

# Title 26—Internal Revenue

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**AUTHORITY:** §§ 300.2 to 300.25 issued under 53 Stat. 467; 26 U. S. C. 3791.

**SOURCE:** §§ 300.2 to 300.25 contained in Regulation 32, May 10, 1913.

**CROSS REFERENCES:** For certificate of inspection and importer's declaration for white phosphorus matches, see 19 CFR 12.34, 12.35. For United States Public Health Service, Department of the Treasury, see 42 CFR Chapter I.

**§ 300.2 White phosphorus matches defined.** (a) Section 2650, I. R. C., defines white phosphorus matches as follows:

For the purposes of this chapter the words "white phosphorus" shall be understood to mean the common poisonous white or yellow phosphorus used in the manufacture of matches and not to include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus.

(b) Under the definition of white phosphorus, matches made of the nonpoisonous forms or nonpoisonous compounds of white or yellow phosphorus are not subject to tax, nor the manufacturers thereof to the operations of the law.

**§ 300.3 Statements and samples.** For the purposes of determining which man-

ufacturers of matches are subject to the provisions of this act, every manufacturer of matches will be required to file with the collector of the district in which his factory is located a statement, under oath, setting forth the names of materials used in the matches produced by him and to furnish samples of the materials named and of the finished product to this office and to the Surgeon General of the Public Health Service for examination. This shall be done whenever deemed necessary by the Commissioner of Internal Revenue and whenever a manufacturer may make a change in his process of manufacture.

**§ 300.4 Examination of samples by the Public Health Service.** The Surgeon General of the Public Health Service shall cause to be examined in the Hygienic Laboratory from time to time samples of matches bought upon the open market, to determine whether they contain poisonous white or yellow phosphorus, and he shall report the result of such examinations to the Commissioner of Internal Revenue.

**§ 300.5 Investigations by the Public Health Service.** (a) If white or yellow phosphorus in any of its forms is used in the production of matches by the manufacturer, the Surgeon General of the Public Health Service shall cause to be made a thorough examination of the factory and materials entering into the production of matches, and a physical examination of the persons employed in such establishment, and he shall report his findings in the matter to the Commissioner of Internal Revenue.

(b) For the purpose of this investigation and examination any duly authorized officer of the Public Health Service shall have access to any match factory while in operation.

**§ 300.6 Registry by manufacturer.** Upon report of the findings of the Surgeon General, the collector of the district wherein the factory is located will be notified whether the manufacturer is exempt from the operations of the law, and, if not, the manufacturer will be required to register, file notice, bond, etc., as hereinafter provided.

**§ 300.7 Duties of collectors.** The collector will, upon notification by the commissioner that the manufacturer is subject to the provisions of the law, require such manufacturer to register, file notice, bond, and inventories and thereafter ren-

der monthly returns as provided in section 2 of the act.

§ 300.8 *Notice: Form 213.* After registration the manufacturer will file notice in duplicate on Form 213.

§ 300.9 *Each factory numbered.* Upon receipt of notice the collector will assign to the manufacturer a factory number, which applies to the manufactory, and shall not thereafter be changed. In case there is more than one manufacturer, or a single manufacturer having more than one factory in the same district, a separate and consecutive number shall be given each manufactory.

§ 300.10 *Manufacturer's sign.* The manufacturer shall thereupon place over the principal entrance to the building in which the business is carried on a sign with letters not less than 4 inches in length and of sufficient width, painted or gilded in colors so as to be easily discernible, giving the name and business and number of factory after the following form:

JOHN DOE,  
Manufacturer of White Phosphorus Matches,  
Factory No. 1.

§ 300.11 *Separate factories for taxable and nontaxable matches.* If the manufacturer is also engaged in the production of matches not taxable under the act, the factory premises where the taxable and nontaxable matches are produced shall be entirely separate, or if in the same building, separated by solid walls or partitions, which shall extend from floor to ceiling. The manufacture of taxable and nontaxable matches on the same premises and with the same machinery is not permissible.

§ 300.12 *Manufacturer's bond.* (a) A bond executed in duplicate on Form 214, revised, must be rendered to the collector by the manufacturer before commencement of business, and the penal sum thereof under section 2656, I. R. C., must not be less than \$1,000. The collector should require the bond to be in a penal sum of not less than any probable total liability which might become a charge against the bond, computed upon the amount of the stamp tax due on the entire production of matches at the full estimated daily capacity of the factory for a period of 30 days.

(b) This bond is a continuing one until replaced by a new instrument. Where there is a discontinuance of operation

for a period, a new bond will be required upon resumption of business.

(c) Affidavits of sureties in duplicate on Form 33, where personal sureties are given, and on Form 400, where a fidelity company acts as sole surety on the bond, must in every case accompany the bond.

(d) The instructions for preparation or execution of bonds and affidavits of surety on the backs of these forms should be carefully observed.

§ 300.13 *Inventory to be made at commencement of business, on July 1 of each year, and at the time of closing.* After registration, filing of notices and bonds as hereinbefore specified, every manufacturer of white phosphorus matches, before commencing business, shall file with the collector of the district in which his factory is located an inventory in duplicate on Form 215, revised, and thereafter on the first day of July during continuance of operations, and a similar inventory in duplicate must be filed upon discontinuance or suspension of the business for a limited period, which should be marked "closing inventory."

§ 300.14 *Packing and stamping of white phosphorus matches.* Section 2653, I. R. C., requires that all white phosphorus matches shall be packed in packages of 100, 200, 500, 1,000, and 1,500 matches each, and these shall then be packed in packages containing not less than 14,400 matches and the tax levied by said section is to be represented by adhesive stamps. To carry out the provision of section 2653, I. R. C., suitable strip stamps to be affixed to the packages by adhesive material have been prepared and are issued in denominations of 2, 4, 10, 20, and 30 cents. These stamps must be securely affixed by the manufacturer so as to seal the packages of 100, 200, 500, 1,000, and 1,500 matches and the initials of the manufacturer and the date when such stamp is affixed placed thereon either by stencil or perforation. The stenciling or perforating of stamps may be done before affixing to the packages where machines are employed for this purpose and where the stenciling or perforating of stamps after affixing would injure the packages.

§ 300.15 *Procurement of stamps.* These stamps are furnished to collectors upon requisition, who in turn will sell the same only upon requisition to duly qualified manufacturers.

§ 300.16 *Packages of durable material.* Packages for packing 100, 200, 500, 1,000, and 1,500 matches may be of any durable material which will permit the affixing and adhesion of the tax-paid stamps.

§ 300.17 *Importation and exportation of white phosphorus matches.* (a) Regulations under section 2654, I. R. C., which prohibits the importation of white phosphorus matches, and under section 2655, I. R. C., forbidding the exportation of such matches from the United States, have been issued by the Bureau of Customs and approved by the Secretary.

(b) Administrative details and correspondence relating to enforcement of regulations governing importations and exportations are delegated to Bureau of Customs, Treasury Department.

CROSS REFERENCE: For regulations relating to the certificate of inspection and importer's declaration for white phosphorus matches, see 19 CFR 12.34 and 12.35.

§ 300.18 *Factory number required on each package.* The factory number required under section 2653, I. R. C., as provided for under the regulations in this part must be printed or branded or lithographed on every package of white phosphorus matches removed by the manufacturer.

§ 300.19 *Caution label.* (a) In addition to the factory number required on the stamped packages of white phosphorus matches a caution label, as required by section 2653, I. R. C., must be affixed to the original package containing these stamped packages.

(b) This label should be printed in black ink on white paper, or, if other colors are used, the printing should be in strongest contrast to the background, so as to be distinct and legible.

§ 300.20 *Daily records: Form 662.* Under authority conferred by section 2653, I. R. C., every manufacturer is required to keep a daily record on Form 662 showing the total of each material used each day and the total number of matches produced and the number of stamped packages and original packages in which packed; also the total number of stamped packages and original packages, together with the total number of matches, disposed of each day as indicated by said form.

§ 300.21 *Monthly return: Form 660.* Each manufacturer shall render in duplicate to the collector of internal revenue

a monthly return on Form 660, which shall be a transcript of the daily record on Form 662 and must be verified under oath by the manufacturer or a duly qualified officer or agent.

§ 300.22 *Bound copy of Form 660.* Manufacturers will be permitted, however, to substitute a bound copy of the monthly return on Form 660 in lieu of daily record on Form 662, if so desired, provided the entries on the return Form 660 are made daily, as required for the manufacturers' record.

§ 300.23 *Record of customers.* The names of customers to whom matches are consigned and the quantities so sold will not be entered in the manufacturers' daily record and monthly returns, but the manufacturer shall, upon request of any internal-revenue officer, furnish a record of all sales for such period as may be desired.

§ 300.24 *Collector's statement: Form 661.* Collectors will render a monthly statement of account on Form 661 covering the production and withdrawal of white phosphorus matches manufactured in their respective districts after the manner prescribed by this form.

§ 300.25 *Penalties.* Failure on the part of any manufacturer of white phosphorus matches to comply with the requirements of the regulations in this part, or for violation thereof, will subject such manufacturer, where there is no specific penalty provided by this act for the violation, to the penalty denounced in section 2657, I. R. C., and to the provisions of section 2659, I. R. C.

## Part 301—Tax on Filled Cheese

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**RECORDS AND RETURNS OF WHOLESALE DEALERS**

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**AUTHORITY:** §§ 301.1 to 301.38 issued under 53 Stat. 467; 26 U. S. C. 3791.

**SOURCE:** §§ 301.1 to 301.38 contained in Regulations 22, Aug. 16, 1926. Exceptions are noted following sections affected.

**CROSS REFERENCE:** For cheese regulations under the Farm Products Inspection Act, see 7 CFR Part 55.

**SUBPART A—FILLED CHEESE**

§ 301.1 *Cheese defined.* For the purpose of sections 2350–2362, 3210, and 3211, I. R. C., section 2350 (a), I. R. C., defines cheese as follows: "The word 'cheese' shall be understood to mean the food product known as cheese, and which is made from milk or cream and without the addition of butter, or any animal, vegetable, or other oils or fats foreign to such milk or cream, with or without additional coloring matter."

§ 301.2 *Filled cheese defined.* (a) For the purpose of sections 2350–2362, 3210, and 3211, I. R. C., section 2650 (b), I. R. C., defines filled cheese as follows: "Certain substances and compounds shall be known and designated as 'filled cheese,' namely: All substances made of milk or skimmed milk, with the admixture of butter, animal oils or fats, vegetable or any other oils, or compounds foreign to such milk, and made in imitation or semblance of cheese. Substances and compounds, consisting principally of cheese with added edible oils, which are not sold as cheese or as substitutes for cheese but are primarily useful for imparting a natural cheese flavor to other foods shall not be considered 'filled cheese' within the meaning of this chapter."

(b) The mixture of cheese with coloring matter does not, under this law, render it liable to tax as filled cheese, such mixture being permitted under the definition given in § 301.1. If, however, the annatto or other coloring matter is mixed with a vegetable oil or an animal fat as a mordant, resulting in a compound resembling cheese, this compound would be liable to tax as filled cheese.

(c) The manufacture of cheese from synthetic cream which is prepared by homogenizing a mixture of butter and skimmed milk or a mixture of butter, milk powder, and water results in a product which is clearly "filled cheese" as defined by statute, being a substance made of milk or skimmed milk with an admixture of butter in imitation or semblance of cheese.

[Regs. 22, Aug. 16, 1926, as amended by T. D. 4813, 3 F. R. 1464]

§ 301.3 *Packages.* (a) All filled cheese shall be packed by the manufacturer thereof in wooden packages only, not before used for that purpose. The law does not fix the size of the manufacturers' packages. The contents of all packages must be completely covered. Crates with openings between slats may not be used as original packages. A package which has once been used for packing filled cheese may be taken apart and the material, from which all stamps, marks, and brands have been effectually removed, may be used in construction of new containers. All filled cheese sold by manufacturers of filled cheese shall be in original stamped packages.

(b) A package of filled cheese, to meet all the requirements of the law and regulations must be branded (§ 301.4), have caution notice label affixed (§ 301.5), and have proper stamp or stamps affixed and canceled (§ 301.6).

(c) Manufacturers and dealers may incase properly stamped and branded original packages of filled cheese in additional coverings or wrappers, provided such additional coverings or wrappers have duly impressed or stenciled thereon the brand as prescribed in § 301.4, and also the following additional inscription: "The original package herein contained has been duly tax paid and proper stamp is affixed."

(d) Every person who packs in any package or packages any filled cheese in any manner contrary to law is subject to a fine for each and every offense of not less than \$50 and not more than \$500 or to be imprisoned not less than 30 days and not more than 1 year.

§ 301.4 *Branding.* (a) Each cheese shall be marked, stamped, and branded with the words "filled cheese" in black-faced letters, not less than 2 inches in length, in a circle in the center of the top and bottom of the cheese; and in like letters, in four different places, equidistant from each other, on the side of the cheese, in line from the top to the bottom thereof. Like brands are required upon the wooden packages containing such cheese. Where the consistency of the filled cheese will not permit of the brand being applied directly thereto it will be sufficient if the package is duly branded as herein required.

(b) The width of the letters in the above brands shall not be less than 1 inch over all, with quarter-inch stem. The law prescribes that the brands for the side of the cheese shall be put on in line from top to bottom. Where the cheese is not sufficiently thick to accommodate these words in a perpendicular or vertical line, they may be branded in a line running diagonally from top to bottom.

(c) Each cheese, likewise the wooden package therefor, shall, in addition to the above brands required upon the top and bottom surfaces, be branded with words and figures indicating the factory number, number of the collection district, the State, and the weight of the cheese, in the order observed in the following example:

FACTORY NO. 1, FIRST DIST. OF ILLINOIS  
30 POUNDS  
FILLED CHEESE

(d) All letters and figures in the above brand must be in black-faced block type, not less than 1 inch in width over all, with quarter-inch stems in the words "filled cheese" and not less than 1 inch square in the remaining words.

(e) If a manufacturer desires to place his name upon the filled cheese, or upon the wooden package therefor, he may do so, provided such brand in nowise overshadows, subordinates, or conceals the Government brand above prescribed by the law and the regulations in this part.

(f) Every person who falsely brands any package of filled cheese is subject to a fine for each offense of not less than \$50 and not more than \$500 or to imprisonment of not less than 30 days and not more than 1 year.

§ 301.5 *Caution-notice label.* (a) Every manufacturer's package of filled cheese must, before removal from the bonded premises where made, have printed thereon or securely affixed on the side or end thereof by pasting, in such a way as to be exposed to public view and to be easily read, a label on which is printed the number of the manufactory and the district and State in which it is situated, and the words of the caution notice as provided by law.

(b) The prescribed wording must be in plain, open, and legible letters in black ink, and shall occupy a space not less than 3 inches long and not less than 1½ inches in width, and when in label form, it shall be printed on plain white paper and shall be substantially in the following form:

Factory No. -----, ----- District,  
State of -----

NOTICE: The manufacturer of the filled cheese herein contained has complied with all the requirements of the law. Every person is cautioned not to use either this package again or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases.

(c) Every manufacturer of filled cheese who neglects to affix such label to any package containing filled cheese made by him, or sold or offered for sale by or for him, and every person who removes any such label so affixed from any such package, is subject to fine of \$50 for each package in respect to which such offense is committed.

§ 301.6 *Rate of tax; affixing and canceling stamps.* (a) The tax upon filled cheese is 1 cent per pound. The tax accrues when the filled cheese is manufactured and is to be paid by the manufacturer thereof by the affixing of stamps to the packages before removal from the place where made.

(b) Filled-cheese stamps have been prepared in denominations of 10, 20, 30, 40, 50, 60, 70, 80, 90, and 100 pounds, with 9 coupons, each representing 1 pound, attached to each stamp. Such stamps are obtainable upon application on Form 218 to the collector of the district in which the factory is located. On the withdrawal of a package of filled cheese the proper tax-paid stamp must be securely affixed to the side thereof and immediately canceled by stamping or perforating the factory number, district, State, and date thereon. Illustration: "Fac. No. 12, 1st Dist. Ill." over "April 15, 1925."

(c) Every person who affixes a stamp on any package of filled cheese denoting a less amount of tax than that required by law is subject to a fine for each offense of not less than \$50 and not more than \$500 or to imprisonment of not less than 30 days and not more than 1 year.

§ 301.7 *Commissioner's duty to assess omitted taxes.* The law makes it the duty of the commissioner, upon satisfactory proof, to estimate the amount of tax omitted to be paid whenever a manufacturer of filled cheese sells, or removes for sale or consumption, any filled cheese liable to payment of tax by stamps, without the use of the proper stamps, and to make an assessment therefor and to certify the same to the collector of the district for collection. Such assessments must be made within four years from the date when the tax became due except in the case of fraud with intent to evade tax, of a failure to file a required return, or a willful attempt in any manner to defeat or evade tax, the tax may be assessed at any time. Assessments will be predicated upon prima facie evidence of the sale or removal for sale or consumption of filled cheese by manufacturers without the use of the proper stamps, obtained and reported by deputy collectors or other internal-revenue officers, or from other facts and circumstances reported by such officers. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal.

§ 301.8 *Testing filled cheese for deleterious ingredients.* The commissioner is authorized to have applied scientific tests; and to decide whether any substances used in the manufacture of filled cheese contain ingredients deleterious to health. But in case of doubt or contest his decision in this class of cases may be appealed from to a board constituted for the purpose, and composed of the Surgeon General of the Army, the Surgeon General of the Navy, and the Secretary of Agriculture, and the decision of this board is final in the premises.

§ 301.9 *Forfeiture of filled cheese not stamped or marked or containing deleterious ingredients.* All packages of filled cheese subject to tax under the act that shall be found without stamps or marks as herein provided, and all filled cheese intended for human consumption which contains ingredients adjudged as provided in § 301.8 to be deleterious to the public health, are subject to forfeiture to the United States.

§ 301.10 *Imported filled cheese; liability to tax.* All filled cheese imported from foreign countries must be tax paid at the rate of 8 cents per pound. Such tax is in addition to any import duty imposed thereon, and must be paid by affixing the required stamps prior to release of the product from customs custody.

§ 301.11 *Purchase of stamps.* Stamps for the tax payment of imported filled cheese will be sold to the owner or consignee of such merchandise by the collector of internal revenue of the district in which is located the office of the collector of customs where the customs entry is filed, upon requisition therefor duly executed by an authorized customs officer.

§ 301.12 *Stamping and cancellation of stamps.* Filled cheese imported from foreign countries is not required to have the internal-revenue stamps affixed to the packages thereof and canceled unless and until such product is to be released from customs custody for consumption or sale in the United States. Such stamps shall be affixed and canceled by the owner or consignee while the product is in the custody of the proper customs officer, and such product shall not pass out of the custody of said officer until the stamps have been affixed and canceled. The mode of affixing the stamps to packages of domestic manufacturers

prescribed in § 301.6 is hereby made applicable to imported filled cheese. Each stamp so affixed shall be canceled by the owner or consignee writing or imprinting on the face thereof in distinct and legible letters and figures his name and date of cancellation, name of port, and customs entry number.

§ 301.13 *Filled cheese for export.* There is no provision for the omission of the tax on filled cheese exported from the United States and all filled cheese exported must be tax paid at the rate of 1 cent per pound. The imposition of the tax on filled cheese exported from the United States is not in contravention to the constitutional provision prohibiting Congress from laying a tax on exports. (*Cornell Brothers v. Coyne*, 192 U. S. 418, T. D. 757.)

[Regs. 22, Aug. 16, 1926, as amended by T. D. 4313, 3 F. R. 1464]

**SUBPART B—MANUFACTURERS OF FILLED CHEESE**

§ 301.14 *Definition and rate of special tax.* Every person, firm, or corporation who manufacturers filled cheese for sale shall be deemed a manufacturer of filled cheese. Manufacturers of filled cheese are subject to a special tax at the rate of \$400 per annum for each factory operated.

§ 301.15 *Registry and payment of special tax stamp to be posted.* (a) Every manufacturer of filled cheese, before commencing business (or at least within the month in which liability to special tax commenced), must register with the collector of the district in which the business is to be carried on, his name, or style, place of residence, business, and the place where such business is to be carried on, and make return (Form 11) duly signed and sworn to, and procure a special tax stamp, which he is to place and keep conspicuously posted in his establishment or place of business; and on the first day of July in each year, if continuing business, he will again so register, make return, and procure a new special-tax stamp and post it as above stated.

(b) Whenever any person engaged in any business for which a special tax is required by law, refuses or neglects to render the return therefor required by law, the Commissioner of Internal Revenue is required to assess the tax due, and to add 25 percent to such tax. In case of a false or fraudulent return he is re-

quired to add 50 percent to the tax due. The amount so added will be collected in the same manner as the tax.

§ 301.16 *Manufacturer's bond.* (a) Every manufacturer of filled cheese shall give a bond on Form 214, in duplicate, to be submitted to and approved by the collector of the district. The penal sum of the bond shall not be less than \$5,000 nor more than \$100,000 and shall be fixed in accordance with the following scale, based on the total quantity of filled cheese produced by the manufacturer in the preceding fiscal year:

Production previous fiscal year		Penal sum of bond required
More than—	Not more than—	
<i>Pounds</i>	<i>Pounds</i>	
100,000	100,000	\$5,000
100,000	700,000	10,000
700,000	1,300,000	15,000
1,300,000	1,900,000	20,000
1,900,000	2,500,000	25,000
2,500,000	3,100,000	30,000
3,100,000	3,700,000	35,000
3,700,000	4,300,000	40,000
4,300,000	4,900,000	45,000
4,900,000	5,500,000	50,000
5,500,000	6,100,000	55,000
6,100,000	6,700,000	60,000
6,700,000	7,300,000	65,000
7,300,000	7,900,000	70,000
7,900,000	8,500,000	75,000
8,500,000	9,100,000	80,000
9,100,000	9,700,000	85,000
9,700,000	10,300,000	90,000
10,300,000	10,900,000	95,000
10,900,000 <sup>1</sup>		100,000

<sup>1</sup> Or over.

(b) A manufacturer must give the required bond prior to commencing business, and in the case of a new manufacturer the penal sum of his bond shall be fixed in accordance with the foregoing scale on the estimated quantity of filled cheese which he will produce in a period of 12 months. When the yearly production of a manufacturer exceeds the scale of production on which the penal sum of his bond has been based a new bond must be given in the requisite penal sum.

§ 301.17 *Notice: Form 213.* (a) Every person before commencing the manufacture of filled cheese must file with the collector for the district in which his factory is situated a notice on Form 213, in duplicate. Such notice shall set forth the name or style under which the business is to be carried on, the date of commencement of business, the place where such manufacture is to be carried on, giving street and number, if any; shall further describe by metes and bounds the

premises bonded as the factory, and shall include a general description of the lot or tract of land on which the factory is located, a list of the machinery and appliances used in the manufacture of filled cheese, and an estimate of the quantity of filled cheese he will produce in 12 months. The premises to be described as a filled-cheese factory must conform with the provisions of § 301.18.

(b) A new notice in duplicate must be filed immediately with the collector in the case of any change in the described premises or ownership of the factory. Similar action must be taken prior to removal of a factory.

§ 301.18 *Premises bonded as factories.*

(a) The premises of a filled-cheese factory, an accurate description of which must be furnished, as required in the above section, must be separated by solid walls or partitions from premises in which cheese is manufactured or manipulated, unless otherwise approved by the commissioner in writing.

(b) Only one filled-cheese factory may be operated at a time within the same described premises unless otherwise approved by the commissioner in writing.

§ 301.19 *Each factory numbered.* Each filled-cheese factory shall be assigned a number by the collector, which number shall not be held at the same time by any other manufacturer of filled cheese in his district, nor thereafter changed except for reasons approved by the commissioner. If the manufacturer removes to a new location in the same district, he will retain his old number. Upon removal from one collection district to another a new number will be assigned. When a factory is closed, the number which is released will not be re-assigned during the balance of the fiscal year.

§ 301.20 *Manufacturer's sign.* Every manufacturer of filled cheese shall place and keep over the principal entrance to the building wherein his business is carried on, so that it can be distinctly seen, a sign with letters thereon not less than 3 inches in height, painted in oil colors or gilded, giving his full name and business and the number of his manufactory.

§ 301.21 *Inventory to be made at commencement of business on July 1 of each year, and at the time of closing.* (a) Every manufacturer of filled cheese must file with the collector of internal

revenue of the district in which the factory is located a complete and correct inventory, in duplicate, on Form 215, verified by oath, of the quantity of each of the different kinds of materials used in the manufacture of filled cheese, including all materials or products in process of manufacture or partially manufactured and the quantity of the finished product, stamped and unstamped, and the value of attached and unattached stamps held and owned by him in said factory on the first day of July of each year. An inventory as aforesaid must also be made and filed with the collector at the time of beginning business as a manufacturer, and at the time of discontinuing such business.

(b) The collector (or his deputy) is required to make personal examination of the stock sufficient to satisfy himself as to the correctness of the inventory and certify the fact of such examination on the form.

§ 301.22 *Records.* (a) Every manufacturer of filled cheese shall keep a daily record of: (1) The number of pounds of each material used by him in the manufacture of filled cheese and the number of pounds of each such kind of material used for purposes other than the manufacture of filled cheese; (2) the number of taxable pounds of filled cheese produced; (3) the number of taxable pounds of filled cheese disposed of in each instance, name of person to whom shipped or delivered, date of shipment or delivery, and the address to which sent; (4) the number of taxable pounds of filled cheese returned to the factory in each instance, name of person by whom returned, date of receipt, and address from which returned; (5) the number of taxable pounds of filled cheese reworked, dumped, or destroyed; and (6) the total values of filled-cheese stamps purchased and used.

(b) The record must be kept at the factory or principal office or place of business of the manufacturer, be preserved for a period of 4 years, and be at all times readily accessible for inspection by internal revenue officers and agents.

§ 301.23 *Returns.* Each manufacturer of filled cheese must furnish to the collector of his district, not later than the 15th day of each month, an accurate return, under oath, on Forms 216 and 216a, of the kinds and quantity of each kind of material used by him in the manufacture of filled cheese, the quantity of filled cheese produced, of all filled cheese

disposed of, of all filled cheese returned, and the values of all stamps purchased and used by him during the preceding month. Such returns shall be prepared in duplicate and should be typewritten, the original being forwarded to the collector and the duplicate or carbon copy being retained by the manufacturer at the factory for a period of 4 years, subject to inspection of any internal revenue officer or agent. A return on Forms 216 and 216a is required to be made for each month from date of opening inventory to date of final inventory. The final return should be marked "final."

§ 301.24 *Penalty for not complying with law or regulations.* Any manufacturer of filled cheese who fails to comply with the provisions of section 5 of the act or the regulations authorized thereby is liable to a fine of not less than \$500 and not more than \$1,000.

§ 301.25 *Penalty for not paying special tax.* Every person, firm, or corporation who carries on the business of a manufacturer of filled cheese without having paid the special tax therefor, as required by law, besides being liable to the payment of the tax is subject to a fine of not less than \$400 and not more than \$3,000.

#### SUBPART C—SALE OF FILLED CHEESE

§ 301.26 *Wholesale dealer defined; rate of special tax.* Every person, firm, or corporation who sells or offers for sale filled cheese in the original manufacturer's package for resale, or to retail dealers as hereinafter defined, shall be deemed a wholesale dealer in filled cheese. A qualified manufacturer who sells only tax-paid filled cheese of his own production at the place of manufacture is not liable as a wholesale dealer. Wholesale dealers in filled cheese are subject to special tax at the rate of \$250 per annum.

§ 301.27 *Retail dealer defined; rate of special tax.* Every person who sells filled cheese at retail, not for resale but for actual consumption, shall be regarded as a retail dealer in filled cheese. Retail dealers in filled cheese are subject to special tax at the rate of \$12 per annum.

§ 301.28 *Registry and payment of special tax; stamp to be posted.* (a) Every wholesale or retail dealer in filled cheese, before commencing business (or at least within the month in which liability to special tax commenced) must register with the collector of the district in which

the business is to be carried on his name or style, place of residence, business, and place where such business is to be carried on, and make return (Form 11) duly signed and sworn to and procure a special-tax stamp, which he is to place and keep conspicuously posted in his place of business; and on the 1st day of July in each year, if continuing in business, he will again so register, make return, and procure a new special-tax stamp and post it as above stated. (Secs. 3270, 3273, I. R. C.) Where the special tax is not more than \$10 the return may be signed or acknowledged before two witnesses in lieu of being executed under oath.

(b) Whenever any person engaged in any business for which a special tax is required by law refuses or neglects to render the return therefor required by law, the Commissioner of Internal Revenue is required to assess the tax due and to add 25 percent to such tax. In case of a false or fraudulent return he is required to add 50 percent to the tax due. The amount so added will be collected in the same manner as the tax.

(c) Every person, firm, or corporation who carries on the business of a wholesale dealer in filled cheese without having paid the special tax therefor, as required by law, besides being liable to payment of the tax is subject to a fine of not less than \$250 and not more than \$1,000; and every person, firm or corporation who carries on the business of a retail dealer in filled cheese without having paid the special tax therefor, as required by law, besides being liable to payment of the tax, is subject to be fined not less than \$40 and not more than \$500 for each and every offense.

§ 301.29 *Special tax liability; when incurred.* (a) Except in the case of a manufacturer selling filled cheese of his own production at the place of manufacture, a person is liable to special tax as a dealer in filled cheese, either wholesale or retail as the case may be, at each and every place where he sells, or offers for sale, filled cheese. The place where the delivery, either actual or constructive, which transfers ownership from vendor to vendee, is made is the place of sale and for which special tax is required to be paid. A special tax stamp can be issued to a dealer in filled cheese only for a fixed place of business. One who travels from place to place and makes sales of filled cheese incurs liability to

special tax at each place where such sales and deliveries are made.

(b) Dealers in cheese should ascertain the true character of the article which they sell or offer for sale. If they are found to have sold filled cheese, though they believed it to be genuine cheese, they nevertheless are liable to special tax as dealers in filled cheese.

(c) Special tax stamps are not transferrable from one person to another. When a new member is added to a firm a new stamp is required.

(d) Any number of persons doing business in copartnership at any one place are required to pay but one special tax.

(e) Special tax liability is not incurred in respect to sales by:

(1) A receiver appointed by the court to sell filled cheese under order of the court.

(2) A trustee when he carries on the business at the principal's store and under the special tax stamp issued to the principal.

(3) A member of a firm acquiring the interests of the other members and carrying on the business under the stamp issued to the firm.

(4) A qualified dealer moving from one location to another provided he registers the change with the collector during the calendar month in which it occurred.

(5) The legal representative of a deceased special taxpayer carrying on the business until the expiration of the stamp but the change must be registered with the collector within the month in which it was made.

(6) An army post exchange under the complete control of the War Department.

(7) A keeper of a restaurant who furnishes filled cheese merely to patrons as a part of their meals even though a separate charge is made for the filled cheese served.

(8) A transportation company selling filled cheese to secure freight charges.

§ 301.30 *Storing filled cheese.* Manufacturers of, and wholesale dealers in, filled cheese may store tax-paid packages of such product at places other than those named in their special-tax stamps and may make deliveries from such places of storage without incurring ad-

ditional special tax liability, provided that sales of filled cheese so stored are absolutely completed by the manufacturers or wholesale dealers at their registered places of business by constructive delivery there prior to actual removal of the goods from the place of storage for delivery to purchasers. Receipt of an order at the place of business of a manufacturer or dealer and the sending of such order to the storage house for delivery is not a sale of goods at said place of business. A manufacturer or dealer must not merely receive the order at his place of business, but he must make out there and deliver to the customer ordering, or send to him direct a bill of sale in each instance transferring to him the ownership of the goods before there is an actual delivery from the place of storage.

§ 301.31 *Sign to be displayed by wholesale and retail dealers.* (a) All retail and wholesale dealers in filled cheese shall display in a conspicuous place in his or their sales room a sign bearing the words "Filled Cheese sold here" in blackfaced letters not less than six inches in length, upon a white ground, with the name and number of the revenue district in which his or their business is conducted; and any wholesale or retail dealer in filled cheese who fails or neglects to comply with this requirement is liable for each and every offense to a fine of not less than \$50 and not more than \$200. (Secs. 2353, 2354, I. R. C.)

(b) Concealment of the sign from full view of the public will not be deemed a compliance with the law. If a dealer has more than one sales room, he must post the requisite sign in each such room.

#### RECORDS AND RETURNS OF WHOLESALE DEALERS

§ 301.32 *Records.* (a) Every wholesale dealer in filled cheese shall keep at his place of business a daily record of (1) the number of pounds in each consignment of filled cheese received by him, giving the name and address of the consignor and date of receipt, and (2) the number of pounds of filled cheese disposed of in each instance, name of person to whom shipped or delivered, date of shipment or delivery, and address to which sent.

(b) The record must be preserved for a period of 4 years and be at all times readily accessible for inspection by internal revenue officers and agents.

§ 301.33 *Returns.* (a) Every wholesale dealer in filled cheese must furnish to the collector of his district, not later than the 15th day of each month, an accurate return, under oath, on Forms 217 and 217a of all filled cheese received and disposed of by him during the preceding month. Form 217 to be modified by substituting the words "filled cheese" for the word "oleomargarine" wherever same occurs thereon.

(b) Each return shall be prepared in duplicate and should be typewritten. The original copy of the return should be forwarded to the collector and the carbon retained by the dealer at his place of business for a period of 4 years subject to inspection of any internal revenue officer or agent. A return on Form 217 and 217a is required to be made for each month, beginning with the month in which filled cheese is received for sale, or the first month for which special tax is paid, whichever is prior, and ending with the month in which goods on hand are ultimately disposed of, or some subsequent month when the dealer decides definitely to discontinue business. The last return should be marked "Final."

§ 301.34 *Packages.* Retail dealers in filled cheese must sell only from original stamped packages, and shall pack the filled cheese sold by them in suitable wooden or paper packages which shall be marked and branded as provided in § 301.35. Wooden or paper packages similar to those usually employed in selling butter and lard at retail may be used by the retail dealer in filled cheese. There is no restriction as to the quantity of filled cheese that a retailer may sell at one sale, but he must remove the product from the original manufacturer's package and repack in another package, made of either wood or paper, and place on such package the required marks and brands. A retail dealer who sells filled cheese in original packages for resale or to another retailer incurs additional liability to special tax as a wholesale dealer.

§ 301.35 *Brands.* (a) Each retailer's wooden or paper package must have the name and address of the dealer marked or branded thereon, likewise the words "Pound" and "Filled Cheese," in letters not less than one-quarter inch square, and the quantity written, marked, or branded thereon in figures of the same size (one-quarter of an inch square), substantially as follows:

RICHARD ROE  
100 Doe Street  
BOSTON  
1 pound Filled Cheese

(b) The words "Filled Cheese" and "Pound" which are required to be marked or branded on retailers' wooden or paper packages, in letters not less than one-quarter inch square, and the quantity which is required to be written, marked or branded thereon in figures of like size, must be so placed so as to be plainly visible to the purchaser at the time of delivery to him. Illegible or concealed marks and brands are not those contemplated and required by the law and regulations. It will not be deemed a compliance with the regulations in this part if the words "Filled Cheese" and the other required words and figures shall be illegibly branded or marked or so placed as to be concealed from view, by being on the inside of the package or by folding in the stamped portion of the paper sheet used for wrapping, or otherwise. The required words and figures must be legibly printed or branded and conspicuously placed, and no other word or business card should be placed in such juxtaposition thereto as to divert attention from the fact that the contents of the package are filled cheese. The color of the ink with which the words are marked or branded must be black.

(c) Every person who knowingly sells or offers for sale or delivers or offers to deliver filled cheese in any other form than new wooden or paper packages, marked and branded as hereinbefore provided, is subject to a fine of not less than \$50 and not more than \$500 or to imprisonment for not less than 30 days and not more than 1 year.

§ 301.36 *Stamps to be destroyed when package is emptied; penalty for failure.* Whenever any stamped package containing filled cheese is emptied it is the duty of the person in whose hands the same is to destroy the stamps thereon; and any person who willfully neglects or refuses so to do is liable for each such offense to a fine of not more than \$50 or to imprisonment of not less than 10 days and not more than 6 months.

§ 301.37 *Liability for purchase or receipt for sale of filled cheese not properly branded or stamped.* Any person who knowingly purchases or receives for sale any filled cheese which has not been branded or stamped according to law, or which is contained in packages not

branded or marked according to law, is liable to a penalty of \$50 for each such offense.

§ 301.38 *Liability, purchases or receipts from manufacturers who have not paid special tax; forfeiture.* Every person who knowingly purchases or receives for sale any filled cheese from any manufacturer or importer who has not paid the special tax herein provided for is liable for each offense to a penalty of \$100 and to a forfeiture of all articles so purchased or received or of the full value thereof.

## Part 302—Excise Tax on Sale of Pistols and Revolvers

### Subpart A—Tax on Pistols and Revolvers

Sec.	
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302.23	Misrepresentation of tax.

**AUTHORITY:** §§ 302.1 to 302.23 issued under 53 Stat. 467; 26 U. S. C. 3791.

**SOURCE:** §§ 302.1 to 302.23 contained in Regulations 47, October 17, 1928, except as noted following sections affected.

### SUBPART A—TAX ON PISTOLS AND REVOLVERS

§ 302.1 *Rate of tax.* The tax is imposed at the rate of 11 percent.

[T. D. 5083, 6 F. R. 5108]

§ 302.2 *Use of terms.* In this part, for convenience, unless obviously inap-

plicable, the term "manufacturer" is used to include also "producer" and "importer"; the term "sale" or "sold" to include "lease" or "leased"; the term "purchaser" to include "lessee," and the term "vendor" to include "lessor." The term "person" is used to include partnerships, corporations, and associations, as well as individuals.

§ 302.3 *Basis of tax.* (a) The tax is imposed on the sale by the manufacturer and should be returned and paid by him whether the sales price is actually collected or not. It is measured by the price for which the article is sold by the manufacturer and not by the list price where that differs from the actual sales price. If the price of a taxable article is increased to cover the tax, and the article is sold at such price including the tax, the tax is on such increased price.

(b) On the other hand, the manufacturer may reimburse himself in the amount of the tax by quoting the selling price and the tax in separate and exact amounts, and where invoices are rendered, segregating these amounts on the invoices.

(c) Where goods are ordered direct from the manufacturer with no agreement as to price, the tax is based on the amount billed or invoiced to the purchaser as the selling price. Mere statements or agreements that the quoted or contract price includes the tax do not operate to exclude any part thereof from tax.

(d) Where a lump sum is specified as the price of a taxable article or articles, and other articles not taxable and not a component part of the taxable articles are included in the price, the tax attaches to the entire amount unless the selling prices of the taxable and non-taxable articles are segregated. In such case the tax will be measured by the price specified as the selling price of the taxable article or articles.

§ 302.4 *Discounts and expenses.* (a) A discount made subsequently to the sale can not be deducted in computing the price for the purpose of the tax.

(b) An adjustment in price, where articles are sold over a period of time, under an agreement for a quantity rebate, or an agreement for a so-called wholesale bonus, i. e., a rebate on goods resold by a distributor or dealer to so-called subdealers, is held not to be a discount made subsequently to the sale, and

the tax, if originally computed on the gross price, may be adjusted in the return for the month in which the price is finally determined. If in such cases the tax assumed to be due on the original selling price has been billed to the dealer and by him to the purchaser as a separate item, and collected from the purchaser, the overcollection of tax arising from the adjustment of the sale price under the contract between the manufacturer and the dealer must be refunded to the purchaser.

(c) Where articles are sold under an agreement for a rebate on goods remaining unsold in the hands of the dealer, and which were purchased by such dealer within a definitely specified period, in case of a decline in the market, a reduction in price made in accordance with such agreement is not considered a discount made subsequently to the sale, and if the manufacturer refunds to the dealer a portion of the original or tentative price, together with the amount for which he was reimbursed to cover the tax thereon, he may take credit on his return for the month in which such adjustment in price is made for the amount of overpayment on the original sale resulting from the price adjustment.

(d) Commissions to agents and other expenses of sale are not deductible from the price.

§ 302.5 *Exchanges.* (a) If articles sold are returned and the sale entirely rescinded, no tax is payable, and if paid it may be credited against the tax included in a subsequent monthly return. (See § 302.15.) If a part only of the articles sold at one time is returned, and credit or rebate allowed by the vendor therefor, the portion of the tax to be credited will be only the proportion of the total tax paid which the amount allowed as a credit or rebate bears to the total sales price of all the articles.

(b) If an article is sold under a guaranty as to its quality or service and is thereafter returned and a rebate made pursuant to the guaranty, the manufacturer may claim as a credit against the tax included in a subsequent return such portion of the tax originally paid in respect of the article as is proportionate to the amount of the price refunded.

(c) Where any article taxable under section 600 of the act is returned to the manufacturer thereof for adjustment,

replacement, or exchange, under a guaranty as to quality or service, and a new article given pursuant to guaranty, free or at a reduced price, the tax shall be computed on the actual price, if any, to be paid to the manufacturer for the new article.

(d) If an article is sold and thereafter, before use, exchanged for another article of a higher price, the purchaser paying the difference, the manufacturer should pay the tax on the second sale, but may take as a credit against such tax such proportion of the tax paid on the returned article, which the amount allowed as a credit for the return of such article on the second sale bears to the amount of the purchase price in the case of the first sale. The tax also attaches to the subsequent sale by the manufacturer of the article so returned.

§ 302.6 *Who is a manufacturer.* A manufacturer is generally a person who (a) actually makes a taxable article, or (b) by changes in the form of an article produces a taxable article, or (c) by the combination of two or more articles produces a taxable article.

§ 302.7 *Tax payable by the manufacturer.* (a) The tax is to be paid by the manufacturer on all sales made directly by him or through an agent. (See § 302.11.)

(1) On articles manufactured for a jobber by a foreign manufacturer, the jobber must pay the tax as the importer.

(2) A receiver or trustee in bankruptcy of a manufacturer conducting a business under court order is liable to the tax upon articles manufactured and sold by him.

(b) Where a manufacturer sells articles to a dealer, sending them on consignment and retaining ownership in them until they are disposed of by the dealer, the manufacturer must pay the tax upon the basis of his selling price to the dealer, as shown by reports to be procured by him monthly from the dealer. Where, however, a manufacturer sends articles to a dealer as his agent, the sale by such dealer or agent is to be treated as a sale by the manufacturer, and the tax computed on the price received by such dealer or agent before deducting his commission.

(c) Where a so-called agent or distributor is a separate corporation and the sale to it is absolute and at prices and under terms and conditions such as

ordinarily obtained between persons dealing at arm's length with no further payment or benefit accruing to the manufacturer upon resale or otherwise except the receipt of dividends on stock holdings, the taxable sale is that made by the manufacturer to such sales corporation even though all or substantially all of the stock of such sales corporation is held by or for the benefit of the manufacturer or the stockholders in the manufacturing corporation. Where, however, there are special arrangements between the manufacturer and the selling corporation such as special terms, prices, etc., the taxable sale is the sale by the selling corporation as the selling agent of the manufacturer. The same rule applies in the case of the selling corporation which owns substantially all the stock of a manufacturing corporation. (See § 302.11.)

§ 302.8 *When tax attaches.* (a) The tax attaches when the title to an article passes from the manufacturer to the purchaser pursuant to a contract of sale.

(b) The tax attaches to the total contract price when the title to an article passes from the manufacturer to the purchaser pursuant to a contract of sale, regardless of whether or not the entire contract price is received.

(c) When title passes is a question of fact dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances.

(d) Where goods are segregated from other goods owned by the vendor and it is the intention of both the vendor and the purchaser at the time the goods are so segregated that they shall then belong to the purchaser, the title will be presumed to pass at such time.

(e) In the absence of an intention to the contrary the title is presumed to pass upon delivery of the article to the purchaser or to a carrier for the purchaser.

(f) In the case of a conditional sale, where title is reserved in the vendor until payment of the purchase price in full, the tax attaches (1) upon such payment, or (2) when title passes if before completion of the payments, or (3) when, before completion of the payments, the dealer disposes of the sale by charging off by any method of accounting he may adopt the unpaid portion of the contract price, or (4) when the vendor discounts the notes of the purchaser for cash or otherwise, or (5) when the vendor trans-

fers to another his title in the article sold, or (6) when the final payment or payments have become long overdue even though not charged off.

§ 302.9 *Exempt sales.* (a) Under the provisions of section 2700 (b) (1) prior to the amendment thereof by section 307 (a) (2) of the Revenue Act of 1943, no tax attaches to pistols and revolvers sold by the manufacturer for the use of the United States, any State, Territory, or possession of the United States, any political subdivision thereof, or the District of Columbia. Any manufacturer claiming exemption from the tax must maintain records and be prepared to produce such evidence as will clearly establish the right to exemption.

(b) By virtue of the amendment by section 307 (a) (2) of the Revenue Act of 1943 of section 2700 (b) (1), and the application of section 307 (b) (2) to such amendment, the exemption with respect to sales of pistols and revolvers by the manufacturer for the use of the United States, or possession of the United States is inapplicable on and after the first day of the first month which begins six months or more after the date of the termination of hostilities in the present war, unless the sale is made pursuant to a contract entered into prior to such date, or to any agreement or change order supplemental to such contract bearing the same Government contract number.

(c) To be exempt from the tax the articles must be sold for the use of a government or governmental agency. Pistols and revolvers sold to government officers in their private capacity or for their private use are not exempt from the tax. [T. D. 5346, 9 F. R. 2847]

§ 302.10 *Manufacturer also retailer.* (a) By "customarily sells" is meant a bona fide practice of selling the same article at both wholesale and retail, in substantial quantities, and not mere occasional sales at wholesale, with the bulk of the business done at retail. Only a manufacturer who does a legitimate wholesale and retail business and holds himself out as a wholesaler as well as a retailer with respect to the goods sold will be entitled to compute the tax upon goods sold at retail on the price for which like articles are sold by him at wholesale.

(b) It should be noted that the provision of the law is that the tax in respect to retail sales shall be computed "on the price for which like articles are sold" at

wholesale. To take advantage of this provision, therefore, it is necessary that a manufacturer shall have sold identical articles both at wholesale and at retail, in order to arrive at a basis for computing the tax.

(c) In arriving at the basis of tax on retail sales, if a manufacturer has but one regular wholesale selling price or rate of discount from list, the basis of tax on all sales, whether wholesale or retail, is the same; that is, his regular wholesale selling price.

(d) If a manufacturer sells regularly at wholesale at two or more rates of discount, it will be necessary for him to arrive at his average wholesale selling price to determine the basis of tax on retail sales; and this must be done by dividing the sum of the actual wholesale selling prices of the article in question by the total number of such articles so sold, and not by the process of "averaging discounts."

(e) Except as provided in this section, the basis of tax on retail sales for any given calendar month shall be the manufacturer's actual average wholesale selling price for the same month. But if the manufacturer desires to pass the tax on as such and to bill his customer a definite amount as tax previous to the determination of his actual average wholesale selling price for that month, he may base the tax on his average wholesale selling price for the second calendar month preceding that in which such retail sale is made, provided no change has been made in the meantime in his retail list price; if his retail list price has been changed, the average wholesale price determined as aforesaid must be adjusted accordingly, so that the amount upon which the tax is based will bear the same proportion to the retail list price then in force as the average wholesale price for the second preceding month bears to the retail list price then in force.

(f) For example, the tax on retail sales made in June may be based on the manufacturer's average wholesale selling price for the same article during the month of April: *Provided*, He has made no change in his retail list price of the article. If in April his retail list was \$15 and his average wholesale price was \$10, and in June his retail list price had been increased 20 percent, to \$18, the average wholesale price or basis of tax would be likewise increased 20 percent, to \$12.

(g) For the purpose of the tax, a wholesale sale is held to be a sale to a vendor for resale, or a sale to a consumer or user in wholesale quantity as distinguished from a sale to a consumer or user at a wholesale price. All sales at wholesale are subject to tax on the basis of the actual selling price of each article sold. (See § 302.3.)

§ 302.11 *Colorable sales.* (a) If a manufacturer sells a taxable article to a subsidiary corporation at less than the fair market price obtainable therefor, the tax shall be based on the selling price of the subsidiary corporation.

(b) If a manufacturer, through the device of a selling branch, selling agent, nominal sale, or in any other manner, contrives to sell his product to any person (see § 302.2) at less than the fair market price obtainable therefor, with the result of benefiting his business or with the intent to cause such benefit, the tax from such manufacturer shall be based on the fair market price obtainable for such products and not on their nominal selling price, such fair market price obtainable therefor to be determined by the commissioner in each instance. If, however, the relationship is one of principal and agent, rather than purchaser and seller, then the tax attaches on the price for which sold by the agent and at the time so sold. (See § 302.7.)

#### SUBPART B—ADMINISTRATIVE AND GENERAL PROVISIONS

§ 302.12 *Records and return and payment of tax.* (a) Each manufacturer of any of the articles enumerated must prepare a monthly return in duplicate on Form 728 (revised), and pay the taxes imposed on such articles to the collector of internal revenue for the district in which his principal place of business is located. The original return must be under oath.

(b) Any return may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath. Instructions for preparing will be found on the back of the form.

(c) The original return must be filed and the tax paid on or before the last day of each month, covering all transactions of the preceding month, and must be in the office of the collector or his deputy on or before the last due date, except that when the last day of the month in which a return and payment are due

falls on Sunday or a legal holiday, the return may be filed and payment made to the collector of internal revenue or his authorized representative on the next secular or business day. The duplicate return shall be retained.

(d) A return must be forwarded to the collector for each month whether or not taxable sales have been made. Where a manufacturer has no tax to report during any month, this fact should be noted on the return made for that month. If a manufacturer ceases business, the last return should be marked "Final return."

(e) Branch houses should in general make reports to the parent house, which is liable to make monthly returns of the sales of the branch house. An itinerant manufacturer should make return and pay the tax to the collector of the district where the sales were made.

(f) The books of every person liable to the tax shall be open at all times for inspection by examining internal revenue officers. (As to penalties, see § 302.13.)

(g) The person responsible for the return and payment of the tax shall, in order that returns may be readily checked and verified by the examining internal revenue officers, keep such records and memoranda as will clearly show the amounts of the sales of taxable articles for each month.

(h) Such records must be kept on file at the taxpayer's principal place of business or at some other convenient and safe location for a period of four years from the date the tax becomes due. They shall be kept in such a manner as to be readily accessible and capable of being verified on request of internal revenue officers.

(i) In collecting the excise taxes the commissioner has the benefit of all existing internal revenue laws. In aid of the enforcement of the statute the commissioner may require any person to keep specified records, to render returns and statements as directed, to submit himself and his books to examination, and to comply with such regulations as may be prescribed.

[Regs. 47, Oct. 17, 1928, as amended by T. D. 5676, 13 F. R. 7301]

§ 302.13 *Ad valorem penalties and interest.* (a) Any manufacturer who fails to file a return within the time prescribed is liable under section 3612 (d) (1),

I. R. C., to a penalty of 25 percent of the amount of the tax, unless it is shown that the failure to file it was due to a reasonable cause and not to willful neglect. Any manufacturer who willfully files a false or fraudulent return is liable under section 3612 (d) (2), I. R. C., to a penalty of 50 percent of the amount of the tax. The return must be made on Form 728 (revised), on or before the last day of the month following the month in which the sale is made, as provided in § 302.12.

(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time fixed for filing the return. If the tax is not paid when due, there shall be added as a part of the tax interest at the rate of 1 percent a month from the time when the tax became due until paid.

(c) In any case where it is found necessary to make assessment of tax, or tax, 25 percent penalty, and interest, and payment is not made within ten days after issuance of notice and demand based on an assessment approved by the Commissioner, there will attach, in addition to the foregoing penalties, a 5 percent penalty and interest at the rate of 6 percent per annum on the total assessment. This penalty and the interest are imposed by section 3655 (b), I. R. C.

§ 302.14 *Specific penalties.* The specific penalties provided in sections 2707 (b), (c), and 3793 (b) (1), I. R. C., are not assessable, but constitute liabilities which may be imposed upon prosecution for and conviction of one or more of the violations enumerated therein. The penalty provided in section 2707 (a), I. R. C., may be assessed if the offense is such that no penalty may be assessed under section 3612, I. R. C. (see § 302.13). The penalties provided are imposed upon any officer or employee of a corporation or member or employee of a partnership who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 302.15 *Credits and refunds.* (a) If a manufacturer overpays the tax due with one monthly return, or if he overcollects the tax, he may take credit for the overpayment or overcollection against the tax due with a succeeding return. If he overcollects the tax, he shall, upon proper application, refund the overcollection to the person entitled

thereto, even though such amount has already been paid over to the collector of internal revenue and no corresponding credit has yet been secured. In case a credit is claimed, a statement shall be attached to the return setting forth fully the facts regarding alleged overpayment or overcollection. In the case of the overcollection of a tax, no credit for the amount overcollected shall be allowed until the manufacturer making the overcollection submits a statement showing that the tax in each case so overcollected has been returned to the person making the overpayment, that no claim for a refund of any part of such amount has been filed with the collector or commissioner on behalf of any person who paid such amounts, and a complete list of such persons. It should be noted that a credit may be taken under section 2703 (a), I. R. C., only in the case of overpayment or overcollection, as distinguished from an illegal or erroneous payment or collection. A complete and detailed record of such overpayments must be kept by the taxpayer for a period of at least 4 years from the date the credit is taken.

(b) In all cases where a tax has been collected or paid and such collection or payment is alleged to be illegal or erroneous, it will be necessary for the person so paying the tax to file claim for refund on Treasury Department Form 843. [Regs. 47, Oct. 17, 1928, as amended by T. D. 5676, 13 F. R. 7301]

§ 302.16 *Sales for export.* (a) The tax does not attach to the sale of an article which is sold for export by the manufacturer and in due course so exported. An article may be sold for export but never exported or not exported in due course. Also, an article may be exported in due course by the purchaser, although not sold for export. In order to be exempt from tax, however, it is necessary that the article be both sold for export by the manufacturer and in due course so exported.

(b) An article will be regarded as having been sold for export if the manufacturer has in his possession at the time that title passes or of shipment (whichever is prior) (1) an order or contract of sale or document incidental thereto showing in writing that the manufacturer is to ship the article direct to a foreign destination; or (2) where the delivery is to be made to the purchaser or his agent within the United States, a certificate from such purchaser

or agent, as the case may be, showing (i) that the article is purchased either to fill a firm order then held by such purchaser requiring shipment to a foreign destination, or for shipment (or transportation) by him in due course to himself or to his agent or to his principal in a foreign country, or that the article is purchased to fill future orders calling for shipment thereof by the purchaser direct to a foreign destination, and (ii) that the article will be transported to a foreign destination in due course prior to use, resale, or further manufacture within the United States.

(c) In these cases the manufacturer, for a period of 12 months from the date when title passes or of shipment (whichever is prior), is excused from filing returns for the articles so sold. This temporary exemption becomes permanent upon the manufacturer's attaching to such order, contract, or certificate before the expiration of such period of 12 months due proof of exportation. (See § 302.17.) On the other hand, if within such period of 12 months the manufacturer has not received and attached to such order or contract such "proof of exportation," then the temporary exemption ceases and the manufacturer shall include a tax on the sale of such article in his return for the month in which such period of 12 months expires. The order or contract of sale and certificate and the "proof of exportation" must be preserved by the manufacturer in such a way as to be readily accessible for inspection by internal revenue officers. No sale shall be considered to be exempt from tax under section 2705, I. R. C., unless its character as an export sale has been established in accordance with the provisions of this section.

NOTE: Treasury Decision 5536, Sept. 10, 1946, 11 F. R. 10282, provides in part as follows: "On and after October 1, 1946, the procedure outlined in §§ 302.16 and 302.17 shall be followed with respect to sales by manufacturers and producers of the articles enumerated in Chapters 25 and 29 of the Internal Revenue Code, when such articles are sold to foreign governments for export."

§ 302.17 *Proof of exportation.* (a) By the term "proof of exportation" is meant a statement of the exporter (who, if not the manufacturer, must be the purchaser from the manufacturer or an agent of one or the other) containing the following information: (1) The name and address of manufacturer; (2) the name and address of the exporter; (3)

whether exporter is acting in his own behalf or as agent, and if agent, name of principal; (4) a brief description of the article; (5) the date upon which the article was delivered to a carrier for transportation beyond the limits of the United States (or if not transported by carrier the actual date and manner of transportation out of the United States); (6) the name of carrier issuing export bill of lading, and if a carrier by sea, the name of vessel carrying the article and date of departure from United States; (7) destination of article; (8) statement that the article was in fact exported in due course prior to use, resale, or further manufacture within the United States.

(b) Where the manufacturer is the exporter there may be attached to the original contract or order as proof of exportation, in lieu of the statement provided for in paragraph (a) of this section; (1) a copy of export bill of lading, or (2) a certificate by the agent or representative of the export carrier showing exportation of the article, or (3) certificate of mailing, where the article was shipped by parcel post. Where the exportation is accomplished by a person other than the manufacturer, the exporter must carefully preserve in his own files a copy of export bill of lading or other shipping document and all other papers bearing on the transaction, readily accessible for inspection by any authorized official of the United States.

(c) Where the exportation is accomplished by a person other than the manufacturer, the statement required in paragraph (a) of this section, may cover all the articles received from the manufacturer upon any one contract or shipment, whether exported on different dates or shipped to different consignees.

(d) In any case where the manufacturer does not have in his possession, within the 12-months' period, proof of exportation as outlined herein, the manufacturer must pay the tax. Whenever proper proof of exportation is available, claim for refund of the amounts so paid may be filed.

[Regs. 47, Oct. 17, 1928, as amended by T. D. 5676, 13 F. R. 7301]

NOTE: See note to § 302.16.

§ 302.18 *Shipments to possessions of the United States.* The same rulings as relate to sales for export and proof of exportation will apply to sales for shipment to a possession of the United States

and in due course so shipped. (See §§ 302.16, 302.17.) (See § 302.19 with reference to shipments to the Virgin Islands, Puerto Rico, and the Philippines.)

§ 302.19 *Trade with the Virgin Islands, Puerto Rico, and the Philippines.* A sale which results in the shipment of articles into the United States from the Virgin Islands is taxable to the same extent as a sale of articles within the United States. Articles going into the Virgin Islands from the United States are free from tax in the United States. The same rules apply to trade with Puerto Rico and the Philippine Islands. (See § 302.18 for shipments to other possessions of the United States, such as the Canal Zone, Guam, etc.)

§ 302.20 *Payment of tax by uncertified checks.* Collectors may accept uncertified checks in payment of excise taxes, provided such checks are collectible at par—that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words, "This check is in payment of an obligation to the United States and must be paid at par. No protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more persons' taxes, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order, or other instruments included in the same remittance; (d) the name of each person whose tax is to be paid by the remittance; (e) the amount of the payment on account of each person; and (f) the kind of tax paid.

§ 302.21 *Procedure with respect to dishonored checks.* If the bank on which any such check is drawn should refuse to pay it at par, the check should be returned through the depository bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depository bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. If any tax-

payer whose check has been returned uncollected by the depository bank should fail at once to make the check good the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is also not released from his obligation until the check has been paid. (See section 3656, I. R. C.)

§ 302.22 *When fractional part of cent may be disregarded.* In the payment of taxes, a fractional part of a cent may be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

§ 302.23 *Misrepresentation of tax.* If a manufacturer or other vendor misrepresents the tax, he is guilty of a misdemeanor and is liable to a fine of \$1,000 and to imprisonment for a year. This provision is designed, among other things, to prevent a vendor adding more than the amount of the tax to the price of an article and representing that the increase is due to the tax.

## Part 305—Tax on Playing Cards

### Subpart A—General

- Sec.  
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### Subpart B—Manufacturers of Playing Cards

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### Subpart C—The Importation, Reimportation, Exportation of Playing Cards, and Tax-Free Withdrawal Thereof for Use of the United States

- 305.19 Imported playing cards.  
305.20 Reimported playing cards.  
305.21 Exportation of playing cards.  
305.22 Withdrawal of playing cards for use of United States.

**AUTHORITY:** §§ 305.1 to 305.22 issued under 53 Stat. 467; 26 U. S. C. 3791. Interpret or apply 53 Stat. 199, as amended; 26 U. S. C. 1807.

**SOURCE:** §§ 305.1 to 305.22 contained in Regulations 66, Aug. 9, 1933, except as noted following sections affected.

### SUBPART A—GENERAL

§ 305.1 *Meaning of terms used.* The word "person" may extend to and include a partnership, association, company, or corporation, as well as a natural person. The word "company" or "association" when used in reference to a corporation embraces the word "successors or assigns of such company or association," the same as if such words or words of similar import were expressed. Words in the singular number or masculine gender may extend to and be applied to several persons or things or to females, and similarly the plural number may include the singular. The requirement of an "oath" will be complied with by affirmation in judicial form.

[Redesignation noted at 14 F. R. 5199]

§ 305.2 *Authority to enter premises.*

(a) The right to enter in the daytime any building or place where any article or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects, is given the collector, deputy collector, or inspector within his district, and any internal-revenue agent whose employment is authorized by section 3601, I. R. C. See also section 3614, I. R. C. When such premises are open at night such officers may enter them while open in the performance of their official duties. If the owner of such building or place, or person in charge, refuses to admit such officer or to permit him to examine such articles or objects, applicable penalties will be invoked. The above right to enter certain premises does not extend to private homes where it is believed a fraud upon the revenue is being committed, which may be entered only under authority of a search warrant.

(b) A search warrant can not be issued but upon probable cause, supported by affidavit, naming or describing the person and particularly describing the property and the place to be searched (18 U. S. C. 3105, 3109). (For authority for issuance of search warrants in internal-revenue cases, see section 3602, I. R. C.)

[Redesignation noted at 14 F. R. 5199]

**SUBPART B—MANUFACTURERS OF PLAYING CARDS**

§ 305.5 *Manufacturer defined.* (a) A manufacturer of playing cards is (1) one who manufactures playing cards for sale or consumption; (2) one who packs or repacks playing cards for sale; (3) one who offers or exposes for sale packs of playing cards, either domestic or imported, without the use of the proper stamps denoting payment of the tax thereon.

(b) The person who cuts playing cards from large lithographed sheets and finishes them is regarded as the manufacturer thereof and not the lithographer.

(c) A person who cleans, gilds, reassembles, or repacks playing cards previously tax paid is deemed a manufacturer of playing cards and subject to all the liabilities thereof.

(d) A club which resells packs of cards on which the stamps have been broken incurs liability as a manufacturer of playing cards and must restamp each package so sold.

§ 305.6 *Manufacturers to register.* Every manufacturer of playing cards shall register with the collector for the district his name or style, place of residence, trade or business, and the place where such business is carried on, and failure to register as provided in this section and required shall subject such person to a penalty of \$50 (sec. 1831 (b), (c), I. R. C.). To register as required Form 277 should be modified and used. The collector receiving a return for registry from one intending to engage in the manufacture of playing cards will issue to every such person or persons so registered a certificate of registry on Form 382, which should be conspicuously posted in his place of business.

§ 305.7 *Manufacturer's monthly return.* (a) Every manufacturer or importer of playing cards must furnish to the collector of his district not later than the 10th day of each month an accurate return, under oath, on Form 749, in duplicate, of the following transactions in packs of playing cards during the preceding month: The number on hand at the beginning of the month; the number manufactured during the month; the number removed tax-paid and for export during the month; the number on hand at the end of the month; and the values of all stamps purchased and used during

the month. Blanks, Form 749, are furnished by collectors of internal revenue.

(b) A return on Form 749 must be submitted each month to date of closing. Any stock of playing cards on hand when the business is discontinued must be accounted for on monthly returns. Both copies of the return for the last month must be marked "Final returns."

§ 305.8 *Tax on playing cards.* (a) On and after October 1, 1941, the rate of tax on playing cards is 13 cents per pack containing not more than 54 cards. Each additional 54 cards or fraction thereof in a pack constitutes a new pack on which tax must be paid. For example, if a pack contains 120 cards it must be considered as constituting three packs, two packs of 54 cards and one pack of 12 cards, and each such pack is subject to tax at the rate in effect when liability is incurred.

(b) The tax on playing cards accrues upon removal from the factory or place where made, or upon sale prior to such removal, and is to be paid by the manufacturer thereof by the affixing of stamps before removal. (See § 305.5, defining a manufacturer of playing cards, and § 305.11, relative to affixing stamps.)

(c) The tax applies to ordinary playing cards such as are used in playing games of skill or chance such as "poker," "euchre," "pinochle," and the like, and to cards that may be used in lieu of ordinary playing cards. Cards for the game of "authors," so called, and the like, differing wholly from ordinary cards, are not subject to tax.

(d) Miniature playing cards, playing cards with advertising matter printed thereon, and so-called "fortune-telling," "magic," or "trick" decks composed wholly or in part of playing cards or cards that may be used in lieu of playing cards are all subject to the tax.

(e) Where packages of playing cards are sent out from the factory duly stamped and are thereafter opened and stamp broken, the cards cannot be returned to the packages and sold under a broken stamp; a new stamp must be affixed to each package and duly canceled.

(f) If cards are reassembled from packs on which tax has been paid, each deck must show the requisite stamp.

[Regs. 66, Aug. 9, 1933, as amended by T. D. 5080, 6 F. R. 5109]

§ 305.9 *Stamps for payment of tax.* Stamps have been prepared pursuant to law for payment of the tax on playing cards, and have been furnished to collectors for sale only to such manufacturers as have registered as required by law and to importers of playing cards.

§ 305.10 *Use of order forms for stamps.* Manufacturers must use Form 218 in ordering playing card stamps. This form is printed by the Government only and furnished to collectors for distribution. Each such order form must be accompanied by the proper remittance for the full amount of the order. Unless otherwise directed, stamps will be sent by ordinary mail at the risk of the purchaser. If ordered to be sent by registered mail, the order must be accompanied by 15 cents additional to pay registry fee. Stamps will also be forwarded by express at the expense of the taxpayer.

§ 305.11 *Affixing stamps.* (a) Each pack of playing cards, except as provided in this section, shall, prior to sale, or before removal from the place where manufactured, packed, reassembled, or repacked, have securely affixed thereto proper internal-revenue stamp or stamps of such denomination as will cover fully the tax thereon. Such stamp or stamps shall be affixed in such manner as to seal the pack and to necessitate the stamp or stamps being torn in two pieces when the pack is opened.

(b) Where playing cards are packed in leather, plush, celluloid, ornamental, or metal cases, the stamps denoting payment of the tax thereon may be affixed to inside wrappers instead of to the cases proper, provided one of the following methods of packing and stamping is used:

(1) Paper bands not less than one-half inch wide must be extended around the entire pack of cards, both the long and short way, and securely fastened together with paste or mucilage at the intersection on the back of the pack so that the pack cannot be separated without breaking the bands. The internal-revenue stamp must be affixed to the pack in such manner that it will adhere partly to one of the bands and partly to the back of the top card so that removal of the bands will necessitate tearing the stamp in two. If desired, an extra blank card may be placed on top of the pack for the purpose of attaching a part of the stamp thereto.

(2) The package of cards must be completely wrapped with paper, securely sealed with paste or mucilage, and the internal-revenue stamp affixed across the place where the wrapper is sealed in such manner as to necessitate tearing the stamp in two when the cards are removed from the wrapper.

§ 305.12 *Cancellation of stamps.* (a) Each stamp affixed to a package of playing cards must be canceled by writing or printing in ink across the face of the stamp the initials of the manufacturer.

(b) Every person who fraudulently makes use of an adhesive stamp to denote payment of the tax on playing cards without canceling the stamp as above provided shall forfeit the sum of \$50.

§ 305.13 *Penalty for removing playing cards for sale or consumption without payment of tax.* Whenever any person makes, prepares, and sells or removes for consumption or sale, playing cards, whether of domestic manufacture or imported, upon which a tax is imposed by law, without affixing thereto an adhesive stamp denoting the tax before mentioned, he shall incur a penalty of \$50 for every omission to affix such stamps. Whoever manufactures or imports and sells, or offers for sale, or causes to be manufactured or imported and sold, or offered for sale, any playing cards, without the full amount of tax being duly paid, is guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than \$100 for each offense (sec. 1820 (b), I. R. C.).

§ 305.14 *Penalty for removing or reusing playing card stamps.* Every manufacturer or maker of playing cards who, after the same are made, and the particulars hereinbefore required as to stamps have been complied with, takes off, removes, or detaches, or causes, or permits, or suffers to be taken off, or removed, or detached, any stamp, or who uses any stamp, or any wrapper or cover to which any stamp is affixed, to cover any other article or commodity than that originally contained in such wrapper or cover with such stamp when first used, with the intent to evade the stamp duties, shall, for every such article, respectively, in respect of which any such offense is committed, be subject to a penalty of \$50, to be recovered together with the costs thereupon accruing; and every such article or commodity as aforesaid shall also be forfeited.

§ 305.15 *Penalty and forfeiture for removing, exposing, or concealing playing cards without affixing stamps.* Every maker or manufacturer of playing cards who, to evade the tax or duty chargeable thereon, or any part thereof, sells, exposes for sale, sends out, removes, or delivers any playing cards before the duty thereon has been fully paid, by affixing thereon the proper stamp, as provided by law, or who, to evade as aforesaid, hides or conceals, or causes to be hidden or concealed, or removes or conveys away, or deposits, or causes to be removed or conveyed away from or deposited in any place, any such article or commodity, shall be subject to a penalty of \$50, together with the forfeiture of any such article or commodity.

§ 305.16 *Penalty and forfeiture for removing, altering, and fraudulently using playing card stamps.* Whoever:

(a) Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by chapter 11, I. R. C., any adhesive stamp or the impression of any stamp, die, plate, or other article, provided, made, or used in pursuance of that title;

(b) Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by that title, (1) any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by that title; or (2) any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or (3) any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article;

(c) Willfully removes, or alters the cancellation, or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has been already used, or knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same;

(d) Knowingly and without lawful excuse (the burden of proof of such excuse

being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article;

is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 5 years, or both, and any such reused, canceled, or counterfeited stamp and the vellum, parchment, document, paper, package, or article upon which it is placed or impressed shall be forfeited to the United States (sec. 1823, I. R. C.).

§ 305.17 *Commissioner's duty to assess omitted taxes.* The law makes it the duty of the Commissioner, upon satisfactory proof, to estimate the amount of tax omitted to be paid whenever any manufacturer of playing cards sells or removes for sale any playing cards liable to payment of tax by stamps, without the use of the proper stamps, and to make an assessment therefor and to certify the same to the collector of the district for collection. Such assessment must be made within four years from the date when the tax became due, except that in the case of a willful attempt in any manner to defeat or evade tax, assessment may be made at any time. Assessments will be predicated upon prima facie evidence of the sale or removal of playing cards by manufacturers without the use of the proper stamps obtained and reported by deputy collectors or other internal-revenue officers, or from other facts and circumstances reported by such officers. The tax so assessed shall be in addition to the penalties imposed by law for such sale or removal.

§ 305.18 *Abandoned or forfeited playing cards.* All playing cards which have been abandoned, forfeited, or seized under warrant of distraint, and which are sold by order of court or of any Government officer for the benefit of the United States, or by a sheriff, constable, or other municipal officer under any writ, execution, or process or order of any court, shall, before delivery by such officer, be properly packed and have the requisite stamps affixed and canceled. With reference to the procurement and cancellation of stamps in cases of sales referred to in this section, instructions will be given as to the procedure according to the facts in the individual case.

**SUBPART C—THE IMPORTATION, REIMPORTATION, EXPORTATION OF PLAYING CARDS, AND TAX-FREE WITHDRAWAL THEREOF FOR USE OF THE UNITED STATES**

§ 305.19 *Imported playing cards*—(a) *Liability to tax.* On and after October 1, 1941, playing cards imported from foreign countries must be tax-paid at the rate of 13 cents per pack of not more than 54 cards. Such tax is in addition to any import duty and must be paid by affixing the required stamps prior to release of the cards from customs custody.

(b) *Purchase of stamps.* Stamps for the tax payment of imported playing cards will be sold to the owner or consignee of such merchandise by the collector of internal revenue of the district in which is located the office of the collector of customs where the customs entry is filed, and only upon requisition therefor (Form 923) duly executed by an authorized customs officer. (See § 305.10 for details other than the form to be used in making the order.)

(c) *Stamping and canceling stamps.* Internal-revenue stamps shall be affixed by the owner or consignee of imported playing cards while they are in the custody of the proper customs officer, and such cards shall not pass out of the custody of such officer until the requisite stamps are affixed and canceled. The method of affixing stamps to domestic playing cards prescribed in § 305.11 is hereby made applicable to imported playing cards. Each stamp so affixed must be canceled by writing or printing in ink across the face of the stamp the initials of the owner or consignee and the date on which the stamp was affixed. [Regs. 66, Aug. 9, 1933, as amended by T. D. 5080, 6 F. R. 5109]

§ 305.20 *Reimported playing cards.* When playing cards produced in the United States which have been duly exported without payment of tax are reimported, they are liable to customs duty, equal to the tax imposed by the internal-revenue laws upon such product. All packs of reimported playing cards must have customs inspection stamps affixed to denote payment of duty thereon. Such packages are not required to have internal-revenue stamps affixed.

§ 305.21 *Exportation of playing cards.* (a) The regulations relating to exportation of playing cards without the payment of tax under the above section of law are prescribed in Part 451 of this

chapter. Copies thereof may be obtained from collectors of internal revenue or from the office of the Commissioner of Internal Revenue. Packs of cards sent abroad even as samples must comply with all the provisions of law and regulations relating to the exportation of playing cards. No provision has been made by law for allowance of drawback on playing cards exported tax-paid.

(b) Playing cards withdrawn free of tax for export must be consigned by the manufacturer in care of the collector of customs at the port of export, and under no circumstances shall such cards be consigned by the manufacturer to another manufacturer or dealer or exporter notwithstanding such other manufacturer or dealer or exporter intends to export the cards so removed. Exportation of playing cards in every instance must be made direct from the factory without any stoppage in transit.

§ 305.22 *Withdrawal of playing cards for use of United States.* The regulations governing the withdrawal of playing cards free of tax for use of the United States are prescribed in Part 450 of this chapter. Copies thereof may be obtained from collectors of internal revenue or from the office of the Commissioner of Internal Revenue.

## Part 306—Processing Tax on Certain Oils

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**AUTHORITY:** §§ 306.1 to 306.24 issued under 53 Stat. 467; 26 U. S. C. 3791. Interpret or apply 53 Stat. 264, as amended; 26 U. S. C. 2470.

**SOURCE:** §§ 306.1 to 306.24 contained in Regulations 48, Aug. 17, 1934, except as noted following sections affected.

**NOTE:** For the suspension of additional processing tax on certain coconut oil, see Proclamation 2693, 3 CFR 1946 Supp.

**SUBPART B—DEFINITIONS**

§ 306.1 *Definitions.* When used in this part, the term:

(a) [Reserved]

(b) *Tax.* Tax means the processing tax imposed by section 2470, I. R. C.

(c) *Person.* Person includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, committee, receiver, assignee for the benefit of creditors, conservator or any person acting in a fiduciary capacity.

(d) *United States.* United States includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(e) *Secretary; Commissioner; collector.* Secretary means the Secretary of the Treasury; Commissioner, the Commissioner of Internal Revenue; and collector, a collector of internal revenue.

(f) *Taxpayer.* Taxpayer means any person subject to liability for the tax imposed by section 2470, I. R. C.

(g) *Oil or oils*—(1) *For the period 11:40 a. m., eastern standard time, May 10, 1934, to 12:00 midnight, eastern standard time, August 20, 1936.* During the period 11:40 a. m., eastern standard time, May 10, 1934, to 12:00 midnight, eastern standard time, August 20, 1936, "oil or oils" means coconut oil, sesame

oil, palm oil, palm kernel oil, sunflower oil, or any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing.

(2) *For the period beginning with 12:01 a. m., eastern standard time, August 21, 1936.* For the period beginning with 12:01 a. m., eastern standard time, August 21, 1936, "oil or oils" means coconut oil, palm oil, palm kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphonated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts. The term also includes sesame oils, sunflower oil (or any combination or mixture containing a substantial quantity of sesame oils, or sunflower oil), if such oil or such combination or mixture or such oil contained therein was imported into the United States prior to 12:01 a. m., eastern standard time, August 21, 1936. It should be noted that fatty acids and salts of sesame oil or sunflower oil imported prior to the above-mentioned time and date are not included.

(3) *"Combination or mixture" and "substantial quantity."* "Combination or mixture" means an article in the formation of which any of the oils have been blended, conjoined, united, admixed, combined, amalgamated, embodied or merged, either by chemical or mechanical means, with or without the presence of any other substance, and which retains a substantial portion (10 percent or more) of substantially all the essential components of any of the oil or oils entering into such combination or mixture. It includes articles in which any of the oil or oils have been subjected to preliminary processing outside the United States or before the effective date, or both, and in which substantially all of the components of such oil or oils are present, even though the oils themselves may no longer exist as such. "Substantial quantity" means 10 percent or more, by weight, of the combination or mixture.

(h) *Fatty acids.* "Fatty acids", for the purposes of this act, are those organic acids found in the free or combined state in coconut oil, palm oil, or palm kernel oil.

(i) *Salts*. "Salts", for the purposes of this act, are those compounds formed by the interaction of fatty acid, free or combined, of coconut oil, palm oil, or palm kernel oil, with a metal or metal-like substance or an organic radical.

(j) *Article processed wholly or in chief value from an article with respect to which a tax is imposed*. "Article processed wholly or in chief value from an article with respect to which a tax is imposed" means any article made entirely from oil or oils, or any article made of two or more components, the oil or oils constituting a component having a value greater than that of any other component. An article is made from an oil or oils when the oil or oils, or any of their processed forms, have been used in making the article. In determining the value of the oil or oils as a component, the combined values of the oil or oils, and of every processed form thereof used in making the article, shall be the value of the oil or oils as a component.

(k) [Reserved]

(l) *Processing*. "Processing" means the use of the oil or oils in the manufacture or production of an article intended for sale.

(m) *Use*. "Use" has a very broad meaning. The term includes, among other things, the using or making use of, or employing, any one or more of the oils, or any combination or mixture of the oils, in any process, or stage or step in the manufacture or production of an article intended for sale, and includes the manufacture or production of such article in its entirety, whether such oil is used as a component or constituent or ingredient of the article, or is used merely as a means or aid in the manufacture or production of the article, and not as a component or constituent or ingredient. Examples which are in no measure all-inclusive of the use contemplated are:

(1) Bleaching, neutralizing, refining, deodorizing, hydrogenating, sulphonating, "twitchellizing," polymerizing, saponifying, or any other commercial processing or any combination of these commercial processings, if such process or combination of processes produces an article intended for sale.

(2) The entire process of manufacture or production of an article intended for sale, where any one or more of the

above-enumerated processes are but incidental steps or stages in a continuous course of manufacture or production of the article.

(3) The manufacture or production of an article intended for sale from an oil or oils upon which any of the processes enumerated in subparagraph (1) of this paragraph have been performed either (i) prior to the importation of the particular oil, or (ii) prior to the effective date of the act.

(4) The use of the oil or oils in connection with any process or stage of the manufacture or production of an article intended for sale, even though the oil is not consumed therein or does not become a component material of the article so produced. The tax does not apply to the use of palm oil, (i) in the manufacture of tin plate, (ii) on or after July 1, 1938, in the manufacture of terneplate, or (iii) on or after November 1, 1942, in the manufacture of iron or steel products. Likewise the tax does not apply to any use on or after July 1, 1938, of palm oil residue resulting from the use of such oil in the manufacture of tin plate, or terneplate, or to any use on or after November 1, 1942, of palm oil residue resulting from the use of such oil in the manufacture of iron or steel products.

(n) *First domestic processing*. "First domestic processing" means the first use in the United States on or after the effective date of the act. At all times in this part, the term processing or first domestic processing will be deemed to be synonymous with "use" or "first use in the United States on or after the effective date", respectively, and will include the meanings implied in the latter terms by subparagraph (m) of this section.

(o) *Processor*. "Processor" is any person who does the "first domestic processing."

(p) *Exportation*. "Exportation" means the severance of an article from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within some foreign country or within a possession of the United States.

(q) *Exporter*. "Exporter" means the person named as shipper or consignee in the export bill of lading.

(r) *Includes and including*. "Includes and including," when used in a statement contained in this part, shall not be

deemed to exclude other things otherwise within the meaning of such statement. [T. D. 4695, 1 F. R. 1564, as amended by T. D. 5179, 7 F. R. 9070]

#### SUBPART C—PROCESSING TAX

§ 306.2 *Nature of the tax.* The tax is an excise, not a property tax, nor an import tax. It is laid not upon the oils as such, or upon the sale of such oils, or upon the importation of such oils, but only upon their use in the manufacture of an article intended for sale.

[T. D. 4695, 1 F. R. 1566]

§ 306.3 *Imposition of the tax—(a) For the period 11:40 a. m., eastern standard time, May 10, 1934, to 12:00 midnight, eastern standard time, August 20, 1936.* During the period 11:40 a. m., eastern standard time, May 10, 1934, to 12:00 midnight, eastern standard time, August 20, 1936, tax is imposed on the first domestic processing of coconut oil, palm oil, palm kernel oil, sesame oil, sunflower oil; or any combination or mixture of such oils.

(b) *For the period beginning with 12:01 a. m., eastern standard time, August 21, 1936.* (1) Beginning with 12:01 a. m., eastern standard time, August 21, 1936, tax is imposed on the first domestic processing of coconut oil, palm oil, palm kernel oil, fatty acids and salts derived from such oils as well as combinations or mixtures of such oils, fatty acids, or salts. However, tax shall not be imposed on any fatty acid or salt (i) resulting from a first domestic processing of coconut oil, palm oil, or palm kernel oil upon which tax has been paid under section 602½ of the Revenue Act of 1934, as amended, or (ii) upon which an import duty has been paid under section 601 (c) (8) of the Revenue Act of 1932, as amended.

(2) Beginning with 12:01 a. m., eastern standard time, August 21, 1936, no tax shall be imposed with respect to a combination or mixture of coconut oil, palm oil, palm kernel oil, fatty acid, or salt of such oils where such oil, fatty acid, or salt has (i) previously been subjected to tax under section 602½ of the Revenue Act of 1934, as amended, or (ii) been subjected to the import tax imposed under section 601 (c) (8) of the Revenue Act of 1932, as amended.

(3) The tax shall apply to sesame oil, sunflower oil, or any combination or mixture of sesame oil or sunflower oil, if such oil, combination or mixture, or the oil contained in such combination or mix-

ture was imported prior to 12:01 a. m., eastern standard time, August 21, 1936.

(c) *Exception.* No tax is imposed on the use of palm oil, (1) in the manufacture of tin plate, (2) on or after July 1, 1938, in the manufacture of terne plate, nor, (3) on or after November 1, 1942, in the manufacture of iron or steel products. Likewise no tax is imposed on any use on or after July 1, 1938, of palm oil residue resulting from the use of palm oil in the manufacture of tin plate or terne-plate, nor to any use on or after November 1, 1942, of palm oil residue resulting from the use of palm oil in the manufacture of iron or steel products.

[T. D. 4695, 1 F. R. 1566, as amended by T. D. 5179, 7 F. R. 9070]

§ 306.4 *When tax attaches—(a) Generally.* The tax attaches upon the first domestic processing of the oil. If some part of the processing of a particular quantity of oil takes place on or after the effective date, the tax attaches notwithstanding that some part of the processing of such quantity took place before the effective date.

(b) *For the period 11:40 a. m., eastern standard time, May 10, 1934, to 12:00 midnight, eastern standard time, August 20, 1936.* If coconut oil, palm oil, palm kernel oil, sesame oil, sunflower oil, or a combination or mixture of such oils, has been refined, sulphated, sulphated, hydrogenated, or otherwise processed, either prior to the importation thereof or prior to 11:40 a. m., eastern standard time, May 10, 1934, or both, the tax attaches to the first domestic processing of such oils, or combinations or mixtures, after such time, in the manufacture or production of an article intended for sale.

(c) *For the period beginning with 12:01 a. m., eastern standard time, August 21, 1936.* (1) Beginning with 12:01 a. m., eastern standard time, August 21, 1936, tax will attach to the first domestic processing of coconut oil, palm oil, palm kernel oil, fatty acids, and salts derived from such oils as well as combinations or mixtures of such oils, fatty acids, or salts.

(2) The tax attaches to sesame oil or sunflower oil, or a combination or mixture of such oils, imported prior to 12:01 a. m., eastern standard time, August 21, 1936, and first domestically processed subsequent to such time.

(3) However, no tax will attach to the first domestic processing of fatty acids

or salts of coconut oil, palm oil, or palm kernel oil if the coconut oil, palm oil or palm kernel oil from the first domestic processing of which the fatty acids or salts resulted, had been subjected to tax under section 602½ of the Revenue Act of 1934, as amended, or if such oils had been subjected to the import tax imposed under section 601 (c) (8) of the Revenue Act of 1932, as amended.

(4) No tax shall attach to a combination or mixture of coconut oil, palm oil, palm kernel oil, fatty acids or salts of such oils, where such oil, fatty acid or salt has previously been subjected to tax under section 602½ of the Revenue Act of 1934, as amended, or been subjected to the import tax imposed under section 601 (c) (8) of the Revenue Act of 1932, as amended.

(5) No tax shall attach to sesame oil, sunflower oil, or any combination or mixture of such oils, if such oils, combinations or mixtures, or the oils contained in such combinations or mixtures were imported subsequent to 12:00 midnight, eastern standard time, August 20, 1936. [T. D. 4695, 1 F. R. 1566.]

§ 306.5 *Measure of the tax*—(a) *Generally*. The measure of the tax is the quantity of oil or oils (in pounds) put into process, that is, the amount of tax will be determined by the quantity of the oil or oils which, in any way, enters into the first domestic processing.

(b) *For the period 11:40 a. m., eastern standard time, May 10, 1934, to 12:00 midnight, eastern standard time, August 20, 1936*. During the period 11:40 a. m., eastern standard time, May 10, 1934, to 12:00 midnight, August 20, 1936, if oil or oils which have been processed and upon which the tax has been paid are combined with oil or oils upon which no tax has been paid, the measure of the tax on the processing of the combination or mixture is the total quantity (in pounds) of such combination or mixture.

(c) *For the period beginning with 12:01 a. m., eastern standard time, August 21, 1936*. Beginning with 12:01 a. m., eastern standard time, August 21, 1936, if oil or oils which have been processed and upon which tax has been paid under section 602½ of the Revenue Act of 1934, as amended, or under section 601 (c) (8) of the Revenue Act of 1932, as amended, are combined with oil or oils upon which no tax has been paid, the measure of the tax on the processing of

the combination or mixture is the quantity (in pounds) of the non-tax-paid oil or oils contained in the combination or mixture.

[T. D. 4695, 1 F. R. 1566]

§ 306.6 *Rate of tax*. (a) The tax is 3 cents per pound with respect to coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing, or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts.

(b) For the period ended 12:00 midnight, eastern war time, September 16, 1942, the applicable statute imposes an additional tax of 2 cents per pound upon the first domestic processing of coconut oil or any combination or mixture containing a substantial quantity of coconut oil with respect to which there has been no previous first domestic processing, except coconut oil (whether or not contained in such a combination or mixture) wholly the production of, or produced wholly from materials the growth or production of, the Philippine Islands or any other possession of the United States. Effective as of 12:01 eastern war time, September 17, 1942, such additional tax is suspended until 12:00 midnight, eastern war time or eastern standard time (whichever is then in effect) June 30, 1944, unless the suspension is terminated prior thereto in accordance with the provisions of the act approved September 16, 1942 (56 Stat. 752).

[T. D. 5179, 7 F. R. 9070]

§ 306.7 *Liability for the tax*. Liability for the tax attaches to the processor upon the first domestic processing of the oil or oils, whether done directly or by an agent or employee. Payment of the tax must be made at the prescribed time, in accordance with the provisions of § 306.10. For provisions relating to the liability of a vendee under a contract made prior to January 26, 1934, for the sale, on or after the effective date, of any article processed wholly or in chief value from oil or oils, see §§ 306.16–306.18 (existing contracts).

§ 306.8 *Records*. (a) Every processor shall keep on file at his principal place of business, or in some other convenient and safe location in the same district, accurate records and accounts with respect to such processing. A separate record must be kept for each plant where oil or oils are processed. The records

shall contain an inventory as of the time the act became effective of:

(1) All raw materials from which oils are produced;

(2) All crude or virgin oils;

(3) All oils which have been imported in a processed state;

(4) All oils in a state of processing into a marketable product; and

(5) All oils completely processed.

(b) For the period May 10 to May 31, 1934, inclusive, records must be maintained showing:

(1) The quantity of (i) all raw materials from which oils are produced, (ii) all crude or virgin oils, (iii) all oils which were imported and upon which preliminary processing had been done prior to importation, and (iv) all oils completely processed, held at 11:40 a. m., eastern standard time, May 10, 1934.

(2) Daily records of the quantity of oils put into process, showing the purpose for which used and the products produced therefrom.

(3) The quantity of oils put into process under bond for export.

A similar record (except for the requirement contained in subparagraph (1) (iv) of this paragraph) shall be maintained for each subsequent calendar month.

(c) Records relative to coconut oil or to any combination or mixture containing a substantial quantity of coconut oil, with respect to which oil no tax has been paid, must be maintained in such a manner as to show:

(1) Separately, the quantity of coconut oil or combination or mixture containing a substantial quantity of coconut oil, which is wholly the production of (i) the Philippine Islands, (ii) Guam, (iii) American Samoa, and (iv) all other possessions of the United States; and

(2) Separately, the quantity of coconut oil, or combination or mixture containing a substantial quantity of coconut oil, produced wholly from materials which are the growth or production of (i) the Philippine Islands, (ii) Guam, (iii) American Samoa, and (iv) all other possessions of the United States.

The records shall also show the country or possession in which the raw materials or oils were produced, when such articles were brought into the United States, and the name and address of the importer.

Such records shall be retained for a period of at least four years from the date the tax became due. The books of every person liable for the tax shall at all times be open for inspection by internal revenue officers.

For provisions relating to the imposition of penalties for failure to keep proper records, see § 306.21.

[Regs. 48, Aug. 17, 1934, as amended by T. D. 5101, 6 F. R. 6298]

§ 306.9 *Returns.* (a) For the period beginning May 10, 1934, and ending May 31, 1934, and for each calendar month thereafter, each processor shall file a return, in duplicate, on Form 932, in accordance with the instructions printed thereon and in accordance with the regulations in this part. This form may be obtained from any collector. The return shall be made under oath and verified before an officer duly authorized to administer oaths. If the amount of the tax covered by the return is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath. The return shall be filed with the collector for the district in which is located the principal place of business of the processor. If he has no principal place of business in the United States, the return shall be filed with the collector at Baltimore, Md. In each case the return shall be filed with the collector on or before the last day of the month following that for which it is made.

(b) If the last day of the month in which the return is due falls on Sunday or a legal holiday, the return shall be filed with the collector, or his authorized representative, on or before the next secular or business day. A return shall be filed with the collector for each month whether or not any tax liability has been incurred for that month. If a processor ceases business, the last return should be marked "Final return."

(c) For provisions relating to the imposition of penalties for failure to file a return, see § 306.21.

§ 306.10 *Payment of the tax.* The processing tax is due and payable to the collector, without any assessment by the Commissioner or notice from the collector, at the time fixed for filing the return. For provisions relating to penalties, see § 306.21.

§ 306.11 *Fractional part of a cent.* In the payment of the tax, a fractional part

of a cent may be disregarded unless it amounts to one-half of a cent or more.

§ 306.12 *Interest.* The due date of the tax for the purpose of computing interest is the day upon which the return is required to be filed and the tax paid. If the tax is not paid at the time the return is required to be filed, there shall be added as part of the tax, interest computed at the rate of 6 percent per annum from the time the return is required to be filed until the tax is paid. For provisions relating to penalties, see § 306.21.

#### SUBPART D—EXPORTATION

§ 306.13 *Processing for export.* (a) A person may process oil or oils for exportation, without payment of the tax, where (1) the oil or oils are specifically processed for exportation, and the product of such processing is actually exported by such person, and (2) such person has, prior to such processing, filed a bond on Form 933, in duplicate, with satisfactory surety, with the collector for the district in which he would be required to file a return and pay the tax (see §§ 306.9, 306.10). The bond shall be in a sum equivalent to the amount of tax which would be incurred during an average 3-month period with respect to the processing of articles for exportation, and in no case less than \$500. The liability under such bond will be a continuing one, subject to increase as successive processing for exportation takes place and to decrease upon proof of exportation of the product of such processing. When the limit of liability under such bond has been reached, no further processing may be done thereunder until such liability is decreased by actual exportation, or a new bond, in duplicate, on Form 933 is filed, under which subsequent processing without the payment of the tax will be permitted. The bond may be executed with corporate surety or individual sureties. If the bond is executed with individual sureties, each individual surety will be required to furnish an affidavit, in duplicate, on Form 33 which should be attached to the original and duplicate bond, respectively.

(b) A period of 6 months will be allowed from the date the oil or oils are put into process, during which time the payment of the tax will not be required unless the product of the processing has been sold or otherwise disposed of in the United States. If at the end of such

period, satisfactory proof of exportation of the product of the processing is not received, or if during such period the product of the processing has been sold or otherwise disposed of in the United States, the tax on the processing of the oil or oils shall be immediately assessed as of the month the oil or oils were put into process. If proof of exportation later becomes available, a claim for refund may be filed in accordance with the provisions contained in § 306.14.

(c) If oil or oils have been processed under bond, the proof of exportation provided for in § 306.15 shall be supplemented by a statement containing the following information: (1) The date or dates when the oil or oils were put into process, (2) the date or dates when the product of the processing was exported, and (3) the date or dates when the proof of exportation, as provided for in § 306.15, was received by the processor. The records containing such information and proof of exportation shall be retained for a period of 4 years from the last day of the month following that in which the oil or oils were put into process.

(d) A person processing oil or oils for exportation under bond shall submit to the collector on or before the last day of each month a sworn statement, in duplicate (the duplicate to be retained by the collector and the original forwarded to the Commissioner, marked for the attention of the Sales Tax Division, Miscellaneous Tax Unit), showing the following:

- (1) The name and address of the processor;
- (2) The kind of oil or oils processed;
- (3) The amount of each kind processed under bond on hand at the beginning of the month;
- (4) The amount of each kind put into process under bond during the month;
- (5) The amount of each kind mentioned in subparagraphs (3) and (4) of this paragraph exported during the month;
- (6) The date or dates the amount mentioned in subparagraphs (5) of this paragraph was exported;
- (7) The date or dates the amount mentioned in subparagraph (5) of this paragraph was put into process;
- (8) The amount mentioned in subparagraphs (3) and (4) of this paragraph with respect to which proof of exportation

tion has been received during the month and the date or dates received;

(9) The name of the foreign purchaser;

(10) The amount of subparagraphs (3) and (4) of this paragraph sold (other than for export) or otherwise disposed of in the United States and the date thereof;

(11) The amount of tax liability involved on the oil or oils mentioned in subparagraphs (3) and (4) of this paragraph;

(12) The date, term, and penal sum of the bond; and

(13) The amount of tax debited and credited against the bond.

§ 306.14 *Refund on articles exported.*

(a) When an article processed wholly or in chief value from oil or oils, with respect to the processing of which a tax has been paid, is exported to a foreign country or to a possession of the United States, the exporter shall be entitled to a refund of the tax due and paid. The test to be applied in determining the right to refund is (1) was the article processed wholly or in chief value from oil or oils with respect to the processing of which a tax has been paid, and (2) was the article actually delivered in a foreign country or in a possession of the United States for use therein. Refund will not be made unless both tests are satisfied.

(b) When any person exports an article processed wholly or in chief value from oil or oils, with respect to the processing of which the tax has been paid, he may file a claim for refund of such tax on Form 843. Each claim for refund shall show with respect to each export shipment (1) the actual net weight of each article exported, together with such a description of the article as will enable the Commissioner to determine the proper amount of refund; (2) the quantity of oil or oils contained in each article with respect to the processing of which claim is made that tax was paid; (3) the amount of tax due and paid on the processing of the oil or oils contained in the article; (4) proof satisfactory to the Commissioner that the tax, refund of which is claimed, was actually due and paid to a collector; (5) the date or dates of payment; (6) the collection district in which the tax was paid; and (7) proof of exportation as provided in § 306.15.

§ 306.15 *Proof of exportation.* (a) Exportation must be evidenced by (1) a copy of the export bill of lading issued by the delivering carrier, or (2) a certificate by an agent or representative of the export carrier showing actual delivery of the article in a foreign country or a possession of the United States, or (3) a certificate of landing signed by a customs officer of the foreign country to which the article is delivered, or (4) where such foreign country has no customs administration, a sworn statement of the foreign consignee showing receipt of the article.

(b) If a person is required to submit proof of exportation (see §§ 306.13, 306.14), and such person possesses the evidence enumerated in either paragraph (a) (1), (2), (3), or (4) of this section, he may submit with such claim, in lieu of the evidence, an affidavit indicating what evidence is available to prove that the article was in fact exported and at what place such evidence is available for inspection by internal revenue officers.

(c) The evidence establishing proof of exportation must be preserved by either the processor or any person who has filed a claim for refund (see § 306.14) for a period of at least 4 years from the last day of the month following that in which the first domestic processing began, and must be readily accessible for inspection by internal revenue officers.

SUBPART E—EXISTING CONTRACTS

§ 306.16 *Scope of subpart.* This subpart is concerned and deals only with the liability for tax under contracts in writing, entered into prior to January 26, 1934, which provide for the sale on or after the effective date of any article processed wholly or in chief value from oil or oils. See § 306.1 (h), (j).

§ 306.17 *Liability for tax under existing contracts.* (a) Where (1) such contract does not permit the addition to the amount to be paid thereunder of the whole of the tax, and (2) such contract does not expressly prohibit such addition to the amount to be paid thereunder, the vendee is liable for so much of the tax as is not permitted to be added to the contract price. It is only in the case of contracts which comply with both subparagraphs (1) and (2) of this paragraph that the vendee is liable for the tax.

(b) If a vendee, who is liable because of an existing contract, has another bona fide contract which meets the tests prescribed in paragraph (a) of this section, and such second contract provides for the delivery of all or a part of the articles covered by the first contract, the second vendee is liable under paragraph (a) of this section for the proper portion of the tax with respect to the articles covered by the first contract.

(c) Where (1) the contract permits the addition of the whole of such tax to the contract price, or (2) the contract expressly prohibits such addition to the contract price, the vendee is not liable. Under such a contract, the provisions contained in § 306.18, relating to collection of the tax by the vendor from the vendee, are inapplicable.

