNITS.**—The term ‘estimated recoverable units’ means the estimated number of units of metal, coal, or nonmetallic substances in the estimated recoverable minerals from the mineral property at the end of the taxable year plus the excess output for such year. All estimates shall be subject to the approval of the Secretary, the determinations of whom for the purposes of this section, shall be final and conclusive.

“(12) **EXEMPT EXCESS OUTPUT.**—The term ‘exempt excess output’ for any taxable year means a number of units equal to the following percentages of the excess output for such year:

“100 per centum if the excess output exceeds 50 per centum of the estimated recoverable units;

“95 per centum if the excess output exceeds $33\frac{1}{3}$ but not 50 per centum of the estimated recoverable units;

“90 per centum if the excess output exceeds 25 but not $33\frac{1}{3}$ per centum of the estimated recoverable units;

“85 per centum if the excess output exceeds 20 but not 25 per centum of the estimated recoverable units;

“80 per centum if the excess output exceeds $16\frac{2}{3}$ but not 20 per centum of the estimated recoverable units;

“60 per centum if the excess output exceeds $14\frac{2}{7}$ but not $16\frac{2}{3}$ per centum of the estimated recoverable units;

“40 per centum if the excess output exceeds $12\frac{1}{2}$ but not $14\frac{2}{7}$ per centum of the estimated recoverable units;

“30 per centum if the excess output exceeds 10 but not $12\frac{1}{2}$ per centum of the estimated recoverable units;

“20 per centum if the excess output exceeds 5 but not 10 per centum of the estimated recoverable units.

“(13) **UNIT NET INCOME.**—The term ‘unit net income’ means the amount ascertained by dividing the net income (computed with the allowance for depletion) from the coal or ore or the timber recovered from the mining property, or timber block, as the case

may be, during the taxable year by the number of units of coal or ore, or timber, recovered from such property in such year. In respect of a natural gas property, the term 'unit net income' means the amount ascertained by dividing the net income, computed in accordance with regulations prescribed by the Secretary, from such property during the taxable year by the number of natural gas units sold in such year.

“(b) NONTAXABLE INCOME FROM EXEMPT EXCESS OUTPUT.—

“(1) GENERAL RULE.—For any taxable year for which the excess output of mineral property which was in operation during the normal period exceeds 5 per centum of the estimated recoverable units from such property, the nontaxable income from exempt excess output for such year shall be an amount equal to the exempt excess output for such year multiplied by the normal unit profit, but such amount shall not exceed the net income (computed with the allowance for depletion) attributable to the excess output for such year.

“(2) MINES IN OPERATION DURING NORMAL PERIOD.—For any taxable year, the nontaxable income from exempt excess output of a metal or coal mining property which was in operation during the normal period shall be an amount equal to the excess output of such property for such year multiplied by one-half of the unit net income from such property for such year, or an amount determined under paragraph (1), whichever the taxpayer elects in accordance with regulations prescribed by the Secretary.

“(3) TIMBER PROPERTIES.—For any taxable year, the nontaxable income from exempt excess output of a timber block which was in operation during the normal period shall be an amount equal to the excess output of such property for such year multiplied by one-half of the unit net income from such property for such year.

“(4) MINES, TIMBER PROPERTIES, AND NATURAL GAS PROPERTIES NOT IN OPERATION DURING NORMAL PERIOD.—For any taxable year, the nontaxable income from exempt excess output of a metal or coal mining property or a timber block or natural gas property, which was not in operation during the normal period, shall be an amount equal to one-third of the net income for such taxable year (computed with the allowance for depletion) from the metal or coal mining property, the timber block, or the natural gas property, as the case may be. For the purposes of the preceding sentence, a metal mining property shall be deemed not to have been in operation during the normal period if, during the period it was in production during 1946, 1947, 1948, and 1949, the aggregate gross income derived therefrom was less than the aggregate of the deductions (allowed under section 23 without regard to any net operating loss deduction) attributable to such property during such period of production.

“(5) NATURAL GAS COMPANIES.—In the case of a natural gas company any of the natural gas property of which was in operation during the normal period, the nontaxable income from exempt excess output for any taxable year shall be an amount equal to the excess output for such year multiplied by one-half of the unit net income for such year.

“(c) NONTAXABLE BONUS INCOME.—The term 'nontaxable bonus income' means the amount of the income derived from bonus payments made by any agency of the United States Government on account of the production in excess of a specified quota of:

“(1) A mineral product or timber, the exhaustion of which gives rise to an allowance for depletion under section 23 (m), but such amount shall not exceed the net income (computed with

Ante, pp. 929, 941, 959; *post*, p. 1219.

53 Stat. 14.
26 U. S. C. § 23 (m).

the allowance for depletion) attributable to the output in excess of such quota; or

“(2) A mineral product extracted or recovered from mine tailings by a corporation which owns no economic interest in the mineral property from which the ore containing such tailings was mined, but such amount shall not exceed the net income attributable to the output in excess of such quota.

“(d) **RULE IN CASE INCOME FROM EXCESS OUTPUT INCLUDES BONUS PAYMENT.**—In any case in which the income attributable to the excess output includes bonus payments (as provided in subsection (c)), the taxpayer may elect, under regulations prescribed by the Secretary, to receive either the benefits of subsection (b) or subsection (c) with respect to such income as is attributable to excess output above the specified quota.

“**SEC. 454. EXEMPT CORPORATIONS.**

“The following corporations, except a member of an affiliated group of corporations filing a consolidated return under section 141, shall be exempt from the tax imposed by this subchapter:

“(a) Corporations exempt under section 101 from the tax imposed by this chapter.

“(b) Foreign personal holding companies, as defined in section 331.

“(c) Regulated investment companies, as defined in section 361 without the application of section 361 (b) (4).

“(d) Personal holding companies, as defined in section 501.

“(e) Foreign corporations not engaged in trade or business within the United States.

“(f) Domestic corporations satisfying the following conditions:

“(1) If 95 per centum or more of the gross income of such domestic corporation for the three-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources other than sources within the United States; and

“(2) If 50 per centum or more of its gross income for such period or such part thereof was derived from the active conduct of a trade or business.

“(g) Any corporation subject to the provisions of Title IV of the Civil Aeronautics Act of 1938, in the gross income of which for any taxable year ending after June 30, 1950, there is includible compensation received from the United States for the transportation of mail by aircraft if, after excluding from its gross income such compensation, its adjusted excess profits net income for such year is zero or less. Such exclusion from gross income for such year shall also be made in computing the unused excess profits credit adjustment for any other taxable year, but only for the purpose of determining whether the corporation is exempted by this subsection from the tax imposed by this chapter for such other taxable year.

“**SEC. 455. RELIEF FOR INSTALMENT BASIS TAXPAYERS AND TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS.**

“(a) **ELECTION TO ACCRUE INCOME.**—Any taxpayer computing income from instalment sales under the method provided by section 44 (a) or whose principal business consists in purchasing instalment sales obligations may elect, in its return for the taxable year, for the purposes of the tax imposed by this subchapter, to compute, in accordance with regulations prescribed by the Secretary, its income from instalment sales or instalment sales obligations on the basis of the taxable period for which such income is accrued without treating any portion of such income as unrealized at the close of such period, in lieu of the basis provided by section 44 (a). Such election shall be

Post, p. 1217.

Ante, pp. 953, 959.

53 Stat. 92.
26 U. S. C. § 331.
53 Stat. 98.
26 U. S. C. § 361.

53 Stat. 104.
26 U. S. C. § 501.
Ante, pp. 423, 429.

52 Stat. 987.
49 U. S. C. §§ 481-496.
Ante, p. 946.

53 Stat. 24.
26 U. S. C. § 44 (a).

irrevocable when once made and shall apply also to all subsequent taxable years to which this subchapter is applicable and the income from instalment sales or instalment sales obligations for each taxable year before the first year with respect to which the election is made which ended after June 30, 1950, shall be adjusted for the purposes of this subchapter to conform to such election. In making such adjustments, no amount shall be included in computing excess profits net income for any excess profits tax taxable year on account of instalment sales made in taxable years ending before July 1, 1950.

“(b) INCOME FROM LONG-TERM CONTRACTS.—Any taxpayer computing income from contracts the performance of which requires more than 12 months may elect, in its return for the taxable year, for the purposes of the tax imposed by this subchapter, to compute, in accordance with regulations prescribed by the Secretary, such income upon the percentage of completion method of accounting. Such election shall be made in accordance with such regulations and shall be irrevocable when once made, and shall also apply to all subsequent taxable years to which this subchapter is applicable. The net income of the taxpayer for each year to which this subchapter is applicable prior to the year with respect to which the election is made shall be adjusted for the purposes of this subchapter. Income described in this section shall not be considered abnormal income under section 456.

Post, p. 1186.

“(c) ADJUSTMENT ON ACCOUNT OF CHANGES WITH RESPECT TO INSTALLMENT BASIS TAXPAYERS AND WITH RESPECT TO TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS.—If an adjustment specified in subsection (a) or subsection (b) is, with respect to any taxable year, prevented, on the date of the election by the taxpayer under subsection (a) or subsection (b), as the case may be, or within two years from such date, by any provision or rule of law (other than this subsection and other than section 3761, relating to compromises), such adjustment shall nevertheless be made if in respect of the taxable year for which adjustment is sought a notice of deficiency is mailed or a claim for refund is filed, as the case may be, within two years after the date such election is made. If at the time of the mailing of such notice of deficiency or the filing of such claim for refund, the adjustment is so prevented, then the amount of the adjustment authorized by this subsection shall be limited to the increase or decrease in the tax imposed by this chapter previously determined for such taxable year which results solely from the effect of subsection (a) or subsection (b), as the case may be, and such amount shall be assessed and collected, or credited or refunded, in the same manner as if it were a deficiency or an overpayment, as the case may be, for such taxable year and as if on the date of such election, two years remain before the expiration of the period of limitation upon the assessment or the filing of claim for refund for the taxable year. The tax previously determined shall be ascertained in accordance with section 452 (d). The amount to be assessed and collected under this section in the same manner as if it were a deficiency or to be refunded or credited in the same manner as if it were an overpayment, shall not be diminished by any credit or set-off based upon any item, inclusion, deduction, credit, exemption, gain or loss, other than one resulting from the effect of subsection (a) or subsection (b), as the case may be. Such amount, if paid, shall not be recovered by a claim or suit for refund, or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain or loss, other than one resulting from the effect of subsection (a) or subsection (b), as the case may be.

53 Stat. 462.
26 U. S. C. § 3761.

Ante, p. 1180.

“(d) CROSS REFERENCES.—In the case of a taxpayer making an election under this section—

Ante, p. 1145.

Ante, p. 1163.

“(1) For adjustment of excess profits net income for taxable years in the base period see section 433 (b) (7) and (8); and

“(2) for adjustment in determining the excess profits credit, see section 441 (h).

“SEC. 456. ABNORMALITIES IN INCOME IN TAXABLE PERIOD.

“(a) **DEFINITIONS.**—For the purposes of this section—

“(1) **ABNORMAL INCOME.**—The term ‘abnormal income’ means income of any class described in paragraph (2) includible in the gross income of the taxpayer for any taxable year under this subchapter if it is abnormal for the taxpayer to derive income of such class, or, if the taxpayer normally derives income of such class but the amount of such income of such class includible in the gross income of the taxable year is in excess of 115 per centum of the average amount of the gross income of the same class for the four previous taxable years, or, if the taxpayer was not in existence for four previous taxable years, the taxable years during which the taxpayer was in existence.

“(2) **SEPARATE CLASSES OF INCOME.**—Each of the following subparagraphs shall be held to describe a separate class of income:

“(A) Income arising out of a claim, award, judgment, or decree, or interest on any of the foregoing; or

“(B) Income resulting from exploration, discovery, or prospecting, or any combination of the foregoing, extending over a period of more than 12 months; or

“(C) Income from the sale of patents, formulae, or processes, or any combination of the foregoing, developed over a period of more than 12 months; or

“(D) Income includible in gross income for the taxable year rather than for a different taxable year by reason of a change in the taxpayer’s method of accounting.

All the income which is classifiable in more than one of such subparagraphs shall be classified under the one which the taxpayer irrevocably elects. The classification of income of any class not described in subparagraphs (A) to (D), inclusive, shall be subject to regulations prescribed by the Secretary.

“(3) **NET ABNORMAL INCOME.**—The term ‘net abnormal income’ means the amount of the abnormal income less, under regulations prescribed by the Secretary, (A) 115 per centum of the average amount of the gross income of the same class determined under paragraph (1), and (B) an amount which bears the same ratio to the amount of any costs or deductions relating to such abnormal income, allowable in determining the normal-tax net income for the taxable year, as the excess of the amount of such abnormal income over 115 per centum of such average amount bears to the amount of such abnormal income.

“(b) **AMOUNT ATTRIBUTABLE TO OTHER YEARS.**—The amount of the net abnormal income that is attributable to any previous or future taxable year or years shall be determined under regulations prescribed by the Secretary. In the case of amounts otherwise attributable to future taxable years, if the taxpayer either transfers substantially all its properties or distributes any property in complete liquidation, then there shall be attributable to the first taxable year in which such transfer or distribution occurs (or if such year is previous to the taxable year in which the abnormal income is includible in gross income, to such latter taxable year) all amounts so attributable to future taxable years not included in the gross income for a previous taxable year.

“(c) **COMPUTATION OF TAX FOR CURRENT TAXABLE YEAR.**—The tax under this subchapter for the taxable year, in which the whole of such

abnormal income would without regard to this section be includible, shall not exceed the sum of:

“(1) The tax under this subchapter for such taxable year computed without the inclusion in gross income of the portion of the net abnormal income which is attributable to any other taxable year, and

“(2) The aggregate of the increase in the tax under this subchapter for the taxable year (computed under paragraph (1)) and for each previous taxable year which would have resulted if, for each previous taxable year to which any portion of such net abnormal income is attributable, an amount equal to such portion had been included in the gross income for such previous taxable year.