§ 306.18 *Collection by vendor from vendee; refunds; records.* (a) The tax payable by the vendee (as provided in § 306.17 (a)) shall be paid to the vendor at the time the sale is consummated, and shall be returned to the United States by the vendor in the same manner as the processing tax is returned and paid under the act. In case of failure or refusal by the vendee to pay the tax to the vendor, the vendor shall report the facts in detail to the Commissioner, who shall cause the tax to be assessed against, and collected from, the vendee.

(b) Each vendor having any contract on the effective date, under which there may be imposed upon the vendee liability for the whole or part of the tax (see § 306.17 (a)), shall make a report, under oath, to the collector within 30 days after the regulations in this part are promulgated. This report shall show, in respect to each such contract: (1) The date of the contract, (2) the total quantity of the processed article covered by the contract, (3) the quantity remaining unfilled on the effective date, and (4) the terms of delivery which apply to such remaining quantity.

(c) Each vendor having any such contract (see § 306.17 (a)) on the effective date shall keep a detailed record showing, with respect to each article required to be delivered under each such contract, (1) the quantity of the article originally required to be delivered under the terms of such contract, (2) the quantity to be delivered under the terms of such contract on or after the effective date, (3) the quantity of such article delivered daily on each contract on or after the

effective date, (4) cancellation, in whole or in part, of any such contract, and (5) the quantity of such article delivered daily on or after the effective date, otherwise than under the terms of such contract.

(d) The vendor, provided he has complied with the requirements contained in paragraphs (b) and (c) of this section, will be entitled to refund or to credit on the monthly return, under the provisions of § 306.19, for any tax theretofore returned and paid with respect to the articles delivered under the terms of such contract.

#### SUBPART F—MISCELLANEOUS PROVISIONS

§ 306.19 *Credit and refund*—(a) *Refund and claims therefor.* A tax (including interest or penalty, if any), erroneously, illegally, or otherwise wrongfully collected, may be refunded to the person who paid the tax to the collector. A claim for such refund must be made on Form 843, in accordance with the instructions printed on such form and in accordance with the regulations in this part. Copies of Form 843 may be obtained from any collector. All grounds in detail and all facts alleged in support of the claim must be clearly set forth under oath.

(b) *Credit against taxes due on monthly return.* If any person makes a return showing a greater amount of tax due than is actually due, and pays such tax, he may either file a claim for refund as prescribed in paragraph (a) of this section, or he may take credit for such overpayment upon any monthly return subsequently filed. The return upon which the credit is taken must have securely attached thereto a statement, under oath, setting forth in detail the grounds and facts relied upon in support of the claim. A like credit against any tax, shown to be due on a monthly return, may be taken where a vendor, under a contract within the scope of § 306.17 (a), pays all or part of the tax for which the vendee, under such contract, was liable.

(c) *Records.* A complete and detailed record of each overpayment must be kept by the taxpayer for a period of at least 4 years from the date when a claim for refund or a claim for credit therefor has been filed.

§ 306.20 *Refunds and credits on articles sold to States or political subdivisions thereof.* (a) Where an article

containing oil or oils, with respect to the processing of which a tax has been paid, is sold to a State or political subdivision thereof for use in the exercise of an essential governmental function, the person making the sale shall be entitled to a credit or refund of the tax so paid. Where such articles are sold to the United States Government, the government of the District of Columbia, or a Territory or possession of the United States, no credit or refund may be allowed.

(b) Where a processor sells direct to a State or political subdivision thereof, for use in the exercise of an essential governmental function, an article containing oil or oils, with respect to the processing of which a tax has been paid, he may either file a claim for refund of such tax on Form 843, or take a credit for such tax against the tax shown to be due on any subsequent monthly return. The claim for refund, or the statement in support of the credit, must contain the evidence required in paragraph (d) of this section.

(c) Where a person, other than a processor, sells to a State or political subdivision thereof, for use in the exercise of an essential governmental function, an article containing oil or oils, with respect to the processing of which a tax has been paid, he may file a claim for refund of such tax on Form 843.

(d) Each claim for refund, or statement in support of a claim for credit, shall show, with respect to each delivery to a State or political subdivision thereof, (1) the actual net weight of each article delivered, together with such a description of the article as will enable the Commissioner to determine the proper amount of refund, (2) the quantity of oil or oils contained in each article, with respect to the processing of which claim is made that tax was paid, (3) the amount of tax due and paid on the processing of the oil or oils contained in the article, (4) proof satisfactory to the Commissioner that the tax, refund of which is claimed, was actually due and paid to a collector, (5) the date or dates of payment, (6) the collection district in which the tax was paid, and (7) a certificate from an official of the State or political subdivision thereof, as provided in paragraph (e) of this section certifying that such article was purchased for use in the exercise of an essential governmental function. The state-

ment in support of the claim must identify the article with respect to which refund is claimed.

(e) The certificate required by this section must include an agreement that if any of the articles covered thereby are used otherwise than in the exercise of an essential governmental function, or if any of such articles are resold, the State or political subdivision thereof will report such fact to the vendor. In such cases the person to whom the tax has been refunded or credited shall, in turn, report that fact to the Commissioner and forward therewith the amount of the tax refunded or credited with respect to such articles. For provisions relating to penalties for a fraudulent attempt to evade or defeat the tax, see § 306.21.

A separate certificate must be filed with each order and shall be in the following form:

**CERTIFICATE IN SUPPORT OF CLAIM FOR REFUND OR CREDIT**

(For use by States or political subdivisions)

-----, 19---

(Date)

The undersigned hereby certifies that he is the -----

(Title of officer)

of -----,

(State, city, etc.)

and that the article or articles specified in the accompanying order are purchased for use by the -----

(Department)

in the exercise of essential governmental functions, namely:

-----  
-----  
-----

It is understood that the right to refund or credit exists only where the articles are purchased for use in the exercise of essential governmental functions. It is agreed that where articles purchased under this certificate are used for purposes other than in the exercise of essential governmental functions or are resold, the vendee will report such fact to the vendor.

[SEAL] ----- (Signature)  
(Title of officer)

§ 306.21 *Penalties.* (a) Every person required to file a return on Form 932 and pay the tax, who fails to file such return and to pay the tax due on or before the due date is subject to certain penalties and interest.

(b) The failure to file the return on the due date causes to accrue under section 3612, I. R. C., a penalty of 25 percent of the amount of the tax. A mere failure

to pay the tax within the time prescribed causes interest to accrue at the rate of 6 percent per annum from the time when the tax became due until assessed, or until paid prior to assessment.

(c) Where assessment is made of tax, 25 percent penalty, or interest, and payment is not made within 10 days after the date of issuance of Form 17 (First notice and demand), based on assessment approved by the Commissioner, there will accrue under section 3184, United States Revised Statutes, a 5 percent penalty and interest at the rate of 1 percent per month computed upon the entire assessment (including penalty and interest, if any) from 10 days after issuance of Form 17 until date of payment. Where assessment is settled by partial payments, interest is computed from the expiration of the first 10-day notice through the date of first payment, and from the next succeeding day to the date of the next payment, until the assessment is paid in full.

(d) If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 percent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 percent penalty applies. The filing of the claim does not stay the running of interest, which continues to run for the full period that intervenes between the date of expiration of the first notice and demand and the date of payment.

(e) If a false or fraudulent return be willfully made, the penalty under section 3612, I. R. C., is 50 percent of the total tax due for the entire period involved including any tax previously paid.

(f) Under section 2707, I. R. C., any person who willfully fails to pay any tax due or file a return, or who fraudulently executes any document required to be filed with such return, or who fails to keep records or attempts in any manner to evade or defeat the tax, is subject to a fine of \$10,000 or imprisonment, or both, with costs of prosecution, and is also liable to a penalty equal to the amount of the tax not paid. These penalties apply to an officer or employee who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs, as well as to a person who fails or refuses to perform any of the duties imposed by chapter 21, I. R. C., such as, pay the tax, make

return, keep records, supply information, etc.

§ 306.22 *Misrepresentation of tax.* If any person, in selling or otherwise disposing of an article or product processed from oil or oils, misrepresents the amount of tax that has been paid with respect to the processing thereof, he is guilty of a misdemeanor and is liable to a fine of \$1,000 or to imprisonment for a year, or both. This provision is designed, among other things, to prevent any person from adding more than the amount of the tax actually paid with respect to the processing of the oil or oils to the price of the article or product sold or otherwise disposed of, and representing that the added amount is due to the tax.

§ 306.23 *Jeopardy assessment.* (a) Whenever, in the opinion of the collector, it becomes necessary to protect the interests of the Government by effecting an immediate return and collection of the tax, the case should be promptly reported to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the amount of taxes due, the period involved, and a statement as to the reason for the recommendation, which will enable the Commissioner to immediately assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice and demand for payment of the tax, penalty, and interest.

(b) Where a taxpayer is not in default in filing returns or in paying any tax under the internal-revenue laws, the collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired and with such sureties as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector United States Liberty bonds or other bonds or notes of the United States having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of de-

fault to collect and sell such bonds or notes so deposited.

(c) Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3690, I. R. C.

§ 306.24 *Closing agreements.* Agreements for the final determination of taxes imposed under the act may be entered into under the provisions of section 3760, I. R. C. Such closing or final agreement may relate to any taxable period ending prior to the date of the agreement. Such an agreement may be executed only where the taxpayer is liable for the tax for the period covered by the agreement. Any tax or deficiency in tax determined pursuant to such agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded.

### Part 310—Taxes on Oleomargarine, Adulterated Butter, and Process or Renovated Butter

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**AUTHORITY:** §§ 310.1 to 310.134 issued under 53 Stat 467; 26 U. S. C. 3791.

**SOURCE:** §§ 310.1 to 310.134 contained in Regulations 9, 1 F. R. 193, except as noted following sections affected. Redesignation noted at 14 F. R. 5199.

**NOTE:** T. D. 4886, Feb. 11, 1939, 4 F. R. 879, reads as follows:

Part 310 relating to the taxes on oleomargarine, adulterated butter, and process or renovated butter, prescribed by the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury and the Secretary of Agriculture, are hereby prescribed under, and made applicable to, Chapter 16, subchapter A and subchapter B, and Chapter 27, subchapter A, Parts I and II, of the Internal Revenue Code insofar as such regulations are not inconsistent with the Code.

This Treasury Decision is issued under authority of the provisions of sections 2325 and 3791 of the Internal Revenue Code and under such other provisions of the Code as correspond with the several provisions of law under which any regulation or Treasury Decision hereby prescribed and made applicable was issued.

**CROSS REFERENCES:** For detention, stamping, and reporting of oleomargarine under the regulations of the Bureau of Customs, Department of the Treasury, see 19 CFR 11.5. For sanitary inspection of process or renovated butter under the Bureau of Dairy Industry, Department of Agriculture, see 9 CFR Part 301. For treatment of oleomargarine when imported by mail under the regulations of the Bureau of Customs, Department of the Treasury, see 19 CFR 9.8.

#### SUBPART A—DEFINITIONS OF GENERAL APPLICATION

§ 310.1 *Terminology.* (a) The terms defined in the several laws on which the regulations in this part are based shall have the meanings so assigned to them.

(b) [Reserved]

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

(d) The term collector means the collector of internal revenue.

(e) The term person includes a nat-

ural person, a corporation, a partnership, a company, a trust or estate, a joint stock company, an association, or other unincorporated organization or group. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

#### SUBPART B—COMMODITY TAX; OLEOMARGARINE

§ 310.10 *Materials or ingredients.* (a) The use of other materials or ingredients than those enumerated in the statute is not prohibited, provided they are not deleterious. (See § 310.98.) Taxability of the product is not affected by the use of more than one of the enumerated materials or admixture of such material with other material. The percentage of enumerated material in the finished product makes no difference.

(b) As to compounds made in part of butter, see § 310.104.

§ 310.11 *Commodity tax.* (a) The tax on oleomargarine accrues upon sale or removal from the place of manufacture. The tax shall be paid by the manufacturer by affixing stamps to the packages before they are removed from the bonded premises. A fraction of a pound is taxable as a pound.

(b) Oleomargarine may be withdrawn tax free (1) for use of the United States (see Part 450 of this chapter) or (2) for export (see § 310.82 and Part 451 of this chapter).

§ 310.12 *Determining color.* (a) The sample of oleomargarine to be tested should be spread to a smooth surface in a glazed porcelain tray having an inside depth of three-sixteenths of an inch. Irregularities on the surface of the oleomargarine should be avoided because they cause the formation of dark shadows. Excessive working of the product should also be avoided because any melted fat on the surface will increase the tint of the oleomargarine.

(b) The temperature at which the test is made depends to some extent upon the composition of the oleomargarine but should be high enough to permit the spreading of the oleomargarine in the tray and low enough to prevent melting on the surface. A temperature of 60° F. has been found satisfactory.

(c) The tray containing the oleomargarine should be placed on a sheet of

white filter paper just below the cell end of a monocular tilting type Lovibond tintometer. Fine precipitated calcium sulphate worked to a smooth surface should be put in a similar tray alongside the tray containing the oleomargarine. By tilting the rear of the instrument to an angle of 45 degrees the light from both trays is reflected through the instrument.

(d) Standard color glass slides should be placed in slots provided for this purpose until the tint of the calcium sulphate appears to be the same as the tint or shade of the oleomargarine. The numerical color value of the glass slides used is the tint or shade of the oleomargarine.

(e) The cell end of the tintometer is placed in an 18-inch cubical skeleton frame constructed from one-half inch square wooden material, five sides being covered with sheets of white filter paper, the sixth side being left open for the tintometer. Light from a north window is preferable in taking readings. The use of filtered light through this device makes the color more distinct and also cuts off the possibility of shadows from the outside.

(f) The adaptability of the eye to perceive variations in color varies considerably with time of observation. It is imperative, therefore, to limit the observation to a fixed time, for which 5 seconds will be found convenient.

(g) The porcelain trays used in this test must be of the type generally used with the Lovibond tintometer for matching colors of powders.

§ 310.13 *Disputed classification* — (a) *Samples for analysis.* When the classification of a product as oleomargarine, or as colored oleomargarine insufficiently taxed, is disputed, the collector will submit a sample to the Commissioner, under whose direction it will be tested to determine its character. Samples should be addressed to the Laboratory Division, Treasury Department, Washington 25, D. C., and must contain not less than 1 pound each and be taken in the presence of an internal-revenue officer. If the product is to be tested for unusual coloring matter, at least 2 pounds should be furnished. (For specific instructions as to sampling see § 310.107.)

(b) *Commissioner's decision.* The Commissioner's finding as to samples representing one lot will not be indicative of his decision as to another lot, although

the lots may be similarly labeled. If the Commissioner's finding shows no tax, or no additional tax, due, the goods will be released; if not, forfeiture proceedings may be instituted.

§ 310.14 *Assessment of commodity tax.* Upon satisfactory proof that a manufacturer sold any taxable oleomargarine without affixing the proper stamps, the Commissioner is required by law to assess the tax and certify the amount to the collector for collection. The assessment must be made within 4 years from the date when the tax became due, except that in case of willful intent to evade tax, assessment may be made at any time. The tax as assessed shall be in addition to the penalties imposed by law for such sale or removal (sec. 2308, 2309, I. R. C.).

#### SUBPART C—MANUFACTURERS OF OLEOMARGARINE

§ 310.20 *Special-tax liability*—(a) *Preliminary requirements.* A manufacturer must make return on Form 11 to the collector, pay special tax, and comply with the provisions contained in §§ 310.60–310.71, relating to special taxes. As to execution of returns, see § 310.93. As to penalty for nonpayment of special tax, see section 3201, I. R. C.

(b) *Liability as a wholesale dealer.* If a manufacturer sells statutory packages of his own production elsewhere than at the place of manufacture, liability as a wholesale dealer is incurred. (See § 310.41.) As to exemption from liability as a wholesale dealer, see §§ 310.41 (j) (1), 310.64. As to liability of manufacturer repacking and selling product of another manufacturer, see § 310.33 (b).

(c) *Liability as a retail dealer.* A manufacturer shall sell oleomargarine in statutory packages only. (See section 2302 (b), I. R. C.) A manufacturer who sells otherwise than in statutory packages incurs liability to the \$1,000 penalty imposed by sections 2308 (j), 2309 (d), I. R. C. If the quantity sold is less than 10 pounds, liability as a retail dealer is also incurred. (See section 2304 (a), I. R. C.)

[Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1332]

§ 310.21 *Coloration*—(a) *Taxable situations.* Liability to special tax as a manufacturer and to commodity tax is incurred in the following situations:

(1) *Dealers.* Where a dealer colors oleomargarine with or without profit at

the request of a customer either before or after sale.

(2) *Eating places.* Where the proprietor of a hotel, boarding house, restaurant, or other eating place colors and serves oleomargarine to paying guests or employees; but see paragraph (b) (4) of this section.

(3) *Institutions.* Where a sanatorium, hospital, or any charitable, religious, educational, or other institution colors oleomargarine for the use of inmates or employees of the institution; but see paragraph (b) (2) of this section.

(4) *Demonstrators.* Where a person who has colored oleomargarine for demonstration purposes supplies it to others, gratuitously or otherwise, for use or consumption. Liability to special tax will attach in such cases at each place where the coloring is done; but see paragraph (b) (5) of this section.

(b) *Nontaxable situations.* Liability is not incurred in the following situations:

(1) *Family.* Where oleomargarine is colored in a private family for household use only. "Household use" includes serving to members of the family, household servants, and nonpaying guests.

(2) *Governmental institutions.* Where an institution under the complete control of the United States, or a State or political subdivision thereof, in the exercise of an essential governmental function, colors oleomargarine for use of inmates or employees of the institution.

(3) *Cooperative clubs or fraternities.* Where a cooperative club or fraternity colors oleomargarine for serving upon the club table, provided the members pay their proportionate share for maintenance of the table and meals are not served to other persons for compensation.

(4) *Purveyors.* Where a purveyor or caterer colors and uses oleomargarine as an ingredient in the preparation of food sold or distributed to others, provided the oleomargarine loses its identity as a distinct article of food in the preparation; but see paragraph (a) (2) of this section.

(5) *Demonstrators.* Where a person who colors oleomargarine for demonstration purposes does not supply it to others for use or consumption; but see paragraph (a) (4) of this section.

(6) *Sample distributors.* Where a person gives away samples of tax-paid colored oleomargarine.

§ 310.22 *Notice of intention to manufacture—(a) Execution of form.* Before commencing business a manufacturer shall file with the collector a notice of intention to manufacture oleomargarine. The notice shall be prepared on Form 213 and signed as prescribed in § 310.93. The premises described in the notice shall conform with the provisions of § 310.26 (a).

(b) *Notice of change.* A new notice shall be filed with the collector before or immediately upon making any change either in location or in the premises or ownership of the business as described in the original notice. (See § 310.69 as to failure to register change.)

§ 310.23 *Inventories—(a) Time of filing.* A manufacturer shall file with the collector an inventory at commencement of business, on July 1 of each year thereafter, and upon discontinuing business. Inventories shall be prepared on Form 215 and shall be marked "Opening" or "Closing" in accordance with the fact. The provisions of § 310.93 as to the execution of returns shall apply to the execution of inventories.

(b) *Verification by collector.* A personal examination of each manufacturer's stock shall be made by the collector, or one of his deputies, who, after satisfying himself as to the correctness of the inventory, will countersign Form 215.

§ 310.24 *Records—(a) Manner of keeping.* (1) A manufacturer shall keep at his place of business separate records of colored and uncolored oleomargarine. If the record is kept as hereinafter prescribed in the manufacturer's own books or in other convenient form no other record will be necessary. The record should be kept in a neat and accurate manner, preserved at least 4 years, and be available at all times for inspection by internal-revenue officers. Care should be taken to exclude from the record any product other than tax-paid and branded oleomargarine.

(2) Entry shall be made not later than the day following that on which the transaction occurred. Quantities reported shall be as indicated by the tax-paid stamps affixed to the packages, except that where oleomargarine is withdrawn free of tax for use of the United States and for export, or where the product is returned to the factory, the actual quantity will be recorded. A fraction of a pound shall be accounted as a pound.

(b) *Items.* The record must show:

(1) The number of pounds of each material or ingredient used in the production of oleomargarine, and the number of pounds of such materials used for other purposes.

(2) The number of pounds of oleomargarine produced.

(3) The number of pounds in each lot disposed of, the name of the consignee, the address to which delivered, and the date of shipment.

(4) The number of pounds in each lot returned to the factory, the name of the person by whom returned, the address from which returned, and the date of receipt.

(5) The number of pounds reworked, disposed of as grease, or otherwise destroyed.

(6) The total value of oleomargarine tax stamps purchased and used.

(c) *Transactions.* The following rules will apply:

(1) *Samples.* Sample packages of tax-paid oleomargarine distributed gratuitously shall be recorded in the same manner as oleomargarine which is sold.

(2) *Transfers to self.* Where oleomargarine is transferred by a manufacturer to himself as a wholesale or retail dealer, the transaction shall be recorded in the same manner as a transfer to another person.

(3) *Sales to chain stores.* Where oleomargarine is shipped to one person doing business at different places, as in the case of chain stores, the deliveries to each address shall be recorded separately.

(4) *Drop shipments.* Where a manufacturer receives an order from one person to ship oleomargarine to another, the transaction shall be recorded in the name and address of the consignee, followed by "acc't of" and the name and address of the person for whose account the shipment was made. A manufacturer shall not record consignments on orders in the names of agents, solicitors, or other persons transmitting an order for another party. (See § 310.41 (e) as to liability of agents.)

§ 310.25 *Monthly returns*—(a) *When required.* A return for each month of the period of special-tax liability shall be made to the collector not later than the 15th of the month following. If the business is discontinued, the return for

the month in which business ceases should be marked "Final."

(b) *Miscellaneous.* Monthly returns should be prepared from the manufacturer's records and typewritten on Form 216 in duplicate, except that the first page should be prepared in triplicate. The first page of the return should be filled out as indicated on the form. The return and the extra copy of the first page should be forwarded to the collector. The carbon duplicate of the complete return shall be retained at least 4 years and be available at all times for examination by internal-revenue officers.

(c) *Separate returns.* One return shall be made for colored and another for uncolored oleomargarine. But one return will be required from a manufacturer who produces oleomargarine taxed at one-fourth of 1 cent a pound only, provided a statement to that effect is inserted in the jurat of his return.

(d) *Supplemental sheets.* Form 216a is a supplemental sheet and shall be used for reporting in detail disposals of new stock and receipt and resale of oleomargarine returned by customers. The entries should be double-spaced, as indicated by the dotted lines on the sheet. Appropriate headings should be set up in capital letters in the center of the page. Each page should be completely used before beginning another page. The order indicated in paragraphs (e) to (p) of this section should be observed.

(e) *Disposals during first month of fiscal year or month of commencing business.* Disposals to wholesalers and retailers and consumers made in the first month of each fiscal year, or the month of commencing business, as the case may be, shall be reported on supplemental sheets, Form 216a, as follows:

(1) *To wholesalers.* Disposals to wholesalers shall be listed under a heading, Withdrawn Tax-Paid, Wholesale Dealers, with the entries grouped in alphabetical order of (i) the names of States and (ii) the names of consignees in each State group. State names should be in capital letters centered on the page at the head of each group, and a line left above and below each State subheading. The State name should be omitted in entering the several individual addresses since it will appear at the head of the group. Where a wholesaler operates at more than one place of business (whether or not within the same State), a separate entry shall be made

for each place of business of such wholesaler to which consignments are made during the month. The aggregate quantity of oleomargarine consigned during the month to each wholesaler at each place of business shall be reported as provided for by the form.

(2) *To retailers and consumers.* Following the listing of disposals to wholesale dealers the disposals to retailers and consumers shall be listed under a heading, Withdrawn Tax-Paid, Retailers and Consumers, in the same manner as specified in subparagraph (1) of this paragraph with respect to wholesalers.

(f) *Disposals during other months.* Disposals to wholesalers, retailers, and consumers in each month other than the first month of the fiscal year, or the month of commencing business, shall be reported on supplemental sheets, Form 216a, as follows:

(1) *To consignees listed on prior returns of same fiscal year.* The total quantity of oleomargarine disposed of during the month to all persons, including wholesalers, retailers, and consumers, listed on returns for prior months of the same fiscal year, shall be reported as a single amount designated as "Disposed of to consignees listed on returns for previous months of the same fiscal year."

(2) *To other consignees.* Disposals to wholesalers not listed on any return for a prior month of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (e) (1) of this section. Similarly disposals to retailers and consumers not listed on any return for a prior month of the same fiscal year shall be reported in detail in the same manner as prescribed in paragraph (e) (2) of this section.

(g) *Registered names and addresses required.* Names and addresses shall be entered as they appear on customers' special-tax stamps. Where the shipping address differs from the registered address, the name of the shipping point, in parentheses, should be entered with the registered address. (See § 310.54 (f).) Surnames should precede first names. County names should be included in the addresses of customers located in the States specified at the head of Form 216a.

(h) [Reserved]

(i) *Chain store entries.* Subject to the provisions of paragraphs (e) and (f) of

this section, disposals to chain stores shall be reported in alphabetical order of the names of (1) the cities or towns in which the stores are located and (2) the streets on which situated. Numerical order of street numbers should be observed where more than one store is located on the same street.

(j) *Exportation.* Under a heading, Withdrawn Free of Tax for Export, there shall be entered as to each foreign consignment (1) date of invoice, (2) name of consignee and place of consignment, and (3) quantity. The entries shall be in the order prescribed in paragraph (e) of this section for reporting disposals to wholesale dealers.

(k) *Disposals to United States.* Under a heading, Withdrawn Free of Tax for Use of the United States, there shall be entered as to each withdrawal (1) date of removal, (2) name and address of consignee, (3) permit and requisition numbers, and (4) quantity. The entries shall be made in the order prescribed in paragraph (e) of this section for reporting disposals to wholesale dealers.

(l) *Returned goods.* Under a heading, Returned Goods, there shall be shown in alphabetical order (1) the name and address of each consignor, and (2) the total quantity received during the month from him. Only oleomargarine of the manufacturer's own production may be entered under this heading. Oleomargarine received from other manufacturers for reworking (see § 310.33 (b)) shall be included in the total of returned goods reworked as prescribed in paragraph (n) of this section.

(m) *Resales.* Under a heading, "Resales to wholesale dealers," entries shall be made in the same manner as disposals of new stock to such customers as prescribed in paragraph (e) (1) of this section. Under a heading, "Resales to retailers and consumers", entries shall be made in the same manner as disposals of new stock to such customers as prescribed in paragraph (e) (2) of this section. (See § 310.41 (f) as to resale of returned goods.)

(n) *Reworked or denatured.* The total quantity of any oleomargarine not removed from the factory but reworked or disposed of as grease shall be reported in the credit column of the summary of new stock. The total quantity of returned goods reworked or disposed of as

grease shall be reported in the credit column of the summary of returned oleomargarine. The combined totals of oleomargarine reworked, as shown in the respective summaries, shall be reported under the heading, "Materials used during month", page 1, Form 216. A certificate of oleomargarine reworked or disposed of as grease shall be attached to the return as provided in § 310.33 (c).

(c) *Losses.* Oleomargarine accidentally destroyed, lost in transit, or unaccounted for shall be reported in the credit column of the proper summary and an appropriate explanation inserted.

(p) *Summary.* The quantities entered under the respective headings on Form 216a shall be totaled and the totals carried to the proper lines of the summaries, page 1, Form 216. The actual balances of new stock and returned goods on hand at the beginning and close of the month shall be entered in the proper summary, which should balance. The quantities reported on hand at the beginning of the month shall agree with the quantities reported on hand at the close of the preceding month.

(q) *Correcting entries.* If after rendering a return it is found that any receipts or disposals were omitted or erroneously reported, correcting entries shall be made on the return for the following month.

(r) *Penalties for falsification.* For any false entry or the omission, with fraudulent intent, of any entry required to be made in his record or returns, a manufacturer is liable to penalties imposed by section 2308 (j), I. R. C.

[Regs. 9, 1 F. R. 193, as amended by T. D. 5660, 13 F. R. 6003]

§ 310.26 *Factories—(a) Premises.* Unless otherwise approved by the Commissioner, another factory may not be operated at the same time within the premises described in a manufacturer's notice, Form 213 (§ 310.22). Oleomargarine factory premises must be separated by solid walls or partitions from any contiguous premises in which butter, adulterated butter, or process or renovated butter is manufactured.

(b) *Signs.* Over the principal entrance to each building in which oleomargarine is produced the manufacturer shall conspicuously display a sign showing the name in which the business is conducted, the kind of business, and the internal-revenue factory number, in

durable characters not less than 3 inches high.

(c) *Numbers.* Each oleomargarine factory shall be numbered by the collector of the district in which the plant is located. The number assigned to one factory shall not be used by another oleomargarine factory in the same district, or changed without the approval of the Commissioner. If the factory is moved to another part of the district the number shall be retained. If moved to another district a new number will be assigned to the factory. If the business is discontinued the number will not be assigned to another factory during the balance of the fiscal year.

§ 310.27 *Bonds—(a) Execution.* Before commencing business a manufacturer shall furnish the collector with a bond which meets with his approval. Bonds shall be executed in duplicate on Form 214. Both copies shall be forwarded to the collector, who will retain the original and forward the duplicate to the Commissioner. Bonds may be executed with individual or corporate sureties or supported by Government securities.

(1) *Corporate sureties.* A corporation which has been authorized by the Secretary of the Treasury to execute bonds in favor of the United States may be accepted as sole surety. Such corporations are listed in Treasury Department Circular 356, issued semiannually.

(2) *Individual sureties.* At least two individual sureties are required. Each shall have property subject to execution of a current market value, above all incumbrances, equal to the penalty of the bond. An affidavit as to the adequacy of the security, executed on Form 33, shall be filed with the bond and annually while it is in force.

(3) *Qualifications.* Personal sureties shall reside within the State in which the factory covered by the bond is located. Real property offered as security shall be located in the State in which the factory is situated. Partners can not act as sureties upon the bond of their firm. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings in the stock of the corporation.

(4) *Government securities.* Bonds or notes of the United States may be deposited as security for penal bonds, as

provided in 6 U. S. C. 15. Collectors will be governed by the rules promulgated in Department Circular 154 (as revised) before accepting such securities.

(b) *New bonds.* If the interest of the Government demands it, a new bond, or one for a larger amount, may be required at any time. A new bond shall be required immediately upon the death, change of address, or insolvency of a personal surety, or upon insolvency of a corporate surety, and from executors, administrators, and assigns who continue the business.

(c) *Alterations or erasures.* Bonds in which alterations are made subsequent to execution will be rejected. If any alterations or erasures are made prior to execution, a sworn statement to that effect shall be made by the surety on the face of the bond.

(d) *Penal sum of bonds.* The minimum penal sum of a bond is \$5,000, and the maximum \$100,000. For the first year the manufacturer engages in business the sum shall be determined by the estimated production of oleomargarine for that year, and thereafter by the output during the preceding year, in accordance with the accompanying scale. When the production for any year exceeds the number of pounds on which the penal sum was based, a new bond for the next and succeeding years must be given in the requisite penal sum.

Production previous fiscal year		Penal sum of bond required
More than—	Not more than—	
Pounds	Pounds	
500,000	500,000	\$5,000
1,000,000	1,000,000	7,500
1,500,000	1,500,000	10,000
2,000,000	2,000,000	12,500
2,500,000	2,500,000	15,000
3,000,000	3,000,000	17,500
3,500,000	3,500,000	20,000
4,000,000	4,000,000	22,500
4,500,000	4,500,000	25,000
5,000,000	5,000,000	27,500
5,500,000	5,500,000	30,000
6,000,000	6,000,000	32,500
6,500,000	6,500,000	35,000
7,000,000	7,000,000	37,500
7,500,000	7,500,000	40,000
8,000,000	8,000,000	42,500
8,500,000	8,500,000	45,000
9,000,000	9,000,000	47,500
9,500,000	9,500,000	50,000
10,000,000	10,000,000	52,500
10,000,000	10,500,000	55,000
10,500,000	11,000,000	57,500

<sup>1</sup> For each additional 500,000 pounds of oleomargarine produced the bond should be increased \$2,500, but in no case shall the bond exceed \$100,000.

[Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1332, T. D. 5439, 10 F. R. 2137]

§ 310.28 *Packages*—(a) *General.* (1) No maximum package is prescribed by law. However, manufacturers are required to put up their product in statutory packages. A statutory package is one designed to contain only that quantity and class of oleomargarine as indicated by the stamp to be affixed thereto. A statutory package may include small advertising cards, coupons, certificates, circulars, and other like advertising matter intended as an advertisement of the oleomargarine business of the manufacturer. It shall not contain any article which would materially increase the weight or size of the package.

(2) Containers of oleomargarine must be of a durable and substantial character and must completely cover the contents. As to penalty for refilling containers from which oleomargarine has been removed, see section 2308 (g), I. R. C.

(b) *Additional coverings.* Properly stamped and branded packages of oleomargarine may be incased in additional coverings or wrappers provided such coverings are branded as prescribed in § 310.29 and contain the following inscription legibly printed or stenciled in letters not less than half an inch high: "Tax has been paid and proper stamp placed on the original package contained herein."

(c) *Prints and rolls.* Manufacturers may subdivide a statutory package of oleomargarine into prints or rolls, provided such subdivisions do not constitute original or statutory packages within the meaning of the law, or weigh less than one-quarter of a pound. Prints and rolls shall be placed in cartons or wrappers branded as prescribed in § 310.29.

[Regs. 9, 1 F. R. 193, as amended by T. D. 5068, 6 F. R. 4728]

§ 310.29 *Branding*—(a) *Statutory packages.* (1) Before removal from the factory the word "Oleomargarine," the factory number, district, and State, and the gross, tare, and net weights shall be legibly printed or stenciled on one of the sides or top of each package of oleomargarine in the following manner:

OLEOMARGARINE  
Factory No. 1, 1st Dist. Penna.  
63-3-60

(2) The word "Oleomargarine" shall be in bold-face gothic letters not less than three-quarters of an inch high and the other letters and figures not less

than one-half inch high. The color of the brand shall be in strong contrast to that of the package.

(3) As to branding statutory packages for export, see § 310.82 (d). Imported packages shall be branded as prescribed in § 310.80 (c). As to branding by retailers, see § 310.54 (b).

(b) *Display containers.* If the brand required by law is placed on the back or end of a container designed for displaying the contents, the word "Oleomargarine" in plain gothic letters at least

three-quarters of an inch high shall also be branded on the front of the container in such manner as to be plainly visible when the package is on display. (See § 310.54 (e).)

(c) *Cartons.* The word "Oleomargarine," the net weight of contents, and the manufacturer's name and address, or the internal-revenue factory number, district, and State, shall be branded on cartons. The word "Oleomargarine" shall be placed on two of the principal display panels in plain gothic letters of not less than 20-point type. Specimen:

# OLEOMARGARINE

(1) The word shall measure at least  $3\frac{1}{8}$  inches in length and be of a color in strong contrast to that of the carton. Hair-line, shaded or ornate letters, or letters in outline may not be used; but see paragraph (d) of this section.

(2) As to branding cartons or inner packages for export, see § 310.82 (d).

(d) *Inside wrappers.* The manufacturer's name and address and the factory number, district, and State may be omitted from cartons if printed on wrappers used with cartons. Where a manufacturer operates more than one factory he may brand cartons with the name and address of his general office, or the address of each factory, provided an inside wrapper is used showing either the name and address of the factory where the oleomargarine was produced, or the factory number, district, and State.

(e) *Blank wrappers.* Blank wrappers may be used with properly branded cartons but if anything is printed on the wrappers in addition to the inspection legend of the United States Department of Agriculture, the word "Oleomargarine" shall appear on the wrappers in letters of the same size and design prescribed for cartons.

(f) *Wrappers without cartons.* When used without cartons wrappers shall be branded in the same manner as cartons. The word "Oleomargarine" shall be so placed on the wrapper that it will appear at the top and bottom of the print or roll when wrapped.

(g) *Dealer's name on containers.* When a dealer's name is printed on containers a phrase such as "prepared for," "distributed by," etc., shall be placed

before his name to show that the dealer is not the manufacturer.

(h) *Advertisements.* Trade-marks, illustrations, recipes, coupons, premium lists, etc., may be printed on cartons and wrappers provided such matter does not obscure the brand or conflict with any Federal or State law. (See paragraph (1) of this section.)

(i) *Coloring directions.* Directions for coloring oleomargarine may be printed on cartons and wrappers provided there is included a statement that under Federal law oleomargarine may be colored, without liability to tax, only by a private family for household use; cooperative clubs or fraternities for use of members where boarding expenses are prorated; and institutions under the complete control of the United States, or a State or political subdivision thereof, for use of inmates or employees.

(j) *Tentative approval.* Only cartons and wrappers formally approved by the Commissioner may be used for packing oleomargarine. However, a sketch or proof may be submitted through the collector for tentative approval of the Commissioner before the cartons and wrappers are ordered. Because photostats do not show color contrasts (see paragraph (c), of this section), a colored sketch should be furnished. Not more than one copy of a sketch is necessary. It will be returned to the manufacturer if desired.

(k) *Formal approval.* Three specimens of the finished carton or wrapper shall be furnished the collector, who will forward them to the Commissioner for formal approval. The specimens should be free of paraffin or other coating. Two

approved copies will be returned to the collector, who will retain one copy and send the other to the manufacturer.

(l) *Prohibited marks.* There may not be used upon packages of oleomargarine, except to the extent required by State laws, the word "butter," "butterine," "creamery," or "dairy," or any other word or phrase, or the name of a breed of cattle, or a trade-mark, label, picture, design, or device which conveys the impression that the article is a product of the dairy. However, if any prohibited word constituted a part of a manufacturer's or dealer's name prior to June 22, 1923 (the effective date of the 1923 revision of the regulations in this part), he may continue to use the name on packages of oleomargarine.

(m) *Labeling nut oleomargarine.* Containers for oleomargarine made from cottonseed oil, soybean oil, or other oils not derived from nuts in whole or in part, may not be labeled "Nut Margarine" or with any statement, design, or device indicating the fat content to be derived from nuts. (See § 310.129 (d), Misbranding under Food and Drug Act.)

(n) *Penalty for misbranding.* For falsely branding a package of oleomargarine a fine of not more than \$1,000 and imprisonment for not more than 2 years for each offense is provided. (See section 2308 (a), I. R. C.)

§ 310.30 *Caution notice*—(a) *Placement upon packages.* Before removal from the factory each statutory package of oleomargarine must have conspicuously printed or labeled on it the following notice, which must measure not less than 3 inches long by 1½ inches wide:

FACTORY NO. ----, ---- DISTRICT, STATE OF ----

NOTICE: The manufacturer of the oleomargarine herein contained has complied with all the requirements of law. Every person is cautioned not to use either this package again (for oleomargarine) or the stamp thereon again, nor to remove the contents of this package without destroying said stamp, under the penalty provided by law in such cases.

(See penalty for refilling containers provided by section 2308 (g), I. R. C.)

(b) *Inspection legend.* On packages of oleomargarine made from animal fats, the caution notice may be placed with the inspection legend of the Bureau of Animal Industry, United States Department of Agriculture, provided the notice is placed above the legend so that the internal-revenue factory number may be

readily distinguished from the establishment number of the Department of Agriculture. The notice and legend shall not be placed on packages in any way contrary to the regulations of the Department of Agriculture. The inspection legend is not required on packages of oleomargarine made exclusively from vegetable oils.

(c) *Penalty for omission.* For failure to place the caution notice on statutory packages of oleomargarine and for removal of such notice from packages a fine of \$50 for each package involved is provided by section 2308 (b), I. R. C.

§ 310.31 *Stamping packages*—(a) *Denominations of stamps.* Stamps for payment of the tax on colored and uncolored oleomargarine are issued in sheets of 25 stamps each in denominations of 10, 12, 15, 18, 20, 24, 30, 32, 48, 60, and 62 pounds, and are available at collectors' offices.

(b) *Ordering stamps.* Stamps for packages of oleomargarine will be sold only to registered manufacturers. They shall be purchased from the collector of the district in which the factory is located. Orders for stamps shall be prepared on Form 218. A remittance for the total value of the stamps shall accompany the order.

(c) *Affixing stamps.* An internal-revenue stamp of a denomination that will fully cover the tax on the net weight of the contents shall be affixed to each package of oleomargarine before removal from the factory, except packages for export and for use of the United States. A single stamp of a denomination denoting the quantity in the package shall be used if stamps of such denomination are issued. If a single stamp will not fully cover the tax due, the least sufficient number of additional stamps shall be used.

(d) *Canceling stamps.* Each stamp affixed to a package shall be canceled before removal of the oleomargarine from the factory. The cancellation shall be legibly written or printed in ink, or perforated, and shall show the factory number, district, and State, and date. The cancellation marks may be abbreviated in the following manner, indicating, for example, cancellation by factory No. 10, first district of Illinois, on January 15, 1935: 10-1-III., 1-15-35.

(e) *Penalty for improper stamping.* For failure to affix a stamp or affixing stamps denoting a less amount of tax

than required by law, a fine of not more than \$1,000 and imprisonment for not more than 2 years for each offense is provided. (See section 2308 (a), I. R. C.)

(f) *Forfeiture of goods.* Unstamped oleomargarine or colored oleomargarine tax-paid at one-fourth of 1 cent a pound is subject to forfeiture. (See section 2309 (b), I. R. C.)

[Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1332]

§ 310.32 *Repacking and restamping outside of factory*—(a) *When allowed.* Provision is made for restamping packages of oleomargarine where the stamps were accidentally mutilated, destroyed, or lost from the packages. (Sections 2103 (b) and 2327 (d), I. R. C.) Such packages are liable to seizure, as provided in section 2309 (b), I. R. C., unless the requirements of paragraphs (b)–(g) of this section are complied with immediately.

(b) *Application.* Application for restamping shall be made in writing to the collector of internal revenue for the district in which the packages to be restamped are held. The application shall state the total number of packages and total number of pounds of colored or uncolored oleomargarine; the name and address of the person in whose custody the packages are held; the number and denomination of lost or mutilated stamps; the nature of the applicant's interest in the goods; and the cause of loss or mutilation of the stamps.

(c) *Affidavit.* If the stamps were lost or destroyed in transit, the application shall be supported by an affidavit of the consignor, or agent having personal knowledge of the circumstances, to substantiate the claim that the packages were properly stamped when shipped. The affidavit shall show, so far as known, how the loss or destruction of the stamps occurred. If the stamps were lost or mutilated while in possession of the applicant, the application shall be accompanied by an affidavit detailing the circumstances in connection with the loss or mutilation of the stamps.

(d) *Inspection.* If the collector finds the application and affidavit have been prepared as prescribed, he shall direct a deputy to immediately inspect the packages. The deputy shall make a written report to the collector of the number of packages which require restamping, the condition and contents of each package, and the kind and condition of the stamps remaining attached.

(e) *Repacking.* If the deputy finds the packages to be in such condition as to require repacking he shall include in his report a statement as to the number and denomination of new stamps required. If the collector is satisfied that the packages were properly stamped before removal from the factory and finds no evidence of fraud, he shall authorize immediate repacking in statutory quantities, in containers not before used for that purpose. The repacking shall be done under supervision of a deputy.

(f) *Replacing stamps.* The packages shall be held until the collector has forwarded the application, affidavits, and deputy's report to the Commissioner and received his approval to restamp the packages. The restamping shall be done under supervision of a deputy, who shall obtain a receipt for the stamps showing their number, denomination, and value. The receipt shall be forwarded to the Commissioner by the collector.

(g) *Prohibited at factory.* The procedure indicated in this section is inapplicable to oleomargarine on factory premises, either prior or subsequent to original withdrawal, as to which see § 310.33.

§ 310.33 *Reworking, denaturing, repacking at factory*—(a) *Manufacturer's own product.* Oleomargarine to be reworked, or disposed of as grease or refuse, shall be dumped under the supervision of an internal-revenue officer, or an inspector of the United States Department of Agriculture. When disposed of as grease or refuse kerosene or another denaturant shall be added to the oleomargarine in the presence of the officer, to render it inedible.

(b) *Product of other manufacturers.* Oleomargarine produced by one manufacturer may be received on the bonded factory premises of another manufacturer only for reworking or repacking. Repacking of the product at the factory or dumping thereof for reworking shall be witnessed by an officer or inspector as provided in paragraph (a) of this section. A manufacturer who repacks and sells oleomargarine produced by another manufacturer incurs liability as a wholesale dealer. (See section 2303 (a), I. R. C.)

(c) *Official certificate.* (1) The officer under whose supervision oleomargarine is dumped or repacked, as in paragraph (a) or (b) of this section,

shall execute a certificate in duplicate showing the date of dumping or repackaging; the quantity dumped or repacked; that all stamps were completely removed from the containers and destroyed; and that an effective denaturant was added to oleomargarine dumped as grease or refuse. The supervising officer shall see that the transaction is properly debited on the manufacturer's record. (See § 310.24 (b) (5).)

(2) Both copies of the certificate shall be delivered to the manufacturer, one to be attached to the monthly return, Form 216, and the other to be retained by the manufacturer.

(d) *Redemption of stamps.* As to redemption of stamps, see § 310.90 (a).

[Regs. 9, 1 F. R. 193 as amended by T. D. 4807, 3 F. R. 1332]

#### SUBPART D—WHOLESALE DEALERS IN OLEOMARGARINE

§ 310.40 *Special-tax liability—(a) Preliminary requirements.* A wholesale dealer shall make return on Form 11 to the collector, pay special tax, and comply with the provisions contained in subpart G, relating to special taxes. As to execution of returns, see § 310.93. As to penalty for nonpayment of special tax, see section 3201 (b), I. R. C.

(b) *Rates of tax.* Tax at the rate of \$480 a year covers sale by a wholesale dealer of both colored and uncolored oleomargarine taxed at 10 cents and  $\frac{1}{4}$  of 1 cent a pound, respectively. A wholesale dealer who pays special tax at the rate of \$200 a year may sell only uncolored oleomargarine and incurs liability to additional tax if he sells the colored product. (See § 310.90 (b) as to redemption of stamp covering the lower rate of tax.)

(c) *Liability for breaking package.* A wholesale dealer shall sell original stamped packages only. (See section 2303 (b), I. R. C.) A wholesale dealer who removes and sells oleomargarine from original stamped packages incurs liability to the \$1,000 penalty imposed by section 2308 (j), I. R. C. If the quantity sold is less than 10 pounds, liability as a retail dealer is also incurred. (See section 2304 (a), I. R. C.)

[Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1332]

§ 310.41 *Liability in particular situations—(a) Place of sale.* Liability to special tax as either a wholesale dealer or a retail dealer is incurred at each place

other than the registered premises where oleomargarine is sold or offered for sale. As to retail dealers, see Subpart F. The place of actual or constructive delivery transferring the ownership of the oleomargarine from the vendor to the vendee is regarded as the place of sale for which special tax is required to be paid. (See § 310.52 (b) as to itinerant vendors.)

(b) *Delivery orders.* Sales to persons ordering oleomargarine, including c. o. d. orders, shall be absolutely completed at the registered place of business of the vendor or liability is incurred at each place where deliveries are made. Orders must be received at the vendor's registered premises, where the oleomargarine must be addressed and billed to, and the sales recorded in the names of the persons ordering. The identical package sold at the vendor's registered place of business to the person ordering is the only package the vendor or his agent may deliver at another place without incurring liability at the place of delivery.

(c) *Sight draft orders.* Where a bona fide order is received at the registered place of business of the vendor and the oleomargarine is there addressed and billed to the persons ordering, it may be shipped with a draft for the purchase money attached to the bill of lading. The bill of lading shall be indorsed specifically, and not in blank, to the person ordering, and the draft drawn on such person, otherwise the sale is completed and special-tax liability is incurred at the place of delivery.

(d) *Standing orders.* Deliveries of oleo may be made as specified in a standing order accepted at the registered place of business of a manufacturer or dealer without incurring liability at the place of delivery. However, delivery of any other quantity than that specified in the standing order, whether more or less, constitutes a separate transaction not covered by the standing order, and is subject to paragraph (b) of this section.

(e) *Agents or brokers.* A broker or agent may solicit orders for oleomargarine, receive a commission for his services, and make collections for the principal without becoming liable to special tax as a dealer, provided title to the oleomargarine does not vest in the agent or broker at any time. If the manufacturer or dealer bills the oleomargarine to the broker or agent, who in turn bills it to others, with or without profit, a

second sale takes place and the broker or agent incurs special-tax liability as a dealer at each place where he makes deliveries.

(f) *Resales.* Before resale of original stamped packages of oleomargarine they shall be actually or constructively returned to the vendor's registered place of business and the second sale there consummated before delivery. If the goods are picked up at the address of one customer and delivered to that of another before the resale is completed at the vendor's registered place of business, the resale occurs at the place of delivery and additional liability is incurred.

(g) *Delivery from warehouse.* Tax-paid packages of oleomargarine may be stored in warehouses and delivered therefrom without incurring special-tax liability at the warehouse: *Provided*, The sales are completed at the vendor's registered place of business. The mere transmittal to, and the filling of the order at, the warehouse do not constitute a sale at the registered place of business. The oleomargarine must be billed to, and the sale recorded in the name of, the customer at the registered place of business before the removal from the warehouse.

(h) *Prohibited storage.* The storage of oleomargarine taxed at 10 cents a pound on the premises of a dealer who has not paid special tax as a dealer in colored oleomargarine, is prohibited.

(i) *Chain store warehouses.* An operator of chain stores may store oleomargarine in warehouses operated by him, without incurring special-tax liability at the warehouses, provided no sales are made there and that the oleomargarine is distributed exclusively to stores operated by him, and not to stores of other operators.

(j) *Exemptions as wholesale dealer.* Liability as a wholesale dealer is not incurred in the following situations:

(1) *Sales at factory.* Where a manufacturer sells oleomargarine of his own production in statutory packages at the place of manufacture. (See section 3200 (a) (2), I. R. C.) As to manufacturer's liability as a retail dealer, see § 310.20 (c).

(2) *Sales of left-over stock.* Where a manufacturer who, having discontinued the business, directs a wholesale dealer holding his product to consign it to another wholesale dealer for sale on commission for the manufacturer's account.

(3) *Sales to secure charges.* Where a warehouse sells oleomargarine to cover storage charges, or a transportation company to secure freight charges or salvage damaged merchandise. The quantity so sold and the name and address of the buyer shall be reported to the collector.

(4) *Sales to assignee.* Where a retail dealer sells his stock of merchandise, including oleomargarine, to his successor.

(k) *Exporters.* A person otherwise liable as a wholesale dealer is not exempt because transactions are for export only. [Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1332]

§ 310.42 *Records*—(a) *Manner of keeping.* (1) A wholesale dealer shall keep at his place of business separate records of colored and uncolored oleomargarine. If the record is kept as hereinafter prescribed in the dealer's own books or in other convenient form no other record will be necessary. The record should be kept in a neat and accurate manner, preserved at least 4 years, and be available at all times for inspection by internal-revenue officers. Care should be taken to exclude from the record any product other than tax-paid and branded oleomargarine.

(2) Entry shall be made not later than the day following that on which the transaction occurred. Quantities reported shall be as indicated by the tax-paid stamps affixed to the packages, except that where goods are returned to or by the wholesaler the actual quantity shall be recorded. A fraction of a pound shall be accounted as a pound.

(b) *Items.* The record must show:

(1) The number of pounds in each consignment of oleomargarine received, the name and address of the consignor, and the date of receipt.

(2) The number of pounds in each lot disposed of, the name of the consignee, the address to which delivered, and the date of shipment.

(c) *Transactions.* The following rules will apply:

(1) *Samples.* Sample packages of tax-paid oleomargarine received and disposed of gratuitously shall be recorded in the same manner as oleomargarine which is purchased and sold.

(2) *Transfers to self.* Where oleomargarine is transferred by a wholesale dealer to himself as a retail dealer, the

transaction shall be recorded in the same manner as a sale to another person.

(3) *Sales to chain stores.* Where oleomargarine is shipped to one person doing business at different places, as in the case of chain stores, the deliveries to each address shall be recorded separately.

(4) *Drop shipments.* A wholesale dealer shall not record the receipt of oleomargarine which he orders delivered direct to a third party. The dealer's connection with the transaction shall be shown by the manufacturer as provided in § 310.24 (c) (4). Where a wholesale dealer receives an order from one person to ship oleomargarine to another, the transaction shall be recorded in the name and address of the consignee followed by "acc't of" and the name and address of the person giving the order. A wholesale dealer shall not record consignments in the names of agents, solicitors, or other persons transmitting orders for other parties. (See § 310.41 (e) as to liability of agents.)

(5) *Returned goods.* Where oleomargarine is returned by a customer to a wholesale dealer the transaction shall be recorded separately from other receipts. The sale of repossessed goods shall be recorded with other disposals. Oleomargarine returned by a wholesale dealer to the manufacturer or other wholesale dealer from whom received shall be recorded separately from other disposals. (See § 310.41 (f) as to resales.)

§ 310.43 *Monthly returns*—(a) *When required.* A return for each month of the period of special-tax liability shall be made to the collector not later than the 15th of the month following. If the business is discontinued, the return for the month in which business ceases should be marked "Final."

(b) *Miscellaneous.* Monthly returns should be prepared from the wholesale dealer's records and typewritten in duplicate on Form 217. The first page of the return should be filled out as indicated on the form. The return should be forwarded to the collector and the carbon duplicate retained at least four years and be available at all times for examination by internal-revenue officers.

(c) *Separate returns.* One return shall be made for colored and another for uncolored oleomargarine. When preparing returns for colored oleomargarine the prefix "Un" in the word "Uncolored" at

the head and in the oath should be stricken out.

(d) *Receipts*—(1) *During first month of fiscal year or month of commencing business.* Under the heading, Oleomargarine Received From Manufacturers and Wholesale Dealers, page 1, Form 217, each entry shall show (i) the name and address of each consignor, and (ii) the total quantity received during the month from him. Regardless of the number of consignments received during the month from the same consignor, only a single entry showing the aggregate of all such consignments shall be made.

(2) *During other months.* Oleomargarine received from manufacturers and wholesale dealers in each month other than the first month of each fiscal year, or the month of commencing business, as the case may be, shall be reported on Form 217 as follows:

(i) *From consignors listed on returns for previous months of same fiscal year.* The total quantity of oleomargarine received from all manufacturers and wholesale dealers listed on returns for prior months of the same fiscal year, shall be reported as a single amount designated as "Received from consignors listed on returns for previous months of the same fiscal year."

(ii) *From other consignors.* Oleomargarine received from manufacturers and wholesale dealers not listed on a return for a prior month of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (d) (1) of this section.

(e) *Returned goods.* Oleomargarine returned by customers should not be entered in detail on returns. Only the total quantity so received during the month shall be reported. The amount should be entered on line 3 in the debit column of the summary.

(f) *Supplemental sheets.* Form 217a is a supplemental sheet and shall be used for reporting disposals in detail. The entries should be double-spaced as indicated by the dotted lines on the sheet. Appropriate headings should be set up in capital letters in the center of the page. Each page should be completely used before beginning another page. The order indicated in paragraphs (g) to (n) of this section should be observed.

(g) *Disposals during first month of fiscal year or month of commencing business.* Disposals to wholesalers and

retailers and consumers in the first month of each fiscal year, or the month of commencing business, shall be reported in full detail on supplemental sheets, Form 217a, as follows:

(1) *To wholesalers.* Disposals to wholesalers shall be listed under a heading, *Disposals to Wholesale Dealers*, with the entries grouped in alphabetical order or (i) the names of States and (ii) the names of consignees in each State group. State names should be in capital letters centered on the page at the head of each group, and a line left above and below each State subheading. The State name should be omitted in entering the several individual addresses since it will appear at the head of the group. Where a wholesaler operates at more than one place of business whether or not within the same State, a separate entry shall be made for each place of business of such wholesaler to which consignments are made during the month. The aggregate quantity of oleomargarine consigned during the month to each wholesaler at each place of business shall be reported as provided for by the form.

(2) *To retailers and consumers.* Following the listing of disposals to wholesale dealers the disposals to retailers and consumers shall be listed under a heading, *Disposals to Retailers and Consumers*, in the same manner as specified in subparagraph (1) of this paragraph with respect to wholesalers.

(h) *Disposals during other months.* Disposals to wholesalers, retailers, and consumers in each month other than the first month of the fiscal year, or the month of commencing business, shall be reported on supplemental sheets, Form 217a, as follows:

(1) *To consignees listed on prior returns of same fiscal year.* The total quantity of oleomargarine disposed of during the month to all persons, including wholesalers, retailers, and consumers, listed on returns for prior months of the same fiscal year, shall be reported as a single amount designated as "Disposed of to consignees listed on returns for previous months of the same fiscal year."

(2) *To other consignees.* Disposals to wholesalers not listed on any return for a prior month of the same fiscal year shall be reported in detail in the manner prescribed in paragraph (g) (1) of this section. Similarly, disposals to retailers and consumers not listed on any return

for a prior month of the same fiscal year shall be reported in detail in the same manner as prescribed in paragraph (g) (2) of this section.

(i) *Registered names and addresses required.* Names and addresses shall be entered as they appear on customers' special-tax stamps. Where the shipping address differs from the registered address, the name of the shipping point, in parentheses, should be entered with the registered address. (See § 310.54 (f).) Surnames should precede first names. County names should be included in the addresses of customers located in the States specified at the head of Form 217a.

(j) *Repeat shipments.* Only the aggregate quantity disposed of to each person at one address during the month shall be reported. Example: If 20 sales of 10 pounds each were made, the name of the purchaser and the address to which delivered should be entered but once with the total of 200 pounds.

(k) *Chain store entries.* Subject to the provisions of paragraphs (g) and (h) of this section, disposals to chain stores shall be reported in alphabetical order of the names of (1) the cities or towns in which the stores are located and (2) the streets on which situated. Numerical order of street numbers should be observed where more than one store is located on the same street.

(l) *Goods returned or otherwise disposed of.* Under a heading, "Returned to Shipper," there shall be shown in alphabetical order (1) the name and address of each consignor, and (2) the total quantity received during the month from him. Similar entries, under appropriate headings, shall be made for oleomargarine disposed of as grease, or for other inedible purposes, or destroyed.

(m) *Losses.* Oleomargarine accidentally destroyed, lost in transit, or unaccounted for shall be reported on line 3 of the credit column of the summary and an appropriate explanation inserted.

(n) *Summary.* The quantities entered under the respective headings shall be totaled and the totals carried to the proper lines of the summary, page 1, Form 217. The actual quantity on hand at the beginning and close of the month shall be entered in the summary, which should balance. The quantity reported on hand at the beginning of the month

shall agree with the quantity reported on hand at the close of the preceding month.

(o) *Correcting entries.* If after rendering a return it is found that any receipts or disposals were omitted or erroneously reported, correcting entries shall be made on the return for the following month.

(p) *Penalty for noncompliance.* For willful violation of § 310.42 and this section relating to wholesale dealers' records and returns, a fine of not less than \$50 or more than \$500 and imprisonment for not less than 30 days or more than 6 months, is provided by section 2308 (h), I. R. C.

[Regs. 9, 1 F. R. 193, as amended by T. D. 5660, 13 F. R. 6004]

#### SUBPART E—RETAIL DEALERS IN OLEOMARGARINE

§ 310.50 *Special-tax liability—(a) Preliminary requirements.* A retail dealer shall make return on Form 11 to the collector, pay special tax, and comply with the provisions contained in subpart G, relating to special taxes. As to execution of returns, see § 310.93. As to penalty for nonpayment of special tax, see section 3201 (c), I. R. C.

(b) *Rates of tax.* Tax at the rate of \$48 a year covers sale by retail of both colored and uncolored oleomargarine taxed at 10 cents and  $\frac{1}{4}$  of 1 cent a pound, respectively. A retail dealer who pays special tax at the rate of \$6 a year may sell only uncolored oleomargarine and incurs liability to additional tax if he sells the colored product. (See § 310.90 (b) as to redemption of stamp covering the lower rate of tax.)

§ 310.51 *Quantity limitation.* A retail dealer may sell not exceeding 10 pounds at one time taken from an original package or packages, but if he sells an original package of 10 pounds, he will incur liability as a wholesale dealer (see section 2304 (a), I. R. C.), and the \$1,000 penalty imposed by section 3201 (c), I. R. C., for violation of section 2304 (b), I. R. C.

§ 310.52 *Liability in particular situations—(a) Dealers in other products.* Dealers in butter and other persons who, knowingly or unknowingly, sell oleomargarine render themselves liable to tax as dealers in oleomargarine.

(b) *Itinerant vendors.* A special-tax stamp can be issued only for a specific address or a fixed place of business.

Peddlers, operators of so-called rolling stores, and other vendors who, traveling from place to place, sell oleomargarine incur liability to special tax as either a wholesale or retail dealer at each place where sales are made. (See § 310.41 (a) as to incurring liability at place of sale.)

(c) *Nontaxable situations.* Special-tax liability as a dealer is not incurred in the following situations:

(1) *Eating places.* Where proprietors of public eating places serve oleomargarine with meals, with or without special charge for it. Notice that oleomargarine is served need not be displayed or given in public eating places unless the law of the State requires it. As to liability of proprietors of public eating places who color oleomargarine, see § 310.21 (a) (2).

(2) *Pooling funds.* Where a member of a pool formed for the purpose of purchasing oleomargarine remits the purchase money and individual orders to the vendor and distributes the goods to other members of the pool. (See § 310.41 (e) as to agents or brokers.)

§ 310.53 *Taxpayers of several classes.* As to situations common to special-tax payers of several classes, or which may involve a person who has paid special tax as a retail dealer in additional liability, see § 310.21 (a) as to manufacturers, and § 310.41 as to wholesale dealers.

§ 310.54 *Selling and buying requirements—(a) Factory-branded packages.* Except as may otherwise be required by State law or local regulation, oleomargarine packed by the manufacturer in cartons or wrappers, branded as prescribed in § 310.29, may be sold by a retail dealer from the original stamped container without further branding.

(b) *Branding upon sale.* (1) If the manufacturer's package is not subdivided into prints or rolls the retail dealer shall wrap the oleomargarine at the time of sale in a new covering, which shall be branded with his name and address, the word "Oleomargarine," and the net weight of the contents. Example:

RICHARD ROE  
100 Doe Street, Boston  
1 pound oleomargarine

(2) The letters shall be not less than one-quarter of an inch square and printed in an ink which forms a strong contrast with the color of the covering. Other marks which would obscure the brand shall not be made. The covering

shall be so placed around the oleomargarine that the brand will be plainly visible.

(c) *Misbranded packages.* A retail dealer shall see that cartons and wrappers are branded as prescribed in § 310.29, as penalty provided in section 2308 (a), I. R. C., is incurred if he sells an improperly branded package of oleomargarine. It will be no defense for a retail dealer to show, in an action for failure to properly brand, that the product was sold in cartons or wrappers as packed by the manufacturer. Penalty for buying improperly branded packages is provided by section 2308 (e), I. R. C.

(d) *Removal from package.* A retail dealer may not lawfully remove oleomargarine from the original stamped packages either for repacking, cutting into prints or rolls, or other purposes, nor remove the sides or ends of such packages, before disposal of the contents. If removed from original stamped packages in advance of sale the oleomargarine is subject to seizure for forfeiture. (See section 2309 (c), I. R. C.)

(e) *Displaying packages.* The top of a manufacturer's package may be removed or folded back to display the contents, provided the package is so placed that the word "Oleomargarine" will be plainly visible and not obscured or rendered inconspicuous. (See § 310.29 (b).)

(f) *Ordering.* (1) When ordering or purchasing oleomargarine a dealer shall state his name and address as they appear on his special-tax stamp. If a trade name, as well as the proprietor's real name, appears on the special-tax stamp, both shall be stated on the order. Oleomargarine shall not be ordered in a trade name that is not registered with the collector and stated on the dealer's special-tax stamp.

(2) If the premises have two addresses, because fronting on two streets or for other reason, the address registered with the collector shall always be used. If oleomargarine is ordered for shipment to a point other than the dealer's registered address, the registered address, as well as the shipping point, shall be named in the order.

[Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1332]

**SUBPART F—SPECIAL TAXES**

NOTE: This subpart deals with miscellaneous administrative matters applicable to special taxes and governed by various stat-

utes of the United States. The sections enumerated below deal with matters relating to liabilities of the persons subject to the taxes set forth in this subpart.

Title	
Manufacturers of oleomargarine.....	§§ 310.20-310.33
Wholesale dealers in oleomargarine.....	§§ 310.40-310.43
Retail dealers in oleomargarine.....	§§ 310.50-310.54
Adulterated butter.....	§§ 310.100-310.117
Process or renovated butter.....	§§ 310.120-310.135

**SPECIAL-TAX RATES**

Classification	Annual rate	See section
<b>Adulterated butter:</b>		
Manufacturers.....	\$600	310.108
Retail dealers.....	48	310.114
Wholesale dealers.....	480	310.114
<b>Oleomargarine (colored or yellow):</b>		
Manufacturers.....	600	310.20
Retail dealers.....	48	310.50
Wholesale dealers.....	480	310.40
<b>Oleomargarine (uncolored or white):</b>		
Manufacturers.....	600	310.20
Retail dealers.....	6	310.50
Wholesale dealers.....	200	310.40
<b>Process or renovated butter:</b>		
Manufacturers.....	50	310.122
Retail dealers.....		310.127
Wholesale dealers.....		310.127

§ 310.60 *Registration and payment of special tax.* (a) Registration as required by law is effected by filing, with the collector for the district in which the business is located, property executed special-tax return, Form 11. (See § 310.93.) The return and the tax due must be in the hands of the collector on or before the last day of the month during which business is commenced.

(b) The tax year begins July 1 and ends June 30. Persons in business during any portion of a month are liable from the beginning of the month. Persons in business during the month of July must pay tax for the entire year. Persons commencing business during any other month must pay a proportionate part of the annual tax. For instance, one commencing business in October will pay for 9 months. (See instructions on Form 11.)

(c) If the business is discontinued prior to the end of the tax year, the liability is not thereby reduced. (See § 310.90 (b) (2).)

(d) Assessment of unpaid special tax will be made as provided in section 3311, I. R. C.

§ 310.61 *Ad valorem penalties and interest for delinquency—(a) Delinquent*

*returns*—(1) *Penalties.* (i) Every person from whom a special-tax return is required who, without reasonable cause, fails to file such return within the month during which liability was incurred, is subject to certain penalties. Section 3612 (d) (1), I. R. C., imposes a 25 percent penalty in all such cases.

(ii) The rule as to special-tax returns, within the scope of the regulations in this part, is that if the time prescribed for filing a return is prior to the month of August, 1935, the penalty for delinquency is 25 percent of the tax; but if the time prescribed for filing a return is during or subsequent to the month of August 1935, the penalty for delinquency is 5 percent if the failure is for not more than 30 days, and an additional 5 percent for each additional 30 days, or fraction thereof, during which the delinquency continues, not to exceed 25 percent of the aggregate.

(2) *Sickness or absence.* If the collector is satisfied that failure to file a return is due to sickness or absence, he may extend the time for not more than 30 days. Since any member of a firm may make the return, sickness or absence of less than all the members of a firm will not relieve from liability to the penalty for failure to make return, nor afford ground for extension of time.

(3) *Failure of agent.* If an attorney or agent is delegated to make a return and pay special tax, the principal will incur the penalty if the return is not filed within the time prescribed by law.

(b) *Delinquent payment.* (1) Failure to pay the amount of an assessment within 10 days after issuance of Form 17 (First Notice and Demand) causes to accrue a 5 percent penalty and interest from the date of the expiration of the 10-day period to the date of payment, under the provisions of section 3655 (b), I. R. C.

(2) [Reserved]

(3) Interest shall be computed at the rate of 6 percent per annum from the expiration of the 10-day period to the date of payment.

(4) Interest at the rate of 6 percent per annum shall be computed on the basis of 365 days to the year, or 366 days in a leap year.

§ 310.62 *False returns.* For making a false or fraudulent return additional liability amounting to 50 percent of the total tax is incurred. If a return covers

only a portion of a year or period for which liability is incurred, the return is false as a whole and not merely as to that portion of the year or period omitted. (See section 3612 (d) (2), I. R. C.)

§ 310.63 *Partnerships.* Collectors will issue special-tax stamps to partnerships in the firm name and trade name, if any, but the stamps need not show the names of individual partners.

§ 310.64 *Each place taxable.* Special tax shall be paid for each place of business, except that a manufacturer who pays special tax for the place of production may, without incurring additional liability, sell products of his own manufacture at his principal office or place of business, provided no products other than samples are kept there.

§ 310.65 *Each business taxable.* Where more than one taxable business is conducted by the same person at the same address, special tax for each business must be paid. But as to manufacturers see §§ 310.41 (j) (1), 310.64.

§ 310.66 *Special-tax stamps*—(a) *Issuance of stamps.* Collectors will issue a special-tax stamp to the taxpayer upon receipt of a return on Form 11 accompanied by the amount of the tax. Collectors and their deputies are forbidden to issue receipts in lieu of special-tax stamps. A receipt may be furnished only pending issuance of a special-tax stamp.

(b) *Display of stamp.* A special-tax payer shall conspicuously display his special-tax stamp on the premises where the business is operated. A taxpayer who neglects to display the stamp incurs liability to a penalty of \$10, or an amount equal to the tax if the tax is more than \$10, in addition to the costs of prosecution. If the failure is willful the penalty is doubled.

(c) *Loss of stamp.* If a taxpayer loses his special-tax stamp, or if it is accidentally destroyed, he shall immediately notify the collector, who will issue a certificate of payment, Form 785, which must be displayed in lieu of the stamp. Unless a certificate is so obtained and displayed, liability for failure to display special-tax stamp will be incurred. (See paragraph (b) of this section.)

§ 310.67 *Change of control*—(a) *Without additional liability.* Certain persons other than the taxpayer may, without incurring additional liability, carry on the business at the same address

and for the remainder of the period for which special tax was paid. To secure such right the party or parties continuing the business must execute, within 30 days, a return on Form 11, showing the basis of the right. As to liability for failure to register change, see § 310.69. Under the conditions indicated the parties having such right are as follows:

(1) *Death.* The widow, children, or other legal representatives of a deceased taxpayer.

(2) *Insolvency.* A receiver or referee in bankruptcy, or an assignee for the benefit of creditors.

(3) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(b) *Additional liability.* Special tax, reckoned from the 1st day of the month in which the change occurs, is incurred and must be paid by the following parties under the conditions named:

(1) *Partnerships.* Where additional partners are taken into a firm operating under the old or a new firm name.

(2) *New corporation.* Where a corporation is formed to continue the business of a partnership, or a new charter is issued to a former corporation.

(3) *Stockholder.* Where a stockholder or other party continues a business previously conducted by a corporation, whether or not the corporation is dissolved.

§ 310.68 *Change of name or location—*

(a) *Exemption from liability.* The name of an individual, firm, or corporation that has paid special tax may be changed, or a special-tax payer may relocate his place of business, without incurring additional tax liability, provided the change is registered with the collector.

(b) *Registration.* A special-tax payer who changes his name or relocates his place of business shall within 30 days execute a new return on Form 11, marked "Revised registry." The return shall set forth the date of change, and the new name or address. The return shall be forwarded with the special-tax stamp to the collector who issued the stamp for recording the change.

(c) *Procedure by collector—*(1) *Removal within district.* Where a taxpayer removes his business to another address within the district the collector will enter on his Record 10 the new address and the date of removal, and will

note the change on the face of the special-tax stamp which he will return to the taxpayer.

(2) *Removal to another district.* Where a taxpayer removes his business to another district the collector who issued the stamp will enter on his Record 10 the new address and date of removal, and will transmit the stamp to the collector of the district to which the taxpayer removed. The collector of that district will then make entry on his Record 10, as in the case of a new registrant, and note the taxpayer's new address and the collector's name, title and district, and the date on the stamp, which will be returned to the taxpayer.

§ 310.69 *Penalties for failure to register change.* A person succeeding to a business for which tax has been paid, or a taxpayer who relocates his business, without registering the change within 30 days, as required by §§ 310.67, 310.68, respectively, will be liable to the tax, to the penalties set forth in § 310.61, for failure to make return, and also to penalty for carrying on business without payment of tax. (See section 3201, I. R. C., and § 310.22 (b).)

§ 310.70 *State laws applicable.* Payment of special tax under Federal law confers no right or privilege to conduct business contrary to State law. The holder of a special-tax stamp issued by the Federal Government may still be punishable under a State law prohibiting or regulating the manufacture or sale of oleomargarine. On the other hand, compliance with State law affords no immunity under Federal law. Persons who engage in business in violation of the law of a State are, nevertheless, required to pay special tax as imposed under the internal-revenue laws of the United States.

§ 310.71 *Public record of taxpayers.* The list of special-tax payers required by the foregoing statute shall be kept on Record 10, and may be inspected and copied in collectors' office at such reasonable and proper times as not to interfere with the collector's use of it, or exclude other persons from inspecting it.

**SUBPART G—IMPORTATION AND EXPORTATION OF OLEOMARGARINE**

§ 310.80 *Importation—*(a) *Requisition for stamps.* Stamps for tax payment of imported oleomargarine will be sold to the owner or importer only upon

requisition (Customs Catalogue 3493) executed by an authorized customs officer. The requisition shall be presented to the internal-revenue collector of the district in which is located the custom-house where the entry is filed.

(b) *Affixing and canceling stamps.* Before release from customs custody stamps shall be affixed and canceled by the owner or importer in the manner prescribed in § 310.31 (c), (d). The cancellation shall distinctly show the name of the owner or importer, port of entry, customs entry number, and date.

(c) *Packing and branding.* Imported oleomargarine shall be packed in wooden or tin-plate containers of not less than 10 pounds each, as prescribed in § 310.28. Before removal from customs custody imported packages shall be branded in accordance with § 310.29, so far as applicable, the name of the country of origin, and the name and address of the importer to be substituted for the factory number, district, and State. The caution notice prescribed for packages of oleomargarine of domestic manufacture is not required.

§ 310.81 *Philippine receipts.* (a) Prior to July 4, 1946, oleomargarine coming into the United States from the Philippine Islands is taxable at the rate of one-fourth of 1 cent a pound for the white or uncolored product and 10 cents a pound for the yellow or colored product, in addition to any customs duty imposed thereon. The provisions contained in § 310.80 as to obtaining, affixing, and canceling stamps and package requirements, so far as applicable, shall apply to oleomargarine received from the Philippines.

(b) On and after July 4, 1946, all oleomargarine coming into the United States from the Philippine Islands is taxable at the rate of 15 cents per pound, in addition to any customs duty imposed thereon, the same as oleomargarine imported from other foreign countries.

[Regs. 9, 1 F. R. 193, as amended by T. D. 5531, 11 F. R. 9237]

§ 310.82 *Exportation*—(a) *Regulatory provisions.* Oleomargarine may be exported free of tax as provided in Part 451 of this chapter, copies of which may be obtained from a collector or the Commissioner of Internal Revenue. The manufacturer is required to furnish the collector with a bond, Form 549, and file application for withdrawal and entry for

exportation, Form 550. As to exporters' liability as wholesale dealers, see § 310.41 (k).

(b) *Drawback.* The law makes no provision for allowance of drawback upon exportation of tax-paid oleomargarine.

(c) *Consumption aboard vessel.* Oleomargarine for consumption aboard a vessel while in a port of the United States or en route to a foreign country shall be tax-paid.

(d) *Packing and branding.* Before removal from the factory each statutory package shall be branded as prescribed in section 2307, I. R. C. Inner packages, which may be of wood, metal, paper, or other material, shall contain not less than one-half pound each and shall be branded with the word "Oleomargarine" in plain gothic letters of at least 20-point type, the brand to measure not less than 3½ inches in length. The brand may be lithographed on inner packages of tin or printed on a label affixed to the tin.

§ 310.83 *Reimportation.* Oleomargarine exported free of tax, when reimported, is subject to a customs duty equal to the tax. Customs inspection stamps shall be affixed to all packages of reimported oleomargarine to denote payment of duty. Internal-revenue stamps are not required on reimported packages to which customs inspection stamps have been affixed.

#### SUBPART H—GENERAL PROVISIONS

§ 310.90 *Redemption of stamps*—(a) *Commodity tax stamps.* (1) Stamps received from the Government in such condition that the purchaser can not use them may be exchanged by the collector for usable stamps of the same quantity and denomination. Stamps may be redeemed if (i) rendered useless by sticking together after receipt by the purchaser; (ii) used in excess of the amount required; or (iii) the owner has no use for them.

(2) Stamps on packages sold or removed from the factory can not be redeemed if afterwards the oleomargarine became damaged or unmerchantable, or was reworked or disposed of as grease. But see §§ 310.32 (Repacking and restamping) and 310.33 (Reworking, denaturing, repacking.)

(b) *Special-tax stamps.* (1) Where two stamps covering respectively colored and uncolored oleomargarine are

issued to the same taxpayer for the same address, the stamp for the sale of uncolored oleomargarine is redeemable provided the full period thereof is covered by the stamp for the sale of colored oleomargarine. (See §§ 310.40 (b), 310.50 (b).)

(2) If business is discontinued before the end of the taxable year the part of the special-tax stamp for the unexpired portion of the tax-paid period can not be redeemed. (See § 310.60 (c).)

(c) *Authority for redemption.* The authority for redemption of or allowance for internal-revenue stamps is provided in section 3304, I. R. C. (See paragraphs (a) and (b) of this section.) [Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1333]

§ 310.91 *Claims for stamps.* A claim prepared by the taxpayer on Form 843 and accompanied by the stamps must be presented to the collector within 4 years after the stamps were purchased. The date of purchase, if known, must be shown. If the date of purchase is unknown the claim must show whether the stamps were purchased within 4 years preceding the date of filing the claim. If the stamps can not be submitted with the claim they shall be exhibited to an internal-revenue representative, who will write on them: "Claim for refund filed." A statement from the representative showing that he made the notation and the circumstances requiring such procedure must accompany the claim.

§ 310.92 *Refunds*—(a) *Special tax and penalty.* Claims for refund of special taxes and penalties, paid as the result of an assessment without issuance of stamps, are governed by sections 3770 and 3313, I. R. C. Such claims shall be made on Form 843 and filed with the collector within 4 years after payment of the tax or penalty. (See § 310.91 as to claims for redemption of stamps.)

(b) *Compromise offers.* Refunds of amounts paid as compromise offers can not be made where the offers have been accepted, notwithstanding it may subsequently be established that no liability was actually incurred.

§ 310.93 *Execution of returns*—(a) *Signatures.* Special-tax and monthly returns required by the regulations in this part shall be executed as follows:

(1) *Sole proprietorship.* The returns of a sole proprietorship shall be signed by the proprietor himself.

(2) *Partnership.* The returns of a partnership shall be signed by a member, who shall affix the firm's name and below it sign his own name and designate his capacity.

(3) *Corporation.* The returns of a corporation shall be signed by a duly authorized officer or agent, who shall affix the corporation's name and below it sign his own name and designate his title. The corporate seal, if any shall be affixed.

(4) *Authorized agent.* If the taxpayer desires to delegate the signing of returns to another, the manager of a branch house, or other agent, may sign returns, provided a power of attorney, in duplicate, authorizing the agent to execute returns, is furnished the collector. An agent shall sign the name of the person, firm, or corporation for which he is authorized to act and below it sign his own name and designate his capacity.

(5) *Names and addresses.* (1) Where a business is operated in a trade name, both the real name and the trade name of the proprietor shall be used when executing special-tax return, Form 11. Monthly returns, Forms 216 and 217, shall be executed in conformity with the special-tax return and special-tax stamp. If the special-tax return and stamp show a trade name as well as the real name of the proprietor, both names shall likewise appear on the monthly returns.

(2) The identical address of the premises as given on the special-tax return and special-tax stamp shall also be used to designate the taxpayer's place of business on monthly returns.

(b) *Oaths.* The jurat may be executed by any officer authorized to administer oaths. No charge is made if special-tax and monthly returns are sworn and subscribed to before a deputy collector or an internal-revenue agent.

§ 310.94 *Preparation of returns by revenue officer.* If a person who has incurred liability to special tax fails or refuses to render returns special-tax or monthly) within the time prescribed by these regulations, or by the Commissioner, the return shall be made by an internal-revenue officer. Such action by an officer will not relieve the delinquent from liability for his failure to make returns. (See § 310.61 as to penalties.)

§ 310.95 *Law enforcement*—(a) *Authority to examine records.* The Commissioner may specifically authorize any

internal-revenue officer or employee to examine the records required by the regulations in this part, and demand the production of any other records for the purpose of determining whether liability to tax was incurred, or whether the provisions of the regulations in this part have been observed.

(b) *Canvass of districts.* Each collector is charged with the enforcement of all the laws and regulations concerning the collection of internal-revenue taxes in his district, and with the prevention, detection, and punishment of fraud. Section 3600, I. R. C., provides that each collector shall require deputies to thoroughly canvass his district from time to time for objects of taxation. Section 3745 (a), I. R. C., makes it the duty of each collector to report willful violations of law to the United States attorney for the appropriate district.

§ 310.96 *Right of entry*—(a) *Authority.* Each collector, deputy collector, or inspector within his district, or any internal-revenue agent, is authorized by law to enter any premises for the purpose of examining taxable merchandise produced or stored there. Unless the premises are open at night, entry may be made only during the day.

(b) *Search warrant.* A private home may be entered only under authority of a search warrant. As to issuance of search warrants in internal-revenue cases, see section 3602, I. R. C.

(c) *Factory inspection.* Each factory where oleomargarine, adulterated butter, or process or renovated butter is made will be periodically inspected by an internal-revenue officer. He will record his name and the date of his inspection in the manufacturer's record and submit a report on the condition of the factory to the collector. If an internal-revenue officer is denied admission to the premises, or refused permission to make an adequate inspection, the facts should be reported to the Commissioner.

[Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1333]

§ 310.97 *Illegal divulgence.* A collector may furnish inquirers with a monthly statement showing the amount received from sales of stamps in his district, but no information from which could be determined the output or operations of any individual manufacturer will be divulged.

§ 310.98 *Deleterious oleomargarine*—(a) *Seizure.* Oleomargarine suspected of containing ingredients deleterious to the public health shall be seized by the collector, who shall immediately forward samples to the Commissioner for examination, as provided in § 310.13.

(b) *Appeal from decision.* If the owner of the product disputes the decision of the Commissioner, he may appeal to a board composed of the Surgeon General of the Army, the Surgeon General of the Navy, and the Secretary of Agriculture. An appeal shall be presented to the collector, who will forward it to the Commissioner, by whom it will be transmitted to the board, together with the samples and record of the case. The decision of the board shall be final and will be transmitted to the owner of the product by the Commissioner through the collector.

(c) *Disposition.* Deleterious oleomargarine forfeited to the United States may be destroyed by the collector upon authorization from the Commissioner; or it may be sold: *Provided,* That before delivery to the purchaser each package is conspicuously stamped with the following statement in letters at least an inch square: "Condemned as unfit for human consumption and deleterious to the public health."

§ 310.99 *Sales by legal process*—(a) *Packing, branding, stamping.* When oleomargarine which has been abandoned, forfeited, or seized under warrant of distraint is sold for the benefit of the United States, with or without an order of court; or when sold by a sheriff, constable, or other officer under any writ, execution, or process or order of any court, the officer making the sale shall, before delivery, see that the product is properly packed and that each package bears the required brand, stamps, and caution notice. If it is necessary to attach stamps, or to cancel stamps already affixed, the cancellation shall show the name and title of the officer and the date.

(b) *Payment of tax.* Where sales of unstamped oleomargarine are to be made for the benefit of the United States the officer will ascertain, by obtaining informal bids or otherwise, whether the merchandise will sell for an amount equal to the tax. If it will not, the officer shall report the facts to the Commissioner, who will issue instructions as to the disposition of the product. The report shall

state the history of the case, the quantity and condition of the goods, and what efforts were made to sell them for an amount equal to the tax.

(1) *Application for stamps.* If an amount equal to the tax is, or will be, realized, application for stamps shall be made by the officer to the internal-revenue collector of the district where the sale was, or will be, made. The application shall show the quantity of each class of oleomargarine sold, or to be sold, and the amount realized or expected from the sale. The application shall be supported by a certified copy of the order of the court or officer who authorized the sale.

(2) *Collector to supply stamps.* If the collector is satisfied that the sale was, or will be, authorized and made for the benefit of the United States, and that the proceeds were, or will be, equal to the tax, he shall supply the necessary stamps and obtain a receipt from the officer. The application and receipt for the stamps and a certified copy of the order of the court or officer shall be forwarded to the Commissioner so that proper credit may be allowed the collector for the stamps.

(c) *Officer to purchase stamps.* If a sale is not made for the benefit of the United States, the sheriff, constable, or other officer making the sale shall purchase the required stamps from the internal-revenue collector of the district.

(d) *Accounting procedure.* The procedure as to obtaining and accounting for stamps, and as to accounting for proceeds of sales of material distrained upon, shall be in accordance with instructions issued to collectors covering such situations.

#### SUBPART I—ADULTERATED BUTTER

§ 310.100 *Butter defined.* (a) [Reserved]

(b) Butter churned and worked in accordance with approved standards, and with quality as a prime object, contains not more than 16 percent moisture. As defined by the Food and Drugs Act of March 4, 1923, butter contains not less than 80 percent, by weight, of milk fat, allowance being made for all tolerances. When butter contains a smaller quantity of milk fat or more than 16 percent moisture, a strong presumption is raised that the product is adulterated butter within the meaning of the statute.

§ 310.101 *Adulterated butter classified.* Adulterated butter may be divided into three classes, namely:

(a) Butter in any way produced from different lots of melted or unmelted butter, or butter fat, to which a substance has been added for the purpose of removing rancidity or deodorizing it, except butter made from sour cream the acid of which has been reduced with lime water before churning.

(b) Butter or butter fat with which is mixed any substance foreign to butter as defined by law, for the purpose of reducing the cost of the product. This does not include mixtures taxable as oleomargarine. (For definition of oleomargarine, see section 2300, I. R. C.)

(c) Butter manufactured or manipulated by any process or with any material resulting in the absorption of abnormal quantities of water, milk, or cream. Emulsified or milk-blended butter comes within this class.

§ 310.102 *Preservatives.* Butter to which a harmless preservative has been added solely for the purpose of preservation, is not subject to tax as adulterated butter, provided the quantity is not larger than is absolutely necessary to preserve it. If the preservative is used as a bath or wash in working or renovating it, the product will be subject to tax as adulterated butter.

§ 310.103 *Ladled butter.* The product commonly known as "ladled butter" is taxable as adulterated butter if a process within the definition of adulterated butter (see § 310.101) is used. As to taxability of ladled butter as renovated butter, see § 310.120 (c).

§ 310.104 *Foreign ingredients.* The addition of any foreign fat, lard, or oil to butter, no matter how small the quantity, renders the product subject to tax as oleomargarine. (See section 2300, I. R. C.)

[Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1333]

§ 310.105 *Commodity tax.* (a) The tax upon adulterated butter accrues upon manufacture or sale or removal from the place of manufacture. The tax shall be paid by the manufacturer by affixing stamps to the packages before they are removed from the bonded premises. If, however, the Commissioner deems it necessary, he may require the attachment of stamps, or may assess the tax,

at any time after manufacture. A fraction of a pound is taxable as a pound.

(b) Adulterated butter may be withdrawn tax free for export. (See § 310.117 and Part 451 of this chapter.)

§ 310.106 *Butter subject to sampling.* Butter which is not branded as adulterated butter, or as process or renovated butter, will be presumed to be genuine butter unless a test discloses it to be taxable. Internal-revenue officers will periodically take samples of butter as provided in § 310.107, and submit them, as provided in § 310.13 (a), to the Commissioner, under whose direction tests will be made. The Commissioner's decision as to the taxability of the product sampled will be based upon the tests and legal definitions of adulterated butter, and process or renovated butter, and will be administratively final.

§ 310.107 *Sampling requirements—(a) Method.* The following rules for sampling butter will apply:

(1) Two drawings with a standard butter trier will be made of tub or solid-packed butter. The instrument will be run diagonally from top to bottom of the package. The two drawings will be from opposite sides. The cores withdrawn will be cut into lengths of 2 or 3 inches each. The alternate lengths should be combined into a sample which should weigh approximately half a pound, and the remaining lengths should be used to close the apertures in the package.

(2) A sample will be taken from every package of each lot. However, (i) if a lot includes two or more packages from one churning, a sample may be taken from one package only; or (ii) if the separate churnings are not indicated, not less than one sample from each 10 tubs may be taken, provided, as to either situation, the manufacturer agrees in writing to pay the tax on the entire lot if the test discloses it to be taxable. Additional samples may be taken if circumstances suggest such action.

(3) A one-pound sample will be taken from each package of print butter.

(b) *Release pending tests.* If the butter is not deleterious, the stamp tax may be paid pending the outcome of the tests, and the product released for reworking to legal condition under internal-revenue supervision. If the tests show all or part of the butter not to be adulterated, a claim for refund of the tax paid in excess may be filed.

(c) *Resampling.* Application for re-sampling butter sampled in accordance with the regulations in this part will not be entertained.

§ 310.108 *Manufacturers' special-tax liability.* A manufacturer shall make return on Form 11 to the collector, pay special tax, and comply with the provisions contained in Subpart G, relating to special taxes. As to execution of returns, see § 310.93.

§ 310.109 *Administrative requirements—(a) Provisions applicable.* The provisions of this part as to oleomargarine manufacturers' notices (§ 310.22), inventories (§ 310.23), records (§ 310.24), returns (§ 310.25), factories (§ 310.26), bonds (§ 310.27), sales by legal process (§ 310.99), and all other provisions of this part relating to oleomargarine, so far as applicable, are hereby extended and made to apply to adulterated butter.

(b) *Penal sum of bond.* The penal sum of the bond required of a manufacturer of adulterated butter shall be not less than \$500.

§ 310.110 *Packages.* The provisions of § 310.28 as to manufacturers' packages of oleomargarine, so far as applicable, are hereby extended and made to apply to packages of adulterated butter. (See penalty for refilling containers provided by section 2308 (g), I. R. C.)

§ 310.111 *Branding—(a) Statutory packages.* (1) Before removal from the factory the words "Adulterated Butter," the factory number, district, and State, and the gross, tare, and net weights shall be legibly printed or stenciled on one of the sides or top of each package of adulterated butter in the following manner:

ADULTERATED BUTTER  
Factory No. 2, 2d Dist., New York  
64-4-60

(2) The words "Adulterated Butter" shall be in bold-face gothic letters not less than three-quarters of an inch high, and the other letters and figures not less than one-half inch high. The color of the brand shall be in strong contrast to that of the package.

(b) *For export.* When manufactured expressly for export in accordance with specifications of foreign customers, a product coming within the classification of adulterated butter, as defined in section 2320 (b), I. R. C., may be branded "Preserved Butter" in lieu of "Adulterated Butter," provided such la-

beling does not violate the laws of the country to which the product is exported, or the Federal Food, Drug, and Cosmetic Act (21 U. S. C. Chapter 9, or any other act, or regulations issued under authority thereof.

(c) *Cartons and wrappers.* The provisions of § 310.29, relating to branding oleomargarine cartons and wrappers, so far as applicable, are hereby extended and made to apply to cartons and wrappers in which adulterated butter is packed.

(d) *Penalty for misbranding.* For falsely branding any package of adulterated butter a fine of not more than \$1,000 and imprisonment for not more than 2 years is provided by section 2326 (a) (1), I. R. C.

**CROSS REFERENCE:** For regulations of the Food and Drug Administration, Federal Security Agency, under the Federal Food, Drug, and Cosmetic Act, see 21 CFR Part 1.

[Regs. 9, 1 F. R. 193, as amended by T. D. 4807, 3 F. R. 1333]

§ 310.112 *Caution notice.* The provisions of § 310.30 as to affixing caution notice to manufacturers' packages of oleomargarine, so far as applicable, are hereby extended and made to apply to packages of adulterated butter.

§ 310.113 *Stamping packages.* The provisions of § 310.31 as to ordering, affixing, and canceling stamps, and of § 310.32 as to repacking and restamping oleomargarine, so far as applicable, are hereby extended and made to apply to adulterated butter.

§ 310.114 *Dealers' special-tax liability—(a) Preliminary requirements.* A return on Form 11 shall be made to the collector by each wholesale and each retail dealer in adulterated butter, who will pay special tax and comply with the provisions contained in Subpart G, relating to special taxes. As to execution of returns, see § 310.93.

(b) *Dealers classified.* A dealer who sells 10 pounds or more at one time is a wholesale dealer in adulterated butter. A wholesale dealer shall sell original stamped packages only. A dealer who sells at one time less than 10 pounds is a retail dealer in adulterated butter. A retail dealer shall sell from original packages only.

§ 310.115 *Wholesale dealers' records and returns.* Sections 310.42 and 310.43 as to records and returns of wholesale

dealers in oleomargarine shall apply, so far as applicable, to wholesale dealers in adulterated butter.

§ 310.116 *Restrictions on sales.* Section 310.20 (b) and (c) as to liability of manufacturers as wholesale or retail dealers, § 310.41 as to liability of wholesale dealers in particular situations, § 310.52 as to liability of retail dealers in particular situations, § 310.54 as to selling and buying requirements, and all other sections of this part relating to oleomargarine manufacturers and dealers, so far as applicable, are hereby extended and made to apply to sales of adulterated butter.

§ 310.117 *Oleomargarine provisions applicable to adulterated butter.* Section 2327 (a), I. R. C., provides that the provisions of sections 2301 (c) (2) and 2305 to 2311, inclusive (except subsections (a), (b), and (h) of section 2308) shall apply to manufacturers of adulterated butter to an extent necessary to enforce the marking, branding, identification, and regulation of exportation and importation of adulterated butter.

#### SUBPART J—PROCESS OR RENOVATED BUTTER

§ 310.120 *Definition applied.* (a) The terms "process butter" and "renovated butter" are used synonymously in the regulations of this part and it is immaterial, for the purposes of the acts cited in this subpart, whether a manufacturer designates the product "process butter" or "renovated butter."

(b) Butter which falls within the definition of adulterated butter (see § 310.101) is subject to tax as adulterated butter rather than as process or renovated butter. The principal difference between adulterated butter and process or renovated butter is with respect to the use of chemicals or other substances. Butter reworked with the use of chemicals or other substances is adulterated. Butter which is melted, clarified, or refined without the use of chemicals or other substances is process or renovated butter.

(c) Ladled butter is taxable as process or renovated butter if, in addition to being reworked, it is melted, clarified, or refined. By the term "ladled butter" is meant butter reworked by mixing or stirring, usually for the purpose of obtaining uniformity of color, and not melted, and softened no more than necessary to facilitate mixing or stirring. Provided the butter is not melted, cleans-

ing of ladled butter by washing with water or otherwise than by use of chemicals or other substances will not give the butter the status of process or renovated butter or adulterated butter. "Melted" as used in this subpart means such melting as is distinguishable by the Waterhouse test.

For definitions of "butter" and "adulterated butter" see section 2320 (a) and (b), I. R. C.

§ 310.121 *Commodity tax.* (a) The tax on process or renovated butter accrues upon manufacture or sale or removal from the place of manufacture. The tax shall be paid by the manufacturer by affixing stamps to the packages before they are removed from the bonded premises. If, however, the Commissioner deems it necessary, he may require the attachment of stamps, or may assess the tax, at any time after manufacture. A fraction of a pound is taxable as a pound.

(b) The law makes no provision for exporting process or renovated butter free of tax.

§ 310.122 *Manufacturers' special-tax liability.* A manufacturer shall make return on Form 11 to the collector, pay special tax, and comply with the provisions contained in subpart G, relating to special taxes. As to execution of returns, see § 310.93.

§ 310.123 *Administrative requirements*—(a) *Provisions applicable.* The provisions of this part as to oleomargarine manufacturers' notices (§ 310.22), inventories (§ 310.23), records (§ 310.24), returns (§ 310.25), factories (§ 310.26), bonds, (§ 310.27), sales by legal process (§ 310.99), and all other provisions of this part relating to oleomargarine, so far as applicable, are hereby extended and made to apply to process or renovated butter.

(b) *Penal sum of bond.* The penal sum of the bond required of a manufacturer of process or renovated butter shall be not less than \$500.

§ 310.124 *Packages*—(a) *Bulk containers.* Manufacturers shall pack process or renovated butter in firkins, tubs, or other wooden, fiber, or paper containers. Except when packed for export (see § 310.131), packages shall not be incased in jute, burlap, or other heavy wrapping.

(b) *Empty containers.* When any tax-paid packages of process or renovated butter are emptied, the stamps

must be destroyed as provided in section 2305, I. R. C., relating to oleomargarine.

(c) *Prints and rolls.* Manufacturers may pack process or renovated butter in prints or rolls and place them in paper cartons or wrappers, or containers of tin or similar material, sealed hermetically or otherwise, provided the coverings are branded as provided in § 310.128 (b).

§ 310.125 *Caution notice.* Before removal from the factory each statutory package of process or renovated butter must have legibly and conspicuously printed or labeled on it the following notice, which must measure not less than 3 inches long by 1½ inches wide:

Factory No. ----, ---- District, State of ----.

NOTICE: The manufacturer of the renovated butter herein contained has complied with all the requirements of the law and regulations authorized thereby. Every person is cautioned not to use again either this package for renovated butter or tax stamp thereon or to remove the contents of this package without destroying said stamp, under penalty provided by law in such cases.

§ 310.126 *Stamping packages.* (a) Stamps for the payment of the tax on process or renovated butter are designated "Process Butter" and are issued in sheets of 20 stamps each, in denominations of 10, 20, 30, 40, 50, 60 and 100 pounds. One-pound coupon stamps for use in connection with stamps of the foregoing denominations are issued in sheets of 200 stamps each.

(b) The provisions of § 310.31 as to ordering, affixing, and canceling stamps, and § 310.32 as to repacking and restamping oleomargarine, so far as applicable, are hereby extended and made to apply to process or renovated butter.

CROSS REFERENCE: For Bureau of Customs regulations relating to internal revenue stamps required for oleomargarine, see 19 CFR 11.5.

§ 310.127 *Wholesale dealers*—(a) *Definition.* Every person selling process or renovated butter in quantities of 10 pounds or more at one time (not including manufacturers selling only at the registered place of business) is a wholesale dealer in process or renovated butter.

(b) *Dealers exempt from liability.* A person who sells process or renovated butter is not subject to special tax unless he is a manufacturer of the product.

(c) *Records and returns.* Wholesale dealers in process or renovated butter

shall keep records and render returns corresponding to those required of wholesale dealers in oleomargarine by §§ 310.42, 310.43, respectively.