“(d) COMPUTATION OF TAX FOR FUTURE TAXABLE YEAR.—The amount of the net abnormal income attributable to any future taxable year shall, for the purposes of this subchapter, be included in the gross income for such taxable year.

“(1) The tax under this subchapter for such future taxable year shall not exceed the sum of—

“(A) the tax under this subchapter for such future taxable year computed without the inclusion in gross income of the portion of such net abnormal income which is attributable to such year; and

“(B) the decrease in the tax under this subchapter for the previous taxable year in which the whole of such abnormal income would, without regard to this section, be includible which resulted by reason of the computation of such tax for such previous taxable year under the provisions of subsection (c); but the amount of such decrease shall be diminished by the aggregate of the increases in the tax under this subchapter for the future taxable year as computed under subparagraph (A) and for the taxable years intervening between such previous taxable year and such future taxable year which have resulted because of the inclusion of the portions of such net abnormal income attributable to such intervening years in the gross income for such intervening years.

“(2) If, in the application of subsection (c), net abnormal income from more than one taxable year is attributable to any future taxable year, paragraph (1) of this subsection shall be applied with respect to such future taxable year in the order of the taxable years from which the net abnormal income is attributable beginning with the earliest, as if the portion of the net abnormal income from each such year was the only amount so attributable to such future taxable year, and (except in the case of the portion for the earliest previous taxable year) as if the tax under this subchapter for the future taxable year was the tax determined under paragraph (1) with respect to the portion for the next earlier previous taxable year.

“(3) If in the application of paragraph (1) to any future taxable year it is determined that the decrease in tax computed under paragraph (1) (B) with respect to the net abnormal income, a portion of which is included in the gross income for the future taxable year, does not exceed the aggregate of the increases in tax computed under paragraph (1) (B) with respect to such net abnormal income, then the portions of such net abnormal income attributable to taxable years subsequent to such future taxable year shall not be included in the gross income for such subsequent taxable year. For the purpose of computing the tax under this subchapter for a taxable year subsequent to the future taxable year, the portion of net abnormal income attributable

to the future taxable year shall not be included in the gross income for such future taxable year to the extent that the inclusion of such portion of net abnormal income in the gross income for such future taxable year did not result in an increase in tax for such future taxable year by reason of the provisions of paragraph (1).

“(e) APPLICATION OF SECTION.—This section shall be applied only for the purpose of computing the tax under this subchapter as provided in subsections (c) and (d), and shall have no effect upon the computation of base period net income. For the purposes of subsections (c) and (d)—

“(1) Net abnormal income means the aggregate of the net abnormal income of all classes for one taxable year.

“(2) Under regulations prescribed by the Secretary, the tax under this subchapter for previous taxable years shall be computed as if the portions of net abnormal income for each previous taxable year for which the tax was computed under this section were included in the gross income for the other previous taxable years to which such portions were attributable.

“(3) If both subsections (c) and (d) are applicable to any current taxable year, subsection (d) shall be applied without regard to subsection (c), and subsection (c) shall be applied as if the tax under this subchapter, except for subsection (c), was the tax computed under subsection (d) and as if the gross income and the other amounts necessary to determine the adjusted excess profits net income were those amounts which would result in the tax computed under subsection (d).

“SEC. 457. CORPORATIONS COMPLETING CONTRACTS UNDER MERCHANT MARINE ACT.

“(a) If the Federal Maritime Board certifies to the Secretary that the taxpayer has completed within the taxable year any contracts or subcontracts which are subject to the provisions of section 505 (b) of the Merchant Marine Act of 1936, as amended, then the tax imposed by this subchapter for such taxable year shall be, in lieu of a tax computed under section 430, a tax computed under subsection (b) of this section, if, and only if, the tax computed under subsection (b) is less than the tax computed under section 430.

“(b) The tax computed under this subsection shall be the excess of—

“(1) A tentative tax computed under section 430 with the normal-tax net income increased by the amount of any payments made, or to be made, to the Federal Maritime Board with respect to such contracts or subcontracts; over

“(2) The amount of such payments.

“SEC. 458. HISTORICAL INVESTED CAPITAL.

“(a) DEFINITION OF HISTORICAL INVESTED CAPITAL.—For the purposes of this subchapter the historical invested capital for any taxable year shall be the average invested capital for such year, determined under subsection (b). (For computation of invested capital in case of foreign corporations and corporations entitled to the benefits of section 251, see section 436 (b).)

“(b) AVERAGE INVESTED CAPITAL.—The average invested capital for any taxable year shall be the aggregate of the daily invested capital for each day of such taxable year, divided by the number of days in such taxable year.

“(c) DAILY INVESTED CAPITAL.—The daily invested capital for any day of the taxable year shall be the sum of the equity invested capital for such day plus 75 per centum of the daily borrowed capital for such day determined under section 439 (b).

“(d) EQUITY INVESTED CAPITAL.—The equity invested capital for any day of any taxable year shall be determined as of the beginning of

49 Stat. 1998.
46 U. S. C. § 1155 (b).

Ante, p. 1137.

Ante, p. 1137.

Ante, pp. 944, 1156.

Ante, p. 1161.

such day and shall be the sum of the following amounts, reduced as provided in subsection (e)—

“(1) **MONEY PAID IN.**—Money previously paid in for stock, or as paid-in surplus, or as a contribution to capital;

“(2) **PROPERTY PAID IN.**—Property (other than money) previously paid in (regardless of the time paid in) for stock, or as paid-in surplus, or as a contribution to capital. Such property shall be included in an amount equal to its basis (unadjusted) for determining loss upon sale or exchange. If the property was disposed of before such taxable year, such basis shall be determined under the law applicable to the year of disposition, but without regard to the value of the property as of March 1, 1913. If the property was disposed of before March 1, 1913, its basis shall be considered to be its fair market value at the time paid in. If the unadjusted basis of the property is a substituted basis, such basis shall be adjusted, with respect to the period before the property was paid in, by an amount equal to the adjustments proper under section 115 (1) for determining earnings and profits. For the purposes of this section the fair value of additions and betterments made by the lessee to the physical properties of a lessor railroad corporation which have become the property of the lessor corporation by rejection of its lease (and fair value being determined as of the date such additions and betterments became the property of the lessor) shall be considered as a contribution to capital; and where the value of such improvements cannot be accurately determined by the old records thereof, because lost, incomplete, or inaccurate, the value of such improvements determined by the Interstate Commerce Commission for rate-making purposes shall be used in lieu of such fair value.

54 Stat. 1004.
26 U. S. C. § 115 (l).

“(3) **DISTRIBUTIONS IN STOCK.**—Distributions in stock—

“(A) Made prior to such taxable year to the extent to which they are considered distributions of earnings and profits; and

“(B) Previously made during such taxable year to the extent to which they are considered distributions of earnings and profits other than earnings and profits of such taxable year;

“(4) **EARNINGS AND PROFITS AT BEGINNING OF YEAR.**—The accumulated earnings and profits as of the beginning of such taxable year;

“(5) **DEFICIT IN EARNINGS AND PROFITS OF ANOTHER CORPORATION.**—In the case of a transferee, as defined in subsection (f) (4), an amount, determined under such paragraph, equal to the portion of the deficit in earnings and profits of a transferor attributable to property received previously to such day.

“(e) **REDUCTION IN EQUITY INVESTED CAPITAL.**—The amount by which the equity invested capital for any day shall be reduced as provided in subsection (d) shall be the sum of the following amounts—

“(1) **DISTRIBUTIONS IN PREVIOUS YEARS.**—Distributions made prior to such taxable year which were not out of accumulated earnings and profits;

“(2) **DISTRIBUTIONS DURING THE YEAR.**—Distributions previously made during such taxable year which are not out of the earnings and profits of such taxable year;

“(3) **EARNINGS AND PROFITS OF ANOTHER CORPORATION.**—The earnings and profits of another corporation which previously at any time were included in accumulated earnings and profits by reason of a transaction described in section 112 (b) to (e), both inclusive, or in the corresponding provision of a prior rev-

53 Stat. 37.
26 U. S. C. § 112 (b)-
(e).
Ante, p. 931.

venue law, or by reason of the transfer by such other corporation to the taxpayer of property the basis of which in the hands of the taxpayer is or was determined with reference to its basis in the hands of such other corporation, or would have been so determined if the property had been other than money; and

“(4) DEFICIT IN EARNINGS AND PROFITS TRANSFERRED TO ANOTHER CORPORATION.—In the case of a transferor, as defined in subsection (f) (4), an amount, determined under such paragraph, equal to the portion of the deficit in earnings and profits of the transferor attributable to property transferred previously to such day.

“(f) RULES FOR APPLICATION OF SUBSECTIONS (d) AND (e).—

“(1) DISTRIBUTIONS TO SHAREHOLDERS.—The term ‘distribution’ means a distribution by a corporation to its shareholders, and the term ‘distribution in stock’ means a distribution by a corporation in its stock or rights to acquire its stock. To the extent that a distribution in stock is not considered a distribution of earnings and profits it shall not be considered a distribution. A distribution in stock shall not be regarded as money or property paid in for stock, or as paid-in surplus, or as a contribution to capital.

“(2) DISTRIBUTIONS IN FIRST SIXTY DAYS OF TAXABLE YEAR.—In the application of such subsections so much of the distributions (taken in the order of time) made during the first sixty days thereof as does not exceed the accumulated earnings and profits as of the beginning thereof (computed without regard to this paragraph) shall be considered to have been made on the last day of the preceding taxable year. This paragraph shall not apply with respect to distributions made during the first sixty days of the taxpayer’s first taxable year under this subchapter.

“(3) COMPUTATION OF EARNINGS AND PROFITS OF TAXABLE YEAR.—For the purposes of subsections (d) (3) (B) and (e) (2) in determining whether a distribution is out of the earnings and profits of any taxable year, such earnings and profits shall be computed as of the close of such taxable year without diminution by reason of any distribution made during such taxable year or by reason of the tax under this subchapter or chapter 1 for such year and the determination shall be made without regard to the amount of earnings and profits at the time the distribution was made.

“(4) DEFICIT IN EARNINGS AND PROFITS—EARNINGS AND PROFITS OF TRANSFEROR AND TRANSFEREE.—If a corporation (hereinafter called ‘transferor’) transfers substantially all its property to another corporation formed to acquire such property (hereinafter called ‘transferee’), if—

“(A) the sole consideration for the transfer of such property is the transfer to the transferor or its shareholders of all the stock of all classes (except qualifying shares) of the transferee. (In determining whether the transfer is solely for stock, the assumption by the transferee of a liability of the transferor or the fact that the property acquired is subject to a liability shall be disregarded);

“(B) the basis of the property, in the hands of the transferee, for the purposes of this subsection, is determined by reference to the basis of the property in the hands of the transferor;

“(C) the transferor is forthwith completely liquidated in pursuance of the plan under which the acquisition of the property is made; and

“(D) immediately after the liquidation the shareholders of the transferor own all such stock;

for the purposes of this subchapter, in computing the equity invested capital for any day after the date of the acquisition of the property, the earnings and profits or deficit in earnings and profits of the transferee and the transferor shall be computed as if, immediately before the beginning of the taxable year in which such transfer occurs, the transferee had been in existence and sustained a recognized loss, and the transferor had realized a recognized gain, equal to the portion of the deficit in earnings and profits of the transferor attributable to such property.

“(g) For special rules affecting computation of property paid in for stock in connection with certain exchanges and liquidations, see part III.

“(h) The reserves of an insurance company shall not be included in computing equity invested capital under this section but shall be treated as daily borrowed capital as provided in section 439.

Post, p. 1210.

Ante, p. 1161.

“Part II—Excess Profits Credit Based on Income in Connection With Certain Exchanges

“SEC. 461. DEFINITIONS.

“For the purposes of this Part—

“(a) ACQUIRING CORPORATION.—The term ‘acquiring corporation’ means—

“(1) A corporation which has acquired—

“(A) substantially all the properties of another corporation and the whole or a part of the consideration for the transfer of such properties is the transfer to such other corporation of all the stock of all classes (except qualifying shares) of the corporation which has acquired such properties, or

“(B) substantially all the properties of another corporation and the sole consideration for the transfer of such properties is the transfer to such other corporation of voting stock of the corporation which has acquired such properties, or

“(C) before December 1, 1950, properties of another corporation solely as paid-in surplus or a contribution to capital in respect of voting stock owned by such other corporation, or

“(D) substantially all the properties of a partnership in an exchange to which section 112 (b) (5), or so much of section 112 (c) or (e) as refers to section 112 (b) (5) is applicable.

“(E) properties either from one or more corporations or from one or more partnerships or from one or more corporations and one or more partnerships, other than from a corporation exempt under section 101, in an exchange, not otherwise described in this subsection, to which section 112 (b) (4) or (5), or so much of section 112 (c) or (e) as refers to section 112 (b) (4) or (5), is applicable.

For the purpose of subparagraphs (B) and (C) in determining whether such voting stock or such paid-in surplus or contribution to capital is the sole consideration, the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded. Subparagraph (C) shall apply only if the corporation transferring such properties is forthwith completely liquidated in pursuance of the plan under which the acquisition is made, and the transaction of which the acquisition is a part has the effect of a statutory merger or consolidation.

“(2) A corporation which has acquired property from another corporation in a transaction with respect to which gain or loss was not recognized under section 112 (b) (6);

53 Stat. 37, 39.
26 U. S. C. § 112 (b),
(c), (e).

Ante, pp. 953, 959.

53 Stat. 37, 39.
26 U. S. C. § 112 (b),
(c), (e).

53 Stat. 38.
26 U. S. C. § 112 (b)
(6).

“(3) A corporation the result of a statutory merger of two or more corporations; or

“(4) A corporation the result of a statutory consolidation of two or more corporations.