(d) *Other administrative provisions.* All sections of the regulations in this part relating to wholesale dealers in oleomargarine and adulterated butter are hereby made to apply, so far as applicable, to wholesale dealers in process or renovated butter.

§ 310.128 *Branding*—(a) *Statutory packages.* (1) Before removal from the factory each package of process or renovated butter shall have legibly printed or stenciled on one of its sides the legend "Process Butter" or "Renovated Butter"; also the factory number, district, and State, and the net weight, in the following manner:

PROCESS BUTTER  
Factory No. 2, 2d Dist., New York  
Net Weight, 60 lbs.

(2) The legend "Process Butter" or "Renovated Butter" shall be in bold-face gothic letters not less than three-quarters of an inch square and the other words and figures not less than half an inch square. The color of the legend shall be in strong contrast to that of the package.

(b) *Cartons and wrappers.* (1) The wrappers, cartons, or other containers in which prints or rolls are placed shall be branded with the legend "Process Butter" or "Renovated Butter," in bold-face gothic letters, not less than three-eighths of an inch square. Such legend shall form a strong contrast to the color of the wrapper or container. No other marks shall be made on the side of the wrapper or container on which the legend is placed.

(2) Each package must show the manufacturer's name and address or the factory number, district, and State, and bear a plain and conspicuous statement of the net weight of contents. Such wrappers, cartons, or other containers shall bear no pictorial or other representation which may create the impression that the article is butter as defined by the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 321a). (See § 310.100 (b).)

(c) *Surface impression.* The top surface of solid-packed goods shall be imprinted with the legend "Process Butter" or "Renovated Butter," in plain gothic letters not less than half an inch square, and impressed at least an eighth of an

inch deep. Prints and rolls shall be similarly impressed with letters not less than three-eighths of an inch square. The surface impression may be omitted from prints and rolls of less than a pound unit weight, provided there is compliance with all other requirements.

(d) *Brands requiring approval.* With the exception of shipping marks, any marks, brands, or labels, other than those prescribed by the regulations in this part, shall be approved by the Secretary of Agriculture before they are used on packages of process or renovated butter.

(e) *Evidence of approval.* Approved copies of all marks, brands, or labels shall be retained at the manufacturer's registered place of business, available for inspection by representatives of the Department of Agriculture.

(f) *Penalty for omitting or removing brand.* Every manufacturer of process or renovated butter who fails to brand the product and the containers in which it is packed, is punishable by a fine of not less than \$50 nor more than \$500 or by imprisonment for not less than 1 month nor more than 6 months, or both. Every person who removes any such brands from any package of process or renovated butter is punishable by a fine not exceeding \$1,000 or imprisonment not exceeding 1 year, or both.

§ 310.129 *Misbranding under Federal Food, Drug, and Cosmetic Act.* Misbranding any article of food intended for interstate commerce, or manufactured or offered for sale in any Territory of the United States or the District of Columbia, is prohibited. For the purposes of this act (Federal Food, Drug, and Cosmetic Act, 21 U. S. C. Chapter 9) an article shall also be deemed to be misbranded, in the case of food:

(a) If it be an imitation of, or offered for sale under the distinctive name of, another article.

(b) If it be labeled or branded so as to deceive or mislead the purchaser, or purports to be a foreign product when not so, or if the contents of the package, as originally put up, shall have been removed in whole or in part and other contents shall have been placed in such package.

(c) If in package form, the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count.

(d) If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular.

No provision of the regulations in this part shall be construed so as to relieve any person from compliance with the Federal Food, Drug, and Cosmetic Act.

**CROSS REFERENCE:** For general regulations of the Food and Drug Administration, Federal Security Agency, under the Federal Food, Drug, and Cosmetic Act relating to misbranding and labeling of products, see 21 CFR Part I.

§ 310.130 *Factory inspection*—(a) *Authority to inspect.* Inspectors of the Department of Agriculture, appointed for the purpose by the Secretary of Agriculture, are authorized to enter all factories and storehouses where process or renovated butter is manufactured, packed, or prepared for market, for the purpose of examination or inspection authorized by this act.

(b) *Report of condition.* Periodic inspection of each factory shall be made by such inspectors who will submit a complete report to the Secretary of Agriculture on the sanitation of the premises, the character and condition of the materials used, and the quantity and quality of process or renovated butter produced. The sanitary provisions of the meat inspection act shall apply to the sanitary inspection of process or renovated butter factories. (See act of August 10, 1912, 37 Stat. 273.)

(c) *Impure ingredients.* Process or renovated butter containing any filthy, decomposed, or putrid animal or vegetable substance shall be deemed adulterated under the Food, Drug, and Cosmetic Act.

(d) *Deleterious products seizable.* The Secretary of Agriculture will determine whether or not materials being used in the manufacture of process or renovated butter will be deleterious to health or unwholesome in the finished product. If any materials which have been so determined to be deleterious to health or unwholesome in the finished product are found to be present in any process or renovated butter, intended for, or in course of, exportation or shipment in interstate commerce, such process or renovated butter will be confiscated.

**CROSS REFERENCE:** For Bureau of Dairy Industry regulations relating to the inspection

of factories where process or renovated butter is manufactured by inspectors of the Department of Agriculture, see 9 CFR Part 301.

§ 310.131 *Exportation requirements*—(a) *Stamping, branding, covering.* Original packages of process or renovated butter for export shall be stamped and branded as in the case of packages for domestic use (see §§ 310.126, 310.128) and may be covered with cloth, jute, or burlap. The outer covering shall be conspicuously stenciled with the legend "Process Butter" or "Renovated Butter," in boldface gothic letters not less than an inch square, and the words "For Export Only" on the line beneath, in similar letters not less than three-eighths of an inch square.

(b) *Inspection.* Process or renovated butter for export shall be examined by inspectors of the Department of Agriculture, who will issue a certificate as to its purity, quality, and grade and the sufficiency of the stamps and brands. If inspection is not made before the outer coverings are placed upon the packages, the exporter may be required to remove them.

§ 310.132 *Reports of violations*—(a) *By agricultural inspectors.* Inspectors of the Department of Agriculture who find on the market process or renovated butter, or butter suspected of being processed, renovated, or adulterated, without the required tax stamps and caution notice, will report the matter to the nearest internal-revenue officer. If in doubt as to the character of the product, the inspector should forward samples to the Laboratory Division, Treasury Department, Washington, D. C., for analysis, as provided in § 310.13 (a).

(b) *By revenue officers.* Internal-revenue officers who discover on the market process or renovated butter which does not comply with the regulations in this part will promptly notify the Chief of the Bureau of Dairy Industry, Department of Agriculture, Washington, D. C., as to their findings.

§ 310.133 *Authority for regulations.* The regulations in this part relating to process or renovated butter are dual in their scope. The provisions pertaining to internal-revenue matters are under the jurisdiction of the Secretary of the Treasury and those relating to inspection are under the control of the Secretary of Agriculture. The regulations pertaining to internal-revenue matters are made

under the authority of section 3901, I. R. C.

§ 310.134 *Administrative jurisdiction.* The administration of §§ 310.120–310.127, as to process or renovated butter, is under the Commissioner of Internal Revenue, Treasury Department, and the administration of §§ 310.128–310.131 is under the Chief of the Bureau of Dairy Industry, Department of Agriculture, Washington, D. C. Correspondence pertaining to the subject matter of the respective sections should be addressed to the bureau having jurisdiction in the matter.

CROSS REFERENCE: For general regulations of the Bureau of Dairy Industry, Department of Agriculture, see 9 CFR Chapter III.

## Part 312—Tax on the Manufacture of Manufactured Sugar

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AUTHORITY: §§ 312.100 to 312.506 issued under 53 Stat. 528, 487; 26 U. S. C. 3497, 3791.

SOURCE: §§ 312.100 to 312.506 contained in Regulations 99, 2 F. R. 2677, except as noted following sections affected. Redesignation noted at 14 F. R. 5199.

### SUBPART A—DEFINITIONS

§ 312.100 *Meaning of terms.* As used in the regulations in this part:

(a) The terms defined in the applicable provisions of law shall have the meaning so assigned to them.

(b) The term "Secretary" means the Secretary of the Treasury.

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

(d) The term "collector" means a collector of internal revenue.

(e) [Reserved].

(f) The term "tax" means the tax imposed by section 3490, I. R. C.

(g) The term "manufacture" means that process of manufacturing which directly results in manufactured sugar.

(h) The term "manufacturer" means the person who performs that process of manufacturing which directly results in manufactured sugar. The term also includes any person who, having acquired any sugar which is to be manufactured into manufactured sugar, without further refining or improving it in quality, sells such sugar as manufactured sugar or uses such sugar as manufactured sugar in the production of other articles for sale.

(i) The terms "includes" and "including" when used in a statement contained in the regulations in this part, shall not be deemed to exclude other things otherwise within the meaning of such statement.

### SUBPART B—TAX ON THE MANUFACTURE OF MANUFACTURED SUGAR

§ 312.200 *Effective date.* The tax is effective with respect to the manufacture of manufactured sugar from the first moment of September 1, 1937, the date of enactment of the Sugar Act of 1937. (See § 312.205.)

§ 312.201 *Geographical scope.* The tax is applicable to the manufacture of manufactured sugar in the United States, which is defined in the act to include only the States, the Territories of Hawaii and Alaska, the District of Columbia, and Puerto Rico.

§ 312.202 *Rate of tax.* The rates of tax imposed upon the manufacture of manufactured sugar are:

(a) On all manufactured sugar testing by the polariscope 92 sugar degrees, 0.465 cent per pound, and for each additional

sugar degree shown by the polariscope test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

(b) On all manufactured sugar testing by the polariscope less than 92 sugar degrees, 0.5144 cent per pound of the total sugars therein.

(See section 3507 (b), I. R. C., for definition of "manufactured sugar.")

**CROSS REFERENCE:** For customs regulations relating to the interpretation of "testing by the polariscope," see 19 CFR 13.1.

§ 312.203 *Measure of tax.* The measure of the tax is the number of pounds of manufactured sugar produced by the manufacturer. In the case of a person considered, under section 3492, I. R. C., to be a manufacturer, the measure of the tax is the number of pounds of manufactured sugar sold, or used in the production of other articles for sale, by such person.

§ 312.204 *Liability for tax.* Liability for the tax attaches to the manufacturer. (See § 312.100 (h) for definition of "manufacturer.")

§ 312.205 *When the tax attaches.* (a) The tax attaches upon the completion of that process of manufacturing the direct result of which is manufactured sugar. If the completion of the manufacturing process takes place during the period the tax is in effect, the tax attaches, notwithstanding that some part of the manufacturing process took place before such period.

(b) If a person acquires sugar to be manufactured into manufactured sugar, and, without further refining or improving it in quality, sells such sugar as manufactured sugar, or uses it as manufactured sugar in the production of other articles for sale, such person is liable for the tax as a manufacturer. The tax attaches at the time of the sale of such sugar or at the time of its use in the production of other articles for sale, by such person. (See § 312.502, relating to payment of tax.)

§ 312.206 *Exemption.* (a) No tax is required to be paid on the manufacture of manufactured sugar by, or for, the producer of the sugar beets or sugarcane from which such manufactured sugar was derived, for consumption by the producer's own family, employees, or household. This exemption is applicable only in cases where the producer in question is an individual; it does not apply if the

producer of the sugar beets or sugarcane is a corporation.

(b) To support the exemption from tax under the provisions of section 402 (d) of the act with respect to that quantity of manufactured sugar delivered by the manufacturer to the producer, the manufacturer shall obtain from each producer an affidavit or certificate, in duplicate, on Form 2 (Sugar). The original affidavit or certificate shall be filed with the return on which the exemption is claimed, and a duplicate copy kept on the premises where the manufacturing was done. Such affidavit on Form 2 (Sugar) shall be executed by the producer with respect to each lot of manufactured sugar delivered to him by the manufacturer.

(c) It is not necessary that the manufactured sugar received by the producer be manufactured from the identical sugar beets or sugarcane delivered. The manufacturer may deliver to the producer an amount of manufactured sugar not in excess of the amount which would have been manufactured from the particular quantity of sugar beets or sugarcane the producer has delivered to the manufacturer. All the manufactured sugar to be delivered to a producer for consumption by his family, employees, or household need not be delivered to him at one time, but a separate affidavit or certificate on Form 2 (Sugar) must be obtained for each withdrawal.

(d) The deduction in the manufacturer's return in connection with this exemption is limited to manufactured sugar actually delivered to the producer during the period for which the return is made and shall not include any quantity of manufactured sugar which has not actually been delivered to the producer.

(e) Under the act this exemption is applicable only to that quantity of manufactured sugar required by the producer for consumption by his family, employees, or household. The manufacturer is required to exercise care in accepting affidavits or certificates from producers to ascertain that no quantity of manufactured sugar in excess of that required for such use is delivered to the producer under this exemption.

#### SUBPART C—EXPORT PAYMENTS

§ 312.300 *Who may file the claim.* The person named as consignor in the bill of lading under which the manufac-

tured sugar, or an article processed wholly or partly therefrom, is exported or shipped has the primary right to claim the export payment provided for in section 3493 (a) of the Internal Revenue Code, as amended. Such person may, however, waive any claim thereto in favor of the shipper or the manufacturer, in which case the shipper or the manufacturer, as the case may be, will be recognized as the proper claimant.

A waiver in substantially the following form shall be used:

-----, the consignor(s) named in the bill of lading to which this waiver is affixed or attached, do(es) waive in favor of ----- (shipper) (manufacturer) any claim for payment allowable under the provisions of section 3493 (a) of the Internal Revenue Code by reason of the exportation or shipment of the articles described in such bill of lading, and state(s) that such party is the actual shipper or the actual manufacturer of the article or articles exported.

-----  
(Consignor named in the bill of lading)  
[T. D. 5021, 5 F. R. 4610]

§ 312.301 *Claim for payment.* Claim for an export payment shall be executed by the claimant on the form prescribed by the Commissioner in accordance with the instructions contained thereon and in accordance with the regulations in this part. The claim shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the claimant. If the claimant has no principal place of business in the United States, the claim shall be filed with the collector of internal revenue at Baltimore, Md.

§ 312.302 *Proof of exportation or shipment.* No export payment shall be allowed unless the claimant establishes actual exportation to a foreign country or shipment to a possession. Exportation to a foreign country or shipment to a possession may be evidenced by (a) a copy of the export bill of lading, or (b) a certificate by an agent or representative of the carrier showing actual delivery of the manufactured sugar or articles in a foreign country or a possession of the United States, or (c) a certificate of landing signed by a customs officer of the foreign country to which the manufactured sugar or articles are delivered, or (d) if such foreign country has no customs administration, or in the case of shipment to a possession, a sworn statement of the consignee show-

ing receipt of the manufactured sugar or articles.

§ 312.303 *Limitations on allowance—*  
(a) *Time for filing claim.* No export payment shall be allowed unless claim therefor is filed by the person entitled thereto within 2 years from the date the right to such payment accrued. The right to payment accrues as of the date the articles are exported.

(b) *Drawback of duty.* No export payment is allowable with respect to any manufactured sugar, or article manufactured wholly or partly from manufactured sugar, upon which through substitution or otherwise a drawback of any tax paid under section 3500, I. R. C. (import compensating tax) has been or is to be claimed under any provision of law made applicable by section 3501, I. R. C. [Regs. 99, 2 F. R. 2677, as amended by T. D. 5021, 5 F. R. 4610]

**SUBPART D—LIVESTOCK FEED AND  
DISTILLATION PAYMENTS**

§ 312.400 *Filing of claim.* Any person using any manufactured sugar, or an article manufactured therefrom, with respect to which a tax has been paid under section 3490, I. R. C., as (a) livestock feed, (b) in the production of livestock feed, or (c) for the distillation of alcohol, may file a claim for payment of the amount of tax paid. The claim for payment shall be executed by the claimant on the form prescribed by the Commissioner, in accordance with the instructions contained thereon, and in accordance with the regulations in this part. The claim shall be filed with the collector for the district in which is located the principal place of business of the claimant. If the claimant has no principal place of business in the United States, the claim shall be filed with the collector at Baltimore, Md.

§ 312.401 *Proof of claim.* No claim for payment under section 3494 (a), I. R. C., will be allowed unless the claimant establishes to the satisfaction of the Commissioner (a) that the tax with respect to the manufactured sugar upon which the claim is based was actually paid; (b) that the manufactured sugar, or article manufactured therefrom, was actually used in the production of livestock feed, or as livestock feed, or for the distillation of alcohol; (c) the quantity and test of the manufactured sugar upon which the claim is based; and (d) such other facts as may be required to

determine the claimant's right to the payment.

§ 312.402 *Period for filing claim.* No payment under section 3494 (b), I. R. C., will be allowed unless claim therefor is filed by the person entitled thereto within 1 year from the date the right to such payment accrued. The right to payment accrues as of the date the manufactured sugar, or article manufactured therefrom, is used for one of the three purposes for which payment is allowable under the act. (See § 312.400.)

#### SUBPART E—ADMINISTRATIVE AND OTHER GENERAL PROVISIONS

§ 312.500 *Returns.* (a) Every person liable for the tax shall prepare for each calendar month a return in duplicate on Form 1 (Sugar) in accordance with the instructions thereon and in accordance with the regulations in this part.

(b) A separate return shall be prepared for each collection district in which the manufacturing was done or liability for the tax incurred. That is, if the taxpayer is engaged in the manufacture of manufactured sugar (or incurs liability for tax as a manufacturer under section 3492, I. R. C.) in more than one collection district, he shall prepare a separate return with respect to the liability for the tax incurred in each such district. (See, however, § 312.501.)

(c) If, within a collection district, the taxpayer has more than one factory, refinery, or other place where he manufactures manufactured sugar, there shall be prepared and annexed to the return for such district a separate schedule for each such factory, refinery, or other place, giving for each such place the information required on Form 1 (Sugar).

(d) The return shall be under oath and verified before an officer duly authorized to administer oaths. If the amount of the tax shown by the return to be due is \$10 or less, the return may be signed and executed before two subscribing witnesses instead of under oath.

§ 312.501 *Time and place for filing returns.* (a) The return for each calendar month shall be filed in duplicate with the collector for the district in which the manufacturing is done, or liability for the tax incurred, on or before the last day of the month following the month for which the return has been prepared. For example, the return for

the month of October, 1937, is required to be filed on or before November 30, 1937. However, the due date of the first return of tax, for the month of September, 1937, is fixed in the act as November 30, 1937.

(b) The Commissioner, on application and for good cause shown, may permit a taxpayer who is engaged in the manufacture of manufactured sugar in more than one collection district to file consolidated returns and pay the tax to the collector for the district in which such taxpayer has his principal place of business.

§ 312.502 *Payment of tax*—(a) *General.* (1) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector on the last day of the month following the month in which the manufactured sugar was sold by the manufacturer, or used by him in the production of other articles for sale. However, an exception is made with respect to the first return and payment of tax under the act: The tax with respect to manufactured sugar manufactured in the month of September, 1937, and sold, or used in the production of other articles for sale, in such month by the manufacturer, shall be due and payable without assessment by the Commissioner or notice from the collector, on November 30, 1937.

(2) With respect to manufactured sugar which has not been sold, or used in the production of other articles for sale, by the manufacturer, within 12 months from the month in which manufactured, the tax shall be due and payable, without assessment by the Commissioner or notice from the collector, on the last day of the month following the month in which such 12-month period expires.

(3) For the purpose of determining whether manufactured sugar has been sold, or used in the production of other articles for sale, by the manufacturer, within 12 months after it was manufactured, such sugar shall be considered to have been sold or used in the order in which it was manufactured.

(4) With respect to sugar which has been acquired by a person to be manufactured into manufactured sugar but which, without further refining or other improvement in quality, is sold as manufactured sugar or is used as manufactured sugar in the production of other articles for sale, the tax with respect

thereto is due and payable without assessment by the Commissioner or notice from the collector, on the last day of the month following the month in which such sugar was so sold or used. However, the due date for payment of tax liability incurred in September, 1937, is fixed as October 30, 1937.

*Example 1.* A quantity of manufactured sugar, manufactured in the month of October, 1937, is sold by the manufacturer during the month of December, 1937. The tax with respect to such manufactured sugar is due and payable on or before January 31, 1938.

*Example 2.* On September 30, 1938, the manufacturer still has on hand, unsold, a quantity of manufactured sugar manufactured by him in the month of September, 1937. The tax with respect to such manufactured sugar is due and payable on or before October 31, 1938.

*Example 3.* A quantity of manufactured sugar manufactured in September, 1937, was destroyed by fire in December, 1937, prior to a sale by the manufacturer. The tax with respect to such sugar is due and payable on or before October 31, 1938.

(b) *Date of sale.* Manufactured sugar will be considered to have been sold during the month in which title thereto passes from the manufacturer to a purchaser. When title passes is dependent upon the intention of the parties, which is gathered from the contract of sale and the attendant circumstances. In the absence of expressed intention or other direct evidence, the legal rules of presumption followed in the jurisdiction where the sale is made govern in determining when title passes. Generally, for the purposes of payment of the tax, manufactured sugar will be considered to have been sold during the month in which it was delivered to the purchaser or to a carrier for delivery to the purchaser.

§ 312.503 *Interest on delinquent taxes.* If the tax is not paid when due there shall be added as part of the tax interest at the rate of 6 percent per annum from the time the tax became due until paid.

§ 312.504 *Records*—(a) *Inventory.* Every manufacturer of manufactured sugar shall make an itemized inventory of all manufactured sugar held by him, as of the first moment of September 1, 1937. A separate inventory shall be made for each factory, refinery, or other place where such person holds or manufactures manufactured sugar, and a copy of such inventory shall be retained on the premises.

(b) *Manufacturing records.* (1) Every person who on and after September 1, 1937, manufactures manufactured sugar shall keep an accurate record of the manufacturing done by him. A separate record shall be kept at and for each place where the manufacturing is done.

(2) Such records shall show: The quantity of manufactured sugar and other sugar on hand at the beginning of the month; the quantity received during the month; the quantity of manufactured sugar produced during the month; the quantity sold during the month; the quantity of manufactured sugar used during the month in the production of other articles for sale; and the quantity of manufactured sugar and other sugar on hand at the end of the month. The records shall show the polariscopic test or total sugars of each grade and type of sugar and manufactured sugar.

(3) The records shall contain sufficient information to enable the Commissioner to determine the amount of tax due. Records shall likewise be kept of all transactions involved in any way in any claim or deduction based upon an exemption, or in connection with any claim for payment, refund, credit, or abatement. All records shall be open for inspection by internal revenue officers and shall be maintained for a period of at least 4 years from the date the return is filed.

§ 312.505 *Penalties.* (1) A failure to file a return as required by the regulations in this part causes to accrue a penalty of 5 percent of the amount of the tax if such failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues. In no case, however, shall the penalty exceed 25 percent in the aggregate.

(2) If assessment is made of the tax, penalty, or interest, and payment is not made within 10 days after the issuance of the form for first notice and demand, based on assessment approved by the Commissioner, there will accrue a 5 percent penalty, and interest at the rate of 6 percent a year computed upon the entire assessment (including penalty and interest, if any) from 10 days after issuance of said form until date of payment. In cases where assessment is settled by partial payments, interest is to be computed from the expiration of the first

10-day notice through the date of the first payment and from the next succeeding day to the date of the next payment, until the assessment is paid in full.

(3) If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 percent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 percent penalty applies. The filing of the claim does not stay the running of interest, which continues to run for the full period that intervenes between the date of expiration of the first notice and demand and the date of payment.

(4) If a false or fraudulent return be willfully made, the penalty under section 3612 (d) (2), I. R. C., is 50 percent of the total tax due.

§ 312.506 *Refunds.* A tax (including any penalty or interest) erroneously, illegally, or otherwise wrongfully collected may be refunded by the Commissioner. A claim for such refund shall be made on Form 843 in accordance with the instructions printed on such form and in accordance with the regulations in this part. Copies of the prescribed forms may be obtained from the collector. The claim shall set forth clearly in detail the reasons and facts relied upon in support of the claim, shall be made under oath, and presented within four years next after payment of such taxes.

## Part 314—Taxes on Gasoline, Lubricating Oil, and Matches

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**AUTHORITY:** §§ 314.1 to 314.65 issued under 53 Stat. 419, 467; 26 U. S. C. 3450, 3791.

**SOURCE:** §§ 314.1 to 314.65 contained in Regulations 44, 9 F. R. 13453, 13557, except as noted following sections affected. Redesignation noted at 14 F. R. 5200.

### SUBPART A—GENERAL PROVISIONS

§ 314.1 *Meaning of terms.* As used in the regulations in this part:

(a) The terms defined in the applicable provisions of law shall have the meanings so assigned to them.

(b) The term "manufacturer" includes producer and importer.

(c) The term "exporter" means the person named as shipper or consignor in the export bill of lading.

(d) The term "exportation" means the severance of an article from the mass of things belonging within the United States and the landing thereof in a foreign country for the purpose of uniting it with the mass of things belonging with-

in such foreign country or within a possession of the United States.

(e) The term "possession of the United States" includes the Philippine Islands, the Panama Canal Zone, the Virgin Islands, Guam, Puerto Rico, American Samoa, Wake, and the Midway Islands.

(f) The term "sale" means an agreement whereby the seller transfers the property (that is, the title or the substantial incidents of ownership) in goods to the buyer for a consideration called the price, which may consist of money, services, or other things.

(g) The term "taxable article" means any article taxable under Chapter 29, subchapter A, of the Internal Revenue Code, as amended.

(h) The term "lease of an article" includes any renewal or extension of a lease or any subsequent lease of an article.

§ 314.2 *Effective period.* The taxes on the sale of gasoline, lubricating oils, and matches became effective under Title IV of the Revenue Act of 1932 on June 21, 1932. The applicable provisions of the Revenue Act of 1932 were superseded effective March 1, 1939, by provisions of the Internal Revenue Code.

§ 314.3 *Liability for tax.* (a) Each manufacturer, producer, or importer is liable for tax on any sale, lease, or use of a taxable article, whether such sale, lease, or use is made directly or through an agent, except as otherwise provided. (See Subpart C of this part and §§ 314.5, 314.32, 314.33, 314.42, and 314.43.)

(b) The tax attaches upon sale or use by the manufacturer irrespective of when the article was manufactured, produced, or imported.

(c) In the case of a sale on credit, it is immaterial whether or not the purchase price is actually collected.

§ 314.4 *When tax attaches.* (a) In general, the tax attaches when the title to the article sold passes from the manufacturer to a purchaser.

(b) When title passes is dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. In the absence of expressed intention, the legal rules of presumption followed in the jurisdiction where the sale is made govern in determining when title passes. Generally, title passes upon delivery of the article

to the purchaser or to a carrier for the purchaser.

(c) Where a manufacturer consigns articles to a dealer, retaining ownership in them until they are disposed of by the dealer, title does not pass and the tax does not attach until sale by the dealer. Likewise, where the relationship between a manufacturer and a dealer is that of principal and agent, title passes upon sale by the dealer, and tax thereupon attaches.

§ 314.5 *Sales of taxable articles by a person other than the manufacturer thereof.* If the property (that is, the title or the substantial incidents of ownership) in an article is transferred from the manufacturer thereof, and, under the law, no tax attaches to such transfer, article by the transferee is subject to the tax. The following paragraphs illustrate the application of this rule:

(a) If a manufacturer, producer, or importer of any of the articles covered by the regulations in this part dies, the surviving spouse, child or children, executors or administrators, or other legal representatives, as the case may be, are liable for the tax on all such articles sold by them.

(b) A receiver or trustee in bankruptcy of a manufacturer, who conducts or liquidates a business under a court order, is liable for tax on all taxable articles sold by him, regardless of whether the articles were manufactured or imported before or after he took charge of the business.

(c) An assignee for the benefit of creditors of a manufacturer is liable for tax with respect to all taxable articles sold by him as such assignee.

(d) If one or more members of a partnership withdraw, and the business is continued by the remaining partners, or if new partners are admitted, the new partnership so constituted will be liable for tax on all taxable articles sold by it regardless of when they were manufactured or imported. Likewise, a corporation which results from a statutory consolidation is liable for tax on all taxable articles sold by it, and a stockholder who, after dissolution of a corporation, continues the business is similarly liable with respect to all articles which he sells.

§ 314.6 *Tax on use by manufacturer, producer, or importer.* (a) If a person manufactures, produces, or imports an article covered by the regulations in this

part and uses it for any purpose (other than as material in the manufacture or production of, or as a component part of, another article manufactured or produced by him which will be taxable or sold free of tax under the provisions of § 314.21 or § 314.22), he is liable for tax with respect to the use of such article in the same manner as if it were sold by him.

(b) The use by any person, in the operation of a business in which he is engaged, of any taxable article which has been manufactured, produced, or imported by him or his agent, makes such person liable to tax on such use. However, the tax on the use of an article will not attach in cases where an individual incidentally manufactures, produces, or imports for his personal use or causes to be manufactured, produced, or imported for such use any taxable article.

§ 314.7 *Registration; generally.*

(a) Every person qualifying as a manufacturer of articles taxable under chapter 29, subchapter A, of the Internal Revenue Code, as amended (except manufacturers or producers of gasoline (see § 314.30), lubricating oil, tires and inner tubes and automobile radios), or as a vendee with an established place of business reselling such taxable articles direct to manufacturers for use as material in the manufacture or production of, or as component parts of, other such taxable articles pursuant to section 3442 (1) and (2), I. R. C. (see Subpart C of this part), may be granted a certificate of registry on Form 637 upon the filing of an application for registry on Form 637-A with the collector of internal revenue for the district in which is located the principal place of business of such person (or, if there is no principal place of business in the United States, with the collector of internal revenue at Baltimore, Md.). The application for registry must state specifically the nature of the applicant's business.

(b) Producers or importers of gasoline and manufacturers or producers of lubricating oil are required to register and give bond. (See §§ 314.8 and 314.9.)

(c) Jobbers or dealers who are not manufacturing or producing taxable articles or selling taxable articles direct to manufacturers for use as material in the manufacture or production of, or as component parts of, taxable articles, and manufacturers of tires and inner tubes

and automobile radios, are not entitled to purchase tax free under paragraph (1) or (2) of section 3442, and will not be granted registration certificates.

(d) The Commissioner may cancel the registration certificate and may deny the right to sell or purchase articles tax free in any case where he is satisfied that the registrant is not a bona fide manufacturer of taxable articles, or is not a vendee reselling direct to manufacturers of such articles, or that tax-free sales are being made for purposes not warranted by the law and the regulations in this part.

§ 314.8 *Registration; producers of gasoline and lubricating oils.* (a) Except as provided in this section, every producer as defined in section 3412 (c) (1), I. R. C., (see Subpart D of this part), or importer of gasoline, and every manufacturer or producer of lubricating oil, must, before incurring any liability for tax with respect to gasoline or lubricating oil, make application for registry to the collector for the district in which is located his principal place of business (or, if he has no principal place of business in the United States, to the collector at Baltimore, Md.). Form 637-A, Application for Registry, which may be obtained from the collector, shall be used for this purpose. The application for registry must describe the products, i. e., gasoline or lubricating oils, or both, produced, and set forth in detail the equipment and facilities maintained for the production thereof, the equipment actually employed and methods used in such production, the ingredients or materials utilized, and the percentage that the sales of gasoline or lubricating oils of his own production are of his total sales of such product.

(b) Upon receipt of Form 637-A properly executed, and upon acceptance of the bond provided for in § 314.9, the collector will furnish to the applicant Form 637, Certificate of Registry, bearing his registration number. This certificate is not transferable from one person to another. In case of a change in the location of the principal place of business within the district in which registered, the collector shall be promptly notified. If the principal place of business is transferred from one collection district to another, a new application for a certificate of registry must be filed promptly with the collector for the district in which the new principal place of business is located.

(c) The number of the certificate of registry must appear on each exemption certificate used by the registrant in purchasing gasoline or lubricating oil tax free for use, further manufacture, or resale.

(d) Those persons holding certificates of registry on Form 637 issued prior to the promulgation of the regulations in this part will not be required to reregister.

(e) In case any importer or producer of gasoline or manufacturer or producer of lubricating oil fails to register and give bond in accordance with the statute, he will be liable for the penalty imposed thereby.

(f) If the Commissioner finds that any importer or producer of gasoline or manufacturer or producer of lubricating oil has at any time evaded any Federal tax on gasoline or lubricating oil, he may revoke the registration certificate issued to such person, and thereafter no sale to, or sale for resale to, such person shall be made tax free. The revocation of a certificate of registry will not relieve such person of the requirement of giving a bond in accordance with § 314.9.

(g) Persons (other than refiners, compounders, blenders, dealers selling exclusively to producers of gasoline, or actual producers of gasoline) who, pursuant to section 3442 (2), I. R. C., purchase gasoline tax free for resale to producers of gasoline for use by them as material in the manufacture or production of, or as a component part of, taxable articles will not be required to register and give bond as producers of the gasoline purchased tax free unless the Commissioner finds that, by reason of abuse of the privilege of buying tax free, such persons are subject to tax under section 3412 of the Internal Revenue Code. Such purchasers for resale will, however, be required to register in accordance with § 314.7.

(h) For special provisions relative to the registration of dealers, other than dealers selling exclusively to producers of gasoline, permitted to purchase gasoline or lubricating oil tax free for resale direct to manufacturers of taxable articles, see § 314.7.

(i) For special provisions relative to inspection of records of importers or producers of gasoline and manufacturers of lubricating oil by internal-revenue officers, or officers of any State or Territory, or political subdivision thereof, or

the District of Columbia, charged with the enforcement or collection of any tax on gasoline or lubricating oil, see § 314.62.

(j) Every person who fails to register as required by this section is liable for the penalties imposed by law.

§ 314.9 *Bonding.* (a) Every producer or importer of gasoline and every manufacturer or producer of lubricating oil required to register in accordance with § 314.8 must give a bond on Form 928, in duplicate, with his application for certificate of registry. Such bond shall be in a sum equivalent to the approximate amount of tax which might be incurred by him during an average 3-month period at the rates of tax then in effect, but in no case shall the bond be for less than \$2,000.

(b) If the amount of the bond so calculated would exceed \$30,000, the collector may accept a bond for not less than \$30,000. In such cases there shall be submitted to the collector for transmittal to the Commissioner all facts pertaining to the ownership and value of the property and equipment which will be of assistance to the Commissioner in determining whether a larger bond should be required from the applicant. In transmitting this data the collector shall submit his recommendation as to the acceptance of the bond.

(c) The amount of the bond shall be a multiple of \$100. Where the sum equivalent to the approximate amount of tax which could be incurred during the 3-month period is an odd amount, the amount of the bond shall be increased to the next higher multiple of \$100. For example, if the approximate amount of tax likely to be incurred during the 3-month period amounts to \$6,666.66, the amount of the bond shall be \$6,700.

(d) Every person who fails to give a bond as required by this section is liable for the penalties imposed by law.

§ 314.10 *Cancellation clause of bond.*

(a) Any bond filed on Treasury Department Form 928 by a manufacturer or producer of lubricating oil or by a producer or importer of gasoline may be accepted with a cancellation clause incorporated therein, or annexed thereto, or such cancellation clause may be accepted after filing of the bond if such clause provides that:

Any surety on the bond may at any time give notice to the principal and the Commissioner of Internal Revenue that he desires

to be relieved of liability under said bond after a date named, which shall be at least 60 days after the receipt of notice by the Commissioner. If the notice is not withdrawn in writing prior to the date named in the notice, the rights of the principal as supported by said bond shall be terminated on such date (unless supported by another bond or bonds), and the surety shall be relieved from liability under said bond for any acts done wholly subsequent to said date. The surety shall, however, remain liable for any unpaid tax liability incurred by the principal before cancellation, in addition to penalties and interest, unless the principal pays such tax and penalties and interest. Said notice may not be given by an agent of the surety, unless it is accompanied by power of attorney duly executed by the surety authorizing the agent to give such notice or by a verified statement that such power of attorney is on file with the Treasury Department.

(b) Where the cancellation clause is not incorporated in the bond on Form 928, but is affixed to or associated therewith, either at the time the bond is filed or subsequently thereto, or any other change in the bond is made after the filing thereof, such cancellation clause or other change shall be shown on Treasury Department Form 929, which must be executed by the principal and surety in the same manner as the bond.

#### SUBPART B—GENERAL EXEMPTIONS

§ 314.20 *Tax-free sales.* No tax is imposed on any article sold:

(a) For use by the vendee as material in the manufacture or production of, or as a component part of, a taxable article;

(b) For resale by the vendee for such use by his vendee if such article is in due course so resold.

The exemption certificates required by §§ 314.21 and 314.22 must in every case show the registration number of the vendee. (See § 314.7.)

§ 314.21 *Articles sold to manufacturers.* (a) To establish the right to exemption with respect to an article sold for use by the purchaser as material in the manufacture or production of, or as a component part of, a taxable article, the manufacturer must obtain from his vendee, prior to or at the time of sale, and retain in his possession, a certificate as outlined in this section, showing that the vendee is a manufacturer of taxable articles and that the article purchased is to be used by him as material in the manufacture or production of another

taxable article or as a component part of such an article.

(b) A manufacturer who purchases an article under an exemption certificate for use in the manufacture or production of a taxable article shall be considered the manufacturer of the article so purchased, and is liable for tax on his use or resale of the article unless the exempt character of the use or resale is established.

(c) Following is the form of exemption certificate which will be acceptable for purposes of this section and which must be adhered to in substance:

#### EXEMPTION CERTIFICATE

(Purchases for further manufacture under section 3442 (1) of the Internal Revenue Code)

-----, 19-----

(Date)

The undersigned hereby certifies that he is a manufacturer or producer of articles taxable under Chapter 29, Subchapter A, of the Internal Revenue Code, as amended, and holds certificate of registry No. ----, issued by the collector of internal revenue at -----, and that the article or articles specified in the accompanying order will be used by him as material in the manufacture or production of, or as a component part of, an article or articles enumerated in such Subchapter A, to be manufactured or produced by him.

It is understood that for all the purposes of such Subchapter A the undersigned will be considered the manufacturer or producer of the articles purchased hereunder, and (except as specifically provided by law) must pay tax on resale or use, otherwise than as specified above, of the articles purchased hereunder. It is further understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to revocation of the privilege of purchasing tax free and to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

-----  
(Name)

-----  
(Address)

(d) If it is impracticable to furnish a separate exemption certificate for each order, a certificate covering all orders between given dates (the period not to exceed a month) will be acceptable.

(e) For special provisions with respect to tax-free sales of gasoline or lubricating oils to manufacturers or producers of gasoline or lubricating oils, see §§ 314.32 and 314.42.

§ 314.22 *Articles sold for resale to manufacturers.* (a) To establish the

right to exemption from tax with respect to an article sold by the manufacturer to any person (either a dealer or another manufacturer) for resale without change in form direct to a manufacturer for use by him as material in the manufacture or production of a taxable article or as a component part thereof, it is necessary that (1) the manufacturer and the vendee (referred to in this section as the "dealer") each be registered with the collector of internal revenue for his respective district in accordance with the provisions of § 314.7 or 314.8, as the case may be, (2) the manufacturer obtain from the dealer prior to or at the time of sale, and retain in his possession, a certificate as outlined in this section, showing that the dealer is engaged in the business of selling direct to manufacturers of taxable articles and that the article is to be resold by him only for use by his vendee as material in the manufacture or production of a taxable article or as a component part thereof, and (3) the manufacturer obtain from the dealer proof that the article has been so resold by the dealer. Such proof shall be either (i) a certificate obtained by the dealer from his vendee showing that such vendee purchased the article for use in the manufacture or production of a taxable article and not for resale, or (ii) a sworn statement by the dealer that he has obtained from his vendee, and has in his possession, such a certificate. The certificate required by subparagraph (2) of this paragraph suspends liability for the payment of the tax by the manufacturer on the sale of such article for a period of not more than two months from the date when title passes or the date of shipment, whichever is prior.

(b) If within two months the manufacturer has not received the proof required by paragraph (a) (3) of this section, then the temporary suspension of liability for the payment of the tax ceases and the manufacturer shall include the tax on the sale of such article in his return for the month in which such 2-month period expires. If such proof later becomes available, a claim for refund of tax paid may be filed, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitations prescribed by section 3313, I. R. C.

(c) The exemption applies only where there is not more than one intervening sale between the manufacturer of the

article and the manufacturer purchasing it for further manufacture, and the exemption certificate is obtained by the first manufacturer prior to or at the time of his sale.

(d) Following is the form of exemption certificate which will be acceptable for purposes of this section and which must be adhered to in substance:

EXEMPTION CERTIFICATE

(Purchases for resale under section 3442 (2) of the Internal Revenue Code)

----- 19-----

(Date)

The undersigned hereby certifies that he is engaged in the business of selling direct to manufacturers or producers of articles taxable under Chapter 29, Subchapter A, of the Internal Revenue Code, and holds certificate of registry No.-----, issued by the collector of internal revenue at -----, and that the article or articles specified in the accompanying order will be resold by him only for use by his vendee as material in the manufacture or production of, or as a component part of, an article or articles enumerated in such Subchapter A.

It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to cancellation of the privilege of purchasing tax free and to a fine of not more than \$10,000 or to imprisonment for not more than five years, or both, together with costs of prosecution.

-----  
(Name)

-----  
(Address)

(e) If it is impracticable to furnish a separate exemption certificate for each order, a certificate covering all orders between given dates (the period not to exceed a month) will be acceptable.

§ 314.23 Proof of right to exemptions.

(a) Where a manufacturer or a vendee makes a sale under exemption certificate, he must use reasonable diligence to satisfy himself that the use of the certificate is warranted by the law and regulations. If the original vendor has knowledge at the time of his sale that the article sold by him is not intended for use or resale by the vendee as specified in the certificate given by the vendee, the original vendor is liable for the tax and is not relieved of liability by the exemption certificate. Where any person attempts to defeat the tax imposed on the sale of articles covered by these regulations by fraudulently giving an exemption certificate, he is liable for the penalties imposed by law. (See § 314.65)

(b) Proper records, with the supporting orders, invoices, certificates, and statements required by the regulations in this part, must be maintained with respect to exempt sales as provided in § 314.62. Such evidence must be preserved for a period of at least four years from the last day of the month following the sale, and must be readily accessible for inspection by internal revenue officers. If any such documents are false or fraudulent, the guilty parties are liable to the penalties provided by law. (See § 314.65.)

[Regs. 44, 9 F. R. 13453, as amended by T. D. 5674, 13 F. R. 7301]

§ 314.24 *Exempt sales for governmental use*—(a) *Sales to States or political subdivisions thereof.* (1) No tax attaches to articles sold by the manufacturer direct to any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use, provided the exempt character of the sale is established as required by the regulations in this part.

(2) No sale may be made tax free by the manufacturer to a dealer for resale to any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, even though it is known at the time of the sale that the article will be so resold. However, where any dealer resells a tax-paid article to any of the governmental units named above, for its exclusive use, the manufacturer who paid the tax to the United States on his sale of the article may secure a refund or credit in accordance with the provisions of § 314.64.

(3) To establish the right to exemption from tax where the sale of an article is made by the manufacturer direct to any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use, it is necessary that (i) the manufacturer have definite knowledge prior to or at the time of sale, that the article is purchased for such use, and (ii) he obtain from an authorized officer of the State, Territory of the United States, political subdivision, or District of Columbia, as the case may be, and retain in his possession a properly executed exemption certificate in the form prescribed by this section.

(4) Where the certificate is not obtained prior to the time the manufacturer files a return covering taxes due for the

month during which the sale was made, the manufacturer must include the tax on such sale in such return. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitations prescribed by section 3313, I. R. C. (See § 314.64.)

(5) The certificate required by this section must include an agreement that if the articles covered thereby are used otherwise than for the exclusive use of the State, Territory, political subdivision, or the District of Columbia, as the case may be, or are resold to employees or others, a responsible officer of the State, Territory, or political subdivision, or the District of Columbia, as the case may be, will report such fact to the manufacturer. The tax applicable to the sale of such articles shall be included by the manufacturer in his return for the month during which such report is received by him.

(6) The certificate required by this section shall be in substantially the following form:

#### EXEMPTION CERTIFICATE

(For use by States, Territories, or political subdivisions thereof, or the District of Columbia)

-----, 19-----  
(Date)

The undersigned hereby certifies that he is  
----- of -----  
(Title of officer) (State, Territory, or political subdivision, or District of Columbia)  
----- and  
that he is authorized to execute this certificate and that the article or articles specified in the accompanying order or on the reverse side hereof, are purchased from -----  
(Name of vendor)  
for the exclusive use of -----  
(Governmental unit)  
of -----  
-----  
(State, Territory, or political subdivision, or District of Columbia)

It is understood that the exemption from tax in the case of sales of articles under this exemption certificate to a State, etc., is limited to the sale of articles purchased for its exclusive use, and it is agreed that if articles purchased tax free under this exemption certificate are used otherwise or are sold to employees or others, such fact will be reported by me to the manufacturer of the article or articles covered by this certificate. It is also understood that the fraudulent use of this certificate to secure exemption will subject

the undersigned and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

----- (Signature)  
(Title of officer)

(7) The articles covered by the exemption certificate must be fully identified as to nature, quantity, and date of sale.

(8) If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (the period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in § 314.62 and must be readily accessible for inspection by internal revenue officers. If a manufacturer's records with respect to any sale claimed to be tax free do not include a proper certificate, as outlined in this section, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, tax is payable by the manufacturer on such sale.

(b) *Sales to United States.* By virtue of section 307 of the Revenue Act of 1943 the exemption from and right to refund or credit of tax previously existing with respect to an article covered by these regulations sold for the exclusive use of the United States was withdrawn with respect to such article sold on or after June 1, 1944, except where such article is sold pursuant to a contract entered into prior to such date or an agreement or change order supplemental to such contract bearing the same Government contract number. The exempt character of sales pursuant to such contracts, agreements or change orders, must be supported by exemption certificates, executed by duly authorized officers of the United States, in the same form as the one outlined in paragraph (a) (6) of this section, appropriately amended.

§ 314.25 *Sales for export.* (a) To exempt from tax a sale for export it is necessary that two conditions be met, namely, (1) that the article be identified as having been sold by the manufacturer for export and (2) that it be exported in due course.

(b) An article will be regarded as having been sold by the manufacturer for export if the manufacturer has in his possession at the time title passes or at the time of shipment (whichever is prior), (1) a written order or contract of

sale showing that the manufacturer is to ship the article to a foreign destination; or (2) where delivery by the manufacturer is to be made within the United States, a statement from the purchaser showing (i) that the article is purchased to fill existing or future orders for delivery to a foreign destination; or that the article is purchased for resale to another person who will export the article, and (ii) that such article will be transported to its foreign destination in due course prior to use or further manufacture and prior to any resale except for export.

(c) The written order or contract of sale or the statement referred to in paragraph (b) (1) and (2) of this section suspends liability for the payment of the tax by the manufacturer on such sales for export for a period of six months from the date when title passes or the date of shipment, whichever is prior. If within such period the manufacturer has not received and attached to the order or contract, or statement, proper "proof of exportation" (see § 314.26), then the temporary suspension of the liability for the payment of the tax ceases and the manufacturer shall include the tax on the sale of such article in his return for the month in which such 6-month period expires.

(d) The exemption provided in this section is limited to sales by the manufacturer for export and is not applicable in cases where sales of taxable articles are made from a dealer's stock for export even though actually exported.

[Regs. 44, 9 F. R. 13453, as amended by T. D. 5674, 13 F. R. 7301]

NOTE: Treasury Decision 5536, Sept. 10, 1946, 11 F. R. 10282, provides in part as follows: On and after October 1, 1946, the procedure outlined in §§ 314.25 and 314.26 shall be followed with respect to sales by manufacturers and producers of the articles enumerated in Chapters 25 and 29 of the Internal Revenue Code, when such articles are sold to foreign governments for export.

§ 314.26 *Proof of exportation.* (a) Exportation may be evidenced by (1) a copy of the export bill of lading issued by the delivering carrier, or (2) a certificate by the agent or representative of the export carrier showing actual exportation of the article, or (3) a certificate of landing signed by a customs officer of the foreign country to which the article is exported, or (4) where such foreign country has no customs admin-

istration, a statement of the foreign consignee showing receipt of the article.

(b) In any case where the manufacturer is not the exporter, the manufacturer must have in his possession a statement from the person to whom he sold the article stating that the article was in fact exported in due course by him or was sold to another person who in due course exported the article. This statement must state what evidence is available to show that the article was in fact exported in due course prior to use or further manufacture and prior to resale in the United States other than for export. Such evidence must be that described in paragraph (a) of this section, and the statement must show where such evidence is readily available for inspection by Government officers.

(c) In any case where the manufacturer does not have in his possession within the 6-month period, proof of exportation as outlined herein, the manufacturer must pay the tax involved. If proof of exportation later becomes available, a claim for refund of any tax paid may be filed on Form 843, or a credit may be taken upon any subsequent monthly return, but such action must be taken within the 4-year period of limitations prescribed by section 3313, I. R. C.

(d) In all cases the sales records together with the evidence of exportation must be preserved by the manufacturer for a period of at least four years from the last day of the month following the sale, and must be readily accessible for inspection by internal-revenue officers.

[Regs. 44, 9 F. R. 13453, as amended by T. D. 5674, 13 F. R. 7301]

NOTE: See note to § 314.25.

§ 314.27 *Shipments to possessions of the United States.* (a) The same provisions as relate to sales for export and proof of exportation will apply to sales for shipment to a possession of the United States. (See §§ 314.1, 314.25, and 314.26.)

(b) This exemption does not apply with respect to sales of articles for shipment to the Territories of Alaska and Hawaii for the reason that these Territories are by a statutory definition included in the term "United States." (See section 3797 (a) (9), I. R. C.)

§ 314.28 *Exemption of certain supplies for certain vessels.* (a) No tax attaches to the sale by the manufacturer of an article covered by the regulations

in this part where such article is sold by the manufacturer direct for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on (1) vessels of war of the United States or of any foreign nation, (2) vessels employed in the fisheries or in the whaling business, (3) vessels actually engaged in foreign trade, (4) vessels actually engaged in trade between the Atlantic and Pacific ports of the United States, or (5) vessels actually engaged in trade between the United States and any of its possessions.

(b) The terms "fuel supplies," "ships' stores," and "legitimate equipment" include all articles, materials, supplies, and equipment necessary for the navigation, propulsion, and upkeep of vessels.

(c) The term "sea stores" includes any article purchased for use or consumption by the passengers or crew, or both, of a vessel upon its voyage.

(d) The term "vessel" includes (1) every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, (2) civil aircraft registered in the United States and employed in foreign trade or in trade between the United States and any of its possessions, and (3) civil aircraft registered in a foreign country and employed in foreign trade or in trade between the United States and any of its possessions.

(e) The term "vessels of war of the United States or of any foreign nation" includes (1) every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water and constituting a part of the armed forces of the United States or of a foreign nation and (2) aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(f) The term "trade" includes the transportation of persons or property for hire and the making of the necessary preparation for such transportation.

(g) No sale may be made tax free to a dealer for resale for use as fuel supplies, ships' stores, sea stores, or legitimate equipment for the vessels enumerated, even though it is known at the time of sale that the article will be so resold. However, where any dealer resells a tax-paid article for such use the manufacturer who paid the tax to the United States on his sale of the article

may secure a refund or credit in accordance with the provisions of § 314.64.

(h) Tax-free sales under this section must be restricted to such of the articles covered by these regulations as normally form a part of the supplies, stores, or equipment of the vessels enumerated. The exemption does not apply to articles which are for resale to passengers or members of the crew for consumption or use otherwise than during the voyage of a vessel, or to articles which are to be transported for the use of others, or to those which are to be used in any manner other than as specified in this section. Articles may not be sold by the manufacturer tax free direct to passengers or crew but only to the owner, officer, charterer, or authorized agent of the vessel.

(i) The exemption from tax provided for under this section is not applicable to vessels engaged in trade between domestic ports on the Pacific Ocean, or between domestic ports on the Atlantic Ocean and Gulf of Mexico, or engaged in trade on the inland waterways of the United States. If a vessel is actually engaged in a voyage from a port in the United States to a foreign port or to a port in one of the possessions of the United States, or between Atlantic and Pacific ports of the United States, the exemption from the tax is not destroyed because the vessel stops at an intermediate port of call in the United States as a part of that voyage to the ultimate destination.

(j) The exemption with respect to civil aircraft is more limited than the exemption with respect to other vessels in that it extends only to civil aircraft employed in foreign trade, or in trade between the United States and any of its possessions. Although section 3451 exempts sales of articles for use as fuel supplies, etc., on watercraft engaged in trade between the Atlantic and the Pacific ports of the United States, it does not exempt sales of articles for use as fuel supplies, etc., on civil aircraft engaged in trade between such ports. In the case of civil aircraft registered in a foreign country, the exemption is further limited in that the privilege of exemption may be granted only so long as such foreign country allows a substantially reciprocal exemption with respect to civil aircraft registered in the United States. If a foreign country discontinues

the allowance of such substantially reciprocal exemption, the exemption allowed by the United States will not apply after the Secretary of the Treasury is notified by the Secretary of Commerce of the discontinuance of the exemption allowed by the foreign country.

(k) The exemption provided in the case of articles sold for the prescribed use on vessels employed in the fisheries or in the whaling business is limited to articles sold by the manufacturer for such use on vessels while employed, and to the extent employed, exclusively in the fisheries or in the whaling business.

(l) To establish the right to exemption from the tax on the sale of an article by the manufacturer direct for use as fuel supplies, etc., on the vessels enumerated above, it is necessary that (1) the manufacturer have definite knowledge prior to or at the same time of sale that the article was purchased for such use, and (2) he obtain from the owner, officer, charterer, or authorized agent of the vessel and retain in his possession a properly executed exemption certificate in the form prescribed by this section. If articles are sold tax free for use on civil aircraft employed in foreign trade or in trade between the United States and any of its possessions, the exemption certificate must show the name of the country in which the aircraft is registered.

(m) Where the certificate is not obtained prior to the time the manufacturer files a return covering taxes due for the month during which the sale was made, the manufacturer must include the tax on such sale in such return. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitations prescribed by section 3313, I. R. C. (See § 314.64.)

(n) The certificate required by this section must include an agreement that if the articles covered thereby are disposed of, or used, otherwise than as fuel supplies, ships' stores, sea stores, or legitimate equipment on the vessel described, the person who signed the certificate will report such fact to the manufacturer. The tax applicable to the sale of such articles shall be included by the manufacturer in his return for the month during which such report is received by him.

(o) The following form of exemption certificate will be acceptable for the purposes of this section and must be adhered to in substance:

EXEMPTION CERTIFICATE

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels (section 3451 of the Internal Revenue Code).)

-----, 19-----

(Date)

The undersigned hereby certifies that he is ((1) or (2), whichever is appropriate)

(1) -----

(Owner, officer, or charterer)

(2) Agent of -----, who is

(Name of principal)

-----

(Owner or charterer)

of -----, and that the

(Name of vessel)

article or articles specified in the accompanying order, or as specified below or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to the following class:

(Here state whichever of the following classes enumerated in section 3451 is appropriate:

(1) Vessels engaged in foreign trade,

(2) Vessels engaged in trade between the Atlantic and Pacific ports of the United States,

(3) Vessels engaged in trade between the United States and any of its possessions,

(4) Vessels employed in the fisheries or whaling business,

(5) Vessels of war of the United States or a foreign nation.

If the articles are purchased for use on civil aircraft engaged in trade as specified in (1) or (3) above, state the name of the country in which the aircraft is registered.)

The undersigned understands that if the article is used for any purpose other than as stated in this certificate, or is resold or otherwise disposed of, he must report such fact to the manufacturer. It is understood that this certificate may not be used in purchasing articles tax free for use as fuel supplies, etc., on pleasure vessels, or on any type of aircraft except (a) civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and otherwise entitled to exemption, and (b) aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a penalty equivalent to the amount of tax due on the sale of the article and upon conviction to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution. The undersigned also understands that he must be prepared

to establish by satisfactory evidence the purpose for which the article was used.

-----  
(Name)

-----  
(Address)

(p) The articles covered by the exemption certificate must be fully identified as to nature, quantity, and date of sale.

(q) If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (the period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in § 314.62 and must be readily accessible for inspection by internal-revenue officers. If a manufacturer's records with respect to any sale claimed to be tax free do not include a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, tax is payable by the manufacturer on such sale.

§ 314.29 *Exemption of certain supplies for aircraft.* (a) Articles sold for use on foreign aircraft are, subject to certain limitations, considered to be exported and therefore subject to the same exemption as though exported. This exemption is limited to articles sold for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions. The exemption is further limited by the requirement that the foreign country of registry must allow a substantially reciprocal exemption in respect to aircraft registered in the United States.

(b) To exempt from tax a sale for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country (which allows substantially reciprocal exemption) and actually engaged in foreign trade or trade between the United States and any of its possessions, it is necessary (1) that the article be identified as having been sold by the manufacturer for such use and (2) that it be so used in due course. An article will be regarded as having been sold for use as supplies upon, or in the maintenance or repair of, such aircraft if the manufacturer has in his possession at the time title passes or at

the time of shipment (whichever is prior) a statement from the purchaser showing that the article is purchased for such use.

(c) With respect to an article sold by a manufacturer for resale for use on foreign aircraft, where it is desired to claim exemption, there should be obtained a written statement of the owner, officer, charterer, or authorized agent of the aircraft showing that the article is actually purchased for use as supplies upon, or in the maintenance or repair of such aircraft. Such statement must show the name of the country in which the aircraft is registered.

[Regs. 44, 9 F. R. 13453, as amended by T. D. 5674, 13 F. R. 7300]

#### SUBPART C—GASOLINE

§ 314.30 *Use of terms.* (a) The term "producer" includes a refiner, compounder, or blender, and a dealer selling gasoline exclusively to producers of gasoline, as well as an actual producer. The term "producer" also includes any person (not included in the preceding sentence) to whom gasoline is sold tax free for any purpose but such person is considered a "producer" only with respect to gasoline purchased tax free. The mere blending or mixing by any person of gasoline to adapt it for seasonal use or to meet the requirements of particular vendees, or blending which is not a substantial part of the blender's regular year-round business, does not constitute him a producer.

(b) The term "gasoline" includes:

(1) All products commonly or commercially known or sold as gasoline, including casinghead and natural gasoline, and including any petroleum product satisfying the volatility requirements (exclusive of vapor pressure) of United States motor gasoline (United States Government Specifications No. VV-G-101) regardless of their classifications or uses: *Provided, however,* That liquefied gases, such as propane, butane, or pentane, or mixtures of the same, and any product (i) more than 90 percent of which is evaporated at 310° F. and having an A. S. T. M. octane number less than 70, or (ii) having a Reid vapor pressure at 100° F. or more than 30 pounds, shall fall within subparagraph (2) of this paragraph.

(2) Benzol, benzene, naphtha, or any other liquid of a kind prepared, advertised, offered for sale, or sold for use as, or used as, a fuel for the propulsion of

motor vehicles, motor boats, or airplanes, which means benzol and benzene and any refined, partly refined, or unrefined product, 10 percent of which has been recovered when the thermometer reads 347° F. (175° C.) or 95 percent of which has been recovered when the thermometer reads 464° F. (240° C.) when subjected to distillation in accordance with the "Standard Method of Test for Distillation of Gasoline, Naphtha, Kerosene, and Similar Petroleum Products" (A. S. T. M. designation: D86) of the American Society for Testing Materials, regardless of the trade name under which sold. However, such products are not taxable as "gasoline" when they are sold under an exemption certificate, obtained prior to or at the time of sale by the importer or producer, certifying that such products are purchased for use (i) otherwise than as a fuel for the propulsion of motor vehicles, motor boats or airplanes, and (ii) otherwise than in the manufacture or production of such a fuel. This exception is limited to the articles named in this subparagraph which are not commonly or commercially known or sold as "gasoline," as defined in subparagraph (1) of this paragraph.

(c) The term "gasoline" does not include products commonly or commercially known or sold as kerosene, gas oil, or fuel oil, which means any product so designated (1) 10 percent of which has not been recovered when the thermometer reads 347° F. (175° C.) and (2) 95 percent of which has not been recovered when the thermometer reads 464° F. (240° C.), when subjected to distillation in accordance with the "Standard Method of Test for Distillation of Gasoline, Naphtha, Kerosene, and Similar Petroleum Products" (A. S. T. M. designation: D86) of the American Society for Testing Materials. Products sold as kerosene, gas oil or fuel oil which do not fall within the specifications of subparagraphs (1) and (2) of this paragraph, are taxable unless sold for use otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel, under a certificate as outlined in § 314.33.

§ 314.31 *Scope of tax.* (a) The tax attaches to the sale or use of gasoline by the producer or importer thereof, or by any producer of gasoline, regardless of when or whether such gasoline was produced by him.

(b) All producers and importers of gasoline must register and give bond to the collector, in accordance with the provisions of §§ 314.8 and 314.9.

§ 314.32 *Sales to producers of gasoline.* (a) Gasoline may be sold tax free by a producer of gasoline to other producers of gasoline.

(b) In the case of such sales both the vendor and the purchaser must be registered and bonded as required by §§ 314.8 and 314.9.

(c) To establish the right to exemption under this section the vendor must obtain from the purchaser, prior to or at the time of sale, a certificate showing that the purchaser is a producer of gasoline. The certificate must bear the registration number of the purchaser and must also show that the purchaser is bonded as required by §§ 314.8 and 314.9. If the records of a producer do not contain proper certificates, with supporting invoices, establishing that the sales were exempt, such vendor-producer will be required to pay the tax.

(d) Tax-free sales of gasoline to producers of gasoline must be made under an exemption certificate in substantially the following form:

EXEMPTION CERTIFICATE

(For use by producers of gasoline under section 3412 of the Internal Revenue Code)

-----, 19-----

(Date)

The undersigned hereby certifies that (1) he is a producer of gasoline, (2) he has filed a bond, which has been accepted by the collector of internal revenue at ----- and (3) he holds certificate of registry No. -----, issued by such collector of internal revenue.

It is understood that the undersigned is liable for tax as a producer of gasoline with respect to all gasoline sold or used by him, unless specifically exempted by law. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and any guilty party to the cancellation of his certificate of registry and to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

-----  
(Name)

-----  
(Address)

(e) When gasoline is sold tax free by a producer to another producer of gasoline, or, to a registered dealer in accordance with the provisions of § 314.22

for resale by such dealer for use by his vendee in the further manufacture of a taxable article, the producer making such tax-free sale must use due diligence to satisfy himself that the gasoline is sold to, or for resale to, a producer of gasoline or a manufacturer of other taxable articles, who has complied with the applicable provisions of this part with respect to registration and bonding.

(f) If a producer has reason to question the validity of the registration shown by any exemption certificate, application for information should be made to the office of the collector shown to have issued the registration certificate.

(g) For special provisions with respect to (1) tax-free sales of gasoline to registered dealers for resale direct to producers of gasoline; (2) tax-free sales of gasoline direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use; (3) tax-free sales for export or for shipment to possessions of the United States; (4) tax-free sales direct for use as ships' stores, etc., and (5) tax-free sales for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, see §§ 314.22, 314.24, 314.25, 314.27, 314.28, and 314.29.

§ 314.33 *Sales of benzol, benzene, naphtha, or other taxable liquids to non-motor fuel users.* (a) No tax attaches to benzol, benzene, naphtha, or any other liquid specified in § 314.30 (b) (which does not fall within the range of the properties of products commonly or commercially known or sold as gasoline, as described in § 314.30 (a)) sold by the manufacturer direct for use (1) otherwise than as fuel for the propulsion of motor vehicles, motor boats, or airplanes, and (2) otherwise than in manufacture or production of such fuel.

(b) No sale of benzol, benzene, naphtha, or other liquid within the scope of § 314.30 (b) may be made tax free by the producer to a dealer for resale for nonmotor fuel uses, even though it is known at the time of the sale that the product will be so resold. However, where any dealer resells a tax-paid product for nonmotor fuel uses, the producer who paid the tax to the United States on his sale of the product may secure a

refund or credit in accordance with the provisions of § 314.64.

(c) To establish the right to exemption from tax where the sale of the product is made by the manufacturer direct to a purchaser for use (1) otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes and (2) otherwise than in the manufacture or production of such fuel it is necessary that (i) the manufacturer have definite knowledge prior to or at the time of sale that the product in question is purchased for such use and (ii) he obtain from the purchaser and retain in his possession a properly executed exemption certificate in the form prescribed by this section.

(d) Where the certificate is not obtained prior to the time the manufacturer files a return covering taxes due for the month during which the sale was made, the manufacturer must include the tax on such sale in such return. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitations prescribed by section 3313, I. R. C. (See § 314.64.) The articles covered by the exemption certificate must be fully identified as to nature, quantity, and date of sale.

(e) Following is the form of exemption certificate which will be acceptable for purposes of this section and which must be adhered to in substance:

**EXEMPTION CERTIFICATE**

(For use by purchasers of benzol, benzene, naphtha, or other taxable liquid, for purposes other than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel under section 3412 of the Internal Revenue Code)

-----, 19-----

(Date)

The undersigned purchaser hereby certifies that he is a -----

(State business and article or articles manufactured)

and that the -----

(State whether benzol, benzene, naphtha, or other taxable liquid)

in the order covered by this certificate will not be used as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and will not be used in the manufacture or production of such fuel, but will be used for the following purpose:

-----  
 -----  
 -----

The undersigned understands that if the benzol, benzene, naphtha, or other taxable liquid is used, sold, or otherwise disposed of except as above stated, he will be liable for the tax upon such use, sale, or other disposition of such product. It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution. The undersigned also understands that he must be prepared to establish by competent evidence that the product was actually used for the purpose or purposes for which purchased as stated in this certificate.

-----  
 (Name)  
 -----

(Address)

(f) If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (the period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in § 314.62 and must be readily accessible for inspection by internal-revenue officers. Where the records of an importer or producer with respect to any sale claimed to be tax free do not contain a proper certificate, as outlined in this section, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, tax is payable by the importer or producer on such sale.

**§ 314.34 Use by producer or importer.**

(a) If gasoline purchased tax free by an importer or producer is used by him (otherwise than in the production of gasoline), such use is considered a sale and is taxable. Likewise, if any importer or producer uses (otherwise than in the production of gasoline) gasoline imported or produced by him, such use is considered a sale and is taxable.

(b) If a person purchases gasoline tax free and uses it for any purpose for which exemption is not provided by law, such use is taxable.

(c) The phrase "otherwise than in the production of gasoline" includes any use of gasoline by a producer thereof, other than as component material in the manufacture or production of gasoline.

**§ 314.35 Rate of tax.** The tax is payable by the importer or producer thereof, or by any producer of gasoline, at the rate of 1½ cents a gallon.

## SUBPART D—LUBRICATING OILS

§ 314.40 *Use of terms.* (a) The term "lubricating oils" as used in this subpart includes all oils, regardless of their origin, which are sold as lubricating oil and all oils which are suitable for use as a lubricant.

(b) The term "lubricating oils" does not include products of the type commonly known as grease. Oleaginous substances which are classed as grease and which contain oil are not subject to the tax when of a worked consistency of less than 390 penetration units, or an unworked consistency of less than 360 penetration units, by the method of test of the American Society for Testing Materials D-217-33-T.

(c) The term "manufacturer" includes (1) any person who produces lubricating oil by any process of manufacturing, refining, or compounding, or any manipulation involving substantially more than mere mixing of taxable oils, (2) any person who produces lubricating oil by mixing taxable oils with other substances, and (3) any person who cleans, renovates, or refines used or waste lubricating oil by any method or process which produces an oil substantially equivalent to new lubricating oil.

(d) The term "manufacturer" does not include a person who merely blends or mixes two or more taxable lubricating oils.

§ 314.41 *Scope of tax.* (a) The tax attaches to the sale by the manufacturer of lubricating oils. However, no tax attaches to the sale of lubricating oils by the importer thereof. Lubricating oils imported into the United States are subject to a tax of 4 cents a gallon under section 3422, I. R. C., upon the importation thereof. This tax is administered by the Bureau of Customs of the Treasury Department.

(b) All manufacturers of lubricating oils must register and give bond in accordance with provisions of §§ 314.8 and 314.9.

§ 314.42 *Sales to manufacturers of lubricating oil for resale.* (a) No tax attaches to the sale of lubricating oil by the manufacturer direct to a manufacturer of lubricating oil for resale by him, but for the purposes of the tax such vendee manufacturer is considered the manufacturer of such lubricating oil.

(b) No lubricating oil may be sold tax free by one manufacturer of lubricating oil to another for resale unless both are registered and bonded as manufacturers of lubricating oil in accordance with the provisions of §§ 314.8 and 314.9.

(c) All tax-free sales of lubricating oil to manufacturers of lubricating oils must be made under an exemption certificate in substantially the following form:

## EXEMPTION CERTIFICATE

(For use by manufacturers of lubricating oil under section 3413 of the Internal Revenue Code)

-----, 19-----

(Date)

The undersigned hereby certifies that (1) he is a manufacturer or producer of lubricating oils, (2) he has filed a bond, which has been accepted by the collector of internal revenue at -----, (3) he holds certificate of registry No. ---- issued by such collector of internal revenue, and (4) the lubricating oils purchased hereunder are for resale by him or use by him as material in the manufacture or production of lubricating oils or as a component part of lubricating oils to be manufactured or produced by him.

It is understood that the undersigned is liable for tax as the manufacturer or producer upon his resale, or upon his use otherwise than as specified above, of the oils purchased hereunder, unless specifically exempted by law. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and any guilty party to the cancellation of his certificate of registry and to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

-----  
(Name)

-----  
(Address)

(d) For special provisions with respect to (1) tax-free sales of lubricating oil to manufacturers for use in further manufacture of taxable articles and to registered dealers for resale direct to such manufacturers; (2) tax-free sales of lubricating oil direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use; (3) tax-free sales for export or for shipment to possessions of the United States; (4) tax-free sales direct for use as ships' stores, etc.; (5) tax-free sales for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft reg-

istered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions; and (6) tax-free sales of lubricating oil direct for nonlubricating uses by the purchaser, see §§ 314.22, 314.24, 314.25, 314.27, 314.28, 314.29, and 314.43.

§ 314.43 *Sales of oil for nonlubricating uses.* (a) No tax attaches where oil is sold by the manufacturer direct to a purchaser who uses it for nonlubricating purposes. No sale of oil may be made tax free by the manufacturer to a dealer for resale for nonlubricating uses even though it is known at the time of sale that the oil will be so resold. However, where any dealer resells tax-paid oil for nonlubricating uses, the manufacturer who paid the tax to the United States on his sale of the oil, may secure a refund or credit in accordance with the provisions of § 314.64.

(b) To establish the right to exemption from tax with respect to lubricating oil sold by the manufacturer direct for nonlubricating purposes, it is necessary that (1) the manufacturer have definite knowledge, prior to or at the time of sale, that the product is purchased for such purposes, and (2) he obtain from the purchaser and retain in his possession a properly executed exemption certificate in the form prescribed by this section.

(c) Where the certificate is not obtained prior to the time the manufacturer files a return covering taxes due for the month during which the sale was made, the manufacturer must include the tax on such sale in such return. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitations prescribed by section 3313, I. R. C. (See § 314.64.)

(d) The certificate required by this section must include an agreement that if the oil is disposed of, or used otherwise than for the nonlubricating purpose for which purchased, the person who signed the exemption certificate will report such fact to the manufacturer. The tax applicable to the sale of such product shall be included by the manufacturer in his return for the month during which such report is received by him.

(e) The following is a form of exemption certificate which will be acceptable

for purposes of this section and must be adhered to in substance:

EXEMPTION CERTIFICATE

(For use by purchasers of oil for nonlubricating purposes)

-----, 19-----  
(Date)

The undersigned purchaser hereby certifies that he is a -----  
(State business and article or articles manufactured) and that the oil covered by the accompanying order or as specified on the reverse side hereof, will not be used or resold for lubrication but will be used by him for the following purposes:  
-----  
-----

The undersigned understands that if the oil is used for any purpose other than as stated in this certificate, or is resold or otherwise disposed of, he must report such fact to the manufacturer, otherwise the privilege of purchasing tax free may be canceled; that he will, if a bonded and registered manufacturer of lubricating oil be liable for the tax upon his sale of such oil, and that whether or not a bonded and registered manufacturer, he will, for fraudulent use of the certificate to secure exemption, be subject to a penalty equivalent to the amount of tax due on the sale of the oil and to a fine of not more than \$10,000, or imprisonment for not more than five years, or both, together with the costs of prosecution. The undersigned also understands that he must be prepared to establish by competent evidence the purpose for which such oil was used.

-----  
(Name)  
-----  
(Address)

(e) The articles covered by the exemption certificate must be fully identified as to the nature, quantity, and date of sale.

(f) If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (the period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales shall be retained as provided in § 314.62 and must be readily accessible for inspection by internal-revenue officers. If a manufacturer's records with respect to any sale claimed to be tax free do not contain a proper certificate, as outlined in this section, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, the tax is payable by the manufacturer on such sale.

§ 314.44 *Rate of tax.* The tax is payable by the manufacturer at the rate of 6 cents per gallon. A manufacturer of nonfluid lubricating oils which are sold by weight may use 8 pounds to the gallon as a basis for computing and reporting the tax upon the sale or use of such oils.

#### SUBPART E—MATCHES

§ 314.50 *Scope of tax.* The tax applies to all types of matches, including waxed matches, parlor matches, safety matches, book matches, vestas, etc., regardless of whether sold in bulk, boxes, books, or in any other manner.

§ 314.51 *Fancy wooden matches.* A fancy wooden match, within the meaning of the law, is one which has a wooden stem and which, in addition to serving the purpose of the ordinary match, is colored, or decorated, or manufactured in such a manner as to be more ornamental or more attractive than the ordinary match.

§ 314.52 *Rate of tax.* (a) In the case of fancy wooden matches and wooden matches having a stained, dyed, or colored stick or stem, the tax payable by the manufacturer is at the rate of 5½ cents per thousand.

(b) In the case of all other matches the tax payable by the manufacturer is at the rate of 2 cents per thousand.

#### SUBPART F—ADMINISTRATIVE PROVISIONS

§ 314.60 *Returns.* (a) Each person required to report a tax on the sale or use of any of the articles covered by this part, must prepare a return for each calendar month in duplicate on Form 726 in accordance with the instructions thereon. The original return must be made under oath and must be verified before an officer duly authorized to administer oaths. If the amount of the tax is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath. The original return, together with the tax, must be filed with the collector of the district in which is located the principal place of business of the taxpayer (or, if he has no principal place of business in the United States, with the collector at Baltimore, Md.), on or before the last day of the month succeeding that for which it is made.

(b) When the last day of the month in which the return is due falls on Sunday or a legal holiday the return may be filed with the collector of internal revenue, or

his authorized representative, on the next secular or business day. A return must be forwarded to the collector for each month whether or not any liability has been incurred for that month. If a manufacturer ceases business the last return should be marked "Final return."

(c) The duplicate return shall be retained as prescribed by § 314.62.

[Regs. 44, 9 F. R. 13453, as amended by T. D. 5674, 13 F. R. 7301]

§ 314.61 *Payment of taxes.* All taxes are due and payable to the collector of internal revenue, without assessment by the Commissioner or notice from the collector, at the time fixed for filing the return. If the tax is not paid when due there shall be added as part of the tax interest at the rate of 6 per cent per annum from the time the tax became due to the actual date of payment or assessment, whichever is prior. For provisions with respect to interest generally, including interest on assessments, see § 314.65.

§ 314.62 *Records.* (a) Every person required to file a return and pay tax on the sale or use of any article covered by these regulations must keep accurate and complete records, including the duplicate returns prescribed by § 314.60 and accounts with respect to such sale or use. Records must be maintained in such a manner as to show:

- (1) Quantity on hand at beginning of month;
- (2) Quantity produced during the month;
- (3) Quantity purchased tax free;
- (4) Quantity purchased tax paid;
- (5) Quantity sold tax free;
- (6) Quantity sold subject to tax;
- (7) Quantity used in production of other taxable commodities;
- (8) Quantity used otherwise;
- (9) Actual wastage, evaporation, and other losses, etc.; and
- (10) Quantity on hand at end of month.

(b) The records must be retained for a period of at least four years from the date the tax became due, or, in the case of tax-free sales, for a period of at least four years from the last day of the month immediately following that in which the sale occurs, and all such records must be available for ready inspection by internal-revenue officers.

(c) The records of a producer of gasoline or manufacturer of lubricating oil shall be open to inspection by officers of any State or Territory, or political subdivision thereof, or the District of Columbia, who are charged with the enforcement or collection of any tax on gasoline or lubricating oils.

(d) The records maintained in the Bureau and in the various collection districts with respect to the taxes imposed on the sale or use of gasoline or lubricating oil, including all returns, reports, and statements with respect to such taxes, shall be at all times open to inspection by internal-revenue officers, or by officers of any State or Territory, or political subdivision thereof, or of the District of Columbia, who are charged with the enforcement or collection of any tax on gasoline or lubricating oils. Upon written request from officers of a State or Territory, or political subdivision thereof, or the District of Columbia, for certified copies of any such statements, reports, or returns filed in the Bureau or the office of a collector, the Commissioner or collector shall furnish to any such officer upon payment of a fee of \$1 for each 100 words or fraction thereof, the copy or copies requested.

(e) The books of every person liable to tax shall at all times be open for inspection by Government officers. Every person who fails to keep proper and accurate records as required by this section is liable for the penalties imposed by law. (See § 314.65.)

[Regs. 44, 9 F. R. 13453, as amended by T. D. 5674, 13 F. R. 7301]

§ 314.63 *Jeopardy assessment.* (a) Whenever, in the opinion of the collector, it becomes necessary to protect the interests of the Government by making an immediate assessment and collection of the tax, the case shall be promptly reported to the Commissioner by telegram or letter. The communication should state the full name and address of the person involved, the amount of taxes due, the period involved, the collector's recommendation and the reason therefor, which will enable the Commissioner to assess the tax immediately, together with all penalties and interest due. Upon assessment, such tax, penalty, and interest shall become immediately due and payable, and the collector shall forthwith

issue a notice and demand for payment thereof.

(b) The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the sum with respect to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, collection of which is stayed, at the time at which such amount would normally be due. In lieu of surety or sureties, the taxpayer may deposit with the collector bonds or notes of the United States having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

(c) Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3690.

§ 314.64 *Credits and refunds.* (a) A credit against the tax due on the sale of any article covered by this part or a refund may be allowed or made to a manufacturer in the amount of any tax which has been paid by any person with respect to the sale of any article purchased and used by such manufacturer as material in the manufacture or production of, or as a component part of, any such article with respect to which tax has been paid, or which has been sold free of tax in accordance with the provisions of § 314.21 or 314.22. In such a case, the credit or refund is allowable only to the manufacturer who uses such tax-paid articles in further manufacture, and no credit or refund is allowable to the person who paid the tax originally on the articles used in such further manufacture. A claim for refund must be supported by evidence showing (1) the name and address of the person who paid to the United States the tax of which refund is claimed, (2) the date of payment, (3) the amount of such tax, and (4) that the article was so used. A credit taken on a return must be supported by the same evidence. If it is impossible to furnish such evidence with the return, a statement to that effect must be submitted with the return. The evidence

supporting such credit must be filed with the collector within 30 days after the date on which the return is filed. If the required evidence is not so filed the credit will be disallowed and assessment of the tax resulting from the disallowance will be made on the current assessment list.

(b) If any person overpays the tax shown to be due on a monthly return, he may either file a claim for refund on Form 843 or take credit for the overpayment against the tax shown to be due on any subsequent monthly return. In no case shall credit or refund on account of overpayment of tax with respect to an article be allowed (except as provided in paragraph (a) of this section), whether in pursuance of a court decision or otherwise, unless the taxpayer files a statement explaining satisfactorily the reason for claiming the credit or refund and establishing (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of the tax from the vendee, or (2) that he has either repaid the amount of the tax to the ultimate purchaser of the article or has secured the written consent of such ultimate purchaser to the allowance of the credit or refund. In the latter case the written consent of the ultimate purchaser must accompany the statement filed with the credit or refund claim. For the purpose of the tax the "ultimate purchaser" is a person who purchases an article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased. The statement supporting the credit or refund claim must also show whether any previous claim for credit or refund covering the amount involved, or any part thereof, has been filed with the collector or Commissioner.

(c) A complete and detailed record of each overpayment must be kept by the taxpayer for a period of at least four years from the date any credit is taken or refund is claimed.

(d) Where an article sold tax paid by a manufacturer to a dealer is resold by the dealer or any subsequent owner for a purpose or use specified in section 3443 (a) (3) (A), I. R. C., or is used for such purpose or use, the manufacturer may be allowed a refund, or may take credit against the tax shown to be due upon any subsequent monthly return, in the

amount of tax paid by him with respect to the sale of such article, provided he can establish by satisfactory evidence (1) that such article has been used, or resold, for one of the uses specified in such section, (2) the name and address of the ultimate vendor, (3) the name and address of the consumer, and the use made or to be made of such article, (4) the date the tax on his sale of such article was paid to the United States, and (5) that he has repaid or agreed to repay the amount of such tax to the ultimate vendor, or has obtained the consent of the ultimate vendor to the allowance of the credit or refund.

(e) The evidence required in paragraph (d) (1), (2), and (3) of this section may be established by the manufacturer securing from the ultimate vendor (1) the original exemption certificate obtained by such ultimate vendor from the consumer, or (2) a statement by the ultimate vendor that he has obtained from the consumer and has in his possession such an exemption certificate. The consent of the ultimate vendor required by paragraph (d) (5) of this section may be indorsed on the certificate or made a part of the statement.

(f) Where a statement is furnished by the ultimate vendor in lieu of the original exemption certificate, the ultimate vendor must incorporate therein a statement to the effect that the certificate and supporting data (1) are retained by him, (2) will be preserved for a period of four years, and (3) will, upon request, be forwarded to the manufacturer at any time within the period for use in establishing to the satisfaction of internal-revenue officers that a refund or credit is justly due.

(g) The exemption certificates required by this section shall be in a form substantially the same as those required in the case of sales by manufacturers direct to users.

(h) Where a tax-paid article is used by a consumer for one or more of the purposes specified above, the ultimate vendor may secure from such consumer, in lieu of the exemption certificate, a statement showing full and complete information as to the date of the purchase of the article, from whom purchased, the quantity and nature of the article, the purpose for which used, the amount of tax involved, and that the consumer has not previously executed any other affi-

davit of use concerning such article. The statement referred to may be furnished to the manufacturer by the ultimate vendor as evidence to support the credit or refund claimed, or the information appearing therein may be incorporated in the statement which the ultimate vendor files with the manufacturer who paid the tax to the Government on the sale of the article.

(i) The statement of the ultimate vendor shall be in substantially the following form:

STATEMENT OF ULTIMATE VENDOR

The undersigned certifies that he himself or the \_\_\_\_\_  
(Name of vendor if other than undersigned)  
of which he is \_\_\_\_\_ is the ultimate vendor  
(Title)

of the articles specified below or on the reverse side hereof;

That such articles were purchased by him tax paid and resold for use by his vendee for the nontaxable purposes indicated and not for resale;

That he has in his possession all of the exemption certificates, properly executed, required by the law and regulations, to cover the sale of the articles specified;

That the certificates and supporting data (1) are retained by him, (2) will be preserved for a period of four years, and (3) will, upon request, be forwarded to the manufacturer any time within the period for use in establishing to the satisfaction of internal-revenue officers that a refund or credit is justly due; and

That he hereby consents to the allowance of a credit or refund to the

\_\_\_\_\_  
(Name and address of manufacturer)

in the amount of the tax paid by such manufacturer with respect to the sale of such articles, and that he has not heretofore given his consent to the allowance of a credit or refund to any other manufacturer and has not made application for a refund or credit of such Federal Tax from any other source.

The undersigned understands that the fraudulent use of this affidavit to secure credit or refund will subject him and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than 10 years, or both, under section 35 of the Criminal Code of the United States, as amended by Act approved April 4, 1938 (52 Stat., 197).

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Date)

Vendor's invoice.	Articles.	Date of resale.	Quantity.	Purpose or use.	Tax claimed.
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(j) The provisions of section 3451 (see § 314.28), relating to aircraft, apply only to sales by manufacturers direct to the owners or operators of aircraft, and no credit or refund is allowable, either under section 3451 or under section 3443 (a) (3) (A) (ii), I. R. C., with respect to tax paid on articles sold by the manufacturer for resale for use on aircraft, regardless of the date the sale or resale occurred, and even though it is known at the time of the manufacturer's sale that the article will be so resold. However, where it can be shown that articles were sold by the manufacturer in accordance with the provisions of section 317 (b) of the Tariff Act of 1930, as added by the Act approved June 25, 1938, for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, the manufacturer who paid the tax to the Government may be allowed a refund or may take credit against the tax due upon any subsequent monthly return, provided he has in his possession the evidence outlined in § 314.29.

(k) No credit or refund is allowable for tax paid with respect to the sale to the United States on or after June 1, 1944, of an article covered by the regulations in this part, except in a case where the tax was paid pursuant to a sale made under a contract entered into prior to June 1, 1944, or an agreement or change order supplemental to such contract bearing the same Government contract number. (See § 314.24 (b).)

(l) No credit will be allowed against tax due on the sale of gasoline or lubricating oil for the tax paid on importation of gasoline or lubricating oil.

[Regs. 44, 9 F. R. 13453, as amended by T. D. 5674, 13 F. R. 7301]

§ 314.65 *Penalties and interest.* (a) In the case of failure to file a return within the prescribed time, a certain percentage of the amount of the tax is added to the

tax unless the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 per cent if the failure is for not more than 30 days, with an additional 5 per cent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per cent in the aggregate.

(b) Failure to pay tax within the time fixed for filing returns causes interest to accrue automatically, without assessment of the tax by the Commissioner or notice to the taxpayer, to the actual date of payment or assessment, whichever is prior. The due date of the tax for the purpose of computing interest is the last day of the month within which the return is required to be filed and the tax paid.

(c) Where assessment is made, and payment is not made within 10 days after the issuance of the first notice and demand (Form 17), there will accrue, under section 3655, a 5 per cent penalty and interest at the rate of 6 per cent per annum computed upon the entire assessment from the date of issuance of Form 17 until date of payment. Where assessment is settled by partial payments, interest is computed at the above-prescribed rate from the date of the first 10-day notice through the date of first payment and on the balance from the next succeeding day to the date of the next payment until the assessment is paid in full.

(d) If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 per cent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 per cent penalty applies. The filing of the claim does not stay the collection of interest, which continues to run for the full period that intervenes between the date of the first notice and demand and the date of payment.

(e) If a false or fraudulent return is willfully made, the penalty, under section 3612 (d) and (e), is 50 per cent of the total tax due for the entire period involved, including any tax previously paid.

(f) Any person who willfully fails to pay any tax due, file return, or keep records, or who attempts in any manner to evade or defeat the tax, or who fraudulently uses any exemption certificate authorized by these regulations, is subject to a fine of \$10,000, or imprisonment, or both, with costs of prosecution, and is also liable to a penalty equal to the amount of the tax not paid. These penalties apply to an officer or employee who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs, as well as to a person who fails or refuses to perform any of the duties imposed by the Code, i. e., pay the tax, make returns, keep records, supply information, etc.

(g) An internal-revenue officer discovering in the course of his duty information leading him to suspect a possible violation of any law with the enforcement of which he is not directly concerned should immediately report the matter to the Commissioner, who is authorized to communicate with the proper department involved.

## Part 315—Licensing Under the Federal Firearms Act of Manufacturers of, and Dealers in, Firearms or Ammunition

### Subpart A—Definitions

Sec.

315.1 Definitions.

### Subpart B—Licenses

315.2 Persons required to procure licenses.  
 315.3 Persons not entitled to a license.  
 315.4 Application for a license.  
 315.5 License fees.  
 315.6 Issuance of license.  
 315.7 Scope and duration of license.  
 315.8 Removal of license.  
 315.9 Suspension and revocation of license.

### Subpart C—Records

315.10 Records.

### Subpart D—Exemptions

315.11 Exemptions.

### Subpart E—Miscellaneous Provisions

315.12 Relation to other provisions of law  
 315.13 Penalties.

**AUTHORITY:** §§ 315.1 to 315.13 issued under sec. 7, 52 Stat. 1252; 15 U. S. C. 907.

**SOURCE:** §§ 315.1 to 315.13 contained in T. D 5646, 13 F. R. 4383. Redesignation noted at 14 F. R. 5200.

**SUBPART A—DEFINITIONS**

§ 315.1 *Definitions.* As used in the regulations in this part:

(a) The term "act" means the Federal Firearms Act.

(b) The term "firearm" means (1) any weapon, by whatever name known, which is designed to expel a projectile or projectiles by action of an explosive, (2) any part or parts of such weapon, and (3) a firearm muffler or firearm silencer.

(c) The term "ammunition" means only pistol and revolver ammunition. It does not include shotgun shells, metallic ammunition suitable for use only in rifles, or any .22 caliber rimfire ammunition.

(d) The term "interstate or foreign commerce" means:

(1) Commerce between any State, Territory, or possession of the United States (not including the Canal Zone), or the District of Columbia, and any place outside thereof;

(2) Commerce between points within the same State, Territory, or possession of the United States (not including the Canal Zone), or the District of Columbia, but through any place outside thereof; or

(3) Commerce within any Territory, or possession of the United States (including the Canal Zone), or the District of Columbia.

(e) The term "person" includes an individual, partnership, association, or corporation.

(f) The term "manufacturer" means any person engaged in the manufacture or importation of firearms, or ammunition, for purposes of sale or distribution.

(g) The term "licensed manufacturer" means a manufacturer licensed under section 3 of the act.

(h) The term "dealer" means any person engaged in the business of selling firearms or ammunition at wholesale or retail, or any person engaged in the business of repairing such firearms or of manufacturing or fitting special barrels, stocks, trigger mechanisms, or breech mechanisms to firearms.

(i) The term "licensed dealer" means a dealer licensed under section 3 of the act.

(j) The term "license" means a license issued under authority of section 3 (b) of the act.

(k) The term "license fee" means the annual fee payable by a manufacturer of, or dealer in, firearms or ammunition.

(l) The term "Secretary" means the Secretary of the Treasury.

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

(n) The term "collector" means collector of internal revenue.

(o) The terms "includes" and "including" when used in a definition or statement in this part shall not be deemed to exclude other things otherwise within the scope thereof.

**SUBPART B—LICENSES**

§ 315.2 *Persons required to procure licenses.* (a) Under section 2 (a) of the act, it is unlawful for any manufacturer or dealer, except a manufacturer or dealer having a license issued under the provisions of the act, to transport, ship, or receive any firearms or ammunition in interstate or foreign commerce. Therefore, every manufacturer or dealer within the meaning of the act and the regulations in this part (see § 315.1 (f) and (h)) must first procure a license under section 3 of the act before he may, on or after July 30, 1938, lawfully transport, ship, or receive any firearms or ammunition in interstate or foreign commerce.

(b) It is not necessary in any case for a person licensed as a manufacturer also to procure a license as a dealer. The license as manufacturer entitles the licensee, within the limitations of the act, to transport, ship, or receive, in interstate or foreign commerce, firearms or ammunition, whether of his own production or produced by another. However, a person required to be licensed as a manufacturer does not comply with the provisions of the act by procuring a license as dealer.

(c) A person engaged in the importation of firearms or ammunition for sale or distribution is required to be licensed as a manufacturer even though he may not perform any manufacturing operations.

(d) A person engaged in the business of repairing firearms, or of manufacturing or fitting special barrels, stocks, trigger mechanisms, or breech mechanisms to firearms, if not otherwise required to be licensed as a manufacturer, must be licensed as a dealer before he may, on or after July 30, 1938, lawfully transport, ship, or receive any firearm, including

any part of a weapon (see § 315.1 (b)), or ammunition in interstate or foreign commerce.

§ 315.3 *Persons not entitled to a license.* A license shall not be issued to any person who is under indictment for, or has been convicted of, a "crime of violence" as defined in section 1 (6) of the act, or who is a "fugitive from justice" as defined in section 1 (17) of the act. Nor shall a license be issued to any applicant within two years after the revocation of a previous license.

§ 315.4 *Application for a license.* The application for a license shall be made on Form 7 (Firearms), copies of which may be procured from collectors. The application shall be filed with the collector for the district within which the principal place of business of the applicant is located. The application must contain all the information required by the form.

§ 315.5 *License fees.* In the case of a manufacturer the license fee is \$25 per annum, and in the case of a dealer the license fee is \$1 per annum.

§ 315.6 *Issuance of license.* If an application on Form 7 (Firearms) has been filed with the collector, properly executed by a person lawfully entitled to a license and accompanied by the required license fee, there shall be issued to the applicant a license on Form 8 (Firearms).

§ 315.7 *Scope and duration of license.* (a) The license shall entitle the person to whom issued to transport, ship, or receive firearms or ammunition in interstate or foreign commerce for a period of one year from the date of issuance, subject, however, to suspension or revocation of the license at any time if the licensee is convicted of violation of any of the provisions of the act. (See § 315.9.)

(b) A license shall not be issued in any case for a period of less than one year. No refund of any part of the amount paid as a license fee shall be made where, for any reason, a licensee discontinues operations prior to the expiration of the period covered by the license. Nor shall any refund be made if the license is suspended or revoked because of violation by the licensee of any provision of the act.

(c) When a license has expired, or is about to expire, a new license, if desired, may be obtained by filing with the collec-

tor an application on Form 7 (Firearms), accompanied by the required license fee, provided the applicant is otherwise entitled to a license. (See § 315.3.)

(d) The license under section 3 of the act is not assignable or transferable under any circumstances and is valid only with respect to the operations of the person to whom issued.

(e) The license applies to the operations of the licensee and not to any particular place at which business is carried on. Accordingly, only one license is required, regardless of the number of places at which the licensee operates. If the business is carried on at more than one location, the license shall be held available for inspection at the principal place of business and an appropriate record maintained at all other locations showing where the license is so held.

(f) The license confers no right or privilege to conduct business contrary to State or other law. The holder of a license is not, by reason of such license, immune from punishment for dealing in firearms or ammunition in violation of the provisions of any State or other law. Similarly, compliance with the provisions of any other law affords no immunity under the act. (See § 315.12.)

§ 315.8 *Removal of licensee.* A licensee may remove his business to a new location without procuring a new license. However, in every case, whether or not the removal is from one district to another, prompt notification of the new location of the business must be given to:

(a) The collector for the district where the license was issued;

(b) The collector for the district from which or within which the removal is made; and

(c) The collector for the district to which the removal is made.

§ 315.9 *Suspension and revocation of license.* (a) Section 3 (c) of the act provides in part that the license of any person convicted of violation of any provision of the act shall be suspended until final disposition of the case, at which time, if the conviction has not been set aside, the license shall be revoked. Section 3 (c) further provides that a licensee convicted of violation of any provision of the act may be permitted to continue in business during the pendency of an appeal from such conviction upon furnish-

ing a bond of \$1,000 acceptable to the Secretary.

(b) Upon receipt by the Secretary of notice of the conviction of a licensee of violation of any provision of the act, the license of such person shall be immediately suspended in accordance with the provisions of section 3 (c) of the act, and the Commissioner shall immediately notify such person thereof by registered letter addressed to his last known address.

(c) A person whose license is suspended on account of a conviction of violation of any provision of the act and who desires permission to continue in business during the pendency of an appeal from such conviction shall file an application with the Commissioner for such permission. The application shall be under oath and fully set forth the grounds on which the application is based. The application shall be accompanied by a bond, running to the United States, in the penal sum of \$1,000. The condition of the bond shall be that, until final disposition of the appeal, the licensee will comply in every respect with all the provisions of the act. As soon as possible after the receipt of the application and bond, the Commissioner shall notify the applicant that, by direction of the Secretary, his application has been granted or denied, as the case may be.

(d) An application for permission to continue in business during the pendency of an appeal from a conviction of violation of any provision of the act shall not be granted if on the facts of the case the applicant would not then be entitled to a license were he applying for a license. (See § 315.3)

(e) In every case, the suspension of a license shall remain in effect until final action is taken upon the application, if made, for permission to continue in business during the pendency of an appeal from the conviction. If such application is granted, the suspension is set aside until final action upon the appeal from the conviction, at which time the case will be disposed of according to the outcome of the appeal. If the application for permission to continue in business is denied, or if no such application is made, the suspension of the license remains in effect throughout the pendency of the appeal and final action will then be taken in the case as may be required by the outcome of the appeal.

(f) The granting of an application to continue in business during the pendency of an appeal from a conviction of violation of any provision of the act does not extend the term of the license. If a license expires by lapse of time before the appeal is decided, the licensee must procure a new license if he desires to continue to transport, ship, or receive firearms or ammunition in interstate or foreign commerce. The new license shall stand in place of, and be subject to the same condition as, the old license, that is, the new license shall be subject to revocation if the conviction is not set aside.

(g) If upon appeal the conviction of a licensee of violation or any provisions of the act is not set aside, or if no appeal is filed, his license shall be immediately revoked pursuant to the provisions of section 3 (c) of the act, and the Commissioner shall immediately notify such person thereof by registered letter addressed to his last known address.

(h) The forfeiture of a license for violation of any provision of the act is a separate and distinct penalty in addition to any other penalties which may apply in the case, whether imposed under section 5 of the act or under any other provision of law.

(i) A person whose license has been revoked for violation of any provision of the act may, if otherwise entitled to a license (see § 315.3), again be licensed to transport, ship, or receive firearms or ammunition in interstate or foreign commerce, but not until the expiration of two years from the date of the revocation of the previous license. In such case, the application for the new license shall be filed with the collector in accordance with the provisions of § 315.4.

#### SUBPART C—RECORDS

§ 315.10 *Records*—(a) *Manufacturers*. Each licensed manufacturer shall maintain complete and adequate records of all firearms and ammunition disposed of in the course of his business, whether manufactured by himself or acquired from other manufacturers or dealers, including firearms in an unassembled condition, but not including parts of firearms. The records shall show and include:

(1) The number of the firearms of each type, together with a full and adequate description thereof, including the

serial numbers if such weapons are numbered;

(2) The types, and quantity of each type, of ammunition;

(3) The name and address of each person from whom the firearms or ammunition, if not the manufacturer's own product, was acquired, and the date of acquisition; and

(4) The disposition made of the firearms or ammunition, including the name and principal address of each transferee, the address to which delivered, and date of disposition.