“(b) COMPONENT CORPORATION.—The term ‘component corporation’ means—

“(1) In the case of a transaction described in subsection (a) (1), the corporation which transferred the assets;

“(2) In the case of a transaction described in subsection (a) (2), the corporation the property of which was acquired;

“(3) In the case of a statutory merger, all corporations merged, except the corporation resulting from the merger; or

“(4) In the case of a statutory consolidation, all corporations consolidated, except the corporation resulting from the consolidation; or

“(5) In the case of a transaction specified in subsection (a) (1) (D), the partnership whose properties were acquired.

“(6) In the case of a transaction specified in subsection (a) (1) (E), the partnerships or corporations whose properties were acquired.

“(c) INCOME OF CERTAIN COMPONENT CORPORATIONS NOT INCLUDED.—For the purposes of section 434, section 462, section 463, and section 464, in the case of a corporation which is a component corporation in a transaction described in subsection (a)—

“(1) Except as provided in paragraphs (2), (3) and (4), for the purpose of computing, for any taxable year ending after June 30, 1950, the excess profits credit of such component corporation or of an acquiring corporation of which the acquiring corporation in such transaction is not a component, no account shall be taken of the excess profits net income, or of the average base period net income if computed under section 442, 443, 444, 445, or 446, of such component corporation for any period before the day after such transaction, and no account shall be taken of capital additions in the base period computed under section 435 (f), and net capital additions or reductions computed under section 435 (g), of such component corporation to the extent that such computations relate to any period before such transaction.

“(2) Except as provided in paragraphs (3) and (4), in case such transaction occurred in a taxable year of such component corporation ending after June 30, 1950, for the purpose of computing the excess profits credit of such component corporation for such taxable year, the amount of its average base period net income shall be limited to an amount which bears the same ratio to such average base period net income (computed without regard to this paragraph) as the number of days in such taxable year before the day after such transaction bears to the total number of days in such taxable year.

“(3) Except as provided in paragraph (4), in the case of a transaction described in subsection (a) (1) (E), for the purpose of computing the excess profits credit of such component corporation or of an acquiring corporation of which the acquiring corporation in such transaction is not a component, no account shall be taken of that portion of the excess profits net income, or of the average base period net income if computed under section 442, 443, 444, 445, or 446, of such component corporation, for any period before the day after such transaction which is allocable to the acquiring corporation in such transaction under section 462 (i), and no account shall be taken of that portion of capital additions in the base period computed under section 435 (f), and net

Ante, p. 1147; *post*, pp. 1194, 1206, 1208.

Ante, pp. 1163-1170.

Ante, p. 1152.

Ante, p. 1153.

Ante, pp. 1163-1170.

Post, p. 1203.

Ante, p. 1152.

capital additions or reductions computed under section 435 (g), of such component corporation, to the extent that such computations relate to any period before such transaction, which is allocable to the acquiring corporation in such transaction under section 462 (i);

Ante, p. 1153.

(4) In the case of a transaction described in subsection (a) (1) (E) which occurred in a taxable year of such component corporation ending after June 30, 1950, for the purpose of computing the excess profits credit of such component corporation for such taxable year, the amount of its average base period net income shall be limited to the sum of the following:

Post, p. 1203.

(A) An amount which bears the same ratio to such average base period net income (computed without regard to this paragraph), as the number of days in such taxable year before the day after such transaction bears to the total number of days in such taxable year; and

(B) An amount which bears the same ratio to that portion of its average base period net income as is allocable to such component corporation in such transaction under section 462 (i) (computed without regard to this paragraph), as the number of days in such taxable year after the day of such transaction bears to the total number of days in such taxable year.

Post, p. 1203.

For the purposes of section 462, in the case of a corporation which is a component corporation in a transaction described in subsection (a), in computing for any taxable year the average base period net income of the acquiring corporation in such transaction, no account shall be taken of the excess profits net income, or of the average base period net income, of such component corporation for any period beginning with the day after such transaction.

Post, p. 1194.

(d) For purposes of sections 435 (e), 442, 443, 444, 445, and 446, any taxpayer which is an acquiring corporation shall be considered to have been in existence and to have had taxable years for any period during which it or any of its component corporations was in existence, and such corporation shall be considered to have commenced business on the earliest date on which it or any of its component corporations commenced business. Except for purposes of the previous sentence, a component corporation in a transaction described in subsection (a), other than one described in subsection (a) (1) (E), shall be deemed not to have been in existence or to have commenced business prior to the day after such transaction for purposes of determining the applicability of sections 435 (e), 442, 443, 444, 445, and 446, to such corporation after such transaction. For purposes of the first sentence of this subsection, a corporation which was an acquiring corporation in a previous transaction shall be deemed to have been in existence for such period as is determined by the application of that sentence to that corporation with respect to that transaction. For purposes of this part, where sections 443 (b), 444 (c), 445 (b), and 446 (b) refer to the amount of a taxpayer's total assets as of the last day of its taxable year immediately preceding the taxpayer's first taxable year under this subchapter, such references, where appropriate, shall be taken to mean the amount of such taxpayer's total assets as of the last day of its base period.

Ante, pp. 1149-1170.

Ante, pp. 1166-1170.

(e) COMPONENT CORPORATION WHICH WAS AN ACQUIRING CORPORATION IN A PREVIOUS TRANSACTION.—In the case of a component corporation which was an acquiring corporation in a previous transaction, its average base period net income, for purposes of the later transaction, shall be determined under sections 435 (d), 435 (e), or 442 (c) with the application of section 462 (b), and of sections 462 (c)

Ante, pp. 1149, 1164.

Post, p. 1194.

Post, p. 1197.

Ante, pp. 1164-1170.

Post, pp. 1197-1203.

Ante, pp. 1191, 1192;
post, p. 1205.

or (d), where applicable, with respect to the previous transaction, and its average base period net income, for purposes of the later transaction, shall be determined under sections 442 (d), 443, 444, 445, or 446, with the application of sections 462 (d), (e), (f), (g), or (h), where applicable, with respect to the previous transaction.

²(f) **SOLE PROPRIETORSHIP.**—For the purposes of sections 461 (a) (1) (D), 461 (b) (5), and 462 (k), a business owned by a sole proprietorship shall be considered a partnership.

“SEC. 462. AVERAGE BASE PERIOD NET INCOME—DETERMINATION.

Ante, p. 1149.

“(a) **IN GENERAL.**—In the case of a taxpayer which is an acquiring corporation, for the purposes of the determination of its average base period net income under section 435 (c), its average base period net income determined under section 435 (d) may be determined by computing its excess profits net income either with or without reference to section 462 (b), and its average base period net income under sections 435 (e) or 442 (c), subject to the rules provided in sections 462 (c) or (d), may likewise be determined by computing its excess profits net income either with or without reference to section 462 (b). Its average base period net income under sections 442 (d), 443, 444, 445, and 446 shall be determined subject to the rules provided in sections 462 (d), (e), (f), (g), and (h). The excess profits net income of such acquiring corporation, computed with reference to section 462 (b), shall be the excess profits net income for each month of the acquiring corporation's base period, and for the additional period ending June 30, 1950, increased or decreased, as the case may be, by the addition or reduction resulting from including the excess profits net income for that month of all component corporations in the manner provided in subsection (b).

Ante, pp. 1149, 1164.

Ante, pp. 1164-1170.

“(b) **METHOD OF RECOMPUTATION OF EXCESS PROFITS NET INCOME OF ACQUIRING CORPORATION.**—

Ante, p. 1149.

“(1) The excess profits net income for each month in the base period of the acquiring corporation and for each month in the additional period ending June 30, 1950, shall be determined in the case of the acquiring corporation, and of any component corporation, as provided in section 435 (d) (1) without regard, however, to that part of such section which provides that in no event shall the excess profits net income of any corporation for any month be less than zero.

Ante, p. 1193.

“(2) For the purposes of this section, if the acquiring corporation was in existence, as provided in section 461 (d), at the beginning of its base period and, for any full month of such base period, either the acquiring corporation or any component corporation was not in existence, such corporation's excess profits net income for such month shall, notwithstanding the last sentence of section 435 (d) (1), be an amount equal to 1 per centum of the equity capital (as defined in section 437 (c)) of such corporation at the close of the day before the transaction described in section 461 (a) occurred, or at the close of the base period of such corporation, whichever is earlier, reduced by an amount determined under section 440 (b) (relating to ratio of inadmissible assets), by applying section 440 (b) as of the day before the transaction described in section 461 (a) occurred, or at the close of the base period of such corporation, whichever is earlier. In case either the acquiring corporation or any component corporation owned stock in any other such corporation on the first day of such owning corporation's first taxable year under this subchapter, the amounts computed under this paragraph with respect to such corporations shall be adjusted, under regulations prescribed by the Secretary, to such extent as may be necessary to prevent the excess profits

Ante, p. 1149.

Ante, p. 1157.

Ante, p. 1191.

Ante, p. 1161.

net income of such corporations for the base period of the acquiring corporation from reflecting money or property having been paid in by either of such corporations to the other for stock or as paid-in surplus or as a contribution to capital, or from reflecting stock of either having been paid in for stock of the other or as paid-in surplus or as a contribution to capital. For the purposes of this paragraph, stock in either such corporation which has in the hands of the other corporation a basis determined with reference to the basis of stock previously acquired by the issuance of such other corporation's own stock shall be deemed to have been paid in for the stock of such other corporation.

"(3) For every month of the acquiring corporation's base period and for each month thereafter for the period ending June 30, 1950, there shall be added to the excess profits net income of the acquiring corporation for that month, as determined under paragraphs (1) and (2), the excess profits net income of each component corporation for that month so determined. The excess profits net income of the acquiring corporation for any month, recomputed as provided in the previous sentence, shall, in no event, be less than zero.

"(c) USE BY ACQUIRING CORPORATION OF ALTERNATIVE AVERAGE BASE PERIOD NET INCOME BASED ON GROWTH PROVIDED FOR IN SECTION 435 (e).—

"(1) In the case of a transaction described in section 461 (a), other than a transaction described in section 461 (a) (1) (E),

"(A) where, immediately prior to the date of the transaction, the acquiring corporation and all the component corporations (other than a corporation created incident to such transaction) had commenced business prior to the beginning of its base period (determined without reference to section 461 (d)) and met the requirements of section 435 (e) (1) (A) (i):

"(i) the acquiring corporation shall not be denied the right to determine whether it is eligible for the benefits of section 435 (e) without reference to the recomputation of its excess profits net income provided for in section 462 (b) where the transaction occurred on or after July 1, 1950, but it shall be denied such right where the transaction occurred prior to July 1, 1950, and

"(ii) the acquiring corporation shall be entitled to compute its average base period net income under section 435 (e) with reference to the recomputation of its excess profits net income provided for in section 462 (b) if the tests of section 435 (e) are satisfied. For that purpose, the acquiring corporation shall combine with its total payroll and its total gross receipts for that portion of its base period which preceded such transaction the total payroll and total gross receipts of such component corporations for that portion of such period and it shall combine with its net sales for that portion of the period prior to January 1, 1951, which preceded such transaction the net sales of such component corporations for that portion of such period. The allocation of payroll and gross receipts amounts of a component corporation to any such portion of such period shall be made in accordance with the rules provided in section 435 (e) (4) and (5). For purposes of qualifying under section 435 (e) (1) (A) (i) (relating to total assets of the taxpayer), such acquiring corporation shall combine its total assets on the date specified in section

Ante, p. 1149.

Ante, p. 1191.

Ante, p. 1193.

Ante, p. 1149.

Ante, p. 1149.

Ante, p. 1149.

Ante, p. 1151.

Ante, p. 1149.

435 (e) (1) (A) (i) with the total assets of each component corporation on such date. The Secretary shall prescribe by regulation such rules as may be necessary to insure that such combined total gross receipts do not reflect a duplication for purposes of this section;

“(B) where, immediately prior to the date of the transaction, either the acquiring corporation or one or more component corporations, had commenced business prior to the beginning of its base period (determined without reference to section 461 (d)) and met the requirements of section 435 (e) (1) (A) (i), but where either the acquiring corporation or one or more of such component corporations (other than a corporation created incident to such transaction) did not meet such requirements, the acquiring corporation shall not be entitled to compute its average base period net income under section 435 (e), regardless of the date on which the transaction occurred, or of whether or not, after the transaction, it determines its excess profits net income with reference to the recomputation provided for in section 462 (b). In any such case, where the transaction occurred on or after July 1, 1950, the monthly excess profits net income of the corporation entitled to the benefits of section 435 (e) for any month of the acquiring corporation's base period shall be, for purposes of the recomputation provided for in section 462 (b), one-twelfth of the average base period net income to which such corporation was entitled under section 435 (e).

“(2) In the case of a transaction described in section 461 (a) (1) (E) which occurred after the close of the base period of the component corporation in which the component corporation, immediately prior to the date of the transaction, was entitled to the use of the alternative average base period net income based on growth provided for in section 435 (e), the acquiring corporation, if it determines its excess profits net income with reference to the recomputation provided for in section 462 (b), and the component corporation shall be entitled to compute their average base period net incomes under section 435 (e). Where the transaction occurred during the base period of the acquiring corporation, and the component corporation, immediately prior to the date of the transaction, had commenced business prior to the beginning of its base period (determined without reference to section 461 (d)) and met the requirements of section 435 (e) (1) (A) (i), the acquiring corporation, if it determines its excess profits net income with reference to the recomputation provided for in section 462 (b), and the component corporation, shall be entitled to compute their average base period net incomes under section 435 (e) provided, however, that they meet the tests of that section. For that purpose, the payroll and gross receipts of the component corporation for the period prior to the day of the transaction, determined in accordance with the rules provided in section 435 (e) (4) and (5), and the net sales of the component corporation for the period prior to the date of the transaction, shall be allocated as between the component corporation and the acquiring corporation in the same ratio as the excess profits net income of the component corporation allocated under subsection (i), and such allocated payroll, gross receipts, and net sales amounts shall be treated by the component corporation and by the acquiring corporation as the payroll, gross receipts, and net sales of the component corporation and the acquiring corporation for the period prior to the transaction. In the appli-

Ante, p. 1193.

Ante, p. 1149.

Ante, p. 1191.

Ante, p. 1149.

Ante, p. 1193.

Ante, p. 1151.

cation of the test prescribed in section 435 (e) (1) (A) (i) (relating to total assets of the taxpayer) the component corporation and the acquiring corporation shall each be considered as having held the total assets of the component corporation as of the date applicable for purposes of section 435 (e) (1) (A) (i).

Ante, p. 1149.

“(3) Where any corporation, a party to a transaction described in section 461 (a), which had commenced business prior to the beginning of its base period (determined without reference to section 461 (d)), either was entitled at the time of the transaction to determine its average base period net income under section 435 (e) by reason of its having met the requirements of section 435 (e) (1) (B) or, where the transaction occurred prior to January 1, 1951, was furnishing at the time of the transaction a product or class of products of the type described in section 435 (e) (1) (B) (ii), the acquiring corporation shall be entitled to determine its average base period net income under section 435 (e) as provided in this subsection, substituting, for purposes of this paragraph, for the reference to the requirements of section 435 (e) (1) (A) (i), wherever it appears in paragraphs (1) and (2), a reference to the requirements stated in this paragraph, for the date July 1, 1950, wherever it appears in paragraph (1), the date January 1, 1951, and for the references, as they appear in paragraph (2), to transactions which occurred after the close of the base period of the component corporation and to transactions which occurred during the base period of the acquiring corporation, references to transactions which occurred after December 31, 1950 and to transactions which occurred prior to January 1, 1951, respectively.

Ante, p. 1191.

Ante, p. 1193.

Ante, p. 1149.

Ante, p. 1150.

“(d) USE BY ACQUIRING CORPORATION OF ALTERNATIVE AVERAGE BASE PERIOD NET INCOME PROVIDED IN THE CASE OF BASE PERIOD ABNORMALITIES IN SECTION 442.—

Ante, p. 1163.

Ante, p. 1191.

“(1) In the case of a transaction described in section 461 (a) which occurred during the base period of an acquiring corporation which commenced business (as provided in section 461 (d)) prior to the beginning of its base period, the acquiring corporation shall be entitled to determine its average base period net income under section 442 (c) or (d) if it satisfies the requirements of either such subsection and satisfies the other requirements of section 442. For purposes of section 442—

Ante, p. 1193.

Ante, p. 1164.

Ante, p. 1163.

“(A) In the case of such a transaction, other than a transaction described in section 461 (a) (1) (E), for purposes:

Ante, p. 1191.

“(i) of determining excess profits net income for any month of the base period for purposes of section 442 (c) or (d), such acquiring corporation shall recompute its monthly excess profits net income as provided in section 462 (b), but without regard to the last sentence of section 462 (b) (3);

Ante, p. 1164.

“(ii) of the computation provided in section 442 (d) (1) or (e) (1) (A) with respect to any day, the acquiring corporation shall be considered as having had the total assets of its component corporation or corporations on such day;

Ante, pp. 1164, 1165.

“(iii) of the interest adjustment provided in section 442 (d) (4) and (e) (1) (B), the acquiring corporation shall be considered as having paid or incurred the interest paid or incurred by its component corporation or corporations for that part of such periods as is referred to in those sections as preceded the date of the transaction; and

Ante, pp. 1164, 1165.

computed under section 462 (b) (3) the substitute excess

Ante, p. 1164.

Ante, p. 1163.

“(iv) of determining the existence of an abnormality under section 442 (a) with respect to the period prior to such transaction, the acquiring corporation shall be treated as if the component corporation’s business during such period were its own; and

Ante, p. 1191.

“(B) In the case of a transaction described in section 461 (a) (1) (E), for purposes:

Ante, p. 1164.

“(i) of determining excess profits net income for any month of the base period for purposes of section 442 (c) or (d), such acquiring corporation shall be considered as having had for that month that proportion of the excess profits net income (or deficit in excess profits net income) of the component corporation for such month which is allocable to such acquiring corporation under section 462 (i);

“(ii) of the computation referred to in subparagraph (A) (ii) of this paragraph and of the interest adjustment referred to in subparagraph (A) (iii) of this paragraph, the acquiring corporation shall be considered as having had the same portion of the items referred to in those subparagraphs as the ratio of its allocable share of the excess profits net income of the component corporation under section 462 (i) bears to the total excess profits net income of that corporation; and

Ante, p. 1163.

“(iii) of determining the existence of an abnormality under section 442 (a) with respect to the period prior to such transaction, the acquiring corporation shall be treated as if that portion of the component corporation’s business which was subsequently transferred to the acquiring corporation had been its own.

Ante, p. 1191.

“(2) In the case of a transaction described in section 461 (a) which occurred after the close of the base period of an acquiring corporation which commenced business (as provided in section 461 (d)) prior to the beginning of its base period, the acquiring corporation shall not be entitled to determine its average base period net income under section 442 except that:

Ante, p. 1193.

Ante, p. 1163.

“(A) if all of the corporations, parties to the transaction, were, prior to the transaction, entitled to compute their average base period net incomes under section 442 (d) or under sections 442 (d), 443, 444, 445, or 446, the acquiring corporation may add an average base period net income of any such corporation computed under section 442 (d) to such other average base period net incomes for the purpose of determining its average base period net income after the transaction under the section applicable to it prior to the transaction, and

Ante, pp. 1164–1170.

“(B) if all of the corporations, parties to the transaction, were, prior to the transaction, entitled to compute their average base period net incomes under section 442 (c), if some were so entitled under section 442 (c) and the remainder under section 442 (d), or if some, but not all, were so entitled under either section 442 (c) or (d), then, for purposes of the recomputation of the excess profits net income of the acquiring corporation under section 462 (b), and for purposes of the allocation of a portion of the excess profits net income (or deficit in excess profits net income) of the component corporation to the acquiring corporation under section 462 (i) in the case of a transaction described in section 461 (a) (1) (E);

Ante, p. 1164.

Ante, p. 1191.

Ante, p. 1164.

“(i) in the case of an average base period net income computed under section 442 (c), the substitute excess

profits net income of the corporation for any month determined under section 442 (c) (1) shall be treated as the excess profits net income of that corporation for that month; and

Ante, p. 1164.

“(ii) in the case of an average base period net income computed under section 442 (d), a figure obtained by dividing such average base period net income by 12 shall be treated as the excess profits net income of that corporation for any month of its base period.

Ante, p. 1164.

“(3) In the case of a transaction described in section 461 (a), where the acquiring corporation had not commenced business, within the meaning of section 461 (d), prior to the beginning of its base period, the acquiring corporation shall not be entitled to compute its average base period net income under section 442 in the manner provided therein or as provided in this section.

Ante, p. 1191.

Ante, p. 1193.

Ante, p. 1163.

“(e) USE BY ACQUIRING CORPORATION OF ALTERNATIVE AVERAGE BASE PERIOD NET INCOME PROVIDED FOR CHANGE IN PRODUCTS OR SERVICES IN SECTION 443.—

Ante, p. 1166.

Ante, p. 1191.

“(1) In the case of a transaction described in section 461 (a), other than a transaction described in section 461 (a) (1) (E), where the acquiring corporation had commenced business, within the meaning of section 461 (d), on or before the first day of its base period, the following rules shall be applicable in determining the availability to the acquiring corporation of a right to compute its average base period net income under section 443—

Ante, p. 1193.

Ante, p. 1166.

“(A) Except as provided in subparagraphs (B) and (D), where any corporation a party to the transaction, other than a corporation created incident to such transaction, had not commenced business, without regard to section 461 (d), on or before the first day of the acquiring corporation's base period, the acquiring corporation shall not be entitled to compute its average base period net income under section 443.

Ante, p. 1193.

Ante, p. 1166.

“(B) In a case described in subparagraph (A) above, where the acquiring corporation, other than a corporation created incident to such transaction, and all of the component corporations were, prior to the transaction, entitled to compute their average base period net incomes under sections 442 (d), 443, 444, 445 or 446, the acquiring corporation may add an average base period net income computed under section 443 of any of the parties to the transaction to such other average base period net incomes for the purpose of determining its average base period net income after the transaction under the section applicable to it prior to the transaction.

Ante, pp. 1164-1170.

Ante, p. 1166.

“(C) Where, at the time of the transaction, one or more of the corporations, parties to the transaction, had made a substantial change, within the meaning of section 443 (a) (1), in the products or services which it furnished, but where such corporations were not entitled at such time to compute their average base period net incomes under section 443, the acquiring corporation, if it recomputes its excess profits net income in the manner provided in section 462 (b) (but without regard to the last sentence of section 462 (b) (3)), shall be entitled to compute its average base period net income under section 443 if the requirements of that section are satisfied. For that purpose the gross income of all of the component corporations for taxable years beginning with, within, and subsequent to, the taxable year of the corporation which made the first such change in which such change was made shall be treated as having been earned by the acquiring corporation. The total assets of the component corporations as they existed

Ante, p. 1166.

Ante, p. 1166.

on the last day of such year of the acquiring corporation which preceded the taxable year in which the transaction occurred shall be treated, for purposes of the determination of its average base period net income under section 443 for the taxable year of the transaction and for subsequent taxable years, as having been held by the acquiring corporation on such day. Interest paid or incurred by any component corporation prior to the day of the transaction shall be considered as having been paid or incurred by the acquired corporation at the time when it was paid or incurred by such component corporation. In any such case, each such change shall be treated as having been made by the acquiring corporation at the time when it was made by the corporation making the change.

Ante, p. 1166.

“(D) In a case described in subparagraph (A), where a corporation a party to the transaction commenced business during the 36-month period ending on the last day of the base period of the acquiring corporation, and the transaction occurred prior to December 1, 1950, the activities of that corporation shall be treated for purposes of section 443, and with respect to the activities of the other corporations parties to the transaction, as though they constituted a substantial change in products or services furnished, within the meaning of section 443 (a) (1), by the acquiring corporation and, for purposes of determining whether or not the acquiring corporation meets the requirements of that section, the rules prescribed in subparagraph (C) shall be applicable.

Ante, p. 1166.

“(E) Where there was a substantial change in the products or services furnished by the acquiring corporation subsequent to the date of the transaction, the acquiring corporation shall be entitled to determine its average base period net income under section 443 with respect to such change if it recomputes its excess profits net income in the manner provided in section 462 (b) (without regard to the last sentence of section 462 (b) (3)), subject to the application of the rules prescribed in subparagraph (C).

Ante, p. 1166.

“(F) Subject to the application of the above rules, an acquiring corporation shall not be deemed, for purposes of section 443, to have made a substantial change in the products or services furnished by it solely by reason of a change in such products or services resulting from the execution of a transaction described in section 461 (a).

Ante, p. 1191.

“(2) In the case of a transaction described in section 461 (a) (1) (E), the acquiring corporation shall only be entitled to compute its average base period net income under section 443 where:

Ante, p. 1191.

Ante, p. 1166.

“(A) the component corporation was entitled to compute its average base period net income under section 443 prior to the date of the transaction, in which event such average base period net income shall be allocated as between the acquiring corporation and the component corporation in the manner provided in section 462 (i), or

Ante, p. 1191.

“(B) there was, after the date of the transaction, a substantial change in the products or services furnished by the acquiring corporation and the acquiring corporation determines its excess profits net income for each month of the base period by reference to the excess profits net income allocable to it in the manner provided in section 462 (i).

“(3) In the case of a transaction described in section 461 (a), where the acquiring corporation had not commenced business,

within the meaning of section 461 (d), on or before the first day of its base period, the acquiring corporation shall not be entitled to compute its average base period net income under section 443 in the manner provided therein or as provided in this section.

Ante, p. 1193.

Ante, p. 1166.

“(f) USE BY ACQUIRING CORPORATION OF ALTERNATIVE AVERAGE BASE PERIOD NET INCOME PROVIDED IN THE CASE OF INCREASE IN CAPACITY FOR PRODUCTION OR OPERATION IN SECTION 444.—Where any corporation, a party to a transaction described in section 461 (a) which occurred after the close of the base period of the acquiring corporation, was entitled to compute its average base period net income under section 444, the acquiring corporation shall only be entitled to compute its average base period net income under such section where all of the corporations, parties to the transaction, (other than a corporation created incident to the transaction) were entitled to compute their average base period net incomes under sections 442 (d), 443, 444, 445 or 446, in which case the acquiring corporation may add an average base period net income computed under section 444, or an allocable portion thereof determined under section 462 (i), of any of the parties to the transaction to such other average base period net incomes for the purpose of determining its average base period net income after the transaction under the section applicable to it prior to the transaction. Where, in the case of a corporation entitled to compute its average base period net income under section 444, the transaction described in section 461 (a) occurred prior to the time at which any corporation a party to the transaction was entitled to compute its average base period net income under section 444, the Secretary, pursuant to regulations, shall provide for the extent to which and for the manner in which the acquiring corporation shall be entitled to compute its average base period net income under such section.

Ante, p. 1167.

Ante, p. 1191.

Ante, pp. 1164-1170.

“(g) USE BY ACQUIRING CORPORATION OF ALTERNATIVE AVERAGE BASE PERIOD NET INCOME PROVIDED FOR NEW CORPORATIONS IN SECTION 445.—

Ante, p. 1168.

Ante, p. 1191.

“(1) In the case of a transaction described in section 461 (a) which occurred during the base period of the acquiring corporation, such acquiring corporation shall be entitled to compute its average base period net income under section 445, in the manner provided therein, if such corporation had not commenced business, within the meaning of section 461 (d), prior to the beginning of its base period and, in applying section 445, the number of taxable years since the acquiring corporation is deemed to have commenced business under section 461 (d) shall be determinative.

Ante, p. 1168.

Ante, p. 1193.

“(2) In the case of a transaction described in section 461 (a) which occurred after the close of the base period of an acquiring corporation which had not commenced business, within the meaning of section 461 (d), prior to the beginning of its base period—

Ante, p. 1191.

Ante, p. 1193.

“(A) where such transaction is a transaction other than a transaction described in section 461 (a) (1) (E)—

Ante, p. 1191.