(b) *Dealers.* Each licensed dealer shall maintain complete and adequate records of all firearms (not including parts of firearms but including firearms in an unassembled condition) acquired or disposed of in the course of his business. The records shall show and include:

(1) The number of the firearms of each type, together with a full and adequate description thereof, including the serial numbers if such weapons are numbered;

(2) The name and address of each person from whom firearms are acquired, and the date of acquisition;

(3) The disposition made of the firearms, including the name and principal address of each transferee, the address to which delivered, and date of disposition.

(c) *General.* The records prescribed by this section shall be in permanent form and shall be retained for a period of not less than six years from the date of the transactions to which the records relate. Such records must be held available for inspection during business hours by any authorized officer or agent of the United States engaged in the performance of his duties under the act.

#### SUBPART D—EXEMPTIONS

##### § 315.11 Exemptions—(a) General.

(1) Under section 4 of the act, the provisions of the act do not apply with respect to the transportation, shipment, receipt, or importation of any firearm, or ammunition, sold or shipped to, or issued for the use of:

(i) The United States or any department, independent establishment, or agency thereof;

(ii) Any State, Territory, or possession, or the District of Columbia, or any department, independent establishment,

agency, or any political subdivision thereof;

(iii) Any duly commissioned officer or agent of the United States, a State, Territory, or possession, or the District of Columbia, or any political subdivision thereof;

(iv) Any bank, public carrier, express, or armored-truck company organized and operating in good faith for the transportation of money and valuables, provided exemption is granted as prescribed in paragraph (b) of this section; and

(v) Any research laboratory designated under paragraph (c) of this section and granted exemption thereunder.

(2) Section 4 of the act further exempts from the provisions of the act:

(i) The transportation, shipment, or receipt of any antique or unserviceable firearms, or ammunition, possessed and held as curios or museum pieces; and

(ii) Shipment of firearms and ammunition to institutions, organizations, or persons to whom such firearms and ammunition may be lawfully delivered by the Secretary of War, and the transportation of such firearms and ammunition by their lawful possessors while they are engaged in military training or in competitions.

(b) *Bank, public carrier, express, or armored-truck company.* Any bank, public carrier, express, or armored-truck company organized and operating in good faith for the transportation of money and valuables, may procure an exemption under section 4 of the act upon application to the collector for the district within which the principal place of business is located. Such application shall be submitted under oath and show the character of the business of the applicant and the purposes for which the exemption is requested. If the application and the purposes stated are bona fide, the exemption shall be granted. In all cases, as soon as possible after the receipt of the application, the collector shall notify the applicant by letter that, by direction of the Secretary, the exemption is granted or denied, as the case may be.

(c) *Research laboratory.* A research laboratory desiring to procure an exemption under section 4 of the act shall file an application with the Commissioner. The application shall be under oath and shall show (1) by whom and the purpose for which the laboratory was organized,

(2) the source of the funds expended for the maintenance and operations of the laboratory, (3) the services performed by, and operations of, the laboratory, and (4) the purposes for which the exemption is requested. The Commissioner shall notify the applicant that, by direction of the Secretary, the application is granted, or denied, as the case may be.

**SUBPART E—MISCELLANEOUS PROVISIONS**

§ 315.12 *Relation to other provisions of law.* The provisions of the act and of the regulations in this part are in addition to, and not in lieu of, any other provision of law, or regulations, respecting the manufacture or importation of, or dealing in, firearms or ammunition.

§ 315.13 *Penalties.* Section 5 of the act provides certain penalties for violation of the provisions of the act or the regulations in this part, and for knowingly making any false statement in applying for a license or exemption. With respect to transactions and dealings declared unlawful and in violation of the act, see section 2 of the act.

**Part 316—Excise Taxes on Sales by the Manufacturer**

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- 316.1 Meaning of terms.
- 316.2 Effective period.
- 316.3 Liability for tax.
- 316.4 Who is a manufacturer.
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- 316.20 Tax-free sales and registration.
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- Sec.
- 316.22 Articles sold for resale to manufacturers.
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**Subpart C—Tires and Inner Tubes**

- 316.30 Scope of tax.
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**Subpart E—Automobiles, Etc.**

- 316.50 Scope of tax.
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- 316.53 Sales of bodies to manufacturers.
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**Subpart F—Radio Receiving Sets, Etc.**

- 316.60 Scope of tax.
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**Subpart G—Mechanical Refrigerators and Refrigerator Components**

- 316.70 Refrigerators, etc.
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- 316.73 Rate of tax.

**Subpart H—Firearms, Shells, and Cartridges**

- 316.80 Scope of tax.
- 316.81 Exempt sales.
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**Subpart I—Sporting Goods**

- 316.90 Scope of tax.
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**Subpart J—Luggage**

- 316.100 Scope of tax.
- 316.101 Application of the tax.
- 316.102 Rate of tax.
- 316.103 Suspension of tax.

**Subpart K—Electric, Gas, and Oil Appliances**

Sec.

- 316.110 Scope of tax.  
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**Subpart L—Photographic Apparatus**

- 316.120 Scope of tax.  
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**Subpart O—Business and Store Machines**

- 316.140 Scope of tax.  
316.141 Rate of tax.

**Subpart S—Electric Light Bulbs and Tubes**

- 316.180 Scope of tax.  
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**Subpart T—Electrical Energy**

- 316.190 Scope of tax.  
316.191 Sales for resale.  
316.192 Rate of tax.  
316.193 Exemptions.  
316.194 Inapplicable administrative provisions.

**Subpart U—Miscellaneous Provisions**

- 316.200 Returns.  
316.201 Payment of taxes.  
316.202 Records.  
316.203 Jeopardy assessment.  
316.204 Credits and refunds.  
316.205 Penalties and interest.

**AUTHORITY:** §§ 316.1 to 316.205 issued under 53 Stat. 419, 467; 26 U. S. C. 3450, 3791.

**NOTE:** Order, Acting Secretary of the Treasury, June 30, 1947, 12 F. R. 4397, authorized the exemption from the taxes imposed by Chapters 19 and 29 of the Internal Revenue Code (26 U. S. C., Chapters 19 and 29) with respect to articles sold on or after June 1, 1944, to any corporation created by act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864 (American Red Cross), for its exclusive use, at a price not including such taxes.

**NOTE:** Redesignation noted at 14 F. R. 5200.

**SUBPART A—GENERAL PROVISIONS**

**SOURCE:** §§ 316.1 to 316.15 contained in Regulations 46, 5 F. R. 142, except as noted following sections affected.

§ 316.1 *Meaning of terms.* As used in the regulations in this part:

(a) The terms defined in the applicable provisions of law shall have the meanings so assigned to them.

(b) The term "manufacturer" includes "producer" and "importer." (See also § 316.4)

(c) The term "exporter" means the person named as shipper or consignor in the export bill of lading.

(d) The term "exportation" means the severance of an article from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within some foreign country or within a possession of the United States.

(e) The term "possession of the United States" includes the Philippine Islands, the Panama Canal Zone, the Virgin Islands, Guam, Puerto Rico, American Samoa, Wake, Palmyra, and the Midway Islands.

(f) The term "sale" means an agreement whereby the seller transfers the property (that is, the title or the substantial incidents of ownership) in goods to the buyer for a consideration called the price, which may consist of money, services, or other things.

(g) The term "taxable article" means any article taxable under Chapter 29, Subchapter A, of the Internal Revenue Code.

(h) The term "vendor" includes a lessor.

(i) The term "purchaser" includes a lessee.

§ 316.2 *Effective period.* (a) Taxes on the manufacturer's sale of tires and inner tubes; automobile truck chassis and bodies, other automobile chassis and bodies and motorcycles, and parts and accessories therefor; radio components; household type mechanical refrigerators and components therefor; and firearms, shells, and cartridges became effective under Title IV of the Revenue Act of 1932, on June 21, 1932. The tax on the vendor's sale of electrical energy became effective under section 6 of the act of June 16, 1933, (Public No. 73-73d Congress), amending section 616 of the Revenue Act of 1932, on September 1, 1933. The tax on the manufacturer's sale of tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer became effective under Title IV of the Revenue Act of 1938, on July 1, 1938. The applicable provisions of the Revenue Act of 1932, as amended, were superseded as of March 1, 1939, by provisions of the Internal Revenue Code. The Code provisions were amended by subsequent acts, including the Revenue Act of 1941.

(b) The change in the basis of the tax on automobile bus chassis, bus bodies, bus trailer and semitrailer chassis and bodies therefor; the tax on the manufacturer's sales of chassis and bodies for trailers

and semitrailers suitable for use in connection with passenger automobiles and motorcycles; the taxes on the manufacturer's sale of complete radio receiving sets; phonographs, phonograph records; musical instruments; mechanical refrigerators (other than household type refrigerators, and components therefor) including commercial refrigerators, coolers, etc.; refrigerating apparatus; air-conditioners, and components therefor; and, the new manufacturers' excise taxes on sales of sporting goods; luggage; electric, gas, and oil appliances; photographic apparatus; electric signs; business and store machines; rubber articles; washing machines; optical equipment; and electric light bulbs and tubes, became effective under Title V of the Revenue Act of 1941, on October 1, 1941.

(c) Under the provisions of Title VI of the Revenue Act of 1942, effective November 1, 1942, the taxes with respect to sales of electric signs, rubber articles, washing machines and optical equipment are terminated, and certain changes are made in the taxes with respect to sales of refrigerators, etc., and photographic apparatus.

(d) The provision of section 302 of the Revenue Act of 1943, relating to the increase in the rate of tax on electric light bulbs and tubes; the provision of section 302 of the Revenue Act of 1943, affecting section 3441 (c), I. R. C., which relates to leases, conditional sales, existing contracts, etc.; the amendment by section 304 of the Revenue Act of 1943 of section 3406 (a) (2), I. R. C., suspending the manufacturers' excise tax on luggage; the amendment by section 306 of the Revenue Act of 1943 of section 3400, I. R. C., defining the term "rubber"; and the amendment by section 311 of the Revenue Act of 1943 of section 3406 (a) (3), I. R. C., repealing the tax on household type electric vacuum cleaners, become effective in each case on April 1, 1944. The amendments made by section 307 of the Revenue Act of 1943 relating to the termination of the tax exemption with respect to articles sold for the exclusive use of the United States, become effective as to certain articles on June 1, 1944, and as to other articles on the first day of the first month which begins six months or more after the date of the termination of hostilities in the present war.

[T. D. 5099, 6 F. R. 6129, as amended by T. D. 5189, 7 F. R. 10048, T. D. 5348, 9 F. R. 3004]

§ 316.3 *Liability for tax.* (a) Each manufacturer, producer, or importer is liable for tax on any sale, lease, or use of a taxable article, whether such sale, lease, or use is made directly or through an agent, except as otherwise provided (see Subpart C of this part and § 316.6).

(b) The amendment of section 3400, I. R. C., by section 553 (a) of the Revenue Act of 1941 clarifies existing language. The term "lease" includes any renewal or extension of a lease or any subsequent lease of an article.

(c) The purpose of section 3453, I. R. C., added by section 553 (b) of the Revenue Act of 1941, is to shift under certain conditions the liability for a tax, or for an increase in existing rate of tax, imposed by the Revenue Act of 1941, from the manufacturer to the vendee. The conditions under which such liability is shifted are as follows: First, there must be a bona fide contract made by the manufacturer prior to October 1, 1941, for the sale on or after such date of an article with respect to which a manufacturers' excise tax is imposed, or the rate of an existing manufacturers' excise tax is increased, by the Revenue Act of 1941; second, the contract does not provide for the addition of such tax or increase in tax to the amount payable thereunder; and, third, the contract does not expressly or by implication prohibit such addition to the contract price. Where these conditions are present, the vendee becomes liable for the tax or additional tax imposed by the Revenue Act of 1941. In all other cases, the liability remains upon the manufacturer and the full amount of the tax is payable by him.

(d) A contract which provides that the tax shall be paid by the vendor, or otherwise negatives any addition to the contract price, is regarded as prohibiting an addition of the tax to such price.

(e) A vendee who is required to pay the tax shall make payment thereof to the vendor at the time the sale is consummated, and the tax shall be returned and paid to the collector by the vendor. (See § 316.200.) In case of failure or refusal by the vendee to pay the tax to the vendor, the vendor shall report the facts to the Commissioner, for direct collection of the tax from the vendee.

(f) Under section 1652 (c), I. R. C., added by section 302 of the Revenue Act of 1943, the increase in the existing rate of tax with respect to electric light bulbs

and tubes, may, under certain conditions be shifted from the manufacturer to the vendee. The conditions outlined above with respect to the increase in rates which became effective October 1, 1941, are applicable to the increased rate of tax on electric-light bulbs and tubes effective April 1, 1944.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5099, 6 F. R. 6130, T. D. 5348, 9 F. R. 3004]

§ 316.4 *Who is a manufacturer.* (a) The term "manufacturer" includes a person who produces a taxable article from scrap, salvage, or junk material, as well as from new or raw material, (1) by processing, manipulating, or changing the form of an article, or (2) by combining or assembling two or more articles.

(b) Under certain circumstances, as where a person manufactures or produces a taxable article for a person who furnishes materials and retains title thereto, the person for whom the taxable article is manufactured or produced, and not the person who actually manufactures or produces it, will be considered the manufacturer.

(c) A manufacturer who sells a taxable article in a knockdown condition, but complete as to all component parts, is liable for the tax, and not the person who buys, and assembles a taxable article from, such component parts.

§ 316.5 *When tax attaches.* (a) In general the tax attaches when the title to the article sold passes from the manufacturer to a purchaser.

(b) When title passes is dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. In the absence of expressed intention, the legal rules of presumption followed in the jurisdiction where the sale is made govern in determining when title passes. Generally, title passes upon delivery of the article to the purchaser or to a carrier for the purchaser.

(c) In the case of a sale on credit, it is immaterial whether or not the purchase price is actually collected.

(d) Where a manufacturer consigns articles to a dealer, retaining ownership in them until they are disposed of by the dealer, title does not pass and the tax does not attach until sale by the dealer. Likewise, where the relationship between a manufacturer and a dealer is that of principal and agent, title passes upon

sale by the dealer, and tax thereupon attaches.

(e) In the case of a lease, an installment sale, a conditional sale, or a chattel mortgage arrangement, a proportionate part of the tax attaches to each payment. (See § 316.9.) In the case of use by the manufacturer (see § 316.7) the tax attaches at the time the use begins.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5189, 7 F. R. 10048]

§ 316.6 *Sales of taxable articles by a person other than the manufacturer thereof.* If the property (that is, the title or the substantial incidents of ownership) in an article is transferred from the manufacturer thereof, and, under the law, no tax attaches to such transfer, the subsequent sale, lease, or use of the article by the transferee is subject to the tax. The following examples are illustrative of this rule:

(a) If a manufacturer, producer, or importer of any of the articles covered by the regulations in this part dies, the surviving spouse, child or children, executors or administrators, or other legal representatives, as the case may be, are liable for the tax on all such articles sold by them.

(b) A receiver or trustee in bankruptcy of a manufacturer, who conducts or liquidates a business under a court order, is liable for tax on all taxable articles sold by him, regardless of whether the articles were manufactured or imported before or after he took charge of the business.

(c) An assignee for the benefit of creditors of a manufacturer is liable for tax with respect to all taxable articles sold by him as such assignee.

(d) If one or more members of a partnership withdraw, and the business is continued by the remaining partners, or if new partners are admitted, the new partnership so constituted will be liable for tax on all taxable articles sold by it regardless of when they were manufactured or imported.

(e) A corporation which results from a statutory consolidation, or a stockholder in a corporation who, after its dissolution, continues the business, is liable for tax on all taxable articles sold.

§ 316.7 *Tax on use by manufacturer, producer, or importer.* (a) If a person manufactures, produces, or imports an

article covered by the regulations in this part, except a tire or inner tube, and uses it for any purpose (other than as material in the manufacture or production of, or as a component part of, another article manufactured or produced by him which will be taxable or sold free of tax under the provisions of § 316.21 or § 316.22), he shall be liable for tax with respect to the use of such article in the same manner as if it were sold by him.

(b) If a person manufactures, produces, or imports tires and/or inner tubes, and sells them on or in connection with, or with the sale of, automobiles, taxable tractors, or motorcycles, or if he uses them for any purpose whatever, he shall be liable for tax in such cases as if such tires and inner tubes were sold by him as separate articles. The tax will be computed at the rates prescribed by section 3400. (See §§ 316.30–316.32, and § 316.54)

(c) The use by any person, in the operation of a business in which he is engaged, of any taxable article which has been manufactured, produced, or imported by him or his agent, makes such person liable to tax on such use. Except in the case of tires and inner tubes the tax will be computed on the basis of the fair market price of the article. (See § 316.15) However, the tax on the use of such taxable article will not attach in cases where an individual incidentally manufactures, produces, or imports for his personal use or causes to be manufactured, produced, or imported for his personal use any taxable article.

§ 316.8 *Basis of tax on sales, generally.*

(a) The tax is imposed on the sale by the manufacturer of any of the articles enumerated in the regulations in this part. The provisions of law embody the rules for determining the sale price, which is the basis of the tax, except in cases covered by section 3441 (b) (see § 316.15). In general, this should be the manufacturer's actual price at the point of distribution or sale. In determining the sale price, for tax purposes, there shall be included any charge incident to placing the article in condition packed ready for shipment. There shall be excluded (1) the amount of the tax, whether or not billed as a separate item, and (2) (subject to the provisions of § 316.12) transportation, delivery, insurance, installation, or other charges (not

required by the preceding sentence to be included).

(b) Where articles are sold on credit, the tax is to be returned and paid to the collector of internal revenue during the month succeeding that in which the sales are made, even though the price may not be paid to the manufacturer until a later date.

§ 316.9 *Basis of tax on leases, installment sales, conditional sales, and sales under chattel mortgage arrangements.*

(a) Special provision is made in the law for computing taxes due in the case of leases of articles and installment and so-called conditional sales. The term "lease" means a continuous right to the possession or use of a particular article for a period of time. It does not include the use of an article merely as occasion demands, but the contract must give the lessee the right to possess or use the article, without interruption, for a period of time.

(b) Where articles are leased by the manufacturer, or sold under an installment-payment contract with title reserved, or under a conditional-sale contract with payments to be made in installments, a proportionate part of the total tax shall be paid upon each payment made with respect to the article. The tax must be returned and paid to the collector during the month following that in which such payment is made.

(c) In the case of articles with respect to which the rate of tax is increased by the Revenue Act of 1940 or by the Revenue Act of 1941:

(1) The tax is payable at the rate in force on June 30, 1940, upon all payments where the lease, contract for sale, or conditional sale, and the delivery thereunder were made before July 1, 1940;

(2) The tax is payable at the rate in force on September 30, 1941, upon all payments where the lease, contract for sale, or conditional sale, and the delivery thereunder were made after June 30, 1940, and before October 1, 1941.

(d) In the case of articles not subject to tax on September 30, 1941, no tax is payable upon payments made on and after October 1, 1941, where the lease, contract for sale, or conditional sale, and the delivery thereunder were made before October 1, 1941.

(e) Where articles are sold by the manufacturer on and after November 1, 1942, under a chattel mortgage arrange-

ment, with payments to be made in installments, a proportionate part of the total tax shall be paid upon each payment made with respect to the articles. The tax must be returned and paid to the collector during the month following that in which such payment is made.

(f) In the case of electric light bulbs and tubes with respect to which the rate of tax is increased by the Revenue Act of 1943, if the lease, contract of sale, conditional sale, or chattel mortgage was made, delivery thereunder was made, and a part of the consideration was paid, before April 1, 1944, the total tax is payable at the rate in force on March 31, 1944. [Regs. 46, 5 F. R. 142, as amended by T. D. 5099, 6 F. R. 6130, T. D. 5189, 7 F. R. 10048, T. D. 5348, 9 F. R. 3004]

§ 316.10 *Charges for coverings, containers, etc., generally.* Any charges for coverings, containers, etc., incident to placing an article in condition packed ready for shipment shall be included as a part of the sale price for the purpose of computing the tax. Therefore, the amount paid for the article and its covering or container is the basis for computing the tax even though a separate charge for such covering or container is billed on the invoice. If there is an agreement that the manufacturer will refund to the purchaser a specified amount upon return of the covering or container, the tax nevertheless attaches to the whole price, including the amount agreed upon to be refunded. However, when such coverings or containers are returned by the purchaser, and the manufacturer actually refunds the amount agreed upon, the manufacturer may file a claim for refund on Form 843, or take credit on any subsequent monthly return for that portion of the tax paid on the part of the price actually refunded to the purchaser. (See § 316.204)

§ 316.11 *Exclusion of tax.* (a) The tax imposed on the sale of an article is not part of the taxable price of the article. Therefore, if a manufacturer computes the tax upon his sale price exclusive of the tax, and charges the tax on such sale price as a separate item, no tax will be due on the tax so charged. Where no separate charge is made as tax, it will be presumed to be included in the price charged for the article, and a proper percentage of such price allocated to the tax.

(b) If an article subject to tax at the rate of 5 percent is sold for \$100 and an additional item of \$5 is billed as tax, it is clear that \$100 is the taxable selling price and \$5 the amount of tax due thereon. However, if the article is sold for \$100 with no separate billing or indication of the amount of the tax, it will be presumed that the tax is included in the \$100, and computation will be necessary to determine what portion of the total amount represents the sale price of the article and what portion the tax. If the tax on the article is 5 percent of the sale price it is clear that the \$100 includes a basic sale price (100 percent) and the tax thereon (5 percent). Consequently, in order to determine the amount of the tax, the \$100 must be divided by 1.05, resulting in a quotient of \$95.24, which is the sale price of the article. If the \$95.24 is either subtracted from \$100 or multiplied by .05 (the rate of tax), the correct tax will be ascertained—\$4.76. The same method of computation may be applied where a different tax rate is involved, and the tax is included in the sale price, the amount charged the customer being divided by 1.00 plus the tax rate, thus ascertaining the sale price of the article and from that the tax thereon.

(c) The above method of computing the tax is applicable only where the basis for the tax is the actual sale price. If the basis for the tax is the fair market price as determined under the provisions of section 3441 (b), the tax is computed at 2 percent, 3 percent, 5 percent, or 10 percent, as the case may be, of such fair market price without excluding any of the items enumerated in section 3441 (a). (See § 316.15)

§ 316.12 *Exclusion of charges for transportation, delivery, etc., generally.*

(a) Charges for transportation, delivery, insurance, installation, and other charges actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale, are to be excluded in computing the tax.

(b) No other additional charge may be excluded in computing the tax unless it can be shown by adequate records to the satisfaction of the Commissioner that such charge properly is not to be included as a manufacturing or selling expense, or is in no way incidental to placing the article in condition packed ready for shipment.

§ 316.13 *Discounts and adjustments, generally.* (a) Readjustments in sale price (such as allowable discounts, rebates, bonuses, etc.) can not be anticipated. The tax must be based upon the original price unless the readjustments have actually been made prior to the close of the month in which the tax upon the sale is returned. However, if the price upon which the tax was computed is subsequently readjusted, a proper credit may be taken against the tax due on a subsequent return, or an appropriate claim for refund may be filed. (See § 316.204)

(b) Where articles are sold over a period of time under an agreement for a quantity rebate, or an agreement for a so-called wholesale bonus, and an adjustment in price is actually allowed in accordance with such agreement, the tax may be adjusted in the return for the month in which the price is finally determined, or a claim for refund may be filed. (See § 316.204)

(c) Where articles are sold under an agreement which provides for a rebate in the case of a price reduction applicable to articles remaining unsold in the hands of a dealer, and a rebate is made in accordance with such agreement, a corresponding adjustment of tax paid may be effected through a credit or claim for refund. (See § 316.204)

(d) Commissions to agents, or allowances, payments, or adjustments made to persons other than the manufacturer's vendee are not deductible from the sale price under any conditions for purposes of computing the tax.

§ 316.14 *Exchanges, etc.* (a) Where articles sold are returned to the manufacturer by his vendee and the original sale is entirely rescinded by refunding the entire amount paid, including tax, to the vendee, no tax is payable on the transaction and, if paid, the tax may be credited or refunded. (See § 316.204) Where taxable articles sold are returned to the manufacturer by his vendee and only a part of the original sale price is refunded or credited to his vendee, the manufacturer is entitled to a tax credit computed on the portion of the sale price he refunds or credits to his vendee.

(b) If an article is sold under a guaranty as to its quality or service and is thereafter returned and a rebate made pursuant to the guaranty, the manufacturer may claim credit or refund of such

portion of the tax originally paid in respect of the article as is proportionate to the part of the price refunded to his vendee.

(c) Where any taxable article is returned to the manufacturer thereof by his vendee for adjustment, replacement, or exchange, under a guaranty as to quality or service, and a new article given pursuant to the guaranty, free, or at a reduced price, the tax shall be computed on the actual amount, if any, to be paid to the manufacturer for the new article.

§ 316.15 *Fair market price in case of retail sales, consignments, etc., generally.*

(a) The law provides a special basis of tax computation where sales are at less than the fair market price and not at arm's length. The fair market price is the price for which articles are sold by manufacturers at the place of distribution or sale in the ordinary course of trade and in the absence of special arrangements. A sale is not at arm's length when made pursuant to special arrangements between a manufacturer and a purchaser (as in the case of intercompany transactions). When a sale is not at arm's length and the price is less than the fair market price (as in the case of intercompany transactions at cost or at a fictitious price), the tax is to be computed upon a fair market price to be computed by the Commissioner. No deduction from the fair market price as determined by the Commissioner is permissible.

(b) Where a manufacturer sells articles at retail, the tax on his retail sales ordinarily will be computed upon a price for which similar articles are sold by him at wholesale. However, in such cases it must be shown that the manufacturer has an established bona fide practice of selling the same articles in substantial quantities at wholesale. If he has no such sales at wholesale, a fair market price will be determined by the Commissioner.

(c) If a manufacturer sells regularly at wholesale at several varying but bona fide rates of discount, ordinarily his average selling price for the smallest wholesale lots will be the basis of tax with respect to retail sales. All sales at wholesale are subject to tax on the basis of the actual sale price of each article so sold.

(d) If a manufacturer delivers articles to a dealer on consignment, retaining ownership in them until disposed of by the dealer, the manufacturer must pay a tax on the basis of the fair market price, which will ordinarily be the net price received from the dealer.

#### SUBPART B—GENERAL EXEMPTIONS

SOURCE: §§ 316.20 to 316.29a contained in Regulations 46, 5 F. R. 142, except as noted following sections affected.

§ 316.20 *Tax-free sales and registration.* (a) No tax is imposed on the sale of any article, except a tire or inner tube, when sold:

(1) For use by the vendee as material in the manufacture or production of, or as a component part of, a taxable article;

(2) For resale by the vendee for such use by his vendee if such article is in due course so resold.

(b) No taxable article may be sold tax free under paragraph (1) or (2) of section 3442, unless the vendor and the vendee have each registered with the collector of internal revenue for the district in which is located his principal place of business (or if he has no principal place of business in the United States, with the collector of internal revenue at Baltimore, Md.), and unless the exemption certificate prescribed in this subpart shows the registration number of the vendee.

(c) Every person qualifying as a manufacturer of articles taxable under chapter 29, subchapter A, of the Internal Revenue Code (except manufacturers of tires or inner tubes), or as a vendee with an established place of business reselling direct to manufacturers of taxable articles, will be granted a registration certificate on Form 637, upon application to the collector for his district.

(d) A person making application to a collector of internal revenue for a registration number as a vendee for resale must attach to such application a statement showing in detail the nature of his business, and the articles handled by him and the type of business conducted by the manufacturers to whom the articles purchased tax free will be resold.

(e) Collectors of internal revenue shall issue certificates of registry and as-

sign registration numbers to all manufacturers located in their districts (except manufacturers of tires or inner tubes) whose applications are approved.

(f) Jobbers or dealers who are not manufacturing or producing taxable articles or selling taxable articles direct to manufacturers for use as material in the manufacture or production or as component parts of taxable articles are not entitled to purchase tax free under paragraph (1) or (2) of section 3442 and will not be granted registration certificates.

(g) The Commissioner is authorized to cancel the registration certificate and to deny the right to sell or purchase articles tax free in any case where he is satisfied that the registrant is not a bona fide manufacturer of taxable articles, or a vendee reselling direct to manufacturers of such articles, or where tax-free sales are being made for purposes not warranted by the law and the regulations in this part.

§ 316.21 *Articles sold to manufacturers.* (a) To establish the right to exemption with respect to an article (other than a tire or inner tube) sold for use by the purchaser as material in the manufacture or production of, or as a component part of, a taxable article, the manufacturer must obtain from his vendee, prior to or at the time of sale, and retain in his possession, a certificate as outlined in this section, showing that the vendee is a manufacturer of taxable articles and that the article purchased is to be used by him as material in the manufacture or production of another taxable article or as a component part of such an article.

(b) A manufacturer who purchases an article under an exemption certificate for use in the manufacture or production of a taxable article shall be considered the manufacturer of the article so purchased, and is liable for tax on his use or resale of the article unless the exempt character of the use or resale is established.

(c) It is to be noted that sales of tires and inner tubes may not be made tax free for use as material in the manufacture of, or as a component part of, any article.

(d) Following is the form of exemption certificate which will be acceptable for purposes of this section and which must be adhered to in substance:

EXEMPTION CERTIFICATE

(Purchases for further manufacture under section 3442 (1) of the Internal Revenue Code.)

-----, 19----  
(Date.)

The undersigned hereby certifies that he is a manufacturer or producer of articles taxable under Chapter 29, Subchapter A, of the Internal Revenue Code, and holds certificate of registry No. -----, issued by the collector of internal revenue at -----, and that the article or articles specified in the accompanying order will be used by him as material in the manufacture or production of, or as a component part of, an article or articles enumerated in such Subchapter A, to be manufactured or produced by him.

It is understood that for all the purposes of such Subchapter A the undersigned will be considered the manufacturer or producer of the articles purchased hereunder, and (except as specifically provided by law) must pay tax on resale or use, otherwise than as specified above, of the articles purchased hereunder. It is further understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to revocation of the privilege of purchasing tax free and to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

-----  
(Name.)

-----  
(Address.)

(e) If it is impracticable to furnish a separate exemption certificate for each order, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable.

§ 316.22 *Articles sold for resale to manufacturers.* (a) To establish the right to exemption from tax with respect to an article sold by the manufacturer to any person (either a dealer or another manufacturer) for resale without change in form direct to a manufacturer for use by him as material in the manufacture or production of a taxable article or as a component part thereof, it is necessary that:

(1) Both the manufacturer and the vendee (referred to in this section as the "dealer") be registered with the collectors of internal revenue for their respective districts in accordance with the provisions of § 316.20,

(2) The manufacturer obtain from the dealer prior to or at the time of sale, and retain in his possession, a certificate as outlined in this section, showing that the dealer is engaged in the business of sell-

ing direct to manufacturers of taxable articles and that the article is to be resold by him only for use by his vendee as material in the manufacture or production of a taxable article or as a component part thereof, and

(3) The manufacturer obtain from the dealer proof that the article has been so resold by the dealer.

(b) Such proof shall be either (1) a certificate obtained by the dealer from his vendee showing that such vendee purchased the article for use in the manufacture or production of a taxable article and not for resale, or (2) a statement by the dealer that he has obtained from his vendee, and has in his possession, such a certificate. The certificate required by paragraph (a) (2) of this section suspends liability for the payment of the tax by the manufacturer on the sale of such article for a period of not more than 2 months from the date when title passes or the date of shipment, whichever is prior.

(c) If within 2 months the manufacturer has not received the proof required by paragraph (a) (3) of this section, then the temporary suspension of liability for the payment of the tax ceases and the manufacturer shall include the tax on the sale of such article in his return for the month in which such 2-month period expires. If such proof later becomes available, a claim for refund of tax paid may be filed, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313.

(d) The exemption applies only where there is not more than one intervening sale between the manufacturer of the article and the manufacturer purchasing it for further manufacture.

(e) Following is the form of exemption certificate which will be acceptable for purposes of this section and which must be adhered to in substance:

EXEMPTION CERTIFICATE

(Purchases for resale under section 3442 (2) of the Internal Revenue Code)

-----, 19----  
(Date.)

The undersigned hereby certifies that he is engaged in the business of selling direct to manufacturers or producers of articles taxable under Chapter 29, Subchapter A, of the Internal Revenue Code, and holds certificate of registry No. -----, issued by the

collector of internal revenue at -----, and that the article or articles specified in the accompanying order will be resold by him only for use by his vendee as material in the manufacture or production of, or as a component part of, an article or articles enumerated in such Subchapter A.

It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to cancellation of the privilege of purchasing tax free and to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

-----  
(Name.)

-----  
(Address.)

(f) If it is impracticable to furnish a separate exemption certificate for each order, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable.

(g) Where articles are sold direct or for resale direct for use as material in the manufacture or production of, or as a component part of a taxable article, it will be necessary that the invoices issued covering the sale of the articles indicate whether they are sold tax paid or tax free under exemption certificates.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5675, 13 F. R. 7302]

#### § 316.23 Proof of right to exemption.

(a) Where a manufacturer or a vendee makes a sale under exemption certificate, he must use reasonable diligence to satisfy himself that the use of the certificate is warranted by the law and regulations. If the original vendor has knowledge at the time of his sale that the article sold by him is not intended for use or resale by such vendee as specified in the certificate given by the vendee, the original vendor is liable for the tax and is not relieved of liability by the exemption certificate. Where any person attempts to defeat the tax imposed on the sale of articles covered by the regulations in this part by fraudulently giving an exemption certificate, he is liable for the penalties imposed by law. (See § 316.205)

(b) Proper records, with the supporting orders, invoices, certificates, and statements required by this part, must be maintained with respect to exempt sales as provided in § 316.202. If such evidence cannot be produced on demand of any internal-revenue officer, tax will be assessed. If any such documents are false or fraudulent, the guilty parties are

liable to the penalties provided by law. (See § 316.205)

[Regs. 46, 5 F. R. 142, as amended by T. D. 5675, 13 F. R. 7302]

§ 316.24 Sales to States or political subdivisions thereof and to the United States. (a) Under the provisions of section 3442 (3), I. R. C., prior to the amendment thereof by section 307 (a) (5) of the Revenue Act of 1943, no tax attaches to articles sold by the manufacturer direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use, provided the exempt character of the sale is established as required by the regulations in this part.

(b) By virtue of the provisions of section 307 (a) (5) and (b) (1) of the Revenue Act of 1943 as they affect section 3442 (3), all taxable articles (except firearms, shells, and cartridges, with respect to which see § 316.81, and except articles subject to the tax imposed under section 3404, I. R. C.), sold on or after June 1, 1944, by the manufacturer to the United States for its exclusive use are subject to tax except articles sold pursuant to a contract entered into prior to June 1, 1944, or to any agreement or change order supplemental to such contract bearing the same Government contract number.

(c) By virtue of the provisions of section 307 (a) (5) and (b) (2) of the Revenue Act of 1943 as they affect section 3442 (3), the exemption with respect to sales of articles subject to the tax imposed under section 3404, to the United States for its exclusive use, is inapplicable on and after the first day of the first month which begins six months or more after the date of the termination of hostilities in the present war.

(d) No sale may be made tax free by the manufacturer to a dealer for resale to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, even though it is known at the time of sale that the article will be so resold. However, where any dealer resells a tax-paid article to any of the governmental units named above, for its exclusive use, the manufacturer who paid the tax to the United States on his sale of the article may in certain cases secure a refund or credit as provided in § 316.204.

(e) To establish the right to exemption from tax where the sale of an article is made by the manufacturer direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use, it is necessary that (1) the manufacturer have definite knowledge prior to or at the time of sale, that the article is purchased for such use, and (2) he obtain from an authorized officer of the United States, the State, Territory of the United States, political subdivision, or District of Columbia, as the case may be, and retain in his possession a properly executed exemption certificate in the form prescribed by this section.

(f) Where the certificate is obtained subsequent to the sale but prior to the time the manufacturer is required to file a return covering taxes due for the month during which the sale was made he should include the tax on such sale in his return for that month, in the item "Total tax due," but may deduct an amount equivalent to the tax applicable to such sale and pay the net tax resulting, making appropriate explanation either on the face of the return or on a rider attached thereto. If the certificate is not so obtained, the manufacturer must include the tax on such sale in his return for the month in which the sale was made. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313, I. R. C.

(g) The certificate required by this section must include an agreement that if the articles covered thereby are used otherwise than for the exclusive use of the United States, the State, Territory, political subdivision, or the District of Columbia, as the case may be, or if any of such articles are resold to employees or others, a responsible officer of the United States, State, Territory, or political subdivision, or the District of Columbia, as the case may be, will report such fact to the manufacturer. The tax applicable to the sale of such articles shall be included by the manufacturer in his return for the month during which such report is received by him.

(h) The certificate required by this section shall be in substantially the following form:

EXEMPTION CERTIFICATE

(For use by United States, States, Territories, or political subdivisions thereof, or the District of Columbia.)

-----, 19-----  
(Date.)

The undersigned hereby certifies that he is ----- of  
(Title of officer.)

-----  
(United States, State, Territory, or political subdivision, or District of Columbia.)

and that he is authorized to execute this certificate and that the article or articles specified in the accompanying order or on the reverse side hereof, are purchased from ----- for the exclusive use  
(Name of company.)

of ----- of -----  
(Governmental unit.)

-----  
(United States, State, Territory, or political subdivision, or District of Columbia.)

It is understood that the exemption from tax in the case of sales or articles under this exemption certificate to the United States, States, etc., is limited to the sale of articles purchased for their *exclusive use*, and it is agreed that if articles purchased tax free under this exemption certificate are used otherwise or are sold to employees or others, such fact will be reported by me to the manufacturer of the article or articles covered by this certificate. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine or not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

----- (Signature).  
(Title of officer.)

(i) If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in § 316.202. If, upon inspection, it is discovered that a manufacturer's records with respect to any sale claimed to be tax free do not contain a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, tax shall be payable by the manufacturer on such sale.

(j) The articles covered by the exemption certificate must be fully identified as to nature, quantity, and date of sale.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5348, 9 F. R. 3004]

§ 316.25 *Sales for export.* (a) To exempt from tax a sale for export it is necessary that two conditions be met; namely, (1) that the article be identified as having been sold by the manufacturer for export and (2) that it be exported in due course.

(b) An article will be regarded as having been sold by the manufacturer for export if the manufacturer has in his possession at the time title passes or at the time of shipment (whichever is prior), (1) a written order or contract of sale showing that the manufacturer is to ship the article to a foreign destination; or (2) where delivery by the manufacturer is to be made within the United States, a statement from the purchaser showing (i) that the article is purchased to fill existing or future orders for delivery to a foreign destination; or that the article is purchased for resale to another person engaged in the business of exporting who will export the article, and (ii) that such article will be transported to its foreign destination in due course prior to use or further manufacture and prior to any resale except for export.

(c) The written order or contract of sale or the statement referred to in paragraph (b) (1) and (2) of this section suspends liability for the payment of the tax by the manufacturer on such sales for export for a period of 6 months from the date when title passes or the date of shipment, whichever is prior. If within such period the manufacturer has not received and attached to the order or contract, or statement, proper "proof of exportation" (see § 316.26), then the temporary suspension of the liability for the payment of the tax ceases and the manufacturer shall include the tax on the sale of such article in his return for the month in which such 6-month period expires.

(d) The exemption provided in this section is limited to sales by the manufacturer for export and is not applicable in cases where sales of taxable articles are made from a dealer's stock for export even though actually exported.

[Regs. 46, 5 F. R. 142 as amended by T. D. 5675, 13 F. R. 7302]

NOTE: Treasury Decision 5536, Sept. 10, 1946, 11 F. R. 10282, provides in part as follows: On and after October 1, 1946, the procedure outlined in §§ 316.25 and 316.26 shall be followed with respect to sales by manufacturers and producers of the articles enumerated in chapters 25 and 29 of the Inter-

nal Revenue Code, when such articles are sold to foreign governments for export.

§ 316.26 *Proof of exportation.* (a) Exportation may be evidenced by (1) a copy of the export bill of lading issued by the delivering carrier, or (2) a certificate by the agent or representative of the export carrier showing actual exportation of the article, or (3) a certificate of landing signed by a customs officer of the foreign country to which the article is exported, or (4) where such foreign country has no customs administration, a statement of the foreign consignee showing receipt of the article.

(b) In any case where the manufacturer is not the exporter, such manufacturer must have in his possession a statement from the person to whom he sold the article stating that the article was in fact exported in due course by him or was sold to another person who in due course exported the article. This statement must state what evidence is available to show that the article was in fact exported in due course prior to use or further manufacture and prior to resale in the United States other than for export. Such evidence must be that described in paragraph (a) of this section, and the statement must show where such evidence is readily available for inspection by Government officers.

(c) In all cases the sales records together with the evidence of exportation must be preserved by the manufacturer for a period of at least 4 years from the last day of the month following the sale, and must be readily accessible for inspection by internal-revenue officers.

(d) In any case where the manufacturer does not have in his possession within the 6-month period, proof of exportation as outlined herein, the manufacturer must pay the tax involved. If proof of exportation later becomes available, a claim for refund of any tax paid may be filed on Form 843, or a credit may be taken upon any subsequent monthly return, but such action must be taken within the 4-year period of limitation prescribed by section 3313.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5675, 13 F. R. 7302]

NOTE: See note to § 316.25.

§ 316.27 *Shipments to possessions of the United States.* (a) The same provisions as relate to sales for export and proof of exportation will apply to sales for shipment to a possession of the

United States if the articles are in due course so shipped. (See §§ 316.1, 316.25, and 316.26.)

(b) This exemption does not apply with respect to sales of articles for shipment to the Territories of Alaska and Hawaii for the reason that these Territories are by a statutory definition included in the term "United States." (See section 3797 (a) (9).)

§ 316.28 *Exemption of certain supplies for certain vessels.* (a) No tax attaches to the sale by the manufacturer of an article covered by the regulations in this part where such article is sold by the manufacturer direct for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on (1) vessels of war of the United States or of any foreign nation, (2) vessels employed in the fisheries or in the whaling business, (3) vessels actually engaged in foreign trade, (4) vessels actually engaged in trade between the Atlantic and Pacific ports of the United States, or (5) vessels actually engaged in trade between the United States and any of its possessions.

(b) The terms "fuel supplies," "ship's stores," "legitimate equipment" include all articles, materials, supplies, and equipment necessary for the navigation, propulsion, and upkeep of vessels.

(c) The term "sea stores" includes any article purchased for use or consumption by the passengers or crew, or both, of a vessel upon its voyage.

(d) The term "vessel" includes (1) every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, (2) civil aircraft registered in the United States and employed in foreign trade or in trade between the United States and any of its possessions, and (3) civil aircraft registered in a foreign country and employed in foreign trade or in trade between the United States and any of its possessions.

(e) The term "vessels of war of the United States or of any foreign nation" includes (1) every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water and constituting a part of the armed forces of the United States or of a foreign nation and (2) aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof.

(f) The term "trade" includes the transportation of persons or property for hire and the making of the necessary preparations for such transportation.

(g) No sale may be made tax free to a dealer for resale for use as fuel supplies, ships' stores, sea stores, or legitimate equipment for the vessels enumerated, even though it is known at the time of sale that the article will be so resold. However, where any dealer resells a tax-paid article for such use the manufacturer who paid the tax to the United States on his sale of the article may secure a refund or credit in accordance with the provisions of § 316.204.

(h) Tax-free sales under this section must be restricted to such of the articles covered by the regulations in this part as normally form a part of the supplies, stores, or equipment of the vessels enumerated. The exemption does not apply to articles which are for resale to passengers or members of the crew for consumption or use otherwise than during the voyage of a vessel, or to articles which are to be transported for the use of others, or to those which are to be used in any manner other than as specified in this section. Articles may not be sold by the manufacturer tax free direct to passengers or crew but only to the owner, officer, or charterer, or authorized agent of the vessel.

(i) The exemption from tax provided for under this section is not applicable to vessels engaged in trade between domestic ports on the Pacific Ocean, or between domestic ports on the Atlantic Ocean and Gulf of Mexico, or engaged in trade on the inland waterways of the United States. If a vessel is actually engaged in a voyage from a port in the United States to a foreign port or to a port in one of the possessions of the United States, or between Atlantic and Pacific ports of the United States, the exemption from the tax is not destroyed because the vessel stops at an intermediate port of call in the United States as a part of that voyage to the ultimate destination.

(j) The exemption with respect to civil aircraft is more limited than the exemption with respect to other vessels in that it extends only to civil aircraft employed in foreign trade, or in trade between the United States and any of its possessions. Although section 3451 exempts sales of articles for use as fuel supplies, etc., on watercraft engaged in trade between the Atlantic and the Pacific ports of the

United States, it does not exempt sales of articles for use as fuel supplies, etc., on civil aircraft engaged in trade between such ports. In the case of civil aircraft registered in a foreign country, the exemption is further limited in that the privilege of exemption may be granted only so long as such foreign country allows a substantially reciprocal exemption with respect to civil aircraft registered in the United States. If a foreign country discontinues the allowance of such substantially reciprocal exemption, the exemption allowed by the United States will not apply after the Secretary of the Treasury is notified by the Secretary of Commerce of the discontinuance of the exemption allowed by the foreign country.

(k) The exemption provided in the case of articles sold for the prescribed use on vessels employed in the fisheries or in the whaling business is limited to articles sold by the manufacturer for such use on vessels while employed, and to the extent employed, exclusively in the fisheries or in the whaling business.

(l) To establish the right to exemption from the tax on the sale of an article by the manufacturer direct for use as fuel supplies, etc., on the vessels enumerated above, it is necessary that (1) the manufacturer have definite knowledge prior to or at the time of sale that the article was purchased for such use, and (2) he obtain from the owner, officer, charterer, or authorized agent of the vessel and retain in his possession a properly executed exemption certificate in the form prescribed by this section. If articles are sold tax free for use on civil aircraft employed in foreign trade or in trade between the United States and any of its possessions, the exemption certificate must show the name of the country in which the aircraft is registered.

(m) Where the certificate is obtained subsequent to the sale but prior to the time the manufacturer is required to file a return covering taxes due for the month during which the sale was made, he should include the tax on such sale in his return for that month, in the item "Total tax due," but may deduct an amount equivalent to the tax applicable to such sale and pay the net tax resulting, making appropriate explanation either on the face of the return or on a rider attached thereto. If the certificate is not so obtained, the manufacturer must include the tax on such

sale in his return for the month in which the sale was made. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313, I. R. C.

(n) The certificate required by this section must include an agreement that if the articles covered thereby are disposed of, or used, otherwise than as fuel supplies, ships' stores, sea stores, or legitimate equipment on the vessels enumerated, the person who signed the certificate will report such fact to the manufacturer. The tax applicable to the sale of such articles shall be included by the manufacturer in his return for the month during which such report is received by him.

(o) The following form of exemption certificate will be acceptable for the purposes of this section and must be adhered to in substance:

#### EXEMPTION CERTIFICATE

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels (section 3451 of the Internal Revenue Code).)

-----, 19-----

(Date.)

The undersigned purchaser hereby certifies that he is the -----

(Owner, officer, charterer,

----- of -----

or an authorized agent) (Name of company and vessel.)

and that the article or articles specified in the accompanying order, or as specified below or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to one of the following classes enumerated in section 3451 of the Internal Revenue Code:

(Check class to which vessel belongs.)

- (1) Vessels engaged in foreign trade,
- (2) Vessels engaged in trade between the Atlantic and Pacific ports of the United States,
- (3) Vessels engaged in trade between the United States and any of its possessions,
- (4) Vessels employed in the fisheries or whaling business,
- (5) Vessels of war of the United States or a foreign nation.

If the articles are purchased for use on civil aircraft engaged in trade as specified in (1) or (3) above, state the name of the country in which the aircraft is registered.

-----

The undersigned understands that if the article is used for any purpose other than as stated in this certificate, or is resold or otherwise disposed of, he must report such fact to the manufacturer. It is understood that this certificate may not be used in purchasing articles tax free for use as fuel supplies, etc., on pleasure vessels, or on any type of aircraft except (a) civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and otherwise entitled to exemption, and (b) aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a penalty equivalent to the amount of tax due on the sale of the article and upon conviction to a fine of not more than \$10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution. The undersigned also understands that he must be prepared to establish by satisfactory evidence the purpose for which the article was used.

-----  
 (Name.)  
 -----  
 (Address.)  
 -----

(p) If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in § 316.202. If, upon inspection, it is discovered that a manufacturer's records with respect to any sale claimed to be tax free do not include a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, tax shall be payable by the manufacturer on such sale.

(q) The articles covered by the exemption certificate must be fully identified as to nature, quantity, and date of sale.

§ 316.29 *Exemption of certain supplies for aircraft.* (a) Articles sold for use on foreign aircraft are, subject to certain limitations, considered to be exported and therefore subject to the same exemption as though exported. This exemption is limited to articles sold for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions. The exemption is fur-

ther limited by the requirement that the foreign country of registry must allow a substantially reciprocal exemption in respect to aircraft registered in the United States.

(b) To exempt from tax a sale for use as supplies (including equipment) upon, or in the maintenance or repair of, aircraft registered in any foreign country (which allows substantially reciprocal exemption) and actually engaged in foreign trade or trade between the United States and any of its possessions, it is necessary (1) that the article be identified as having been sold by the manufacturer for such use and (2) that it be so used in due course. An article will be regarded as having been sold for use as supplies upon, or in the maintenance or repair of, such aircraft if the manufacturer has in his possession at the time title passes or at the time of shipment (whichever is prior) a statement from the purchaser showing that the article is purchased for such use.

(c) With respect to an article sold by a manufacturer for resale for use on foreign aircraft, where it is desired to claim exemption, there should be obtained from the owner, officer, charterer, or authorized agent of the aircraft a written statement showing that the article is actually purchased for use as supplies upon, or in the maintenance or repair of such aircraft. Such statement must show the name of the country in which the aircraft is registered.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5675, 13 F. R. 7302]

§ 316.29a *Exemption of articles taxable as jewelry.* The manufacturers' excise taxes imposed by section 3406 of the Internal Revenue Code, as added by section 551 of the Revenue Act of 1941, do not apply with respect to any article the sale of which at retail is subject to the tax (relating to jewelry) imposed by section 2400 of the Code, as added by section 552 of the Revenue Act of 1941.

[T. D. 5099, 6 F. R. 6130]

SUBPART C—TIRES AND INNER TUBES

§ 316.30 *Scope of tax.* (a) The tax is imposed upon the sale or use by the manufacturer of (1) tires made wholly or in part of rubber and (2) inner tubes (for tires) made wholly or in part of rubber. The term "rubber" includes synthetic and substitute rubber.

(b) Tires which are constructed by inserting a wire into a length of rubber

tiring so that the ends may be fastened together are considered as being completely manufactured when the wire is inserted. The person who produces tires by so combining the wire and tiring is the manufacturer of the tire and liable for tax upon his sale or use thereof.

(c) The term "tires" includes rubber casings, rubber hoops, and rubber strips or bands, of all kinds, designed and shaped or built to form the tread of or to fit a vehicle wheel. Tires of either the pneumatic or solid type which fit or form the tread for the wheels of any article which is capable of use as a means of transporting a person or burden, are taxable as tires. Examples of such articles are a toy so constructed that it will carry a child, wheel chairs, tea tables, doll carriages, scooters, velocipedes, tricycles, baby walkers, bassinets, industrial trucks of either the push or motor-driven type, boys' wagons, wheelbarrows, and similar articles. However, tires attached to imitations of such articles such as miniature toys of cast iron, tin, wood, or other materials, are not subject to tax.

(d) The term "inner tubes" includes inner tubes or air containers of all types made wholly or in part of rubber and designed and manufactured for use in pneumatic tires.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5348, 9 F. R. 3004]

§ 316.31 *Use by manufacturer.* The tax on use attaches when completely manufactured tires made wholly or in part of rubber are placed by the tire manufacturer on a vehicle. (See § 316.7.)

[Regs. 46, 5 F. R. 142]

§ 316.32 *Rate and computation of tax.*

(a) The tax is payable by the manufacturer at the following rates: (1) tires, 5 cents a pound on total weight (exclusive of metal rims or rim bases); and (2) inner tubes (for tires), 9 cents a pound on total weight.

(b) In the case of tires the tax is computed on the total weight of the tire, excluding metal rims or rim bases, but including any wire, staples, darts, clips, or other material or fastening device which forms a part of the tire or is required for its use. The tax will be computed upon the total weight of a tire or tube, and fractional parts of a pound must be included.

(c) Where tires are sold attached to metal rims or rim bases, the manufac-

turer will be required to submit satisfactory evidence showing what portion of the total weight of the finished product represents the tire and what portion the metal rim or base.

(d) The tax on inner tubes shall be computed upon the total weight, including the air valve and stem or any other mechanism attached thereto which may be used for inflating the tube or maintaining air pressure.

[Regs. 46, 5 F. R. 142 as amended by T. D. 5099, 6 F. R. 6130]

#### SUBPART D—TOILET PREPARATIONS, ETC.

§ 316.40 *Termination of tax.* (a) The tax imposed by section 3401, I. R. C., as amended upon sales of toilet preparations by the manufacturer does not apply to sales made on and after October 1, 1941.

(b) See §§ 320.50–320.52 of this chapter relative to the tax on sales of toilet preparations by retailers imposed by section 2402 as added to the Code by section 552 of the Revenue Act of 1941, effective as of October 1, 1941.

[T. D. 5099, 6 F. R. 6131]

§ 316.42 *Sale price.* (a) Subject to the qualifications and additional exclusions specified in this section with respect to sales made after June 29, 1939, the sale price for purposes of the tax on all sales other than sales coming within the purview of section 3441 (b) of the Internal Revenue Code shall be determined in accordance with the provisions of section 3441 (a) of the Internal Revenue Code and §§ 316.8–316.14.

(b) In determining the sale price for purposes of the tax on sales made after June 29, 1939:

(1) Any charge for coverings and containers of whatever nature shall be included in the price only if furnished by the actual manufacturer of the article;

(2) Any charge incident to placing the article in condition packed ready for shipment shall be included in the price only if performed by the actual manufacturer of the article; and

(3) The wholesaler's salesmen's commissions and costs and expenses of advertising and selling shall be excluded from the price only if the amount thereof is established to the satisfaction of the Commissioner, in accordance with the regulations in this part. (See § 316.202.)

[Regs. 46, 5 F. R. 142]

## SUBPART E—AUTOMOBILES, ETC.

§ 316.50 *Scope of tax.* (a) The tax is imposed on the sale by the manufacturer of (1) automobile truck chassis and bodies, (2) other automobile chassis and bodies, (3) tractors, and (4) motorcycles.

(b) Motor-driven machines designed and adapted for use in pulling or drawing vehicles around the premises of factories and railway stations, and small trucks for handling baggage and trunks at railway stations, as distinguished from automotive vehicles, including tractors, used on highways and roads, are not subject to tax.

(c) The sale of an automobile truck or other automobile shall be treated for the purpose of computing the tax, as the sale of a chassis and a body. If the purchaser of a tax-paid chassis attaches thereto a body manufactured by him and sells the completed vehicle, he is liable for tax on the sale price of the body. However, if the completed vehicle is sold for a lump sum, the tax attaches to such lump sum, unless the sale price of the body is stated as a separate item on the invoice to the customer, or unless such sale price can be established by adequate records to the satisfaction of the Commissioner. A like rule applies where the manufacturer of a chassis installs thereon a tax-paid body and sells the completed vehicle.

(d) The tax does not apply with respect to sales of bodies by the manufacturer thereof to manufacturers of automobile trucks or other automobiles as provided in § 316.53. A chassis manufacturer who purchases a body tax free under certificate, as provided in § 316.53, is required to pay tax on his sale of the completed vehicle as the manufacturer of both chassis and body.

(e) The tax applies to the sale of all motorcycles. Side cars are considered parts of motorcycles.

(f) Any parts or accessories for automobile truck chassis and bodies, other automobile chassis and bodies, tractors, and motorcycles, sold on or in connection therewith, or with the sale thereof, are taxable at the rate applicable to the sale price of the complete articles. A manufacturer cannot lessen his sale price of chassis, body or taxable tractor, or motorcycle by billing separately parts and accessories which are considered equipment for the particular article. If, for example, a manufacturer sells to any person a chassis and a set of bumpers, or a

taxable tractor and a fifth wheel and attachments, he must pay tax on the parts or accessories at the same rate as on the chassis or tractor regardless of the method of billing.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5099, 6 F. R. 6130]

§ 316.50a *Definitions.* As used in this subpart, unless from the context it is clear that a different meaning is intended:

(a) The term "automobile truck" shall include automobile trucks, automobile busses, and truck and bus trailers and semitrailers.

(b) The term "other automobile" shall mean all automobiles other than automobile trucks, and shall include trailers and semitrailers suitable for use in connection with passenger automobiles.

(c) The term "tractor" shall mean the kind of tractors chiefly used for highway transportation in combination with a trailer or semitrailer.

(d) The term "motorcycle" shall mean all types of motorcycles and shall include side cars as parts of motorcycles.

[T. D. 5099, 6 F. R. 6131]

§ 316.51 *Rate of tax.* The tax is payable by the manufacturer at the rate of 5 percent of the sale price of automobile truck chassis, bodies, or tractors, and at the rate of 7 percent of the sale price of other automobile chassis or bodies or motorcycles as determined under §§ 316.8 to 316.15, inclusive.

[T. D. 5099, 6 F. R. 6131]

§ 316.52 *Combinations of chassis and bodies taxable at different rates.* If the manufacturer of a truck body installs it on an "other automobile chassis" manufactured by him, he must record and bill the sale of the body and chassis separately, and pay tax on the sale price at the rates of 5 percent and 7 percent, respectively. In case a passenger body is installed by the manufacturer thereof on an automobile truck chassis manufactured by him, the transaction must be handled in a similar manner, and tax paid on the body and chassis at the rates of 7 percent and 5 percent, respectively. The respective selling prices of the body and chassis must include all instruments, parts, and accessories made a part thereof, or attached to, or sold in connection therewith. Where doubt exists as to whether a part or accessory should be included in the sale price of the body or of the chassis, the custom of selling

such part or accessory with either bodies or chassis, when sold separately, will determine the rate of tax.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5099, 6 F. R. 6131]

§ 316.53 *Sales of bodies to manufacturers.* (a) Bodies are exempt from tax when sold by the manufacturer to a manufacturer of automobile trucks or other automobiles to be sold by the purchaser. In order to obtain this exemption, the vendor must secure from the purchaser and retain in his possession a certificate of the purchaser establishing that the purchaser is a manufacturer of automobile trucks or other automobiles to be sold by him and that the bodies so purchased are to be used in the manufacture or production of automobile trucks or other automobiles to be sold by him.

(b) Under the specific provisions of section 3403 (d), I. R. C., a manufacturer of automobile truck bodies or other automobile bodies is permitted to sell such bodies tax free to manufacturers of automobile truck chassis or other automobile chassis; however, there is no such provision with respect to the sale of automobile truck or other automobile chassis to body manufacturers.

[Regs. 46, 5 F. R. 142]

§ 316.54 *Credit for taxes on tires, inner tubes, or automobile radios.* (a) Under the specific provisions of the Code, tires, inner tubes, and automobile radios may not be purchased tax free for use as material in the manufacture of, or as a component part of, other taxable articles manufactured by the purchaser.

(b) Where a manufacturer sells tax-paid tires, inner tubes, and automobile radios on, or in connection with, or with the sale of automobile trucks, other automobiles, taxable tractors, or motorcycles, he may take credit against the tax due on his sale in an amount determined by applying to the purchase price of the tires, inner tubes, automobile radios, the percentage rate of tax applicable to such automobile trucks, other automobiles, taxable tractors, or motorcycles, but the part of the purchase price of tires attributable to any metal rims or rim bases shall be excluded. For example, if the sale price of an automobile is \$1,000, the tax payable thereon \$70.00, and the cost to the automobile manufacturer of the tires, inner tubes or automobile radios, sold on or in connection therewith is

\$40.00, the manufacturer will be permitted to take a credit against the tax payable on the selling price of the automobile in an amount equal to 7 percent of \$40.00, or \$2.80.

(c) In the event that the manufacturer of an automobile also manufactures or imports tires and inner tubes, and sells the automobile and the tires and tubes in a single transaction, he will be liable for tax on the sale price of the automobile (including the tires and tubes) at the rate of 7 percent, and he will also be liable for tax on the tires and tubes at the rates of 5 cents and 9 cents per pound, respectively. He will, however, be permitted to take a credit against the tax on the automobile on the same basis as if he had purchased the tires and tubes so sold. The same rule applies in the case of motorcycles and, except for the difference in the rate of tax, in the case of automobile truck chassis and taxable tractors.

(d) Sales of automobile trucks, taxable tractors, other automobiles and motorcycles, originally equipped with tax-paid tires, inner tubes, or automobile radios, to an exempt governmental agency for its exclusive use are not properly to be regarded resales of tires and inner tubes, as such, so as to entitle the manufacturer of such tires and inner tubes to a credit or refund of the amount of tax paid by him thereon.

[T. D. 5099, 6 F. R. 6131]

§ 316.55 *Definition of parts or accessories.* (a) The term "parts or accessories" for an automobile truck or other automobile chassis or body, taxable tractor, or motorcycle, includes (1) any article the primary use of which is to improve, repair, replace, or serve as a component part of such vehicle or article, (2) any article designed to be attached to or used in connection with such vehicle or article to add to its utility or ornamentation, and (3) any article the primary use of which is in connection with such vehicle or article whether or not essential to its operation or use. However, such term does not include tires, inner tubes, and automobile radios, since these articles are expressly excluded by the statute from the tax on parts or accessories. With respect to fare registers and fare boxes for use on busses and automobiles, see § 316.140.

(b) The term "parts and accessories" shall be understood to embrace all such

articles as have reached such a stage of manufacture that they are commonly or commercially known as parts and accessories whether or not fitting operations are required in connection with installation. The term shall not be understood to embrace raw materials used in the manufacture of such articles.

(c) Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains which are suitable for use on or in connection with, or as component parts of, automobile truck or other automobile chassis, taxable tractors, or motorcycles, are considered parts of or accessories for such articles whether or not primarily designed or adapted for such use.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5099, 6 F. R. 6132]

§ 316.56 *Rate of tax.* The tax is payable by the manufacturer at the rate of 5 percent of the sale price as determined under §§ 316.8 to 316.15, inclusive.

[T. D. 5099, 6 F. R. 6132]

§ 316.57 *Parts and accessories sold to manufacturers.* (a) No tax will be imposed upon parts or accessories sold to a manufacturer of automobile truck or other automobile chassis, bodies, taxable tractors, or motorcycles, provided the vendor obtains from the purchaser, and retains in his possession as provided in § 316.21, a certificate of the purchaser establishing that the purchaser is a manufacturer of such articles.

(b) Under section 3442, I. R. C., sales of parts or accessories to another manufacturer of parts or accessories for use in the manufacture or production of parts or accessories are likewise exempt, when supported by exemption certificate as provided in § 316.21.

(c) If the purchaser uses or resells parts or accessories purchased by him tax free, he shall be considered the manufacturer, and must pay the tax thereon or in the case of resale establish by exemption certificate on file that his sale was tax free.

(d) Jobbers or dealers and others who are not manufacturers of taxable articles are not entitled to purchase tax free. In case a manufacturer of both taxable and nontaxable articles uses parts or accessories purchased tax free under certificate in the manufacture of a nontaxable article, he is liable for tax on the parts or accessories so used based

on the fair market price determined as provided in § 316.15.

[Regs. 46, 5 F. R. 142]

#### SUBPART F—RADIO RECEIVING SETS, ETC.

§ 316.60 *Scope of tax.* (a) The tax attaches to the sale by the manufacturer of (1) radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs; (2) chassis, cabinets, tubes, reproducing units, power packs, antennae of the "built-in" type, and phonograph mechanisms, which are suitable for use on or in connection with, or as component parts of, radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs, regardless of whether such components are primarily adapted for such use; (3) phonograph records; and (4) musical instruments. Parts and accessories for such articles (except musical instruments) are subject to the tax when sold on or in connection with the sale thereof.

(b) Automobile radio receiving sets may not be sold tax free to manufacturers of automobiles under the provisions of either section 3442 or section 3403 (c), I. R. C., as amended.

(c) Automatic devices for playing or repeating records, phonograph pick-ups, home recording apparatus, and similar devices are subject to the tax if sold on or in connection with or with the sale of radio receiving sets, combination radio and phonograph sets, or phonographs.

[T. D. 5099, 6 F. R. 6132]

§ 316.61 *Radios, phonographs, etc., components.* (a) The term "chassis" includes radio receiving apparatus of all types.

(b) The term "cabinets" includes containers suitable for housing radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonographs.

(c) The term "tubes" includes vacuum tubes of all types suitable for use in connection with or as part of radio receiving sets, automobile radio receiving sets, combination radio and phonographs sets, or phonographs.

(d) The term "reproducing units" includes all apparatus for the amplification or reproduction of sound which are suitable for use in connection with or as parts of radio receiving sets, automobile

radio receiving sets, combination radio and phonographs sets, or phonographs.

(e) The term "power packs" includes all devices which are suitable for use on or in connection with or as part of radio receiving sets, automobile radio receiving sets, combination radio and phonographs sets, or phonographs, which convert electric current of ordinary commercial or domestic voltages into electric current of voltages suitable for operating such articles.

(f) The term "antennae of the 'built-in' type" includes all types of aerials of the kind completely contained in a radio receiving set, automobile radio receiving set, or combination radio and phonograph set.

(g) The term "phonograph mechanisms" includes devices which are suitable for use in combination radio and phonograph sets, or phonographs for the purpose of playing records.

(h) The articles defined in this section are subject to the tax regardless of whether such articles are primarily adapted for use in connection with radio receiving sets, automobile radio receiving sets, combination radio and phonograph sets, and phonograph.

[T. D. 5099, 6 F. R. 6132]

§ 316.62 *Phonograph records.* The term "phonograph records" means all disks, cylinders, or other articles, regardless of the material from which they are made, and upon which are recorded or may be recorded human speech or other sounds for reproduction by means of a phonograph or combination radio and phonograph.

[T. D. 5099, 6 F. R. 6132]

§ 316.63 *Musical instruments.* (a) The term "musical instruments" includes pianos and organs of all types, trombones, saxophones, violins, drums, xylophones, chimes, cymbals, etc., and all string, wind, reed, or percussion instruments used in producing music, or in reproducing it, except radios and phonographs, for which see § 316.61.

(b) The tax does not apply to an organ sold under a bona fide written contract entered into before October 1, 1941. In any case where tax has been paid with respect to the sale of an organ under such a contract, the person who paid the tax to the United States may take a credit or be allowed a refund in the amount of the tax paid on such article

in accordance with the provisions of § 316.204.

[T. D. 5099, 6 F. R. 6132, as amended by T. D. 5189, 7 F. R. 10048]

§ 316.64 *Rate of tax.* The tax is payable by the manufacturer at the rate of 10 percent of the sale price as determined by §§ 316.8 to 316.15, inclusive.

[T. D. 5099, 6 F. R. 6132]

#### SUBPART G—MECHANICAL REFRIGERATORS AND REFRIGERATOR COMPONENTS

§ 316.70 *Refrigerators, etc.*—(a) *For the period October 1, 1941 to October 31, 1942, inclusive.* (1) Subsection (a) of section 3405, I. R. C., as amended by section 546 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of refrigerators, beverage coolers, ice cream cabinets, water coolers, food and beverage display cases, food and beverage storage cabinets, ice making machines, and milk cooler cabinets, each such article having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline, and including in each case parts or accessories therefor sold on or in connection with the sale of the article.

(2) The tax applies to all the above-enumerated articles without regard to their size, whether single or multiple cabinet installation, or whether designed for household, commercial, or industrial use.

(3) The tax applies to all the above-enumerated articles, if primarily designed for use with a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline; it is not necessary that such a mechanical refrigerating unit be sold on or in connection with the sale of the article.

(4) A manufacturer of an article taxable under section 3405 (a), as amended by section 546 of the Revenue Act of 1941, may purchase tax free for use as a component in the manufacture of such article any of the refrigerating apparatus specified in section 3405 (b), as amended by section 546 of the Revenue Act of 1941. (See § 316.71.) However, if any of the refrigerating apparatus specified in section 3405 (b) as so amended, is purchased tax paid and used as a component in the manufacture of an article taxable under such section 3405 (a) as amended, the manufacturer of the article may be allowed a credit to the extent of the tax

paid on the refrigerating apparatus so used as a component. (See § 316.204.)

(5) The tax does not apply to refrigerator cabinets which are primarily designed for use without a mechanical refrigerating unit.

(b) *For the period beginning November 1, 1942.* (1) Subsection (a) of section 3405, I. R. C., as amended by section 614 of the Revenue Act of 1942, imposes a tax on sales by the manufacturer of household type refrigerators (for single or multiple cabinet installations) having, or being primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline, and including in each case parts or accessories therefor sold on or in connection with the sale of the article.

(2) The term "household type refrigerator" includes refrigerators for single or multiple cabinet installations, which (i) are designed for domestic use, (ii) are arranged to provide refrigerated storage space for the preservation of food products or low temperature space for making ice cubes and frozen desserts, (iii) have a net storage space not exceeding 20 cubic feet, and (iv) have, or are primarily designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline.

(3) The tax applies to all household type refrigerators, if primarily designed for use with a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline; it is not necessary that such a mechanical refrigerating unit be sold on or in connection with the sale of the refrigerator.

(4) A manufacturer of household type refrigerators taxable under section 3405 (a), as amended by section 614 of the Revenue Act of 1942, or other refrigerators, or refrigerating or cooling apparatus may purchase tax free for use as a component in the manufacture of such articles any of the refrigerating apparatus specified in section 3405 (b), as amended by section 614 of the Revenue Act of 1942. (See § 316.71.) However, if any of the refrigerating apparatus specified in such section 3405 (b) as amended, is purchased tax paid and used as a component in the manufacture of a household type refrigerator taxable under section 3405 (a) as amended, the manufacturer of such household type refrigerator may be allowed a credit to the extent of the tax paid on the refrigerat-

ing apparatus so used as a component. (See § 316.204.)

(5) The tax does not apply to refrigerator cabinets which are primarily designed for use without a mechanical refrigerating unit.

[T. D. 5099, 6 F. R. 6133 as amended by T. D. 5189, 7 F. R. 10049]

§ 316.71 *Refrigerating apparatus—*(a) *For the period October 1, 1941, to October 31, 1942, inclusive.* Subsection (b) of section 3405, I. R. C., as amended by section 546 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of compressors, condensers, evaporators, expansion units, absorbers, and controls, for, or suitable for use as part of, or with, a refrigerating plant, refrigerating system, refrigerating equipment or unit, or any of the articles enumerated in section 3405 (a), as amended, and including in each case parts or accessories therefor sold on or in connection with the sale of the specified refrigerating apparatus.

(b) *For the period beginning November 1, 1942.* Subsection (b) of section 3405 as amended by section 614 of the Revenue Act of 1942, imposes a tax on sales by the manufacturer of cabinets, compressors, condensers, evaporators, expansion units, absorbers and controls for, or suitable for use as parts of or with, household type refrigerators of the kind described in section 3405 (a), as amended by section 614 of the Revenue Act of 1942, including in each case parts or accessories therefor sold on or in connection with the sale of the specified refrigerating apparatus. Sales of such refrigerating apparatus as component parts of complete refrigerators, or refrigerating or cooling apparatus are not subject to the tax.

[T. D. 5099, 6 F. R. 6133, as amended by T. D. 5189, 7 F. R. 10049]

§ 316.72 *Air-conditioners, and components—*(a) *For the period October 1, 1941, to October 31, 1942, inclusive.* Subsections (c) and (d) of section 3405, as added by section 546 of the Revenue Act of 1941, impose taxes on sales by the manufacturer of self-contained air-conditioning units, as well as separate sales of cabinets, compressors, condensers, fans, blowers, heating coils, cooling coils, filters, humidifiers, and controls for or suitable for use as part of, or with, self-contained air-conditioning units, and including in each case

parts or accessories therefor sold on or in connection with the sale of the specified articles.

(b) *For the period beginning November 1, 1942.* Subsection (c) of section 3405, as amended by section 614 of the Revenue Act of 1942, imposes a tax on sales by the manufacturer of self-contained air-conditioning units, including parts or accessories therefor sold on or in connection with the sale of such units. [T. D. 5099, 6 F. R. 6133, as amended by T. D. 5189, 7 F. R. 10049]

§ 316.73 *Rate of tax.* The tax is payable by the manufacturer at the rate of 10 percent of the sale price as determined by §§ 316.8 to 316.15, inclusive. [T. D. 5099, 6 F. R. 6133]

#### SUBPART H—FIREARMS, SHELLS, AND CARTRIDGES

§ 316.80 *Scope of tax.* (a) The tax is imposed on the sale by the manufacturer of (1) firearms and (2) shells and cartridges.

(b) The term "firearms" includes all portable weapons, such as rifles, carbines, machine guns, shotguns, and the fowling pieces, from which a shot, bullet or projectile may be discharged by an explosive.

(c) The terms "shells" and "cartridges" include all combinations of projectile, explosive, and container which are designed, assembled, and ready for use without further manufacture in portable firearms, including pistols and revolvers.

[Regs. 46, 5 F. R. 142]

§ 316.81 *Exempt sales.* (a) Under the provisions of section 3407, I. R. C., prior to the amendment thereof by section 307 (a) (3) of the Revenue Act of 1943, no tax attaches to firearms, shells, and cartridges sold by the manufacturer for the use of the United States, any State, Territory, or possession of the United States, any political subdivision thereof, or the District of Columbia: *Provided*, The exempt character of the sale is established as required by this part.

(b) By virtue of the amendment made by section 307 (a) (3) of the Revenue Act of 1943 of section 3407, and the application of section 307 (b) (2) to such amendment, the exemption with respect to sales of firearms, shells, and cartridges by the manufacturer for the use of the United States, or possession of the United States is inapplicable on and after the first day of the first month which begins

six months or more after the date of the termination of hostilities in the present war, unless the sale is made pursuant to a contract entered into prior to such date, or to any agreement or change order supplemental to such contract bearing the same Government contract number.

(c) To be exempt from the tax the articles must be sold for the use of a Government or governmental agency. Firearms, shells, and cartridges sold to officers of a State or municipality in their private capacity or for their private use are not exempt from the tax.

(d) Sales of pistols and revolvers are specifically exempt from the tax imposed under section 3407 of the Code, as amended, but are subject to the tax imposed under section 2700 (a), as amended, and (b) of the Code, which remains in effect. (See Part 302 of this chapter, as amended, relating to excise taxes on sales by the manufacturer of pistols and revolvers.)

(e) The tax imposed under section 3407 also does not apply in the case of the sale by the manufacturer, producer, or importer of any firearm of a type covered by section 2720, I. R. C., if the tax under section 2720 has been paid by such manufacturer, producer, or importer on such sale.

(f) Any manufacturer claiming exemption from the tax imposed by section 3407 on sales of firearms, shells, and cartridges, (1) for the use of the United States, etc., or (2) on which he has paid tax under section 2720, must maintain such records (see § 316.202), and be prepared to produce such evidence as will clearly establish the right to exemption. [Regs. 46, 5 F. R. 142, as amended by T. D. 5099, 6 F. R. 6133, T. D. 5348, 9 F. R. 3006]

§ 316.82 *Rate of tax.* The tax is payable by the manufacturer at the rate of 11 percent of the sale price as determined under §§ 316.8 to 316.15, inclusive. [T. D. 5099, 6 F. R. 6133]

#### SUBPART I—SPORTING GOODS

SOURCE: §§ 316.90 and 316.91 contained in Treasury Decision 5099, 6 F. R. 6133.

§ 316.90 *Scope of tax.* (a) Subsection (a) (1) of section 3406, I. R. C., as added by section 551 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of the specified articles, equipment, and apparatus, including in each case parts or accessories therefor sold on or

in connection therewith, or with the sale thereof.

(b) The term "fencing equipment" includes foils, sabres, blades, dueling swords, masks, guards, plastrons, and all other equipment used in the sport of fencing.

(c) The term "gymnasium equipment and apparatus" includes all equipment or apparatus of the type used in connection with any variety of indoor exercise for developing or exhibiting the strength, activity, or control of the body. The following is descriptive but not all-inclusive of the type of equipment or apparatus intended to be included in the above-mentioned term: indian clubs, dumbbells, exercising rings, stall bars, gymnasium ladders, parallel bars, vaulting horses, horizontal bars, striking or punching bags, pulley weights, rowing machines, etc.

(d) The tax does not attach (unless otherwise indicated in subsection 3406 (a) (1)) to articles which, in view of their size, quality, or the substance of their material, are not capable of being used in the playing of any game, athletic event, sport, or as gymnasium equipment.

§ 316.91 *Rate of tax.* The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by §§ 316.8 to 316.15, inclusive.

**SUBPART J—LUGGAGE**

Source: §§ 316.100 to 316.103 contained in Treasury Decision 5099, 6 F. R. 6134, except as noted following section affected.

§ 316.100 *Scope of tax.* (a) Subsection (a) (2) of section 3406, I. R. C., as added by section 551 of the Revenue Act of 1941, imposes a tax on the sale by the manufacturer of trunks, valises, traveling bags, suitcases, hat boxes for use by travelers, fitted toilet cases (not including contents), other traveler's luggage, and leather and imitation leather brief cases, including in each case (except contents of fitted toilet cases) parts or accessories therefor sold on or in connection therewith, or with the sale thereof.

(b) The term "trunks" includes all receptacles which are commonly or commercially designated as trunks, and which are designed for the purpose of carrying or conveying the effects of a traveler.

(c) The terms "valises", "traveling bags" and "suitcases", include all receptacles which are commonly or commercially designated as valises, traveling bags, and suitcases and which are designed to be used for the purpose of carrying or conveying by hand the effects of a traveler.

(d) The term "other traveler's luggage" includes all other receptacles commonly or commercially designated as luggage and which are designed for the purpose of carrying or conveying by hand or otherwise the effects of a traveler.

(e) The term "hat boxes for use by travelers" includes all receptacles commonly or commercially designated as hat boxes and which are designed for the purpose of conveying or carrying hats by hand or otherwise in traveling.

(f) The term "leather or imitation leather brief cases" includes all receptacles commonly or commercially designated as brief cases which are made of any leather or imitations thereof, and which are designed for the purpose of carrying or conveying documents, etc., of any size or shape.

(g) The term "fitted toilet cases" includes all receptacles of any form whatsoever designed or fitted to contain toilet articles or other effects of a traveler, or both, exclusive of the toilet article contents thereof.

(h) Articles commonly or commercially designated as salesmen's trunks, valises, utility bags, etc., designed for the purpose of carrying or conveying samples of any kind are subject to the tax even though not specifically used to carry or convey the usual effects of a traveler.

§ 316.101 *Application of the tax.* (a) In the case of articles taxable under section 3406 (a) (2), which contain fixtures such as hangers, trays, drawers, etc., the tax attaches to the price for which the entire assembly is sold.

(b) Fittings such as bottles, phials, jars, combs, brushes, mirrors, etc., contained in fitted toilet cases, are not taxable when sold as a part thereof and the sale price of such fittings may be excluded in determining the sale price of the taxable fitted toilet case, provided the sale price of such fittings is separately invoiced by the manufacturer or that such sale price can be established by adequate records to the satisfaction of the Commissioner.

(c) If an article taxable under section 3406 (a) (2) is sold at retail by the manufacturer, and such article contains fittings that are subject to the retailers' excise tax imposed by section 2400, I. R. C. (relating to jewelry, etc.), or section 2402 (relating to toilet preparations), the manufacturer, in addition to the manufacturers' excise tax, incurs liability for the retailers' excise tax with respect to the sale which must be returned and paid as required by Part 320 of this chapter. However, where the fittings are subject to the tax imposed by section 2400, the sale thereof by the manufacturer, whether at wholesale or retail, does not subject him to a liability under section 3406 (a) (2). (See § 316.29a.)

§ 316.102 *Rate of tax.* The tax is payable by the manufacturer at the rate of 10 percent of the sale price as determined by §§ 316.8 to 316.15, inclusive.

§ 316.103 *Suspension of tax.* Effective April 1, 1944, and for the period during which the retailers' excise tax imposed on luggage, etc., by section 1651, I. R. C., as added by section 302 of the Revenue Act of 1943 is in effect, no tax is imposed on the sale of such luggage, etc., by the manufacturer.

[T. D. 5348, 9 F. R. 3005]

#### SUBPART K—ELECTRIC, GAS, AND OIL APPLIANCES

§ 316.110 *Scope of tax.* (a) Subsection (a) (3) of section 3406, I. R. C., as added by section 551 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of electric direct motor-driven fans and air circulators, electric, gas, or oil water heaters, electric flat irons, electric air heaters (not including furnaces), electric immersion heaters, electric heating pads and blankets, electric, gas, or oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises, electric mixers, whippers, and juicers, household type electric vacuum cleaners, and combinations of two or more of such appliances, including in each case parts and accessories thereof sold on or in connection therewith, or with the sale thereof.

(b) The term "electric direct motor-driven fans and air circulators" includes appliances of the type primarily designed and adapted to be operated as independent units. It includes so-called "exhaust" fans but does not include so-called "blowers." With respect to fans

and blowers for, or suitable for use as part of, or with, self-contained air-conditioning units, see § 316.72.

(c) The phrase "electric, gas, or oil appliances of the type used for cooking, warming, or keeping warm food or beverages for consumption on the premises" includes any type of appliance operated by, or for which the heat is generated by, electricity, gas, or oil, which is used, commercially or domestically, to cook, warm, or keep warm food or beverages for consumption on the premises. The following are descriptive but not all inclusive of the types of article subject to tax under this classification: coffee makers, ranges, roasters, toasters, waffle irons, griddles, hot plates, casseroles, steam tables, etc.

(d) The tax does not apply to household type electric vacuum cleaners sold on and after April 1, 1944.

[T. D. 5099, 6 F. R. 6134, as amended by T. D. 5348, 9 F. R. 3005]

§ 316.111 *Rate of tax.* The tax is payable by the manufacturer at the rate of 10 percent of the sale price as determined by §§ 316.8 to 316.15, inclusive.

[T. D. 5099, 6 F. R. 6134]

#### SUBPART L—PHOTOGRAPHIC APPARATUS

§ 316.120 *Scope of tax.* (a) Subsection (a) (4) of section 3406, I. R. C., as added by section 551 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of cameras, lenses for cameras, all unexposed still or motion picture films (except X-ray films), photographic plates, photographic sensitized paper, photographic apparatus, photographic equipment, and any apparatus or equipment designed especially for use in the taking of photographs or motion pictures, or in the developing, printing, or enlarging of photographs or motion picture films, including in each case parts or accessories therefor sold on or in connection therewith, or with the sale thereof. Under section 3406 (a) (4), as amended by section 607 of the Revenue Act of 1942, increased rates of tax are imposed (see § 316.122), and the tax in the case of cameras is restricted to cameras weighing 4 pounds or less, exclusive of the lens and accessories. In all other respects, the scope of the tax under section 3406 (a) (4), as amended by section 607 of the Revenue Act of 1942, is identical to the scope of the tax as originally imposed under section 3406 (a) (4), as

added by section 551 of the Revenue Act of 1941.

(b) The term "cameras" includes the entire assembly which is used for, or capable of use in, the taking of still or motion pictures. For the period prior to November 1, 1942, the tax applies to all cameras regardless of weight; for the period beginning with November 1, 1942, cameras weighing more than 4 pounds exclusive of lens and accessories are specifically excluded by law from the scope of the tax.

(c) The term "lenses" includes the glass and also the frame or cell in which such glass is mounted. Where a lens is sold in combination with a barrel, shutter, diffusing device, etc., the tax attaches to the total amount paid for the assembly.

(d) The term "unexposed photographic films" includes all films for use in any type of still or motion picture camera whether in rolls, reels, or packs, but does not include X-ray films.

(e) The term "photographic plates" includes any plate used in any type camera in the taking of a picture.

(f) The term "sensitized paper" includes any type of paper, regardless of size, used in producing prints or enlargements from any type of photographic negative.

(g) The term "photographic apparatus and equipment" includes any article used on or in connection with a camera or lens in the taking of a still or motion picture. The following are descriptive but not all-inclusive of such articles: range finders, view finders, lens extension tubes, filters, diffusers, tripods, focusing finders, etc.

(h) The phrase "any apparatus or equipment designed especially for use in the taking of photographs or motion pictures or in the developing, printing, or enlarging of photographs or motion picture films" includes the following articles which are descriptive but not all-inclusive: exposure meters, enlargers, lenses and other attachments for enlargers, tanks or pans designed for developing films, printing frames, photo-flood lamps and reflectors, flash bulbs, etc.

[T. D. 5099, 6 F. R. 6135, as amended by T. D. 5189, 7 F. R. 10049]

§ 316.121 *Unexposed motion picture films used in making news reel motion*

*picture films.* (a) Under the provisions of the Code, where unexposed motion picture films are used or are resold for use in the making of "news reel motion picture films" the manufacturer of such unexposed motion picture films is entitled to a refund or credit of the tax paid on the sale of such unexposed films.

(b) The term "making of news reel motion picture films" means the production of news reel motion pictures covering current news events for immediate release for public exhibition.

(c) The tax attaches to the manufacturer's sale of all unexposed motion picture films even though it is known at the time of the sale that such unexposed films will be used or resold for use in the making of news reel motion picture films.

(d) In order to establish the right to a credit or refund of the tax paid on the sale of unexposed motion picture films used or resold for use in the making of news reel motion picture films, it is necessary that, (1) the manufacturer have definite knowledge that the film in question was used for such purposes, and (2) he obtain from the purchaser and retain in his possession a properly executed certificate in the form prescribed by this section.

(e) Where the certificate is obtained prior to the time the manufacturer is required to file a return covering taxes due for the month in which the sale was made, he must include the tax on such sale in his return for that month, in the item "Total tax due", but he may deduct an amount equivalent to the tax applicable to such sale and pay the net tax resulting, making appropriate explanation on a rider attached to the return. If the certificate is not so obtained, the manufacturer must include the tax on such sale in his return for the month in which the sale was made, and when the certificate is obtained later he may file a claim for refund on Form 843, or take a credit upon any subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313, I. R. C.

(f) For regulations relating to the claiming of credits or refunds, see § 316.204.

(g) The following is a form of exemption certificate which will be acceptable for the purpose of this section and must be adhered to in substance:

## CREDIT OR REFUND CERTIFICATE

(For use by purchasers of unexposed motion picture films for use in the making of news reel motion pictures.)

-----, 19---

The undersigned hereby certifies that the unexposed motion picture films covered by this certificate were used in the making of news reel motion picture films.

The undersigned understands that a fraudulent use of this certificate to secure a credit or refund may subject him (1) to a penalty equivalent to the amount of tax due on the sale of the unexposed motion picture film, and (2) to a fine of not more than \$10,000, or imprisonment of not more than five years, or both, together with costs of prosecution.

-----  
(Name)

-----  
(Address)

(h) If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificate and proper records of invoices, orders, etc., relative to tax-free use shall be retained as provided in § 316.202. If, upon inspection, it is discovered that a manufacturer's records with respect to any use claimed to be tax free do not contain a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the use, the tax shall be payable by the manufacturer on such sale.

(i) The unexposed motion picture films covered by the certificate must be fully identified as to the nature of its use, the quantity used, the date of sale, and the amount of tax paid thereon.

[T. D. 5099, 6 F. R. 6135]

§ 316.122 *Rates of tax.* (a) For the period prior to November 1, 1942, the tax is payable by the manufacturer at the rate of 10 percent of the sale price.

(b) For the period beginning with November 1, 1942, the tax is payable by the manufacturer at the following rates:

*25 percent of the sale price.* Cameras; lenses; photographic apparatus and equipment; and any apparatus or equipment designed especially for use in the taking of photographs or motion pictures, or in developing, printing, or enlarging photographs or motion pictures.

*15 percent of the sale price.* Unexposed photographic films (including motion picture

films but not including X-ray film); photographic plates; and sensitized paper.

(c) In each case, the taxable sale price shall be determined in accordance with the provisions of §§ 316.8 to 316.15, inclusive.

[T. D. 5189, 7 F. R. 10049]

## SUBPART O—BUSINESS AND STORE MACHINES

§ 316.140 *Scope of tax.* (a) Subsection (a) (6) of section 3406, I. R. C., as added by section 551 of the Revenue Act of 1941, imposes a tax on sales by the manufacturer of all business and store machines of the types enumerated in such subsection, and to sales by the manufacturer of any combination of two or more of such machines, including parts and accessories sold on or in connection therewith, or with the sale thereof.

(b) Where any taxable business or store machine is leased (including any renewal or any extension of a lease or any subsequent lease of such article) by the manufacturer, such lease shall, for the purpose of this section, be considered as the sale thereof. For computation of tax on leases or rentals see § 316.9.

(c) Fare registers and fare boxes for use in streetcars, busses, and other vehicles are taxable as business machines under section 3406 (a) (6) and not as automobile accessories under section 3403 (c), I. R. C., as amended.

(d) The tax does not apply to sales on and after November 1, 1942, of cash registers of the type used in registering over-the-counter retail sales.

[T. D. 5099, 6 F. R. 6136, as amended by T. D. 5189, 7 F. R. 10050]

§ 316.141 *Rate of tax.* The tax is payable by the manufacturer at the rate of 10 per cent of the sale price as determined by §§ 316.8 to 316.15, inclusive.

[T. D. 5099, 6 F. R. 6136]

## SUBPART S—ELECTRIC LIGHT BULBS AND TUBES

§ 316.180 *Scope of tax.* (a) Subsection (a) (10) of section 3406, I. R. C., as added by section 551 of the Revenue Act of 1941, imposes a tax on the sale by the manufacturer of electric light bulbs and tubes.

(b) An electric light bulb or tube is any device designed for the diffusion of artificial light for illuminative or decorative purposes through the use of electricity.

[T. D. 5099, 6 F. R. 6136]

§ 316.181 *Rate of tax.* In the case of electric light bulbs and tubes sold on or after April 1, 1944, the tax is payable by the manufacturer at the rate of 20 percent of the sale price. In the case of electric light bulbs and tubes sold during the period October 1, 1941, through March 31, 1944, the tax was payable by the manufacturer at the rate of 5 percent of the sale price. The sale price shall be determined in accordance with the provisions of §§ 316.8 to 316.15, inclusive.

[T. D. 5563, 12 F. R. 3320]

#### SUBPART T—ELECTRICAL ENERGY

SOURCE: §§ 316.190 to 316.194 contained in Treasury Decision 5099, 6 F. R. 6137, except as noted following section affected.

§ 316.190 *Scope of tax.* (a) The tax imposed by section 3411 (a) of the Internal Revenue Code, as amended, applies, except as provided in this subpart, to all electrical energy sold for domestic or commercial consumption and not for resale.

(b) The term "electrical energy sold for domestic or commercial consumption" does not include (1) electrical energy sold for industrial consumption, e. g., for use in manufacturing, mining, refining, shipbuilding, building construction, irrigation, etc., or (2) that sold for other uses which likewise can not be classed as domestic or commercial, such as the electrical energy used by electric and gas companies, waterworks, telegraph, telephone, and radio communication companies, railroads, other similar common carriers, educational institutions not operated for private profit, churches, and charitable institutions in their operations as such. However, electrical energy is subject to tax if sold for consumption in commercial phases of industrial or other businesses, such as in office buildings, sales and display rooms, retail stores, etc., or in domestic phases, such as in dormitories or living quarters maintained by educational institutions, churches, charitable institutions, or others.

(c) Where electrical energy is sold to a consumer for two or more purposes, through separate meters, the specific use for which the energy is sold through each meter, i. e., whether for domestic or commercial consumption, or for other use, shall determine its taxable status. Where the consumer has all the electrical energy consumed at a given location

furnished through one meter, the predominant character of the business carried on at such location shall determine the classification of consumption for the purposes of this tax.

(d) The tax attaches to electrical energy sold for domestic or commercial consumption, irrespective of whether any of the energy sold is actually used or the charges therefor actually collected. The tax is due on all such sales whether the charge therefor is billed as a minimum charge, a flat charge, a service charge, or otherwise.

(e) Where a discount is allowable from the gross charge for electrical energy if payment therefor is made by the consumer within a prescribed period, or where an additional amount is added for failure to make payment within a prescribed period, the tax shall be based on the amount due.

§ 316.191 *Sales for resale.* (a) The tax does not apply to sales of electrical energy for resale, except where the electrical energy is sold to an owner or lessee of a building for resale to the tenants therein. The statute provides that sales of electrical energy to an owner or lessee of a building for resale to the tenants therein shall be considered a sale for consumption; accordingly, the sales to such owner or lessee are subject to the tax. However, in such case the resale of the electrical energy by the owner or lessee of the building to the tenants is not taxable. In determining the tax payable with respect to the electrical energy sold to an owner or lessee of a building for resale to tenants therein, such portion of the electrical energy as can be shown to have been resold to the tenants for other than domestic or commercial consumption may be excluded.

(b) Every person who purchases electrical energy for resale (except resale by the owner or lessee of a building to the tenants therein) must register with the collector for the district in which is located the principal place of business of such person (or, if he has no principal place of business in the United States, with the collector at Baltimore, Md.). The application for registry must show the name and place, or places, of business of the applicant. The collector will issue registration numbers in a separate series, beginning with number 1, for the district. Electrical energy so furnished for resale shall be exempt from tax only when the vendee furnishes to the vendor

a certificate showing the vendee's registration number and that the electrical energy is to be resold by him.

(c) Where electrical energy is sold to a person registered under the provisions of paragraph (b) of this section, a portion of which is for domestic or commercial consumption by the vendee and a portion of which is for resale, the certificate furnished by such vendee must show the amount of such electrical energy purchased for domestic or commercial consumption by him, and the amount purchased by him for resale. The vendor must pay tax on the portion of such electrical energy sold to the vendee for domestic or commercial consumption by such vendee. Such vendee must in turn pay tax on the portion of such electrical energy resold by him for domestic or commercial consumption. The tax in each case is based on the price for which the electrical energy is sold to the consumer thereof.

§ 316.192 *Rate of tax.* The tax is payable by the vendor at the rate of 3½ per cent of the sale price.

§ 316.193 *Exemptions.* (a) Under the provision of section 3411 (c), I. R. C., prior to the amendment thereof by section 307 (a) (4) of the Revenue Act of 1943, no tax attaches to electrical energy sold direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use, provided the exempt character of the sale is established as required by the regulations in this part. By virtue of the provisions of section 307 (a) (4) and (b) (1) of the Revenue Act of 1943, sales of electrical energy to the United States on or after June 1, 1944, are not exempt from tax, unless the sale is made pursuant to a contract entered into prior to such date, or to any agreement or change order supplemental to such contract bearing the same Government contract number.

(b) Sales of electrical energy by electric and power plants owned by the United States, or any State or Territory, or political subdivision thereof, or the District of Columbia, are exempt from the tax.

(c) Sales of electrical energy by electric and power plants or systems owned and operated by cooperative or nonprofit corporations engaged in rural electrification are exempt from the tax.

(d) In every case, the exemption specified in this section must be established by an official ruling. Where not so established, any corporation claiming the right to such exemption must submit for ruling by the Commissioner, (1) a copy of its charter, (2) a copy of its by-laws, and (3) adequate and sufficiently detailed evidence of the area served by its operations.

[T. D. 5099, 6 F. R. 6137, as amended by T. D. 5348, 9 F. R. 3006]

§ 316.194 *Inapplicable administrative provisions.* The provisions of sections 3441, 3444, and 3447 of the Internal Revenue Code, relating to sale price, use by manufacturers, and contracts prior to May 1, 1932, respectively, do not apply to the tax imposed on sales of electrical energy.

#### SUBPART U—MISCELLANEOUS PROVISIONS

SOURCE: §§ 316.200 to 316.205 contained in Regulations 46, 5 F. R. 142, redesignated by T. D. 5099, 6 F. R. 6137. Exceptions are noted following sections affected.

§ 316.200 *Returns.* (a) Each person required to report a tax on the sale or use of any of the articles covered by the regulations in this part must prepare a return for each calendar month in duplicate on Form 728 in accordance with the instructions thereon. The original return must be made under oath and must be verified before an officer duly authorized to administer oaths. If the amount of the tax is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath. The original return, together with the tax, must be filed with the collector of the district in which is located the principal place of business of the taxpayer (or, if he has no principal place of business in the United States, with the collector at Baltimore, Md.), on or before the last day of the month following that for which it is made.

(b) When the last day of the month in which the return is due falls on Sunday or a legal holiday the return may be filed with the collector of internal revenue, or his authorized representative, on the next secular or business day. A return must be forwarded to the collector for each month whether or not any liability has been incurred for that month. If a manufacturer ceases business the last return should be marked "Final return."

(c) Returns covering taxes collected from vendees under section 3447 (b), or section 3453, I. R. C., as added by section 553 (b) of the Revenue Act of 1941, should be prepared as prescribed above on Form 728. If a vendee, liable for tax, refuses to pay to the vendor the tax due, the vendor should report to the collector the name and address of such person, the nature of the transaction, the amount involved in the contract, and the date of the payment of such amount. Upon receipt of such information the collector will report the item to the Bureau for direct assessment against such person.

(d) The duplicate return shall be retained as prescribed by § 316.202.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5675, 13 F. R. 7302]

§ 316.201 *Payment of taxes.* All taxes are due and payable to the collector of internal revenue, without assessment by the Commissioner or notice from the collector, at the time fixed for filing the return. If the tax is not paid when due there shall be added as part of the tax interest at the rate of 6 percent per annum from the time the tax became due to the actual date of payment or assessment, whichever is prior. For provisions with respect to interest generally, including interest on assessments, see § 316.205.

§ 316.202 *Records.* (a) Every person required to file a return and pay tax on the sale or use of an article, shall keep on file at his principal place of business, or some other convenient or safe location, accurate records, including the duplicate returns prescribed by § 316.200 and accounts of all transactions. Manufacturers of taxable articles who are permitted under section 3442, I. R. C., to dispose of their products to other manufacturers free of tax must maintain accurate records of all such transactions, including certificates from purchasers certifying to the fact that the products are purchased for further manufacture of taxable articles, with supporting invoices, etc. Evidence with respect to sales for export, or shipment to a possession of the United States, and sales to States or political subdivisions thereof, upon which no tax is due, must also be maintained. (See §§ 316.24, 316.25, 316.26, and 316.27.)

(b) The records shall contain sufficient information to enable the Commis-

sioner to determine whether the correct amount of tax has been paid. Such records shall at all times be open for inspection by internal-revenue officers, and shall be maintained for a period of at least 4 years from the date the tax became due or, in the case of tax-free sales, for a period of at least 4 years from the last day of the month following the month in which the sale was made.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5675, 13 F. R. 7302]

§ 316.203 *Jeopardy assessment.* (a) Whenever in the opinion of the collector it becomes necessary to protect the interests of the Government by requiring an immediate return and collection of the tax, the matter shall be promptly reported to the Commissioner by telegram or letter showing the reasons therefor. The communication must state the full name and address of the person involved, the kind and amount of taxes due and the period involved, so that the Commissioner can immediately assess the tax together with all penalties and interest due. Such tax, penalties, and interest will, upon assessment, become immediately due and payable, and the collector shall, without delay, issue a notice and demand for payment thereof in full.

(b) If a taxpayer is not actually in default in filing returns or in paying any tax under the internal-revenue laws, the collection of the whole or any part of the amount of such jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, collection of which is stayed, at the time at which such amount would normally be due.

(c) Upon refusal to pay, or failure to pay or give bond, the collector shall proceed immediately to collect the tax, penalty, and interest by distraint, without regard to the 10-day period after notice and demand prescribed in section 3690, I. R. C.

§ 316.204 *Credits and refunds.* (a) A credit against the tax due on the sale of any article covered by the regulations in this part or a refund may be allowed or made to a manufacturer in the amount of any tax which has been paid by any person with respect to the sale of any article (other than a tire, inner tube, or

automobile radio taxable under section 3404, I. R. C.) purchased and used by such manufacturer as material in the manufacture or production of, or as a component part of, any such article with respect to which tax has been paid, or which has been sold free of tax in accordance with the provisions of § 316.21 or § 316.22. A claim for refund must be supported by evidence showing (1) the name and address of the person who paid to the United States the tax of which refund is claimed, (2) the date of payment, (3) the amount of such tax, and (4) that the article was so used. A credit taken on a return must be supported by evidence of the same character. If it is impossible to furnish such evidence at the time when the credit is taken, a statement to that effect must be submitted with the return in which the credit is taken. The evidence supporting such credit must be filed with the collector within 30 days after the date on which the return is filed. If the required evidence is not so filed within that period, the amount of the credit will be disallowed and assessment of the tax resulting from the disallowance will be made on the current assessment list.

(b) In the case of a readjustment of price to the manufacturer's vendee by reason of the return or repossession of an article or a covering or container, or by a bona fide discount, rebate, or allowance, the manufacturer who paid the tax based upon the original price may file a claim for refund or take credit against the tax due upon any subsequent monthly return in the amount of that part of the tax proportionate to the part of the sale price which is refunded or credited to the purchaser. In no case shall such a refund or credit be allowed to the taxpayer in connection with an article or a covering or container sold prior to June 21, 1932. The refund or credit of the tax shall be allowed only if a statement is furnished showing that the readjustment of price has actually been made. (See § 316.13.)

(c) If any person overpays the tax shown to be due on a monthly return, he may either file a claim for refund on Form 843 or take credit for the overpayment against the tax shown to be due on any subsequent monthly return. In all cases where a person overpays tax, no credit or refund shall be allowed (except as provided in the preceding paragraphs), whether in pursuance of a court

decision or otherwise, unless the taxpayer files a sworn statement explaining satisfactorily the reason for claiming the credit or refund and establishing (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the vendee, or (2) that he has either repaid the amount of tax to the ultimate purchaser of the article or has secured the written consent of such ultimate purchaser to the allowance of the credit or refund. In the latter case the written consent of the ultimate purchaser must accompany the statement filed with the credit or refund claim. For the purpose of the tax the "ultimate purchaser" is a person who purchases an article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased. The statement supporting the credit or refund claim must also show whether any previous claim for credit or refund covering the amount involved, or any part thereof, has been filed with the collector or Commissioner.

(d) A complete and detailed record of each overpayment must be kept by the taxpayer for a period of at least 4 years from the date any credit is taken or refund is claimed.

(e) In the case of a sale of a taxable article by a manufacturer to a dealer, where title passes through one or more persons in a chain of sales from the manufacturer to a consumer, and such article is used, or resold for a purpose or use specified in section 3443 (a) (3) (A), I. R. C.—the manufacturer who paid the tax to the United States may be allowed a refund or may take credit against the tax shown to be due upon any subsequent monthly return, in the amount of tax paid by him with respect to the sale of such article, provided he can establish by satisfactory evidence (1) that such article has been used, or resold, for one of the uses specified in such section, (2) the name and address of the ultimate vendor, (3) the name and address of the consumer, and the use made or to be made of such article, (4) the date the tax on his sale of such article was paid to the United States, and (5) that he has repaid or agreed to repay the amount of such tax to the ultimate vendor, or has obtained the consent of the ultimate vendor to the allowance of the credit or refund.

(f) The evidence required in paragraph (e) (1), (2), and (3) of this section may be established by the manufacturer securing from the ultimate vendor (1) the original exemption certificate obtained by such ultimate vendor from the consumer, or (2) a statement by the ultimate vendor that he has obtained from the consumer and has in his possession such an exemption certificate. The consent of the ultimate vendor required by paragraph (e) (5) of this section may be indorsed on the certificate or made a part of the statement.

(g) Where a statement is furnished by the ultimate vendor in lieu of the original exemption certificate, the ultimate vendor must incorporate therein a statement to the effect that the certificate and supporting data (1) are retained by him, (2) will be preserved for a period of 4 years, and (3) will, upon request, be forwarded to the manufacturer at any time within the period for use in establishing to the satisfaction of internal-revenue officers that a refund or credit is justly due.

(h) The exemption certificates required by this section shall be in a form substantially the same as those required in the case of sales by the manufacturers direct to users.

(i) Where a tax-paid article is used by a consumer for one or more of the purposes specified above, the ultimate vendor may secure from such consumer, in lieu of the exemption certificate, a statement showing full and complete information as to the date of the purchase of the article, from whom purchased, the quantity and nature of the article, the purpose for which used, the amount of tax involved, and that the consumer has not previously executed any other affidavit of use concerning such article. The statement referred to may be furnished to the manufacturer by the ultimate vendor as evidence to support the credit or refund claimed, or the information appearing therein may be incorporated in the statement which the ultimate vendor files with the manufacturer who paid the tax to the Government on the sale of the article.

(j) The statement of the ultimate vendor shall be in substantially the following form:

STATEMENT OF ULTIMATE VENDOR

The undersigned certifies that he himself, or the \_\_\_\_\_ of (Name of vendor if other than undersigned)

which he is \_\_\_\_\_, is  
(Title)  
the ultimate vendor of the article specified below or on the reverse side hereof;

That the articles specified below were purchased by him tax paid and resold for use by his vendee for the nontaxable purposes indicated and not for resale;

That he has in his possession, all of the exemption certificates properly executed, required by the law and regulations, to cover the sale of the articles specified herein;

That the certificates and supporting data (1) are retained by him, (2) will be preserved for a period of four years, and (3) will, upon request, be forwarded to the manufacturer any time within the period for use in establishing to the satisfaction of internal-revenue officers that a refund or credit is justly due; and

That he hereby consents to the allowance of a credit or refund to the\_\_\_\_\_

(Name and address of manufacturer.)  
in the amount of the tax paid by such manufacturer with respect to the sale of such articles and that he has not heretofore given his consent to the allowance of a credit or refund to any other manufacturer and has not made application for a refund or credit of such Federal tax from any other source.

The undersigned understands that the fraudulent use of this affidavit to secure credit or refund will subject him and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than 10 years, or both, under section 35 of the Criminal Code of the United States, as amended by Act approved April 4, 1938 (52 Stat., 197).

\_\_\_\_\_  
(Name.)

\_\_\_\_\_  
(Address.)

\_\_\_\_\_  
(Date)

Vendor's invoice	Articles	Date of resale	Quantity	Purpose or use	Tax claimed
-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	-----	-----

(k) The provisions of section 3451, I. R. C. (see § 316.29), relating to aircraft, apply only to sales by manufacturers direct to the owners or operators of aircraft, and no credit or refund is allowable, either under section 3451 or under section 3443 (a) (3) (A) (ii) with respect to tax paid on articles sold by the manufacturer for resale for use on aircraft, regardless of the date the sale or resale

occurred, and even though it is known at the time of the manufacturer's sale that the article will be so resold. However, where it can be shown that articles were sold by the manufacturer in accordance with the provisions of section 317 (b) of the Tariff Act of 1930, as added by the Act approved June 25, 1938, for use as supplies (including equipment upon, or in the maintenance or repair of, aircraft, registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, the manufacturer who paid the tax to the Government may be allowed a refund or may take credit against the tax due upon any subsequent monthly return, provided he has in his possession the evidence outlined in § 316.29.

(1) No credit or refund is allowable for tax paid with respect to the sale of any article on or after June 1, 1944, to the United States, except in those cases where tax has been paid on sales made pursuant to a contract entered into prior to June 1, 1944, or to any agreement or change order supplemental to such contract bearing the same Government contract number.

[Regs. 46, 5 F. R. 142, as amended by T. D. 5348, 9 F. R. 3006, T. D. 5675, 13 F. R. 7302]

§ 316.205 *Penalties and interest.* (a) In the case of failure to file a return within the prescribed time, a certain percentage of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate.

(b) Failure to pay tax within the time fixed for filing returns causes interest to accrue automatically, without assessment of the tax by the Commissioner or notice to the taxpayer, to the actual date of payment or assessment, whichever is prior. The due date of the tax for the purpose of computing interest is the last day of the month within which the return is required to be filed and the tax paid.

(c) Where assessment is made, and payment is not made within 10 days after

the issuance of the first notice and demand (Form 17), there will accrue, under section 3655, I. R. C., a 5 percent penalty and interest at the rate of 6 percent per annum computed upon the entire assessment from the date of issuance of Form 17 until date of payment. Where assessment is settled by partial payments, interest is computed at the above-prescribed rates from the date of the first 10-day notice through the date of first payment and on the balance from the next succeeding day to the date of the next payment until the assessment is paid in full.

(d) If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 percent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 percent penalty applies. The filing of the claim does not stay the collection of interest, which continues to run for the full period that intervenes between the date of the first notice and demand and the date of payment.

(e) If a false or fraudulent return is willfully made, the penalty under section 3612 (d) and (e), I. R. C., is 50 percent of the total tax due for the entire period involved, including any tax previously paid.

(f) Any person who willfully fails to pay any tax due, file return, or keep records, or who attempts in any manner to evade or defeat the tax, or who fraudulently uses any exemption certificate authorized by the regulations in this part, is subject to a fine of \$10,000, or imprisonment, or both, with costs of prosecution, and is also liable to a penalty equal to the amount of the tax not paid. These penalties apply to an officer or employee who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs, as well as to a person who fails or refuses to perform any of the duties imposed by the Code, i. e., pay the tax, make return, keep records, supply information, etc.

(g) An internal-revenue officer discovering in the course of his duty information leading him to suspect a possible violation of any law with the enforcement of which he is not directly concerned should immediately report the matter to the Commissioner, who is authorized to communicate with the proper department involved.

**Part 317—Tax Imposed by the Act Approved March 1, 1893, As Amended, With Respect to Certain Hydraulic Mining**

- Sec.
- 317.2 Definitions.
- 317.3 Rates of tax.
- 317.4 Liability for the tax.
- 317.5 Ascertainment of quantity mined.
- 317.6 Returns.
- 317.7 Due date and place for filing returns and paying tax.
- 317.8 Penalties and interest.

**AUTHORITY:** §§ 317.2 to 317.8 issued under sec. 23, 27 Stat. 510, as amended; 33 U. S. C. 683.

**SOURCE:** §§ 317.2 to 317.8 contained in Treasury Decision 4952, 4 F. R. 4244.

§ 317.2 *Definitions.* As used in the regulations in this part:

(a) The term "act" means "An Act to create the California Debris Commission and regulate hydraulic mining in the State of California" approved March 1, 1893, as amended (27 Stat. 507, 34 Stat. 1001, 48 Stat. 1118, 52 Stat. 1040; 33 U. S. C. 661-687).

(b) The term "person" means an individual, a trust, estate, partnership, company or corporation.

(c) The term "Secretary" means the Secretary of the Treasury.

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

(e) The term "collector" means the collector of internal revenue.

(f) The terms "hydraulic mining" and "mining by the hydraulic process" shall have the meaning and application given said terms in the State of California.

(g) The term "taxable year" means the 12-month period ending on August 31st of each year for which the tax imposed by the act is payable.

§ 317.3 *Rates of tax.* (a) Under the act the California Debris Commission will determine and prescribe with respect to each debris dam or other works the rate of tax payable in the area served by the particular debris dam or works. The Secretary of the Army will notify the Secretary of the Treasury of the rate of tax fixed with respect to each debris dam or works as such rate becomes known.

(b) The tax is payable annually on the basis of the number of cubic yards mined

from the natural bank by the hydraulic process during the taxable year.

§ 317.4 *Liability for the tax.* Liability for tax attaches to any person engaged at any time during the taxable year in hydraulic mining in an area served by any of the debris dams or other works identified in § 317.1 if the debris from such mining operations is in whole or in part restrained by any of such debris dams or works.

§ 317.5 *Ascertainment of quantity mined.* Each person engaged in hydraulic mining operations within the scope of the tax shall make or cause to be made appropriate surveys of the premises on which such hydraulic mining operations are conducted for the purpose of determining the cubic yardage mined from the natural bank. Such surveys shall be made at the beginning and end of hydraulic mining operations in each taxable year by a licensed engineer or other qualified agency having prior approval of the California Debris Commission, and shall conform to requirements prescribed by the California Debris Commission.

§ 317.6 *Returns.* (a) Every person liable for tax for any taxable year shall prepare for such year a return in triplicate on Form 1 (California Debris) in accordance with the instructions thereon and in accordance with the regulations in this part.

(b) The return shall show the identity of the particular dam or other works restraining debris from the mine; the name and location of the mine; the name and address of the person to whom the California Debris Commission has issued a license to operate the mine; the number and date of the license; the name and address of the owner of the mine; the dates on which hydraulic mining operations began and ended during the taxable year for which the return is made; the number of cubic yards mined by the hydraulic process at the mine during the taxable year; the rate of tax per cubic yard determined by the California Debris Commission applicable to the particular mine; the amount of tax due and payable (cubic yards mined multiplied by the rate of tax per cubic yard).

(c) With each return there must be submitted a supporting affidavit of the person who made the surveys at the mine for the mining season covered by the

return (see § 317.5), stating that such surveys were made in accordance with requirements prescribed by the California Debris Commission.

(b) The return shall be made under oath and verified before an officer duly authorized to administer oaths.

§ 317.7 *Due date and place for filing returns and paying tax.* The return for each taxable year shall be filed in triplicate with, and the tax shall be paid to, the collector at San Francisco, California, on or before September 30th of each year. The tax is due and payable on such date without assessment by the Commissioner or notice from the collector.

§ 317.8 *Penalties and interest.* (a) In the case of failure to file a return within the prescribed time, a certain percentage of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to wilful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate.

(b) Where assessment is made, and payment is not made within 10 days after the issuance of the first notice and demand (Form 17), there will accrue under section 3655 of the Internal Revenue Code a 5 percent penalty and interest at the rate of 6 percent per annum computed upon the entire assessment from the date of issuance of Form 17 until date of payment.

(c) If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 percent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 percent penalty applies. The filing of the claim does not stay the running of interest, which continues to run for the full period that intervenes between the date of the first notice and demand and the date of payment.

(d) If a false or fraudulent return be willfully made, the penalty under section 3612 of the Internal Revenue Code is 50 percent of the total tax due. For

other penalties see section 3616 of the Internal Revenue Code.

## Part 319—Taxes Relating to Machine Guns and Certain Other Firearms

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## Title 26—Internal Revenue

Sec.	
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319.45	Notice and demand for tax: Penalty and interest.
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319.47	Stamps rendered useless, affixed in error, or for which the owner has no use.
319.48	Claims.
319.49	Refunds.

**AUTHORITY:** §§ 319.1 to 319.49 issued under 53 Stat. 294, 467; 26 U. S. C. 2732, 3791.

**SOURCE:** §§ 319.1 to 319.49 contained in Regulations 88, 6 F. R. 4935, except as noted following sections affected. Redesignation noted at 14 F. R. 5200.

### SUBPART A—DEFINITIONS

§ 319.1 *Meaning of terms.* As used in the regulations in this part:

(a) The terms defined in the provisions of the Internal Revenue Code shall have the meanings so assigned to them.

(b) The term "muffler" or "silencer" includes any device for silencing or diminishing the report of any portable weapon, such as a rifle, carbine, pistol, revolver, machine gun, submachine gun, shotgun, fowling piece, or other device from which a shot, bullet, or projectile may be discharged by an explosive, and is not limited to mufflers or silencers for "firearms" as defined.

(c) The term "insular possessions" includes the Panama Canal Zone, the Philippine Islands, the Virgin Islands, Guam, Puerto Rico, American Samoa, Wake, the Midway Islands, and Palmyra, but does not include the Territory of Hawaii.

(d) The term "importation" means the bringing of a "firearm" within the limits of the "continental United States" or of any Territory or "insular possession" of the United States, from a place outside thereof (whether such place be a foreign country or territory subject to the jurisdiction of the United States), with intent to unlade.

### SUBPART B—SPECIAL TAXES

§ 319.3 *Effective date of special taxes.* The special taxes on importers and manufacturers, dealers other than pawnbrokers, and pawnbrokers, became effective under the National Firearms Act on July 26, 1934. The provisions of the National Firearms Act were superseded, effective February 11, 1939, by provisions of the Internal Revenue Code.

§ 319.4 *Geographical scope of tax.* The special taxes imposed by the provisions of law quoted are applicable only to persons engaged in business within the States of the United States and the District of Columbia. Liability to the special taxes is therefore not incurred by persons doing business in the Territories of Alaska and Hawaii, or the insular possessions.

§ 319.5 *Rates of tax.* (a) The special taxes are as follows:

	Per year
Class 1. Importers or manufacturers of "firearms" as defined (see § 319.1 (a)), except manufacturers in class 2	\$500
Class 2. Prior to July 1, 1945, manufacturers whose production of "firearms" (see § 319.1 (a)) is limited to guns with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, and on and after July 1, 1945, manufacturers of "firearms" whose production is limited to guns with two attached barrels, twelve inches or more in length from which only a single discharge can be made from either barrel without manual reloading, or guns designed to be held in one hand when fired and having a barrel twelve inches or more in length from which only a single discharge can be made without manual reloading, or guns of both types	\$25
Class 3. Pawnbrokers, except those in class 5	300
Class 4. Dealers, other than pawnbrokers, except those in class 5	200
Class 5. Prior to July 1, 1945, dealers, including pawnbrokers, whose dealing in "firearms" (see § 319.1 (a)) is limited to guns with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, and, on and after July 1, 1945, dealers, including pawnbrokers, whose dealing in "firearms" is limited to guns with two attached barrels, twelve inches or more in length, from which only a single discharge can be made from either barrel without manual reloading, or guns designed to be held in one hand when fired, and having a barrel twelve inches or more in length from which only a single discharge can be made without manual reloading, or guns of both types	1

(b) The tax year begins July 1 and ends June 30. Persons commencing busi-

ness between August 1 and June 30 (both dates inclusive) of any tax year must pay a proportionate part of the annual tax. Persons in business for only a portion of a month are liable to tax for the entire month. For example, a person commencing business October 21 must pay tax for nine months, or three-fourths of the yearly rate.

[Regs. 88, 6 F. R. 4935, as amended by T. D. 5481, 10 F. R. 12549]

§ 319.6 *Registry, return, and payment of tax.* Every person first engaging in any business mentioned in this part must, prior to commencing business, separately for each place of business, register and file return on Form 11-A (Firearms) with, and pay the tax to, the collector for the district in which such place is located. Thereafter, such person must register, file return, and pay the tax on or before the 1st day of July of each year. The collector will furnish the proper form, which must be filled out, subscribed, and attested as indicated therein. Each return must show an individual's full name. A person doing business under a style or trade name must give his own name, followed by his style or trade name. In the case of a copartnership, association, firm, or company, other than a corporation, its style or trade name must be given, also the name of each member and his place of residence. In the case of a corporation, the name and title of each officer and his place of residence must be shown. The exact type of business, whether manufacturer, importer, pawnbroker, or dealer other than pawnbroker, and the period for which special tax is due, must be stated.

§ 319.7 *Tax payment evidenced by special tax stamp.* (a) Upon receipt of a return on Form 11-A (Firearms), accompanied by remittance of the full amount due, the collector will issue a special tax stamp as evidence of payment of the special tax. Such payment must be made in the form of cash, certified check, or post office money order.

(b) Collectors will distinctly write or print the taxpayer's registered name (see § 319.6), and the address of the particular place of business designated by street and number, on the stamp before it is delivered or mailed to the taxpayer. Special tax stamps will be transmitted by ordinary mail, unless it is desired that they be transmitted by registered mail, in which case 15 cents additional to pay

registry fee should be remitted with the return.

(c) Immediately upon issuance of a special tax stamp each collector should forward to the Bureau a statement showing the name and address of the taxpayer, the kind and serial number of the special tax stamp issued, the taxable period covered thereby, and the amount of tax paid.

(d) Collectors and their deputies are forbidden to issue receipts in lieu of stamps representing the payment of special taxes.

§ 319.8 *Special tax stamp to be posted.* Every special tax stamp issued to a taxpayer must be kept posted conspicuously on the premises where the business is operated. One who fails so to post a stamp thereby incurs liability to a penalty, equal and in addition to the tax, plus the costs of prosecution; but in no case shall the penalty (not including the costs of prosecution) be less than \$10. Where the failure is willful the penalty is doubled. This liability is additional to any and all liability otherwise incurred. (See § 319.10)

§ 319.9 *Certificates in lieu of stamps lost or destroyed.* When a special tax stamp has been lost or destroyed, such fact should be reported to the collector at once for the purpose of obtaining from him a certificate of payment. Such certificate will be on Form 785, and must be posted in place of the stamp; otherwise liability as above indicated for failure to post the stamp will be incurred. (See § 319.8)

§ 319.10 *Several places of business.* Generally a taxpayer must pay as many special taxes as he has places of business. However, a manufacturer upon a single payment of special tax may sell products of his own manufacture at both the place of manufacture and his principal office or place of business, provided no products, except samples, are kept at said office or place of business. Removal of a business to a new location creates a new liability unless the change of location is registered with the collector, as provided in § 319.16.

§ 319.11 *Dual occupations incur dual liability.* In any case where more than one taxable business is carried on by the same person at the same location at the same time, special tax in respect to each must be paid.

§ 319.12 *Partnership liability.* Any number of persons doing business in co-partnership at any one location shall be required to pay but one special tax. The firm name is the only name required on a special tax stamp issued to a partnership.

§ 319.13 *Change of ownership—(a) Changes through death.* Whenever any person who has paid special tax dies, the surviving spouse or child, or executors or administrators, or other legal representatives, may carry on such business for the remainder of the term for which tax has been paid without any additional payment, subject to the conditions stated in this part. If the surviving spouse or child, or executors or administrators, or other legal representatives of the deceased taxpayer continue the business, such person must within 30 days after the date of the death of the taxpayer execute a new Form 11-A (Firearms). The return thus executed must show the name of the original taxpayer, together with all other data required. (As to liability in case of failure to register, see § 319.16.)

(b) *Changes from other causes.* A receiver or referee in bankruptcy may continue the business under the stamp issued to the taxpayer at the place and for the period for which the tax was paid. An assignee for the benefit of creditors may continue business under his assignor's special tax stamp without incurring additional special tax liability. In such cases the change must be registered with the collector in a manner similar to that required by paragraph (a) of this section.

(c) *Changes in firm.* When one or more members of a firm or partnership withdraw, the business may be continued by the remaining partner or partners under the same special tax stamp for the remainder of the period for which the stamp was issued to the old firm. The change shall, however, be registered in the same manner as required in paragraph (a) of this section. Where new partners are taken into a firm, the new firm so constituted may not carry on business under the special tax stamp of the old firm. The new firm must make return and pay its own special tax reckoned from the 1st day of the month in which it began business, even though the name of such firm be the same as that of the old. Where the members of a partnership which has paid special tax form

a corporation to continue the business, a new special tax stamp must be taken out in the name of the corporation.

(d) *Change in corporation.* A corporation may, upon application to the collector, change its name without creating a new special tax liability, if the stamp is forwarded to the collector for proper notation within 30 days. An increase in the capital stock of the corporation does not create a new special tax liability if the laws of the State under which it is incorporated permit such increase without the formation of a new corporation. A stockholder in a corporation who after its dissolution continues the business incurs new special-tax liability.

§ 319.14 *Change of business location—(a) Procedure by taxpayer.* Whenever a special-tax payer removes his business to a location other than specified in his last special tax return (see § 319.6), he shall, within 30 days after the date of removal, register the change of location with the collector of the district within which the old place of business is located, by filing another return, Form 11-A (Firearms), and designated "removal registry," setting forth the time of removal. The taxpayer's special tax stamp must accompany the return for notation by the collector of the change of location. As to liability in case of failure to register a change of location within 30 days, see § 319.16.

(b) *Procedure by collector: Removal within district.* When registration is made by a special-tax payer in the manner specified in paragraph (a) of this section, of the removal of his business to a new location in the same district, the collector will enter on his Record 10 (see § 319.19) the place to which such removal was made and the date of the removal. The same information shall also be entered plainly on the face of the special tax stamp, which will be returned to the taxpayer, by the collector, for posting.

(c) *Procedure by collector: Removal to another district.* In case of removal to another collection district, the collector will note the transfer on his Record 10, stating the location to which the business was removed, and shall then transmit the special tax stamp to the collector for the district to which said business was removed. The latter will make an entry on his Record 10 as in the case of original registration in his district, correct the location shown

on the stamp, and note also thereon his name, title, date, and district, and then forward the stamp to the taxpayer.

§ 319.15 *Penalty for failure to pay special tax.* Persons carrying on a business within the scope of section 3260, I. R. C., without payment of special tax within the time prescribed (see § 319.6) are liable, in addition to the amount of the tax and other penalties, to fine and imprisonment as provided in section 2729, I. R. C.

§ 319.16 *Liability for failure to register change or removal.* Any person succeeding to and carrying on a business for which special tax has been paid and any taxpayer removing his business, with respect to which special tax has been paid, to a place other than that for which tax was paid, without registering such change or removal within 30 days thereafter, will be liable to the additional tax and penalty prescribed in section 3612 (d), I. R. C. for failure to make return (see § 319.17), as well as to fine and imprisonment for carrying on business without payment of special tax. (See § 319.15.)

§ 319.17 *Penalties for delinquency and fraudulent return.* (a) In case of failure to file a return within the prescribed time, a certain percentage of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is not for more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate.

(b) If a false or fraudulent return is filed, the taxpayer is liable to an additional amount equal to 50 percent of the total tax. If a person liable to tax for an entire year falsely states in his return that he is liable for a portion only of the year, the return is false not only as to the portion of the year not covered but as to the portion falsely represented as the actual period of liability.

§ 319.18 *State regulations.* Special tax stamps are merely receipts for the tax. Payment of tax under Federal law confers no privilege to act contrary to State law. One to whom a special tax stamp has been issued may still be pun-

ishable under a State law prohibiting or controlling the manufacture or transfer of firearms. On the other hand, compliance with State law confers no immunity under Federal law. Persons who engage in the manufacture, or transfer, of firearms, in violation of the law of a State, are nevertheless required to pay special tax as imposed under the internal revenue laws of the United States.

§ 319.19 *Public record of special-tax payers.* The list required by section 3275, I. R. C., shall be kept on Record 10 (see § 319.14), and may be inspected in the collector's office at reasonable and proper times.

#### SUBPART C—TRANSFER TAX

§ 319.21 *Effective date.* The tax on the transfer of firearms became effective under the National Firearms Act on July 26, 1934. The applicable provisions of the National Firearms Act were superseded, effective February 11, 1939, by provisions of the Internal Revenue Code.

§ 319.22 *Scope of tax.* Except as otherwise provided (see §§ 319.28 and 319.29), each transfer of a firearm within the continental United States is subject to tax to be represented by an adhesive stamp bearing the words "Firearms Act" to be affixed to the order for the firearm. (See §§ 319.25 and 319.42.)

§ 319.23 *Rate of tax.* The transfer tax to be levied, collected, and paid with respect to all articles within the term "firearm" (see § 319.1 (a)) transferred in the continental United States is at the rate of \$200 for each firearm, except that prior to July 1, 1945, the rate of tax is \$1 upon the transfer of any gun with two attached barrels, twelve inches or more but less than 18 (16 in the case of rifles of .22 caliber or less) inches in length, from which only a single discharge can be made from either barrel without manual reloading, and, on and after July 1, 1945, the rate of tax is \$1 upon the transfer of any gun with two attached barrels, twelve inches or more but less than 18 (16 in the case of rifles of .22 caliber or less) inches in length, from which only a single discharge can be made from either barrel without manual reloading, or any gun designed to be held in one hand when fired and having a barrel twelve inches or more but less than 18 (16 in the case of rifles of .22 caliber or less) inches in length, from which only a single discharge can be made without manual reloading. In

every case the tax shall be paid by the transferor.

[T. D. 5481, 10 F. R. 12549]

§ 319.24 *Transfer tax in addition to import duty.* The transfer tax imposed by section 2720 (a) is in addition to any import duty. (See § 319.33.)

§ 319.25 *Written order required for transfer of firearm.* (a) Except as otherwise provided, every person seeking to obtain a firearm must make an application in duplicate to the transferor on order Form 4 (Firearms). The application shall show (1) the name and address of the applicant, and, if the applicant is other than a natural person, the name and address of the principal officer or authorized representative thereof; and (2) the place where the firearm will usually be kept.

(b) If the applicant is an individual, he shall attach to each copy of the application an individual photograph of himself taken within 90 days prior to the date of such application, affix his fingerprints, and furnish such other data as Form 4 (Firearms) requires. The fingerprints must be clear for accurate classification and should be taken before someone properly equipped to take them. The application must be supported by a certificate of the local chief of police, sheriff of the county, United States attorney, United States marshal, or such other person whose certificate may in a particular case be acceptable to the Commissioner, that he is satisfied that the fingerprints and photograph appearing on the application are those of the applicant and that the firearm is intended by the applicant for lawful purposes.

(c) The transferor must furnish the information called for on the form relating to the serial number, model, trade name, and other marks identifying the firearm.

(d) The application for transfer (order Form 4 (Firearms)) must be forwarded, in duplicate, by the transferor direct to the Commissioner of Internal Revenue, Washington, D. C. A "Firearms Act" stamp of the proper denomination (\$200 or \$1) must be affixed to the original order form and properly canceled (see § 319.26) prior to forwarding. The Commissioner, if satisfied that the forms have been correctly prepared, and that the original bears the required stamp, properly canceled, will return the original to the transferor for delivery to the appli-

cant, and will retain the duplicate. No order forms will be approved if the fingerprints are smudged. Upon receipt of the approved order form, the transferor may deliver the firearm to the applicant, together with the original order form with the "Firearms Act" stamp attached thereto.

(e) Where a firearm transferred on or after July 26, 1934, is to be subsequently transferred, a new order form covering such proposed transfer must, when filed with the Commissioner, be accompanied by the previously approved order form for each prior transfer. Such order forms will be returned by the Commissioner to the present transferor for delivery to the applicant.

(f) In the event that an order form is executed and stamp affixed without the transfer of the firearm being made, the transferor may file a claim on Form 843 (see § 319.48) for redemption of the stamp.

§ 319.26 *Cancellation.* The person affixing a "Firearms Act" stamp shall cancel it by writing or stamping thereon, in ink, his initials, and the day, month, and year, or shall, by cutting with a machine or punch, affix his initials and the date as aforesaid, in such manner as to render it unfit for reuse. The cancellation shall not so deface the stamp as to prevent its denomination and genuineness from being readily determined.

§ 319.27 *Stolen or lost firearms or documents—*(a) *Firearms.* Whenever any firearm is stolen or lost, the person losing possession thereof shall, immediately upon discovery of such theft or loss, make a report under oath to the Commissioner of Internal Revenue, Washington, D. C., showing the following: (1) Name and address of the person in whose name the firearm is registered, (2) kind of firearm, (3) serial number, (4) model, (5) caliber, (6) manufacturer of firearm, (7) date and place of theft or loss, and (8) complete facts and circumstances surrounding such theft or loss.

(b) *Documents.* When any order form, certificate of registry, exemption certificate, or other document evidencing possession of a firearm is stolen, lost, or destroyed, the person losing possession shall immediately upon discovery of the theft, loss, or destruction report the matter to the Commissioner of Internal Revenue, Washington 25, D. C. The report shall be under oath showing in detail

the circumstances of the theft, loss, or destruction and shall include all known facts which may serve to identify the document. Upon receipt of the report, the Commissioner shall make such investigation as appears appropriate and may issue a duplicate document upon such conditions as the circumstances warrant.

§ 319.28 *Special-tax payers.* (a) The transfer tax and the requirements as to use of order forms (see § 319.25) are not applicable where importers, manufacturers, and dealers who have registered and paid special tax transfer to other manufacturers or dealers who have registered and paid special tax. However, such importers, manufacturers, and dealers must keep the records required by § 319.38, and make the returns required by § 319.39.

(b) Before a tax-free transfer is made, the transferor must satisfy himself that the transferee is a registered special-tax payer. If not fully satisfied, he should communicate with the collector of the district in which the transferee is located. Where tax-free transfers to unauthorized persons are made, tax and penal liability will be incurred.

§ 319.29 *Peace officers and Federal officers.* (a) The following are hereby designated as officers entitled to receive firearms without order forms (see § 319.25): Sheriffs, chiefs of police, commissioners of police, superintendents or other chief officers of State police units, including State highway patrols, and directors of public safety. Additional officers may be designated by the Commissioner from time to time as in his judgment seems proper. Order forms are not required for procurement of firearms by Federal law enforcement agencies. A peace officer or Federal officer obtaining firearms for official use should do so through or in the name of the organization with which he is connected.

(b) Transfers under section 2721 (a), I. R. C., may be made prior to forwarding Form 5 (Firearms) to the Commissioner, but see § 319.30.

§ 319.30 *Application for exemption.* (a) Where a transfer is claimed to be exempt from tax under section 2721 (a), I. R. C. (see § 319.29), an application for exemption must be immediately executed by the transferor in triplicate on Form 5 (Firearms), and the original forwarded to the Commissioner of Internal Revenue, Washington 25, D. C., the duplicate

retained by the transferor, and the triplicate furnished to the transferee. The application must be supported by the evidence required thereby and any additional evidence relied upon by the transferor or which may be required by the Commissioner.

(b) Before a tax-free transfer is made, the transferor should satisfy himself of the exempt status of the transferee and the bona fides of the transaction. If not fully satisfied, he should communicate with the Commissioner and report all the circumstances and await the Commissioner's advice before making the transfer.

(c) If transfers to unauthorized persons, or transfers otherwise unwarranted, are made, tax and penal liability will be incurred.

[Regs. 88, 6 F. R. 4935, as amended by T. D. 5632, 13 F. R. 3734]

#### SUBPART D—REGISTRATION AND IDENTIFICATION OF FIREARMS

§ 319.31 *Registration of firearms.* Under section 3261 (b), I. R. C., every person having in the continental United States a firearm (a) possessed by him on July 26, 1934 (the effective date of the National Firearms Act), not already registered, or (b) acquired since that date not in conformity with the provisions of part VIII, subchapter A, chapter 27, and subchapter B, chapter 25, of the Internal Revenue Code, must register such firearm on Form 1 (Firearms), in duplicate, with the collector for the district in which such person resides. The duplicate form, after proper endorsement, will be returned to the registrant by the collector and the original forwarded to the Commissioner.

§ 319.32 *Identification of firearms.* Each manufacturer and importer of a firearm shall identify it by stamping, or otherwise conspicuously placing or causing to be stamped or placed thereon, in a manner not susceptible of being readily obliterated or altered, the name and location of the manufacturer or importer; and the serial number, caliber, and model of the firearm. None of the data indicated may be omitted except with the approval of the Commissioner.

#### SUBPART E—IMPORTATION AND EXPORTATION

§ 319.33 *Importation.* (a) The burden of proof is affirmatively on any person importing or bringing a firearm into the continental United States, or, on or after

March 15, 1946, Puerto Rico, the Virgin Islands, Hawaii, or Alaska, to show to the satisfaction of the Secretary, prior to importation (see § 319.1 (a)), that the firearm is to be lawfully used and is unique or of a type unobtainable within the United States or such Territory or possession. One desiring to import or bring a firearm into the continental United States, or, on or after March 15, 1946, Puerto Rico, the Virgin Islands, Hawaii, or Alaska shall file application in duplicate on Form 6 (Firearms) with the Commissioner of Internal Revenue. The application shall show the intended port or place of importation and describe the firearm intended for importation accurately and in detail, including, as far as practicable, the data indicated by § 319.32. The reasons for the proposed importation and the purposes for which the firearm is intended must be clearly shown. To justify importation it must be satisfactorily demonstrated that the desired firearm is unique or of a type unobtainable without importation. If uniqueness is claimed, it must be specifically indicated in what particulars the firearm is unique. If the application is based on alleged unobtainability, the differences between the desired firearm and other firearms of the same general character obtainable without importation must be clearly shown. The applicant will be notified of the approval or disapproval of the application. If it is approved, the certificate will be returned to the applicant to be filed with the collector of customs at the port of importation. Collectors of customs will not permit release of the firearm from customs custody, except for exportation, unless covered by an approved application.

(b) The importation of firearms into a Territory or possessions of the United States other than continental United States, and, on and after March 15, 1946, Puerto Rico, the Virgin Islands, Hawaii, and Alaska will be under the control of the governing authorities of such Territory or possessions. (See § 319.36.)

(c) Any person importing or bringing a firearm into the continental United States is subject to tax upon the subsequent transfer of such firearm, which tax is additional to any duty upon the importation of the firearm. An importer (see section 2733 (d), I. R. C.) of firearms is subject to the requirements as to forms

and records, the same as a domestic manufacturer.

[T. D. 5501, 11 F. R. 2770]

§ 319.34 *Exemption from tax.* (a) One desiring to export a firearm free of transfer tax must file with the Commissioner an application for exemption certificate in duplicate on Form 5 (Firearms). The application shall be supported by a certified copy of a written order or contract of sale showing that the firearm is to be shipped to a foreign destination, and such other satisfactory evidence of intended exportation as may be required by the Commissioner. Where there is no order or contract of sale a statement of the circumstances which establish the right of exemption from transfer tax shall be included.

(b) Where it is desired that a transfer to the exporter shall be tax free the transferor shall likewise file an application for a certificate of exemption supported by evidence that the transfer will start the firearm in course of exportation.

(c) If the application is approved, the Commissioner will execute the exemption certificate and return the duplicate to the applicant. Shipment shall not be made without payment of transfer tax until the approved certificate is received.

(d) Issuance of the certificate will suspend assertion of tax liability for a period of six months from the date of issuance. Within this 6-month period there must be furnished to the Commissioner satisfactory evidence of exportation consisting of (1) a copy of the export bill of lading, or (2) a certificate by the agent or representative of the export carrier showing actual exportation of the article; and (3) a certificate of landing signed by a customs officer of the foreign country to which the article is exported, or (4) where such foreign country has no customs administration, a sworn statement of the foreign consignee covering the receipt of the article. Issuance of exemption certificates and furnishing of the required evidence will relieve from liability the actual exporter and one selling to the exporter for export. Where satisfactory evidence of actual exportation is not furnished within the stated period the tax will be assessed.

(e) The procedure indicated will not be necessary in the case of transfers for export between registered taxpayers.

**NOTE:** Treasury Decision 5536, Sept. 10, 1946, 11 F. R. 10282, provides in part as follows: On and after October 1, 1946, the procedure outlined in § 319.34 shall be followed with respect to sale by manufacturers and producers of the articles enumerated in chapters 25 and 29 of the Internal Revenue Code, when such articles are sold to foreign governments for export.

[Regs. 88, 6 F. R. 4935, as amended by T. D. 5536, 11 F. R. 10282]

**§ 319.35 Refunds.** (a) Where, after payment of tax by the manufacturer, a firearm is exported, a claim for refund on Form 843 may be submitted.

(b) If a manufacturer waives all claim for refund of tax paid on a firearm which is exported, refund may be made to the exporter. A claim for refund by an exporter of tax paid by a manufacturer should be accompanied by waiver of the manufacturer and proof of tax payment by the latter.

**§ 319.36 Territories and insular possessions.** (a) Transfers of firearms to persons in the Territories and insular possessions of the United States are exempt from transfer tax, provided title in cases involving change of title (and custody or control, in cases not involving change of title) does not pass to the transferee or his agent in the continental United States. However, such exempt transactions must be covered by approved exemption certificates and supporting documents corresponding to those required in the case of firearms exported to foreign countries, except that the Commissioner may vary the requirements set forth in this part in accordance with the requirements of the governing authority of a Territory or insular possession. Exemption certificates covering shipments to Territories and insular possessions will not be approved without compliance with the requirements of the governing authorities thereof.

(b) In the case of a nontaxable consignment to a person in a Territory or possession of the United States, the exemption extends only to such consignment and not to prior transfers. A transfer to the person making such consignment is taxable.

#### SUBPART F—ADMINISTRATIVE PROVISIONS

**§ 319.38 Records.** (a) Every manufacturer, importer, and dealer (including pawnbroker) shall make and keep at his place of business a record showing (1) the manufacture, receipt, transfer, or

other disposition of all firearms taxable under the Code, (2) the date of such manufacture, receipt, transfer, or disposition, (3) the number, model, and trade name or other mark identifying each firearm, and (4) the name and address of the person to whom any firearm is transferred or otherwise conveyed.

(b) This record must be preserved for a period of at least four years from the date of disposition of the firearm, and be at all times readily accessible for inspection.

**§ 319.39 Returns.** (a) Immediately upon the manufacture, receipt, transfer, or other disposition of any firearm every manufacturer, importer, dealer other than pawnbroker, and pawnbroker, shall execute an accurate return under oath on either Form 2 (Firearms) or Form 3 (Firearms), in triplicate, setting forth the information called for in § 319.38, above. All transactions occurring during a single day may be included in one return filed at the close of that business day. These returns shall be filed in duplicate with the collector of the district wherein the business of the person making the return is located. The original will be forwarded to the Commissioner, and the duplicate retained by the collector. The triplicate will be retained by the person making the return for a period of four years and be at all times readily accessible for inspection.

(b) Return forms will be supplied by collectors of internal revenue upon application.

**§ 319.40 Failure to make returns; substitute returns.** (a) If any person required by the regulations in this part to make returns shall fail or refuse to make any such return within the time prescribed by the regulations in this part or designated by the Commissioner, then the return shall be made by an internal revenue officer upon inspection of the books, but the making of such return by an internal revenue officer shall not relieve the person from any default or penalty incurred by reason of failure to make such return.

(b) Any officer designated by the Commissioner shall have authority to examine the books, papers, and records kept pursuant to the regulations in this part, and may require the production of any books, records, papers, or statements of account necessary to determine any liability to the tax or the observance of

the provisions of the regulations in this part.

(c) Any person failing to keep records or make returns is liable to fine and imprisonment as provided in section 2729, I. R. C.

(d) Any person assisting in the preparation of fraudulent returns is liable to fine and imprisonment as provided in section 3793 (b) (1), I. R. C.

§ 319.41 *Orders for stamps.* (a) Each order for stamps to be used under the regulations in this part shall be made in writing to the collector or duly authorized deputy collector in the internal revenue district in which the stamps are to be used, showing the date of the order, the number of firearms stamps applied for, and the name and address of the purchaser, and shall be signed in ink by the purchaser.

(b) The collector shall preserve the orders for stamps sold by him for at least four years.

§ 319.42 *Stamps authorized.* \$1 and \$200 adhesive stamps bearing the words "Firearms Act" have been prepared and distributed, and only such stamps shall be used for the payment of the transfer tax.

§ 319.43 *Reuse of stamps prohibited.* A stamp once affixed to one instrument can not lawfully be removed and affixed to another.

§ 319.44 *Assessment of taxes not paid by stamp.* (a) In cases where the transfer tax has not been paid and the taxpayer refuses to execute Form 4 (Firearms) and affix the stamp, the transfer tax shall be reported for assessment. When an assessment is paid a receipt on Form 1 will be issued. In those instances where stamps are purchased and affixed to the order, receipt on Form 1 will not be issued. (See § 319.25.)

(b) Special tax which the taxpayer refuses or fails to pay may likewise be reported for assessment.

§ 319.45 *Notice and demand for tax: Penalty and interest.* (a) Where assessment is made, and payment is not made within 10 days after the issuance of the first notice and demand (Form 17), there will accrue under section 3655, I. R. C., a 5 percent penalty and interest at the rate of 6 percent per annum computed upon the entire assessment from the date of issuance of Form 17 until date of payment.

Where assessment is settled by partial payments, interest is computed at the above-prescribed rates from the date of the first 10-day notice through the date of first payment and on the balance from the next succeeding day to the date of the next payment until the assessment is paid in full.

(b) If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 percent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 percent penalty applies. The filing of the claim does not stay the collection of interest, which continues to run for the full period that intervenes between the date of the first notice and demand and the date of payment.

§ 319.46 *Jeopardy assessment.* (a) Whenever, in the opinion of the collector, it becomes necessary to protect the interests of the Government by effecting immediate collection of tax, the matter shall be promptly reported to the Commissioner by telegram or letter showing the reasons therefor. The communication must state the full name and address of the person involved, the kind and amount of tax due, and the period involved, so that the Commissioner can immediately assess the tax, together with all penalties and interest due. Such tax, penalties, and interest will, upon assessment, become immediately due and payable, and the collector shall, without delay, issue a notice and demand for payment thereof in full.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, collection of which is stayed, at the time at which such amount would normally be due.

(c) Upon refusal to pay, or failure to pay or give bond, the collector shall proceed immediately to collect the tax, penalty, and interest, by distraint, without regard to the 10-day period after notice and demand prescribed in section 3690. (See § 319.45.)

§ 319.47 *Stamps rendered useless, affixed in error, or for which the owner*

*has no use.* Where a purchaser receives stamps from the Government which have been rendered useless by gumming or sticking together, they may be exchanged by a collector for other stamps of exactly the same quantity and denomination. Amounts paid for stamps rendered useless by gumming or sticking together after receipt by the purchaser, or used in excess, or on instruments not actually effective, or on instruments not subject to tax, or for which the owner has no use, may be refunded, upon claim properly presented to the collector.

§ 319.48 *Claims.* All claims for the redemption of or allowance for stamps must be presented to the collector on Form 843 within four years after the purchase of said stamps from the Government. In filing a claim for the redemption of or allowance for stamps, the stamps involved should be submitted therewith, or if it is impracticable to remove the stamps from the instruments to which they are attached, they should be presented to a deputy collector or other internal revenue representative, who shall write on the face of the stamps the words "Claim for refund filed" and attach to the claim a statement showing that such indorsement has been made. In any case where the actual date of purchase of the stamps from the Government can not be given, it must be definitely shown in the claim whether they were so purchased from the Government within four years prior to the date of filing of the claim.

§ 319.49 *Refunds.* As indicated in this part, the transfer tax is ordinarily paid by the purchase and affixing of stamps, while special tax stamps are issued in payment of special taxes. However, in exceptional cases, such taxes may be paid pursuant to assessment. (See § 319.44.) Claims for refund of amounts so paid must be presented to the collector on Form 843 within four years next after payment of the taxes.

## Part 320—Retailers' Excise Taxes

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**AUTHORITY:** §§ 320.1 to 320.77 issued under 53 Stat. 467, 55 Stat. 720; 26 U. S. C. 2410, 3791.

**NOTE:** Order, Acting Secretary of the Treasury, June 30, 1947, 12 F. R. 4397, authorized the exemption from the taxes imposed by chapters 19 and 29 of the Internal Revenue

Code (26 U. S. C., Chapters 19 and 29), with respect to articles sold on or after June 1, 1944, to any corporation created by act of Congress to act in matters of relief under the treaty of Geneva of August 22, 1864 (American Red Cross), for its exclusive use, at a price not including such taxes.

NOTE: Redesignation noted at 14 F. R. 5200.

#### SUBPART A—GENERAL PROVISIONS

§ 320.1 *Meaning of terms.* As used in the regulations in this part:

(a) The terms defined in the applicable provisions of law shall have the meanings so assigned to them.

(b) The phrase "every person who sells at retail" means any person engaged in the business of selling articles to a purchaser at retail.

(c) The term "exporter" means the person named as shipper or consignor in the export bill of lading.

(d) The term "exportation" means the severance of an article from the mass of things belonging within the United States with the intention of uniting it with the mass of things belonging within some foreign country or within a possession of the United States.

(e) The term "possession of the United States" includes the Philippine Islands, the Panama Canal Zone, the Virgin Islands, Guam, Puerto Rico, American Samoa, Wake, Palmyra, and the Midway Islands.

(f) The term "sale" means an agreement whereby the seller transfers the property (that is, the title or the substantial incidents of ownership) in goods to the buyer for a consideration called the price, which may consist of money, services, or other things.

(g) The term "taxable article" means any article taxable under chapter 19 of the Internal Revenue Code.

(h) The term "vendor" includes a lessor.

(i) The term "purchaser" includes a lessee.

(j) The term "armed forces of the United States" means the "military or naval forces of the United States" as defined by section 3797 (a) (15) of the Code, as amended by section 511 of the Revenue Act of 1942.

[Regs. 51, 6 F. R. 4965, as amended by T. D. 5191, 7 F. R. 10129]

§ 320.2 *Effective period.* (a) The taxes imposed under chapter 19 of the Internal Revenue Code are applicable to

articles sold or leased on and after October 1, 1941. The amendment by section 613 of the Revenue Act of 1942 of section 2400, I. R. C., relating to the tax on jewelry, etc.; the amendment by section 623 of the Revenue Act of 1942 of section 2402 (b), I. R. C., relating to the sale and use of toilet preparations by beauty parlors, etc., and the amendment by section 618 of the Revenue Act of 1942 of section 2405, I. R. C., relating to leases, conditional sales, etc., became effective in each case on November 1, 1942.

(b) The provisions of section 302 of the Revenue Act of 1943, relating to the increases in the rates of tax on jewelry, etc., fur articles, and toilet preparations, the imposition of the retailers' excise tax on luggage, etc.; the amendment by section 303 of the Revenue Act of 1943 of section 2401, I. R. C., relating to persons making fur articles from pelts furnished by customers; the amendment by section 302 of the Revenue Act of 1943 affecting section 2405, relating to leases, conditional sales, existing contracts, etc.; and the amendment by section 310 of the Revenue Act of 1943 of section 2400, exempting silver-plated flatware from the tax on jewelry, etc., become effective in each case on April 1, 1944. The amendment made by section 307 of the Revenue Act of 1943 of section 2406 (a), I. R. C., terminating the exemption with respect to the sale of articles for the exclusive use of the United States, becomes effective on June 1, 1944.

[Regs. 51, 6 F. R. 4965, as amended by T. D. 5191, 7 F. R. 10129, T. D. 5353, 9 F. R. 3540]

§ 320.3 *Liability for tax.* (a) Every person who sells at retail any article covered by the regulations in this part, or leases such article, is liable for tax whether such sale or lease is made directly or through an agent.

(b) Under section 1652 (c), I. R. C., as added by section 302 of the Revenue Act of 1943, if certain conditions exist, the liability for the retailer's tax on luggage, etc., and the increases in existing retailers' taxes, imposed by the Revenue Act of 1943, is shifted from the retailer to the vendee. (See § 320.10.)

(c) The conditions under which such liability is shifted are as follows: first, there must be a bona fide contract made by a retailer prior to April 1, 1944, for the sale on or after such date of an article with respect to which a retailers' excise tax is imposed, or the rate of an existing retailers' excise tax is increased,

by the Revenue Act of 1943; second, the contract must not provide for the addition of such tax or increase in tax to the amount payable under such contract; and third, the contract must not expressly, or by implication, prohibit such addition to the contract price. Where these conditions are present the vendee becomes liable for the tax or additional tax imposed by the Revenue Act of 1943. In all other cases, the liability remains upon the retailer and the full amount of the tax is payable by him.

(d) A contract which provides that the tax shall be paid by the vendor, or otherwise negatives any addition to the contract price, is regarded as prohibiting an addition of the tax to such price.

(e) A vendee who is required to pay the tax shall make payment thereof to the vendor at the time the sale is consummated, and the tax shall be returned and paid to the collector by the vendor. (See § 320.70.) In case of a failure or refusal by the vendee to pay the tax to the vendor, the vendor shall report the facts to the Commissioner for direct collection of the tax from the vendee. [Regs. 51, 6 F. R. 4965, as amended by T. D. 5353, 9 F. R. 3541]

§ 320.4 *When tax attaches.* (a) In general, the tax attaches when the title to the article sold passes from the retailer to a purchaser.

(b) When title passes is dependent upon the intention of the parties as gathered from the contract of sale and the attendant circumstances. In the absence of expressed intention, the legal rules of presumption followed in the jurisdiction where the sale is made govern in determining when title passes. Generally, title passes upon delivery of the article to the purchaser or to a carrier for the purchaser.

(c) In the case of a sale on credit, it is immaterial whether or not the purchase price is actually collected.

(d) Where an article is consigned to any person for sale at retail and the consignor maintains control over the terms and prices for which the article may be sold by the consignee, the consignor is considered to be the "person who sells at retail" when the consignee sells the taxable article.

(e) Where an article is consigned to any person for sale at retail and the consignor maintains no control over the terms and prices for which the article

may be sold at retail by the consignee, such consignee is considered the "person who sells at retail" when such article is sold by him.

(f) In the case of an installment sale, where title does not pass until a future date, a conditional sale, or a lease, a proportionate part of the tax attaches on each payment. See § 320.10.

[Regs. 51, 6 F. R. 4965]

§ 320.5 *Basis of tax on sales, generally.* (a) The tax is imposed on the sale by the retailer of any of the articles enumerated in the regulations in this part. The provisions of law quoted above embody the rules for determining the sale price, which is the basis of the tax. In general, this should be the retailer's actual price at the point of distribution or sale. In determining the sale price, for tax purposes, there shall be included any charge incident to placing the article in condition packed ready for shipment. There shall be excluded (1) the amount of the tax, whether or not billed as a separate item, and (2) (subject to the provisions of § 320.8) transportation, delivery, insurance, installation, or other charges (not required by the preceding sentence to be included). There may also be excluded the amount of any retail sales tax imposed by any State or Territory or political subdivision of the foregoing, or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, but such amount shall be excluded only if stated as a separate charge (and in the exact amount of tax) on the invoice, bill, or other memorandum of sale rendered to the purchaser.

(b) Where articles are sold on credit, the tax is to be returned and paid to the collector of internal revenue during the month succeeding that in which the sales are made, even though the price may not be paid to the retailer until a later date.

(c) The sale price of any article covered by the regulations in this part may be payable in whole or in part in property. Thus, where a dealer accepts an article in trade as partial or full payment for the purchase price of any taxable article, the amount allowed for the article accepted in trade but not less than the fair market value thereof, must be included in the determination of the tax due on such sale. If the article accepted in such a "trade-in" transaction is one covered by the regulations in this part,

the resale thereof will be subject to the tax.

(d) The giving of a premium in consideration of the return of wrappers, labels, coupons, trading stamps, or other scrip, delivered or sold in connection with the sale of a commodity, constitutes a taxable transaction, and the person so giving the premium is considered to be one who sells at retail.

[Regs. 51, 6 F. R. 4965]

§ 320.6 *Charges for coverings, containers, etc., generally.* Any charges for coverings, containers, etc., incident to placing an article in condition packed ready for shipment shall be included as a part of the sale price for the purpose of computing the tax. Therefore, the amount paid for the article and its covering or container is the basis for computing the tax even though a separate charge for such covering or container is billed on the invoice.

[Regs. 51, 6 F. R. 4966]

§ 320.7 *Exclusion of tax—(a) Federal tax.* (1) The tax imposed by chapter 19 of the Internal Revenue Code on the retailer's sale of an article is by statute not a part of the taxable price of the article. Where the Federal tax is billed as a separate item, the amount thereof should be excluded in determining the sale price upon which the tax is to be computed. Where the Federal tax is not billed as a separate item, it will be presumed that the amount of the tax is included in the price charged for the article, and such amount will be excluded by an appropriate computation in determining the taxable sale price.

(2) Thus, where an article is sold for \$100 and an additional sum of \$10 is billed as tax, it is clear that \$100 is the taxable sale price and \$10 the amount of tax due thereon at the prescribed rate of 10 percent. Where the article is sold for \$100 with no separate billing or indication of the amount of the tax, it will be presumed that the tax is included in the \$100, and the tax computed accordingly on the basis of a sales price exclusive of the tax. Since the rate of tax is 10 percent, the billed price of \$100 represents the taxable sales price (100 percent) plus the tax due thereon (10 percent), or 110 percent. Since 10 percent is  $\frac{1}{11}$  of 110 percent, the tax may be computed on the basis of a sales price exclusive of the tax by taking  $\frac{1}{11}$  of the billed price.

(b) *State and local taxes.* (1) A retail sales tax imposed by a State, or Territory, or political subdivision of the foregoing, or by the District of Columbia, may be excluded from the taxable price of an article only when billed as a separate item; if not so billed, the amount of such tax must be included in the taxable sales price.

(2) This exclusion relates to State or local taxes imposed with respect to the sale of the article, regardless of whether the vendor or vendee is liable for payment of the tax. However, it does not include other levies, as, for example, a State income tax payable by a retailer upon the net profits derived from his operations.

(3) Where the amount of any State or local retail sales tax is excluded from the taxable sales price of an article, the taxpayer must retain a copy of the invoice, bill, or other memorandum of sale rendered the purchaser or other evidence satisfactory to the Commissioner to show that the amount of the retail sales tax so excluded was stated as a separate charge.

[Regs. 51, 6 F. R. 4966]

§ 320.8 *Exclusion of charges for transportation, delivery, etc., generally.* Charges for transportation, delivery, insurance, installation, and other charges actually incurred in connection with the delivery of an article to a purchaser pursuant to a bona fide sale, are to be excluded in computing the tax.

[Regs. 51, 6 F. R. 4966]

§ 320.9 *Discounts and adjustments, generally.* (a) Readjustments in sale price (such as allowable discounts, rebates, bonuses, etc.) can not be anticipated. The tax must be based upon the original price unless the readjustments have actually been made prior to the close of the month in which the tax upon the sale is returned. However, if the price upon which the tax was computed is subsequently readjusted, a proper credit may be taken against the tax due on a subsequent return, or an appropriate claim for refund may be filed. (See § 320.76.)

(b) Commissions to agents, or allowances, payments, or adjustments made to persons other than the retailer's vendee, are not deductible from the sale price under any conditions for purposes of computing the tax.

[Regs. 51, 6 F. R. 4966]

§ 320.10 *Basis of tax on leases, installment sales, conditional sales, and sales under chattel mortgage arrangements.*

(a) Special provision is made in the law for computing taxes due in the case of leases of articles, installment sales, so-called conditional sales and sales made on and after November 1, 1942 (see § 320.2) under chattel mortgage arrangements. The term "lease" means a continuous right to the possession or use of a particular article for a period of time. It does not include the use of an article merely as occasion demands, but the contract must give the lessee the right to possess or use the article, without interruption, for a period of time.

(b) Where an article is (1) leased by the retailer, (2) sold under an installment-payment contract with title reserved, (3) sold under a conditional-sale contract with payments to be made in installments, or (4) sold on or after November 1, 1942 under a chattel mortgage arrangement, with payments to be made in installments, a proportionate part of the total tax shall be paid upon each payment made with respect to the article. The tax is to be returned and paid to the collector during the month following that in which the payment is made.

(c) In the case of an article taxable under sections 2400, I. R. C. (relating to jewelry, etc.), and 2401, I. R. C. (relating to furs), the tax does not apply when (1) the lease, or installment sale, or conditional sale contract, (2) delivery of the article under the contract, and (3) payment of a part of the consideration, were made prior to October 1, 1941. In the case of an article sold prior to November 1, 1942, under a chattel mortgage arrangement, the tax is payable upon the full sales price at the time the sale was made, regardless of whether provision is made for the payment of the sales price in installments.

(d) If (1) the lease, installment sale, conditional sale, or chattel mortgage arrangement, (2) delivery of the article under the contract, and (3) payment of a part of the consideration, were made prior to April 1, 1944, the tax due is at the rate in force on March 31, 1944, and not at the increased rate provided for in section 1650 of the Internal Revenue Code, as amended by section 302 of the Revenue Act of 1943.

(e) In the case of articles taxable under section 1651 of the Internal Revenue Code, as added by section 302 of the

Revenue Act of 1943, (relating to luggage, etc), the tax does not apply if (1) the lease; or installment sale, or conditional sale contract, or chattel mortgage arrangement, (2) delivery of the article under the contract, and (3) payment of a part of the consideration, were made prior to April 1, 1944.

[T. D. 5191, 7 F. R. 10130 as amended by T. D. 5353, 9 F. R. 3541]

SUBPART B—GENERAL EXEMPTIONS

§ 320.20 *Sales to States or political subdivisions thereof and to the United States.*

(a) Under section 2406 (a), I. R. C., prior to the amendment thereof by section 307 (a) (1) of the Revenue Act of 1943, no tax attaches to articles sold by the retailer direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use, provided the exempt character of the sale is established as required by the regulations in this part. By virtue of the amendment of section 2406 (a), sales of articles by the retailer to the United States on or after June 1, 1944, are not exempt from tax, unless the sale is made pursuant to a contract entered into prior to such date, or to any agreement or change order supplemental to such contract bearing the same Government contract number.

(b) To establish the right to exemption from tax where the sale of an article is made by the retailer direct to the United States, any State, Territory of the United States, or any political subdivision of the foregoing, or the District of Columbia, for its exclusive use, it is necessary that (1) the retailer have definite knowledge prior to or at the time of sale, that the article is purchased for such use, and (2) he obtain from an authorized officer of the United States, the State, Territory of the United States, political subdivision, or District of Columbia, as the case may be, and retain in his possession a properly executed exemption certificate in the form prescribed by this section.

(c) Where the certificate is obtained subsequent to the sale but prior to the time the retailer is required to file a return covering taxes due for the month during which the sale was made he should include the tax on such sale in his return for that month, in the item "Total tax due," but may deduct an amount equivalent to the tax applicable to such sale and pay the net tax re-

sulting, making appropriate explanation either on the face of the return or on a rider attached thereto. If the certificate is not so obtained, the retailer must include the tax on such sale in his return for the month in which the sale was made. However, if the certificate is later obtained a claim for refund of tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313, I. R. C.

(d) The certificate required by this section must include an agreement that if the articles covered thereby are used otherwise than for the exclusive use of the United States, the State, Territory, political subdivision, or the District of Columbia, as the case may be, or if any of such articles are resold to employees or others, a responsible officer of the United States, State, Territory, or political subdivision, or the District of Columbia, as the case may be, will report and pay the tax on such sales to the collector for the district in which the sale is made.

(e) The certificate required by this section shall be in substantially the following form:

**EXEMPTION CERTIFICATE**

(For use by United States, States, Territories, or political subdivisions thereof, or the District of Columbia.)

-----, 19--  
(Date)

The undersigned hereby certifies that he is -----  
(Title of officer)

of -----  
(United States, State, Territory, or political subdivision, or District of Columbia) and that he is authorized to execute this certificate and that the article or articles specified in the accompanying order or on the reverse side hereof, are purchased from ----- for the exclusive use of ----- of -----  
(Name of company) (Government unit) (United States,

-----  
State, Territory, or political subdivision, or District of Columbia)

It is understood that the exemption from tax in the case of sales of articles under this exemption certificate to the United States, States, etc., is limited to the sale of articles purchased for their *exclusive use*, and it is agreed that if articles purchased tax free under this exemption certificate are used otherwise or are sold to employees or others, such fact will be reported and tax paid by

me to the collector of internal revenue for the district in which the sale was made. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution.

----- (Signature)  
(Title of officer)

(f) If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in § 320.72. If, upon inspection, it is discovered that a retailer's records with respect to any sale claimed to be tax free do not contain a proper certificate, as outlined above, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, tax shall be payable by the retailer on such sale.

(g) The articles covered by the exemption certificate must be fully identified as to nature, quantity, and date of sale. [Regs. 51, 6 F. R. 4967, as amended by T. D. 5353, 9 F. R. 3541]

§ 320.21 *Sales for export.* (a) To exempt from tax a sale for export it is necessary that two conditions be met, namely, (1) that the article be identified as having been sold by the retailer for export and (2) that it be exported in due course.

(b) In order to establish exemption from tax in the case of the sale of a taxable article for export it is necessary that the retailer maintain adequate records and have in his possession documentary evidence showing that the article was so sold.

[Regs. 51, 6 F. R. 4967]

§ 320.22 *Shipments to possessions of the United States.* (a) The same provisions as relate to sales for export and proof of exportation will apply to sales for shipment to a possession of the United States if the articles are in due course so shipped. (See §§ 320.1 and 320.21.)

(b) This exemption does not apply with respect to sales of articles for shipment to the Territories of Alaska and Hawaii for the reason that these Territories are by a statutory definition included in the term "United States."

[Regs. 51, 6 F. R. 4967]

§ 320.23 *Sales for resale.* (a) All sales of taxable articles by persons engaged in the business of selling such articles at retail are presumed to be sales at retail, unless the character of a sale as a sale for resale is evidenced either (1) by a "retailers' exemption certificate" furnished by the purchaser in the form outlined in this section, or (2) by equivalent proof of exemption.

(b) The following is the prescribed form of retailers' exemption certificate:

RETAILERS' EXEMPTION CERTIFICATE

-----, 19-----  
(Date)

The undersigned purchaser hereby certifies that he is engaged under the name of

-----  
(Name under which purchaser operates)  
located at -----, in selling at retail  
(Address)

articles subject to retailers' excise tax; that the article or articles specified and fully identified in the accompanying order, or on the reverse side hereof, are purchased from ----- for resale; and that  
(Name of vendor)

the retailers' excise tax payable in respect of retail sales of luggage, etc., under section 1651 of the Internal Revenue Code, and in respect of retail sales of jewelry, etc., furs, and toilet preparations under sections 2400, 2401 and 2402, respectively, and for the war period under section 1650, will be reported in returns filed by the undersigned with the Collector of Internal Revenue at -----

The undersigned understands that he must be prepared to establish by competent evidence that the articles were actually purchased for the purpose stated and that the tax due thereon was paid to the Government.

It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000.00, or to imprisonment for not more than five years, or both, together with costs of prosecution.

-----  
(Name)  
-----  
(Address)

(c) The proof of exemption considered equivalent to a "retailers' exemption certificate" is not restricted to any particular form, but must be in writing and show the name under which the purchaser is engaged in business, his business address, his intention to resell the articles at retail and pay tax thereon, and the Collector of Internal Revenue to whom the tax will be paid.

(d) Where the certificate of exemption or equivalent proof, as outlined in this section, is not procured by the retailer

from the purchaser prior to or at the time the retailer files his return for the month in which the sale for resale is made, the retailer must include the tax on such sale in such return. However, if the certificate or equivalent proof is later obtained, a claim on Form 843 for refund of the tax may be filed by the retailer or he may take credit upon a subsequent return, but such action must be taken within the 4-year period of limitation prescribed by section 3313, I. R. C. (See § 320.76.)

(e) If it is impracticable to furnish a separate certificate or equivalent proof for each purchase order, a single certificate, or equivalent proof, covering all sales between given dates (the period not to exceed a month) will be acceptable.

(f) The certificates of exemption or equivalent proof and proper records of invoices, orders, etc., relative to tax-free sales must be retained by the vendor selling for resale as provided in § 320.72 and must be readily accessible for inspection by internal revenue officers.

(g) Notwithstanding that an exemption certificate or equivalent proof with respect to any sale is obtained by the vendor, the latter shall be liable for the tax if in fact the sale is at retail.

(h) The provisions of this section apply to sales of toilet preparations in all cases except sales to operators of beauty parlors, etc. For special provisions relating to tax-free sales of toilet preparations to operators of beauty parlors, etc. see § 320.52.

[T. D. 5475, 10 F. R. 11343]

SUBPART C—JEWELRY, ETC.

§ 320.30 *Scope of tax.* The tax attaches to the sale by the retailer of:

(a) All articles commonly or commercially known as jewelry, whether real or imitation, regardless of the substance of which made, including articles to be carried in the hand, or hung on the arm, or carried or worn on the person, which are made of, ornamented, mounted or fitted with, pearls, precious or semi-precious stones, or imitations thereof;

(b) Pearls, precious and semiprecious stones and imitations thereof;

(c) All other articles made of, ornamented, mounted or fitted with, precious metals or imitations thereof;

(d) Articles specifically mentioned in section 2400, I. R. C., such as watches, clocks, cases and movements therefor,

gold, gold-plated, silver, or sterling flatware or hollow ware, and silver-plated hollow ware; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars.

[Regs. 51, 6 F. R. 4965, as amended by T. D. 5353, 9 F. R. 3542]

§ 320.31 *Jewelry.* (a) Jewelry in general includes articles designed to be worn on the person or apparel for the purpose of adornment and which in accordance with custom or ordinary usage are worn so as to be displayed, such as rings, chains, brooches, bracelets, cuff buttons, necklaces, earrings, beads, etc. The tax is imposed on the sale of any of such articles at retail, regardless of the substance of which made and without reference to their utilitarian value or purpose, unless for a purpose specifically exempted by law.

(b) Jewelry also includes articles to be carried in the hand, or hung on the arm, or carried or worn on the person, whether in pocket or bag or under the outer garments, such as cigarette cases, eyeglass cases, pencils, powder boxes, garter buckles, canes, purses or handbags, if made of, or ornamented, mounted or fitted with, pearls, precious or semiprecious stones, or imitations thereof. Such articles are likewise subject to tax without regard to their utilitarian value or purpose. (But see § 320.33 as to the taxability of articles where made of, or ornamented, mounted or fitted with, precious metals or imitations thereof, and § 320.61 relating to the taxability of purses, handbags, pocketbooks, etc.).

(c) For purposes of the tax, it is immaterial whether jewelry is real or imitation.

[T. D. 5102, 6 F. R. 6349, as amended by T. D. 5353, 9 F. R. 3542]

§ 320.32 *Pearls, precious and semiprecious stones, and imitations thereof.* The tax is imposed on the sale at retail of all pearls and precious or semiprecious stones, regardless of whether such pearls, precious or semiprecious stones are real or imitations, cut or uncut, whether drilled, mounted, or matched, and whether temporarily or permanently strung and whether with or without clasps. Beads are subject to the tax as jewelry if the beads are strung ready for use. The sale of loose beads is not subject to the tax unless such beads are pearls, precious or semiprecious stones, or imitations thereof. (But see § 320.31 for the taxability of certain articles

where made of, or ornamented, mounted or fitted with, pearls, precious or semiprecious stones, or imitations thereof.) [Regs. 51, 6 F. R. 4968, as amended by T. D. 5102, 6 F. R. 6350]

§ 320.33 *Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof.* (a) The tax is imposed on the sale at retail of any article, as distinguished from those articles commonly or commercially known as jewelry as described in § 320.31, which are made of, or ornamented, mounted or fitted with, precious metals or imitations thereof. The term "precious metals" includes platinum, gold, silver, and other metals of similar or greater value. The term "imitations thereof" includes platings and alloys of such metals. Any article, for example, photograph frames, book ends, ash trays, vanity cases, mesh bags, cigarette cases, etc., glassware, china, pottery, and like articles, which is ornamented with gold, silver, or other precious metals or imitations thereof, is subject to the tax.

(b) Examples of other articles which become subject to the tax when ornamented, mounted or fitted with, precious metals or imitations thereof are umbrellas, walking sticks, cigarette lighters, shoe buckles, etc. If, in the case of a fountain pen sold on or after October 1, 1941, a smokers' pipe sold on or after November 1, 1942, or a mechanical pencil sold on or after September 1, 1945, the only parts which consist of precious metals are essential parts not used for ornamental purposes, such fountain pen, smokers' pipe, or mechanical pencil is not subject to the tax. Such essential parts of a fountain pen are the pen point, lever clip, and the plain narrow band or bands placed on the cap for the purpose of preventing the cap from splitting or expanding. Such essential part of a smokers' pipe is the plain narrow band or bands placed on the shank of the pipe to prevent the shank from splitting. Such essential parts of a mechanical pencil are the tapered point holding the lead for writing, the clip, and the plain narrow band or bands placed on the barrel or cap, or both, for the purpose of preventing such part or parts from splitting or expanding. The tax will attach if the band or bands on a fountain pen, mechanical pencil, or smokers' pipe consist of precious metals or imitations thereof and have a combined width of more than  $\frac{3}{8}$  of an inch, or if the fountain pen,

mechanical pencil, or smokers' pipe has any parts other than the essential parts enumerated above which are made of, or ornamented, mounted or fitted with, precious metals or imitations thereof.

[Regs. 51, 6 F. R. 4968, as amended by T. D. 5191, 7 F. R. 10129, T. D. 5353, 9 F. R. 3542; T. D. 5479, 10 F. R. 12115]

§ 320.34 *Watches and clocks.* The tax is imposed on the sale at retail of watches and clocks or cases and movements therefor. The term "watches and clocks" includes all time-measuring devices whether actuated by weights, springs, or electrical energy, except watches sold on and after November 1, 1942, which are designated especially for use by the blind. (See § 320.2.)

[Regs. 51, 6 F. R. 4968, as amended by T. D. 5191, 7 F. R. 10129]

§ 320.35 *Gold, gold-plated, silver, or sterling flatware or hollow ware, and silver-plated hollow ware.* (a) The tax is imposed on the sale at retail of any gold, gold-plated, silver, or sterling flatware or hollow ware, and any silver-plated hollow ware. The terms "flatware and hollow ware" include all articles commonly or commercially known and sold as such in the trade. Any gold, gold-plated, silver, silver-plated, or sterling article which is not so known or sold in the trade as flatware or hollow ware, is subject to the tax as an article made of, ornamented, mounted or fitted with precious metals or imitations thereof.

(b) No tax attaches to the sale at retail of any article commonly or commercially known or sold in the trade as "silver-plated flatware".

[T. D. 5353, 9 F. R. 3542]

§ 320.36 *Opera glasses, lorgnettes, marine glasses, etc.* The tax is imposed on the sale at retail of opera glasses, lorgnettes, marine glasses, field glasses, or binoculars. These articles are specifically enumerated in the Code and the terms used are held to include only those which are portable instruments. Articles known as marine glasses, field glasses, and similar optical instruments which by reason of their size or weight are ordinarily mounted upon tripods or other bases, are not subject to the provisions of section 2400, I. R. C.

[Regs. 51, 6 F. R. 4968, as amended by T. D. 5353, 9 F. R. 3542]

§ 320.37 *Exemptions.* (a) Under the specific provisions of the Code the tax

does not attach to the sale on and after October 1, 1941, of surgical instruments, frames or mountings for spectacles or eye-glasses, or articles used for religious purposes; nor does the tax attach to the sale on and after November 1, 1942, of buttons, insignia, cap devices, chin straps, and other devices prescribed for use in connection with the uniforms of the armed forces of the United States. (See § 320.2.) For definition of "armed forces of the United States," see § 320.1 (j). For exemptions in the case of certain kinds of fountain pens, mechanical pencils, smokers' pipes, and watches, see §§ 320.33 and 320.34.

(b) The phrase "articles used for religious purposes" means articles of a description ordinarily taxable but which are commonly used in religious devotion. However, an article commonly used for non-religious purposes may be sold tax free if purchased from the retailer for use exclusively for religious purposes.

(c) Where an article otherwise taxable is sold for religious purposes and the article is of such nature as to be usable for non-religious as well as religious purposes, for example, crosses, candlesticks, vases, etc., the retailer must have in his possession a statement from the consumer certifying that the article was purchased solely for religious purposes in order to establish his right to exemption from the tax on the sale. However, if the article is of such nature as to be usable only for religious purposes, for example, a crucifix, rosary, chalice, etc., a statement from the purchaser or consumer will not be required to establish the tax exemption.

[Regs. 51, 6 F. R. 4968, as amended by T. D. 5353, 9 F. R. 3542, T. D. 5479, 10 F. R. 12115]

§ 320.38 *Rate of tax.* With respect to articles sold during the period October 1, 1941, through March 31, 1944, both dates inclusive, the tax is payable by the retailer at the rate of 10 percent of the price for which sold. With respect to articles sold on or after April 1, 1944, the tax is payable by the retailer at the rate of 20 percent of the price for which sold, except that in the case of watches selling at retail for \$65 or less, and alarm clocks selling at retail for \$5 or less, the tax is at the rate of 10 percent of the price for which sold. The price for which an article is sold shall be determined in accordance with the provisions of §§ 320.5 to 320.10, inclusive, and § 320.74. [T. D. 5558, 12 F. R. 2559]

## SUBPART D—FURS

§ 320.40 *Scope of tax.* (a) The tax attaches to the sale by the retailer of certain articles as follows:

(1) Articles made of fur on the hide or pelt sold on or after October 1, 1941;

(2) Articles of which fur on the hide or pelt is the component material of chief value sold during the period October 1, 1941, through March 31, 1947, both dates inclusive; and

(3) Articles of which fur on the hide or pelt is a component material, the value of which is more than three times the value of the next most valuable component material, sold on or after April 1, 1947.

(b) The tax does not apply to sales of raw fur.

(c) The tax is not confined to the sale of fur articles used as wearing apparel but applies to sales of any fur article suitable for any use, such as fur rugs, fur robes, etc.

(d) In determining, for the purposes of paragraph (a) (2) and (3) of this section whether the sale of an article of which fur is a component material is subject to tax, the value of such fur at the time of assemblage of the article must be compared to the value of each other single component at such time.

(e) Where fur is a component material of an article and exemption with respect to the sale of such article is claimed on the ground that the value of the fur as compared with that of the most valuable of the other component materials is not such as to render the sale taxable under paragraph (a) (2) or (3) of this section, the retailer must maintain adequate records or have in his possession proper documentary evidence to establish that fact to the satisfaction of the Commissioner. In the absence of such records or documentary evidence, the tax must be paid with respect to the sale of such article at retail.

[T. D. 5558, 12 F. R. 2559]

§ 320.41 *Fur articles made from pelts furnished by customers.* (a) On and after April 1, 1944, where a person, who is engaged in the business of dressing or dyeing fur skins or of manufacturing, selling, or repairing fur articles, produces a taxable fur article from fur on the hide or pelt furnished, directly or indirectly, by a customer, and the article is for the use of, and not for resale by, such cus-

tomers, the transaction shall be deemed to be a sale at retail and the person producing the article shall be deemed to be the person selling such article at retail for the purposes of the tax.

(b) The tax applicable to such transactions is to be computed upon the fair retail market value of the finished article, as determined by the Commissioner. Generally the fair retail market value may be considered as the retail sales price for which the same or a similar finished article is sold by retailers generally in the ordinary course of the retail trade. [T. D. 5353, 9 F. R. 3542]

§ 320.42 *Rate of tax.* With respect to articles sold during the period October 1, 1941, through March 31, 1944, both dates inclusive, the tax is payable by the retailer at the rate of 10 percent of the price for which sold. With respect to articles sold on or after April 1, 1944, the tax is payable by the retailer at the rate of 20 percent of the price for which sold. The price for which an article is sold shall be determined in accordance with the provisions of §§ 320.5 to 320.10, inclusive, and § 320.74.

[T. D. 5558, 12 F. R. 2559]

## SUBPART E—TOILET PREPARATIONS, ETC.

§ 320.50 *Scope of tax.* (a) The tax attaches to the sale by the retailer of the articles enumerated in section 2402, I. R. C., and similar articles commonly or commercially known as toilet articles, which are used or applied, or intended to be used or applied, for toilet purposes. Any article advertised or held out for toilet purposes, or for any purpose for which the articles enumerated in the law are customarily used, will be subject to the tax regardless of the name by which it may be known or distinguished. The tax attaches to the sale by the retailer of any preparation which is used or applied or intended to be used or applied for toilet purposes or used in connection with the bath or care of the body, or applied to the clothing as a perfume or to the body as a toilet article. The fact that any particular product, preparation, or substance coming within the scope of this law may have, or be held out to have, a medicinal, stimulating, remedial, or curative value does not exempt it from the tax, if it is used, or held out for use, as an adjunct to the toilet or for toilet purposes.

(b) Shampoo oils and liquids of the so-called "soapless" variety are taxable as toilet preparations. Witch hazel; bay

rum; bath crystals and salts; deodorants for personal use; hair and scalp lotions for treatment of falling hair, dandruff, etc.; foot powder; face creams and lotions; hand lotions; lipsticks; rouges, face powders; eyebrow and eyelash mascara; eye shadow creams; eau de cologne; brilliantine and hair oils; baby oils and baby powders; oils, creams, etc., for the prevention of sunburn; rose water and glycerine; breath sweetening pellets other than chewing gum or candy; sachets; stain removers for use in removing ink, berry, and other stains from the body; nail lacquers, cuticle removers and softeners, polish removers, etc.; depilatories; eye washes; after shaving lotions; theatrical make-up; hair bleaches and dyes; permanent waving solutions; toilet pumice; styptics; pore cleansers; and suntan oils, are examples of the type of article taxable under this section, but the exclusion from this list of an article otherwise within the scope of the articles enumerated in section 2402 will not operate to exclude such article from the taxable class.

[Regs. 51, 6 F. R. 4968, as amended by T. D. 5353, 9 F. R. 3542]

§ 320.51 *Rate of tax.* With respect to articles sold during the period October 1, 1941, through March 31, 1944, both dates inclusive, the tax is payable by the retailer at the rate of 10 percent of the price for which sold. With respect to articles sold on or after April 1, 1944, the tax is payable by the retailer at the rate of 20 percent of the price for which sold. The price for which an article is sold shall be determined in accordance with the provisions of §§ 320.5 to 320.10, inclusive, and § 320.74.

[T. D. 5558, 12 F. R. 2559]

§ 320.52 *Sales to beauty parlors, etc.—*

(a) *Sales made during the period October 1, 1941, through October 31, 1942, both dates inclusive.* Any person who, during the period October 1, 1941, through October 31, 1942, both dates inclusive, sells toilet preparations taxable under section 2402 (a), I. R. C., to another person operating a barber shop, beauty parlor, or similar establishment, whether for use in the operation thereof or for resale purposes, shall be deemed to have sold such articles at retail and must make a return and pay tax on all such sales as provided in §§ 320.70 and 320.71. Where the operator of a barber shop, beauty parlor, or similar establishment resells

such articles at retail, he is liable on the resale for the tax imposed by section 2402 (a). However, in determining the tax to be paid by the operator on such resales before November 1, 1942, a credit may be taken in the amount of the tax paid by the operator's vendor under section 2402 (a). (See § 320.75.)

(b) *Sales made on and after November 1, 1942.* (1) Any person who, on and after November 1, 1942 (see § 320.2), sells toilet preparations taxable under section 2402 (a) to another person operating a barber shop, beauty parlor, or similar establishment for use in the operation thereof and not for resale, shall be deemed to have sold such articles at retail and must make a return and pay tax on all such sales as provided in § 320.70. No tax attaches to the sale of such articles on and after November 1, 1942, to any person operating a barber shop, beauty parlor, or similar establishment for the express purpose of resale.

(2) The sale of any article described in section 2402 (a) to any person operating a barber shop, beauty parlor, or similar establishment shall be presumed to be made for use in the operation thereof, unless (i) at the time of sale, the vendor is furnished by the vendee with a "certificate of purchase for resale" substantially in the form as outlined in this section, or (ii) (if such certificate is not furnished at that time) the vendor has written evidence at the time of sale showing that the sale is made for resale and the vendor is subsequently furnished with a "certificate of purchase for resale". Where the "certificate of purchase for resale" is not furnished at the time of sale, the evidence required to be had by the vendor is not restricted to any particular form of document, so long as such evidence is in writing and shows that the sale is made for resale and not for use in the operation of the barber shop, beauty parlor, or similar establishment.

(3) Where a sale is made for resale purposes and the "certificate of purchase for resale" is obtained prior to the time the retailer makes his return for the month in which the sale is made, no tax on such sale should be included in his return. If the "certificate of purchase for resale" is not so obtained, the retailer must include the tax on such sale in his return for the month in which the sale is made. However, if the "certificate of purchase for resale" is later obtained, a

claim for refund of the tax paid may be filed on Form 843, or a credit taken upon a subsequent return, but such action must be taken within the four-year period of limitation prescribed by section 3313 of the Internal Revenue Code.

(4) The articles covered by the "certificate of purchase for resale" must be fully identified as to nature, quantity and date of sale.

(5) Following is the form of "certificate of purchase for resale" which shall be adhered to in substance:

**CERTIFICATE OF PURCHASE FOR RESELL**

(For use by operators of barber shops, beauty parlors, or similar establishments in purchasing for resale purposes articles described in section 2402 (a) of the Internal Revenue Code).

-----19-----  
Date

The undersigned purchaser hereby certifies that he is an operator of -----  
(State business in -----  
----- and that the  
which engaged)

----- in the order covered  
(State article purchased)  
by this certificate or on the reverse side hereof will be resold by him and not used in the operation of his business.

The undersigned understands that if the articles are used by him in the operation of his barber shop, beauty parlor, or similar establishment, or resold by him at retail, he will be liable for tax on such use or resale. It is understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a fine of not more than \$10,000 or to imprisonment for not more than five years or both, together with costs of prosecution. The undersigned also understands that he must be prepared to establish by competent evidence that the article was actually purchased for the purpose for which stated in this certificate.

-----  
(Name)

-----  
(Address)

(6) If it is impracticable to furnish a separate certificate for each order or contract, a certificate covering all orders between given dates (such period not to exceed a month) will be acceptable. Such certificate and proper records of invoices, orders, etc., relative to tax-free sales must be retained as provided in § 320.72. Where, upon inspection, it is discovered that the records of a retailer with respect to any sale claimed to be tax-free do not contain a proper certificate, as outlined in this section, with sup-

porting invoices and such other evidence as may be necessary to establish the exempt character of the sale, the tax shall be payable by the retailer on such sale.

(7) In any case where the operator of a barber shop, beauty parlor, or similar establishment uses in the operation of his business any article which was purchased by him on or after November 1, 1942, for resale purposes, such use shall be considered a sale at retail by such operator at the time the article is first set apart for such use. The tax shall be computed at a price equivalent to the amount paid by such person for the article. Where the operator of a barber shop, beauty parlor, or similar establishment resells at retail on or after November 1, 1942, any article previously purchased by him, such operator will be liable for the tax imposed under section 2402 (a) on such resale irrespective of the purpose for which such article was purchased. In determining the amount of tax to be paid by the operator on such resale on or after November 1, 1942, no credit or refund will be allowable for any amount which might previously have been paid as tax to the United States with respect to any prior sale of such article.

[T. D. 5191, 7 F. R. 10130]

**SUBPART F—LUGGAGE**

Source: §§ 320.60 and 320.61 contained in T. D. 5353, 9 F. R. 3542.

§ 320.60 *Scope of tax.* (a) The tax imposed by section 1651, I. R. C., as added by section 302 of the Revenue Act of 1943, attaches to the sale by the retailer on and after April 1, 1944, of all articles commonly and commercially known or sold as:

(1) Trunks, valises, traveling bags, suitcases, satchels, overnight bags, hat boxes for use by travelers, beach bags, bathing suit bags, brief cases made of leather or imitation leather, and salesmen's sample and display cases;

(2) Purses, handbags, pocketbooks, wallets, billfolds, and card, pass, and key cases; and,

(3) Toilet cases and other cases, bags, and kits (without regard to size, shape, construction, or material from which made) for use in carrying toilet articles or articles of wearing apparel.

(b) The terms "trunks", "valises", "traveling bags", "suitcases", "satchels",

“overnight bags”, “beach bags”, “bathing suit bags”, and “salesmen’s sample and display cases”, include all receptacles which are commonly and commercially known and sold as such regardless of their design, size, materials from which made, or the purpose for which they are to be used.

(c) The term “hat boxes for use by travelers” includes all receptacles commonly and commercially known and sold as such, which are designed for the purpose of conveying or carrying hats by hand or otherwise in traveling.

(d) The term “brief cases made of leather or imitation leather” includes all receptacles commonly or commercially known and sold as such, which are made of leather or imitation leather, regardless of size or the purpose for which purchased. This term also includes so-called “ring binders”, “portfolios”, “envelopes”, etc., which are made of leather or imitation leather, regardless of size, provided such articles are capable of being closed on all four sides by means of a zipper, lock, snap fastener, or some other such device.

(e) The terms “purses”, “handbags”, “pocketbooks”, “wallets”, “billfolds”, and “card, pass, and key cases” include receptacles commonly and commercially known and sold as such, regardless of design, size, or materials from which made, or the purpose for which they are to be used.

(f) The terms “toilet cases”, and “other cases, bags, and kits”, include all receptacles commonly and commercially known and sold for use in carrying toilet articles or articles of wearing apparel, regardless of their size, shape, construction, or materials from which made. These terms also include so-called “utility bags”, “furlough bags” and similar articles.

§ 320.61 *Rate of tax.* (a) The tax is payable by the retailer. The tax rate is 20 percent of the price for which the articles are sold. The tax applies to all sales made on and after April 1, 1944, as determined under §§ 320.5 to 320.10, inclusive, and § 320.74.

(b) No credit or refund shall be allowed against the retailer’s tax due on luggage, etc., for any tax previously paid by the manufacturer on his sale thereof under the provisions of section 3406 (a) (2) of the Code.

#### SUBPART G—MISCELLANEOUS PROVISIONS

§ 320.70 *Returns.* (a) Each person required to report a tax on the sale of any of the articles covered by the regulations in this part must prepare a return for each calendar month in duplicate on Form 728A in accordance with the instructions thereon. The original return must be under oath and must be verified before an officer duly authorized to administer oaths. If the amount of the tax is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath. The original return, together with the tax, must be filed with the collector of the district in which is located the principal place of business of the taxpayer (or, if he has no principal place of business in the United States, with the collector at Baltimore, Md.), on or before the last day of the month following that for which it is made.

(b) When the last day of the month in which the return is due falls on Sunday or a legal holiday the return may be filed with the collector of internal revenue, or his authorized representative, on the next secular or business day. A return must be forwarded to the collector for each month whether or not any liability has been incurred for that month. If a retailer ceases business the last return should be marked “Final return”.

(c) The taxes collected and paid under section 1652 (c), I. R. C., as added by section 302 of the Revenue Act of 1943 (see § 320.3), should be included in the regular monthly return on Form 728A filed by the vendor as prescribed in this section. If a vendee, liable for the tax, refuses to pay to the vendor the tax due, the vendor should report to the Commissioner the name and address of such vendee, the nature of the transaction, the amount involved in the contract, and the date of the payment of such amount. A copy of the contract involved should also be furnished.

[Regs. 51, 6 F. R. 4970, as amended by T. D. 5353, 9 F. R. 3543, T. D. 5677, 13 F. R. 7302]

§ 320.71 *Payment of taxes.* All taxes are due and payable to the collector of internal revenue, without assessment by the Commissioner or notice from the collector, at the time fixed for filing the return. If the tax is not paid when due there shall be added as part of the tax interest at the rate of 6 percent per

annum from the time the tax became due to the actual date of payment or assessment, whichever is prior. For provisions with respect to interest generally, including interest on assessments, see § 320.77. [Regs. 51, 6 F. R. 4970, as amended by T. D. 5353, 9 F. R. 3543]

§ 320.72 *Records.* (a) Every person required to file a return and pay tax on the sale of an article at retail, shall keep on file at his principal place of business, or some other convenient or safe location, accurate records, including the duplicate copy of each return as prescribed by § 320.70 and accounts of all transactions. Evidence with respect to sales at retail for export, or shipment to a possession of the United States, and sales at retail to States or political subdivisions thereof, upon which no tax is due, must be maintained. (See §§ 320.20, 320.21, and 320.22.)

(b) The records shall contain sufficient information to enable the Commissioner to determine whether the correct amount of tax has been paid. Such records shall at all times be open for inspection by internal-revenue officers, and shall be maintained for a period of at least four years from the date the tax became due or, in the case of tax-free sales, for a period of at least four years from the last day of the month following the month in which the sale was made.

[Regs. 51, 6 F. R. 4970, as amended by T. D. 5353, 9 F. R. 3543, T. D. 5677, 13 F. R. 7302]

§ 320.73 *Jeopardy assessment.* (a) Whenever in the opinion of the collector it becomes necessary to protect the interests of the Government by requiring an immediate return and collection of the tax, the matter shall be promptly reported to the Commissioner by telegram or letter showing the reasons therefor. The communication must state the full name and address of the person involved, the kind and amount of taxes due, and the period involved, so that the Commissioner can immediately assess the tax together with all penalties and interest due. Such tax, penalties, and interest will, upon assessment, become immediately due and payable, and the collector shall, without delay, issue a notice and demand for payment thereof in full.

(b) If a taxpayer is not actually in default in filing returns or in paying any tax under the internal-revenue laws, the collection of the whole or any part of the

amount of such jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, collection of which is stayed, at the time at which such amount would normally be due.

(c) Upon refusal to pay, or failure to pay or give bond, the collector shall proceed immediately to collect the tax, penalty, and interest by distraint, without regard to the 10-day period after notice and demand prescribed in section 3690, I. R. C.

[Regs. 51, 6 F. R. 4970, as amended by T. D. 5353, 9 F. R. 3543]

§ 320.74 *Returned goods; price adjustments.* (a) A retailer may be allowed a credit or refund of tax under section 2407 (a), I. R. C., with respect to any article where the price on which the tax was based is readjusted by reason of return or repossession of the article, or by a bona fide discount, rebate, or allowance. The allowable credit or refund is limited in amount to that part of the tax which is proportionate to the part of the sale price refunded or credited by the retailer to the purchaser.

(b) Where an article is sold and before use, the sale is rescinded by a return of the article to the retailer and by a refund or credit of the full amount of the purchase price, including tax, to the purchaser, no tax is payable with respect to the transaction. In such case, if a tax was paid by the retailer, the amount thereof may be applied as a credit upon a subsequent monthly return, or may be made the subject of a claim for refund.

(c) Where an article is sold and before use, the sale is rescinded by a return of the article to the retailer, and the purchaser receives credit for the full amount of the purchase price, including tax, in an exchange of the article for another article, with appropriate adjustment for the difference, if any, in the values of both articles, the tax applies to the second article, if taxable, without regard to the time when the sale of the first article occurred, whether before, on, or after October 1, 1941. If a tax was paid by the retailer with respect to the first article, the amount thereof may be applied as a credit upon a subsequent monthly

return or may be made the subject of a claim for refund.

(d) Where an article sold under a guaranty contract is returned to the retailer from whom purchased, whether before or after use, by reason of a defect or a failure under the warranty, and a new article of the same kind is given without charge in exchange therefor, no tax is payable with respect to the transaction. In such case, there is no adjustment within the meaning of section 2407 (a), I. R. C., of the price at which the first article was sold; accordingly, no credit or refund of the tax, if any, paid with respect to the returned article is allowable. Where the purchaser receives an article, whether of the same kind or of a different kind, and is required to make some payment for the second article in addition to whatever amount is allowed as an adjustment for the returned defective article, the tax is payable with respect to the second article, if taxable, on the basis of the amount paid therefor, plus the amount allowed for the returned article. In that case, the amount allowed for the returned article is an adjustment within the meaning of section 2407 (a) of the price at which such article was sold, and the retailer may be allowed a refund or credit of that part of the tax, if any, paid with respect to such article which is proportionate to the part of the sales price allowed as an adjustment.

(e) A credit or refund of tax is not allowable with respect to an article returned as a "trade-in" in the purchase of another article. In such case, there is no adjustment within the meaning of section 2407 (a) of the price at which the first article was sold. Instead, the sale of the second article is a separate and distinct transaction in which the first article is merely applied in part payment of the purchase price. Accordingly, the full amount of the tax due upon the sale of the second article is payable without any allowance or offset for the tax paid on the sale of the first article. (See § 320.5.)

[Regs. 51, 6 F. R. 4971, as amended by T. D. 5102, 6 F. R. 6350, T. D. 5353, 9 F. R. 3543]

§ 320.75 *Sales by beauty parlors, etc.* Whenever any person operating a barber shop, beauty parlor, or similar establishment becomes liable for tax under section 2402 (a), I. R. C., by reason of his resale prior to November 1, 1942, of toilet

preparations purchased by him tax-paid under such section at any time during the period October 1, 1941, through October 31, 1942, both dates inclusive, a credit against the tax due on the resale may be allowed in the amount of the tax paid by the operator's vendor under section 2402 (a), except that in no case shall the amount of the credit exceed the amount of tax payable by the operator. (For procedure in the case of articles purchased on and after November 1, 1942, see § 320.52 (b).) If an article is purchased tax-paid prior to November 1, 1942, and resold by the operator on or after that date, tax attaches to the full selling price and no credit may be taken for the tax paid on the sale to such operator.

[T. D. 5191, 7 F. R. 10129, as amended by T. D. 5353, 9 F. R. 3543]

§ 320.76 *Credits and refunds generally.* (a) If a person overpays the tax due he may either file a claim for refund on Form 843 or take credit for such overpayment against the tax due the Government on a subsequent monthly return. A complete statement of the facts involving the overpayment must be attached either to the claim or to the return on which the credit is claimed.

(b) Every claim for refund must be supported by evidence showing (1) the name and address of the person who paid to the United States the tax of which refund is claimed, (2) the date of payment, and (3) the amount of such tax. A credit taken on a return must be supported by evidence of the same character. If it is impossible to furnish such evidence at the time when the credit is taken, a statement to that effect must be submitted with the return in which the credit is taken. The evidence supporting such credit must be filed with the collector within 30 days after the date on which the return is filed. If the required evidence is not so filed within that period, the amount of the credit will be disallowed and assessment of the tax resulting from the disallowance will be made on the current assessment list.

(c) No credit or refund shall be allowed whether in pursuance of a court decision or otherwise unless the taxpayer files a statement explaining satisfactorily the reason for claiming the credit or refund and establishing (1) that he has not included the tax in the

price of the article with respect to which it was imposed, or collected the amount of tax from the vendee, or (2) that he has either repaid the amount of tax to the purchaser of the article or has secured the written consent of such purchaser to the allowance of the credit or refund. In the latter case the written consent of the purchaser must accompany the statement filed with the credit or refund claim. For the purpose of the tax the "purchaser" is a person who purchases an article for consumption and not for resale. The statement supporting the credit or refund claim must also show whether any previous claim for credit or refund covering the amount involved, or any part thereof, has been filed with the collector or Commissioner.