“(i) and the transaction occurred after the close of the third taxable year after the commencement of business of the component corporation or corporations and of the acquiring corporation (unless such corporation was created incident to the transaction), the commencement of business for each such corporation being determined without regard to section 461 (d), the average base period net income of the acquiring corporation after the transaction shall be determined, for purposes of section 445, in lieu of in the manner provided by section 445 (b), by adding together the average base period net

Ante, p. 1193.

Ante, p. 1168.

incomes of the acquiring corporation and of the component corporation or corporations as determined under that section as of the first day of the fourth such taxable year of each such corporation;

“(ii) and the transaction occurred prior to the close of the third taxable year after the commencement of business of either the acquiring corporation or of one or more of the component corporations, determined without regard to section 461 (d), but after the close of the third taxable year after the commencement of business of one or more of such corporations, the average base period net income of the acquiring corporation after the transaction shall be determined, for purposes of section 445, in lieu of in the manner provided by section 445 (b), by adding together the average base period net incomes determined under section 445 as of the first day of the fourth such taxable year of each such corporation in business for more than three taxable years and an average base period net income amount computed by the method specified in section 445 for each corporation not in business for three taxable years as though the day immediately prior to such transaction were the first day of such corporation's fourth such taxable year;

“(iii) and the transaction occurred prior to the close of the third taxable year after the commencement of business of the acquiring corporation and of the component corporation or corporations, the average base period net income of the acquiring corporation after the transaction shall be determined, for purposes of section 445, by the method specified in section 445, and, in applying that method, the number of taxable years since the acquiring corporation is deemed to have commenced business under section 461 (d) shall be determinative;

“(B) where such transaction is a transaction described in section 461 (a) (1) (E)—

“(i) and the transaction occurred after the close of the third taxable year after the commencement of business of the component corporation, the average base period net income of the acquiring corporation after the transaction shall be that portion of the average base period net income of the component corporation, determined under section 445, which is allocable to the acquiring corporation under section 462 (i);

“(ii) and the transaction occurred prior to the close of the third taxable year after the commencement of business of the component corporation, the average base period net income of the acquiring corporation after the transaction shall be determined, for purposes of section 445, by the method specified in section 445 and, in applying that method, the number of taxable years since the acquiring corporation is deemed to have commenced business under section 461 (d) shall be determinative.

“(3) In the case of a transaction described in section 461 (a) where the acquiring corporation had commenced business, within the meaning of section 461 (d), prior to the beginning of its base period, the acquiring corporation shall not be entitled to compute its average base period net income under section 445 in the manner provided therein or as provided in this section. In any such case, however, where the acquiring corporation (other than a corporation created

Ante, p. 1193.

Ante, p. 1168.

Ante, p. 1168.

Ante, p. 1193.

Ante, p. 1191.

Ante, p. 1168.

Post, p. 1203.

Ante, p. 1168.

Ante, p. 1193.

Ante, p. 1191.

Ante, p. 1193.

Ante, p. 1168.

incident to the transaction) and all of the component corporations were, prior to the transaction, entitled to compute their average base period net incomes under sections 442 (d), 443, 444, 445, or 446, the acquiring corporation may add an average base period net income computed under section 445 of any of the parties to the transaction to such other average base period net incomes for the purpose of determining its average base period net income after the transaction under the section applicable to it prior to the transaction.

Ante, pp. 1164-1170.

Ante, p. 1168.

“(h) USE BY ACQUIRING CORPORATION OF ALTERNATIVE AVERAGE BASE PERIOD NET INCOME PROVIDED FOR DEPRESSED INDUSTRIES IN SECTION 446.—Where any corporation, a party to a transaction described in section 461 (a) which occurred after the close of the base period of the acquiring corporation, was entitled to compute its average base period net income under section 446, the acquiring corporation shall only be entitled to compute its average base period net income under such section where all of the corporations, parties to the transaction, (other than a corporation created incident to the transaction) were entitled to compute their average base period net incomes under sections 442 (d), 443, 444, 445, or 446, in which case the acquiring corporation may add an average base period net income computed under section 446, or an allocable portion thereof determined under section 462 (i), of any of the parties to the transaction to such other average base period net incomes for the purpose of determining its average base period net income after the transaction under the section applicable to it prior to the transaction. Where, in the case of a corporation entitled to compute its average base period net income under section 446, the transaction described in section 461 (a) occurred prior to the time at which any corporation a party to the transaction was entitled to compute its average base period net income under section 446, the Secretary, pursuant to regulations, shall provide for the extent to which and for the manner in which the acquiring corporation shall be entitled to compute its average base period net income under such section.

Ante, p. 1170.

Ante, p. 1191.

Ante, pp. 1164-1170.

“(i) ALLOCATION RULES IN THE CASE OF TRANSACTIONS DESCRIBED IN SECTION 461 (a) (1) (E).—

Ante, p. 1191.

“(1) The amount of the component corporation's excess profits net income for any month which shall be taken into account by the acquiring corporation in the computation of its excess profits net income as provided in subsection (b) shall be such portion of the component corporation's excess profits net income, or of its substitute excess profits net income if computed under section 442 (c), for such month as the fair market value of the assets transferred to the acquiring corporation bears to the fair market value of the total assets of the component corporation as they existed immediately prior to such transaction.

Ante, p. 1164.

“(2) In the case of a transaction which occurred after the close of the third taxable year after a component corporation commenced business, the amount of its average base period net income, if computed under section 445 (relating to new corporations), for such taxable year and for any taxable year thereafter which is allocable to the acquiring corporation shall be such portion of the component corporation's average base period net income computed under such section as the fair market value of the assets transferred by the component corporation to the acquiring corporation bears to the fair market value of the total assets of the component corporation as they existed immediately prior to the transaction.

Ante, p. 1168.

“(3) For the purposes of section 461 (c) (4) (B), the average base period net income allocable to the component corporation, other than in the case of an average base period net income computed under sections 445 (b) (1), shall be such portion of its

Ante, p. 1193.

Ante, p. 1168.

Ante, p. 1149.

Ante, pp. 1164-1170.

average base period net income computed under section 435 (c) as the fair market value of the assets not transferred in the transaction bears to the fair market value of the assets held immediately prior to such transaction.

“(4) In the case of a transaction which occurred after the requirements of sections 442 (d), 443, 444, or 446 are met by the component corporation, the amount of the component corporation's average base period net income, if computed under any of such sections, for such taxable year, which is allocable to the acquiring corporation, shall be such portion of the component corporation's average base period net income computed under such section as the fair market value of the assets transferred by the component corporation to the acquiring corporation bears to the fair market value of the total assets of the component corporation as they existed immediately prior to the transaction.

“(5) Pursuant to regulations prescribed by the Secretary, a determination of the fair market value of the properties and of the division thereof for the purpose of this subsection, may be made by agreement between all persons parties to the transaction, where the Secretary consents thereto. In no such case shall the aggregate of the excess profits net incomes or of the average base period net incomes allocated under the above paragraphs be in excess of 100 per centum of the excess profits net income or of such average base period net income, as the case may be, of the component corporation.

“(6) Pursuant to regulations prescribed by the Secretary, an allocation of excess profits net income or average base period net income for the purposes of this section may be made on the basis of the earnings experience of the assets transferred and retained in lieu of an allocation based on the fair market value of the assets if all of the parties to the transaction consent thereto and if it is established to the satisfaction of the Secretary that such an allocation fairly represents an identifiable earnings experience of each such group of assets. Except in the case of a transaction which occurred before December 1, 1950, in which the component corporation is a partnership, the aggregate of the excess profits net incomes or average base period net incomes allocated to the several parties to the transaction as provided in this paragraph shall not be in excess of 100 per centum of the excess profits net income or of the average base period net income as the case may be of the component corporation.

“(7) In any case in which there is a determination of the fair market value of the properties or a determination of an allocation of excess profits net income or average base period net income based on identifiable earnings, such fair market values or excess profits net incomes or average base period net incomes so determined shall be binding upon all parties to the transactions for the excess profits tax taxable year for which determined and for all subsequent excess profits tax taxable years.

“(8) CROSS REFERENCE.—For rules for the allocation of payroll, gross receipts, equity capital, borrowed capital, and capital additions and reductions, see sections 461 (c) (3), 462 (c), 463, and 464.

“(j) (1) If, after December 31, 1945—

“(A) the taxpayer acquired stock in another corporation, and thereafter such other corporation became a component corporation of the taxpayer; or

“(B) a corporation (hereinafter called ‘first corporation’) acquired stock in another corporation (hereinafter called ‘second corporation’), and thereafter the first and

Ante, pp. 1192, 1194;
post, pp. 1206, 1208.

second corporations became component corporations of the taxpayer,

then to the extent that the consideration for such acquisition was not the issuance of the taxpayer's or first corporation's, as the case may be, own stock, the average base period net income of the taxpayer shall be reduced, and the transferred capital addition and reduction adjusted, in respect of the income and capital addition and reduction of the corporation whose stock was so acquired and in respect of the income and capital addition and reduction of any other corporation which at the time of such acquisition was connected directly or indirectly through stock ownership with the corporation whose stock was so acquired and which thereafter became a component corporation of the taxpayer, in such amounts and in such manner as shall be determined in accordance with regulations prescribed by the Secretary. For the purposes of this paragraph, stock which has, in the hands of the taxpayer or first corporation, as the case may be, a basis determined with reference to the basis of stock previously acquired by the issuance of the taxpayer's or first corporation's, as the case may be, own stock, shall be considered as having been acquired in consideration of the issuance of the taxpayer's or first corporation's, as the case may be, own stock.

"(2) If during the taxable year for which tax is computed under this subchapter the taxpayer acquires assets in a transaction which constitutes it an acquiring corporation, the amount includible under subsection (a), attributable to such transaction, shall be limited to an amount which bears the same ratio to the amount computed without regard to this subsection as the number of days in the taxable year after such transaction bears to the total number of days in such taxable year.

"(k) In the case of a partnership which is a component corporation by virtue of section 461 (b) (5) and (6), the computations required by this part shall be made, under rules and regulations prescribed by the Secretary, as if such partnership had been a corporation.

"(1) In the case of a taxpayer which becomes an acquiring corporation in any taxable year ending after June 30, 1950, if, at the beginning of the first taxable year of such corporation which ends after June 30, 1950, and at all times until the taxpayer became an acquiring corporation—

"(1) the taxpayer owned not less than 75 per centum of each class of stock of each of the qualified component corporations involved in the transaction in which the taxpayer became an acquiring corporation; or

"(2) one of the qualified component corporations involved in the transaction owned not less than 75 per centum of each class of stock of the taxpayer, and of each of the other qualified component corporations involved in the transaction,

the average base period net income of the taxpayer shall not be less than (A) the average base period net income of that one of its qualified component corporations involved in the transaction the average base period net income of which is greatest, or (B) the average base period net income of the taxpayer computed without regard to the base period net income of any of its qualified component corporations involved in the transaction. As used in this subsection, the term 'qualified component corporation' means a component corporation which was in existence and had commenced business (without regard to the provisions of section 461 (d)) on the date of the beginning of the taxpayer's base period.

"(m) TREATMENT OF ABNORMALITIES IN INCOME IN TAXABLE PERIOD.—In the case where an acquiring corporation in a transaction

Ante, p. 1192.

Ante, p. 1193.

Ante, p. 1191.

Ante, p. 1186.

described in section 461 (a) which occurred on or before December 31, 1950, receives income which, under the provisions of section 456 (relating to abnormalities in income in taxable period), would be attributable, under section 456 (b), to a taxable year of a component corporation of such acquiring corporation, which taxable year closed prior to or with the close of the base period of the acquiring corporation, for purposes of section 456, such income, and all other income of the same class, of the component corporation for such year and previous taxable years shall be treated as income of the acquiring corporation.

"SEC. 463. CAPITAL CHANGES.

Ante, p. 1191.

Ante, p. 1153.

"(a) **TAXPAYER USING PART II OF THIS SUBCHAPTER.**—For the purposes of section 435 (g), if the transaction which constitutes a taxpayer an acquiring corporation occurs in a taxable year of the taxpayer which ends after June 30, 1950, and the taxpayer's average base period net income is computed by application of this part, the following rules shall apply in computing the net capital addition and net capital reduction of such acquiring corporation after such transaction:

Ante, p. 1191.

Ante, p. 1154.

"(1) Except with respect to a transaction described in section 461 (a) (1) (E), in the determination of the amounts of money and property paid in for stock or as paid in surplus or as a contribution to capital after the beginning of the taxable year of the acquiring corporation for the purposes of section 435 (g) (3) (A), there shall be added, as of the day after the transaction, the amounts of money and property paid in for stock or as paid in surplus or as a contribution to capital to a component corporation after the beginning of the taxable year of such component corporation and prior to the day of the transaction which constitutes such corporation a component corporation.

Ante, p. 1191.

Ante, p. 1154.

"(2) Except with respect to a transaction described in section 461 (a) (1) (E), in the determination of the amounts of distributions to shareholders which were not out of the earnings and profits of the taxable year of the acquiring corporation for the purposes of section 435 (g) (4) (A), there shall be added, as of the day after the transaction, the amounts of distributions to shareholders of a component corporation not out of the earnings and profits of its taxable year in which such transaction occurred and prior to such day.

Ante, pp. 1191, 1154.

Ante, p. 1204.

"(3) Except with respect to a transaction described in section 461 (a) (1) (E), for the purpose of section 435 (g) (3) (B) and (g) (4) (B), for a taxable year of the acquiring corporation beginning after the date of the transaction the equity capital of the acquiring corporation at the beginning of the taxpayer's first taxable year under this subchapter shall be the aggregate of the equity capital of the acquiring corporation as of such date and the equity capital of a component corporation as of the first day of the first taxable year of such component corporation under this subchapter. This rule shall be modified pursuant to regulations prescribed by the Secretary under section 462 (j) to the extent that the transaction is subject to that subsection.

Ante, p. 1191.

Ante, p. 1154.