(d) A complete and detailed record of each overpayment must be kept by the taxpayer for a period of at least four years from the date any credit is taken or refund is claimed.

[Regs. 51, 6 F. R. 4971, as amended by T. D. 5353, 9 F. R. 3543, T. D. 5677, 13 F. R. 7302]

§ 320.77 *Penalties and interest.* (a) In the case of failure to file a return within the prescribed time, a certain percentage of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate.

(b) Failure to pay tax within the time fixed for filing returns causes interest to accrue automatically, without assessment of the tax by the Commissioner or notice to the taxpayer, to the actual date of payment or assessment, whichever is prior. The due date of the tax for the purpose of computing interest is the last day of the month within which the return is required to be filed and the tax paid.

(c) Where assessment is made, and payment is not made within 10 days after the issuance of the first notice and demand (Form 17), there will accrue, under section 3655, a 5 percent penalty

and interest at the rate of 6 percent per annum computed upon the entire assessment from the date of issuance of Form 17 until date of payment. Where assessment is settled by partial payments, interest is computed at the above-prescribed rates from the date of the first 10-day notice through the date of first payment and on the balance from the next succeeding day to the date of the next payment until the assessment is paid in full.

(d) If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 percent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 percent penalty applies. The filing of the claim does not stay the collection of interest, which continues to run for the full period that intervenes between the date of the first notice and demand and the date of payment.

(e) If a false or fraudulent return is willfully made, the penalty under section 3612 (d) and (e), I. R. C., is 50 percent of the total tax due for the entire period involved, including any tax previously paid.

(f) Any person who willfully fails to pay any tax due, file return, or keep records, or who attempts in any manner to evade or defeat the tax, or who fraudulently uses any exemption certificate authorized by the regulations in this part, is subject to a fine of \$10,000, or imprisonment, or both, with costs of prosecution, and is also liable to a penalty equal to the amount of the tax not paid. These penalties apply to an officer or employee who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs, as well as to a person who fails or refuses to perform any of the duties imposed by the Code, i. e., pay the tax, make return, keep records, supply information, etc.

(g) An internal-revenue officer discovering in the course of his duty information leading him to suspect a possible violation of any law with the enforcement of which he is not directly concerned should immediately report the matter to the Commissioner, who is authorized to communicate with the proper department involved.

[Regs. 51, 6 F. R. 4972, as amended by T. D. 5353, 9 F. R. 3543]

## Part 323—Special Taxes With Respect to Coin-Operated Amusement and Gaming Devices, Bowling Alleys, Billiard Tables and Pool Tables

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323.54 Jeopardy assessment.  
323.55 Claims.

**AUTHORITY:** §§ 323.1 to 323.55 issued under 53 Stat. 467; 26 U. S. C. 3791.

**SOURCE:** §§ 323.1 to 323.55 issued under Regulations 59, 6 F. R. 6298, except as noted following sections affected. Redesignation noted at 14 F. R. 5200.

### SUBPART A—DEFINITIONS

§ 323.1 *Meaning of terms.* As used in the regulations in this part the terms defined in the applicable provisions of law shall have the meanings so assigned to them.

### SUBPART B—COIN-OPERATED AMUSEMENT AND GAMING DEVICES

§ 323.20 *Effective date of tax.* The special taxes with respect to coin-op-

erated amusement and gaming devices imposed by section 3267, added to the Internal Revenue Code by section 555 of the Revenue Act of 1941, became effective October 1, 1941. The effective dates of changes made in such section 3267 by the Revenue Act of 1942 are as follows:

(a) Effective July 1, 1943, except as indicated by paragraph (c) of this section, the rate of tax applicable with respect to gaming devices operated by means of the insertion of a coin, token, or similar object is increased from \$50 to \$100 per annum.

(b) Effective November 1, 1942, any amusement or music machine operated by means of the insertion of a coin, token, or similar object, not within the scope of section 3267 as originally enacted, is subject to tax.

(c) Effective July 1, 1942, the tax on a vending machine, operated by means of the insertion of a 1-cent coin, which dispenses, or entitles a person to receive, a prize of a value of not more than 5 cents consisting of merchandise only, and never of cash or tokens, is reduced from \$50 to \$10.

[T. D. 5203, 7 F. R. 10835]

§ 323.21 *Persons liable for tax.* Every person who maintains for use or permits the use of a coin-operated amusement or gaming device on any place or premises occupied by him, is liable to special tax. An operator of such place or premises is considered, for the purposes of the law, to become engaged in a trade or business in respect of each such device as of the day the device is placed on his premises for use thereon.

§ 323.22 *Rates and computation of tax.* (a) Special taxes are imposed as follows:

(1) Effective October 1, 1941, and continuing through October 31, 1942, \$10 per year in the case of each so-called "pin-ball" or other similar amusement machine operated by means of the insertion of a coin, token, or other similar object.

(2) Effective November 1, 1942, \$10 per year in the case of any amusement or music machine operated by means of the insertion of a coin, token, or similar object, including machines within the scope of paragraph (a) (1) of this section, except that where, prior to November 1, 1942, tax for any period has been paid with respect to a machine within

the scope of such paragraph (a) (1) of this section, no further tax with respect to such machine for the same period will be due.

(3) Effective July 1, 1942, \$10 per year in the case of each vending machine operated by means of the insertion of a 1-cent coin, which dispenses a prize of a retail value of, or entitles a person to receive a prize of a retail value of not more than 5 cents, consisting of merchandise only and never of cash or tokens.

(4) (i) Effective October 1, 1941, and continuing through June 30, 1943, \$50, and effective July 1, 1943, \$100, per year in the case of each so-called "slot" machine which operates by means of the insertion of a coin, token, or similar object and which, by application of the element of chance, may deliver, or entitle the person playing or operating the machine to receive, cash, premiums, merchandise, or tokens; except that this paragraph shall not be applicable for any period after June 30, 1942, with respect to any machine covered by paragraph (c) of this section.

(ii) The tax year begins July 1 and ends June 30. Persons commencing business between August 1 and June 30 (both dates inclusive) must pay a proportionate part of the annual tax. "Commencing business" in the case of a coin-operated amusement and gaming device means the initial maintenance for use on the taxpayer's premises of such a device. Persons in business for only a portion of a month are liable for tax for the full month, i. e., a person installing a coin-operated amusement or gaming device on his premises for use on, for example, the 15th day of a month, is liable for tax for the entire month.

(iii) As the tax became effective on October 1, 1941, persons in business on that date or commencing business during the month (that is, having such devices on their premises for use) are liable for tax for the nine months of the tax year ending the following June 30.

(iv) The amount of tax liability is computed on the basis of the number of devices of each particular type maintained for use, or permitted to be used on his premises, by the taxpayer. For each additional device subsequently during the same period brought on to the premises for use additional tax liability is incurred. Tax liability applies with respect to a device installed on the tax-

payer's premises even though previously used on the premises of another person, and even though special tax for the same year or period or part thereof was paid by such other person with respect thereto.

(v) If a taxpayer replaces a device with respect to which he has paid special tax with a like device, no additional tax is payable. For example: a cigar store proprietor who maintains on the premises two "pin-ball" machines with respect to which he has paid special tax has these two machines removed and replaces them with two "pin-ball" machines of a more modern design. In this case no additional special tax is payable. However, if the replacing article is placed in operation before operation of the replaced article is discontinued, additional tax liability is incurred. If "pin-ball" machines are replaced by coin-operated gaming devices, or gaming devices are replaced by "pin-ball" machines, liability to special tax at the rate applicable to the replacing machines or devices is incurred, and no credit is allowable for the special tax paid with respect to the replaced machines or devices.

(b) Examples of machines which, when operated by means of the insertion of a coin, token, or similar object, are regarded as gaming devices for purposes of this part are:

(1) A "pin-ball" machine with respect to which unused "free plays" are redeemed in cash, tokens, or merchandise, or with respect to which prizes are offered to any person for the attainment of designated scores.

(2) A machine which, even though it does not dispense cash or tokens, has incorporated gaming features in the form of combinations of insignia on reels or drums.

[Regs. 59, 6 F. R. 6298, as amended by T. D. 5203, 7 F. R. 10835]

#### SUBPART C—BOWLING ALLEYS AND BILLIARD AND POOL TABLES

§ 323.30 *Effective date of tax.* The special tax with respect to bowling alleys, and billiard and pool tables, imposed by section 3268 of the Internal Revenue Code is effective on and after October 1, 1941.

§ 323.31 *Persons liable for tax.* Every person who operates a bowling alley, billiard room, or pool room is liable for a special tax with respect to each bowling

alley, billiard table, or pool table. For the purposes of the tax every building or place where bowls are thrown, or where games of billiards or pool are played, except in private homes, is regarded as a bowling alley, billiard room, or pool room, respectively. No tax is incurred with respect to a billiard or pool table in a hospital if no charge is made for the use of such table.

[Regs. 59, 6 F. R. 6298, as amended by T. D. 5344, 9 F. R. 2848]

§ 323.32 *Rate and computation of tax.*

(a) The rate of tax is \$20 per year for each bowling alley, billiard table, or pool table operated by the taxpayer. Prior to July 1, 1944, the rate of tax was \$10 per year for each such alley or table. The tax year begins July 1 and ends June 30. Persons commencing business between August 1 and June 30 (both dates inclusive) must pay a proportionate part of the annual tax. Persons in business for only a portion of a month are liable for tax for the full month, i. e., a person beginning the operation of a bowling alley, billiard table, or pool table on his premises on, for example, the 15th day of a month, is liable for tax for the entire month.

(b) As the tax became effective on October 1, 1941, persons in business on that date or commencing business during the month (that is, operating bowling alleys, billiard tables, or pool tables), are liable for tax for the nine months of the tax year ending the following June 30.

(c) The amount of tax liability is computed on the basis of the number of alley beds, billiard tables, and pool tables maintained for use on the operator's premises. For each additional alley bed, billiard table, or pool table subsequently during the same period installed on the premises for operation, additional tax liability is incurred.

(d) If a taxpayer replaces an alley bed, billiard table, or pool table with respect to which he has paid special tax with another article of the same or different kind subject to this tax, for example, replaces an alley bed either with another alley bed or a billiard or pool table, no additional tax is payable. However, if the replacing article is placed in operation before operation of the replaced article is discontinued additional tax liability is incurred.

[Regs. 59, 6 F. R. 6298, as amended by T. D. 5561, 12 F. R. 3220]

SUBPART D—ADMINISTRATIVE PROVISIONS

§ 323.40 *Registry, return, and payment of tax.* (a) Every person first engaging in any business subject to the regulations in this part shall on or before the last day of the month in which business is commenced file, separately for each place of business, a return on Form 11-B. The collector will furnish the proper forms which must be filled out, subscribed and attested as indicated therein.

(b) Every person engaged on October 1, 1941, in any business mentioned herein, or first engaging in such a business during the month of October 1941, must register and file return on Form 11-B and pay the tax on or before October 31, 1941. Thereafter, such person must register, file return, and pay the tax on or before the last day of July of each year.

(c) Where before the end of the taxable year an additional article of a type covered by the regulations in this part is maintained or operated on the taxpayer's premises, a return covering such additional article shall be filed and additional special tax paid for the remaining portion of the taxable year. Payment of the additional tax will be evidenced by special tax stamps. (See § 323.41.)

(d) Each return must show the taxpayer's full name. A person doing business under a style or trade name must give his own name, followed by his style or trade name. In the case of a co-partnership, association, firm, or company, other than a corporation, its style or trade name must be given, also the name of each member and his place of residence. In the case of a corporation, the name and title of each officer and his place of residence must be shown.

§ 323.41 *Tax payment evidenced by special tax stamp.* (a) Upon receipt of a return, on Form 11-B, together with remittance of the full amount of tax due, the collector will issue a special tax stamp as evidence of payment of the special tax. Such payment must be made in the form of cash, certified check, or post office money order.

(b) Collectors will distinctly write or print the taxpayer's registered name (see § 323.40), and the address of the particular place of business designated by street and number, on the stamp before it is delivered or mailed to the taxpayer. Special tax stamps will be

transmitted by ordinary mail, unless it is desired that they be transmitted by registered mail, in which case 15 cents additional to pay registry fee should be remitted with the return.

(c) Collectors and their deputies are forbidden to issue receipts in lieu of stamps representing the payment of special taxes.

§ 323.42 *Special tax stamp to be posted.* Every special tax stamp issued to a taxpayer must be kept posted conspicuously on the premises where the business is operated. One who fails so to post a stamp thereby incurs liability to a penalty, equal and in addition to the tax, plus the costs of prosecution; but in no case shall the penalty (not including the costs of prosecution) be less than \$10. Where the failure is willful the penalty is doubled. This liability is additional to any and all liability otherwise incurred.

§ 323.43 *Certificates in lieu of stamps lost or destroyed.* When a special tax stamp has been lost or destroyed, such fact should be reported to the collector at once for the purpose of obtaining from him a certificate of payment. Such certificate will be on Form 785, and must be posted in place of the stamp; otherwise liability as above indicated for failure to post the stamp will be incurred. (See § 323.42.)

§ 323.44 *Tax payable for each business at same location.* Where more than one taxable business is carried on by the same person at the same location at the same time, special tax in respect to each must be paid.

§ 323.45 *Partnership liability.* Any number of persons doing business in co-partnership at any one location shall be required to pay but one special tax. The firm name is the only name required on a special tax stamp issued to a partnership.

§ 323.46 *Change of ownership—(a) Changes through death.* Whenever any person who has paid special tax dies, the surviving spouse or child, or executors or administrators, or other legal representatives, may carry on such business for the remainder of the term for which tax has been paid without any additional payment, subject to the conditions hereinafter stated. If the surviving spouse or child, or executors or administrators, or other legal representatives of the de-

ceased taxpayer continue the business, such person must within 30 days after the date of the death of the taxpayer execute a new Form 11-B. The return thus executed must show the name of the original taxpayer, together with all other data required.

(b) *Changes from other causes.* A receiver or referee in bankruptcy may continue the business under the stamp issued to the taxpayer at the place and for the period for which the tax was paid. An assignee for the benefit of creditors may continue business under his assignor's special tax stamp without incurring additional special tax liability. In such cases the change must be registered with the collector in a manner similar to that required by paragraph (a) of this section.

(c) *Changes in firm.* When one or more members of a firm or partnership withdraw, the business may be continued by the remaining partner or partners under the same special tax stamp for the remainder of the period for which the stamp was issued to the old firm. The change shall, however, be registered in the same manner as required in paragraph (a) of this section. Where new partners are taken into a firm, the new firm so constituted may not carry on business under the special tax stamp of the old firm. The new firm must make return and pay its own special tax reckoned from the first day of the month in which it began business, even though the name of such firm be the same as that of the old. Where the members of a partnership which has paid special tax form a corporation to continue the business, a new special tax stamp must be taken out in the name of the corporation.

(d) *Change in corporation.* A corporation may, upon application to the collector, change its name without creating a new special tax liability, if the stamp is forwarded to the collector for proper notation within 30 days. An increase in the capital stock of a corporation does not create a new special tax liability if the laws of the State under which it is incorporated permit such increase without the formation of a new corporation. A stockholder in a corporation who after its dissolution continues the business incurs new special tax liability.

§ 323.47 *Change of business location—(a) Procedure by taxpayer.* Whenever a special taxpayer removes his business

to a location other than specified in his last special tax return (see § 323.40), he shall, within 30 days after the date of removal, register the change of location with the collector of the district within which the old place of business is located, by filing another return, Form 11-B, and designated "removal registry," setting forth the time of removal. The taxpayer's special tax stamp must accompany the return for notation by the collector of the change of location. As to liability in case of failure to register a change of location within 30 days, see § 323.48.

(b) *Procedure by collector; removal within district.* When registration is made by a special taxpayer in the manner specified in paragraph (a) of this section, of the removal of his business to a new location in the same district, the collector will enter on his Record 10 (see § 323.51) the place to which such removal was made and the date of the removal. The same information shall also be entered plainly on the face of the special tax stamp, which will be returned to the taxpayer, by the collector, for posting.

(c) *Procedure by collector; removal to another district.* In case of removal to another collection district, the collector will note the transfer on his Record 10, stating the location to which the business was removed, and shall then transmit the special tax stamp to the collector for the district to which said business was removed. The latter will make an entry on his Record 10 as in the case of original registration in his district, correct the location shown on the stamp, and note also thereon his name, title, date, and district, and then forward the stamp to the taxpayer.

§ 323.48 *Liability for failure to register change or removal.* Any person succeeding to and carrying on a business for which special tax has been paid and any taxpayer removing his business, with respect to which special tax has been paid, to a place other than that for which tax was paid, without registering such change or removal within 30 days thereafter, will be liable to the additional tax and penalty prescribed in section 3612 (d) for failure to make return. (See § 323.49.)

§ 323.49 *Penalties for delinquency and fraudulent return.* (a) In case of failure to file a return within the pre-

scribed time a certain percentage of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent of the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate.

(b) If a false or fraudulent return is filed, the taxpayer is liable to an additional amount equal to 50 percent of the total tax. If a person liable to tax for an entire year falsely states in his return that he is liable for a portion only of the year, the return is false not only as to the portion of the year not covered but as to the portion falsely represented as the actual period of liability.

§ 323.50 *Doing business in violation of State law.* Payment of any special tax within the scope of the regulations in this part in nowise authorizes the carrying on of any business in violation of the law of any State. The special tax stamp is not a license or permit and affords no protection from prosecution for violation of State law.

§ 323.51 *Public record of special-tax payers.* The list required by section 3275, I. R. C., shall be kept on Record 10, and may be inspected in the collector's office at reasonable and proper times.

§ 323.52 *Assessment of taxes not paid by stamp.* In case special taxes within the scope of the regulations in this part have not been paid and the taxpayer refuses or fails to make payment, the tax will be assessed. No stamp will be issued for an expired period; the tax in such case will be assessed.

§ 323.53 *Notice and demand for tax; penalty and interest.* (a) Where assessment is made, and payment is not made within 10 days after the issuance of the first notice and demand (Form 17), there will accrue under section 3655, a 5 percent penalty and interest at the rate of 6 percent per annum computed upon the entire assessment from the date of issuance of Form 17 until date of payment. Where assessment is settled by partial payments, interest is computed at the above-prescribed rate from the date of the first 10-day notice through the date of the first payment and on the

balance from the next succeeding day to the date of the next payment until the assessment is paid in full.

(b) If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 percent penalty does not attach. If the assessment is not paid within 10 days after receipt of notice of rejection of the claim, the 5 percent penalty applies. The filing of the claim does not stay the collection of interest, which continues to run for the full period that intervenes between the date of the first notice and demand and the date of payment.

§ 323.54 *Jeopardy assessment.* (a) Whenever, in the opinion of the collector, it becomes necessary to protect the interests of the Government by effecting immediate collection of tax, the matter shall be promptly reported to the Commissioner by telegram or letter showing the reasons therefor. The communication must state the full name and address of the person involved, the kind and amount of tax due, and the period involved, so that the Commissioner can immediately assess the tax, together with all penalties and interest due. Such tax, penalties, and interest will, upon assessment, become immediately due and payable, and the collector shall, without delay, issue a notice and demand for payment thereof in full.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding

double the amount with respect to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, collection of which is stayed, at the time at which such amount would normally be due.

(c) Upon refusal to pay, or failure to pay or give bond, the collector shall proceed immediately to collect the tax, penalty, and interest, by distraint, without regard to the 10-day period after notice and demand prescribed in section 3690, I. R. C. (See § 323.53.)

§ 323.55 *Claims.* (a) Claims for abatement or refund of special taxes and ad valorem penalties erroneously or illegally assessed or collected, and claims for the redemption of special tax stamps shall be filed on Form 843 with the collector. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof. If the claim is for redemption of a special tax stamp, such stamp shall be attached to and made a part of the claim.

(b) No claim for the refund of a special tax or penalty or for the redemption of a special tax stamp shall be allowed unless presented within four years next after the payment of such tax or penalty or the purchase of such stamp.

(c) A special-tax payer who for any reason discontinues business is not entitled to any refund for the unexpired portion of the fiscal year for which the special tax stamp was issued.

## SUBCHAPTER D—EMPLOYMENT TAXES

### Part 402—Employees' Tax and the Employers' Tax Under the Federal Insurance Contributions Act

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**AUTHORITY:** §§ 402.1 to 402.804a issued under 53 Stat. 178, 188, 467; 26 U. S. C. 1429, 1609, 3791.

**SOURCE:** §§ 402.1 to 402.804a contained in Regulations 106, 5 F. R. 774, except as noted following sections affected.

**INTRODUCTORY**

§ 402.1 *Chronological description of pertinent statutes and regulations—(a) Title VIII of the Social Security Act and regulations thereunder—(1) Statutes.* (1) Title VIII of the Social Security Act, approved August 14, 1935 (49 Stat. 636; 42 U. S. C. 1001–1011) imposes an excise tax on employers of one or more employees, and an income tax on employees, measured by wages paid and received after December 31, 1936, with respect to employment after such date. (Title VIII of the Social Security Act has been superseded as indicated in paragraph (b) (1).)

(ii) Section 9 (a) of the Carriers Taxing Act of 1937, approved June 29, 1937 (50 Stat. 439; 45 U. S. C. 269 (a)), excludes the services of employees and employee representatives, as defined in such act, from employment with respect to which the taxes under such Title VIII apply.

(iii) Section 902 (f) of the Social Security Act Amendments of 1939, approved

August 10, 1939 (53 Stat. 1400), provides, in part, that no tax shall be collected under such Title VIII with respect to services performed in the employ of foreign governments and certain of their instrumentalities.

(iv) Section 2 of the Act of August 11, 1939 (53 Stat. 1420), provides, in part, that no tax shall be collected under such Title VIII with respect to certain services performed in salvaging timber and clearing debris left by a hurricane.

(2) *Regulations.* Regulations relating to the taxes under Title VIII of the Social Security Act are set forth in:

(i) Treasury Decision 4704 (26 CFR, 1938 ed., Part 401, Subpart G), approved November 5, 1936, as amended, entitled "Identification of Taxpayers under Title VIII of the Social Security Act—Assignment of Identification Numbers to Employers and Account Numbers to Employees";

(ii) Regulations 91 (26 CFR, 1938 ed., Supps., Part 401, Subparts A-F), approved November 9, 1936, as amended, entitled "Regulations 91 Relating to the Employees' Tax and the Employers' Tax under Title VIII of the Social Security Act"; and

(iii) Treasury Decision 4739 (2 F. R. 1069) approved May 24, 1937, making returns under Title VIII of the Social Security Act available to the Social Security Board.

(b) *Federal Insurance Contributions Act and regulations thereunder*—(1) *Statutes.* (i) Effective April 1, 1939, the provisions of Title VIII of the Social Security Act were reenacted in the Internal Revenue Code, approved February 10, 1939, as subchapter A of chapter 9 thereof (53 Stat. 175). Such subchapter, which supersedes Title VIII of the Social Security Act, may be cited as the "Federal Insurance Contributions Act," under the authority contained in section 1432 of such subchapter, as added by section 607 of the Social Security Act Amendments of 1939 (53 Stat. 1387). The Federal Insurance Contributions Act imposes an excise tax on employers of one or more employees, and an income tax on employees, measured by wages paid and received on and after April 1, 1939, with respect to employment after December 31, 1936; except that, in the case of wages for services performed by individuals after they have attained age 65, such act (as amended by section 905 of the Social

Security Act Amendments of 1939 (53 Stat. 1400)) imposes such taxes with respect to wages paid and received after December 31, 1938, with respect to employment after such date.

(ii) Substantial changes in the provisions of the Federal Insurance Contributions Act are effected by amendments thereto contained in sections 601 to 607, inclusive, and 903 to 905, inclusive, of the Social Security Act Amendments of 1939 (53 Stat. 1381, 1400). In addition, the application of the act is modified by section 902 (f) of the Social Security Act Amendments of 1939 (53 Stat. 1400) and by section 2 of the act of August 11, 1939 (53 Stat. 1420), in the same manner as such sections 902 (f) and 2 modify the application of Title VIII of the Social Security Act (see paragraph (a) (1)). The applicable provisions of the Federal Insurance Contributions Act, as so amended, and the provisions making such modifications, as well as certain applicable provisions of internal revenue laws of particular importance, have been inserted in the appropriate places in, and are to be read in connection with, the regulations in this part.

(2) *Regulations.* The regulations contained in Treasury Decision 4704, as amended, Regulations 91, as amended, and Treasury Decision 4739 are prescribed under, and made applicable to, the Federal Insurance Contributions Act and other provisions of the Internal Revenue Code, by Treasury Decision 4885, approved February 11, 1939. (For amendments to Regulations 91, as so made applicable to the Internal Revenue Code, see Treasury Decision 4934, approved September 6, 1939; Treasury Decision 4935, approved September 6, 1939; and Treasury Decision 4941, approved September 20, 1939. For the extent to which Treasury Decision 4704 and Regulations 91, as so made applicable to the Internal Revenue Code, are superseded by the regulations in this part, see § 402.102. See also § 402.101, relating to the scope of the regulations in this part.)

#### SUBPART A—SCOPE OF PART

§ 402.101 *Scope of part*—(a) *Taxes with respect to wages paid after 1939.* The regulations in this part relate to the employees' tax and employers' tax with respect to wages paid and received on or after January 1, 1940, imposed by the

Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code), as amended and modified by the Social Security Act Amendments of 1939 and other provisions of law.

(b) *Additional subjects covered*—(1) *Adjustments, settlements, and claims.* In addition to adjustments, settlements, and claims made in connection with the taxes with respect to wages paid and received on or after January 1, 1940, the regulations in this part also relate to adjustments, settlements, and claims made on or after such date in connection with the taxes under Title VIII of the Social Security Act or under the Federal Insurance Contributions Act in force prior to January 1, 1940, with respect to wages paid and received prior to such date, but not to any adjustment reported in whole or in part on any return (except an adjustment reported by means of a supplemental return) for a tax-return period ended prior to such date.

(2) *Identification of taxpayers.* The regulations in this part also relate to the use after December 31, 1939, of account numbers and identification numbers assigned to employees and employers under Title VIII of the Social Security Act or the Federal Insurance Contributions Act in force before or after the first moment of January 1, 1940, and to applications for and assignment of such numbers under the Federal Insurance Contributions Act in force after December 31, 1939.

(3) *Employment.* In addition to employment in the case of remuneration therefor paid and received on or after January 1, 1940, the regulations in this part also relate to employment performed on or after such date in the case of remuneration therefor paid and received prior to such date.

[Regs. 106, 5 F. R. 774, as amended by T. D. 5519, 11 F. R. 6757]

§ 402.102 *Extent to which the regulations in this part supersede Regulations 91 and Treasury Decision 4704.* The regulations in this part with respect to the subjects to which they relate, supersede:

(1) Regulations 91, approved November 9, 1936, as amended, as made applicable to the Federal Insurance Contributions Act and other provisions of the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939, together with any amendments to such

regulations as so made applicable to the Internal Revenue Code; and

(2) Treasury Decision 4704, approved November 5, 1936, as amended, as made applicable to the Federal Insurance Contributions Act and other provisions of the Internal Revenue Code by such Treasury Decision 4885, together with any amendments to such Treasury Decision 4704 as so made applicable to the Internal Revenue Code.

#### SUBPART B—DEFINITIONS

§ 402.201 *General definitions and use of terms.* As used in the regulations in this part:

(a) The terms defined in the provisions of law shall have the meanings so assigned to them.

(b) "Social Security Act" means the act approved August 14, 1935 (49 Stat. 620).

(c) "Internal Revenue Code" means the act approved February 10, 1939 (53 Stat. Part 1), entitled "An act to consolidate and codify the internal revenue laws of the United States," as amended.

(d) "Social Security Act Amendments of 1939" means the act approved August 10, 1939 (53 Stat. 1360).

(e) "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Internal Revenue Code, as amended.

(f) "Act" means the Federal Insurance Contributions Act, as defined in this section.

(g) "Regulations 91" means the regulations approved November 9, 1936, as amended, relating to the employees' tax and the employers' tax under Title VIII of the Social Security Act, and such regulations, as made applicable to subchapter A of chapter 9 and other provisions of the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939, together with any amendments to such regulations as so made applicable to the Internal Revenue Code.

(h) "Person" includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of cred-

itors, conservator, or any person acting in a fiduciary capacity.

(i) "Tax" means the employees' tax or the employers' tax as respectively defined in this section, or both.

(j) "Employees' tax" means the tax imposed by section 1400 of the act, except that such term when used in Subpart G of this part includes also the tax imposed by section 1400 of the Federal Insurance Contributions Act in force prior to August 10, 1939, and the tax imposed by section 801 of the Social Security Act.

(k) "Employers' tax" means the tax imposed by section 1410 of the act, except that such term when used in Subpart G of this part includes also the tax imposed by section 1410 of the Federal Insurance Contributions Act in force prior to August 10, 1939, and the tax imposed by section 804 of the Social Security Act.

(l) "Identification number" means the identifying number of an employer assigned, as the case may be, under the act, or the Federal Insurance Contributions Act in force prior to August 10, 1939, or Title VIII of the Social Security Act.

(m) "Account number" means the identifying number of an employee assigned, as the case may be, under the act, or the Federal Insurance Contributions Act in force prior to August 10, 1939, or Title VIII of the Social Security Act.

(n) "Social Security Board" means the board established pursuant to Title VII of the Social Security Act.

(o) The cross references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience, and shall be given no legal effect.

(p) "Social Security Act Amendments of 1946" means the act approved August 10, 1946 (Pub. Law 719, 79th Cong., 60 Stat. 978).

(q) "Social Security Act Amendments of 1947" means the act approved August 6, 1947 (Pub. Law 379, 80th Cong., 61 Stat. 793).

[Regs. 106, 5 F. R. 774, as amended by T. D. 5566, 12 F. R. 4176, T. D. 5592, 12 F. R. 7941]

§ 402.202 *Employment prior to January 1, 1940.* (a) Under the provisions of section 1426 (b) of the Federal Insurance Contributions Act, as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939, services performed prior to January 1, 1940, constitute employment if they were employment as defined in section 1426

(b) prior to such date. Thus, services performed prior to January 1, 1940, within the United States by an employee for the person employing him, constitute employment within the meaning of the Federal Insurance Contributions Act in force on and after such date, unless the services are excepted by section 1426 (b) of the Federal Insurance Contributions Act in force prior to such date. The services so excepted are the services excepted by the section (as originally enacted February 10, 1939), as amended by section 905 (a) of the Social Security Act Amendments of 1939. Such section 905 (a) repealed, with respect only to services performed on or after January 1, 1939, the exception of services performed by an individual after his attainment of age 65.

(b) The collection of tax under the act with respect to certain services is prohibited although such services are not excepted by section 1426 (b) of the Federal Insurance Contributions Act in force prior to January 1, 1940. Section 902 (f) of the Social Security Act Amendments of 1939 provides that no tax shall be collected under the act with respect to services rendered prior to January 1, 1940, which are described in paragraph (11), relating to services in the employ of foreign governments, and in paragraph (12), relating to services in the employ of certain instrumentalities of foreign governments, of section 1426 (b) of the Federal Insurance Contributions Act in force on and after January 1, 1940; and section 2 of the Act of August 11, 1939 (53 Stat. 1420), provides that no tax shall be collected under the Federal Insurance Contributions Act with respect to services rendered prior to January 1, 1940, in the employ of the owner or tenant of land, in salvaging timber on such land, or clearing such land of brush and other debris, left by a hurricane. Section 5 (b) of the International Organizations Immunities Act provides, in effect, that no tax shall be collected under the Federal Insurance Contributions Act with respect to services rendered prior to January 1, 1940, which are described in paragraph (16) of section 1426 (b) of the Federal Insurance Contributions Act in force on and after January 1, 1946, relating to services in the employ of an international organization. (For provisions relating to services rendered after December 31, 1939, and prior to January 1, 1946, with respect to which the collection of tax is prohibited by such

section 5 (b), see § 402.206.) The exemption from taxation provided under such section 5 (b) is subject to the provisions of section 1 of the International Organizations Immunities Act (see provisions of such section quoted immediately preceding § 402.226a). Notwithstanding the provisions of § 402.201 (a) and of this section, the term "employment", as used in this part, shall be deemed not to include services with respect to which the collection of tax is prohibited by such section 902 (f), such section 2, or such section 5 (b), as the application of the last-mentioned section may be modified pursuant to such section 1.

(c) The taxes to which the regulations in this part relate apply with respect to remuneration paid on or after January 1, 1940, for services performed prior to such date, to the extent that the remuneration and services constitute wages and employment. (See §§ 402.227 and 402.228, relating to wages.)

(d) Whether services performed prior to January 1, 1940, constitute employment within the meaning of the regulations in this part shall be determined in accordance with the applicable provisions of Regulations 91, as amended.

[Regs. 106, 5 F. R. 774, as amended by T. D. 5519, 11 F. R. 6757]

§ 402.203 *Employment after December 31, 1939*—(a) *In general.* Whether services performed on or after January 1, 1940, constitute employment is determined under section 1426 (b) of the act, that is, section 1426 (b), as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939, and as amended, effective January 1, 1946, by section 4 (c) of the International Organizations Immunities Act, and as further amended, effective January 1, 1940, by section 1 of Public Law 492, 80th Congress, relating to certain vendors of newspapers and magazines. This section and §§ 402.204 and 402.205 (relating to who are employees and employers), § 402.206 (relating to excepted services in general), § 402.207 (relating to included and excluded services), and §§ 402.208–402.226 (relating to certain classes of excepted services), apply with respect only to services performed on or after January 1, 1940. Section 402.226a, relating to an additional class of excepted services, applies with respect only to services performed on or after January 1, 1946. (For provisions relating to

the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see § 402.207. For provisions relating to the circumstances under which certain services with respect to which the collection of tax is prohibited are deemed not to be included within the term, "employment" as used in this part, see § 402.206. For provisions relating to services performed prior to January 1, 1940, see § 402.202.)

(b) *Services performed within the United States.* (1) Services performed on or after January 1, 1940, within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii, by an employee for the person employing him, unless specifically excepted by section 1426 (b) of the act, constitute employment within the meaning of the act. Services performed outside the United States, that is, outside the several States, the District of Columbia, and the Territories of Alaska and Hawaii (except certain services performed on or in connection with an American vessel—see paragraph (c) of this section), do not constitute employment.

(2) With respect to services performed within the United States, the place where the contract of service is entered into and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent employment within the meaning of the act.

(c) *Services performed outside the United States.* (1) Services performed on or after January 1, 1940, by an employee for the person employing him "on or in connection with" an American vessel outside the United States constitute employment provided:

(i) The employee is also employed "on and in connection with" such vessel when outside the United States; and

(ii) The services are performed under a contract of service, between the em-

ployee and the person employing him, which is entered into within the United States, or during the performance of which the vessel touches at a port within the United States; and

(iii) The services are not excepted under section 1426 (b) of the act. (See particularly § 402.225, relating to fishing.)

(2) An employee performs services on and in connection with the vessel if he performs services on the vessel which are also in connection with the vessel. Services performed on the vessel as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(3) If services are performed by an employee "on and in connection with" an American vessel when outside the United States and subparagraph (1) (ii) and (iii) of this paragraph are met, then the services of that employee performed on or in connection with the vessel constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(4) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which the vessel does not touch at a port within the United States, do not constitute employment, notwithstanding similar services performed by others on or in connection with the vessel may constitute employment.

(5) The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

(6) The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii).

(7) With respect to services performed outside the United States, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether a vessel is an American vessel.

(d) *Services performed for War Shipping Administration or Bonneville Power Administrator.* Notwithstanding any other provision of this part, such services as constitute employment under section 1426 (i) or (j) of the act shall constitute employment within the meaning of the act and of this part. Section 1426 (i) of the act relates to certain services performed after September 30, 1941, and prior to the termination of title I of the First War Powers Act, 1941, on or in connection with a vessel by an officer or member of the crew as an employee of the United States employed through the War Shipping Administration or, in respect of such services performed before February 11, 1942, the United States Maritime Commission. Section 1426 (j) of the act relates to services performed after December 31, 1945, by certain laborers, mechanics, or workmen, in connection with construction work or the operation and maintenance of electrical facilities, as employees of the United States employed through the Bonneville Power Administrator.

[Regs. 106, 5 F. R. 774, as amended by T. D. 5502, 11 F. R. 2920, T. D. 5519, 11 F. R. 6757, T. D. 5665, 13 F. R. 6603]

§ 402.204 *Who are employees.* (a) Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.

(b) Generally such relationship exists when the person for whom services are

performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, sub-contractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

(f) The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

(g) No distinction is made between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees. An officer of a corporation is an employee of

the corporation but a director as such is not. A director may be an employee of the corporation, however, if he performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors.

(h) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment within the meaning of the act. (See § 402.203)

§ 402.205 *Who are employers.* (a) Every person is an employer if he employs one or more employees. Neither the number of employees employed nor the period during which any such employee is employed is material.

(b) An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entry. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

(c) Although a person may be an employer under this section, services performed in his employ may be of such a nature, or performed under such circumstances, as not to constitute employment within the meaning of the act. (See § 402.203)

§ 402.206 *Excepted services in general.* (a) Services performed on or after January 1, 1940, by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted by any of the numbered paragraphs of section 1426 (b) of the act, that is, section 1426 (b), as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939, and as amended, effective January 1, 1946, by section 4 (c) of the International Organizations Immunities Act, and as further amended, effective January 1, 1940, by section 1 of Public Law 492, 80th Congress, relating to certain vendors of newspapers and magazines. Such services do not constitute employment for purposes of the tax even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel.

(b) The exception attaches to the services performed by the employee and

not to the employee as an individual; that is, the exception applies only to the services rendered by the employee in an excepted class.

*Example.* A is an individual who is employed part time by B to perform services which constitute "agricultural labor." (See § 402.208.) A is also employed by C part time to perform services as a grocery clerk in a store owned by him. While no tax liability is incurred with respect to A's remuneration for services performed in the employ of B (the services being excepted as agricultural labor), the exception does not embrace the services performed by A in the employ of C which constitute employment and the tax attaches with respect to the wages (see § 402.227) for such services.

This section, § 402.207 (relating to included and excluded services), and §§ 402.208 to 402.226, inclusive (relating to certain classes of excepted services), apply with respect only to services performed on or after January 1, 1940. Section 402.226a, relating to an additional class of excepted services, applies with respect only to services performed on or after January 1, 1946. (For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 402.207. For provisions relating to services performed prior to January 1, 1940, see § 402.202.)

(c) The collection of tax under the act with respect to certain services rendered prior to January 1, 1946, is prohibited although such services are not excepted by section 1426 (b) of the act in force prior to such date. Section 5 (b) of the International Organizations Immunities Act provides that no tax shall be collected under the Federal Insurance Contributions Act with respect to services rendered prior to January 1, 1946, which are described in paragraph (16) of section 1426 (b) of the Federal Insurance Contributions Act in force on and after such date, relating to services in the employ of an international organization. The exemption from taxation provided under such section 5 (b) is subject to the provisions of section 1 of the International Organizations Immunities Act (see provisions of such section quoted immediately preceding § 402.226a). Notwithstanding any other provision of this part services with respect to which the collection of tax is prohibited by such sec-

tion 5 (b), as the application of such section may be modified pursuant to such section 1, shall be deemed not to be included within the term "employment" as used in this part.

[Regs. 106, 5 F. R. 774, as amended by T. D. 5519, 11 F. R. 6757, T. D. 5665, 13 F. R. 6603]

§ 402.207 *Included and excluded services.* (a) If a portion of the services performed by an employee for the person employing him during a pay period constitutes employment, and the remainder does not constitute employment, all the services of the employee during the period shall for purposes of the tax be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which under section 1426 (b) of the act constitute employment, and the time during which he performs services which under such section do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then all the services of that employee for that person in that pay period shall be deemed to be employment.

(c) If less than one-half of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then none of the services of that employee for that person in that pay period shall be deemed to be employment.

*Example 1.* Employee A is employed by B who operates a farm and a store. A's services on the farm are such that they are excepted as agricultural labor and do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours on the farm and 80 hours in the store. None of A's services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment.

During another month A works 75 hours on the farm and 120 hours in the store. All of A's services during the month are deemed to be employment, since one-half or more of his services during the month constitutes employment.

*Example 2.* Employee C is employed by a maid by D, a medical doctor, whose home and office are located in the same building.

C's services in the home are excepted as domestic service and do not constitute employment, and her services in the office constitute employment. She is paid each week. During a particular week C works 20 hours in the home and 20 hours in the office. All of C's services during that week are deemed to be employment, since one-half or more of her services during the week constitutes employment.

During another week C works 22 hours in the home and 15 hours in the office. None of C's services during that week are deemed to be employment, since less than one-half of her services during the week constitutes employment.

(d) For purposes of this section, a "pay period" is the period (of not more than 31 consecutive calendar days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. Thus, if the periods for which payments of remuneration are made to the employee by such person are of uniform duration, each such period constitutes a "pay period." If, however, the periods occasionally vary in duration, the "pay period" is the period for which a payment of remuneration is ordinarily made to the employee by such person, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if a person ordinarily pays a particular employee for each calendar week at the end of the week, but the employee receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the "pay period" is still the calendar week; or if, instead, that employee is sent on a trip by such person and receives at the end of the third week a single remuneration payment for 3 weeks' services, the "pay period" is still the calendar week.

(e) If there is only one period (and such period does not exceed 31 consecutive calendar days) for which a payment of remuneration is made to the employee by the person employing him, such period is deemed to be a "pay period" for purposes of this section.

(f) The rules set forth in this section do not apply (1) with respect to any services performed by the employee for the person employing him if the periods for which such person makes payments of remuneration to the employee vary to the extent that there is no period "for which a payment of remuneration is ordinarily made to the employee," or (2)

with respect to any services performed by the employee for the person employing him if the period for which a payment of remuneration is ordinarily made to the employee by such person exceeds 31 consecutive calendar days, or (3) with respect to any service performed by the employee for the person employing him during a pay period if any of such service is excepted by section 1426 (b) (9) of the act. (See § 402.216.)

(g) If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee's services constitutes employment, but the rules prescribed herein are not applicable, the tax attaches with respect to such services as constitute employment as defined in section 1426 (b) of the act.

§ 402.208 *Agricultural labor*—(a) *In general.* (1) Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 1426 (h) of the act are excepted. The term as so defined includes services of the character described in paragraphs (b), (c), (d), and (e) of this section.

(2) In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(b) *Services described in section 1426 (h) (1) of the act.* (1) Services performed on a farm by an employee of any person in connection with any of the following activities are excepted as agricultural labor:

(i) The cultivation of the soil;

(ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

(2) The term "farm" as used in this section includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets), do not constitute "farms."

(c) *Services described in section 1426 (h) (2) of the act.* (1) The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms are excepted as agricultural labor, provided the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

(2) The services described in subparagraph (1) (i) of this paragraph may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

(3) Since the services, described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(d) *Services described in section 1426 (h) (3) of the act.* Services performed by an employee in the employ of any person in connection with any of the following operations are excepted as agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;

(2) The hatching of poultry;

(3) The raising or harvesting of mushrooms;

(4) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;

(5) The production or harvesting of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(6) The production or harvesting of crude gum (oleoresin) from a living tree

or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 1426 (h) (4) of the act.* (1) (i) Services performed by an employee in the employ of a farmer or a farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see subparagraph (2) of this paragraph), produced by such farmer or farmer-members of such organization or group of farmers are excepted, provided such services are performed as an incident to ordinary farming operations.

(ii) Generally services are performed "as an incident to ordinary farming operations" within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers' cooperative organization or group as a prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmers' organization or group. Services performed by employees of such farmer or farmers' organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of commodities produced by persons other than such farmer or members of such farmers' organization or group are not performed "as an incident to ordinary farming operations."

(2) Services performed by an employee in the employ of any person in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of fruits and vegetables, whether or not of a perishable nature, are excepted as agricultural labor, provided such services are performed as an incident to the preparation of such fruits and vegetables for market. For example, if services in the sorting, grading, or storing of fruits, or in the cleaning of beans, are performed as an incident to their preparation for market, such services may be excepted

whether performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities.

(3) The services described in subparagraphs (1) and (2) of this paragraph, do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the excepted services described in such subparagraphs must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (c) of this section.

§ 402.209 *Domestic service.* (a) Services of a household nature performed by an employee in or about the private home of the person by whom he is employed, or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which he is employed, are included within the exception stated in section 1426 (b) (2).

(b) A private home is the fixed place of abode of an individual or family.

(c) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter.

(d) If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home and the services performed therein are not excepted. Likewise, if the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for such purpose, the services performed therein are not within the exception.

(e) In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen,

gardeners, footmen, grooms, and chauffeurs of automobiles for family use. In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, maids, butlers, laundresses, furnacemen, waiters, and housemothers.

(f) The services above enumerated are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, or commercial offices or establishments.

(g) Services performed as a private secretary, even though performed in the employer's home, are not within the exception.

§ 402.210 *Casual labor not in the course of employer's trade or business.*

(a) The term "casual labor" includes labor which is occasional, incidental, or irregular.

(b) The expression "not in the course of the employer's trade or business" includes labor that does not promote or advance the trade or business of the employer.

(c) Thus, labor which is occasional, incidental, or irregular, and does not promote or advance the employer's trade or business, is excepted.

*Example 1.* A's business is that of operating a sawmill. He employs B, a carpenter, at an hourly wage to repair his home. B works irregularly and spends the greater part of 2 days in completing the work. Since B's labor is casual and is not in the course of A's trade or business, such services are excepted.

(d) Casual labor, that is, labor which is occasional, incidental, or irregular, but which is in the course of the employer's trade or business, does not come within the exception stated in paragraph (c) of this section.

*Example 2.* C's business is that of operating a sawmill. He employs D for 2 hours, at an hourly wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, but it is in the course of C's trade or business and is not excepted.

*Example 3.* E is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks may be casual, they are in the course of the employer's trade or business and, therefore, not excepted.

(e) Casual labor performed for a corporation does not come within this exception.

§ 402.211 *Family employment.* (a) Certain services are excepted because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) Services performed by a father or mother in the employ of his or her son or daughter; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

(b) Under paragraph (a) (1) and (2) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a) (3) of this section, in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

(c) Services performed in the employ of a corporation are not within the exception. Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

[Regs. 106, 5 F. R. 774, as amended by T. D. 5062, 6 F. R. 3693]

§ 402.212 (a) *Vessel not an American vessel.* Certain services performed within the United States "on or in connection with" a vessel not an American vessel are excepted. In order to be excepted, the services must be performed by an employee who is also employed "on and in connection with" the vessel when outside the United States.

(b) An employee performs services on and in connection with the vessel if he performs services on the vessel when outside the United States which are also in connection with the vessel. Services performed on the vessel outside the United States as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on

the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(c) The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(d) The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel. (For definitions of "vessel" and "American vessel," see § 402.203 (c).)

(e) Since the only services performed outside the United States which constitute employment are those described in § 402.203 (c) (relating to services performed outside the United States on or in connection with an American vessel), services performed outside the United States on or in connection with a vessel not an American vessel in any event do not constitute employment.

§ 402.213 *United States and instrumentalities thereof.* (a) Services performed in the employ of the United States Government, except as provided in section 1426 (i) or (j) of the act (see § 402.203 (d)), are excepted. Services performed in the employ of an instrumentality of the United States are also excepted if the instrumentality is either wholly owned by the United States, or exempt from the employers' tax by virtue of any other provision of law.

(b) Services performed in the employ of an instrumentality of the United States which is neither wholly owned by the United States nor exempt from the employers' tax by virtue of any other provision of law are not within the exception.

(c) Services performed in the employ of a national bank or a State member bank of the Federal Reserve System, for example, are not within the exception.

[Regs. 106, 5 F. R. 774, as amended by T. D. 5502, 11 F. R. 2920]

§ 402.214 *States and their political subdivisions and instrumentalities.* (a) Services performed in the employ of any State, or of any political subdivision thereof, are excepted. Services performed in the employ of an instrumentality of one or more States or political subdivisions thereof are excepted if the instrumentality is wholly owned by one or more of the foregoing. Services performed in the employ of an instrumentality of one or more of the several States or political subdivisions thereof which is not wholly owned by one or more of the foregoing are excepted only to the extent that the instrumentality is with respect to such services immune under the Constitution of the United States from the employers' tax.

(b) The term "State" includes the District of Columbia and the Territories of Alaska and Hawaii.

§ 402.215 *Religious, charitable, scientific, literary, and educational organizations and community chests.* (a) Services performed by an employee in the employ of an organization of the class specified in section 1426 (b) (8) of the act are excepted.

(b) For purposes of this exception the nature of the services performed is immaterial; the statutory test is the character of the organization for which the services are performed.

(c) In all cases, in order to establish its status under the statutory classification, the organization must meet the following three tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes;

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(3) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

(d) Corporations or other institutions organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that an organization established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily affect status under the law.

(e) An educational organization within the meaning of section 1426 (b) (8) of the act is one designed primarily

for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda is not an educational organization. However, the publication of books or the giving of lectures advocating cause of a controversial nature shall not of itself be sufficient to deny an organization the exemption, if carrying on propaganda, or otherwise attempting, to influence legislation form no substantial part of its activities, its principal purpose and substantially all of its activities being clearly of a nonpartisan, noncontroversial, and educational nature.

(f) Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and which also manufactures and sells articles to the public for profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

(g) An organization otherwise within the statutory class does not lose its status as such by receiving income such as rent, dividends, and interest from investments, provided such income is devoted exclusively to one or more of the specified purposes.

(h) If an organization has established its status under section 1426 (b) (8) of the act, it need not thereafter make a return or any further showing with respect to its status under the act unless it changes the character of its organization or operations or the purpose for which it was originally created.

§ 402.216 *Railroad industry; employees and employee representatives under section 1532 of the Internal Revenue Code.* Services performed by an individual as an "employee" or as an "employee representative," as those terms are defined in section 1532 of subchapter B of chapter 9 of the Internal Revenue

Code (which subchapter corresponds to and, effective April 1, 1939, superseded the Carriers Taxing Act of 1937), are excepted. (For definitions of employee and employee representative, see such section and the regulations issued pursuant to such subchapter B.)

§ 402.217 *Organizations exempt from income tax*—(a) *In general.* This section deals with the exception of services performed in the employ of certain organizations exempt from income tax under section 101 of the Internal Revenue Code. If the services meet the tests set forth in paragraph (b), (c), or (d) of this section, such services are excepted.

(See also § 402.215 for provisions relating to the exception of services performed in the employ of religious, charitable, scientific, literary, and educational organizations and community chests of the type described in section 101 (6) of the Internal Revenue Code; § 402.218 for provisions relating to the exception of services performed in the employ of agricultural and horticultural organizations exempt from income tax under section 101 (1) of the Code; § 402.219 for provisions relating to the exception of services performed in the employ of voluntary employees' beneficiary associations of the type described in section 101 (16) of the Code; and § 402.220 for provisions relating to the exception of services performed in the employ of Federal employees' beneficiary associations of the type described in section 101 (19) of the Code.)

(b) *Remuneration not in excess of \$45 for calendar quarter.* Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code are excepted, if the remuneration for the services does not exceed \$45. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. A calendar quarter is a period of 3 calendar months ending on March 31, June 30, September 30, or December 31. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

*Example 1.* X is a local lodge of a fraternal organization and is exempt from income tax under section 101 (3) of the Internal Revenue Code. X has two paid employees, A, who serves exclusively as recording secretary for the lodge, and B, who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1940 (that is, January 1, 1940, through March 31, 1940, both dates inclusive) A earns a total of \$30. For services performed during the same calendar quarter B earns \$180. Since the remuneration for the services performed by A during such quarter does not exceed \$45, all of such services are excepted, and the tax does not attach with respect to any of the remuneration for such services. Since the remuneration for the services performed by B during such quarter, however, does exceed \$45, none of such services are excepted, and the tax attaches with respect to all of the remuneration for such services (that is, \$180) as and when paid.

*Example 2.* The facts are the same as in Example 1, above, except that on April 1, 1940, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1940, through June 30, 1940, both dates inclusive), A earns a total of \$60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services exceeds \$45. The tax attaches with respect to all of the remuneration for services performed during the second quarter (that is, \$60) as and when paid.

*Example 3.* The facts are the same as in Example 1, above, except that A earns \$120 for services performed during the year 1940, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the \$120 attributable to services performed in that quarter does not exceed \$45. If, however, the portion of the \$120 attributable to services performed in any calendar quarter during the year does exceed \$45, the services during that quarter are not excepted, and the tax attaches with respect to that portion of the remuneration attributable to his services in that quarter.

(c) *Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies.* The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 101 of the Internal Revenue Code are excepted:

(1) Services performed away from the home office of such a society, order, or association in connection with the col-

lection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) *Students employed by organizations exempt from income tax.* Services performed in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted. For purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where such services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(For provisions relating to services performed by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see § 402.221.)

§ 402.218 *Agricultural and horticultural organizations exempt from income tax.* (a) Services performed by an employee in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1) of the Internal Revenue Code are excepted.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 402.219 *Voluntary employees' beneficiary associations.* (a) Services performed by an employee in the employ of an organization of the character described in section 1426 (b) (10) (C) of the act are excepted.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 402.220 *Federal employees' beneficiary associations.* (a) Services performed by an employee in the employ of an organization of the character described in section 1426 (b) (10) (D) are excepted.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 402.221 *Students employed by schools, colleges, or universities not exempt from income tax.* (a) Services performed in a calendar quarter by a student in the employ of a school, college, or university not exempt from income tax under section 101 of the Internal Revenue Code are excepted, provided:

(1) The services are performed by a student who is enrolled and is regularly attending classes at such school, college, or university; and

(2) The remuneration for such services performed in such calendar quarter does not exceed \$45, exclusive of room, board, and tuition furnished by the school, college, or university.

(b) A calendar quarter is a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

(c) For purposes of this exception, the type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the amount of remuneration for services performed by the employee in the calendar quarter, and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in whose employ he performs the services.

(d) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(For provisions relating to services performed by a student in the employ of an organization exempt from income tax, see § 402.217 (d).)

§ 402.222 *Foreign governments.* (a) Services performed by an employee in the employ of a foreign government are excepted. The exception includes not only services performed by ambassadors, ministers, and other diplomatic officers and employees but also services performed as a consular or other officer or employee of a foreign government, or as a nondiplomatic representative thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.

§ 402.223 *Wholly owned instrumentalities of a foreign government.* Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country, provided:

(a) The instrumentality is wholly owned by the foreign government;

(b) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(c) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

For purposes of this exception, the citizenship or resident of the employee is immaterial.

§ 402.224 *Student nurses and hospital internes.* (a) Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted

provided the student nurse is enrolled and regularly attending classes in a nurses' training school, and such nurses' training school is chartered or approved pursuant to State law.

(b) Services performed as an interne (as distinguished from a resident doctor) in the employ of a hospital are excepted provided the interne has completed a four years' course in a medical school chartered or approved pursuant to State law.

§ 402.225 *Fishing*—(a) *In general.* Subject to the limitations prescribed in paragraphs (b) and (c) of this section, the services described in this paragraph are excepted. Services performed by an individual in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish (for example, oysters, clams, and mussels), crustacea (for example, lobsters, crabs, and shrimps), sponges, seaweeds, or other aquatic forms of animal and vegetable life are excepted. The exception extends to services performed as an officer or member of the crew of a vessel while the vessel is engaged in any such activity whether or not the officer or member of the crew is himself so engaged. In the case of an individual who is engaged in any such activity in the employ of any person, the services performed, by such individual in the employ of such person, as an ordinary incident to any such activity are also excepted. Similarly, for example, the shore services of an officer or member of the crew of a vessel engaged in any such activity are excepted if such services are an ordinary incident to any such activity. Services performed as an ordinary incident to any such activity may include, for example, services performed in such cleaning, icing, and packing of fish as are necessary for the immediate preservation of the catch.

(b) *Salmon and halibut fishing.* Services performed in connection with the catching or taking of salmon or halibut, for commercial purposes, are not within the exception. Thus, neither the services of an officer or member of the crew of a vessel (irrespective of its tonnage) which is engaged in the catching or taking of salmon or halibut, for commercial purposes, nor the services of any other individual in connection with such activity, are within the exception.

(c) *Vessels of more than 10 net tons.* Services described in paragraph (a) of this section performed on or in connec-

tion with a vessel of more than 10 net tons are not within the exception. For purposes of the exception, the tonnage of the vessel shall be determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

§ 402.226 *Delivery and distribution of newspapers, shopping news, and magazines—(a) In general.* Subparagraph (A) of section 1426 (b) (15) of the act, as amended by section 1 of Public Law 492, 80th Congress, enacted April 20, 1948, excepts certain services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news. This exception, which is dealt with in paragraph (b) of this section, continues without change the exception contained in section 1426 (b) (15), as added by section 606 of the Social Security Act Amendments of 1939. Subparagraph (B) of section 1426 (b) (15), added by section 1 of Public Law 492, excepts certain services in the sale of newspapers and magazines without regard to the age of the individual performing the services. Such exception is dealt with in paragraph (c) of this section. The exceptions in subparagraph (A) and subparagraph (B) are both applicable with respect to services performed after December 31, 1939.

(b) *Services of individuals under age 18.* Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, are excepted. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted. The services are excepted irrespective of the form or method of compensation. Incidental services by the employee who makes the house-to-house delivery, such as services in assembling newspapers, are considered to be within the exception. The exception continues only during the time that the employee is under the age of 18.

(c) *Services of individuals of any age.* Services performed by an employee in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under

which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, are excepted. The services are excepted whether or not the employee is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the services are excepted without regard to the age of the employee. Services performed other than at the time of sale to the ultimate consumer are not within the exception. Thus, the services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer are not within the exception. However, incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, are considered to be within the exception.

[T. D. 5665, 13 F. R. 6603]

§ 402.226a *International organizations.* Subject to the provisions of section 1 of the International Organizations Immunities Act, services performed on or after January 1, 1946, in the employ of an international organization as defined in section 3797 (a) (18) of the Internal Revenue Code are excepted. For provisions relating to the circumstances under which services rendered prior to January 1, 1946, in the employ of an international organization are deemed not to be included within the term "employment" as used in this part, see § 402.206.

[T. D. 5519, 11 F. R. 6757]

§ 402.227 *Wages—(a) In general.* (1) Whether remuneration paid on or after January 1, 1940, for employment performed after December 31, 1936, constitutes wages is determined under section 1426 (a) of the act, that is, section 1426 (a), as amended, effective January 1, 1940, by section 606 of the Social Security Act Amendments of 1939, and as further amended by section 412 (a) of the Social Security Act Amendments of 1946. This section and § 402.228 (relating to exclusions from wages) apply with respect only to remuneration paid on or after January 1, 1940, for employment performed after December 31, 1936. Whether remuneration paid prior to January 1, 1940, for employment per-

formed after December 31, 1936, constitutes wages shall be determined in accordance with the applicable provisions of Part 401 of this chapter.

(2) The term "wages" means all remuneration for employment unless specifically excepted under section 1426 (a) of the act. (See § 402.228)

(3) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions on sales or on insurance premiums, are wages within the meaning of the act if paid as compensation for employment.

(4) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

(5) The medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment.

(6) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges," however, does not ordinarily include the value of meals or lodgings furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

(7) Remuneration for employment, unless such remuneration is specifically excepted under section 1426 (a), constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

*Example.* A is employed by B during the month of January 1940 in employment and is entitled to receive remuneration of \$100 for the services performed for B, the employer, during the month. A leaves the employ of B at the close of business on January 31, 1940. On February 15, 1940 (when A is no longer an employee of B), B pays A the remuneration of \$100 which was earned for the services performed in January. The \$100 is wages within the meaning of the act, and the tax is payable with respect thereto.

(b) *Certain items included as wages—*

(1) *Vacation allowances.* Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(2) *Traveling expenses.* Amounts paid to traveling salesmen or other employees as allowance or reimbursement for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer. Thus, the wages of a salesman, who is employed on a straight salary basis with an allowance to cover all necessary expenses incurred in the employer's business, are computed by adding to the salary the amount of the excess, if any, of the expense allowance over the expenses actually incurred and accounted for by the employee to the employer.

(3) *Deductions by an employer from wages of an employee.* The amount of any tax which is required by section 1401 (a) of the act to be deducted by the employer from the wages of an employee is considered to be a part of the employee's wages, and is deemed to be paid to the employee as wages at the time that the deduction is made. Other amounts deducted from the wages of an employee by an employer also constitute wages paid to the employee at the time of the deduction. It is immaterial that the act, or any act of Congress, or the law of any State, requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

(4) *Remuneration for certain services performed for War Shipping Administration or Bonneville Power Administrator.* Notwithstanding any other provision of this part, such remuneration for employment as constitutes wages un-

der section 1426 (i) or (j) of the act shall constitute wages within the meaning of the act and of this part. See § 402.203 (d), relating to services which constitute employment under section 1426 (i) and (j).

[Regs. 106, 5 F. R. 774, as amended by T. D. 5502, 11 F. R. 2921. T. D. 5566, 12 F. R. 4176]

§ 402.228 *Exclusions from wages*—(a) *\$3,000 limitation*—(1) *In general.* Section 1426 (a) (1) of the act provides an annual \$3,000 limitation on the amount of remuneration that may constitute wages, by excepting from the term “wages” remuneration paid after \$3,000 has been paid. Under such section as amended by section 412 (a) of the Social Security Act Amendments of 1946, the amount first to be included in wages, after which the exception operates, is measured in two ways, depending on whether the remuneration is paid before 1947 or is paid after 1946. In the case of remuneration paid before 1947, the amount first to be included in wages is remuneration paid up to and including \$3,000 for employment performed by an employee for his employer during each calendar year regardless of when paid (before 1947); and additional amounts for employment performed in such calendar year by such employee for such employer are excluded regardless of when paid (before 1947). In the case of remuneration paid after 1946, the amount first to be included in wages in each calendar year is remuneration up to and including \$3,000 paid in the calendar year by an employer to an employee for employment performed at any time after December 31, 1936; and additional amounts paid in such calendar year by such employer to such employee are excluded regardless of when earned. In general, the change is from an “earned within the calendar year basis” to a “paid within the calendar year basis.” For a more complete explanation of the limitation, see subparagraphs (2) and (3) of this paragraph.

(2) *Remuneration paid before 1947.*

(i) This subparagraph (ending with Example 3) applies only with respect to remuneration paid before January 1, 1947.

(ii) The term “wages” does not include that part of the remuneration paid before January 1, 1947, by an employer to an employee for employment performed for him during any calendar year which exceeds the first \$3,000 paid by such em-

ployer to such employee for employment performed during such calendar year.

(iii) In the case of remuneration paid before 1947, the \$3,000 limitation applies only if the remuneration received by an employee from the same employer for employment during any one calendar year exceeds \$3,000. The limitation in such case relates to remuneration for employment during any one calendar year and not to the amount of remuneration (irrespective of the year of employment) which is paid or received in any one calendar year.

*Example 1.* Employee A, in 1940, receives \$2,500 from employer B on account of \$3,000 due him for employment performed in 1940. In 1941 A receives from employer B the balance of \$500 due him for employment performed in the prior year (1940) and also \$3,000 for employment performed in 1941. Although A actually receives total remuneration of \$3,500 during the calendar year 1941, that entire amount is subject to tax, that is, \$3,000 with respect to employment during 1941 and \$500 with respect to employment during 1940 (this \$500 added to the \$2,500 paid in 1940 constitutes the maximum wages which could be received before January 1, 1947, from any one employer by A with respect to employment during the calendar year 1940).

(iv) In the case of remuneration paid before 1947, if the employee has more than one employer during a calendar year, the limitation of wages to the first \$3,000 of remuneration received applies, not to the aggregate remuneration received from all employers with respect to employment during that year, but instead to the remuneration received from each employer with respect to employment during that year. In such case the first \$3,000 received from each employer constitutes wages and is subject to the tax, even though, under section 1401 (d) of the act, the employee may be entitled to a refund of any amount of employees' tax deducted from his wages and paid to the collector which exceeds the employees' tax with respect to the first \$3,000 of wages received for services performed during such year. (In this connection and in connection with the two examples immediately following, see § 402.705, relating to special refunds of employees' tax on wages over \$3,000.)

*Example 2.* During 1940 employee C receives from employer D a salary of \$600 a month for employment by D during the first seven months of 1940, or total remuneration of \$4,200. At the end of the fifth month C

has received \$3,000 from employer D, and only that part of his total remuneration from D constitutes wages subject to the tax. The \$800 received by employee C from employer D for employment during the sixth month, and the like amount received for employment during the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month C leaves the employ of D and enters the employ of E. During 1940 C receives remuneration of \$600 a month from employer E for the remaining five months of 1940, or total remuneration of \$3,000 from employer E. The entire \$3,000 received by C from employer E constitutes wages and is subject to the tax. Thus, the first \$3,000 received from employer D and the entire \$3,000 received from employer E constitute wages.

*Example 3.* F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation during the calendar year 1940 and during such year receives a salary of \$3,000 from each corporation. Each \$3,000 received by F from each of the corporations X, Y, and Z (whether or not such corporations are related) constitutes wages and is subject to the tax.

(3) *Remuneration paid after 1946.*

(i) This subparagraph applies only with respect to remuneration paid after December 31, 1946.

(ii) The term "wages" does not include that part of the remuneration paid within any calendar year beginning after December 31, 1946, by an employer to an employee which exceeds the first \$3,000 paid within such calendar year by such employer to such employee for employment performed for him at any time after December 31, 1936.

(iii) In the case of remuneration paid after 1946, the \$3,000 limitation applies only if the remuneration received during any one calendar year by an employee from the same employer for employment performed after 1936 exceeds \$3,000. The limitation in such case relates to the amount of remuneration received during any one calendar year for employment after 1936 and not to the amount of remuneration for employment performed in any one calendar year.

*Example 1.* Employee G, in 1947, receives \$2,500 from employer H on account of \$3,000 due him for employment performed in 1947. In 1948 G receives from employer H the balance of \$500 due him for employment performed in the prior year (1947), and thereafter in 1948 also receives \$3,000 for employment performed in 1948 for employer H. The \$2,500 received in 1947 is subject to tax in 1947. The balance of \$500 received in 1948 for employment during 1947 is subject to tax in 1948, as is also the first

\$2,500 paid of the \$3,000 for employment during 1948 (this \$500 for 1947 employment added to the first \$2,500 paid for 1948 employment constitutes the maximum wages which could be received by G in 1948 from any one employer). The final \$500 received by G from H in 1948 is not included as wages and is not subject to the tax.

*Example 2.* Employee I, in 1946, receives \$3,000 from employer J on account of \$6,000 due him for employment performed in 1946. In 1947, before receiving any remuneration for employment performed in 1947, employee I receives the balance of \$3,000 due him from J on account of employment performed in 1946. The \$3,000 received in 1946 constitutes wages in 1946 and is subject to the tax, in accordance with the provisions set forth in subparagraph (2) of this paragraph. The balance of \$3,000 received in 1947 on account of employment in 1946 constitutes wages and is subject to the tax in 1947, in accordance with the provisions set forth in subparagraph (3) of this paragraph. The \$3,000 received in 1947 for 1946 employment constitutes the maximum wages which could be received by I from J in 1947. Any further remuneration received in 1947 by employee I for services performed for J is not included as wages and is not subject to the tax, whether for services performed before, during, or after 1947. (Assuming the same amounts of remuneration and times of payment, the same result would be reached if employee I had left the employ of J and performed no further services for J after 1946.)

(iv) If during a calendar year (after 1946) the employee receives remuneration from more than one employer, the limitation of wages to the first \$3,000 of remuneration received applies, not to the aggregate remuneration received from all employers with respect to employment performed after 1936, but instead to the remuneration received during such calendar year from each employer with respect to employment performed after 1936. In such case the first \$3,000 received during the calendar year from each employer constitutes wages and is subject to the tax, even though, under section 1401 (d) of the act, the employee may be entitled to a refund of any amount of employees' tax deducted from his wages which exceeds the employees' tax with respect to the first \$3,000 of wages received during the calendar year from all employers. (In this connection and in connection with the two examples immediately following, see § 402.705, relating to special refunds of employees' tax on wages over \$3,000.)

*Example 3.* During 1947 employee K receives from employer L a salary of \$600 a month for employment performed for L during the first seven months of 1947, or total

remuneration of \$4,200. At the end of the fifth month K has received \$3,000 from employer L, and only that part of his total remuneration from L constitutes wages subject to the tax. The \$600 received by employee K from employer L in the sixth month, and the like amount received in the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month K leaves the employ of L and enters the employ of M. K receives remuneration of \$600 a month from employer M in each of the remaining five months of 1947, or total remuneration of \$3,000 from employer M. The entire \$3,000 received by K from employer M constitutes wages and is subject to the tax. Thus, the first \$3,000 received from employer L and the entire \$3,000 received from employer M constitute wages.

*Example 4.* During the calendar year 1947 N is simultaneously an officer (an employee) of the O Corporation, the P Corporation, and the Q Corporation and during such year receives a salary of \$3,000 from each corporation. Each \$3,000 received by N from each of the corporations O, P, and Q (whether or not such corporations are related) constitutes wages and is subject to the tax.

(b) *Employers' plans providing for payments on account of retirement, sickness or accident disability, medical and hospitalization expenses, or death.* (1) Under section 1426 (a) (2) of the act, the term "wages" does not include the amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(i) Retirement,

(ii) Sickness or accident disability.

(iii) Medical and hospitalization expenses in connection with sickness or accident disability, or

(iv) Death, provided the employee has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer.

(2) The plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items.

(3) It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

(c) *Payment by an employer of employees' tax or employees' contributions under a State law.* The term "wages" does not include the amount of any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (1) the employees' tax imposed by section 1400 of the act, or (2) any payment required from an employee under a State unemployment compensation law.

(d) *Dismissal payments.* Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, are excluded from "wages," provided the employer is not legally bound by contract, statute, or otherwise, to make such payments.

(e) *Miscellaneous.* In addition to the exclusions specified in paragraphs (a), (b), (c), and (d) of this section, the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 1426 (b) of the act.

(2) Remuneration for services which are not deemed to be employment under section 1426 (c) of the act.

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.

[Regs. 106, 5 F. R. 774, as amended by T. D. 5566, 12 F. R. 4176]

#### SUBPART C—EMPLOYEES' TAX

§ 402.301 *Measure of employees' tax.* The employees' tax is measured by the amount of wages actually or constructively received on or after January 1, 1940, with respect to employment on or after January 1, 1937. (See §§ 402.202 and 402.203, relating to employment, and §§ 402.227 and 402.228, relating to wages)

§ 402.302 *Rates and computation of employees' tax.* The rates of employees' tax applicable for the respective calendar years are as follows:

	Percent
For the calendar years 1940 to 1949, both inclusive.....	1
For the calendar years 1950 and 1951.....	1½
For the calendar year 1952 and subsequent calendar years.....	2

The employees' tax is computed by applying to the wages received by the employee the rate in effect at the time such wages are received.

*Example.* During 1949 A is an employee of B and is engaged in the performance of services which constitute employment (see § 402.203). In the following year, 1950, A receives from B \$1,000 as remuneration for services performed by A in the preceding year. The tax is payable at the 1½ percent rate in effect for the calendar year 1950 (the year in which the wages are received) and not at the 1 percent rate which is in effect for the calendar year 1949 (the year in which the services are performed).

[T. D. 5592, 12 F. R. 7941]

§ 402.303 *When employees' tax attaches.* The employees' tax attaches at the time that the wages are either actually or constructively received by the employee. Wages are constructively received when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute receipt in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their receipt brought within his own control and disposition. (See § 402.403, relating to the time the employers' tax attaches)

§ 402.304 *Collection of, and liability for, employees' tax.* (a) The employer shall collect from each of his employees the employees' tax with respect to wages for employment performed for the employer by the employee. The employer shall make the collection by deducting or causing to be deducted the amount of the employees' tax from such wages as and when paid, either actually or constructively. The employer is required to collect the tax, notwithstanding the wages are paid in something other than money (for example, wages paid in stock,

board, lodging; see § 402.227) and to pay the tax to the collector in money. In collecting employees' tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. The employer is liable for the employees' tax with respect to all wages paid by him to each of his employees whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him the employee is also liable for the employees' tax with respect to all the wages received by him. Any employees' tax collected by or on behalf of an employer is a special fund in trust for the United States. The employer is indemnified against the claims and demands of any person for the amount of any payment of such tax made by the employer to the collector.

(b) Section 2707 of the Internal Revenue Code (see quotation following § 402.804) provides severe penalties for a willful failure to pay, collect, or truthfully account for any pay over, the employees' tax or for a willful attempt in any manner to evade or defeat the tax. Such penalties may be incurred by any person, including the employer, and any officer or employee of a corporate employer, or member or employee of any other employer, who as such employer, officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

§ 402.305 *Manner and time of payment of employees' tax.* The employees' tax is payable to the collector in the manner and at the time prescribed in § 402.607.

§ 402.306 *Statements for employees.* (a) Every employer shall furnish to each of his employees a written statement or statements, in a form suitable for retention by the employee, showing with respect to wages paid by him to the employee on or after January 1, 1940, for employment on or after January 1, 1937, (1) the name of the employer, (2) the name of the employee, (3) the period covered by the statement, (4) the total amount of wages paid during such period, and (5) the amount of employees' tax with respect to such wages. Each state-

ment shall cover a calendar year, or one, two, three, or four calendar quarters, whether or not within the same calendar year. A calendar quarter is a period of 3 calendar months ending on March 31, June 30, September 30, or December 31. The statement shall be furnished to the employee not later than the last day of the second calendar month following the period covered by the statement, except that, if the employee leaves the employ of the employer, the final statement shall be furnished on the day on which the last payment of wages is made to the employee. The employer may, at his option, furnish such a statement to any employee at the time of each payment of wages to the employee during any calendar quarter, in lieu of a statement covering such quarter; and, in such case, the statement may show the date of payment of the wages in lieu of the period covered by the statement. No particular form is prescribed for the statement required to be furnished to employees under this section.

(b) Section 1403 (b) of the act prescribes a civil penalty of not more than \$5 for each willful failure of an employer to furnish the required statement to an employee.

#### SUBPART D—EMPLOYERS' TAX

§ 402.401 *Measure of employers' tax.* The employers' tax is measured by the amount of wages actually or constructively paid on or after January 1, 1940, with respect to employment on or after January 1, 1937. (See §§ 402.202 and 402.203, relating to employment, and §§ 402.227 and 402.228, relating to wages)

§ 402.402 *Rates and computation of employers' tax.* (a) The rates of employers' tax applicable for the respective calendar years are as follows:

	<i>Percent</i>
For the calendar years 1940 to 1949, both inclusive.....	1
For the calendar years 1950 and 1951.....	1½
For the calendar year 1952 and subsequent calendar years.....	2

(b) The employers' tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

[T. D. 5592, 12 F. R. 7941]

§ 402.403 *When employers' tax attaches.* The employers' tax attaches at the time that the wages are either actually or constructively paid by the employer. Wages are constructively paid

when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition. (See § 402.303, relating to the time the employees' tax attaches.)

§ 402.404 *Liability for employers' tax.* The employer is liable for the employers' tax with respect to the wages paid to his employees for employment performed for him.

§ 402.405 *Manner and time of payment of employer's tax.* The employers' tax is payable to the collector in the manner and at the time prescribed in § 402.607.

#### SUBPART E—IDENTIFICATION OF TAXPAYERS

§ 402.501 *Employers' identification numbers.* Every person who on or after January 1, 1940, has in his employ one or more individuals in employment for wages, but who prior to such date has neither secured an identification number nor made application therefor, shall make an application, in duplicate, on Form SS-4 for an identification number. Each application, together with any supplementary statement, shall be prepared in accordance with the instructions and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Such employer shall file the application either with the nearest field office of the Social Security Board in the State in which his principal place of business is located or with the collector for the district in which such place of business is located, or, if the employer has no principal place of business within the United States, with the office of the Social Security Board at Baltimore, Md. The application shall be filed on or before the seventh day after the date on which employment for wages for such employer first occurs. Copies of Form SS-4 may be obtained from any field office of the Social Security Board or from any collector. Each application shall be signed by (a) the individual, if the employer is

an individual; (b) the president, vice president, or other principal officer, if the employer is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (d) the fiduciary, if the employer is a trust or estate. An identification number will be assigned to the employer in due course upon the basis of information reported on the application required under this section. Identification numbers assigned to employers shall be shown in their records, returns, and claims to the extent required by §§ 402.605 and 402.609, by the instructions relating to Form SS-1a, and by § 402.704.

§ 402.502 *Employees' account numbers.* (a) Every individual who on or after January 1, 1940, is in employment for wages, but who prior to such date has neither secured an account number nor made application therefor, shall make an application on Form SS-5 for an account number. Each application shall be prepared in accordance with the instructions and regulations applicable thereto, and shall set forth fully and clearly the date therein called for. Such employee shall file the application with the field office of the Social Security Board nearest his place of employment, or, if the employee is not working within the United States, with the office of the Social Security Board at Baltimore, Md. The application shall be filed on or before the seventh day after the date on which the employee first performs employment for wages, except that the application shall be filed on or before the date the employee leaves the employ of his employer if such date precedes such seventh day. Copies of Form SS-5 may be obtained from any field office of the Social Security Board or from any collector. An account number will be assigned to the employee by the Social Security Board in due course upon the basis of information reported on the application required under this section.

(b) Any employee may have his account number changed at any time by applying to a field office of the Social Security Board and showing good reasons for a change. With that exception, only one account number will be assigned to an employee. Any employee whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, should report such change

or correction to a field office of the Social Security Board. Copies of the form for making such reports may be obtained from any field office of the Board.

§ 402.503 *Duties of employee with respect to his account number.*—(a) *Employee required to advise each employer of account number.* Every employee shall advise every employer for whom he performs employment for wages what his account number is, and what his name is, exactly as shown on the account number card issued to him by the Social Security Board. Care must be exercised that the employer is correctly advised of such number and name. Such advice shall be furnished to the employer as soon as the employee is notified of the assignment of an account number and thereafter as soon as the employee enters the employ of any other employer. Such advice shall be furnished by the employee, if possible, by showing his account number card to the employer. The account number originally assigned to an employee (or the number as changed in accordance with § 402.502) shall be used by him even though he enters the employ of other employers.

(b) *Duties if account number not assigned to or known by employee when hired.* (1) If, when an employee enters the employ of any employer for wages, the employee for any reason does not know what his name or account number is as shown on an account number card, he shall in every case advise that employer what his name and account number are in accordance with paragraph (a) of this section as soon as they are known to him, whether or not at that time he is still in the employ of that employer.

(2) In any case where the employee has not previously advised the employer what his name and account number are as shown on his account number card, the employee shall, on the fourteenth day after the date on which the employee first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is the earlier, comply with subdivision (i) or (ii) of this subparagraph:

(i) If the employee has available a receipt issued to him by an office of the Social Security Board acknowledging that an application for an account number has been received, the employee shall show such receipt to the employer.

(For provisions relating to the duties of an employer when an employee shows him such a receipt, see § 402.504.)

(ii) If the employee does not have available a receipt issued to him by an office of the Social Security Board acknowledging that an application for an account number has been received, the employee shall furnish to the employer an application on Form SS-5, completely filled in and signed by the employee. If a copy of Form SS-5 is not available, the employee shall in lieu thereof furnish to the employer a statement in writing, signed by the employee, setting forth the date of the statement, the employee's full name, present address, date and place of birth, father's full name, mother's full name before marriage, and the employee's sex and color, including a statement as to whether the employee has previously filed an application on Form SS-5 and, if so, the date and place of such filing. The furnishing of an executed Form SS-5, or statement in lieu thereof, by the employee to the employer does not relieve the employee of his obligation to make an application on Form SS-5 and file it with the field office of the Social Security Board as required by § 402.502. (For provisions relating to the disposition to be made by the employer of an executed Form SS-5 or a statement in lieu thereof furnished to him by the employee under this subdivision, see § 402.504.)

**§ 402.504 Duties of employer with respect to employees' account numbers—**

(a) *When individual has entered his employ.* (1) Upon being advised of the name and account number of an employee, the employer shall enter such name and number in his records, returns, and claims to the extent required by §§ 402.605 and 402.609, by the instructions relating to Form SS-1a, and by § 402.704. Upon failure of an employee to advise his employer of his account number when he enters the employ of the employer, the employer shall request the employee to advise him of such number. If the employee has not been assigned a number and has not filed an application therefor with a field office of the Social Security Board, the employer shall, when the employee enters his employ, inform the employee of the provisions of §§ 402.502 and 402.503.

(2) If the employee has not advised the employer what his account number is

within a period of 14 days after the date the employee first performs employment for wages for the employer, or before the employee leaves his employ if such event occurs within such period, the employer shall immediately request the employee to comply with the provisions of § 402.503 (b) (1) or (2).

(3) If the employee shows to the employer, as provided in § 402.503 (b) (1), a receipt issued by the Social Security Board acknowledging that an application for an account number has been received from the employee, the employer shall enter in his records with respect to such employee the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the employee exactly as shown in the receipt. The receipt shall be retained by the employee.

(4) If, however, the employee furnishes to the employer, as provided in § 402.503 (b) (2), an executed Form SS-5 or statement in lieu thereof, the employer shall retain the form or statement for disposition as provided below.

(5) In any case in which the employee's account number is for any reason unknown to the employer at the time the employer's return on Form SS-1a is filed for any quarter during which the employee receives wages from such employer:

(i) If the employee has shown to the employer, as provided in § 402.503 (b) (1), a receipt of the Social Security Board acknowledging that an application for an account number has been received from the employee, the employer shall enter on the return, with the entry with respect to the employee, the name and address of the employee exactly as shown in the receipt, the date of issue of the receipt and the address of the issuing office; or

(ii) If the employee has furnished to the employer, as provided in § 402.503 (b) (2), an executed Form SS-5 or statement in lieu thereof, the employer shall attach such form or statement to the return; or

(iii) If neither subdivision (i) nor (ii) of this subparagraph is applicable, the employer shall attach to the return a Form SS-5 or statement, signed by the employer, setting forth as fully and clearly as practicable the employee's full name, his present or last known address, date and place of birth, father's full name, mother's full name before mar-

riage, the employee's sex and color, and a statement as to whether an application for an account number has previously been filed by the employee and, if so, the date and place of such filing. The employer shall also insert in such Form SS-5 or statement an explanation of why he has not secured from the employee a Form SS-5 or statement signed by the employee as provided in § 402.503 (b) (2), and shall insert the word "Employer" as part of his signature.

(6) If the employee advises his employer what his name and account number are as shown on his account number card prior to the time the employer's return on Form SS-1a is filed and the employer enters such name and number on the return, the employer shall return to the employee any executed Form SS-5 or statement in lieu thereof furnished by the employee to the employer in accordance with § 402.503 (b) (2).

(b) *Prospective employees.* While not mandatory, it is suggested that the employer advise any prospective employee who does not have an account number what the requirements of §§ 402.502 and 402.503 are.

#### SUBPART F—RETURNS, PAYMENT OF TAX, AND RECORDS

§ 402.601 *Tax and information returns.* Every employer shall make a tax and information return on Form SS-1a for the first quarter after December 31, 1939, within which wages are paid to his employee or employees, and for each subsequent quarter (whether or not wages are paid therein) until he files a final return as required by the provisions of § 402.603. One original return shall be filed with the collector. For purposes of returns under the act, the quarters shall each be 3 calendar months as follows: (a) from January 1 to March 31, both dates inclusive; (b) from April 1 to June 30, both dates inclusive; (c) from July 1 to September 30, both dates inclusive; and (d) from October 1 to December 31, both dates inclusive.

§ 402.602 *When to report wages.* Wages shall be reported in the tax return for the period in which they are actually paid unless they were constructively paid in a prior tax-return period, in which case such wages shall be reported only in the return for such prior period; except that if wages actually or constructively paid before January 1, 1943, for a payroll period ending within a tax-return

period prior to October 1, 1942, are so paid after such return period but before the return for such period is filed, the employer may report such wages in the return for such period.

§ 402.603 *Final returns.* The last return on Form SS-1a for any employer who ceases to pay wages shall be marked "Final return" by the employer or the person filing the return. Such final return shall be filed with the collector on or before the thirtieth day after the date on which the final payment of wages is made for services performed for the employer, and shall plainly show the period covered and also the date of the last payment of wages. There shall be executed as part of each final return a statement, in duplicate, giving the address at which the records required by § 402.609 will be kept, the name of the person keeping such records, and, if the business has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took effect. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement. An employer who has only temporarily ceased to pay wages, including an employer engaged in seasonal activities, shall continue to file returns, but shall enter on the face of any return on which no wages are required to be reported the date of the last payment of wages and the date when he expects to resume paying wages to one or more employees.

§ 402.604 *Execution of returns.* (a) Except as provided in this section, each return shall be signed and verified under oath or affirmation by (1) the individual, if the employer is an individual; (2) the president, vice president, or other principal officer, if the employer is a corporation; (3) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (4) the fiduciary, if the employer is a trust or estate. The employer's return may be executed by an agent in the name of the employer if an acceptable power of attorney is filed with the collector and if such return includes the wages paid to all employees of the employer for the period covered by the return.

(b) The oath or affirmation may be administered by any person duly authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. Returns executed abroad may be attested free of charge before a United States consular officer. If a foreign notary or other official having no seal acts as attesting officer, the authority of such attesting officer should be certified to by some judicial officer or other proper officer having knowledge of the appointment and official character of the attesting officer. This section is not an exclusive enumeration of the persons who may administer oaths or affirmations.

(c) If the sum of the employees' tax and the employers' tax shown to be payable by any return on Form SS-1a is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath.

(d) Each return for a period beginning after December 31, 1943, shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of the oath or affirmation, or the signing or acknowledgment before two witnesses, otherwise required.

[Regs. 106, 5 F. R. 774, as amended by T. D. 5302, 8 F. F. 14000]

§ 402.605 *Use of prescribed forms.* (a) Copies of the prescribed return forms will so far as possible be regularly furnished employers by collectors without application therefor. An employer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Employers not supplied with the proper forms should make application therefor to the collector in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. (See § 402.606, relating to the place and time for filing returns; see also § 402.603, relating to final returns.) If the prescribed form is not available, a statement made by the employer disclosing the amount of wages paid during the period for which a return is required and the amount of taxes due may be accepted as a tentative return. If filed within the prescribed time the statement so made

will relieve the employer from liability for the addition to tax imposed for the delinquent filing of the return by section 3612 (d) (1) of the Internal Revenue Code (see § 402.804 (a)), provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form.

(b) Each return, together with a copy thereof and any supporting data, shall be filed in and disposed of in accordance with the instructions and regulations applicable thereto. (See § 402.606, relating to the place and time for filing returns, and § 402.609 (c) and (e), relating to copies of returns, schedules, and statements, and to the place and period for keeping records.) The return shall be carefully prepared so as fully and accurately to set forth the data therein called for. Returns which have not been so prepared will not be accepted as meeting the requirements of the act. Only one return for a tax-return period shall be filed by or for an employer. Any supplemental return filed for such period in accordance with § 402.702 or § 402.703 shall constitute a part of such return. Consolidated returns of parent and subsidiary corporations are not permitted.

(c) If in a return, or in any other manner, the employer fails to report, or incorrectly reports, to the collector, the name, account number, or wages of an employee, the employer shall fully advise the collector of the omission or error by letter; except that such letter is not required if the omission or error is corrected by adjustment, supplemental return, credit, refund, or abatement, within 7 months after the date the correct data are ascertained. The employer shall include in such letter his identification number, each tax-return period for which the data were omitted or for which the incorrect data were furnished, the data incorrectly reported for each period, and the data which should have been reported. A copy of such letter shall be retained by the employer as a part of his records.

§ 402.606 *Place and time for filing returns.* Each return shall be filed with the collector for the district in which is located the principal place of business of the employer, or if the employer has no principal place of business in the United States, with the collector at Baltimore, Md. Except as provided in § 402.603, each return shall be filed on or before the last day of the first

month following the period for which it is made. If the last day for filing any return falls on Sunday or a legal holiday, the return may be filed on the next following business day. If placed in the mails, the return shall be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the due date. As to additions to tax for failure to file a return within the prescribed time, see § 402.804. See also section 2707 of the Internal Revenue Code, relating to penalties.

§ 402.607 *Payment of tax.* The employees' tax and the employers' tax required to be reported on each return on Form SS-1a are due and payable to the collector, without assessment by the Commissioner or notice by the collector, at the time fixed for filing such return. For provisions relating to interest, additions to tax, and penalties, see §§ 402.802, 402.803, and 402.804 and section 2707 of the Internal Revenue Code.

§ 402.608 *When fractional part of cent may be disregarded.* In the payment of taxes to the collector a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent shall not be disregarded in the computation of taxes. See § 402.304 for provisions relating to fractional parts of a cent in connection with the deduction of employees' tax from wages.

§ 402.609 *Records*—(a) *Records of employers.* (1) Every employer liable for tax shall keep accurate records of all remuneration (whether in cash or in a medium other than cash) paid to his employees after December 31, 1939, for services performed for him after December 31, 1936. Such records shall show with respect to each employee:

(i) The name, address, and account number of the employee (see § 402.504, relating to account numbers), and such additional information with respect to the employee as is required by § 402.504 (a) when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Board.

(ii) The total amount (including any sum withheld therefrom as tax or for any other reason) and date of each remuneration payment and the period of services covered by such payment,

(iii) The amount of such remuneration payment which constitutes wages subject to tax (see §§ 402.227 and 402.228), and

(iv) The amount of employees' tax withheld or collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected.

(2) If the total remuneration payment (subparagraph (1) (ii) of this paragraph), and the amount thereof which is taxable (subparagraph (1) (iii) of this paragraph) are not equal, the reason therefor shall be made a matter of record. Accurate records of the details of each adjustment or settlement made pursuant to § 402.702 or § 402.703 shall also be kept.

(3) No particular form is prescribed for keeping the records required by this paragraph. Each employer shall use such forms and systems of accounting as will enable the Commissioner to ascertain whether the taxes for which the employer is liable are correctly computed and paid.

(b) *Records of employees.* While not mandatory, it is advisable for each employee to keep permanent, accurate records showing the name and address of each employer for whom he performs services as an employee, the dates of beginning and termination of such services, the information with respect to himself which is required by paragraph (a) of this section to be kept by employers, and the receipts furnished in accordance with the provisions of § 402.306. (See, however, paragraph (d) of this section, relating to records of claimants.)

(c) *Copies of returns, schedules, and statements.* Every employer who is required, by the regulations in this part or by instructions applicable to any form prescribed under the regulations in this part, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as part of his records.

(d) *Records of claimants.* Any person (including an employee) claiming refund, credit, or abatement of any tax, penalty, or interest shall keep a complete and detailed record with respect to such tax, penalty, or interest.

(e) *Place and period for keeping records.* (1) All records required by the regulations in this part shall be kept, by the person required to keep them, at one

or more convenient and safe locations accessible to internal revenue officers. Such records shall at all times be open for inspection by such officers. If the employer has a principal place of business in the United States, the records required by paragraphs (c) and (d) of this section shall be kept at such place of business.

(2) Records required by paragraphs (a) and (c) of this section shall be maintained for a period of at least 4 years after the date the tax to which they relate becomes due, or the date the tax is paid, whichever is the later. Records required by paragraph (d) of this section (including any record required by paragraph (a) or (c) of this section which relates to a claim) shall be maintained for a period of at least 4 years after the date the claim is filed.

#### SUBPART G—ADJUSTMENTS, CLAIMS, AND ASSESSMENTS

§ 402.701 *Adjustments in general.* Errors in the payment of employees' tax and employers' tax must be adjusted in certain cases without interest. Not all corrections of erroneous collections or payments of tax, however, constitute adjustments within the meaning of the regulations in this part. The various situations under which such adjustments shall be made are set forth in §§ 402.702 and 402.703, the provisions of which also relate to settlement other than by adjustment under certain circumstances set forth therein. No underpayment of employees' tax or employers' tax shall be reported pursuant to such sections after receipt from the collector of notice and demand for payment thereof based upon an assessment, but the amount shall be paid in accordance with such notice and demand. Every return on which an adjustment or settlement is reported pursuant to § 402.702 or § 402.703 must have securely attached as a part thereof a statement, in duplicate, explaining the adjustment or settlement, designating the tax-return period in which the error was ascertained and setting forth such other information as may be required by the regulations in this part and by the instructions relating to the return. If an adjustment of an overcollection of employees' tax which an employer has repaid to an employee is reported on a return, such statement shall include the fact that such tax was repaid to the employee. (See § 402.702 (b) (2).)

§ 402.702 *Adjustment of employees' tax—(a) Undercollections—(1) Prior to filing of return.* If no employees' tax or less than the correct amount of employees' tax is deducted from any payment of wages to an employee and the error is ascertained prior to the time the return on Form SS-1a is filed with the collector for the period in which such wages are paid, the employer shall nevertheless report on such return and pay to the collector the correct amount of employees' tax. However, the reporting and payment by the employer of the correct amount of such tax in accordance with this subparagraph do not constitute an adjustment, and the amount shall not be reported as an adjustment on the return.

(2) *After return is filed.* (i) If no employees' tax or less than the correct amount of employees' tax with respect to a payment of wages to an employee is reported on a return and paid to the collector, the employer shall adjust the underpayment by reporting the additional amount due by reason of such underpayment as an adjustment on a return on Form SS-1a filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained, or reporting such additional amount on a supplemental return on Form SS-1 or Form SS-1a for the tax-return period in which such payment of wages is made. The reporting of such an underpayment on a supplemental return constitutes an adjustment within the meaning of this subparagraph only when the supplemental return is filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained. (See § 402.605, relating in part to supplemental returns) The amount of each underpayment adjusted in accordance with this subparagraph shall be paid to the collector, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subparagraph but the amount thereof is not paid when due, interest thereafter accrues.

(ii) If no employees' tax or less than the correct amount of employees' tax with respect to a payment of wages to an employee is reported on a return and paid to the collector and such underpayment is not reported as an adjustment within the time prescribed by this subparagraph, the amount of such underpayment shall be reported on the em-

ployer's next return on Form SS-1a, or reported immediately on a supplemental return on Form SS-1 or Form SS-1a. (For interest accruing on amounts so reported, see § 402.802)

(3) *Deductions from employee.* If an employer collects no employees' tax or less than the correct amount of employees' tax from an employee with respect to wages received by the employee, the employer shall collect the amount of the undercollection by deducting such amount from remuneration of the employee, if any, under his control after he ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages. (See §§ 402.227 and 402.228, relating to wages.) If the employer ascertains the error prior to the time the return is required to be filed for the period in which such wages are paid, or if the employer ascertains the error subsequent to such time and the error is subject to adjustment under the provisions of subparagraph (2) of this paragraph, the deduction of the amount of the undercollection in correction of such error shall be made without interest. The obligation of the employee to the employer with respect to an undercollection of employees' tax from the employee not subsequently corrected by a deduction made as prescribed in the foregoing provisions of this subparagraph is a matter for settlement between the employee and the employer. The amount of the employees' tax, in the case of a prior undercollection thereof from the employee, shall be reported and paid as provided in subparagraphs (1) and (2) of this paragraph. Amounts deducted from remuneration of the employee and other settlements between the employee and the employer, in correction of an undercollection of employees' tax, shall be shown on statements furnished by the employer to the employee in accordance with § 402.306. If an employer makes an erroneous collection of employees' tax from two or more of his employees, a separate settlement must be made with respect to each employee. Thus, an overcollection of employees' tax from one employee may not be used to offset an undercollection of such tax from another.

(b) *Overcollections*—(1) *Prior to filing of return.* If an employer (i) during any tax-return period collects more than the correct amount of employees' tax from any employee, and (ii) repays the amount of the overcollection to the em-

ployee prior to the time the return on Form SS-1a for such period is filed with the collector, and (iii) obtains and keeps as part of his records the written receipt of the employee, showing the date and amount of the repayment, the employer shall not report on any return or pay to the collector the amount of the overcollection. However, every overcollection not repaid to and receipted for by the employee as provided in this subparagraph must be reported and paid to the collector with the return on Form SS-1a for the period in which the overcollection was made.

(2) *After return is filed.* (i) If an employer collects from any employee and pays to the collector more than the correct amount of employees' tax, the employer shall adjust the overcollection by repaying or reimbursing the employee in the amount thereof.

(ii) If the amount of the overcollection is repaid, the employer shall obtain and keep as part of his records the written receipt of the employee, showing the date and amount of the repayment. (See § 402.701, relating in part to statements required in explanation of adjustments of overcollections of employees' tax)

(iii) If the employer does not repay the employee, the employer shall reimburse the employee by applying the amount of the overcollection against the employees' tax which attaches to wages paid to the employee prior to the expiration of the tax-return period following the tax-return period in which the error is ascertained. If the amount of the overcollection exceeds the amount so applied against such employees' tax, the excess amount shall be repaid to the employee as required by this subparagraph.

(iv) An overcollection is adjustable under this subparagraph only if it is completed prior to the expiration of the tax-return period following the tax-return period in which the error is ascertained by the employer, and then only if the adjustment is reported on a return filed within the 4-year period after the date the overpayment was made to the collector. A claim for credit or refund (in accordance with § 402.704) may be filed within such 4-year period for any overcollection which cannot be adjusted under this subparagraph.

§ 402.703 *Adjustment of employers' tax*—(a) *Underpayments.* (1) If no employers' tax or less than the correct

amount of employers' tax with respect to a payment of wages to an employee is reported on a return and paid to the collector, the employer shall adjust the underpayment by (i) reporting the additional amount due by reason of such underpayment as an adjustment on a return on Form SS-1a filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained, or (ii) reporting such additional amount on a supplemental return on Form SS-1 or Form SS-1a for the tax-return period in which such payment of wages is made. The reporting of such an underpayment on a supplemental return constitutes an adjustment within the meaning of this paragraph only when the supplemental return is filed on or before the last day of the first calendar month following the tax-return period in which the error is ascertained. (See § 402.605, relating in part to supplemental returns) The amount of each underpayment adjusted in accordance with this paragraph shall be paid to the collector, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subparagraph but the amount thereof is not paid when due, interest thereafter accrues.

(2) If no employers' tax or less than the correct amount of employers' tax with respect to a payment of wages to an employee is reported on a return and paid to the collector and such underpayment is not adjusted in accordance with the provisions of this paragraph, the amount of such underpayment shall be (i) reported on the employer's next return on Form SS-1a, or (ii) reported immediately on a supplemental return on Form SS-1 or Form SS-1a. (For interest accruing on amounts so reported, see § 402.802)

(b) *Overpayments.* If (1) an employer pays more than the correct amount of employers' tax with respect to any payment of remuneration, and (2) the employer is required under § 402.702 (b) to adjust a corresponding overpayment of employees' tax with respect to the same payment of remuneration to the employee, the employer shall adjust the overpayment of employers' tax to the same extent and on the same return or returns on which the adjustment of employees' tax is reported. The adjustment of employers' tax shall be made by deducting the amount of the

overpayment from the amount of employees' tax reported on such return or returns. No overpayment shall be adjusted under this paragraph after the expiration of the 4-year period after the date the overpayment was made to the collector. If an overpayment of employers' tax is made with respect to a payment of remuneration to an employee, but no corresponding overpayment of employees' tax is made with respect to the same payment of remuneration, the overpayment of employers' tax is not adjustable under this paragraph. (See § 402.704, relating to refunds and credits)

§ 402.704 *Refund or credit of overpayments which are not adjustable; abatement of overassessments*—(a) *Who may make claims.* If more than the correct amount of tax, penalty, or interest is paid to the collector, the person who paid such tax, penalty, or interest to the collector may file a claim for refund of such overpayment or such person may take credit for the overpayment on any return on Form SS-1a which he subsequently files. (See paragraph (e) of this section, relating in part to overpayments which are adjustable.) If more than the correct amount of tax, penalty, or interest is assessed but not paid to the collector, the person against whom the assessment is made may file a claim for abatement of such overassessment. (See also paragraph (c) of this section, relating to claims by employees.)

(b) *Statements supporting employers' claims for employees' tax.* Every claim filed by an employer for refund, credit, or abatement of employees' tax collected from an employee shall include a statement that the employer has repaid the tax to the employee or has secured the written consent of such employee to allowance of the refund, credit, or abatement. In every such case, the employer shall maintain as part of his records the written receipt of the employee, showing the date and amount of the repayment, or the written consent of the employee, whichever is used in support of the claim. (See paragraph (d) of this section, relating to form of claims.)

(c) *Refund claims made by employees.* If (1) more than the correct amount of employees' tax is collected by an employer from an employee and paid to the collector, and (2) such overcollection is not adjustable under § 402.702, and (3) the employee does not receive reim-

bursement in any manner from such employer and does not authorize the employer to file a claim and receive refund or credit, such employee may file a claim for refund of such overpayment. The employee shall submit with the claim a statement setting forth the extent, if any, to which the employer has reimbursed the employee in any manner for the overcollection, the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer and such facts as will establish that the overpayment is not adjustable under § 402.702. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employees' tax paid by such employer to the collector of internal revenue. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his knowledge and belief, and shall include therein an explanation of his inability to obtain the statement from the employer. (For provisions relating to special refunds of employees' tax on wages over \$3,000, see § 402.705)

(d) *Form of claims.* (1) Each claim for refund or abatement under this section shall be made on Form 843 in accordance with the regulations in this part and with the instructions relating to such form, and shall designate the tax-return period in which the error was ascertained. Copies of Form 843 may be obtained from any collector. If credit is taken under this section, a claim on Form 843 is not required, but the return on which such credit is claimed shall have securely attached as a part thereof a statement which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, designating the tax-return period in which the error was ascertained, and showing such other information as is required by the regulations in this part or by the instructions relating to the return.

(2) Whenever a claim for refund, credit, or abatement is made with respect to remuneration which was erroneously reported on Form SS-2a or on Schedule A of Form SS-1a, such claim shall include a statement showing (1) the identification number of the em-

ployer, (ii) the name and account number of the employee for whom such remuneration was so reported, (iii) the period covered by such Form SS-2a or such Schedule A of Form SS-1a, (iv) the amount of remuneration actually reported as wages for such employee, and (v) the amount of wages which should have been reported for such employee.

(e) *Limitations on claims.* No refund or credit will be allowed after the expiration of 4 years after the payment to the collector of the tax, penalty, or interest, except upon one or more of the grounds set forth in a claim filed prior to the expiration of such 4-year period. No refund or credit of an overpayment will be allowed if such overpayment is adjustable under § 402.702 or § 402.703.

(f) *Claims improperly made.* Any claim which does not comply with the requirements of this section will not be considered for any purpose as a claim for refund, credit, or abatement.

(g) *Proof of representative capacity.* If a return is made by an individual who thereafter dies and a refund claim is made by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is made. If an executor, administrator, guardian, trustee, receiver, or other fiduciary makes a return and thereafter a refund claim is made by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was made by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is made by a fiduciary other than the one by whom the return was made, the necessary documentary evidence should accompany the claim. The affidavit may be made by the agent of the person assessed, but in such case a power of attorney must accompany the claim.

(h) *Refunds under section 902 (f) of the Social Security Act amendments of 1939, section 2 of the act of August 11, 1939, and section 5 (b) of the Interna-*

*tional Organizations Immunities Act.* The provisions of this section shall apply in the case of claims for refund with respect to services described by section 902 (f) of the Social Security Act amendments of 1939, section 2 of the act of August 11, 1939 (53 Stat. 1420), and section 5 (b) of the International Organizations Immunities Act. (For provisions relating to such services, see §§ 402.202 and 402.206.)

(1) *Prohibition of refund or credit.*

No refund or credit is allowable with respect to any amount paid prior to April 20, 1948, the date of the enactment of Public Law 492, 80th Congress (relating to the exception of certain services performed by vendors of newspapers and magazines), which constitutes an overpayment of tax solely by reason of an amendment made by such law. (For provisions relating to services excepted from employment by Public Law 492, 80th Congress, see § 402.226 (c).)

[Regs. 106, 5 F. R. 774, as amended by T. D. 5519, 11 F. R. 6758, T. D. 5665, 13 F. R. 6604.]

§ 402.705 *Special refunds of employees' tax on wages over \$3,000*—(a) *In general.* If an employee receives wages from more than one employer, his aggregate wages from all employers may exceed the annual \$3,000 limitation on wages from a single employer provided by section 1426 (a) (1) of the act. (See § 402.228 (a), relating to the \$3,000 limitation.) Section 1401 (d) of the act provides in certain cases for refund to an employee of a portion of the employees' tax in event of such an excess. By reason of the amendment of such section by section 413 of the Social Security Act Amendments of 1946, the conditions and limitations upon the refunds differ in certain respects, depending upon whether the tax, refund of which is claimed, is imposed with respect to wages received before 1947 or with respect to wages received after 1946.

(b) *Wages received before 1947.* This paragraph relates only to refunds, under section 1401 (d) (1) of the act, of employees' tax with respect to wages received before January 1, 1947. If, prior to 1947, an employee receives wages in excess of \$3,000 from two or more employers for services performed during the calendar year 1940 or any subsequent calendar year, the employee may file a claim for refund of the amount, if any, by which the employees' tax deducted

and paid to a collector with respect to such wages exceeds the employees' tax with respect to the first \$3,000 of such wages. (See §§ 402.227 and 402.228, relating to wages.) Each such claim shall be made with respect to wages for services performed within one calendar year. The employee shall submit with the claim the best available information establishing, with respect to each employer for whom he performed services during the calendar year, (1) the name and address of such employer, (2) the account number of the employee and the employee's name as reported by the employer on his returns, (3) the amount of wages paid during the calendar year to which the claim relates for services performed by the employee during that year, (4) the amount of wages, if any, paid during each subsequent calendar year prior to 1947 for services performed by the employee during the year to which the claim relates, (5) the amount of employees' tax, if any, deducted from such wages during each of such years and paid to the collector, and (6) the address of the collector to whom such tax was paid. Such information shall be furnished, if possible, in the form of statements made by the employers, each of whom should include in his statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employees' tax. If the statement of any employer is not submitted with the claim, the employee shall include in the claim an explanation of his inability to submit such statement. Other information may be required, but should be submitted only upon the receipt of a specific request therefor. The employee's claim shall be made on Form 843, in accordance with the regulations in this part and the instructions relating to such form, and shall be filed with the collector for the district in which the employee resides. No interest will be allowed or paid by the Government on the amount of any refund under this paragraph. No refund will be made under this paragraph unless (1) the employee files a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (2) such claim is filed within 2 years after the calendar year in which the wages are paid with respect to which refund of tax is claimed.

*Example 1.* Employee A in the calendar year 1946 receives taxable wages in the amount of \$2,000 from each of his employers, B, C, and D, for services performed during such year, or a total of \$6,000. Employees' tax is deducted from A's wages and paid to the collector, in the amount of \$20 by B and \$20 by C, or a total of \$40. Employer D pays employees' tax in the amount of \$20 to the collector without deducting such tax from A's wages. The employees' tax with respect to the first \$3,000 of such wages is \$30. A may file a claim for refund of \$10.

*Example 2.* Employee E in the calendar year 1946 performs employment for employers F and G, for which E is entitled to remuneration of \$3,000 from each employer, or a total of \$6,000. On account of such employment E in 1946 receives wages in the amount of \$3,000 from F and \$2,000 from G; and on January 1, 1947, E receives the remaining \$1,000 of wages from G. Employees' tax was deducted and paid to the collector as follows: in 1946, by employer F, \$30, and by employer G, \$20; and in 1947, by employer G, \$10. Thus E, prior to January 1, 1947, received \$5,000 in wages for services performed during the calendar year 1946, with respect to which wages \$50 of employees' tax was deducted and paid to the collector. The amount of employees' tax with respect to the first \$3,000 of such wages is \$30. E may file a claim for refund of \$20. (The \$1,000 of wages received on January 1, 1947, and \$10 of employees' tax with respect thereto, have no bearing on this claim because the wages were received after December 31, 1946; but if in 1947 E receives wages from one or more employers in addition to employer G, and the total wages received in such year from all employers exceeds \$3,000, E may be entitled to another special refund of employees' tax. The determination in such case would include consideration of the \$1,000 wages received on January 1, 1947, and the \$10 of employees' tax with respect thereto, and such determination would be made under section 1401 (d) (2) of the act, which is dealt with in paragraph (c) of this section.)

(c) *Wages received after 1946.* This paragraph relates only to refunds, under section 1401 (d) (2) of the act, of employees' tax with respect to wages received after December 31, 1946. If, during any calendar year beginning after December 31, 1946, an employee receives wages in excess of \$3,000 from two or more employers, the employee may file a claim for refund of the amount, if any, by which the employees' tax imposed with respect to such wages and deducted therefrom exceeds the employees' tax with respect to the first \$3,000 of such wages. (See §§ 402.227 and 402.228, relating to wages.) Each such claim shall be made with respect to wages received within one calendar year (regardless of

the year or years after 1936 during which the services are performed for which such wages are received). The employee shall submit with the claim, as a part thereof, a statement setting forth the following information, with respect to each employer from whom he received wages during the calendar year: (1) The name and address of such employer, (2) the account number of the employee and the employee's name as reported by the employer on his returns, (3) the amount of wages received during the calendar year to which the claim relates, (4) the amount of employees' tax, if any, deducted from such wages, and (5) the amount of such tax, if any, which has been refunded or otherwise returned to the employee. Other information may be required, but should be submitted only upon the receipt of a specific request therefor. The employee's claim shall be made on Form 843, in accordance with the regulations of this part and the instructions relating to such form, and shall be filed with the collector for the district in which the employee resides. No interest will be allowed or paid by the Government on the amount of any refund to which this paragraph relates.

No refund to which this paragraph relates will be made unless the employee files a claim, establishing his right thereto, after the calendar year in which the wages are received with respect to which refund of tax is claimed, and such claim is filed within two years after the calendar year in which such wages are received.

*Example 1.* Employee H in the calendar year 1947 receives taxable wages in the amount of \$2,000 from each of his employers I, J, and K, for services performed during such year (or at any time after December 31, 1936), or a total of \$6,000. Employees' tax is deducted from H's wages, in the amount of \$20 by I and \$20 by J, or a total of \$40. Employer K pays employees' tax in the amount of \$20 to the collector without deducting such tax from H's wages. The employees' tax with respect to the first \$3,000 of such wages is \$30. H may file a claim for refund of \$10.

*Example 2.* Employee L in the calendar year 1947 performs employment for employers M and N, for which L is entitled to remuneration of \$3,000 from each employer, or a total of \$6,000. On account of such employment L in 1946 received an advance payment of \$1,000 in wages from M; and in 1947 receives wages in the amount of \$2,000 from M, and \$3,000 from N. Employees' tax was deducted as follows: In 1946, \$10 by employer M; and in 1947, \$20 by employer M, and \$30

by employer N. Thus L in the calendar year 1947 received \$5,000 in wages, from which \$50 of employees' tax was deducted. The amount of employees' tax with respect to the first \$3,000 of such wages received in 1947 is \$30. L may file a claim for refund of \$20. (The \$1,000 advance of wages received in 1946 from M, and \$10 of employees' tax with respect thereto, have no bearing on this claim, because the wages were not received in 1947; and such amounts could not form the basis for a refund unless L prior to 1947 received from M and at least one more employer advance wages totalling more than \$3,000 for employment to be performed during 1947, in which case L's right to refund would be determined under section 1401 (d) (1) of the act, which is dealt with in paragraph (b) of this section.)

[Regs. 106, 5 F. R. 774, as amended by T. D. 5566, 13 F. R. 4178]

§ 402.706 *Credit and refund of taxes paid for period during which liability existed under subchapter B of chapter 9 of the Internal Revenue Code.* If any person pays any amount as tax under the Federal Insurance Contributions Act with respect to any period for which he is not liable for such tax and such person is liable for a tax imposed by subchapter B of chapter 9 of the Internal Revenue Code (which subchapter corresponds to and, effective April 1, 1939, superseded the Carriers Taxing Act of 1937), the amount paid as tax under the Federal Insurance Contributions Act shall be credited against the tax for which the person is liable under such subchapter and the balance, if any, shall be refunded. Each claim for refund under this section shall be made in accordance with § 402.704. Each claim for credit under this section shall be made on Form 843 in accordance with the instructions relating to such form and the applicable provisions of § 402.704. See section 1531 of subchapter B of chapter 9 of the Internal Revenue Code for credit on refund of amounts paid as tax under such subchapter for any period during which liability existed under the Federal Insurance Contributions Act.

§ 402.707 *Assessment of underpayments.* If any tax is not paid to the collector when due, the Commissioner may, as the circumstances warrant, assess the tax (whether or not the underpayment is otherwise adjustable) or afford the employer opportunity to adjust the underpayment pursuant to § 402.702 or § 402.703. Unpaid employers' tax or employees' tax may be assessed against the employer. Employees' tax not collected

by the employer may also be assessed against the employee. The unpaid amount, together with interest and penalty, if any, will be collected, pursuant to section 3655 of the Internal Revenue Code and other applicable provisions of law, from the person against whom the assessment is made. If an employer pays employees' tax pursuant to an assessment against him without an adjustment having been made pursuant to § 402.702, reimbursement is a matter to be settled between the employer and the employee. (See § 402.802, relating to interest, and § 402.803, relating to penalty for failure to pay an assessment after notice and demand. See also § 402.801, relating to jeopardy assessments.)

#### SUBPART H—MISCELLANEOUS PROVISIONS

§ 402.801 *Jeopardy assessments.* (a) Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the tax-return period or periods involved, the amount of tax due for each period, the date any return was filed by or for the taxpayer for such period, a reference to any prior assessment made for such period against the taxpayer, and a statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice and demand for payment of the tax, penalty, and interest.

(b) The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired and with such sureties as the collector deems necessary. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with an agreement

authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

(c) Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3690 of the Internal Revenue Code.

**CROSS REFERENCE:** For regulations governing acceptance of United States bonds or notes in lieu of sureties, see 31 CFR Part 225.

§ 402.802 *Interest.* If the tax is not paid to the collector when due and is not adjusted under § 402.702 or § 402.703, interest accrues at the rate of 6 percent per annum.

§ 402.803 *Addition to tax for failure to pay an assessment after notice and demand.* (a) If tax, penalty, or interest is assessed and the entire amount thereof is not paid within 10 days after the date of issuance of notice and demand for payment thereof, based on such assessment, there accrues under section 3655 of the Internal Revenue Code (except as provided in paragraph (b) of this section) a penalty of 5 percent of the assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of notice and demand, a claim for abatement of any amount of the assessment is filed with the collector, the 5 percent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the collector shall issue notice and demand for such amount. If payment is not made within 10 days after the date the collector issues the notice and demand, the 5 percent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.

§ 402.804 *Additions to tax for delinquent or false returns—*(a) *Delinquent returns.* (1) If a person fails to make and file a return required by the regulations in this part within the prescribed time, a certain percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which

failure continues, not to exceed 25 percent in the aggregate. In computing the period of delinquency all Sundays and holidays after the due date are counted. Two classes of delinquents are subject to this addition to the tax:

(i) Those who do not file returns and for whom returns are made by a collector, a deputy collector, or the Commissioner; and

(ii) Those who file tardy returns and are unable to show reasonable cause for the delay.

(2) A person who files a tardy return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

(b) *False returns.* If a false or fraudulent return is willfully made, the addition to tax under section 3612 (d) (2) of the Internal Revenue Code, is 50 percent of the total tax due for the entire period involved including any tax previously paid.

§ 402.804a *Acts to be performed by agents.* If an employer pays wages to an employee or group of employees through a fiduciary, agent, or other person who also has the control, receipt, custody, or disposal of, or pays the wages payable by another employer to such employee or group of employees, the Commissioner may, subject to such terms and conditions as he deems proper, authorize such fiduciary, agent, or other person to perform such acts as are required of employers under the act and these regulations. Application for authorization to perform such acts, signed by such fiduciary, agent, or other person, should be filed with the Commissioner of Internal Revenue, Washington, D. C. If the fiduciary, agent, or other person is authorized by the Commissioner to perform such acts as are required of employers under the act and the regulations in this part, all provisions of law (including penalties) and of the regulations prescribed in pursuance of law applicable in respect of an employer shall be applicable to such fiduciary, agent, or other person. However, each employer for whom such fiduciary, agent, or other person acts shall remain subject to all provisions of law (including penalties) and of the regulations

prescribed in pursuance of law applicable in respect of employers.

[T. D. 5324, 9 F. R. 368]

## Part 403—Excise Tax on Employers Under the Federal Unemployment Tax Act

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**AUTHORITY:** §§ 403.1 to 403.605 issued under 53 Stat. 178, 188, 467; 26 U. S. C. 1429, 1609, 3791.

**SOURCE:** §§ 403.1 to 403.605 contained in Regulations 107, 5 F. R. 3705, except as noted following sections affected.

### INTRODUCTORY

§ 403.1 *Chronological description of pertinent statutes and regulations—(a) Title IX of the Social Security Act and regulations thereunder; calendar years 1936, 1937, and 1938—(1) Statutes.* (i) Title IX of the Social Security Act, approved August 14, 1935 (49 Stat. 639; 42 U. S. C. 1101–1110), imposes, for each of the 3 calendar years 1936, 1937, and 1938, an excise tax on employers of eight or more employees, measured by wages payable with respect to employment performed during the calendar year. (Title IX of the Social Security Act has been superseded, with respect to the calendar year 1939 and subsequent calendar years, as indicated in paragraph (b) (1) of this section.)

(ii) Section 902 (a), (b), (c), (d), and (h) of the Social Security Act Amendments of 1939, approved August 10, 1939 (53 Stat. 1399), provides for certain credits against, and refunds of, the tax imposed under Title IX of the Social Security Act for the calendar years 1936, 1937, and 1938. Section 810 of the Revenue Act of 1938, enacted May 28, 1938 (52 Stat. 576), contained an earlier provision for credits against, and refunds of, such tax for the calendar year 1936.

(iii) Section 902 (f) of the Social Security Act Amendments of 1939 (53 Stat. 1400) provides, in part, that no tax shall be collected under Title IX of the Social Security Act with respect to services performed in the employ of foreign governments and certain of their instrumentalities.

(iv) Section 2 of the act of August 11, 1939 (53 Stat. 1420), provides, in part, that no tax shall be collected under Title IX of the Social Security Act with respect to certain services performed in salvaging timber and clearing debris left by a hurricane.

(2) *Regulations.* Regulations relating to the tax for the calendar years 1936, 1937, and 1938 under Title IX of the Social Security Act are set forth in:

(i) Regulations 90, approved February 17, 1936, as amended, entitled "Regulations 90 Relating to the Excise Tax on Employers under Title IX of the Social Security Act." (Treasury Decision 4616, approved December 20, 1935, relating to the records to be maintained with respect to the tax under Title IX of the Social Security Act, was superseded by article 307 of such Regulations 90.)

(ii) Treasury Decision 4726, approved January 21, 1937, extending the time for filing returns and paying tax under Title IX of the Social Security Act for the calendar year 1936.

(iii) Treasury Decision 4873, approved November 12, 1938, and Treasury Decision 4878, approved January 4, 1939, both relating to the inspection of returns, including returns made under Title IX of the Social Security Act. (Treasury Decision 4797, approved March 25, 1938, and Treasury Decision 4798, approved March 25, 1938, both relating to the inspection of returns, including returns made under Title IX of the Social Security Act, were superseded by Treasury Decisions 4873 and 4878, respectively.)

(b) *Federal Unemployment Tax Act and regulations thereunder; calendar year 1939 and subsequent years*—(1) *Statutes.* (i) The provisions of Title IX of the Social Security Act were reenacted in the Internal Revenue Code, approved February 10, 1939, as subchapter C of chapter 9 thereof (53 Stat. 183). Under the authority contained in section 1611 of subchapter C of chapter 9 of the Code, as added by section 615 of the Social Security Act Amendments of 1939 (53 Stat. 1396), such subchapter may be cited as the "Federal Unemployment Tax Act." Section 1600 of the Federal Unemployment Tax Act, as amended by section 608 of the Social Security Act Amendments of 1939, imposes an excise tax for the calendar year 1939 and each calendar year thereafter on employers of eight or more employees, measured by the wages paid during the calendar year with respect to employment after December 31, 1938.

(ii) Sections 608 to 613, inclusive, and 615 of the Social Security Act Amendments of 1939 (53 Stat. 1387, 1396) effected substantial changes in the provisions of the Federal Unemployment Tax Act with respect to the tax for the calendar year 1939 and subsequent calendar years. Section 614 of the Social Security Act Amendments of 1939 (53 Stat. 1392) amended, effective January 1, 1940, section 1607 of the Federal Unemployment Tax Act with respect to the tax for the calendar year 1940 and subsequent calendar years. In addition, the application of the Federal Unemployment Tax Act is modified by section 13 (a) of the Railroad Unemployment Insurance Act, approved June 25, 1938 (52 Stat. 1110); by section 902 (e) and (f) of the Social Security Act Amendments of 1939 (53 Stat. 1400); and by section 2 of the Act of August 11, 1939 (53 Stat. 1420). The applicable provisions of the Federal Unemployment Tax Act, as so amended, and the provisions making such modifications, as well as certain applicable provisions of the internal revenue laws of particular importance, have been inserted in the appropriate places in, and are to be read in connection with, the regulations in this part.

(2) *Regulations.* Regulations relating to the tax under the Federal Unemployment Tax Act are set forth in:

(i) Regulations 90, as amended, as made applicable to the Federal Unemployment Tax Act and other provisions

of the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939. Regulations 90, as so made applicable to the Internal Revenue Code, relates only to the tax for the calendar year 1939.

(ii) Treasury Decision 4929, approved August 28, 1939, and Treasury Decision 4945, approved September 20, 1939, both relating to the inspection of returns, including returns made under the Federal Unemployment Tax Act.

#### SUBPART A—SCOPE OF PART

§ 403.101 *Scope of part*—(a) *Tax with respect to wages paid after 1939.* The regulations in this part relate to the excise tax for the calendar year 1940 and subsequent calendar years with respect to wages paid after December 31, 1939, imposed on employers of eight or more employees by the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Internal Revenue Code), as amended and modified by the Social Security Act Amendments of 1939 and other provisions of law.

(b) *Employment.* In addition to employment in the case of remuneration therefor paid on or after January 1, 1940, the regulations in this part also relate to employment performed on or after such date in the case of remuneration therefor paid prior to such date.

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5383, 9 F. R. 7303]

#### SUBPART B—DEFINITIONS

§ 403.201 *General definitions and use of terms.* As used in the regulations in this part:

(a) The terms defined in the provisions of law shall have the meanings so assigned to them.

(b) "Social Security Act" means the act approved August 14, 1935 (49 Stat. 620).

(c) "Internal Revenue Code" means the act approved February 10, 1939 (53 Stat. Part 1), entitled "An Act To consolidate and codify the internal revenue laws of the United States," as amended.

(d) "Social Security Act Amendments of 1939" means the act approved August 10, 1939 (53 Stat. 1360).

(e) "Federal Unemployment Tax Act" means subchapter C of chapter 9 of the Internal Revenue Code, as amended.

(f) "Act" means the Federal Unemployment Tax Act, as defined in this section.

(g) "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Internal Revenue Code, as amended.

(h) "Railroad Unemployment Insurance Act" means the act approved June 25, 1938 (52 Stat. 1094), as amended.

(i) "Regulations 90" means "Regulations 90 Relating to the Excise Tax on Employers under Title IX of the Social Security Act," approved February 17, 1936, as amended, as made applicable to subchapter C of chapter 9 and other provisions of the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939, together with any amendments to such regulations as so made applicable to the Internal Revenue Code.

(j) "Person" includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(k) "Tax" means the tax imposed by section 1600 of the act.

(l) "Social Security Board" means the board established pursuant to Title VII of the Social Security Act.

(m) The cross references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience, and shall be given no legal effect.

(n) "Social Security Act Amendments of 1946" means the act approved August 10, 1946 (Pub Law 719, 79th Cong.; 60 Stat. 978).

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5566, 12 F. R. 4179]

§ 403.202 *Employment prior to January 1, 1940.* (a) Under the provisions of section 1607 (c) of the Federal Unemployment Tax Act, as amended, effective July 1, 1946, by section 302 of the Social Security Act Amendments of 1946, services performed prior to July 1, 1946, constitute employment if they were employment as defined in section 1607 (c) as in

effect at the time the service was performed. The provision in effect prior to January 1, 1940, and therefore applicable to services performed prior to such date, is section 1607 (c) of the Federal Unemployment Tax Act as originally enacted February 10, 1939, as modified by section 13 (a) of the Railroad Unemployment Insurance Act. Thus, services performed prior to January 1, 1940, within the United States by an employee for the person employing him, constitute employment within the meaning of the Federal Unemployment Tax Act in force on and after January 1, 1940, unless the services are excepted by section 1607 (c) as originally enacted, as modified by such section 13 (a). Such section 13 (a) excepted from employment, effective July 1, 1939, services performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and services performed as an employee representative as defined in such act.

(b) The collection of tax under the Federal Unemployment Tax Act with respect to certain services performed prior to January 1, 1940, is prohibited although such services are not excepted by section 1607 (c) of the Federal Unemployment Tax Act in force prior to such date. Section 902 (f) of the Social Security Act Amendments of 1939 provides that no tax shall be collected under the act with respect to services rendered prior to January 1, 1940, which are described in paragraph (11), relating to services in the employ of foreign governments, and in paragraph (12), relating to services in the employ of certain instrumentalities of foreign governments, of section 1607 (c) of the Federal Unemployment Tax Act in force on and after January 1, 1940; and section 2 of the act of August 11, 1939 (53 Stat. 1420), provides that no tax shall be collected under the Federal Unemployment Tax Act with respect to services rendered prior to January 1, 1940, in the employ of the owner or tenant of land, in salvaging timber on such land, or clearing such land of brush and other debris, left by a hurricane. Section 5 (b) of the International Organizations Immunities Act provides, in effect, that no tax shall be collected under the Federal Unemployment Tax Act with respect to services rendered prior to January 1, 1940, which are described in paragraph (16) of section 1607 (c) of the Federal Unemployment Tax Act in force on and

after January 1, 1946, relating to services in the employ of an international organization. (For provisions relating to services rendered after December 31, 1939, and prior to January 1, 1946, with respect to which the collection of tax is prohibited by such section 5 (b), see § 403.206.) The exemption from taxation provided under such section 5 (b) is subject to the provisions of section 1 of the International Organizations Immunities Act (see provisions of such section quoted immediately preceding § 403.226a). Notwithstanding the provisions of § 403.201 (a) and of this section, the term "employment", as used in this part, shall be deemed not to include services with respect to which the collection of tax is prohibited by such section 902 (f), such section 2, or such section 5 (b), as the application of the last-mentioned section may be modified pursuant to such section 1.

(c) The tax to which the regulations in this part relate applies with respect to remuneration paid by an employer on or after January 1, 1940, for services performed during the calendar year 1939, to the extent that the remuneration and services constitute wages and employment. (See §§ 403.227 and 403.228, relating to wages.)

(d) Whether services performed prior to January 1, 1940, constitute employment within the meaning of the regulations in this part shall be determined in accordance with the applicable provisions of 26 CFR, 1938 ed., Supps., Part 400.

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5519, 11 F. R. 6758, T. D. 5566, 12 F. R. 4179]

§ 403.203 *Employment after December 31, 1939*—(a) *In general.* Whether services performed on or after January 1, 1940, constitute employment is determined under section 1607 (c) of the act, that is, section 1607 (c), as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939, and as amended, effective January 1, 1946, by section 4 (d) of the International Organizations Immunities Act, and as amended, effective July 1, 1946, by sections 302, 303, and 304 of the Social Security Act Amendments of 1946, and as further amended, effective January 1, 1940, by section 2 of Public Law 492, 80th Congress, relating to certain vendors of newspapers and magazines. This section, and all sections of this subpart which follow (except §§ 403.227 and 403.228, relating

to wages), apply with respect only to services performed after December 31, 1939. Such sections apply with respect to services performed at any time after such date, except those provisions thereof in which a different period of application is expressly stated. (For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see § 403.207. For provisions relating to the circumstances under which certain services with respect to which the collection of tax is prohibited are deemed not to be included within the term "employment" as used in the regulations in this part, see § 403.206. For provisions relating to services performed prior to January 1, 1940, see § 403.202.

(b) *Services performed within the United States.* (1) Services performed on or after January 1, 1940, within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii, by an employee for the person employing him, unless specifically excepted by section 1607 (c) of the act, constitute employment within the meaning of the act. Services performed outside the United States, that is, outside the several States, the District of Columbia, and the Territories of Alaska and Hawaii (except certain services performed after June 30, 1946, on or in connection with an American vessel—see paragraph (c) of this section), do not constitute employment.

(2) With respect to services performed within the United States, the place where the contract of service is entered into and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent employment within the meaning of the act.

(c) *Services performed outside the United States.* (1) Services performed on or after July 1, 1946, by an employee for the person employing him "on or in connection with" an American vessel

outside the United States constitute employment provided:

(i) The employee is also employed "on and in connection with" such vessel when outside the United States; and

(ii) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States, or during the performance of which the vessel touches at a port within the United States; and

(iii) The services are not excepted under section 1607 (c) of the act. (See particularly § 403.226b, relating to fishing.)

(2) An employee performs services on and in connection with the vessel if he performs services on the vessel which are also in connection with the vessel. Services performed on the vessel as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(3) If services are performed by an employee "on and in connection with" an American vessel when outside the United States and conditions in subparagraph (1) (i) and (iii) of this paragraph are met, then the services of that employee performed on or in connection with the vessel constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(4) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which the vessel does not touch at a port within the United States, do not constitute employment, notwithstanding similar services performed by others on or in connection with the vessel may constitute employment.

(5) The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

(6) The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii).

(7) With respect to services performed outside the United States, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether a vessel is an American vessel.

(d) *Services performed for Bonneville Power Administrator.* Notwithstanding any other provision of the regulations in this part, such services as constitute employment under section 1607 (m) of the act shall constitute employment within the meaning of the act and of this subpart (including § 403.205 relating to who are employers). Section 1607 (m) of the act relates to services performed after December 31, 1945, by a laborer, mechanic, or workman, in connection with construction work or the operation and maintenance of electrical facilities, as an employee of the United States employed through the Bonneville Power Administrator.

[T. D. 5566, 12 F. R. 4179, as amended by T. D. 5665, 13 F. R. 6604]

§ 403.204 *Who are employees.* (a) Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee. (The word "employer" as used in this section only, notwithstanding the provisions of § 403.201 (a), includes a person who employs one or more employees.)

(b) Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the

services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

(f) The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

(g) No distinction is made between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees. An officer of a corporation is an employee of the corporation but a director as such is not. A director may be an employee of

the corporation, however, if he performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors.

(h) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment within the meaning of the act (see § 403.203).

§ 403.205 *Who are employers.* (a) Every person who employs eight or more employees in employment within the meaning of section 1607 (c) and (d) of the act on a total of 20 or more calendar days during a calendar year, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(b) The several weeks in each of which occurs a day on which eight or more employees are employed need not be consecutive weeks. It is not necessary that the employees so employed be the same individuals; they may be different individuals on each day. Neither is it necessary that the eight or more employees be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient if the total number of employees employed during the 24 hours of a calendar day is eight or more.

(c) In determining whether a person employs a sufficient number of employees to be an employer subject to the tax, each employee is counted with respect to services which constitute employment as defined in section 1607 (c) of the act (see § 403.203). No employee is counted, however, with respect to services which do not constitute employment as so defined.

(d) The provisions of paragraph (c) of this section are subject to the provisions of section 1607 (d) of the act, relating to services which do not constitute employment but which are deemed to be employment, and relating to services which constitute employment but which are deemed not to be employment (see § 403.207). For example, if the services of an employee during a pay period are deemed to be employment under section 1607 (d) of the act, even though a portion thereof does not constitute employment under section 1607 (c), the employee is counted with respect to all services during the pay period. On the other hand,

if the services of an employee during a pay period are deemed not to be employment, even though a portion thereof constitutes employment, the employee is not counted with respect to any services during the pay period.

§ 403.206 *Excepted services in general.*

(a) Services performed on or after January 1, 1940, by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted by any of the numbered paragraphs of section 1607 (c) of the act, that is, section 1607 (c), as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939, and as amended, effective January 1, 1946, by section 4 (d) of the International Organizations Immunities Act, and as amended, effective July 1, 1946, by sections 302, 303, and 304 of the Social Security Act Amendments of 1946, and as further amended, effective January 1, 1940, by section 2 of Public Law 492, 80th Congress, relating to certain vendors of newspapers and magazines.

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services rendered by the employee in an excepted class.

*Example.* A is an individual who is employed part time by B to perform services which constitute "agricultural labor" (see § 403.208). A is also employed by C part time to perform services as a grocery clerk in a store owned by him. While A's services which constitute "agricultural labor" are excepted, the exception does not embrace the services performed by A as a grocery clerk in the employ of C and the latter services are not excepted from employment.

(c) This section, and the sections which follow it relating to included and excluded services and the several classes of excepted services, apply with respect to services performed at any time after December 31, 1939, except where a different period of application is expressly stated. (For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 403.207. For provisions relating to services performed prior to January 1, 1940, see § 403.202.)

(d) The collection of tax under the act with respect to certain services rendered prior to January 1, 1946, is prohibited although such services are not excepted by section 1607 (c) of the act in force prior to such date. Section 5 (b) of the International Organizations Immunities Act provides that no tax shall be collected under the Federal Unemployment Tax Act with respect to services rendered prior to January 1, 1946, which are described in paragraph (16) of section 1607 (c) of the Federal Unemployment Tax Act in force on and after such date, relating to services in the employ of an international organization. The exemption from taxation provided under such section 5 (b) is subject to the provisions of section 1 of the International Organizations Immunities Act (see provisions of such section quoted immediately preceding § 403.226a). Notwithstanding any other provision of this part, services with respect to which the collection of tax is prohibited by such section 5 (b), as the application of such section may be modified pursuant to such section 1, shall be deemed not to be included within the term "employment" as used in this part (including § 403.205, relating to who are employers).

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5519, 11 F. R. 6758, T. D. 5566, 12 F. R. 4179, T. D. 5665, 13 F. R. 6604]

§ 403.207 *Included and excluded services.* (a) If a portion of the services performed by an employee for the person employing him during a pay period constitutes employment, and the remainder does not constitute employment, all the services of the employee during the period shall for purposes of the tax be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which under section 1607 (c) of the act constitute employment, and the time during which he performs services which under such section do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then all the services of that employee for that person in that pay period shall be deemed to be employment.

(c) If less than one-half of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then none of the services of that employee for that person in that pay period shall be deemed to be employment.

*Example 1.* Employee A is employed by B who operates a farm and a store. A's services on the farm are such that they are excepted as agricultural labor and do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours on the farm and 80 hours in the store. None of A's services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment.

During another month A works 75 hours on the farm and 120 hours in the store. All of A's services during the month are deemed to be employment, since one-half or more of his services during the month constitutes employment.

*Example 2.* Employee C is employed as a maid by D, a medical doctor, whose home and office are located in the same building. C's services in the home are excepted as domestic service and do not constitute employment, and her services in the office constitute employment. She is paid each week. During a particular week C works 20 hours in the home and 20 hours in the office. All of C's services during that week are deemed to be employment, since one-half or more of her services during the week constitutes employment.

During another week C works 22 hours in the home and 15 hours in the office. None of C's services during that week are deemed to be employment, since less than one-half of her services during the week constitutes employment.

(d) For purposes of this section, a "pay period" is the period (of not more than 31 consecutive calendar days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. Thus, if the periods for which payments of remuneration are made to the employee by such person are of uniform duration, each such period constitutes a "pay period." If, however, the periods occasionally vary in duration, the "pay period" is the period for which a payment of remuneration is ordinarily made to the employee by such person, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if a person ordinarily pays a particular em-

ployee for each calendar week at the end of the week, but the employee receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the "pay period" is still the calendar week; or, if instead, that employee is sent on a trip by such person and receives at the end of the third week a single remuneration payment for 3 weeks' services, the "pay period" is still the calendar week.

(e) If there is only one period (and such period does not exceed 31 consecutive calendar days) for which a payment of remuneration is made to the employee by the person employing him, such period is deemed to be a "pay period" for purposes of this section.

(f) The rules set forth in this section do not apply (1) with respect to any services performed by the employee for the person employing him if the periods for which such person makes payments of remuneration to the employee vary to the extent that there is no period "for which a payment of remuneration is ordinarily made to the employee," or (2) with respect to any services performed by the employee for the person employing him if the period for which a payment of remuneration is ordinarily made to the employee by such person exceeds 31 consecutive calendar days, or (3) with respect to any service performed by the employee for the person employing him during a pay period if any of such service is excepted by section 1607 (c) (9) of the act (see § 403.216).

(g) If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee's services constitutes employment, but the rules prescribed herein are not applicable, the tax attaches with respect to such services as constitute employment as defined in section 1607 (c) of the act (provided such person is an employer as defined in section 1607 (a) of the act and § 403.205).

§ 403.208 *Agricultural labor*—(a) *In general.* (1) Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 1607 (1) of the act are excepted. The term as so defined includes services of the character described in paragraphs (b), (c), (d), and (e) of this section.

(2) In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(b) *Services described in section 1607 (1) (1) of the act.* (1) Services performed on a farm by an employee of any person in connection with any of the following activities are excepted as agricultural labor:

(i) The cultivation of the soil;

(ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

(2) The term "farm" as used in this section includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets), do not constitute "farms."

(c) *Services described in section 1607 (1) (2) of the act.* (1) The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms are excepted as agricultural labor, provided the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

(2) The services described in subparagraph (1) (i) of this paragraph may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

(3) Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(d) *Services described in section 1607 (1) (3) of the act.* Services performed by an employee in the employ of any person in connection with any of the following operations are excepted as agricultural labor without regard to the place where such services are performed:

- (1) The ginning of cotton;
- (2) The hatching of poultry;
- (3) The raising or harvesting of mushroom rooms;
- (4) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;
- (5) The production or harvesting of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(6) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 1607 (1) (4) of the act.* (1) (i) Services performed by an employee in the employ of a farmer or a farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see subparagraph (2) of this paragraph), produced by such farmer or farmer-members of such organization or group of farmers are excepted, provided such services are performed as an incident to ordinary farming operations.

(ii) Generally services are performed "as an incident to ordinary farming operations" within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers' cooperative organization or group as a

prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmers' organization or group. Services performed by employees of such farmer or farmers' organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of commodities produced by persons other than such farmer or members of such farmers' organization or group are not performed "as an incident to ordinary farming operations."

(2) Services performed by an employee in the employ of any person in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of fruits and vegetables, whether or not of a perishable nature, are excepted as agricultural labor, provided such services are performed as an incident to the preparation of such fruits and vegetables for market. For example, if services in the sorting, grading, or storing of fruits, or in the cleaning of beans, are performed as an incident to their preparation for market, such services may be excepted whether performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities.

(3) The services described in subparagraphs (1) and (2) of this paragraph, do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the excepted services described in such subparagraphs must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm,

they may be within the provisions of paragraph (c) of this section.

§ 403.209 *Domestic service.* (a) Services of a household nature performed by an employee in or about the private home of the person by whom he is employed, or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which he is employed, are included within the exception stated in section 1607 (c) (2).

(b) A private home is the fixed place of abode of an individual or family.

(c) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter.

(d) If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home and the services performed therein are not excepted. Likewise, if the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for such purpose, the services performed therein are not within the exception.

(e) In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, maids, butlers, laundresses, furnacemen, waiters, and housemothers.

(f) The services enumerated in paragraph (e) of this section are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, or commercial offices or establishments.

(g) Services performed as a private secretary, even though performed in the employer's home, are not within the exception.

§ 403.210 *Casual labor not in the course of employer's trade or business.*

(a) The term "casual labor" includes labor which is occasional, incidental, or irregular.

(b) The expression "not in the course of the employer's trade or business" in-

cludes labor that does not promote or advance the trade or business of the employer.

(c) Thus, labor which is occasional, incidental, or irregular, and does not promote or advance the employer's trade or business is excepted.

*Example 1.* A's business is that of operating a sawmill. He employs B, a carpenter, at an hourly wage to repair his home. B works irregularly and spends the greater part of two days in completing the work. Since B's labor is casual and is not in the course of A's trade or business, such services are excepted.

(d) Casual labor, that is, labor which is occasional, incidental, or irregular, but which is in the course of the employer's trade or business, does not come within the exception in paragraph (c) of this section.

*Example 2.* C's business is that of operating a sawmill. He employs D for 2 hours, at an hourly wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, but it is in the course of C's trade or business and is not excepted.

*Example 3.* E is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks may be casual, they are in the course of the employer's trade or business and, therefore, not excepted.

(e) Casual labor performed for a corporation does not come within this exception.

§ 403.211 *Maritime services*—(a) *In general.* Section 1607 (c) (4) of the act, as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939, excepts service performed within the United States as an officer or member of the crew of a vessel on the navigable waters of the United States. Such exception, which is dealt with in paragraph (b) of this section, applies only with respect to services performed before July 1, 1946. Section 1607 (c) (4) of the act, as amended, effective July 1, 1946, by section 303 of the Social Security Act Amendments of 1946, excepts service performed within the United States on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States. Such exception, which is dealt with in paragraph (c) of this section applies only with respect to services performed on or after July 1, 1946. (For definitions of "vessel"

and "American vessel," see § 403.203 (c.)

(b) *Services performed prior to July 1, 1946.* (1) The expression "navigable waters of the United States" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign countries or among the States.

(2) The expression "officer or member of the crew" includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel. The exception extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids, and by seal hunters and fishermen on sealing and fishing vessels.

(c) *Services performed after June 30, 1946.* (1) In order for services performed after June 30, 1946, within the United States "on or in connection with" a vessel not an American vessel to be excepted, the services must be performed by an employee who is also employed "on and in connection with" the vessel when outside the United States.

(2) An employee performs services on and in connection with the vessel if he performs services on the vessel when outside the United States which are also in connection with the vessel. Services performed on the vessel outside the United States as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(3) The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or

members of the crew, or as employees of concessionaires, of the vessel).

(4) The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel.

(5) Since the only services performed outside the United States which constitute employment are those described in § 403.203 (c) (relating to services performed outside the United States on or in connection with an American vessel), services performed outside the United States on or in connection with a vessel not an American vessel in any event do not constitute employment.

§ 403.212 *Family employment.* (a) Certain services are excepted because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) Services performed by a father or mother in the employ of his or her son or daughter; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

(b) Under paragraph (a) (1) and (2) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a) (3) of this section, in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

(c) Services performed in the employ of a corporation are not within the exception. Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5062, 6 F. R. 3693]

§ 403.213 *United States and instrumentalities thereof.* (a) Services performed in the employ of the United

States Government, except as provided in section 1607 (m) of the act (see § 403.203 (d)), are excepted. Services performed in the employ of an instrumentality of the United States are also excepted if the instrumentality is either wholly owned by the United States, or exempt from the tax imposed by section 1600 of the act by virtue of any other provision of law.

(b) Services performed in the employ of an instrumentality of the United States which is neither wholly owned by the United States nor exempt from the tax imposed by section 1600 of the act by virtue of any other provision of law are not within the exception.

(c) Services performed in the employ of a national bank or a State member bank of the Federal Reserve System, for example, are not within the exception. [Regs. 107, 5 F. R. 3705, as amended by T. D. 5502, 11 F. R. 2921, T. D. 5566, 12 F. R. 4181]

§ 403.214 *States and their political subdivisions and instrumentalities.* (a) Services performed in the employ of any State, or of any political subdivision thereof, are excepted. Services performed in the employ of an instrumentality of one or more States or political subdivisions thereof are excepted if the instrumentality is wholly owned by one or more of the foregoing. Services performed in the employ of an instrumentality of one or more of the several States or political subdivisions thereof which is not wholly owned by one or more of the foregoing are excepted only to the extent that the instrumentality is with respect to such services immune under the Constitution of the United States from the tax imposed by section 1600 of the act.

(b) The term "State" includes the District of Columbia and the Territories of Alaska and Hawaii.

§ 403.215 *Religious, charitable, scientific, literary, and educational organizations and community chests.* (a) Services performed by an employee in the employ of an organization of the class specified in section 1607 (c) (8) of the act are excepted.

(b) For purposes of this exception the nature of the services performed is immaterial; the statutory test is the character of the organization for which the services are performed.

(c) In all cases, in order to establish its status under the statutory classifica-

tion, the organization must meet the following three tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes;

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(3) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

(d) Corporations or other institutions organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that an organization established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily affect its status under the law.

(e) An educational organization within the meaning of section 1607 (c) (8) of the act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda is not an educational organization. However, the publication of books or the giving of lectures advocating a cause of a controversial nature shall not of itself be sufficient to deny an organization the exemption, if carrying on propaganda, or otherwise attempting, to influence legislation form no substantial part of its activities, its principal purpose and substantially all of its activities being clearly of a nonpartisan, noncontroversial, and educational nature.

(f) Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and which also manufactures and sells articles to the public for profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

(g) An organization otherwise within the statutory class does not lose its status as such by receiving income such as rent, dividends, and interest from investments, provided such income is devoted exclusively to one or more of the specified purposes.

(h) If an organization has established its status under section 1607 (c) (8) of the act, it need not thereafter make a return or any further showing with respect to its status under the act unless it changes the character of its organization or operations or the purpose for which it was originally created. See, however, section 3312 (b) of the Internal Revenue Code relating to the statute of limitations in case no return is filed.

§ 403.216 *Railroad industry; employees and employee representatives under the Railroad Unemployment Insurance Act.* Services performed by an individual as an "employee" or as an "employee representative," as those terms are defined in section 1 of the Railroad Unemployment Insurance Act, as amended, are excepted.

§ 403.217 *Organizations exempt from income tax—(a) In general.* This section deals with the exception of services performed in the employ of certain organizations exempt from income tax under section 101 of the Internal Revenue Code. If the services meet the tests set forth in paragraph (b), (c), or (d) of this section such services are excepted. (See also § 403.215 for provisions relating to the exception of services performed in the employ of religious, charitable, scientific, literary, and educational organizations and community chests of the type described in section 101 (6) of the Internal Revenue Code; § 403.218 for provisions relating to the exception of services performed in the employ of agricultural and horticultural organizations exempt from income tax under section 101 (1) of the Code; § 403.219 for provisions relating to the exception of services performed in the employ of voluntary employees' beneficiary associations of the type described in section 101 (16) of the Code; and § 403.220 for provisions relating to the exception of services performed in the employ of Federal employees' beneficiary associations of the type described in section 101 (19) of the Code.)

(b) *Remuneration not in excess of \$45 for calendar quarter.* Services per-

formed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code are excepted, if the remuneration for the services does not exceed \$45. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. A calendar quarter is a period of 3 calendar months ending on March 31, June 30, September 30, or December 31. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

*Example 1.* X is a local lodge of a fraternal organization and is exempt from income tax under section 101 (3) of the Internal Revenue Code. X has a number of paid employees, among them being A who serves exclusively as recording secretary for the lodge, and B who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1940 (that is, January 1, 1940, through March 31, 1940, both dates inclusive) A earns a total of \$30. For services performed during the same calendar quarter B earns \$180. Since the remuneration for the services performed by A during such quarter does not exceed \$45, all of such services are excepted. Thus, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer (see § 403.205). Even though it is subsequently determined that X is an employer, A's remuneration of \$30 for services performed during the first calendar quarter of such year is not subject to tax. B's services, however, are not excepted during such quarter since the remuneration therefor does exceed \$45. Thus, B is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, B's remuneration of \$180 for services performed during the first calendar quarter is included in computing the tax.

*Example 2.* The facts are the same as in Example 1, above, except that on April 1, 1940, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1940, through June 30, 1940, both dates inclusive), A earns \$60. Since A's remuneration for services during such quarter does exceed \$45, such services are not excepted. A, therefore, is counted as an employee in employment during all of such quarter for purposes of de-

termining whether the X organization is an employer. If it is determined that the X organization is an employer, A's remuneration of \$60 for services performed during the second calendar quarter is included in computing the tax.

*Example 3.* The facts are the same as in Example 1, above, except that A earns \$120 for services performed during the year 1940, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the \$120 attributable to services performed in that quarter does not exceed \$45. In such case, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer. If, however, the portion of the \$120 attributable to services performed in any calendar quarter during the year does exceed \$45, the services during that quarter are not excepted. In the latter case, A is counted as an employee in employment during all of such quarter and, if the X organization is determined to be an employer, that portion of the \$120 attributable to services performed in such quarter is included in computing the tax.

(c) *Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies.* The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 101 of the Internal Revenue Code are excepted:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) *Students employed by organizations exempt from income tax.* (1) Services performed in the employ of an organization exempt from income tax under section 101 of the Internal Revenue Code by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted. For

purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where such services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

(2) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense. (For provisions relating to services performed by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see § 403.221.)

§ 403.218 *Agricultural and horticultural organizations exempt from income tax.* (a) Services performed by an employee in the employ of an agricultural or horticultural organization exempt from income tax under section 101 (1) of the Internal Revenue Code are excepted.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 403.219 *Voluntary employees' beneficiary associations.* (a) Services performed by an employee in the employ of an organization of the character described in section 1607 (c) (10) (C) of the act are excepted.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 403.220 *Federal employees' beneficiary associations.* (a) Services performed by an employee in the employ of an organization of the character described in section 1607 (c) (10) (D) are excepted.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such

services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 403.221 *Students employed by schools, colleges, or universities not exempt from income tax.* (a) Services performed in a calendar quarter by a student in the employ of a school, college, or university not exempt from income tax under section 101 of the Internal Revenue Code are excepted, provided:

(1) The services are performed by a student who is enrolled and is regularly attending classes at such school, college, or university; and

(2) The remuneration for such services performed in such calendar quarter does not exceed \$45, exclusive of room, board, and tuition furnished by the school, college, or university.

(b) A calendar quarter is a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

(c) For purposes of this exception, the type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the amount of remuneration for services performed by the employee in the calendar quarter, and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in whose employ he performs the services.

(d) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense. (For provisions relating to services performed by a student in the employ of an organization exempt from income tax, see § 403.217 (d).)

§ 403.222 *Foreign governments.* (a) Services performed by an employee in the employ of a foreign government are excepted. The exception includes not only services performed by ambassadors, ministers, and other diplomatic officers and employees but also services performed as a consular or other officer or employee of a foreign government, or as a nondiplomatic representative thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government

grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.

§ 403.223 *Wholly owned instrumentalities of a foreign government.* (a) Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country provided:

(1) The instrumentality is wholly owned by the foreign government;

(2) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial.

§ 403.224 *Student nurses and hospital internes.* (a) Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted provided the student nurse is enrolled and regularly attending classes in a nurses' training school, and such nurses' training school is chartered or approved pursuant to State law.

(b) Services performed as an interne (as distinguished from a resident doctor) in the employ of a hospital are excepted provided the interne has completed a four years' course in a medical school chartered or approved pursuant to State law.

§ 403.225 *Insurance agents and solicitors.* (a) Services performed by an employee as an insurance agent or insurance solicitor are excepted provided such services are performed solely for commissions.

(b) If all or any part of the remuneration of an employee for services performed as an insurance agent or insurance solicitor is a salary, none of his services are excepted and his total remuneration

neration (for example, salary, or salary and commissions) is included for purposes of computing the tax.

§ 403.226 *Delivery and distribution of newspapers, shopping news, and magazines—(a) In general.* Subparagraph (A) of section 1607 (c) (15) of the act, as amended by section 2 of Public Law 492, 80th Congress, enacted April 20, 1948, excepts certain services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news. This exception, which is dealt with in paragraph (b) of this section, continues without change the exception contained in section 1607 (c) (15), as added by section 614 of the Social Security Act Amendments of 1939. Subparagraph (B) of section 1607 (c) (15), added by section 2 of Public Law 492, excepts certain services in the sale of newspapers and magazines without regard to the age of the individual performing the services. Such exception is dealt with in paragraph (c) of this section. The exceptions in subparagraph (A) and subparagraph (B) are both applicable with respect to services performed after December 31, 1939.

(b) *Services of individuals under age 18.* Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, are excepted. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted. The services are excepted irrespective of the form or method of compensation. Incidental services by the employee who makes the house-to-house delivery, such as services in assembling newspapers, are considered to be within the exception. The exception continues only during the time that the employee is under the age of 18.

(c) *Services of individuals of any age.* Services performed by an employee in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at

which the newspapers or magazines are charged to him, are excepted. The services are excepted whether or not the employee is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the services are excepted without regard to the age of the employee. Services performed other than at the time of sale to the ultimate consumer are not within the exception. Thus, the services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer are not within the exception. However, incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, are considered to be within the exception.

[T. D. 5665, 13 F. R. 6804]

§ 403.226a *International organizations.* Subject to the provisions of section 1 of the International Organizations Immunities Act, services performed on or after January 1, 1946, in the employ of an international organization as defined in section 3797 (a) (18) of the Internal Revenue Code are excepted. For provisions relating to the circumstances under which services rendered prior to January 1, 1946, in the employ of an international organization are deemed not to be included within the term "employment" as used in this part, see § 403.206.

§ 403.226b *Fishing—(a) In general.* Subject to the limitations prescribed in paragraphs (b) and (c) of this section, the services performed on or after July 1, 1946, as described in this paragraph are excepted. Services performed by an individual in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish (for example, oysters, clams, and mussels), crustacea (for example, lobsters, crabs, and shrimps), sponges, seaweeds, or other aquatic forms of animal and vegetable life are excepted. The exception extends to services performed as an officer or member of the crew of a vessel while the vessel is engaged in any such activity whether or not the officer or member of the crew is himself so engaged. In the case of an individual who is engaged in any such activity in the employ of any person, the services performed, by such individual in the employ of such person,

as an ordinary incident to any such activity are also excepted. Similarly, for example, the shore services of an officer or member of the crew of a vessel engaged in any such activity are excepted if such services are an ordinary incident to any such activity. Services performed as an ordinary incident to any such activity may include, for example, services performed in such cleaning, icing, and packing of fish as are necessary for the immediate preservation of the catch.

(b) *Salmon and halibut fishing.* Services performed in connection with the catching or taking of salmon or halibut, for commercial purposes, are not within the exception. Thus, neither the services of an officer or member of the crew of a vessel (irrespective of its tonnage) which is engaged in the catching or taking of salmon or halibut, for commercial purposes, nor the services of any other individual in connection with such activity, are within the exception.

(c) *Vessels of more than 10 net tons.* Services described in paragraph (a) of this section performed on or in connection with a vessel of more than 10 net tons are not within the exception. For purposes of the exception, the tonnage of the vessel shall be determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

§ 403.227 *Wages*—(a) *In general.* (1) Whether remuneration paid on or after January 1, 1940, for employment performed after December 31, 1938, constitutes wages is determined under section 1607 (b) of the act, that is, section 1607 (b), as amended, effective January 1, 1940, by section 614 of the Social Security Act Amendments of 1939, and as further amended by section 412 (b) of the Social Security Act Amendments of 1946. This section and § 403.228 (relating to exclusions from wages) apply with respect only to remuneration paid on or after January 1, 1940, for employment performed after December 31, 1938.

(2) The term "wages" means all remuneration for employment unless specifically excepted under section 1607 (b) of the act (see § 403.228).

(3) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions are wages within the meaning of the act if paid as compensation for employment.

(4) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

(5) The medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment.

(6) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges," however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees since generally these items constitute an appreciable part of the total remuneration of such employees.

(7) Remuneration paid by an employer to an individual for employment, unless such remuneration is specifically excepted under section 1607 (b) of the act, constitutes wages even though at the time paid the individual is no longer an employee.

*Example.* B, an employer, employs A during the month of June 1940 in employment at a salary of \$100 per month. A leaves the employ of B at the close of business on June 30, 1940. On July 15, 1940 (when A is no longer an employee of B), B pays A the remuneration of \$100 which was earned for the services performed in June. The \$100 is wages within the meaning of the Act, and the tax is payable with respect thereto.

(b) *Certain items included as wages*—  
(1) *Vacation allowances.* Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(2) *Traveling expenses.* Amounts paid to traveling salesmen or other employees

as allowance or reimbursement for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer. Thus, the wages of a salesman, who is employed on a straight salary basis with an allowance to cover all necessary expenses incurred in the employer's business, are computed by adding to the salary the amount of the excess, if any, of the expense allowance over the expenses actually incurred and accounted for by the employee to the employer.

(3) *Deductions by an employer from wages of an employee.* The amount of any tax which is required by section 1401 (a) of the Federal Insurance Contributions Act to be deducted by the employer from the wages of an employee is considered to be a part of the employee's wages, and is deemed to be paid to the employee as wages at the time that the deduction is made. Other amounts deducted from the wages of an employee by an employer also constitute wages paid to the employee at the time of the deduction. It is immaterial that the Federal Insurance Contributions Act, or any act of Congress, or the law of any State, requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

(4) *Remuneration for certain services performed for Bonneville Power Administrator.* Notwithstanding any other provision of this part, such remuneration for employment as constitutes wages under section 1607 (m) of the act shall constitute wages within the meaning of the act and of this part. See § 403.203 (b), relating to services which constitute employment under section 1607 (m). [Regs. 107, 5 F. R. 3705, as amended by T. D. 5502, 11 F. R. 2921, T. D. 5566, 12 F. R. 4182]

§ 403.228 *Exclusions from wages—(a) \$3,000 limitation—(1) In general.* Section 1607 (b) (1) of the act provides an annual \$3,000 limitation on the amount of remuneration that may constitute wages, by excepting from the term "wages" remuneration paid after \$3,000 has been paid. Under such section as amended by section 412 (b) of the Social Security Act Amendments of 1946, the amount first to be included in wages, after which the exception operates, is measured in two ways, depending on

whether the remuneration is paid before 1947 or is paid after 1946. In the case of remuneration paid before 1947, the amount first to be included in wages is remuneration paid up to and including \$3,000 for employment performed by an employee for his employer during each calendar year regardless of when paid (before 1947); and additional amounts for employment performed in such calendar year by such employee for such employer are excluded regardless of when paid (before 1947). In the case of remuneration paid after 1946, the amount first to be included in wages in each calendar year is remuneration up to and including \$3,000 paid in the calendar year by an employer to an employee for employment performed at any time after December 31, 1938; and additional amounts paid in such calendar year by such employer to such employee are excluded regardless of when earned. In general, the change is from an "earned within the calendar year basis" to a "paid within the calendar year basis." For a more complete explanation of the limitation, see subparagraphs (2) and (3) of this paragraph.

(2) *Remuneration paid before 1947.*

(i) This subparagraph applies only with respect to remuneration paid before January 1, 1947.

(ii) The term "wages" does not include that part of the remuneration paid before January 1, 1947, by an employer to an employee for employment performed for him during any calendar year which exceeds the first \$3,000 paid by such employer to such employee for employment performed during such calendar year.

(iii) In the case of remuneration paid before 1947, the \$3,000 limitation applies only if the remuneration paid to an employee by the same employer for employment during any one calendar year exceeds \$3,000. The limitation in such case relates to remuneration for employment during any one calendar year and not to the amount of remuneration (irrespective of the year of employment) which is paid in any one calendar year.

*Example 1.* Employer B, in 1940, pays employee A \$2,500 on account of \$3,000 due him for employment performed in 1940. In 1941 employer B pays employee A the balance of \$500 due him for employment performed in the prior year (1940) and also \$3,000 for employment performed in 1941. Although A is actually paid remuneration of \$3,500 during the calendar year 1941, that entire amount is

subject to tax, that is, \$3,000 with respect to employment during 1941 and \$500 with respect to employment during 1940 (this \$500 added to the \$2,500 paid in 1940 constitutes the maximum wages which could be paid before January 1, 1947, to employee A by employer B with respect to employment during the calendar year 1940).

(iv) In the case of remuneration paid before 1947, if an employee has more than one employer during a calendar year, the limitation of wages to the first \$3,000 of remuneration paid to such employee applies, not to the aggregate remuneration paid by all employers with respect to employment during that year, but instead to the remuneration paid by each employer with respect to employment during that year. In such case the first \$3,000 paid by each employer to such employee constitutes wages and is subject to the tax.

*Example 2.* During 1940 employer D pays employee C a salary of \$600 a month for employment during the first seven months of 1940 or total remuneration of \$4,200. At the end of the fifth month employer D has paid employee C \$3,000, and only that part of the total remuneration constitutes wages subject to the tax. The \$600 paid by employer D to employee C for employment during the sixth month, and the like amount paid for employment during the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month C leaves the employ of D and enters the employ of E. During 1940 employer E pays employee C \$600 a month for the remaining five months of 1940, or total remuneration of \$3,000. The entire \$3,000 paid by employer E constitutes wages and is subject to the tax. Thus, the first \$3,000 paid by employer D and the entire \$3,000 paid by employer E constitute wages.

*Example 3.* F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation during the calendar year 1940, each such corporation being an employer for such year. During such year F is paid a salary of \$3,000 by each such corporation. Each \$3,000 paid to F by each of the corporations X, Y, Z (whether or not such corporations are related) constitutes wages and is subject to the tax.

(3) *Remuneration paid after 1946.*

(i) This subparagraph applies only with respect to remuneration paid after December 31, 1946.

(ii) The term "wages" does not include that part of the remuneration paid within any calendar year beginning after December 31, 1946, by an employer to an employee which exceeds the first \$3,000

paid within such calendar year by such employer to such employee for employment performed for him at any time after December 31, 1938.

(iii) In the case of remuneration paid after 1946, the \$3,000 limitation applies only if the remuneration paid during any one calendar year by an employer to the same employee for employment performed after 1938 exceeds \$3,000. The limitation in such case relates to the amount of remuneration paid during any one calendar year for employment after 1938 and not to the amount of remuneration for employment performed in any one calendar year.

*Example 1.* Employer H, in 1947, pays employee G \$2,500 on account of \$3,000 due him for employment performed in 1947. In 1948 employer H pays employee G the balance of \$500 due him for employment performed in the prior year (1947), and thereafter in 1948 also pays G \$3,000 for employment performed in 1948. The \$2,500 paid in 1947 is subject to tax in 1947. The balance of \$500 paid in 1948 for employment during 1947 is subject to tax in 1948, as is also the first \$2,500 paid of the \$3,000 for employment during 1948 (this \$500 for 1947 employment added to the first \$2,500 paid for 1948 employment constitutes the maximum wages which could be paid in 1948 by H to G). The final \$500 paid by H to G in 1948 is not included as wages and is not subject to the tax.

*Example 2.* Employer J, in 1946, pays \$3,000 to employee I on account of \$6,000 due him for employment performed in 1946. In 1947 before paying any remuneration for employment performed in 1947 employer J pays to I the balance of \$3,000 due employee I on account of employment performed in 1946. The \$3,000 paid in 1946 constitutes wages in 1946 and is subject to the tax, in accordance with the provisions set forth in subparagraph (2) of this paragraph. The balance of \$3,000 paid in 1947 on account of employment in 1946 constitutes wages and is subject to the tax in 1947 in accordance with the provisions set forth in this subparagraph (3). The \$3,000 paid in 1947 for 1946 employment constitutes the maximum wages which could be paid by J to I in 1947. Any further remuneration paid in 1947 to employee I for services performed for J is not included as wages and is not subject to the tax, whether for services performed before, during, or after 1947. (Assuming the same amounts of remuneration and times of payment, the same result would be reached if employee I had left the employ of J and performed no further services for J after 1946.)

(iv) If during a calendar year (after 1946) an employee is paid remuneration by more than one employer, the limitation of wages to the first \$3,000 of remuneration paid applies, not to the aggregate

gate remuneration paid by all employers with respect to employment performed after 1938, but instead to the remuneration paid during such calendar year by each employer with respect to employment performed after 1938. In such case the first \$3,000 paid during the calendar year by each employer constitutes wages and is subject to the tax.

*Example 3.* During 1947 employer L pays to employee K a salary of \$600 a month for employment performed for L during the first seven months of 1947, or total remuneration of \$4,200. At the end of the fifth month K has been paid \$3,000 by employer L, and only that part of his total remuneration from L constitutes wages subject to the tax. The \$600 paid to employee K by employer L in the sixth month, and the like amount paid in the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month K leaves the employ of L and enters the employ of M. Employer M pays to K remuneration of \$600 a month in each of the remaining five months of 1947, or total remuneration of \$3,000. The entire \$3,000 paid by M to employee K constitutes wages and is subject to the tax. Thus, the first \$3,000 paid by employer L and the entire \$3,000 paid by employer M constitute wages.

*Example 4.* During the calendar year 1947 N is simultaneously an officer (an employee) of the O Corporation, the P Corporation, and the Q Corporation, each such corporation being an employer for such year. During such year N is paid a salary of \$3,000 by each corporation. Each \$3,000 paid to N by each of the corporations O, P, and Q (whether or not such corporations are related) constitutes wages and is subject to the tax.

(b) *Employers' plans providing for payments on account of retirement, sickness or accident disability, medical and hospitalization expenses, or death.* (1)

Under section 1607 (b) (2) of the act, the term "wages" does not include the amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

- (i) Retirement,
- (ii) Sickness or accident disability,
- (iii) Medical and hospitalization expenses in connection with sickness or accident disability, or
- (iv) Death, provided the employee (1) has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit

is insured, any part of the premiums (or contributions to premiums) paid by his employer, and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer.

(2) The plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items.

(3) It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

(c) *Payment by an employer of employees' tax or employees' contributions under a State law.* The term "wages" does not include the amount of any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (1) the employees' tax imposed by section 1400 of the Federal Insurance Contributions Act, or (2) any payment required from an employee under a State unemployment compensation law.

(d) *Dismissal payments.* Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, are excluded from "wages," provided the employer is not legally bound by contract, statute, or otherwise, to make such payments.

(e) *Miscellaneous.* In addition to the exclusions specified in paragraphs (a), (b), (c), and (d) of this section, the following types of payments are excluded from wages:

- (1) Remuneration for services which do not constitute employment under section 1607 (c) of the act.
- (2) Remuneration for services which are deemed not to be employment under section 1607 (d) of the act.
- (3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.

**SUBPART C—MEASURE AND COMPUTATION  
OF TAX**

§ 403.301 *Persons liable for tax.* Every person who is an employer as defined in section 1607 (a) of the act (see § 403.205) is liable for the tax. Even if an employer is not subject to any State unemployment compensation law, he is nevertheless liable for the tax. However, if he is subject to such a State law, he may be entitled to certain credits against the tax (see Subpart D of this part). (For provisions relating to payment of the tax, see § 403.508.)

§ 403.302 *Measure of tax.* The tax for any calendar year is measured by the amount of wages paid by the employer during such year with respect to employment after December 31, 1938. (See §§ 403.202 and 403.203, relating to employment, and §§ 403.227 and 403.228, relating to wages.)

§ 403.303 *Rate and computation of tax.* The rate of tax is 3 percent. The tax is computed by applying the 3 percent rate to the wages paid during the calendar year with respect to employment after December 31, 1938.

§ 403.304 *When wages are paid.* Wages are paid for purposes of the tax when actually or constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition. (See § 403.502, relating to the return on which wages are to be reported.)

**SUBPART D—CREDITS AGAINST TAX**

§ 403.401 *Credit against tax for contributions paid—(a) In general.* Subject to the provisions of paragraphs (b), (c), (d), and (e) of this section, the taxpayer may credit against the tax for any taxable year the total amount of contributions paid by him into an unemployment fund maintained during such year under a State law which has been found by the Social Security Board to contain

the provisions specified in section 1603 (a) of the act, provided that no credit may be taken for contributions under a State law if such State has not been duly certified for the calendar year to the Secretary by the Social Security Board. The contributions may be credited against the tax whether or not they are paid with respect to employment as defined in section 1607 (c) of the act.

(b) *Limitation on total credit allowable.* The total credit allowable to any taxpayer for contributions paid to State unemployment funds shall not exceed 90 percent of the tax against which such credit is applied.

*Example.* The Federal return of the O Company for the calendar year 1940 discloses a total tax of \$10,000. The company is entitled to a credit against the tax by reason of contributions paid to State unemployment funds. The total amount of such credit, however, may in no event exceed \$9,000 (90 percent of the Federal tax of \$10,000), even though the O Company pays contributions in excess of \$9,000.

(See § 403.402 (d), relating to the aggregate limitation in case an additional credit is taken under section 1601 (b) of the act.)

(c) *Limitation on amount of credit allowable based on time when contributions are paid—(1) In general.* Contributions paid into a State unemployment fund at any time may be credited against the tax, but the amount of the credit is dependent upon the time when the contributions are paid. The amount of the credit shall be determined in accordance with subparagraph (2), (3), (4), or (5), of this paragraph, whichever is applicable, subject, however, to the limitation on the total credit set forth in paragraph (b) of this section. Although contributions paid at any time may be credited against the tax, no refund or credit of the tax based on credit for contributions paid will be allowed unless the contributions are paid prior to the expiration of four years after the payment of the tax. For provisions relating to the statutory period of limitations applicable to refund or credit of the tax, see § 403.602 (c).

(2) *Amount of credit allowable when contributions are paid on or before last day for filing return.* Contributions paid into a State unemployment fund on or before the last day upon which the return for the taxable year is required to be filed may be credited against the tax

in an amount equal to such contributions, but not, however, to exceed 90 percent of such tax. (The last day for filing the return is January 31 next following the close of the taxable year unless the time for filing the return is extended. See §§ 403.506 and 403.507.)

(3) *Amount of credit allowable when contributions are paid after last day for filing return.* Contributions paid into a State unemployment fund after the last day upon which the return for the taxable year is required to be filed may be credited against the tax in an amount not to exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid into a State unemployment fund on or before such last day. See, however, subparagraph (5), of this paragraph, for special provisions relating to credit, against the tax for the taxable year 1940, 1941, or 1942 only, for contributions paid where taxpayers' assets were in the custody or control of certain fiduciaries. See also subparagraph (4), of this paragraph relating to the payment of contributions to the wrong State. For provisions relating to refund, credit, or abatement of the tax based on credit with respect to contributions, see § 403.602.

*Example (1).* The Federal return of the M Company for the calendar year 1940 discloses a total tax of \$12,000. The company is liable for total State contributions of \$8,000 for such year. The due date of the company's Federal return is January 31, 1941, no extension of time for filing the return having been granted. The contributions are not paid until February 1, 1941. If the contributions had been paid on or before January 31, 1941, the entire amount could have been credited against the tax (such amount not exceeding 90 percent of the Federal tax of \$12,000). Since the contributions were paid after January 31, 1941, the M Company is entitled to a credit of 90 percent of the amount of the contributions (\$8,000), or \$7,200, the net liability for Federal tax being \$4,800 (\$12,000 minus \$7,200).

*Example (2).* The facts are the same as in example (1), except that the M Company is liable for and pays total State contributions of \$12,000, instead of \$8,000. If the contributions had been paid on or before January 31, 1941, the amount allowable as credit would have been \$10,800 (90 percent of the Federal tax of \$12,000). Since the contributions were paid after January 31, 1941, the M Company is entitled to a credit of 90 percent of \$10,800, or \$9,720, the net liability for Federal tax being \$2,280 (\$12,000 minus \$9,720).

*Example (3).* The Federal return of the R Company for the calendar year 1940 discloses a total tax of \$10,000. The company is liable for total State contributions of \$9,000 for such year. The due date of the company's Federal return is January 31, 1941, no extension of time for filing the return having been granted. The R Company pays \$8,000 of the total State contributions on or before such date, and the remaining \$1,000 on February 1, 1941. If the \$1,000 had been paid on or before January 31, 1941, that amount could have been credited against the tax (such amount plus the \$8,000 paid on or before January 31, 1941, not exceeding 90 percent of the Federal tax of \$10,000). Since the \$1,000 was paid after January 31, 1941, the R Company is entitled to a credit of 90 percent of this amount or \$900, plus the credit of \$8,000 allowable for the contributions paid on or before January 31, 1941. The net liability for Federal tax is thus \$1,100 (\$10,000 minus \$8,900).

(4) *Amount of credit allowable when contributions are paid to wrong State.* Contributions for the taxable year paid into a State unemployment fund which are required under the unemployment compensation law of that State, but which are paid with respect to remuneration on the basis of which the taxpayer had, prior to such payment, erroneously paid an amount as contributions under another unemployment compensation law, shall be deemed for purposes of the credit to have been paid at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions for such taxable year with respect to services subject to such other law, the payment into the proper fund shall be deemed for purposes of credit to have been made on the date the return for such year was actually filed under section 1604 of the act.

*Example.* Employer N, whose Federal return for the calendar year 1940 discloses a total tax of \$1,000, employs individuals in State X and State Y during the calendar year 1940. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State Y, and pays as contributions to State Y the amount of \$900 based upon the remuneration of the employees. All of the services were in fact covered by the unemployment compensation law of State X, and none by the law of State Y. The payment to State Y was made on January 31, 1941. When the error was discovered thereafter, N paid to State X contributions in the amount of \$900 based upon such remuneration. Since the contributions were paid to State Y on January 31, 1941, the contributions to State

X are, for purposes of the credit, deemed to have been paid on such date. N is entitled to a credit of \$900 against the Federal tax of \$1,000, the net liability for Federal tax being \$100 (\$1,000 minus \$900).

(5) *Amount of credit allowable, against tax for taxable year 1940, 1941, or 1942 only, when taxpayers' assets are in custody or control of certain fiduciaries.* This subparagraph applies only to credit against the tax for the taxable year 1940, 1941, or 1942 in those cases where the assets of the taxpayer were, at any time during the period from the last day upon which the taxpayer was required to file a return of the tax against which credit is claimed to June 30 next following such last day, both dates inclusive, or, in the case of credit against the tax for the taxable year 1940, the period September 21, 1941, to November 18, 1941, both dates inclusive, in the custody or control of a receiver, trustee, or other fiduciary appointed by, or under the control of, a court of competent jurisdiction. In such cases contributions paid into a State unemployment fund at any time may, notwithstanding the provisions of subparagraph (3) of this paragraph, be credited, against the tax for the taxable year 1940, 1941, or 1942, in the same amount that would have been allowable as credit had the contributions been paid on or before the last day upon which the return for the taxable year was required to be filed.

(d) *Limitation on the taxable year with respect to which contributions are allowable.* In order to be allowable as credit against the tax for any taxable year, the contributions must have been paid with respect to such year. (See, however, paragraph (e) of this section.)

*Example 1.* Under the unemployment compensation law of State X, employer M is required to report in his contribution return for the quarter ended December 31, 1940, all remuneration payable for services rendered in such quarter. A portion of such remuneration is not paid to his employees until February 1, 1941. On January 20, 1941, M pays to the State the total amount of contributions due with respect to all remuneration so required to be reported. Such contributions, including those with respect to the remuneration paid on February 1, 1941, may be included in computing the credit against the tax for the calendar year 1940. This is true even though the remuneration paid on February 1, 1941 (if it constitutes "wages") is required to be reported in the Federal return for 1941 and not in the Federal return for 1940.

*Example 2.* Under the unemployment compensation law of State Y, employer N is required to include in his contribution return for the quarter ended December 31, 1940, certain remuneration paid on December 30, 1940, to an employee for services to be rendered after December 31. On January 20, 1941, N pays to the State the total amount of contributions due with respect to all remuneration required to be reported on the contribution return. Such contributions, including those with respect to the remuneration paid on December 30, 1940, may be included in computing the credit against the tax for the calendar year 1940.

(e) *Special credit under section 902 (e) of the Social Security Act Amendments of 1939 against tax for the taxable years 1940, 1941, and 1942.* Notwithstanding the limitation set forth in paragraph (d) of this section (but subject to the limitations of paragraphs (a), (b), and (c) of this section), credit is allowable against the tax for the taxable year in which remuneration is paid for services performed during a prior year for such contributions paid into a State unemployment fund with respect to such remuneration as have not been credited against the tax for any prior taxable year, provided that:

(1) The contributions are paid with respect to remuneration for services performed after December 31, 1938; and

(2) The contributions shall be allowable as credit only against the tax for the taxable year 1940, 1941, or 1942.

*Example.* Employer M employs individuals in State Y during the calendar years 1939 and 1940. M's employees are paid \$300,000 during 1939 for services rendered during such year. All of such amount is subject to the tax for such year. Under the unemployment compensation law of State Y, contributions are imposed at the rate of 2.7 percent of the remuneration payable for services performed in such year. In addition to the \$300,000 paid in the calendar year 1939 for services rendered in such year, M is required under such law to report in his contribution returns for the year 1939, remuneration in the amount of \$12,500 payable for services rendered in 1939 but not paid until 1940. On or before January 31, 1940, M pays contributions to the State for the calendar year 1939 in the amount of \$8,437.50 (2.7 percent of \$312,500). Since the credit for contributions paid to the State may not exceed 90 percent of the tax against which it is applied, the M Company may credit against the total tax of \$9,000 (3 percent of \$300,000), contributions in the amount of \$8,100 (90 percent of \$9,000). Thus, the contributions in the amount of \$337.50 (\$8,437.50 minus \$8,100) based upon

remuneration payable during 1939 but not paid until the calendar year 1940, for services performed during 1939, are not creditable against the tax for the year 1939.

During the calendar year 1940, M's employees are paid \$300,000 for services rendered in the years 1939 and 1940. All of such amount is subject to the tax for the calendar year 1940. Effective January 1, 1940, the unemployment compensation law of State Y is amended to provide for contributions at the rate of 2.7 percent based on the remuneration paid (as distinguished from payable) for services performed after December 31, 1939. Under such law M is required to report on his contribution returns for the year 1940, remuneration in the amount of \$287,500 paid to employees for services rendered after December 31, 1939 (\$300,000 minus \$12,500 paid in 1940 for services rendered in 1939). On or before January 31, 1941, M pays to the State contributions in the amount of \$7,762.50 (2.7 percent of \$287,500). Against the total tax of \$9,000 for the calendar year 1940 (3 percent of \$300,000), the M Company may credit the contributions in the amount of \$7,762.50 paid with respect to the year 1940; and, under section 902 (e) of the Social Security Act Amendments of 1939, may also credit the contributions in the amount of \$337.50 reported in the contribution returns for the year 1939 (such amount having been paid with respect to remuneration paid during the calendar year 1940 for services performed during the year 1939 and not credited against the tax for the year 1939).

(f) *Refund of State contributions.* If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contribution credited against the tax, the taxpayer is required to advise the Commissioner under oath of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5383, 9 F. R. 7803]

§ 403.402 *Additional credit against tax—(a) In general.* In addition to the credit against the tax allowable for contributions actually paid to State unemployment funds (see § 403.401), the taxpayer may be entitled to a further credit under section 1601 (b) of the act. This further or additional credit is allowable to the taxpayer with respect to the amount of contributions which he is relieved from paying to an unemployment fund under the provisions of a State law which have been certified for the taxable year as provided in section 1602 of the act. Generally, an additional credit is

available to an employer, if under the provisions of a State law which have been so certified he is permitted to pay contributions to such State for the taxable year, or portion thereof, at a rate which is both lower than the highest rate applied under such law in such year and lower than 2.7 percent. No additional credit is allowable except with respect to a State law certified by the Social Security Board for the taxable year as provided in section 1602 of the act (or with respect to any provisions thereof so certified).

(b) *Method of computing amount of additional credit allowable with respect to a State law—(1) Certification of a State law as a whole.* In ascertaining the additional credit for any taxable year with respect to a particular State law which the Social Security Board certifies as a whole to the Secretary in accordance with the provisions of section 1602 of the act, the taxpayer must first compute the following amounts:

(i) The amount of contributions (whether or not with respect to employment as defined in section 1607 (c) of the act) which the taxpayer would have been required to pay under the State law for such year if throughout the year he had been subject to the highest rate applied under such law in such year, or to a rate of 2.7 percent, whichever rate is lower.

(ii) The amount of contributions (whether or not with respect to employment as defined in section 1607 (c) of the act) he was required to pay under the State law with respect to such year, whether or not paid.

The amount computed under subdivision (ii) of this subparagraph should then be subtracted from the amount computed under subdivision (i) of this subparagraph and the result will be the additional credit for the taxable year with respect to the law of that State.

*Example.* A employs individuals only in State X during the calendar year 1940. The unemployment compensation law of State X has been certified in its entirety to the Secretary by the Social Security Board for such year. The highest rate applied in such year under such State law to any taxpayer was 3 percent. However, A had obtained a rate of 1 percent under the law of such State and was required to pay his entire year's contributions at that rate. The amount of remuneration of A's employees subject to contributions under such State law was \$25,000. The amount of wages paid by A during

that year with respect to employment under the Federal law likewise was \$25,000, the Federal tax at the 3 percent rate being \$750. A's additional credit under section 1601 (b) of the act is \$425, computed as follows:

Remuneration subject to contributions -----	\$25,000
Contributions at 2.7 percent rate----	675
Less:	
Contributions required to be paid at 1 percent rate-----	250
Additional credit to A-----	425

Since the 2.7 percent rate is less than the highest rate applied (3 percent), the 2.7 percent rate is used in computing the amount (\$675) from which the amount of contributions required to be paid at the 1 percent rate (\$250) is deducted in order to ascertain the additional credit (\$425). Thus, A is entitled to an additional credit under section 1601 (b) of the act of \$425.

(2) *Certification with respect to particular provisions of a State law.* If the Social Security Board makes a certification to the Secretary with respect to particular provisions of a State law for any taxable year pursuant to section 1602 of the act, the additional credit of the taxpayer for such year with respect to such law shall be computed in such manner as the Commissioner shall determine.

(c) *Amount of additional credit allowable to taxpayer with respect to more than one State law.* If the taxpayer is entitled to additional credit with respect to more than one State law in any taxable year, the additional credit allowable with respect to each State law shall be computed separately (in accordance with paragraph (b) of this section) and the total additional credit allowable against the tax for such year shall be the aggregate of the additional credits allowable with respect to such State laws.

(d) *Ninety-percent limitation on credits.* The aggregate of the additional credit under section 1601 (b) of the act, the credit under section 1601 (a) of the act, the credit under section 701 (b) of the Revenue Act of 1941, the credit under section 602 (b) of the Revenue Act of 1943, and the special credit under section 902 (e) of the Social Security Act Amendments of 1939 shall not exceed 90 percent of the tax against which credit is taken.

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5383, 9 F. R. 7304]

§ 403.403 *Proof of credit*—(a) *Credit under section 1601 (a) of the act or sec-*

*tion 602 (b) of the Revenue Act of 1943.* Credit against the tax for any calendar year for contributions paid into State unemployment funds shall not be allowed unless there is submitted to the Commissioner:

(1) A certificate of the proper officer of each State (the laws of which required the contributions to be paid) showing, for the taxpayer:

(i) The total amount of contributions required under the State law with respect to such calendar year (exclusive of penalties and interest) actually paid on or before the date the Federal return is required to be filed; and

(ii) The amounts and dates of such required payments (exclusive of penalties and interest) actually paid after the date the Federal return is required to be filed.

(2) An affidavit by the taxpayer that no part of any payment made by him into a State unemployment fund for such calendar year, which is claimed as a credit against the tax, was deducted or is to be deducted from the remuneration of individuals in his employ. With respect to a credit against the tax for any taxable year beginning after December 31, 1943, a statement by the taxpayer setting forth the information called for in this subparagraph, which statement shall contain or be verified by a written declaration that it is made under the penalties of perjury, shall be submitted in lieu of the affidavit otherwise required.

(3) Such other or additional proof as the Commissioner may deem necessary to establish the right to the credit provided for under section 1601 (a) of the act or section 602 (b) of the Revenue Act of 1943.

(b) *Special credit under section 902 (e) of the Social Security Act Amendments of 1939.* Special credit under section 902 (e) of the Social Security Act Amendments of 1939 against the tax for the calendar year 1940, 1941, or 1942 shall not be allowed unless there is submitted to the Commissioner:

(1) A statement by the taxpayer setting forth:

(i) The calendar year in which the remuneration was paid upon which the contributions claimed as special credit were based;

(ii) The total amount of such remuneration;

(iii) The calendar year (or each calendar year, if more than one) in which

the services were performed for which such remuneration was paid;

(iv) The amount and date of payment of contributions based upon such remuneration; and

(v) The amount of such contributions which was not credited against the tax for any prior calendar year.

(2) Such other or additional proof as the Commissioner may deem necessary to establish the right to the special credit provided for under section 902 (e) of the Social Security Act Amendments of 1939.

(c) *Additional credit under section 1601 (b) of the act.* Additional credit under section 1601 (b) of the act shall not be allowed against the tax for any calendar year unless there is submitted to the Commissioner:

(1) A certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing for the taxpayer:

(i) The total remuneration with respect to which contributions were required to be paid by the taxpayers under the State law with respect to such calendar year;

(ii) The rate of contributions applied to the taxpayer under the State law with respect to such calendar year;

(iii) The total amount of contributions the taxpayer was required to pay under the State law with respect to such calendar year, whether or not paid; and

(iv) The highest rate of contributions applied under the State law in such calendar year to any person having individuals in his employ.

If under the law of such State different rates of contributions were applied to the taxpayer during particular periods of such calendar year, the certificate shall set forth the information called for in subdivisions (i), (ii), and (iii) of this subparagraph with respect to each such period, as well as the total amount of contributions the taxpayer was required to pay under such law, whether or not paid, and the information called for in subdivision (iv) of this subparagraph.

(2) Such other or additional proof as the Commissioner may deem necessary to establish the right to the additional credit provided for under section 1601 (b) of the act.

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5302, 8 F. R. 14000, T. D. 5383, 9 F. R. 7304]

#### SUBPART E—RETURNS, PAYMENT OF TAX, AND RECORDS

§ 403.501 *Returns.* Every employer (see § 403.205) shall make a return on Form 940 for each calendar year in accordance with the instructions and regulations applicable thereto. Copies of the prescribed form may be obtained from collectors.

§ 403.502 *When to report wages.* Wages shall be reported in the tax return for the calendar year in which they were actually paid unless they were constructively paid in a prior calendar year, in which case such wages shall be reported only in the return for such prior year.

§ 403.503 *Termination of business—*  
(a) *Final returns.* The last return on Form 940 filed by a person who has ceased to be an employer by reason of the discontinuance, sale, or other transfer of his business shall be marked "Final return" by such person or the person filing the return.

(b) *Statements.* Each person who has ceased to be an employer by reason of the discontinuance, sale, or other transfer of his business shall promptly submit to the collector for the district in which such person filed his last return a statement, in writing, giving the address at which the records required by § 403.511 will be kept, the name of the person keeping such records, and, if the business has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took effect. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.

§ 403.504 *Execution of returns.* (a) Except as provided in this section, each return shall be signed and verified under oath or affirmation by (1) the individual, if the employer is an individual; (2) the president, vice president, or other principal officer, if the employer is a corporation; (3) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (4) the fiduciary, if the employer is a trust or estate. The employer's return may be executed by an agent in the name of the employer if an acceptable power of attorney is filed with the collector and if such return includes

the wages paid to all employees of the employer for the period covered by the return.

(b) The oath or affirmation may be administered by any person duly authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. Returns executed abroad may be attested free of charge before a United States consular officer. If a foreign notary or other official having no seal acts as attesting officer, the authority of such attesting officer should be certified to by some judicial officer or other proper officer having knowledge of the appointment and official character of the attesting officer. This section is not an exclusive enumeration of the persons who may administer oaths or affirmation.

(c) If the tax shown to be payable by any return on Form 940 is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath.

(d) Each return for a period beginning after December 31, 1943, shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of the oath or affirmation, or the signing or acknowledgment before two witnesses, otherwise required.

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5302, 8 F. R. 14000]

#### § 403.505 *Use of prescribed forms.*

(a) Copies of the prescribed return form will so far as possible be furnished employers by collectors without application therefor. An employer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Employers not supplied with the proper form should make application therefor to the collector in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. (See § 403.506, relating to the place and time for filing returns; see also § 403.503, relating to final returns.) If the prescribed form is not available, a statement made by the employer disclosing the amount of wages paid during the calendar year for which a return is required and the amount of tax due may be accepted as a tentative return. If filed

within the prescribed time the statement so made will relieve the employer from liability for the addition to tax imposed for the delinquent filing of the return by section 3612 (d) (1) of the Internal Revenue Code (see § 403.605 (a)) provided that, without unnecessary delay, such tentative return is supplemented by a return made on the proper form.

(b) Each return, together with a copy thereof and any supporting data, shall be filed in and disposed of in accordance with the instructions and regulations applicable thereto. (See § 403.506, relating to the place and time for filing returns, and § 403.511 (c) and (e), relating to copies of returns, schedules, and statements, and to the place and period for keeping records.) The return shall be carefully prepared so as fully and accurately to set forth the data therein called for. Returns which have not been so prepared will not be accepted as meeting the requirements of the act. Consolidated returns of two or more employers are not permitted, as for example, returns of a parent and a subsidiary corporation or of a business operated by two different employers during the year.

§ 403.506 *Place and time for filing returns.* Each return shall be filed with the collector for the district in which is located the principal place of business of the employer, or if the employer has no principal place of business in the United States, with the collector at Baltimore, Md. Except as provided in § 403.507, each return shall be filed on or before January 31 next following the calendar year for which it is made. If the last day for filing any return falls on Sunday or a legal holiday, the return may be filed on the next following business day. If placed in the mails, the return shall be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the due date. As to additions to the tax for failure to file a return within the prescribed time, see § 403.605 (a). See also section 2707 of the Internal Revenue Code relating to penalties.

§ 403.507 *Extension of time for filing returns.* It is important that every employer render on or before January 31, next following the close of the calendar year, a return for such year as nearly complete as it is possible for him to prepare. However, the Commissioner is authorized to grant an extension of time for not more than 90 days for filing

returns, under such rules and regulations as he may prescribe with the approval of the Secretary. Accordingly, authority for granting extensions of time for filing returns is hereby delegated to the several collectors of internal revenue. Application for extension of time for filing a return shall be addressed to the collector for the district in which the employer is required to file his return, and shall contain a full recital of the causes for the delay. The application shall be made in writing, and shall be filed with the collector on or before January 31 next following the close of the calendar year, or the date prescribed for filing the return in any prior extension granted. An extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof. (For extensions of time for payment of tax, see § 403.509.)

§ 403.508 *Payment of tax.* The tax is due and payable to the collector for the district in which the employer is required to file his return, without assessment by the Commissioner or notice by the collector, on the date fixed by law for filing the return, that is, on the thirty-first day of January next following the close of the calendar year for which the tax is due. The tax may, at the option of the taxpayer, be paid in four equal installments instead of in a single payment, in which case the first installment is to be paid on or before January 31, the second installment on or before April 30, the third installment on or before July 31, and the fourth installment on or before October 31. If the taxpayer elects to pay the tax in four installments, each installment must be equal in amount; but any installment may be paid, at the election of the taxpayer, prior to the date prescribed for its payment. If the tax or any installment thereof is not paid in full on or before the date fixed for its payment either by the act or by the Commissioner in accordance with the terms of an extension of time granted for the payment of the tax or installment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector. For provisions relating to interest, additions to tax, and penalties, see §§ 403.603, 403.604, and 403.605 and section 2707 of the Internal Revenue Code.

§ 403.509 *Extension of time for payment of the tax or installment thereof.*  
(a) If it is shown to the satisfaction of

the Commissioner that the payment of the tax or any part or installment thereof upon the date or dates prescribed for the payment thereof will result in undue hardship to the taxpayer, the Commissioner, at the request of the taxpayer, may grant an extension of time for the payment for a period not to exceed 6 months from the date prescribed for the payment of such amount, part, or installment. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the taxpayer from making payment of the amount on the due date. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(b) An application for an extension of time for the payment of such tax, part, or installment, should be made under oath on the prescribed form, and must be accompanied or supported by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. A sworn statement of assets and liabilities of the taxpayer is required and should accompany the application. An itemized statement showing all receipts and disbursements for each of the 3 months preceding the due date of the tax or installment shall also be submitted. The application with the evidence must be filed with the collector, who will at once transmit it to the Commissioner with his recommendations as to the extension. When it is received by the Commissioner it will be examined immediately and, if possible, within 30 days will be rejected, approved, or tentatively approved, subject to certain conditions of which the taxpayer will be immediately notified. The Commissioner will not consider an application for an extension of time for the payment of the tax or installment unless such application is made in writing, and is made to the collector on or before the due date of the tax or installment thereof for which the extension is desired, or on or before the date or dates prescribed for payment in any prior extension granted.

(c) As a condition to the granting of such an extension, the Commissioner will usually require the taxpayer to furnish a

bond on the prescribed form in an amount not exceeding double the amount of the tax or installment or to furnish other security satisfactory to the Commissioner for the payment of the tax or installment thereof, on the date prescribed for payment in the extension, so that the risk of loss to the Government will not be greater at the end of the extension period than it was at the beginning of the period. If a bond is required it shall be conditioned upon the payment of the tax or installment, the interest, and additional amounts assessed in connection therewith in accordance with the terms of the extension granted, and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, and shall be subject to the approval of the Commissioner. In lieu of such a bond, the taxpayer may file a bond secured by deposit of bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, equal in their total par value to an amount not exceeding double the amount of the tax or installment thereof, together with an agreement authorizing, in case of default, the collection or sale of such bonds or notes so deposited. A request by the taxpayer for an extension of time for the payment of one installment does not operate to procure an extension of time for payment of subsequent installments. If an extension of time for payment of the tax or any installment is granted, the amount, time for payment of which is so extended, shall be paid on or before the expiration of the period of the extension, together with interest at the prescribed rate on such amount from the date when the payment should have been made if no extension had been granted until the expiration of the period of the extension. (See section 1605 (d) of the act.)

**CROSS REFERENCE:** For regulations governing acceptance of United States bonds or notes in lieu of surety, see 31 CFR Part 225.

§ 403.510 *Fractional part of a cent.* In the payment of the tax or any installment thereof to the collector, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent shall not be disregarded in the computation of the tax or any installment thereof.

§ 403.511 *Records*—(a) *Records of employers.* (1) Every employer subject

to the tax for any calendar year shall, with respect to each such year, keep such permanent records as are necessary to establish:

(i) The total amount of remuneration whether in cash or in a medium other than cash (including amounts deducted from such remuneration) paid to his employees during the calendar year for services performed after December 31, 1938;

(ii) The amount of such remuneration which constitutes wages subject to the tax (see §§ 403.227 and 403.228);

(iii) The amount of contributions paid by him into each State unemployment fund, with respect to services subject to the law of such State, showing separately (a) payments made and not deducted (or to be deducted) from the remuneration of his employees, and (b) payments made and deducted (or to be deducted) from the remuneration of his employees; and

(iv) The information required to be shown on the prescribed return and the extent to which the employer is liable for the tax.

(2) If the total remuneration paid (subparagraph (1) (i) of this paragraph) and the amount thereof which is subject to the tax (subparagraph (1) (ii) of this paragraph) are not equal, the reason therefor shall be made a matter of record.

(3) No particular form is prescribed for keeping the records required by this paragraph. Each employer shall use such forms and systems of accounting as will enable the Commissioner to ascertain whether the tax for which the employer is liable is correctly computed and paid.

(b) *Records of persons who are not employers.* Any person who employs individuals in employment (see § 403.203) during any calendar year but who considers that he is not an employer subject to the tax (see § 403.205) shall, with respect to each such year, be prepared to establish by proper records (including, where necessary, records of the number of employees employed each day) that he is not an employer subject to the tax. No particular form is prescribed for keeping the records required by this paragraph.

(c) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed under the regulations in this

part, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as part of his records.

(d) *Records of claimants.* Any person claiming refund, credit, or abatement of any tax, penalty, or interest shall keep a complete and detailed record with respect to such tax, penalty, or interest.

(e) *Place and period for keeping records.* (1) All records required by the regulations in this part shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers. Such records shall at all times be open for inspection by such officers. If the employer has a principal place of business in the United States, the records required by paragraphs (c) and (d) of this section shall be kept at such place of business.

(2) Records required by paragraphs (a) and (c) of this section shall be maintained for a period of at least 4 years after the date the tax to which they relate becomes due, or the date the tax is paid, whichever is the later. Records required by paragraph (b) of this section shall be maintained for a period of at least 4 years after the due date of the tax for the calendar year to which they relate. Records required by paragraph (d) of this section (including any record required by paragraph (a) or (c) of this section which relates to a claim) shall be maintained for a period of at least 4 years after the date the claim is filed.

#### SUBPART F—MISCELLANEOUS PROVISIONS

§ 403.601 *Jeopardy assessments.* (a) Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the tax-return period or periods involved, the amount of tax due for each period, the date any return was filed by or for the taxpayer for such period, a reference to any prior assessment made for such period against the taxpayer, and a statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice

and demand for payment of the tax, penalty, and interest.

(b) The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired and with such sureties as the collector deems necessary. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

(c) Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3690 of the Internal Revenue Code.

CROSS REFERENCE: For regulations governing acceptance of United States bonds or notes in lieu of surety, see 31 CFR Part 225.