"(4) Except with respect to a transaction described in section 461 (a) (1) (E), in the case of the taxable year in which the transaction occurred, for purposes of section 435 (g) (3), there shall be added as of the day of the transaction the amount, if any, by which the equity capital of a component corporation at the beginning of its taxable year in which the transaction occurred exceeds its equity capital at the beginning of its first taxable year under this subchapter, and, for purposes of section 435 (g) (4),

there shall be added as of the day of the transaction the amount, if any, by which the equity capital of a component corporation at the beginning of its first taxable year under this subchapter exceeds its equity capital at the beginning of its taxable year in which the transaction occurred.

“(5) Except in the case of a transaction described in section 461 (a) (1) (E), for the purposes of section 435 (g) (3) (C) and (g) (4) (C), in the computation of the daily borrowed capital of the acquiring corporation for the first day of such corporation's first taxable year under this subchapter there shall be added the daily borrowed capital of a component corporation for the first day of its first taxable year under this subchapter, and in the computation of the average borrowed capital of the acquiring corporation for its taxable year in which such transaction occurred there shall be included the daily borrowed capital of a component corporation for that part of the acquiring corporation's taxable year prior to the transaction.

Ante, p. 1191.

Ante, p. 1154.

“(6) Except in the case of a transaction described in section 461 (a) (1) (E), for the purposes of section 435 (g) (5) (C) and (D), in the computation of the original inadmissible assets of the acquiring corporation there shall be added the original inadmissible assets of a component corporation, and in the computation of the average inadmissible assets of the acquiring corporation for the taxable year of the transaction there shall be added the daily amounts attributable to the inadmissible assets of a component corporation for that part of the acquiring corporation's taxable year prior to the date of the transaction.

Ante, p. 1191.

Ante, p. 1155.

“(7) The Secretary shall prescribe by regulation such modification of the rules specified in this section as may be necessary to carry out the principles of such rules and the rules of section 435 (g) in cases involving inter-corporate stock ownership, contributions, distributions, stock purchases, and loans between parties to a transaction described in section 461 (a), or their shareholders, prior to the date of such transaction.

Ante, p. 1153.

Ante, p. 1191.

“(8) In the case of an acquiring corporation in a transaction described in section 461 (a) (1) (E), for the purposes of section 435 (g) (3) (B) and (g) (4) (B), so much of the equity capital of the component corporation at the beginning of its first taxable year under this subchapter shall be allocated to the acquiring corporation as is proportionate to the ratio which the equity capital transferred to the acquiring corporation in the transaction bears to the equity capital of the component corporation immediately prior to the transaction. The amount so allocated shall be deemed to be the equity capital of the taxpayer as of the first day of its first taxable year under this subchapter. For purposes of sections 435 (g) (3) (B) and 435 (g) (4) (B) the equity capital of the acquiring corporation at the beginning of its taxable year in which the transaction occurred shall be computed as of the day following the transaction.

Ante, p. 1191.

Ante, p. 1154.

“(9) In the case of a transaction described in section 461 (a) (1) (E), for the purposes of section 435 (g) (3) (C) and (g) (4) (C), the daily borrowed capital of an acquiring corporation for the first day of such corporation's first taxable year under this subchapter shall be such portion of the daily borrowed capital of the component corporation for the first day of its first taxable year under this subchapter as the borrowed capital of the acquiring corporation immediately after the transaction bears to the borrowed capital of the component corporation as of the close of the day prior to the day of the transaction.

Ante, p. 1191.

Ante, p. 1154.

- Ante*, p. 1191.
- Ante*, p. 1155.
- Ante*, p. 1155.
- Ante*, p. 1191.
- Ante*, p. 1204.
- Post*, p. 1210.
- Ante*, p. 1153.
- Ante*, pp. 1199, 1200.
- Ante*, p. 1166.
- Ante*, pp. 1201, 1202.
- Ante*, p. 1169.
- Ante*, p. 1152.
- “(10) In the case of a transaction described in section 461 (a) (1) (E), in the determination of the original inadmissible assets of an acquiring corporation for the purposes of section 435 (g) (5) (C) and (g) (5) (D), there shall be allocated to such corporation that proportion of the original inadmissible assets of the component corporation as is proportionate to the ratio which the inadmissible assets transferred to the acquiring corporation in the transaction bears to the total of the inadmissible assets held by the component corporation immediately prior to the transaction. The amount so allocated shall be deemed to be the original inadmissible assets of the acquiring corporation.
- “(11) For purposes of the determination under section 435 (g) (6) and (7) of the amount to be added to the daily capital reduction in the case of a corporation a member of a controlled group such determination shall be made, pursuant to regulations prescribed by the Secretary, in a manner consistent with the method provided in such sections.
- “(12) In the case of a transaction other than that described in section 461 (a) (1) (E), to the extent that stock of a component corporation was acquired in an exchange for other than stock of the acquiring corporation within the meaning of section 462 (j), the basis of the assets of the component corporation shall be redetermined as provided in section 470 and such redetermination basis shall be used for all purposes of section 435 (g).
- “(13) In the case of transactions described in section 462 (e) (1) (C), (e) (1) (B) and (e) (2) the net capital additions and reductions of the acquiring corporation after the transaction shall be determined under this section subject to the application, prior to the transaction, of section 443 (d) to each corporation which was a party to the transaction.
- “(14) In the case of transactions described in section 462 (g) (2) and the second sentence of (g) (3), the net capital additions and reductions of the acquiring corporation after the transaction shall be determined under this section subject to the application, prior to the transaction, of section 445 (f) to each corporation which was a party to the transaction.
- “(b) **RULE WHERE ACQUIRING CORPORATION IS COMPONENT OF TAXPAYER.**—In cases where an acquiring corporation is a component of the taxpayer, and the transaction which constitutes such corporation an acquiring corporation occurs in a taxable year of such corporation which ends after June 30, 1950, for the purpose of determining the daily capital addition or reduction of the taxpayer the above rules shall be applied in a similar manner to determine the net capital addition or reduction of such acquiring corporation for each day after such transaction.
- “**SEC. 464. CAPITAL CHANGES DURING THE BASE PERIOD.**
- “For the purposes of section 435 (f), if the transaction which constitutes the taxpayer an acquiring corporation occurred during or after the beginning of the second taxable year preceding the first taxable year of the acquiring corporation under this subchapter, and the acquiring corporation's average base period net income is computed by application of this part, the following rules shall apply in computing the base period capital addition of such acquiring corporation:
- “(a) In the case of a transaction, other than a transaction described in section 461 (a) (1) (E), which—
- “(1) occurred during or after the first taxable year of the acquiring corporation under this subchapter, for the purposes of section 435 (f), the base period capital addition of the acquiring

corporation for the taxable year in which the transaction occurred shall be the sum of:

“(A) the base period capital addition of the acquiring corporation, and

“(B) so much of the base period capital addition of a component corporation as is proportionate to the ratio which the number of days in the taxable year of the acquiring corporation after the transaction bears to the number of days in such taxable year;

and the base period capital addition of the acquiring corporation for any taxable year thereafter shall be the aggregate of the base period capital addition of the acquiring corporation and the base period capital addition of such component corporation.

“(2) occurred during the taxable year of the acquiring corporation immediately preceding its first taxable year under this subchapter, its base period capital addition shall be computed after—

“(A) adding to its yearly base period capital for the immediately preceding taxable year (as defined in section 435 (f) (2) (A) (ii)) of the acquiring corporation the yearly base period capital for the immediately preceding taxable year (so defined) of a component corporation, and

Ante, p. 1152.

“(B) adding to its yearly base period capital for the second preceding taxable year (as defined in section 435 (f) (2) (A) (iii)) of the acquiring corporation the yearly base period capital for the second preceding taxable year (so defined) of such component corporation.

“(3) occurred during the second taxable year of the acquiring corporation preceding its first taxable year under this subchapter, its base period capital addition shall be computed after adding to its yearly base period capital for the second preceding taxable year (as defined in section 435 (f) (2) (A) (iii)) of the acquiring corporation the yearly base period capital for the second preceding taxable year (so defined) of a component corporation.

Ante, p. 1152.

“(b) In the case of a transaction described in section 461 (a) (1) (E) which—

Ante, p. 1191.

“(1) occurred during or after the first taxable year of the component corporation under this subchapter, for purposes of section 435 (f), the base period capital addition of the acquiring corporation shall be such portion of the base period capital addition of the component corporation as is proportionate to the ratio which the fair market value of the assets transferred to the acquiring corporation in the transaction bears to the fair market value of the assets of a component corporation immediately prior to the transaction;

Ante, p. 1152.

“(2) occurred during a taxable year of the component corporation which is or would be if it remained in existence, a taxable year preceding its first taxable year under this subchapter,

“(A) The yearly base period capital of the acquiring corporation for the year in which the transaction occurred shall be computed as of the day following the transaction,

“(B) If the taxable year of the acquiring corporation during which the transaction occurred is its first taxable year under this subchapter, its base period capital addition shall be computed by

“(i) treating as its yearly base period capital for the immediately preceding taxable year (as defined in section 435 (f) (2) (ii)) such portion of the yearly base period capital of the component corporation for the first day

Ante, p. 1152.

Ante, p. 1152.

of the taxable year of the component corporation in which such transaction occurred, and

“(ii) treating as its yearly base period capital for the second preceding taxable year (as defined in section 435 (f) (2) (iii)) such portion of the yearly base period capital of the component corporation for the first day of the taxable year of the component corporation before the taxable year of the component corporation in which the transaction occurred as is proportionate to the ratio which the fair market value of the assets transferred to the acquiring corporation in the transaction bears to the fair market value of the assets of the component corporation immediately prior to the transaction.

“(C) If the taxable year of the acquiring corporation during which the transaction occurred is its taxable year immediately preceding its first taxable year under this subchapter its base period capital addition shall be computed by treating as its yearly base period capital for the second preceding taxable years (as defined in section 435 (f) (2) (iii)) such portion of the base period capital of the component corporation for the first day of the taxable year of the component corporation in which such transaction occurred as is proportionate to the ratio which the fair market value of the assets transferred to the acquiring corporation in the transaction bears to the fair market value of the assets of the component corporation immediately prior to the transaction.

“(3) Was a transaction in which a part of the assets of a component corporation were transferred to an acquiring corporation which had commenced business prior to such transaction, the base period capital addition of such acquiring corporation shall be computed pursuant to Regulations prescribed by the Secretary.

“SEC. 465. FOREIGN CORPORATIONS.

“The term ‘corporation’ as used in this part does not include a foreign corporation.

“Part III—Invested Capital in Connection With Certain Exchanges and Liquidations

“SEC. 470. ADJUSTED BASIS OF ASSETS RECEIVED IN CERTAIN INTERCORPORATE LIQUIDATIONS.

Ante, p. 1188.

“For the purposes of this subchapter (other than section 458)—

“(a) **BASIS OF ASSETS ACQUIRED IN INTERCORPORATE LIQUIDATION.**—The property received by a transferee in an intercorporate liquidation attributable to a share of stock having in the hands of the transferee a basis determined to be a cost basis, shall be considered to have an adjusted basis at the time so received determined as follows:

“(1) The aggregate of the property (other than money) held by the transferor at the time of the acquisition by the transferee of control of the transferor (or, if such share was acquired after the acquisition of such control, at the time of the acquisition of such share, or, if such control was not acquired, at the time immediately prior to the receipt of any property in the intercorporate liquidation in respect of such share) shall be deemed to have an aggregate basis equal to the amount obtained by (A) multiplying the amount of the adjusted basis at such time of such share in the hands of the transferee by the aggregate number of share units in the transferor at such time (the interest represented by such share being taken as the share unit), and (B) adjusting for the

amount of money on hand and the liabilities of the transferor at such time.

“(2) The basis which property of the transferor is deemed to have under paragraph (1) at the time therein specified shall be used in determining the basis of property subsequently acquired by the transferor the basis of which is determined with reference to the basis of property specified in paragraph (1).

“(3) The basis which property of the transferor is deemed to have under paragraphs (1) and (2) at the time therein specified shall be used in determining all subsequent adjustments to the basis of such property.

“(4) The property so received by the transferee shall be deemed to have, at the time of its receipt, the same basis it is deemed to have under the foregoing provisions of this subsection in the hands of the transferor, or in the case of property not specified in paragraph (1) or (2), the same basis it would have had in the hands of the transferor.

“(5) Only such part of the aggregate property received by the transferee in the intercorporate liquidation as is attributable to such share shall be considered as having the adjusted basis which property is deemed to have under paragraphs (1), (2), (3), and (4) of this subsection.

“(b) BASIS FOR EQUITY CAPITAL CREDIT.—The adjusted basis which property received by the transferee in an intercorporate liquidation is considered to have under the provisions of subsection (a) at the time of its receipt shall be thereafter treated as the adjusted basis, in lieu of the adjusted basis otherwise prescribed, in computing any amount, determined by reference to the basis of such property in the hands of the transferee, entering into the computation of the equity capital of the transferee, or of any other corporation the computation of the equity capital of which is determined by reference to the basis of such property in the hands of the transferee.

“(c) STATUTORY MERGERS AND CONSOLIDATIONS.—If a corporation owns stock in another corporation and such corporations are merged or consolidated in a statutory merger or consolidation, then for the purposes of this section and section 437 such stock shall be considered to have been acquired (in such statutory merger or consolidation) by the corporation resulting from the statutory merger or consolidation, and the properties of such other corporation attributable to such stock to have been received by such resulting corporation as a transferee from such other corporation as a transferor in an intercorporate liquidation.

Ante, p. 1157.

“(d) DETERMINATIONS.—

“(1) REGULATIONS.—Any determination which is required to be made under this section (including determinations in applying this section in cases where there is a series of transferees of the property and cases where the stock of the transferor is acquired by the transferee from another corporation, and the determinations of the basis and adjusted basis which property or items thereof have or are considered to have) shall be made in accordance with regulations which shall be prescribed by the Secretary. If the transferor or the transferee is a foreign corporation, the provisions of this section shall apply to such extent and under such conditions and limitations as may be provided in such regulations.

“(2) APPLICATION TO LIQUIDATION EXTENDING OVER LONG PERIOD.—The Secretary is authorized to prescribe rules similar to those provided in this section with respect to the days within the period beginning with the date on which the first property is

received in the intercorporate liquidation and ending with the day of its completion; and the extent to which, and the conditions and limitations under which, such rules are to be applicable.

“(e) DEFINITIONS.—

“(1) INTERCORPORATE LIQUIDATION.—As used in this section, the term ‘intercorporate liquidation’ means the receipt (whether or not after December 31, 1949) by a corporation (hereinafter called the ‘transferee’) of property in complete liquidation of another corporation (hereinafter called the ‘transferor’) to which

“(A) the provisions of section 112 (b) (6), or the corresponding provision of a prior revenue law, is applicable or

“(B) a provision of law is applicable prescribing the non-recognition of gain or loss in whole or in part upon such receipt (including a provision of the regulations applicable to a consolidated income or excess profits tax return but not including section 112 (b) (7), (9), or (10) or a corresponding provision of a prior revenue law),

but only if none of such property so received is a stock or a security in a corporation the stock or securities of which are specified in the law applicable to the receipt of such property as stock or securities permitted to be received (or which would be permitted to be received if they were the sole consideration) without the recognition of gain.

“(2) CONTROL.—As used in this section, the term ‘control’ means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the ownership of at least 80 per centum of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), but only if in both cases such ownership continues until the completion of the intercorporate liquidation.

“SEC. 471. EXCHANGES.

“For purposes of section 458—

“(a) DEFINITIONS, ETC.—For the purposes of this section—

“(1) ‘EXCHANGE’, ‘TRANSFEROR’, AND ‘TRANSFEE’.—The term ‘exchange’ means a transaction by which one corporation (hereinafter called ‘transferee’) receives property of another corporation (hereinafter called ‘transferor’) and the basis of the property received, in the hands of the transferee, for the purposes of section 458 (d) is determined by reference to the basis in the hands of the transferor.

“(2) DETERMINATION OF BASIS OF PROPERTY RECEIVED.—The basis, in the hands of the transferee, of the property of the transferor received by the transferee upon the exchange shall be determined in accordance with section 458 (d).

“(b) RULE.—In the application of section 458 (d) to a transferee upon an exchange in determining the amount paid in for stock of the transferee, or as paid-in surplus or as a contribution to capital of the transferee, in connection with such exchange, only an amount shall be deemed to have been so paid in equal to the excess of the basis in the hands of the transferee of the property of the transferor received by the transferee upon the exchange over the sum of—

“(1) The amount of any liability of the transferor assumed upon the exchange and of any liability subject to which such property was so received, plus

“(2) The amount of any liability of the transferee (not arising out of any liability described in paragraph (1)) constituting consideration for the property so received, plus

53 Stat. 38.
26 U. S. C. § 112 (b)
(6).

Ante, p. 931.
56 Stat. 838; 58 Stat.
41.
26 U. S. C. § 112 (b)
(9), (10).

Ante, p. 1188.

Ante, p. 1188.

“(3) The aggregate of the amount of any money and the fair market value of any other property (other than such stock and other than property described in paragraphs (1) and (2)) transferred to the transferor.

“(c) **REDUCTION IN DAILY INVESTED CAPITAL.**—In the application of section 458 (c) to a transferee upon an exchange, the daily invested capital for any day after such exchange shall be reduced by an amount equal to the amount by which the sum of the amounts specified in paragraphs (1), (2), and (3) of subsection (b) exceeds the basis in the hands of the transferee of the property of the transferor received upon the exchange.

Ante, p. 1188.

“**SEC. 472. INVESTED CAPITAL ADJUSTMENT AT THE TIME OF TAX-FREE INTERCORPORATE LIQUIDATIONS.**

“For purposes of section 458—

Ante, p. 1188.

“(a) **DEFINITION OF INTERCORPORATE LIQUIDATION.**—As used in this section, the term ‘intercorporate liquidation’ means the receipt (whether or not after June 30, 1950) by a corporation (hereinafter called the ‘transferee’) of property in complete liquidation of another corporation (hereinafter called the ‘transferor’), to which—

“(1) the provisions of section 112 (b) (6), or the corresponding provision of a prior revenue law, is applicable or

53 Stat. 38.
26 U. S. C. § 112
(b) (6).

“(2) a provision of law is applicable prescribing the nonrecognition of gain or loss in whole or in part upon such receipt (including a provision of the regulations applicable to a consolidated income or excess profits tax return but not including section 112 (b) (7), (9), or (10) or a corresponding provision of a prior revenue law),

Ante, p. 931.
56 Stat. 838.
26 U. S. C. § 112 (b)
(9), (10).

but only if none of such property so received is a stock or a security in a corporation the stock or securities of which are specified in the law applicable to the receipt of such property as stock or securities permitted to be received (or which would be permitted to be received if they were the sole consideration) without the recognition of gain.

“(b) **DEFINITION OF PLUS ADJUSTMENT AND MINUS ADJUSTMENT.**—For the purposes of this section—

“(1) **PLUS ADJUSTMENT.**—The term ‘plus adjustment’ means the amount, with respect to an intercorporate liquidation, determined to be equal to the amount by which the aggregate of the amount of money received by the transferee in such intercorporate liquidation, and of the adjusted basis at the time of such receipt of all property (other than money) so received, exceeds the sum of—

“(A) the aggregate of the adjusted basis of each share of stock with respect to which such property was received; such adjusted basis of each share to be determined immediately prior to the receipt of any property in such liquidation with respect to such share, and

“(B) the aggregate of the liabilities of the transferor assumed by the transferee in connection with the receipt of such property, of the liabilities (not assumed by the transferee) to which such property so received was subject, and of any other consideration (other than the stock with respect to which such property was received) given by the transferee for such property so received.

“(2) **MINUS ADJUSTMENT.**—The term ‘minus adjustment’ means the amount, with respect to an intercorporate liquidation, determined to be equal to the amount by which the sum of—

“(A) the aggregate of the adjusted basis of each share of stock with respect to which such property was received; such

adjusted basis of each share to be determined immediately prior to the receipt of any property in such liquidation with respect to such share, and

“(B) the aggregate of the liabilities of the transferor assumed by the transferee in connection with the receipt of such property, of the liabilities (not assumed by the transferee) to which such property so received was subject, and of any other consideration (other than the stock with respect to which such property was received) given by the transferee for such property so received

exceeds the aggregate of the amount of the money so received and of the adjusted basis, at the time of receipt, of all property (other than money) so received.

“(3) RULES FOR APPLICATION OF PARAGRAPHS (1) AND (2).—In determining the plus adjustment or minus adjustment with respect to any share, the computation shall be made in the same manner as is prescribed in paragraphs (1) and (2) of this subsection, except that there shall be brought into account only that part of each item which is determined to be attributable to such share.

“(c) RULES FOR THE APPLICATION OF THIS SECTION.—

“(1) STOCK HAVING COST BASIS.—The property received by a transferee in an intercorporate liquidation attributable to a share of stock having in the hands of the transferee a basis determined to be a cost basis, shall be considered to have, for the purposes of subsection (b), an adjusted basis at the time so received determined as follows:

“(A) The aggregate of the property (other than money) held by the transferor at the time of the acquisition by the transferee of control of the transferor (or, if such share was acquired after the acquisition of such control, at the time of the acquisition of such share, or, if such control was not acquired, at the time immediately prior to the receipt of any property in the intercorporate liquidation in respect of such share) shall be deemed to have an aggregate basis equal to the amount obtained by (i) multiplying the amount of the adjusted basis at such time of such share in the hands of the transferee by the aggregate number of share units in the transferor at such time (the interest represented by such share being taken as the share unit), and (ii) adjusting for the amount of money on hand and the liabilities of the transferor at such time.

“(B) The basis which property of the transferor is deemed to have under subparagraph (A) at the time therein specified shall be used in determining the basis of property subsequently acquired by the transferor the basis of which is determined with reference to the basis of property specified in subparagraph (A).

“(C) The basis which property of the transferor is deemed to have under subparagraphs (A) and (B) at the time therein specified shall be used in determining all subsequent adjustments to the basis of such property.

“(D) The property so received by the transferee shall be deemed to have, at the time of its receipt, the same basis it is deemed to have under the foregoing provisions of this paragraph in the hands of the transferor, or in the case of property not specified in subparagraph (A) or (B), the same basis it would have had in the hands of the transferor.

“(E) Only such part of the aggregate property received by

the transferee in the intercorporate liquidation as is attributable to such share shall be considered as having the adjusted basis which property is deemed to have under subparagraphs (A), (B), (C), and (D) of this paragraph.

“(2) BASIS OF STOCK NOT A COST BASIS.—The property received by a transferee in an intercorporate liquidation attributable to a share of stock having in the hands of the transferee a basis determined to be a basis other than a cost basis shall, for the purposes of subsection (b), be considered to have, at the time of its receipt, the basis it would have had had the first sentence of section 113 (a) (15) been applicable.

“(3) DEFINITION OF CONTROL.—As used in this subsection, the term ‘control’ means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the ownership of at least 80 per centum of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), but only if in both cases such ownership continues until the completion of the intercorporate liquidation.

“(d) ADJUSTMENT OF EQUITY INVESTED CAPITAL.—If property is received by the transferee in an intercorporate liquidation, in computing the equity invested capital of the transferee for any day following the completion of such intercorporate liquidation—

“(1) with respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of any property in such intercorporate liquidation, a basis determined to be a cost basis, the earnings and profits or deficit in earnings and profits of the transferee shall be computed as if on the day following the completion of such intercorporate liquidation the transferee had realized a recognized gain equal to the amount of the plus adjustment in respect of such share, or had sustained a recognized loss equal to the amount of the minus adjustment in respect of such share;

“(2) with respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of any property in such intercorporate liquidation, a basis determined to be a basis other than a cost basis, there shall be treated as an amount includible in the sum specified in section 458 (d) the amount of the plus adjustment with respect to such share, or as an amount includible in the sum specified in section 458 (e) the amount of the minus adjustment with respect to such share.

“(e) INVESTED CAPITAL BASIS.—

“The adjusted basis which property received by the transferee in an intercorporate liquidation is considered to have under the provisions of subsection (c) at the time of its receipt shall be thereafter treated as the adjusted basis, in lieu of the adjusted basis otherwise prescribed, in computing any amount, determined by reference to the basis of such property in the hands of the transferee, entering into the computation of the invested capital of the transferee, or of any other corporation the computation of the invested capital of which is determined by reference to the basis of such property in the hands of the transferee.

“(f) STATUTORY MERGERS AND CONSOLIDATIONS.—If a corporation owns stock in another corporation and such corporations are merged or consolidated in a statutory merger or consolidation, then for the purposes of this section and section 458 such stock shall be considered to have been acquired (in such statutory merger or consolidation) by the corporation resulting from the statutory merger or consolidation, and the properties of such other corporation attributable to such

53 Stat. 43.
26 U. S. C. § 113
(a) (15).

Ante, p. 1188.

Ante, p. 1189.

Ante, p. 1188.

stock to have been received by such resulting corporation as a transferee from such other corporation as a transferor in an intercorporate liquidation.

“(g) DETERMINATIONS.—

“(1) REGULATIONS.—Any determination which is required to be made under this section (including determinations in applying this section in cases where there is a series of transferees of the property and cases where the stock of the transferor is acquired by the transferee from another corporation, and the determinations of the basis and adjusted basis which property or items thereof have or are considered to have) shall be made in accordance with regulations which shall be prescribed by the Secretary. If the transferor or the transferee is a foreign corporation, the provisions of this section shall apply to such extent and under such conditions and limitations as may be provided in such regulations.

“(2) APPLICATION TO LIQUIDATION EXTENDING OVER LONG PERIOD.—The Secretary is authorized to prescribe rules similar to those provided in this section with respect to the days within the period beginning with the date on which the first property is received in the intercorporate liquidation and ending with the day of its completion; and the extent to which, and the conditions and limitations under which, such rules are to be applicable.”

TITLE II—INCREASE IN CORPORATION SURTAX

SEC. 201. SURTAX ON CORPORATIONS.

Ante, p. 916. (a) RATE OF TAX.—Section 15 (b) (1) of the Internal Revenue Code (relating to rate of surtax in the case of taxable years beginning after June 30, 1950) is hereby amended by striking out “20 per centum” and inserting in lieu thereof “22 per centum”.

Ante, p. 917. (b) MUTUAL INSURANCE COMPANIES OTHER THAN LIFE OR MARINE.—Section 207 (a) (3) (A) (ii) of such code (relating to surtax on inter-insurers or reciprocal underwriters) is hereby amended by striking out “30 per centum” and inserting in lieu thereof “33 per centum”.

Ante, p. 918. (c) REGULATED INVESTMENT COMPANIES.—Section 362 (b) (4) of such code (relating to surtax on regulated investment companies) is hereby amended by striking out “20 per centum” and inserting in lieu thereof “22 per centum”.

Ante, p. 948. (d) BUSINESS INCOME OF CERTAIN TAX-EXEMPT ORGANIZATIONS.—Section 421 (a) (1) of such code (relating to surtax of certain section 101 organizations upon unrelated business net income) is hereby amended by striking out “20 per centum” and inserting in lieu thereof “22 per centum”.

(e) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning on or after July 1, 1950.

SEC. 202. CREDITS OF CORPORATIONS.

Ante, p. 919. (a) CREDIT FOR DIVIDENDS PAID ON CERTAIN PREFERRED STOCK.—Section 26 (h) (1) (B) of the Internal Revenue Code (relating to credit for dividends paid on certain preferred stock) is hereby amended by striking out “31 per centum” and inserting in lieu thereof “30 per centum”.

Ante, p. 920. (b) WESTERN HEMISPHERE TRADE CORPORATIONS.—Section 26 (i) (1) of such code (relating to credit of western hemisphere trade corporations) is hereby amended by striking out “31 per centum” and inserting in lieu thereof “30 per centum”.