§ 403.602 *Refund or credit of overpayments; abatement of overassessments*—(a) *Who may make claims.* If more than the correct amount of tax, penalty, or interest is paid to the collector, the person who paid such tax, penalty, or interest to the collector may file a claim for refund of such overpayment or may file a claim for credit of such overpayment against the tax shown to be due on any return on Form 940 which he files. If more than the correct amount of tax, penalty, or interest is assessed but not paid to the collector, the person against whom the assessment is made may file a claim for abatement of such overassessment.

(b) *Form of claims.* Each claim for refund, credit, or abatement under this section shall be made on Form 843 in accordance with the regulations in this part and the instructions relating to such form. Copies of Form 843 may be obtained from any collector. A separate claim on such form shall be made for each taxable year. All grounds in detail and all facts alleged in support of the

claim must be clearly set forth under oath. The claim shall be filed with the collector for the district in which the tax was assessed or paid.

(c) *Limitations on claims.* No refund or credit will be allowed after the expiration of four years after the payment to the collector of the tax, penalty, or interest, except upon one or more of the grounds set forth in a claim filed prior to the expiration of such four-year period. A claim based on credit for contributions paid into a State unemployment fund shall not be considered as setting forth a sufficient ground within the meaning of this section unless the contributions, with respect to which credit is claimed, are paid prior to the filing of the claim. The amount of the refund or credit shall not exceed the portion of the tax, penalty, or interest paid during the four years immediately preceding the filing of the claim for refund or credit, or if no claim was filed, then during the four years immediately preceding the allowance of the refund or credit.

(d) *Claims improperly made.* Any claim which does not comply with the requirements of this section will not be considered for any purpose as a claim for refund, credit, or abatement.

(e) *Proof of representative capacity.* If a return is made by an individual who thereafter dies and a refund claim is made by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is made. If an executor, administrator, guardian, trustee, receiver, or other fiduciary makes a return and thereafter a refund claim is made by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was made by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is made by a fiduciary other than the one by whom the return was made, the necessary documentary evidence should accompany the claim. The affidavit may be made by

the agent of the person assessed, but in such case a power of attorney must accompany the claim.

(f) *Refunds or credits under section 1601 (d) of the act.* The provisions of this section of these regulations shall apply in the case of claims for refund or credit of the tax (including penalty and interest collected with respect thereto, if any) based upon credit allowable under section 1601 of the act (see Subpart D of this part). No interest shall be allowed or paid by the Government on the amount of such refund or credit.

(g) *Refunds or credits, under section 602 (c) (1) of Revenue Act of 1943, of tax for taxable year 1940, 1941 or 1942.* The provisions of this section shall apply in the case of claims for refund or credit of the tax (including penalty and interest collected with respect thereto, if any) for the taxable year 1940, 1941, or 1942, based on credit, for contributions paid, allowable under section 602 (b) of the Revenue Act of 1943. No interest shall be allowed or paid by the Government on the amount of any such refund or credit.

(h) *Refund or credit if claim therefor disallowed prior to February 25, 1944.* Section 602 (c) (2) of the Revenue Act of 1943 provides that, even though refund or credit, with respect to the tax (including penalty and interest collected with respect thereto, if any), based on credit for contributions, would be considered erroneous under section 3774 (b) of the Internal Revenue Code (in case of a claim for refund) or under section 3775 (b) of the Internal Revenue Code (in case of a claim for credit) by reason of the disallowance by the Commissioner of the claim for such refund or credit and the failure of the claimant to bring suit for the recovery of the tax prior to the expiration of the statutory period of limitation for bringing suit therefor, the Commissioner may nevertheless allow such refund or credit if (1) the claim therefor was filed prior to the expiration of the statutory period of limitation for filing the claim, (2) such claim was disallowed prior to February 25, 1944, and (3) such refund or credit is otherwise allowable under section 1601 of the Federal Unemployment Tax Act or section 602 of the Revenue Act of 1943. The allowance of any such refund or credit shall be subject to the provisions of this section of these regulations. No interest shall be allowed or paid by the Govern-

ment on the amount of any such refund or credit.

(i) *Refund, credit, or abatement if liability compromised prior to February 25, 1944.* Section 602 (c) (3) of the Revenue Act of 1943 provides that, notwithstanding the acceptance of an offer in compromise prior to February 25, 1944, with respect to the tax (or penalty or interest in connection therewith), the Commissioner may nevertheless allow any refund, credit, or abatement with respect to such tax (including penalty and interest collected with respect thereto, if any), based on credit for contributions, if such refund, credit, or abatement is otherwise allowable under section 1601 of the Federal Unemployment Tax Act or section 602 of the Revenue Act of 1943. In such case the amount of the refund, credit, or abatement shall be determined as though an offer in compromise had not been accepted, except that any amount paid by the taxpayer under the compromise agreement shall be treated as a payment on account of the tax (including penalty and interest in connection therewith, if any). The allowance of any such refund, credit, or abatement shall be subject to the provisions of this section. No interest shall be allowed or paid by the Government on the amount of any such refund or credit.

(j) *Refund, credit, or abatement based on credit allowable under section 701 of the Revenue Act of 1941 barred.* On and after February 25, 1944, no refund, credit, or abatement of the tax (including penalty and interest collected with respect thereto, if any) for the taxable year 1940 shall be allowed based on any credit allowable under section 701 of the Revenue Act of 1941.

(k) *Refunds under section 5 (b) of the International Organizations Immunities Act.* The provisions of this section of this part shall apply in the case of claims for refund with respect to services described by section 5 (b) of the International Organizations Immunities Act. (For provisions relating to such services, see §§ 403.202 and 403.206.) No interest shall be allowed or paid by the Government on the amount of any such refund.

(l) *Prohibition of refund or credit.* No refund or credit is allowable with respect to any amount paid prior to April 20, 1948, the date of the enactment of Public Law 492, 80th Congress (relating

to the exception of certain services performed by vendors of newspapers and magazines), which constitutes an overpayment of tax solely by reason of an amendment made by such law. (For provisions relating to services excepted from employment by Public Law 492, 80th Congress, see § 403.226 (c).)

[Regs. 107, 5 F. R. 3705, as amended by T. D. 5383, 9 F. R. 7304, T. D. 5519, 11 F. R. 6759, T. D. 5665, 13 F. R. 8605]

§ 403.603 *Interest.* If the tax is not paid to the collector when due, interest accrues at the rate of 6 percent per annum.

§ 403.604 *Addition to tax for failure to pay an assessment after notice and demand.* (a) If tax, penalty, or interest is assessed and the entire amount thereof is not paid within 10 days after the date of issuance of notice and demand for payment thereof, based on such assessment, there accrues under section 3655 of the Internal Revenue Code (except as provided in paragraph (b) of this section) a penalty of 5 percent of the assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of notice and demand, a claim for abatement of any amount of the assessment is filed with the collector, the 5 percent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the collector shall issue notice and demand for such amount. If payment is not made within 10 days after the date the collector issues the notice and demand, the 5 percent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.

§ 403.605 *Additions to tax for delinquent or false returns—(a) Delinquent returns.* (1) If a person fails to make and file a return within the prescribed time, a certain percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate. In computing the period of de-

linquency all Sundays and holidays after the due date are counted. Two classes of delinquents are subject to this addition to the tax:

(i) Those who do not file returns and for whom returns are made by a collector, a deputy collector, or the Commissioner; and

(ii) Those who file tardy returns and are unable to show reasonable cause for the delay.

(2) A person who files a tardy return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

(b) *False returns.* If a false or fraudulent return is willfully made, the addition to tax under section 3612 (d) (2) of the Internal Revenue Code is 50 percent of the total tax due for the entire period involved including any tax previously paid.

## Part 405—Collection of Income Tax at Source on or After January 1, 1945

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### Subpart I—Miscellaneous Provisions

405.801 Jeopardy assessments.  
405.802 Interest.  
405.803 Addition to tax for failure to pay an assessment after notice and demand.  
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405.805 Minimum addition to the tax.

**AUTHORITY:** §§ 405.1 to 405.805 issued under 53 Stat. 32, 178, 467; 26 U. S. C. 62, 1429, 3791.

**SOURCE:** §§ 405.1 to 405.805 contained in Regulations 116, 9 F. R. 14573, 14669, 15039, except as noted following sections affected.

### SUBPART A—INTRODUCTORY PROVISIONS

§ 405.1 *Wages paid on or after January 1, 1945.* (a) The regulations in this part apply to all wages (as defined in section 1621, I. R. C.) paid on or after January 1, 1945, regardless of when such wages were earned. Thus, if an employee is paid wages on January 1, 1945, for services performed during 1944 or any preceding year, withholding of the tax at source on such wages shall be subject to the regulations in this part.

(b) Wages are constructively paid within the meaning of the regulations in this part when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the wages must be credited or set apart to the employee

without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his control and disposition.

#### SUBPART B—DEFINITIONS

##### § 405.101 *Wages*—(a) *In general.*

(1) The term “wages” means all remuneration for services performed by an employee for his employer unless specifically excepted under section 1621 (a) or section 1622 (g), I. R. C. See §§ 405.102 and 405.204.

(2) The name by which the remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales or on insurance premiums, pensions, and retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employee for his employer.

(3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus it may be paid on the basis of piecework, or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually.

(4) Wages may be paid in money or in some medium other than money, as, for example, stocks, bonds, or other forms of property. If services are paid for in a medium other than money, the fair market value of the thing taken in payment is the amount to be included as wages subject to withholding. If the services were rendered at a stipulated price, in the absence of evidence to the contrary such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remuneration is the fair market value of the stock at the time of the transfer. If a person receives as remuneration for services rendered a salary and in addition thereto living quarters or meals, the value to such person of the quarters and meals so furnished shall be added to the remuneration otherwise paid for the purpose of determining the amount of wages subject to withholding. If, however, living quarters or meals are furnished to an employee for the convenience of the employer, the value thereof need not be included as wages subject to withholding.

(5) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called “courtesy” discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as wages subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees.

(6) Where wages are paid in property other than money, the employer should make necessary arrangements to insure that the amount of the tax required to be withheld is available for payment to the collector.

(7) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer, are not subject to withholding.

(8) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employe the services were performed and the individual who performed them.

*Example.* A is employed by B during the month of January 1945 and is entitled to receive remuneration of \$100 for the services performed for B, the employer, during the month. A leaves the employ of B at the close of business on January 31, 1945. On February 15, 1945 (when A is no longer an employee of B), B pays A the remuneration of \$100 which was earned for the services performed in January. The \$100 is wages within the meaning of the statute.

(b) *Pensions, retired pay, and employees' trusts.* (1) In general, pensions and retired pay are wages subject to withholding. However, no withholding is required with respect to amounts paid to an employee upon retirement which are taxable as annuities under the provisions of section 22 (b) (2), I. R. C. So-called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages.

(2) No withholding is required with respect to an employer's contributions to, or with respect to distributions under, a pension, stock bonus, profit-sharing, annuity plan, or other plan deferring the receipt of compensation by the employee, including amounts paid or contributed

by an employer in conjunction with such a plan in respect of life insurance or death benefits, if the contributions of the employer to such plan are of the character for which a deduction is allowable under section 23 (p), I. R. C. As to information at the source with respect to payments referred to in this paragraph, see section 147, I. R. C., and the regulations thereunder.

(3) Wages representing retired pay for service in the military or naval forces of the United States are subject to withholding unless the individual receiving such pay has been retired because of personal injuries or sickness resulting from active service with such forces. Where such retired pay is paid to a non-resident alien individual no withholding is required. See section 1621 (a) (6), I. R. C. Payments of pensions or other benefits under the War Risk Insurance Act, as amended, the World War Veterans' Act, 1924, as amended, the Emergency Officers' Retirement Act, as amended, the World War Adjusted Compensation Act, as amended, the pension laws in effect prior to March 20, 1933, Public Law Numbered 2, Seventy-third Congress, as amended, Public Law Numbered 484, Seventy-third Congress, and any act or acts amendatory of such acts, are not includible in gross income under chapter 1 of the Internal Revenue Code and hence are not subject to withholding.

(c) *Traveling and other expenses.* Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(d) *Vacation allowances.* Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation paid notwithstanding his absence from work, constitutes wages.

(e) *Dismissal payments.* Any payments made by an employer to any employee on account of dismissal, that is, involuntary separation from the service of the employer, constitute wages regardless of whether the employer is

legally bound by contract, statute, or otherwise to make such payments.

(f) *Deductions by employer from wages of employee.* The amount of any tax which is required by law to be deducted by the employer from the wages of an employee is considered to be a part of the employee's wages and is deemed to be paid to the employee as wages at the time the deduction is made. Other amounts deducted from the wages of an employee by an employer also constitute wages paid to the employee at the time of the deduction. It is immaterial that the Internal Revenue Code, or any act of Congress, or the law of any State, requires or permits such deductions and the payment of the amounts thereof to the United States, a State, a Territory, or the District of Columbia, or any political subdivision of any one or more of the foregoing.

(g) *Payment by an employer of employee's tax, or employee's contributions under a State law.* The term "wages" includes the amount paid by an employer on behalf of an employee (without deduction from the remuneration of, or other reimbursements from, the employee) on account of any payment required from an employee under a State unemployment compensation law, or on account of any tax imposed upon the employee by any taxing authority, including the taxes imposed by sections 1400 and 1500, I. R. C.

(h) *Remuneration for services as employee of nonresident alien individual or foreign entity.* The term "wages" includes remuneration for services performed by a citizen or resident of the United States as an employee of a nonresident alien individual, foreign partnership, or foreign corporation whether or not such alien individual or foreign entity is engaged in trade or business within the United States. Any person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, is subject to all the provisions of law and regulations applicable with respect to an employer. (See § 405.105.)

#### § 405.102 Exclusions from wages.—

(a) *Fees paid to a public official.* Authorized fees paid to public officials such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are

excepted from the definition of the term "wages" and hence are not subject to withholding. However, salaries paid such officials by the Government, or Government agency or instrumentality, are subject to withholding.

(b) *Compensation of military and naval forces paid before January 1, 1949.* Remuneration paid before January 1, 1949, for services performed as a member of the military or naval forces of the United States is excepted from the definition of the term "wages," but remuneration paid on or after January 1, 1949, for such services constitutes wages subject to withholding. Pensions and retired pay, if includible in gross income under chapter 1 of the Internal Revenue Code, are not within the exception and hence constitute wages subject to withholding. For the purpose of the exception, the military and naval forces of the United States include (but are not necessarily limited to) the Army, the Navy, the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, the Navy Nurse Corps, Female, the Women's Army Corps (the "WACS"), the Women's Reserve Branch of the Naval Reserve (the "WAVES"), the Women's Reserve Branch of the Coast Guard Reserve (the "SPARS"), and the Marine Corps Women's Reserve.

(c) *Remuneration paid for agricultural labor—(1) In general.* The term "wages" does not include remuneration for services which constitute agricultural labor as defined in section 1426 (h). The term "agricultural labor" as so defined includes services of a character described in subparagraphs (2), (3), (4), and (5) of this paragraph. In general, however, the term "agricultural labor" does not include services performed in connection with forestry, lumbering, or landscaping.

(2) *Services described in section 1426 (h) (1).* Remuneration paid for services performed on a farm by an employee of any person in connection with any of the following activities is excepted as remuneration for agricultural labor:

- (i) The cultivation of the soil;
- (ii) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or
- (iii) The raising or harvesting of any other agricultural or horticultural commodity.

The term "farm" as used in this paragraph includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets), do not constitute "farms."

(3) *Services described in section 1426 (h) (2).* The remuneration paid for the following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms is excepted as remuneration for agricultural labor, provided the major part of such services is performed on a farm:

- (i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any such farms or its tools or equipment; or
- (ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

The services described in subdivision (i) of this subparagraph may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged. Since the services described in this subparagraph must be performed in the employ of the owner or tenant or other operator of the farm, the exception does not extend to remuneration paid for services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(4) *Services described in section 1426 (h) (3).* Remuneration paid for services performed by an employee in the employ of any person in connection with any of the following operations is excepted as remuneration for agricultural labor without regard to the place where such services are performed:

- (i) The ginning of cotton;
- (ii) The hatching of poultry;

(iii) The raising or harvesting of mushrooms;

(iv) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;

(v) The production or harvesting of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(vi) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(5) *Services described in section 1426 (h) (4).* (i) Remuneration paid for services performed by an employee in the employ of a farmer or a farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see subdivision (ii) of this subparagraph), produced by such farmer or farmer-members of such organization or group of farmers is excepted, provided such services are performed as an incident to ordinary farming operations. Generally services are performed "as an incident to ordinary farming operations" within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers' cooperative organization or group as a prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmers' organization or group. Services performed by employees of such farmer or farmers' organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of commodities produced by persons other than such farmer or members of such farmers' organization or group are not performed "as an incident to ordinary farming operations."

(ii) Remuneration paid for services performed by an employee in the employ

of any person in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of fruits and vegetables, whether or not of a perishable nature, is excepted as remuneration for agricultural labor, provided such services are performed as an incident to the preparation of such fruits and vegetables for market. For example, if services in sorting, grading, or storing of fruits or in the cleaning of beans, are performed as an incident to their preparation for market, remuneration paid for such services may be excepted whether the services are performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities.

(iii) The services described in subdivisions (i) and (ii), of this subparagraph, do not include services performed in connection with commercial canning or commercial freezing, or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in such subdivisions must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of subparagraph (3) of this paragraph.

(d) *Remuneration paid for domestic service.* (1) Remuneration paid for services of a household nature performed by an employee in or about the private home of the person by whom he is employed, or performed in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority by which he is employed, is excepted from the term "wages."

(2) A private home is the fixed place of abode of an individual or family.

(3) A local college club or local chapter of a college fraternity or sorority

does not include an alumni club or chapter.

(4) If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home and the remuneration paid for services performed therein is not excepted. Likewise, if the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for such purpose, the remuneration paid for services performed therein is not within the exception.

(5) In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, maids, butlers, laundresses, furnacemen, waiters, and housemothers.

(6) The remuneration paid for the services above enumerated is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

(7) Remuneration paid for services performed as a private secretary, even though performed in the employer's home, is not within the exception.

(e) *Remuneration for casual labor not in the course of employer's trade or business.* (1) The term "casual labor" includes labor which is occasional, incidental, or irregular.

(2) The expression "not in the course of the employer's trade or business" includes labor that does not promote or advance the trade or business of the employer.

(3) Thus remuneration paid for labor which is occasional, incidental, or irregular, and does not promote or advance the employer's trade or business, is excepted.

*Example.* A's business is that of operating a sawmill. He employs B, a carpenter, at an hourly wage to repair his home. B works irregularly and spends the greater part of two days in completing the work. Since B's labor is casual and is not in the course

of A's trade or business, the remuneration paid for such services is excepted.

(4) The remuneration paid for casual labor, that is, labor which is occasional, incidental, or irregular, but which in the course of the employer's trade or business, does not come within the above exception.

*Example (1).* C's business is that of operating a sawmill. He employs D for two hours, at an hourly wage, to remove sawdust from his mill. D's labor is casual since it is occasional, incidental, or irregular, but it is in the course of C's trade or business and the remuneration paid for such labor is not excepted.

*Example (2).* E is engaged in the business of operating a department store. He employs additional clerks for short periods. While the services of the clerks may be casual, they are in the course of the employer's trade or business and, therefore, the remuneration paid for such services is not excepted.

(5) Remuneration paid for casual labor performed for a corporation does not come within this exception.

(f) *Compensation paid by foreign government or international organization—*

(1) *Services for foreign government.*

(i) Remuneration paid for services performed as an employee of a foreign government or the government of the Commonwealth of the Philippines, is excepted. The exception includes not only remuneration paid for services performed by ambassadors, ministers, and other diplomatic officers and employees but also remuneration paid for services performed as a consular or other officer or employee of a foreign government, or the government of the Commonwealth of the Philippines, or as a nondiplomatic representative of such a government. However, the exception does not include remuneration for services performed for a corporation created or organized in the United States or under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii) even though such corporation is wholly owned by such a government.

(ii) The citizenship or residence of the employee and the place where the services are performed are immaterial for purposes of the exception.

(2) *Services for international organization.* Subject to the provisions of section 1 of the International Organizations Immunities Act, remuneration paid for services performed within or without the

United States by an employee for an international organization as defined in section 3797 (a) (18), I. R. C., is excepted from the term "wages". The term "employee" as used in the preceding sentence includes not only an employee who is a citizen or resident of the United States but also an employee who is a nonresident alien individual. The term "employee" also includes an officer. An organization designated by the President through appropriate Executive order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act may enjoy the benefits of the exclusion from wages with respect to remuneration paid for services performed for such organization prior to the date of the issuance of such Executive order, if (1) the Executive order does not provide otherwise and (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the authority of an act of Congress authorizing such participation or making an appropriation for such participation, at the time such services are performed. The exclusion from wages is effective only with respect to remuneration of the prescribed character paid on or after December 29, 1945.

(g) *Compensation paid to nonresident alien individuals.* (1) Except in the case of certain nonresident alien individuals who are residents of Canada and Mexico, remuneration for services performed by nonresident alien individuals does not constitute wages subject to withholding under section 1622, I. R. C. For withholding of income tax on wages paid for services performed within the United States in the case of nonresident alien individuals generally, see section 143, I. R. C., and regulations thereunder.

(2) Withholding is required in the case of wages paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who enter and leave the United States at frequent intervals, except such aliens who, in the performance of their duties in transportation service between points in the United States and points in a contiguous country, enter and leave the United States at frequent intervals. This exception applies to personnel engaged in railroad, ferry, steamboat, and aircraft services and applies alike whether the employer is a domestic or foreign entity.

Thus, the wages of a nonresident alien individual who is a resident of Canada and an employee of a domestic railroad, for services as a member of the crew of a train operating between points in Canada and points in the United States, shall not be subject to withholding under section 1622. The exemption, however, has no application to a resident of Canada, who, for example, is employed at a fixed point in the United States, such as a factory, store, or office, and who commutes from his home in Canada in the pursuit of his employment within the United States; nor does it apply to an alien employee of a railroad corporation who is on duty within the United States, even though he enters and leaves the United States in reaching his place of employment from his home in a contiguous country.

(3) In order for the exemption to apply, the nonresident alien employee must file with his employer a certificate containing the following: The employee's name and address, and a statement that he is not a citizen of the United States, and that he is a resident of the named contiguous country and the approximate period of time during which he has occupied such status. Such certificate shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. Although the form is not prescribed, the certificate must contain all the information required by this paragraph.

(h) *Remuneration for services performed outside the United States—*(1) *Remuneration paid before January 1, 1948.* (i) The remuneration paid before January 1, 1948, by an employer for services performed outside the United States does not constitute wages and hence is not subject to withholding if the major part of the services performed by the employee for such employer during the calendar year is to be performed outside the United States. The term "United States" includes the several States, the Territories of Alaska and Hawaii, and the District of Columbia.

(ii) The exception relates only to the remuneration paid for the services performed outside the United States. Thus, if an employee performs services outside the United States for more than six months of the calendar year, the remuneration paid for such services does not constitute wages and hence is not subject to withholding, but the remuneration

paid for services performed within the United States for such employer during the remainder of the calendar year constitutes wages and is subject to withholding.

(iii) If, however, an employee is absent from the United States on business of his employer for less than six months of the calendar year and performs services for such employer within the United States during the remainder of the calendar year, the entire amount of the remuneration paid for services performed during the calendar year constitutes wages and is subject to withholding.

(iv) However, it is recognized that in the case of an employee performing outside the United States, services of indefinite duration, it may be impossible for the employer to determine whether the major portion of the employee's services during the calendar year is to be performed within the United States or outside the United States. In such case it may be presumed that such performance will continue throughout the calendar year and the liability of the employer to withhold tax on the compensation paid for such services performed outside the United States shall be determined in the light of such presumption. Thus, if an employee undertakes for his employer the performance of services abroad of indefinite duration, or for a term extending beyond the end of the calendar year, and such employee has not already within the calendar year performed services within the United States for a length of time which would constitute, in any circumstances, the major part of the year's services for such employer, no tax is required to be withheld on the compensation paid for services performed by such employee outside the United States.

*Example (1).* A has been regularly employed by B, and is sent abroad under such conditions that it is not possible to know when he will return: (a) If A goes abroad on January 1, no tax is required to be withheld on compensation paid to A for services performed abroad, but on the compensation paid for services performed after his return to the United States tax should be withheld; (b) if A goes abroad on June 29, the same rules are applicable, and therefore no tax is required to be withheld on the compensation for services performed abroad but on compensation for services performed after his return to the United States tax should be withheld; (c) if A goes abroad on August 1, tax should be withheld on the compensation paid A for all services performed during the calendar year, since under no circum-

stances could the major part of the services performed during such year be performed outside the United States.

*Example (2).* A begins his employment with B on July 1, and on September 1 is sent abroad under the circumstances described in example (1). No tax is required to be withheld on the compensation paid A for the services performed abroad.

*Example (3).* A begins his employment with B on July 1, and on November 1 is sent abroad under the circumstances described in example (1). Tax is required to be withheld on the compensation paid A for the services performed abroad, as well as on compensation paid for services performed within the United States for the reasons set forth in example (1) (c).

(v) For the purposes of this paragraph, services performed on or in connection with (a) an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States or (b) any vessel as an employee of the United States employed through the War Shipping Administration are not considered as services performed outside the United States. Hence, the remuneration paid for such services constitutes wages subject to withholding within the meaning of section 1621 (a), I. R. C., and the regulations in this part unless the employee performing such services is a nonresident alien.

(vi) The word "vessel" includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

(vii) The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented or numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii).

(2) *Remuneration paid on or after January 1, 1948.* (1) Remuneration paid on or after January 1, 1948, by an employer (other than the United States or any agency thereof) for services performed outside the United States by a

citizen of the United States, is not subject to withholding if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of a foreign country or countries.

(ii) The reasonable belief with respect to an employee's bona fide residence in a foreign country mentioned in section 1621 (a) (8) may be based on any evidence (including the statement with respect to residence hereinafter prescribed) reasonably sufficient to induce such belief even though such evidence might be insufficient, upon closer examination by the Commissioner or the courts, finally to establish such bona fide residence in a foreign country so as to justify the exemption from tax provided for in section 116 (a), I. R. C.

(iii) The employer may presume that an employee will be a bona fide resident of a foreign country during the entire calendar year in any case where such employee, who is a citizen of the United States, claims to be a bona fide resident of a foreign country and files with such employer, for transmission to the collector with the employer's return on Form W-1 required for the first quarter of the calendar year involved (or third quarter of 1948) by § 405.601, a statement with respect to his residence as hereinafter provided, unless such employer otherwise has reasonable belief that the employee will not be a bona fide resident of such foreign country. The statement with respect to the employee's residence shall be verified before an officer duly authorized to administer oaths, or signed in the presence of two subscribing witnesses and the employee shall set forth therein the following:

(a) That he was living on January 1st of the current calendar year in a foreign country (name the country) and expects to live in such foreign country or in some other foreign country (name the country) during the entire calendar year;

(b) That the purpose or business requiring his presence in the foreign country or countries is such that an extended stay or a stay of indefinite duration will be necessary for its accomplishment;

(c) That he understands that any exemption from withholding of tax permitted by reason of the filing of such statement is not a determination by the Commissioner of Internal Revenue that

he is exempt from tax under section 116 (a), Internal Revenue Code;

(d) All the facts with respect to such foreign service, including:

(1) His name and last address (in the United States) and the collection district in which his last income tax return was filed;

(2) Nature of the services to be rendered during the calendar year and rate of compensation;

(3) Terms of the agreement with the employer with respect to such foreign services, particularly whether or not such services are to be rendered for any specified period of time;

(4) His marital status; if married whether his immediate family will live with him in the foreign country during the period of his foreign service.

(iv) In the case of an employee who has been deemed under section 1621 (a) (8) (A) to be a bona fide resident of a foreign country or countries for two consecutive calendar years immediately preceding the current calendar year and who is residing in such foreign country or countries on the first day of January of the current calendar year, the employer may, in the absence of that time of clear and definite knowledge to the contrary, presume that such employee will continue to be a bona fide resident of such foreign country or countries for the current calendar year.

(v) Remuneration paid on or after January 1, 1948, for services for an employer performed within a possession of the United States by a citizen of the United States is not subject to withholding, if it is reasonable to believe that at least 80 percent of the remuneration to be paid by such employer to the employee during the calendar year will be for such services.

(vi) The term "United States" includes the several States, the Territories of Alaska and Hawaii, and the District of Columbia.

(i) *Compensation for services performed as a minister of the gospel.* Compensation for services performed as a minister of the gospel is not subject to withholding under section 1622, I. R. C. The exception is extended to remuneration of ministers of the gospel for services which are ordinarily the duties of a minister of the gospel. The duties of a minister of the gospel include the ministerial functions of sacerdotal functions and conduct

of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination.

[Regs. 116, 9 F. R. 14573, as amended by T. D. 5522, 11 F. R. 6755, T. D. 5645, 13 F. R. 4259]

§ 405.103 *Payroll period.* (a) The term "payroll period" means the period of service for which a payment of wages is ordinarily made to an employee by his employer. It is immaterial that the wages are not always paid at regular intervals. For example, if an employer ordinarily pays a particular employee for each calendar week at the end of the week, but if for some reason the employee in a given week receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the payroll period is still the calendar week; or if, instead, that employee is sent on a 3-week trip by his employer and receives at the end of the trip a single wage payment for three weeks' services, the payroll period is still the calendar week, and the wage payment shall be treated as though it were three separate weekly wage payments.

(b) For the purpose of section 1622, I. R. C., an employee can have but one payroll period with respect to wages paid by any one employer. Thus, if an employee is paid a regular wage for a weekly payroll period and in addition thereto is paid supplemental wages (for example, bonuses) determined with respect to a difference period, the payroll period is the weekly payroll period. For computation of tax on supplemental wage payments see § 405.209.

(c) The term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semi-monthly, monthly, quarterly, semiannual, or annual payroll period.

§ 405.104 *Employee.* (a) The term "employee" includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term specifically includes officers and employees, whether elected or appointed, of the United States, a State, Territory, or

any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

(f) The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

(g) No distinction is made between classes or grades of employees. Thus superintendents, managers, and other superior employees are employees. An officer of a corporation is an employee of the corporation but a director as such is not. If, however, a director performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors, he may or may not be an employee of the corporation. Whether or not such services are performed as an employee of the corporation must be determined upon the basis of the facts in the particular case.

(h) Although an individual may be an employee under the statute, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 1621 (a), I. R. C.

§ 405.105 *Employer.* (a) The term "employer" means any person for whom an individual performs or performed any service, of whatever nature, as the employee of such person.

(b) It is not necessary that the services be continuing at the time the wages are paid in order that the status of employer exist. Thus, for purposes of withholding a person for whom an individual has performed past services for which he is still receiving wages from such person is an "employer."

(c) If the person for whom the services are or were performed does not have legal control of the payment of the wages for such services, the term "employer" means (except for the purpose of the definition of "wages") the person having such control. For example, where wages, such as certain types of pensions or retired pay, are paid by a trust and the person for whom the services were performed has no legal control over the payment of such wages, the trust is the "employer."

(d) The term "employer" also means (except for the purpose of the definition of "wages") any person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States.

(e) It is a basic purpose to centralize in the employer the responsibility for

withholding, returning, and paying the tax and furnishing the statements required under section 1625, I. R. C. The foregoing two special definitions of the term "employer" are designed solely to meet unusual situations. They are not intended as a departure from the basic purpose.

(f) As a matter of business administration, certain of the mechanical details of the withholding process may be handled by representatives of the employer. Thus, in the case of a corporate employer having branch offices, the branch manager or other representative may actually, as a matter of internal administration, withhold the tax or prepare the statements required under section 1625, I. R. C. Nevertheless, the legal responsibility for withholding, paying, and returning the tax and furnishing such statements rests with the corporate employer.

(g) An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

(h) The term "employer" embraces not only individuals and organizations engaged in trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations and societies, as well as the governments of the United States, the States, Territories, and the District of Columbia, including their agencies, instrumentalities, and political subdivisions.

§ 405.106 *Number of withholding exemptions claimed.* (a) The term "number of withholding exemptions claimed" is defined in section 1621 (e), I. R. C. The number of withholding exemptions claimed must be taken into account in determining the amount of tax to be deducted and withheld under section 1622, I. R. C., whether the employer computes the tax in accordance with the provisions of subsection (a) or subsection (c) of section 1622.

(b) The employer is not required to ascertain whether or not the number of

withholding exemptions claimed is greater than the number of withholding exemptions to which the employee is entitled. If, however, the employer has reason to believe that the number of withholding exemptions claimed by an employee is greater than the number to which such employee is entitled, the collector should be so advised.

(c) As to the number of withholding exemptions to which an employee is entitled, see § 405.205.

§ 405.107 *General definition and use of terms.* As used in the regulations in this part:

(a) The terms defined in sections 3797 (a) and (b) of the Internal Revenue Code shall have the meanings so assigned to them.

(b) Internal Revenue Code means the act approved February 10, 1939 (53 Stat., Part 1), entitled "An Act to consolidate and codify the internal revenue laws of the United States," as amended.

(c) Person includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(d) The cross references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience, and shall be given no legal effect.

#### SUBPART C—DETERMINATION OF TAX

§ 405.201 *Requirement of withholding.* (a) Section 1622, I. R. C., provides, at the election of the employer, alternative methods for computing the income tax collected at source on wages. Under the first method (hereinafter referred to as "the percentage method") the employer is required to deduct and withhold a tax computed in accordance with the provisions of section 1622 (a). Under the second method (hereinafter referred to as "the wage bracket method") the employer is required to deduct and withhold a tax determined in accordance with the

tables provided in subsection (c) of section 1622. For the withholding exemption see § 405.202; for the wage bracket method see § 405.203; for constructive payment of wages see § 405.1.

(b) The percentage method involves several calculations. In using this method with respect to wages paid before January 1, 1946, reference must be made to the percentage method withholding table in section 1622 (b) (1) prior to its amendment by the Revenue Act of 1945. The steps in computing the tax under such method with respect to wages paid before January 1, 1946, are summarized as follows:

*Step 1.* Subtract the amount of one withholding exemption (see percentage method withholding table) from the employee's wages. Multiply the remainder, if any, by 0.027.

*Step 2.* Multiply the amount of one withholding exemption by the number of exemptions claimed by the employee.

*Step 3.* Subtract the amount determined in step 2 from the employee's wages. Compare the remainder, if any, with the figure shown in the last column of the percentage method withholding table. Take the smaller of the two amounts and multiply it by 0.18.

*Step 4.* Add the amount determined in step 2 and the figure in the last column of the percentage method withholding table. Subtract the sum of those two figures from the employee's wages. Multiply the remainder, if any, by 0.198.

*Step 5.* To determine the amount required to be withheld, add the amounts determined in steps 1, 3, and 4.

*Example.* During 1945 an employee has a weekly payroll period, for which he is paid \$82, and has in effect a withholding exemption certificate claiming three exemptions. His employer, using the percentage method, computes the tax to be withheld as follows:

#### Step 1

Total wage payment-----	\$82
Less amount of one withholding exemption-----	11
Balance subject to 2.7 percent rate-----	71
	× 0.027
Portion of tax to be withheld-----	\$1.92

#### Step 2

Amount of one withholding exemption-----	\$11
Multiplied by number of exemptions claimed on Form W-4--	× 3
Total withholding exemptions--	33

*Step 3*

Total wage payment.....	\$82
Less amount determined in step 2.....	33
(a) Balance.....	49
(b) Amount shown in last column of table for weekly payroll period.....	44
Smaller of (a) or (b) subject to 18 percent rate.....	44
	× 0.18
Portion of tax to be withheld.....	7.92

*Step 4*

Total wage payment.....	\$82
Amount determined in step 2.....	\$33
Amount shown in last column of table for weekly payroll period.....	44
Total.....	77
Balance subject to 19.8 percent rate.....	5
	× 0.198
Portion of tax to be withheld.....	.99

*Step 5*

Total tax to be withheld.....	10.83
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(c) In the case of any employee who has no withholding exemption certificate in effect, or an employee who has claimed no exemption, the amount of one withholding exemption is to be used for the purpose of step 1, but no withholding exemptions are allowed for purposes of steps 2, 3, and 4.

(d) In using the percentage method with respect to wages paid on or after January 1, 1946, reference must be made to the percentage method withholding table in section 1622 (b) (1), I. R. C., as amended by the Revenue Act of 1945. The steps in computing the tax under such method with respect to wages paid on or after January 1, 1946, are summarized as follows:

*Step 1.* Multiply the amount of one withholding exemption by the number of exemptions claimed by the employee.

*Step 2.* Subtract the amount determined in step 1 from the employee's wages. Compare the remainder, if any, with the figure in the last column of the percentage method withholding table. Take the smaller of the two amounts and multiply it by 0.17.

*Step 3.* Add the amount determined in step 1 and the figure in the last column of the percentage method withholding table. Subtract the sum of these two figures from the employee's wages. Multiply the remainder, if any, by 0.19.

*Step 4.* To determine the amount required to be withheld, add the amounts determined in steps 2 and 3.

*Example.* During 1946 an employee has a weekly payroll period, for which he is paid \$82, and has in effect a withholding exemption certificate claiming three exemptions. His employer, using the percentage method, computes the tax to be withheld as follows:

*Step 1*

Amount of one withholding exemption.....	\$11
Multiplied by number of exemptions claimed on Form W-4.....	× 3
Total withholding exemptions.....	33

*Step 2*

Total wage payment.....	\$82
Less amount determined in step 1.....	33
(a) Balance.....	49
(b) Amount shown in last column of table for weekly payroll period.....	44
Smaller of (a) or (b) subject to 17 percent rate.....	44
	× 0.17
Portion of tax to be withheld.....	7.48

*Step 3*

Total wage payment.....	\$82
Amount determined in step 1.....	\$33
Amount shown in last column of table for weekly payroll period.....	44
Total.....	77
Balance subject to 19 percent rate.....	5
	× 0.19
Portion of tax to be withheld.....	.95

*Step 4*

Total tax to be withheld.....	11.43
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(e) Where the withholding is computed under the rules applicable to a miscellaneous payroll period, the wages and the amounts shown in the percentage method withholding table must be placed in a comparable basis. This may be accomplished by either of the following methods:

(1) Adjust the percentage method withholding table to accord with the number of days in the period by multiplying the amounts shown in the table as applicable per day of a miscellaneous payroll period by the number of days in such period. Using the table so adjusted compute the tax on the total wages paid for the period by the method outlined in the above examples.

(2) Reduce the wages paid for the period to a daily basis by dividing the total wages by the number of days in the

period. Compute the tax on the daily basis using the steps indicated in the above examples and multiply the amount so computed by the number of days in the period.

[Regs. 116, 9 F. R. 14573, as amended by T. D. 5492, 11 F. R. 1277]

§ 405.202 *Application of withholding exemptions*—(a) *In general.* (1) Under the percentage method with respect to wages paid before January 1, 1946, the portion of the tax at the 2.7 percent rate is computed on the amount by which the wages paid exceed the amount of one withholding exemption, regardless of the number of withholding exemptions claimed. In the computation of the portions of the tax with respect to such wages at the 18 percent rate and the 19.8 percent rate, the amount allowed as the withholding exemption depends upon the number of withholding exemptions claimed. Under the percentage method with respect to wages paid on or after January 1, 1946, the amount allowed as the withholding exemption depends upon the number of withholding exemptions claimed. The amount of the withholding exemption is determined in accordance with the percentage method withholding table contained in section 1622 (b) (1), I. R. C.

(2) If the employee has an established payroll period, the amount of the withholding exemption is determined by reference to the line applicable to such payroll period in the percentage method withholding table and without regard to the time the employee is actually engaged in the performance of service during such payroll period.

*Example (1).* During 1945 employee A has a semimonthly payroll period. The number of withholding exemptions claimed by A is two. A's wages are determined at the rate of \$1.20 per hour. During a particular payroll period he works only 40 hours and earns \$48. In computing the amount of the tax at the 2.7 percent rate, the amount of one withholding exemption, or \$23, is allowable. In computing the amount of the tax at the 18 percent rate the amount of two withholding exemptions, or \$46 is allowable. The 19.8 percent rate is not applicable in this instance, since the amount of the wages paid for the payroll period is less than the maximum amount shown in the last column of the percentage method withholding table.

*Example (2).* During 1945 employee B has a weekly payroll period. The number of withholding exemptions claimed by B is zero. B's wages are determined at the rate of \$10 per day. During a particular week B worked

only two days and resigned. The amount of the tax at the 2.7 percent rate is computed on the excess of \$20 over \$11, the latter amount being the amount of one withholding exemption for a weekly payroll period. The amount of the tax at the 18 percent rate is computed on the entire amount of \$20, which amount is less than the maximum amount subject to the 18 percent rate as shown in the percentage method withholding table. The 19.8 percent rate is not applicable in this instance, since the amount received is less than the amount shown in the last column of the percentage method withholding table.

*Example (3).* During 1946 employee C has a semimonthly payroll period. The number of withholding exemptions claimed by C is two. C's wages are determined at the rate of \$1.20 per hour. During a certain payroll period he works only 40 hours and earns \$48. In computing the amount of the tax at the 17 percent rate, the amount of two withholding exemptions, or \$46, is allowable. The 19 percent rate is not applicable in this instance, since the amount of the wages paid for the payroll period is less than the amount shown in the last column of the percentage method withholding table.

*Example (4).* During 1946 employee D has a weekly payroll period. The number of withholding exemptions claimed by D is zero. D's wages are determined at the rate of \$10 per day. During a certain week D worked only two days and resigned. The amount of the tax at the 17 percent rate is computed on the entire amount of \$20, which amount is less than the maximum amount subject to the 17 percent rate as shown in the percentage method withholding table. The 19 percent rate is not applicable in this instance, since the amount received is less than the amount shown in the last column of the percentage method withholding table.

(b) *Period not a payroll period.* If wages are paid for a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

*Example.* An individual is hired by a contractor to perform services in connection with a building project. The number of withholding exemptions claimed by such individual is two. Wages were fixed at the rate of \$9 per day, to be paid upon completion of the project. The project was completed during 1945 in 12 consecutive days, at the end of which period the individual is paid wages of \$90 for 10 days' services performed during the period. For the purpose of computing the tax at the 2.7 percent rate, the amount of the withholding exemption allowable for the 12-day period is \$18 ( $12 \times \$1.50$ ). The amount of the withholding exemption allowable for the 12-day

period, in computing the tax at the 18 percent rate, is \$36 ( $12 \times (2 \times \$1.50)$ ). The 19.8

The 19.8 percent rate is not applicable, since the wages paid for the period of 12 days are less than the amount of two withholding exemptions plus the maximum amount subject to the 18 percent rate for such period. If, however, the wages were paid in 1946 or a subsequent year, the amount of the withholding exemption allowable for the 12-day period, in computing the tax to be withheld, namely, at the 17 percent rate, is \$36 ( $12 \times (2 \times \$1.50)$ ). The 19 percent rate would not be applicable, since the wages paid for the period of 12 days would be less than the amount of two withholding exemptions plus the maximum amount subject to the 17 percent rate for such period.

(c) *Wages paid without regard to any period.* In the case of wages paid without regard to any particular period, as, for instance, commissions paid to a salesman upon completion of a sale, the withholding exemption is measured by the number of days elapsed (including Sundays and holidays) since the date of the last payment of wages to such employee by such employer during the calendar year, or the date on which employment with such employer began during the calendar year, or January 1 of such calendar year, whichever is the latest.

*Example (1).* On April 2, 1945, A was employed by the X Real Estate Co. to sell real estate on a commission basis, commissions to be paid only upon consummation of sales. The number of withholding exemptions claimed by A is one. On May 21, 1945, A received a commission of \$300. Again, on June 16, 1945, A received a commission of \$400. The amount of the withholding exemption in respect of the commission paid on May 21 for the purpose of computing the tax at the 2.7 percent rate and the 18 percent rate is \$75 ( $\$1.50 \times 50$ ). The amount of the wages is insufficient for the 19.8 percent rate to be applicable in this instance. In respect of the commission paid on June 16, the amount of the withholding exemption for the purpose of computing the tax at the 2.7 percent rate is \$39 ( $\$1.50 \times 26$ ); for the purpose of computing the tax at the 18 percent rate, the maximum amount subject to tax at such rate, \$156 ( $\$6 \times 26$ ), is the amount to be used; and the amount of the wages subject to withholding at the 19.8 percent rate is the excess of the wages (\$400) over \$195 (\$39 plus \$156).

*Example (2).* On April 1, 1946, B was employed by the Y Real Estate Co. to sell real estate on a commission basis, commissions to be paid only upon consummation of sales. The number of withholding exemptions claimed by B is one. On May 20, 1946, B received a commission of \$300. Again on June 15, 1946, B received a commission of \$400. The amount of the withholding exemption in respect of the commission paid on May 20

for the purpose of computing the tax at the 17 percent rate is \$75 ( $\$1.50 \times 50$ ). The amount of the wages is insufficient for the 19 percent rate to be applicable in this instance. In respect of the commission paid on June 15, the maximum amount subject to tax at the 17 percent rate, \$156 ( $\$6 \times 26$ ) is the amount to be used for the purpose of computing the tax at such rate, and the amount of the wages subject to withholding at the 19 percent rate is the excess of the wages (\$400) over \$195 (\$39 plus \$156).

(d) *Period or elapsed time less than one week.* (1) It is the general rule that if wages are paid for a payroll period or other period of less than one week, the withholding exemption allowable shall be the exemption allowable for a daily payroll period, or a miscellaneous payroll period containing the same number of days (including Sundays and holidays) as the payroll period or other period for which such wages are paid. The same rule is applicable in the case of wages paid without regard to a payroll period or other period, where the elapsed time as determined in accordance with the rule prescribed in § 405.202 (c) is less than one week.

*Example (1).* During 1945 an employee having a daily payroll period is paid wages of \$12 per day. The number of withholding exemptions claimed by such employee is one. The amount of the withholding exemption allowable against the daily wage payment for the purpose of computing the tax at the 2.7 percent rate is \$1.50. The amount of each such daily wage payment subject to the tax at the 18 percent rate is \$6. The amount of the wages subject to withholding at the 19.8 percent rate is the excess of the wages (\$12) over \$7.50 ( $\$1.50$  plus \$6).

*Example (2).* An employee works for a particular employer for four days for which he is paid \$36. The number of withholding exemptions claimed by the employee is two. The amount of the withholding exemption allowable for the purpose of computing the tax at the 2.7 percent rate is \$6 ( $4 \times \$1.50$ ). The amount of the withholding exemption allowable for the purpose of computing the tax at the 18 percent rate is \$12 ( $4 \times \$3$ ). The amount of the wages is insufficient for the 19.8 percent rate to be applicable.

*Example (3).* During 1946 an employee having a daily payroll period is paid wages of \$12 per day. The number of withholding exemptions claimed by such employee is one. The amount of each such daily wage payment subject to the tax at the 17 percent rate is \$6. The amount of the wages subject to withholding at the 19 percent rate is the excess of the wages (\$12) over \$7.50 ( $\$1.50$  plus \$6).

*Example (4).* During 1946 an employee works for a certain employer for four days for which he is paid \$36. The number of

withholding exemptions claimed by the employee is two. The amount of the withholding exemption allowable for the purpose of computing the tax at the 17 percent rate is \$12 ( $4 \times \$3$ ). The amount of the wages is insufficient for the 19 percent rate to be applicable.

(2) Under certain conditions, however, if the payroll period, other period, or elapsed time where wages are paid without regard to any period, is less than one week, the employer may, at his election, deduct and withhold the tax computed as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period. Such election by the employer is limited to the case of an employee who works for wages only for such employer during the calendar week. Any employer electing to compute the tax upon the excess of the wages paid during the calendar week over the weekly exemption must secure a statement in writing from the employee, stating that he works for wages only for such employer, and that if he should thereafter secure additional employment for wages, he will within 10 days after the beginning of such additional employment, notify such employer of that fact. Such statement shall be signed by the employee and shall contain or be verified by a written declaration that it is made under the penalties of perjury. No form of statement is specified, but any form used must include the contents specified above. An employer electing to compute the tax in accordance with the provisions of this paragraph should withhold from each wage payment an amount sufficient to insure withholding of the correct amount of tax.

(3) If such employee secures additional employment for wages, such employer may not thereafter use the weekly exemption in computing the amount of tax to be withheld from the wages of such employee. In such event the daily or miscellaneous exemption will take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after 30 days from the date on which such employee notifies such employer that he has secured additional employment for wages.

(4) To illustrate the use of the weekly exemption in such a case: Assume the facts stated in example (2) above, except that the employer elects to use the weekly withholding exemption after

securing the proper statement from the employee. In such case, the amount of the withholding exemption allowable for the purpose of computing the tax at the 2.7 percent rate is \$11, the amount of one withholding exemption for a weekly payroll period. The amount of the withholding exemption allowable for the purpose of computing the tax at the 18 percent rate is \$22 ( $2 \times \$11$ ). The amount of the wages is insufficient for the 19.8 percent rate to apply. Under the same state of facts, if the wages are paid on or after January 1, 1946, the amount of the withholding exemption allowable for the purpose of computing the tax at the 17 percent rate is \$22 ( $2 \times \$11$ ). The amount of the wages is insufficient for the 19 percent rate to apply.

(5) As used in this paragraph the term "calendar week" means a period of seven consecutive days beginning with Sunday and ending with Saturday.

(e) *Rounding off of wage payment.* In determining the amount of tax to be deducted and withheld under the percentage method, the last digit of the wage amount may, at the election of the employer, be reduced to zero, or the wage amount may be computed to the nearest dollar. Thus, if the weekly wage is \$45.37, the employer may, in determining the amount of tax to be deducted and withheld, eliminate the last digit and determine the tax on the basis of a wage payment of \$45.30 or he may determine the tax on the basis of a wage payment of \$45.

[Regs. 116, 9 F. R. 14573, as amended by T. D. 5492, 11 F. R. 1278]

#### § 405.203 Wage bracket withholding—

(a) *In general.* (1) The employer may elect to use the wage bracket method provided in section 1622 (c), I. R. C., instead of the percentage method with respect to any employee. The tax computed under the wage bracket method shall be in lieu of the tax required to be deducted and withheld under section 1622 (a). The employer may elect to use the wage bracket method in the case of one group of employees and the percentage method in the case of another group of employees.

(2) With respect to wages paid before January 1, 1946, the wage bracket tables contained in section 1622 (c) prior to its amendment by the Revenue Act of 1945 are to be used. With respect to wages paid on or after January 1, 1946, the wage bracket tables contained in section 1622

(c) as amended by the Revenue Act of 1945 are to be used.

(b) *Daily or miscellaneous period.* The table applicable to a daily or miscellaneous payroll period shows the tax on the amount of wages for one day. Where the withholding is computed under the rules applicable to a miscellaneous payroll period, the wages and the amounts shown in the table must be placed on a comparable basis. This may be accomplished by either of the following methods:

(1) Adjust the amounts shown in the table to accord with the number of days in the period by multiplying such amounts by the number of days in such period. The amount of the tax required to be withheld is determined by applying the table as adjusted to the total wages paid for the period.

(2) Reduce the wages paid for the period to a daily basis by dividing the total wages by the number of days in the period. Apply the table to the wages so determined and multiply the result by the number of days in the period.

(c) *Period not a payroll period.* If wages are paid for a period which is not a payroll period, the amount to be deducted and withheld under the wage bracket method shall be the amount applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

*Example.* An individual is hired by a contractor to perform services in connection with a construction project. The number of withholding exemptions claimed by the individual is two. Wages were fixed at the rate of \$9 per day, to be paid upon completion of the project. The project was completed during 1945 in 12 days, at the end of which period the individual was paid \$90, representing wages for 10 days' services performed during the period. Under the wage bracket method the amount to be deducted and withheld from such wages is determined by dividing the amount of the wages (\$90) by the number of days in the period (12), the result being \$7.50. The amount of tax required to be withheld is determined under the table applicable to a miscellaneous payroll period. Under this table it will be found that the tax required to be withheld is \$1 multiplied by the number of days in such period, or \$12 for the 12-day period.

If, however, the wages were paid in 1946 or a subsequent year, the tax required to be withheld under the table applicable to a

miscellaneous payroll period to be used for such years would be \$0.80 multiplied by the number of days in such period, or \$9.60 for the 12-day period.

(d) *Wages paid without regard to any period.* If wages are paid without regard to any period, as, for instance, commissions paid to a salesman upon consummation of a sale, the amount of tax to be deducted and withheld shall be determined in the same manner as in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the latest.

*Example (1).* On April 2, 1945, A is hired by the X Real Estate Co. to sell real estate on a commission basis, commissions to be paid only upon consummation of sales. The number of withholding exemptions claimed by A is one. On May 21, 1945, A received a commission of \$300. Again, on June 16, 1945, A received a commission of \$400. Under the wage bracket method, the amount of tax to be deducted and withheld in respect of the commission paid on May 21 is \$47.50, which amount is obtained by multiplying \$0.95 (tax under wage bracket table for a daily or miscellaneous payroll period where wages are at least \$6 but less than \$6.25 a day) by 50 (number of days elapsed); and the amount of tax to be withheld with respect to the commission paid on June 16 is \$78, which amount is obtained by multiplying \$3 (tax under wage bracket table for a daily or miscellaneous payroll period where wages are at least \$15 but less than \$15.50 a day) by 26 (number of days elapsed).

*Example (2).* On April 1, 1946, B is hired by the Y Real Estate Co. to sell real estate on a commission basis, commissions to be paid only upon consummation of sales. The number of withholding exemptions claimed by B is one. On May 20, 1946, B received a commission of \$300. Again, on June 15, 1946, B received a commission of \$400. Under the wage bracket method, the amount of tax to be deducted and withheld in respect of the commission paid on May 20 is \$40, which amount is obtained by multiplying \$0.80 (tax under wage bracket table for a daily or miscellaneous payroll period where wages are at least \$6 but less than \$6.25 a day) by 50 (number of days elapsed); and the amount of tax to be withheld with respect to the commission paid on June 15 is \$65, which amount is obtained by multiplying \$2.50 (tax under wage bracket table for a daily or miscellaneous payroll period where wages are at least \$15 but less than \$15.50 a day) by 26 (number of days elapsed).

(e) *Period or elapsed time less than one week.* (1) It is the general rule that if wages are paid for a payroll period or other period of less than one week, the tax to be deducted and withheld under the wage bracket method shall be the amount computed for a daily payroll period, or for a miscellaneous payroll period containing the same number of days (including Sundays and holidays) as the payroll period, or other period, for which such wages are paid. In the case of wages paid without regard to any period, if the elapsed time computed as provided in paragraph (d) of this section is less than one week, the same rule is applicable.

*Example (1).* During 1945 an employee having a daily payroll period is paid wages of \$7 per day. The number of withholding exemptions claimed by the employee is one. Under the table applicable to a daily payroll period, the amount of tax to be deducted and withheld from each such payment of wages is \$1.15.

*Example (2).* During 1945 an individual is hired for four days, for which he is paid wages of \$36. The number of withholding exemptions claimed by him is two. The amount of tax to be deducted and withheld under the wage bracket method is \$5.20 ( $4 \times \$1.30$ ).

*Example (3).* During 1946 an employee having a daily payroll period is paid wages of \$7 per day. The number of withholding exemptions claimed by the employee is one. Under the table applicable to a daily payroll period, the amount of tax to be deducted and withheld from each such payment of wages is \$0.95.

*Example (4).* During 1946 an individual is hired for four days, for which he is paid wages of \$36. The number of withholding exemptions claimed by him is two. The amount of tax to be deducted and withheld under the wage bracket method is \$4.20 ( $4 \times \$1.05$ ).

(2) If the payroll period, other period, or elapsed time where wages are paid without regard to any period, is less than one week, the employer may, under certain conditions, elect to deduct and withhold the tax determined by the application of the wage table for a weekly payroll period to the aggregate of the wages paid to the employee during the calendar week. The election to use the weekly wage table in such cases is subject to the limitations and conditions prescribed in § 405.202 (d) with respect to employers using the percentage method in similar cases.

(f) *Rounding off of wage payment.* In determining the amount to be de-

ducted and withheld under the wage bracket method the wage amount may, at the election of the employer, be computed to the nearest dollar, *Provided*, Such amount is in excess of the highest wage bracket of the applicable table. Thus, with respect to wages paid on or after January 1, 1946, if the payroll period of an employee is weekly and the wage payment of such employee is \$255.25, the employer may compute the 19 percent of the excess over \$200 as if the excess were \$55 instead of \$55.25.

[Regs. 116, 9 F. R. 14573, as amended by T. D. 5492, 11 F. R. 1278]

§ 405.204 *Included and excluded wages.* (a) If a portion of the remuneration paid by an employer to his employee for services performed during a payroll period constitutes wages, and the remainder does not constitute wages, all the remuneration paid the employee for services performed during such period shall for purposes of withholding be treated alike, that is, either all included as wages or all excluded. The time during which the employee performs services, the remuneration for which under section 1621 (a), I. R. C., constitutes wages, and the time during which he performs services, the remuneration for which under such section does not constitute wages, determine whether all the remuneration for services performed during the payroll period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular person in a payroll period is spent in performing services the remuneration for which constitutes wages, then all the remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

(c) If less than one-half of the employee's time in the employ of a particular person in a payroll period is spent in performing services the remuneration for which constitutes wages, then none of the remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

*Example (1).* Employee A is employed by B who operates a farm and a store. The remuneration paid A for services on the farm is excepted as remuneration for agricultural labor, and the remuneration for services performed in the store constitutes wages. Employee A is paid on a monthly basis. During a particular month, A works 120 hours on the farm and 80 hours in the store. None of the remuneration paid A for services per-

formed during the month is deemed to be wages, since the remuneration paid for less than one-half of the services performed during the month constitutes wages.

During another month A works 75 hours on the farm and 120 hours in the store. All of the remuneration paid A for services performed during the month is deemed to be wages since the remuneration paid for one-half or more of the services performed during the month constitutes wages.

*Example (2).* Employee C is employed as a maid by D, a physician, whose home and office are located in the same building. The remuneration paid C for services in the home is excepted as remuneration for domestic service, and the remuneration paid for her services in the office constitute wages. C is paid on a weekly basis. During a particular week C works 20 hours in the home and 20 hours in the office. All of the remuneration paid C for services performed during that week is deemed to be wages, since the remuneration paid for one-half or more of the services performed during the week constitutes wages.

During another week C works 22 hours in the home and 15 hours in the office. None of the remuneration paid C for services performed during that week is deemed to be wages, since the remuneration paid for less than one-half of the services performed during the week constitutes wages.

(d) The rules set forth in this section do not apply (1) with respect to any remuneration paid for services performed by an employee for his employer if the periods for which remuneration is paid by the employer vary to the extent that there is no period which constitutes a payroll period within the meaning of section 1621 (b), or (2) with respect to any remuneration paid for services performed by an employee for his employer if the payroll period for which remuneration is paid exceeds 31 consecutive days. In any such case withholding is required with respect to that portion of such remuneration which constitutes wages.

§ 405.205 *Rights to claim withholding exemptions.* (a) An employee receiving wages shall on any day be entitled to withholding exemptions as provided in section 1622 (h) (1), I. R. C. In order to receive the benefit of such exemptions, the employee must file with his employer a withholding exemption certificate as provided in section 1622 (h) (2). See § 405.206.

(b) The number of exemptions to which an employee is entitled on any day depends upon his status as single or married, upon the number of his dependents, and if married, upon the number of exemptions claimed by his spouse.

(c) A single person is entitled to one withholding exemption for himself.

(d) A married person is entitled to one withholding exemption for himself and one for his spouse, unless his spouse is employed and claims the withholding exemption for herself. Thus, a married couple is entitled to one withholding exemption for each spouse and they each may claim one exemption, but if one spouse does not claim his exemption the other spouse may claim both.

(e) For the purpose of determining the number of withholding exemptions to which an employee is entitled for himself or his spouse on any day, the employee's status as a single person or a married person and, if married, whether a withholding exemption is claimed by his spouse, shall be determined as of such day. For example, a married employee having no dependents has in effect a withholding exemption certificate claiming one exemption for himself and one for his wife. On February 5, 1945, his wife dies. On February 6, 1945, the employee has the status of a single person and hence is entitled to a withholding exemption for himself only. Accordingly, he is required to file a new withholding exemption certificate within 10 days from the date of death of his wife claiming not more than one withholding exemption.

(f) Subject to the limitations stated below, an employee shall also be entitled on any day to a withholding exemption for each individual who may be reasonably expected to be his dependent for the taxable year beginning in the calendar year in which such day falls. For the purposes of the withholding exemption for an individual who may be reasonably expected to be a dependent, the following subparagraphs (1) to (3) of this section shall apply:

(1) The determination that an individual may or may not be reasonably expected to be a dependent shall be made on the basis of facts existing at the beginning of the day for which a withholding exemption for such individual is to be claimed. The individual in respect of whom an exemption is claimed must be in existence and bear the required relationship to the employee on the day in question.

(2) The determination that an individual may or may not be reasonably expected to be a dependent shall be made for the taxable year of the em-

ployee under chapter 1 of the Internal Revenue Code in respect of which amounts deducted and withheld under subchapter D of chapter 9 of such Code in the calendar year in which the day in question falls are allowed as a credit. In general, amounts deducted and withheld under subchapter D of chapter 9 during any calendar year are allowed as a credit against the tax imposed by chapter 1 for the taxable year which begins in, or with, such calendar year. For example, in order for an employee to be able to claim for the calendar year 1945 a withholding exemption with respect to a particular individual (other than the employee's spouse) there must be a reasonable expectation that the employee will be allowed a surtax exemption with respect to such individual under section 25 (b), I. R. C., for his income tax taxable year 1945. Similarly, in order for an employee to be able to claim for the calendar year 1946 a withholding exemption with respect to a particular individual (other than the employee's spouse) there must be a reasonable expectation that the employee will be allowed an exemption with respect to such individual under section 25 (b) for his income tax taxable year 1946.

(3) For the employee to be entitled on any day of the calendar year to a withholding exemption for an individual as a dependent, such individual must on such day be reasonably expected to receive less than \$500 of gross income for such calendar year, receive over half of his support from the employee during such calendar year, and be related to the employee in one of the relationships specified in section 25 (b) (3).

(g) If an employee undertakes the support of an individual before July 1 of any calendar year and intends to support such individual for the rest of such year, it will be considered reasonable for such employee to claim for the purposes of the withholding exemption that he expects to furnish more than half the support of such individual for such calendar year.

(h) An employee is not entitled to claim a withholding exemption for an individual otherwise reasonably expected to be a dependent of the employee if such individual is a citizen of a foreign country, unless such individual is at any time during the calendar year a resident of the United States, Canada, or Mexico.

[Regs. 116, 9 F. R. 14573, as amended by T. D. 5492, 11 F. R. 1279]

§ 405.206 *Withholding exemption certificates.* (a) Except as hereinafter provided, every employee receiving wages shall furnish his employer a signed withholding exemption certificate, on Form W-4, relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled. The employer is required to request a withholding exemption certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be considered as claiming no withholding exemptions. Forms of certificate (Form W-4) will be supplied employers upon request to the collector for the district. In lieu of the prescribed form of certificate, employers may prepare and use a form which includes contents identical with the prescribed form. The certificates must be retained by the employer as a supporting record of the withholding exemption allowed.

(b) Except as hereinafter provided, a withholding exemption certificate shall be furnished the employer by the employee on or before the date of the commencement of employment with the employer.

(c) Section 1622 (h) (2) (B), I. R. C., provides for the filing of new withholding exemption certificates when any change occurs which affects the number of withholding exemptions to which an employee is entitled. If, on any day during the calendar year, such number is more than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect, the employee may furnish the employer with a new withholding exemption certificate on which the employee must in no event claim more than the number of withholding exemptions to which he is entitled on such day.

(d) If, however, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect, the employee must within 10 days after the change occurs furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which must in no event exceed the number to which he is entitled on such day. The number of withholding

exemptions claimed on a withholding exemption certificate previously filed may exceed the number to which the employee is entitled because of the following:

(1) The employee's wife (or husband) for whom the employee has been claiming a withholding exemption dies, is divorced, or claims her (or his) own withholding exemption on a separate certificate.

(2) The support of an individual for whom the employee has been claiming a withholding exemption is taken over by someone else, so that it can no longer be reasonably expected that the employee will furnish over half of the support of such individual for the particular calendar year.

(3) The employee finds that an individual claimed as a dependent on a withholding exemption certificate will receive \$500 or more of gross income of his or her own during the current calendar year.

(e) Before December 1 of each year, every employer should request his employees to file amended withholding exemption certificates for the ensuing year, in the event of change in their exemption status since the filing of their latest certificates.

(f) If on any day during the calendar year the number of withholding exemptions to which the employee will be, or may be reasonably expected to be, entitled at the beginning of his next taxable year under chapter 1 of the Internal Revenue Code is different from the number to which the employee is entitled on such day, the following rules shall be applicable:

(1) If such number is greater than the number of withholding exemptions claimed in a withholding exemption certificate in effect on such day, the employee may, on or before December 1 of the year in which such change occurs, unless such change occurs in December, furnish his employer with a new withholding exemption certificate reflecting the increase in the number of withholding exemptions. If the change occurs in December, the certificate may be furnished on or after the date on which the change occurs.

(2) If such number is less than the number of withholding exemptions claimed in a withholding exemption cer-

tificate in effect on such day, the employee must, on or before December 1 of the year in which the change occurs, unless such change occurs in December, furnish his employer with a new withholding exemption certificate reflecting the decrease in the number of withholding exemptions. If the change occurs in December, the new certificate must be furnished within 10 days of the date on which the change occurs.

(g) Thus, for example, a decrease in the number of withholding exemptions to which an employee is entitled at the beginning of the next taxable year under chapter 1 of the Internal Revenue Code results when a dependent of the employee dies; when the employee ceases late in the year to support an individual so that it is not reasonable to expect that more than half of the individual's support will be received from the employee during the ensuing year; when a dependent of the employee begins to receive income late in the year so that it is reasonable to expect that the dependent will have a gross income of \$500 or more for the ensuing year.

(h) No withholding exemption certificate is required to be furnished to his employer by an individual under 16 years of age performing services in the delivery or distribution of newspapers or shopping news unless such individual is paid wages by such employer in an amount in excess of the amount of one withholding exemption applicable in respect of such wages.

(i) Section 1626 (d), I. R. C., provides criminal penalties applicable with respect to individuals who are required under section 1622 (h) to furnish to their employers information relating to the number of withholding exemptions claimed. The penalties are imposed upon any such individual (1) who willfully supplies false or fraudulent information, or (2) who willfully fails to supply information which would increase the tax required to be withheld at the source on his wages. The penalty in each instance is a fine of not more than \$500 or imprisonment for not more than one year, or both. Such penalties are in lieu of any penalties otherwise provided by law for failure to furnish the information required by section 1622 (h) or for the furnishing of false or fraudulent information under such section.

[Regs. 116, 9 F. R. 14573, as amended by T. D. 5492, 11 F. R. 1279]

§ 405.207 *When withholding exemption certificates effective.* (a) A withholding exemption certificate furnished the employer in cases in which no previous withholding exemption certificate is in effect with respect to such employer, shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(b) A withholding exemption certificate furnished the employer in cases in which a previous withholding exemption certificate is in effect with respect to such employer shall, except as hereinafter provided, take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished. However, at the election of the employer, except as hereinafter provided, such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished.

(c) A withholding exemption certificate furnished the employer pursuant to section 1622 (h) (2) (C), I. R. C., that is, where the change affects only the next year, shall not take effect, and may not be made effective, with respect to the calendar year in which the certificate is furnished.

(d) For the purposes of this section the term "status determination date" means January 1 and July 1 of each year.

(e) A withholding exemption certificate which takes effect under section 1622 (h) shall continue in effect with respect to the employee until another withholding exemption certificate takes effect under such section.

§ 405.209 *Supplemental wage payments—(a) In general.* (1) An employee's remuneration may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period, or without regard to a particular period. When such supplemental wages are paid (whether or not at the same time as the regular wages) the amount of the tax required to be withheld under section 1622 (a), I. R. C. (the percentage method), or under section 1622 (c) (the wage bracket method) shall be determined as follows:

(2) The supplemental wages shall be aggregated with the wages paid for the payroll period, or, if not paid concurrently, shall be aggregated with the wages paid for the last preceding payroll period within the same calendar year or the current payroll period, and the amount of tax to be withheld shall be determined as if the aggregate of the supplemental wages and the regular wages constituted a single wage payment for the regular payroll period.

*Example (1).* A is employed as a salesman at a monthly salary of \$100 plus commissions on sales made during the month. The number of withholding exemptions claimed is one. During January 1945 A earned \$275 in commissions, which together with the salary of \$100 was paid on February 10, 1945. Under the wage bracket method the amount of the tax required to be withheld is shown in the table applicable to a monthly payroll period. Under this table it will be found that the amount of tax required to be withheld is \$70.

*Example (2).* B is employed at a salary of \$3,000 per annum paid semimonthly on the 15th day and the last day of each month, plus a bonus and commission determined at the end of each 3-month period. The number of withholding exemptions claimed is four. The bonus and commission for the 3-month period ending on March 31, 1945, amount to \$250, which was paid on April 10, 1945. Under the wage bracket method, the amount of tax required to be withheld on the aggregate of the bonus of \$250 and the last preceding semimonthly wage payment of \$125, or \$375, is \$62.60. Since tax in the amount of \$8.80 was withheld on the semimonthly wage payment of \$125, the amount to be withheld on April 10, 1945, is \$53.80.

*Example (3).* C is employed as a salesman at a monthly salary of \$100 plus commissions on sales made during the month. The number of withholding exemptions claimed is one. During January 1946 C earned \$275 in commissions, which together with the salary of \$100 was paid on February 9, 1946. Under the wage bracket method the amount of the tax required to be withheld is shown in the table applicable to a monthly payroll period. Under this table it will be found that the amount of tax required to be withheld is \$58.10.

*Example (4).* D is employed at a salary of \$3,000 per annum paid semimonthly on the 15th day and the last day of each month, plus a bonus and commission determined at the end of each 3-month period. The number of withholding exemptions claimed is four. The bonus and commission for the 3-month period ending on March 31, 1946, amount to \$250, which was paid on April 10, 1946. Under the wage bracket method, the amount of tax required to be withheld on the aggregate of the bonus of \$250 and the last preceding semimonthly wage payment of

\$125, or \$375, is \$50.80. Since tax in the amount of \$5.70 was withheld on the semi-monthly wage payment of \$125, the amount to be withheld on April 10, 1946, is \$44.90.

(b) *Special rule where aggregate withholding exemption exceeds wages paid.* If supplemental wages are paid to an employee during a calendar year for a period which involves two or more consecutive payroll periods the wages for which are also paid during such calendar year and the aggregate of the wages paid for such payroll periods is less than the aggregate of the amounts determined under the table provided in section 1622 (b) (1), I. R. C., as the withholding exemptions applicable for such payroll periods, the amount of the tax required to be withheld on the supplemental wages shall be computed as follows:

(1) Determine an average wage for each of such payroll periods by dividing the sum of the supplemental wages and the wages paid for such payroll periods by the number of such payroll periods.

(2) Determine a tax for each payroll period as if the amount of the average wage constituted the wages paid for such payroll period.

(3) From the sum of the taxes computed on the basis of the average wage per payroll period subtract the sum of the taxes previously withheld for such payroll periods and the remainder, if any, shall constitute the amount of the tax to be withheld upon the supplemental wages.

The rules prescribed in this paragraph shall, at the election of the employer, be applied in lieu of the rules prescribed in paragraph (a) of this section except that this paragraph shall not be applicable in any case in which the payroll period of the employee is less than one week.

*Example (1).* An employee has a weekly payroll period ending on Saturday of each week, the wages for which are paid on Tuesday of the succeeding week. On the 10th day of each month he is paid a bonus based upon production during the payroll periods for which wages were paid in the preceding month. The employee was paid a weekly wage of \$35 on each of the five Tuesdays occurring on January 1945. On February 10, 1945, the employee was paid a bonus of \$125 based upon production during the five payroll periods covered by the wages paid in January. On the date of payment of the bonus, the employee, who is married and has two children, has a withholding exemption certificate in effect claiming four withholding

exemptions. The amount of the tax to be withheld from the bonus paid on February 10, 1945, is computed as follows:

Wages paid in January 1945 for five payroll periods (5×\$35)-----	\$175.00
Bonus paid February 10, 1945-----	125.00
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Aggregate of wages and bonus-----	300.00
Average wage per payroll period (\$300÷5)-----	30.00
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Computation of tax under percentage method:

Tax at 2.7 percent on (\$60—\$11)-----	\$1.32
Tax at 18 percent on (\$60—\$44)-----	2.88
Tax at 19.8 percent-----	None

Tax on average wage for one week-----	4.20
Tax on average wage for five weeks-----	21.00
Less: Tax previously withheld on weekly wage payments of \$35—\$0.65 per week for five weeks-----	3.25
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Tax to be withheld on supplemental wages-----	17.75
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Computation of tax under wage bracket method:

Tax on \$60 wage under weekly wage table—\$4.60 per week for five weeks-----	23.00
Less: Tax previously withheld on weekly wage payments of \$35—\$0.70 per week for five weeks-----	3.50

Tax to be withheld on supplemental wages-----	19.50
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*Example (2).* An employee has a weekly payroll period ending on Saturday of each week, the wages for which are paid on Wednesday of the succeeding week. On the 11th day of each month he is paid a bonus based upon production during the payroll periods for which wages were paid in the preceding month. The employee was paid a weekly wage of \$35 on each of the five Wednesdays occurring in January 1946. On February 11, 1946, the employee was paid a bonus of \$125 based upon production during the five payroll periods covered by the wages paid in January. On the date of payment of the bonus, the employee, who is married and has two children, has a withholding exemption certificate in effect claiming four withholding exemptions. The amount of the tax to be withheld from the bonus paid on February 11, 1946, is computed as follows:

Wages paid in January 1946 for five payroll periods (5×\$35)-----	\$175.00
Bonus paid February 11, 1946-----	125.00
	<hr/>
Aggregate of wages and bonus-----	300.00
Average wage per payroll period (\$300÷5)-----	30.00
	<hr/>

Computation of tax under percentage method:	
Tax at 17 percent on (\$60—\$44) ----	\$2. 72
Tax at 19 percent-----	None
Tax on average wage for one week.....	2. 72
Tax on average wage for five weeks.....	13. 60
Less: Tax previously withheld on weekly wage payments of \$35-----	None
Tax to be withheld on supplemental wages -----	13. 60
Computation of tax under wage bracket method:	
Tax on \$60 wage under weekly wage table—\$3.10 per week for five weeks-----	15. 50
Less: Tax previously withheld on weekly payments of \$35-----	None
Tax to be withheld on supplemental wages -----	15. 50

(c) *Vacation allowances.* Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the rules applicable with respect to supplemental wage payments shall apply to such vacation allowance. [Regs. 116, 9 F. R. 14573, as amended by T. D. 5431, 10 F. R. 812, T. D. 5492, 11 F. R. 1279]

§ 405.210 *Wages paid for payroll period of more than one year.* If wages are paid to an employee for a payroll period of more than one year, for the purpose of determining the amount of tax required to be deducted and withheld in respect of such wages:

(a) Under the percentage method, the amount of the tax shall be determined as if such payroll period constituted an annual payroll period, and

(b) Under the wage bracket method, the amount of the tax shall be determined as if such payroll period constituted a miscellaneous payroll period of 365 days.

§ 405.211 *Wages paid on behalf of two or more employers.* (a) If a payment of wages is made to an employee by an employer through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays the wages payable by another employer to such employee, the amount of the tax required to be withheld on each wage payment made through such agent, fiduciary, or person shall, whether the wages

are paid separately on behalf of each employer or paid in a lump sum on behalf of all such employers, be determined upon the aggregate amount of such wage payment or payments in the same manner as if such aggregate amount had been paid by one employer. Hence, under either the percentage method or the wage bracket method the tax shall be determined upon the aggregate amount of the wage payment.

(b) In any such case, each employer shall be liable for the return and payment of a pro rata portion of the tax so determined, such portion to be determined in the ratio which the amount contributed by the particular employer bears to the aggregate of such wages.

For example, three companies maintain a central management agency which carries on the administrative work of the several companies. The central agency organization consists of a staff of clerks, bookkeepers, stenographers, etc., who are the common employees of the three companies. The expenses of the central agency, including wages paid to the foregoing employees, are borne by the several companies in certain agreed proportions. Companies X and Y each pay 40 percent and Company Z pays 20 percent. The amount of the tax required to be withheld on the wages paid to persons employed in the central agency should be determined in accordance with the provisions of this section. In such event, Companies X and Y are each liable as employers for the return and payment of 40 percent of the tax required to be withheld and Company Z is liable for the return and payment of 20 percent of the tax.

(c) A fiduciary, agent, or other person acting for two or more employers may be authorized to withhold the tax under section 1622, I. R. C., with respect to the wages of the employees of such employers. Such fiduciary, agent, or other person may also be authorized to make and file returns of the tax withheld at source on such wages and to furnish the receipts required under section 1625. Application for authorization to perform such acts should be addressed to the Commissioner of Internal Revenue, Washington 25, D. C. If such authority is granted by the Commissioner, all provisions of law (including penalties) and regulations prescribed in pursuance of law applicable in respect of an employer shall be applicable to such fiduciary, agent, or other person. However, the employer for whom such fiduciary, agent, or other person acts shall remain subject to all provisions of law (including penalties) and regulations prescribed in pur-

suance of law applicable in respect of employers.

§ 405.212 *Withholding on basis of average wages.* The Commissioner may authorize the employer to withhold the tax under section 1622, I. R. C., on the basis of the employee's average estimated wages, with necessary adjustments, for any quarter. Before using such method the employer must receive authorization from the Commissioner. Applications to use such method must be accompanied by evidence establishing the need for the use of such method.

#### SUBPART D—LIABILITY FOR TAX

§ 405.301 *Liability for tax.* (a) The employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages as and when paid, either actually or constructively. As to when wages are constructively paid, see § 405.1. An employer is required to deduct and withhold the tax notwithstanding the wages are paid in something other than money (for example, wages paid in stocks or bonds; see § 405.101) and to pay the tax to the collector or duly designated depository of the United States, as the case may be, in money. If wages are paid in property other than money, the employer should make necessary arrangements to insure that the amount of the tax required to be withheld is available for payment to the collector.

(b) Every person required to deduct and withhold the tax under section 1622, I. R. C., from the wages of an employee is liable for the payment of such tax whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. However, if the employer in violation of the provisions of section 1622 fails to deduct and withhold the tax, and thereafter the income tax against which the tax under section 1622 may be credited is paid, the tax under section 1622 shall not be collected from the employer. Such payment does not, however, operate to relieve the employer from liability for penalties or additions to the tax for failure to deduct and withhold within the time prescribed by law or regulations made in pursuance of law. The employer will not be relieved of his liability for payment of the tax required to be withheld unless he can show

that the tax against which the tax under section 1622 may be credited has been paid.

(c) The amount of any tax withheld and collected by the employer is a special fund in trust for the United States.

(d) The employer or other person required to deduct and withhold the tax under section 1622 is relieved of liability to any other person for the amount of any such tax withheld and paid to the collector or deposited with a duly designated depository of the United States.

(e) Section 2707, I. R. C., provides severe penalties for a willful failure to pay, collect, or truthfully account for and pay over, the tax imposed by section 1622, or for a willful attempt in any manner to evade or defeat the tax. Such penalties may be incurred by any person, including the employer, and any officer or employee of a corporate employer, or member or employee of any other employer, who as such employer, officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

#### SUBPART E—CREDIT FOR TAX WITHHELD

§ 405.401 *Nondeductibility of tax and credit for tax withheld.* (a) The tax deducted and withheld at the source upon wages shall not be allowed as a deduction either to the employer or the recipient of the income in computing net income under chapter 1 of the Internal Revenue Code. The entire amount of the wages from which the tax is withheld shall be included in gross income in the return required to be made by the recipient of the income without deductions for such tax. The tax withheld at source, however, is allowable as a credit against the tax imposed by chapter 1 of the Internal Revenue Code upon the recipient of the income. If the tax has actually been withheld at the source, credit or refund shall be made to the recipient of the income even though such tax has not been paid over to the Government by the employer. See section 322, I. R. C. For the purpose of the credit, the recipient of the income is the person subject to tax imposed under chapter 1 of the Internal Revenue Code upon the wages from which the tax was withheld. For instance, if a husband and wife domiciled in a community property State make separate returns, each reporting for income tax purposes one-half of the wages received by the husband, each spouse is

entitled to one-half of the credit allowable for the tax withheld at source with respect to such wages.

(b) The credit for tax withheld at source during a calendar year shall be allowed against the tax imposed by chapter 1 of the Internal Revenue Code for the taxable year of the recipient of the income which begins in such calendar year. If such recipient has more than one taxable year beginning in such calendar year, the credit shall be allowed against the tax for the last taxable year so beginning.

#### SUBPART F—RECEIPTS

§ 405.501 *Receipts for tax withheld at source on wages*—(a) *In general.* (1) With respect to wages paid before January 1, 1946, every employer or other person required to deduct and withhold tax shall furnish to each employee from whose wages taxes are withheld the original and duplicate of Form W-2, showing the name and address of the employer, the name and address of the employee, the wages paid, and the amount of tax withheld during the calendar year. With respect to wages paid on or after January 1, 1946, every employer or other person making payment of wages is required to furnish to each employee from whose wages taxes are withheld, or would be withheld if such employee had claimed no more than one withholding exemption, the original and duplicate of Form W-2, showing the name and address of the employer, the name and address of the employee, the wages paid, the amount of tax withheld, if any, during the calendar year, even though no tax is required to be deducted and withheld with respect to such employee's wages. For example, if the table method is used, a withholding statement must be furnished each employee whose earnings during any payroll period are equal to or in excess of the smallest wage for which tax must be withheld from employees claiming one exemption. If the percentage computation method is used, a withholding statement must be furnished each employee whose wages during any payroll period are in excess of one withholding exemption for such payroll period as shown in the percentage method withholding table contained in section 1622 (b) (1), I. R. C. Such receipt on Form W-2 shall not show remuneration which does not constitute wages within the meaning of section 1621, I. R. C. Receipts prepared in sub-

stantially like form and size as Form W-2, but in no case larger than 8 by 3½ inches, will be acceptable if approved by the Commissioner.

(2) The statement on Form W-2 shall be furnished to the employee on or before January 31 of the succeeding calendar year, or if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made.

(b) *Extension of time for furnishing statements to employees.* An extension of time, not exceeding 30 days, within which to furnish the Withholding Receipt (Form W-2) required by section 1625 (a) upon termination of employment is hereby granted to any employer with respect to any employee whose employment is terminated during the calendar year. In the case of intermittent or interrupted employment where there is reasonable expectation on the part of both employer and employee of further employment, there is no requirement that a Withholding Receipt be immediately furnished the employee; but when such expectation ceases to exist, the statement must be furnished within 30 days from that time.

(c) *Form 1099 information returns.* The making of information returns, Form 1099, will not be required with respect to any wages from which the tax has been withheld, provided the triplicates of the Withholding Receipts (Form W-2a) are submitted with the last quarterly return (Form W-1) for the year.

(d) *Penalties for fraudulent receipt or failure to furnish receipt.* Section 1626 imposes criminal and civil penalties for the willful failure to furnish a receipt in the manner, at the time, and showing the information required under section 1625, I. R. C., or regulations prescribed thereunder or for willfully furnishing a false or fraudulent receipt. The criminal penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both, and the civil penalty is a fine of not more than \$50 for each such violation. Such penalties are in lieu of any other penalties provided by law respecting the failure to furnish a receipt or the furnishing of a false or fraudulent receipt.

[Regs. 116, 9 F. R. 14573, as amended by T. D. 5492, 11 F. R. 1279]

NOTE: Treasury Decision 5650, Aug. 25, 1948, appearing at 13 F. R. 5049, provides as follows:

Section 405.501 of Regulations 116 as amended by Treasury Decision 5492, approved January 30, 1946 (26 CFR 405.501), provides that employers and other persons required to deduct and withhold Federal income tax shall furnish to employees a receipt on Form W-2 for tax withheld at the source on wages. Form W-2 has been revised and the revised form is identified as "Form W-2 (Revised July 1948)". In view of the date of such revision of Form W-2, such § 405.501 will not be construed to require the use of Form W-2 (Revised July 1948) prior to the first day of the third month following the month in which this Treasury decision becomes effective. Where an employer, with the approval of the Commissioner of Internal Revenue, has had printed a substantial supply of Form W-2 for use for the calendar year 1948, permission will be granted for him to use such Form W-2 for taxes deducted and withheld during the entire calendar year 1948, provided such Form W-2 is overstamped or otherwise changed to conform substantially to Form W-2 (Revised July 1948). Application for such permission should be addressed to the Commissioner of Internal Revenue, Washington 25, D. C.

#### SUBPART G—RETURNS AND PAYMENT OF TAX

§ 405.601 *Return and payment of income tax withheld on wages.* (a) Every person required, under the provisions of section 1622, I. R. C., to deduct and withhold the tax on wages shall make a return and pay such tax on or before the last day of the month following the close of each of the quarters ending March 31, June 30, September 30, and December 31. Such return is to be made on Form W-1, Return of Income Tax Withheld on Wages, and must be filed with the collector of internal revenue for the district in which is located the principal place of business or office of the employer, or if he has no principal place of business or office, then in the district in which is located his legal residence. There shall be included with the return filed for the fourth quarter of the calendar year or with the employer's final return, if filed at an earlier date, the triplicate of each withholding tax receipt (Form W-2a) furnished employees.

(b) The triplicate Forms W-2a, when filed with the collector, must be accompanied by Form W-3 and a list (preferably in the form of an adding machine tape) of the amounts shown on Forms W-2. If an employer's total payroll consists of a number of separate units or establishments, the triplicate Forms W-2a may be assembled accordingly and a separate list of tape submitted for each unit. In such case, a summary list or

tape should be submitted, the total of which will agree with the corresponding entry to be made on Form W-3. Where the number of triplicate receipts is large, they may be forwarded in packages of convenient size. When this is done, the packages should be identified with the name of the employer and consecutively numbered and Form W-3 should be placed in package No. 1. The number of packages should be indicated immediately after the employer's name on Form W-3. The tax return, Form W-1, and remittance in cases of this kind should be filed in the usual manner, accompanied by a brief statement that Forms W-2a and W-3 are in separate packages.

(c) Every person required to withhold and pay any tax under section 1622 shall keep such records as will indicate the names and addresses of the persons employed during the year payments to whom are subject to withholding, the periods of employment, and the amounts and dates of payment to such persons. No specific form for such records has been prescribed. Such records shall be kept at all times available for inspection by internal revenue officers.

(d) The return must be signed by the employer or other person required to withhold and pay the tax and shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(e) If the person required to withhold and pay the tax under section 1622 is a corporation, the return shall be made in the name of the corporation and shall be signed and verified by the president, vice president, or other principal officer.

(f) With respect to any tax required to be withheld under section 1622 by a fiduciary, the return shall be made in the name of the individual, estate, or trust for which such fiduciary acts, and shall be signed and verified by such fiduciary. In the case of two or more joint fiduciaries the return shall be signed and verified by one of such fiduciaries.

(g) If the United States, a State, Territory, or political subdivision, or the District of Columbia, or any agency on instrumentality of any one or more of the foregoing, is the employer, the return of the tax may be made by the officer or employee having control of the payment of wages or other officer or employee appropriately designated for that purpose.

(h) Preaddressed Forms W-1 mailed by collectors to employers should be used in filing returns. If the preaddressed form is lost, a new one should be requested if sufficient time remains before the filing date. Should it be necessary to use a blank form not preaddressed, care should be exercised to show the employer's name exactly as it appeared on previous returns.

(i) Except in the case of quarterly adjustments, as explained in § 405.701, a return on Form W-1 may not be made for more than one calendar quarter of the year, nor may a portion of one calendar quarter be included with a portion of another calendar quarter in a single return on Form W-1 even though the entire period does not exceed three months.

§ 405.602 *Final returns.* The last return on Form W-1 for any employer required to withhold and pay any tax under section 1622, I. R. C., who during the calendar year either goes out of business or otherwise ceases to pay wages, shall be marked "final return" by such employer. Such final return shall be filed with the collector on or before the thirtieth day after the date on which the final payment of wages is made for services performed for such employer, and shall plainly show the period covered and also the date of the last payment of wages. There shall be executed as part of each final return a statement giving the address at which the records required by this section will be kept, the name of the person keeping such records, and, if the business has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took effect. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement. An employer who has only temporarily ceased to pay wages, including an employer engaged in seasonal activities, shall continue to file returns, but shall enter on the face of any return on which no tax is required to be reported a statement showing the date of the last payment of wages and the date when he expects to resume paying wages.

§ 405.603 *Use of prescribed forms.* Copies of the prescribed return forms will so far as possible be regularly furnished employers by collectors without application therefor. An employer will not be excused from making a return, however,

by the fact that no return form has been furnished to him. Employers not supplied with the proper forms should make application therefor to the collector in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. If the prescribed form is not available, a statement made by the employer disclosing the amount of taxes due may be accepted as a tentative return. If filed within the prescribed time the statement so made will relieve the employer from liability for the addition to tax imposed for the delinquent filing of the return by section 3612 (d) (1), I. R. C. (see § 405.804): *Provided*, That without unnecessary delay such tentative return is supplemented by a return made on the proper form.

§ 405.604 *Penalties for false returns.* Subsection (b) of section 1630 provides for penalties in the case of any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter. Such person shall be guilty of a felony, and, upon conviction, shall be subject to the penalties prescribed for perjury in section 125 of the Criminal Code.

§ 405.605 *Use of Government depositaries in connection with payment of taxes.* It will be the duty of every employer who withheld more than \$100 during the month to pay, within 15 days after the close of each calendar month, to a depositary and financial agent authorized by the Secretary of the Treasury to receive deposits of withheld taxes, pursuant to section 1631, I. R. C., all funds withheld as taxes during that calendar month. (All banks insured by the Federal Deposit Insurance Corporation are eligible to qualify as depositaries and financial agents.) On or before the last day of the month following the close of each quarter of each calendar year, every employer shall make a return on Form W-1 to the collector of his district, covering the aggregate amount of taxes withheld during that quarter, and attach to such return, as payment for the taxes shown thereon, receipts in the form approved by the Secretary of the Treasury, issued by the authorized depositary and financial agent evidencing the payment of

funds withheld as taxes; *Provided, however*, That for taxes withheld during the last month of the quarter the employer may either include with his return direct remittance to the collector for the amount of the taxes withheld during such last month of the quarter or attach to such return a receipt evidencing the payment of the taxes withheld during such last month to a depository on or before the last day of the month following the close of the quarter. The employer may obtain from his local bank the names and locations of the nearby depositories and financial agents authorized to receive deposits of withheld taxes. A list of the depositories and financial agents will be furnished each bank by the Federal reserve bank of the district. See Treasury Department Circular No. 714, dated June 25, 1943.

[Regs. 116, 9 F. R. 14573, as amended by T. D. 5644, 13 F. R. 4121]

#### SUBPART H—ADJUSTMENTS AND REFUNDS

##### § 405.701 *Quarterly adjustments—*

(a) *In general.* If, for any quarter of the calendar year, more or less than the correct amount of the tax is withheld, or more or less than the correct amount of the tax is paid to the collector, proper adjustment, without interest, may be made in any subsequent quarter of the same calendar year. No adjustment, however, under the provisions of this section shall be made in respect of an underpayment for any quarter after receipt from the collector of notice and demand for payment thereof based upon an assessment, but the amount shall be paid in accordance with such notice and demand; nor shall any adjustment under the provisions of this section be made in respect of an overpayment for any quarter after the filing of a claim for refund thereof. Every return on which an adjustment for a preceding quarter is reported must have securely attached as a part thereof a statement explaining the adjustment, and designating the quarterly return period in which the error occurred. If an adjustment of an overcollection of tax which the employer has repaid to an employee is reported on a return, such statement shall include the fact that such tax was repaid to the employee.

(b) *Less than correct amount of tax withheld.* (1) If none, or less than the correct amount, of the tax is deducted from any wage payment and the error is

ascertained prior to the making of the return on Form W-1 for the quarter in which such wages are paid, the employer shall nevertheless report on such return and pay to the collector the correct amount of the tax required to be withheld. If the error is not ascertained until after the making of the return on Form W-1 for the quarter in which such wages are paid, the undercollection may be corrected by an adjustment on the return for any subsequent quarter of the same calendar year, subject, however, to the limitations noted in paragraph (a) of this section. The amount of any undercollection adjusted in accordance with this paragraph shall be paid to the collector, without interest, at the time prescribed for payment of the tax for the quarter in which such adjustment is made. If an adjustment is made pursuant to this paragraph but the amount thereof is not paid when due, interest thereafter accrues. (See section 1420 (b), I. R. C.)

(2) If none, or less than the correct amount, of the tax is withheld from any wage payment, the employer may correct the error by deducting the amount of the undercollection from remuneration of the employee, if any, under his control after he ascertains the error. Such deduction may be made even though the remuneration, for any reason, does not constitute wages. The obligation of an employee to the employer with respect to an undercollection of tax from the employee's wages not subsequently corrected by a deduction made as prescribed herein is a matter for settlement between the employee and the employer. In this connection, see section 1622 (d), I. R. C., relieving the employer from liability for the tax if the tax imposed by chapter 1 of the Internal Revenue Code against which the tax withheld at source is allowable as a credit, has been paid by the employee or other person liable therefor.

(c) *More than correct amount of tax withheld.* (1) If, in any quarter, more than the correct amount of tax is deducted from any wage payment, the overcollection may be repaid to the employee in any quarter of the same calendar year. If the amount of the overcollection is repaid, the employer shall obtain and keep as part of his records the written receipt of the employee showing the date and amount of the repayment.

(2) If an overcollection in any quarter is repaid and receipted for by the employee prior to the time the return on Form W-1 for such quarter is filed with the collector, the amount of such overcollection shall not be included in the return for such quarter.

(3) Subject to the limitations provided in paragraph (a) of this section, if an overcollection in any quarter is repaid and receipted for by the employee after the time the return on Form W-1 for such quarter is filed and the tax is paid to the collector, the overcollection may be corrected by an adjustment on the return for any subsequent quarter of the same calendar year.

(4) Every overcollection not repaid and receipted for by the employee as provided in this paragraph must be reported and paid to the collector with the return on Form W-1 for the quarter in which the overcollection is made.

(5) For information as to the manner of correcting errors in withholding which cannot be adjusted in a return for a subsequent quarter of the same calendar year, employers should consult the local collector of internal revenue.

§ 405.702 *Refunds or credits.* Where there has been an overpayment of tax under subchapter D, chapter 9, Internal Revenue Code, refund or credit shall be made to the employer only to the extent that the amount of the overpayment was not deducted and withheld under such subchapter by the employer.

#### SUBPART I—MISCELLANEOUS PROVISIONS

§ 405.801 *Jeopardy assessments.* (a) Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the tax-return period or periods involved, the amount of tax due for each period, the date any return was filed by or for the taxpayer for such period, a reference to any prior assessment made for such period against the taxpayer, and a statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately

a notice and demand for payment of the tax, penalty, and interest.

(b) The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired, and with such sureties as the collector deems necessary. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector negotiable bonds or notes of the United States, or negotiable bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

(c) Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3690, I. R. C.

§ 405.802 *Interest.* If the tax is not paid to the collector on or before the date prescribed in § 405.601 and is not adjusted under § 405.701, interest accrues at the rate of 6 percent per annum, subject to the minimum addition to the tax provided by section 1626 (c), I. R. C. (See § 405.805.)

§ 405.803 *Addition to tax for failure to pay an assessment after notice and demand.* (a) If tax, penalty, or interest is assessed and the entire amount thereof is not paid within 10 days after the date of issuance of notice and demand for payment thereof, based on such assessment, there accrues under section 3655, I. R. C. (except as provided in paragraph (b) of this section), a penalty of 5 percent of the assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of notice and demand, a claim for abatement of any amount of the assessment is filed with the collector, the 5 percent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the collector shall issue notice and demand

for such amount. If payment is not made within 10 days after the date the collector issues the notice and demand, the 5 percent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.

§ 405.804 *Additions to tax for delinquent or false returns*—(a) *Delinquent returns.* (1) If a person fails to make and file a return required by the regulations in this part within the prescribed time, a certain percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, but not exceeding in the aggregate 25 percent of the tax, subject, however, to the minimum addition to the tax provided by section 1626 (c), I. R. C. (See § 405.805.) In computing the period of delinquency all Sundays and holidays after the due date are counted. Two classes of delinquents are subject to this addition to the tax:

(i) Those who do not file returns and for whom returns are made by a collector, a deputy collector, or the Commissioner; and

(ii) Those who file tardy returns and are unable to show reasonable cause for the delay.

(2) A person who files a tardy return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

(b) *False returns.* If a false or fraudulent return is willfully made, the addition to tax under section 3612 (d) (2), I. R. C., is 50 percent of the total tax due for the entire period involved, including any tax previously paid.

§ 405.805 *Minimum addition to the tax.* If an employer fails to file a return or pay the tax required to be withheld within the time prescribed in §§ 405.601 and 405.602, unless it is shown that the failure is due to reasonable cause and not to willful neglect, the addition to the tax

shall not be less than \$10. This provision is to be applied in accordance with paragraphs (a) to (c) of this section.

(a) In the case of failure to file a Return of Income Tax Withheld on Wages (Form W-1) within the prescribed time, the addition to the tax shall be computed as provided by section 3612 (c), I. R. C., and if less than \$10 shall be increased to that amount.

(b) In the case of failure to pay the tax when due, the addition to the tax shall be computed as provided by section 1420 (b), I. R. C., and if less than \$10 shall be increased to that amount.

(c) In case of concurrent failure to file the return and pay the tax within the prescribed time, the ad valorem penalty provided by section 3612 (d) and the interest provided by section 1420 (b) shall be aggregated and if less than \$10 shall be increased to that amount.

## Part 410—Employers' Tax, Employees' Tax, and Employee Representatives' Tax Under the Carriers Taxing Act of 1937 and Subchapter B of Chapter 9 of the Internal Revenue Code

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**AUTHORITY:** §§ 410.1 to 410.806 issued under 53 Stat. 178, 183, 188, 487; 26 U. S. C. 1429, 1535, 1609, 3791.

**CROSS