(c) EFFECTIVE DATE.—The amendments made by this section shall be applicable with respect to taxable years beginning on or after July 1, 1950.

SEC. 203. FISCAL YEAR TAXPAYERS.

Section 108 (f) (2) of the Internal Revenue Code (relating to computation of tax of a fiscal year beginning before July 1, 1950, and ending after June 30, 1950) is hereby amended by adding at the end thereof the following new sentence: "For the purposes of this paragraph, the provisions of sections 15 (b) (1), 26 (h) (1), and 26 (i) (1) shall be applied without regard to the amendments made to such provisions by Title II of the Excess Profits Tax Act of 1950."

Ante, p. 921.*Ante*, pp. 916, 919, 920, 1216.*Ante*, p. 1216.**TITLE III—MISCELLANEOUS AMENDMENTS AND PROVISIONS****SEC. 301. CONSOLIDATED RETURNS.**

Effective with respect to taxable years ending after June 30, 1950, section 141 of the Internal Revenue Code (relating to consolidated returns) is hereby amended to read as follows:

"SEC. 141. CONSOLIDATED RETURNS.

"(a) **PRIVILEGE TO FILE CONSOLIDATED RETURNS.**—An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under subsection (b) prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

"(b) **REGULATIONS.**—The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income- and excess-profits-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

"(c) **COMPUTATION AND PAYMENT OF TAX.**—In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) prescribed prior to the last day prescribed by law for the filing of such return; except that the tax imposed under section 15 or section 204 shall be increased by 2 per centum of the consolidated corporation surtax net income of the affiliated group of includible corporations. If the affiliated group includes one or more Western Hemisphere trade corporations (as defined in section 109), the increase of 2 per centum provided in the preceding sentence shall be applied only on the amount by which the consolidated corporation surtax net income of the affiliated group exceeds the portion (if any) of the consolidated corporation surtax net income attributable to the Western Hemisphere trade corporations included in such group. For the purposes of the tax imposed by section 430, the sum of the excess profits credit and the unused excess profits credit adjustment of the affiliated group shall not be increased under the last sentence of section 431 to an amount in excess of \$25,000 for the entire group.

Ante, pp. 915, 919.56 Stat. 838.
26 U. S. C. § 109.*Ante*, p. 1137.*Ante*, p. 1133.

“(d) DEFINITION OF ‘AFFILIATED GROUP’.—As used in this section, an ‘affiliated group’ means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

“(1) Stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of each of the includible corporations (except the common parent corporation) is owned directly by one or more of the other includible corporations; and

“(2) The common parent corporation owns directly stock possessing at least 95 per centum of the voting power of all classes of stock and at least 95 per centum of each class of the nonvoting stock of at least one of the other includible corporations.

As used in this subsection, the term ‘stock’ does not include nonvoting stock which is limited and preferred as to dividends.

“(e) DEFINITION OF ‘INCLUDIBLE CORPORATION’.—As used in this section, the term ‘includible corporation’ means any corporation except—

“(1) Corporations exempt from taxation under section 101.

“(2) Insurance companies subject to taxation under section 201 or 207.

“(3) Foreign corporations.

“(4) Corporations entitled to the benefits of section 251, by reason of receiving a large percentage of their income from sources within possessions of the United States.

“(5) Corporations organized under the China Trade Act, 1922.

“(6) Regulated investment companies subject to tax under Supplement Q.

“(7) Any corporation described in section 449, or in section 454 (d), (f), and (g) (without regard to the exception in the initial clause of section 454), but not including such a corporation which has made and filed a consent, for the taxable year or any prior taxable year ending after June 30, 1950, to be treated as an includible corporation. Such consent shall be made and filed at such time and in such manner as may be prescribed by the Secretary.

“(8) Regulated public utilities described in section 448 (d) which compute their excess profits credit under section 448 but not including any such regulated public utility which has made and filed a consent, applicable to the taxable year, to compute its excess profits credit without regard to section 448. The consent shall be made and filed at such time and in such manner as may be prescribed by the Secretary. The consent shall be applicable to the taxable year for which filed and to each consecutive subsequent taxable year for which a consolidated return is filed.

“(f) INCLUDIBLE INSURANCE COMPANIES.—Despite the provisions of paragraph (2) of subsection (e), two or more domestic insurance companies each of which is subject to taxation under the same section of this chapter shall be considered as includible corporations for the purpose of the application of subsection (d) to such insurance companies alone.

“(g) SUBSIDIARY FORMED TO COMPLY WITH FOREIGN LAW.—In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors’ qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this chapter as a domestic corporation.

Ante, pp. 953, 959.

Ante, pp. 918, 917.

Ante, p. 944.

42 Stat. 849.
15 U. S. C. §§ 141-
162; Sup. III, § 146a.
53 Stat. 98.
26 U. S. C. §§ 361,
362.

Ante, p. 1176.

Ante, p. 1184.

Ante, p. 1176.

Ante, p. 1174.

“(h) **SUSPENSION OF RUNNING OF STATUTE OF LIMITATIONS.**—If a notice under section 272 (a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

53 Stat. 82.
26 U. S. C. § 272 (a).

53 Stat. 87.
26 U. S. C. § 277.

“(i) **ALLOCATION OF INCOME AND DEDUCTIONS.**—For allocation of income and deductions of related trades or businesses, see section 45.

53 Stat. 25.
26 U. S. C. § 45.

“(j) **INCLUDIBLE REGULATED PUBLIC UTILITIES.**—Despite the provisions of paragraph (8) of subsection (e), two or more regulated public utilities each of which has made and filed a consent, applicable to the taxable year, to compute its excess profits credit under section 448 only, shall be considered as includible corporations for the purpose of the application of subsection (d) to such regulated public utilities alone. The consent shall be made and filed at such time and in such manner as may be prescribed by the Secretary. The consent shall be applicable to the taxable year for which filed and to each consecutive subsequent taxable year for which a consolidated return is filed.”

Ante, p. 1174.

SEC. 302. FOREIGN TAX CREDIT.

(a) That portion of section 131 (a) of the Internal Revenue Code which precedes paragraph (1) thereof is hereby amended by inserting after “subchapter E” the following: “and except, with respect to the tax imposed under subchapter D, only to the extent provided in subsection (j)”.

Ante, pp. 544, 946.

(b) Section 131 of such code is hereby amended by adding at the end thereof the following new subsection:

Ante, pp. 544, 946.

“(j) **TAX IMPOSED BY SUBCHAPTER D.**—This section shall be applicable for purposes of the tax imposed by subchapter D, but the tax paid or accrued to any country shall be deemed to be the amount of such tax reduced by the amount of the credit allowed under this section with respect to such tax against the tax imposed by this chapter without regard to subchapter D. The amount of the credit taken under this subsection shall be subject to each of the following conditions:

Ante, p. 1137.

“(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources within such country bears to its entire excess profits net income for the same taxable year; and

“(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources without the United States bears to its entire excess profits net income for the same taxable year.”

SEC. 303. EXPENDITURES FOR ADVERTISING AND GOOD WILL.

Section 23 (a) (1) (C) of the Internal Revenue Code (relating to expenditures for advertising and good will) is hereby amended to read as follows:

56 Stat. 819.
26 U. S. C. § 23 (a)
(1) (C).

“(C) **Expenditures for Advertising and Good Will.**—If a corporation has, for the purpose of computing its excess profits tax credit under Chapter 2E, or subchapter D of this Chapter, claimed the benefits of the election provided in section 733 or section 451, as the case may be, no deduction shall be allowable under subparagraph (A) to such corporation for expenditures for advertising or the promotion of good will which, under the rules and regulations prescribed under section 733 or section 451, as the case may be, may be regarded as capital investments.”

54 Stat. 975.
26 U. S. C. §§ 710-736; Sup. III, § 710 notes.
Ante, p. 1137.
55 Stat. 26.
26 U. S. C. § 733.
Ante, p. 1177.
56 Stat. 819.
26 U. S. C. § 23 (a)
(1) (A).

SEC. 304. TECHNICAL AMENDMENTS.

59 Stat. 519.
26 U. S. C. § 3779.

Ante, p. 1139.

(a) Section 3779 of the Internal Revenue Code (relating to extensions of time for payment of taxes by corporations expecting carry-backs) is hereby amended by striking "710 (c) (3)" where it appears in subsection (b) and inserting in lieu thereof "432 (c)", and by striking the words "four equal" where they appear in subsections (c), (g) and (i).

59 Stat. 521.
26 U. S. C. § 3780.

Ante, p. 1139.

(b) Section 3780 (a) of such code (relating to tentative carry-back adjustments) is hereby amended by striking "710 (c) (3)" and inserting in lieu thereof "432 (c)".

58 Stat. 75.
26 U. S. C. § 3807.

Ante, p. 931.

(c) Section 3807 of such code (relating to period of limitations in case of related taxes under chapter 1 and chapter 2) is repealed.

56 Stat. 807.
26 U. S. C. § 122

(d) (6).

(d) Section 114 (b) (4) (B) of such code is hereby amended by striking out "731 and 735" and inserting in lieu thereof "450 and 453".

(e) Section 122 (d) (6) of such code (relating to the computation of the net operating loss deduction) shall not apply with respect to any taxable year ending after June 30, 1950.

54 Stat. 1005.
26 U. S. C. §§ 391-396.

Ante, p. 1176.

(f) Supplement S of chapter 1 of such code is hereby amended by striking out "section 725" wherever appearing therein and inserting in lieu thereof "section 449".

(g) The amendments made by this section shall be applicable with respect to taxable years ending after June 30, 1950.

SEC. 305. FILING OF RETURNS FOR TAXABLE YEARS ENDING AFTER JUNE 30, 1950, AND BEFORE DECEMBER 31, 1950.

Ante, p. 1137.

In the case of a corporation subject to the tax imposed by subchapter D of chapter 1 of the Internal Revenue Code for a taxable year ending after June 30, 1950, but prior to December 31, 1950, such corporation shall after the date of the enactment of this Act and before March 15, 1951, make a return for such taxable year with respect to the tax imposed by chapter 1 of the Internal Revenue Code for such taxable year. The return required by this section for such taxable year shall constitute the return for such taxable year for all purposes of the Internal Revenue Code; and no return for such taxable year, with respect to any tax imposed by chapter 1 of such code, filed on or before the date of the enactment of this Act shall be considered for any of such purposes as a return for such year. The taxes imposed by chapter 1 of such code (determined with the amendments made by this Act) for such taxable year shall be paid on March 15, 1951, in lieu of the time prescribed in section 56 (a) of such code. All payments with respect to any tax for such taxable year imposed by chapter 1 of such code under the law in effect prior to the enactment of this Act, to the extent that such payments have not been credited or refunded, shall be deemed payments made at the time of the filing of the return required by this section on account of the tax for such taxable year under chapter 1 determined with the amendments made by this Act.

53 Stat. 4.
26 U. S. C. §§ 1-421;
Sup. III, § 11 *et seq.*
Ante, pp. 544, 906,
1137.

Ante, p. 930.

SEC. 306. PAYMENTS TO ENCOURAGE EXPLORATION, DEVELOPMENT, AND MINING FOR DEFENSE PURPOSES.

53 Stat. 10.
26 U. S. C. § 22 (b);
Sup. III, § 22 (b).

Effective with respect to taxable years beginning after December 31, 1950, section 22 (b) of the Internal Revenue Code is amended by adding the following new paragraph:

"(15) PAYMENTS TO ENCOURAGE EXPLORATION, DEVELOPMENT, AND MINING FOR DEFENSE PURPOSES.—An amount paid to a taxpayer by the United States (or any agency or instrumentality thereof), whether by grant or loan, and whether or not repayable, for the encouragement of exploration, development or mining of critical and strategic minerals or metals pursuant to or in connection

with any undertaking approved by the United States (or any of its agencies or instrumentalities) and for which an accounting is made or required to be made to an appropriate governmental agency, and the forgiveness or discharge of any of such amount. Any expenditures (other than expenditures made after the repayment of such grant or loan) attributable to such grant or loan shall not be deductible by the taxpayer as an expense nor increase the basis of the taxpayer's property either for determining gain or loss on sale, exchange, or other disposition or for computing depletion or depreciation, but upon the repayment of any portion of any such grant or loan which has been expended in accordance with the terms thereof such deductions and such increase in basis shall to the extent of such repayment be allowed as if made at the time of such repayment."

Approved January 3, 1951, 10:13 a. m.

[CHAPTER 1212]

AN ACT

To authorize certain construction at military and naval installations, and for other purposes.

January 6, 1951
[H. R. 9893]
[Public Law 910]

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

TITLE I

SEC. 101. The Secretary of the Army, under the direction of the Secretary of Defense, is authorized to establish or develop military installations and facilities by the construction, conversion, installation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, and utilities, as follows:

Military and naval installations.
Construction authorized.

Army.

CONTINENTAL UNITED STATES

Facilities for Army Field Force stations, \$79,722,525; facilities for United States Military Academy, \$1,057,400; advance design of future construction projects for Army Field Force stations or United States Military Academy, \$1,000,000; facilities for technical service stations as follows: Ordnance Corps, \$38,025,275; Quartermaster Corps, \$23,277,600; Chemical Corps, \$21,129,000; Signal Corps, \$44,814,500; Corps of Engineers, \$11,677,600; Transportation Corps, \$10,956,200; Finance Corps, \$23,242,000; Adjutant General's Corps, \$2,900,000; Army Medical Service, \$8,663,200; classified construction, \$20,000,000; advance design for future construction projects for technical service stations, \$2,000,000; and acquisition of land or real property, \$3,295,500.

OUTSIDE CONTINENTAL UNITED STATES

Alaska, \$28,105,600; Japan, \$4,415,000; Hawaii, \$923,900; United States Army, Europe, \$53,111,600; United States forces, Austria, \$4,080,000; and advance design of future construction projects for overseas bases, \$1,000,000.

TITLE I-A

SEC. 102. The Secretary of the Army, under the direction of the Secretary of Defense, is authorized to establish or develop military installations and facilities by the construction, conversion, installation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, and utilities, as follows: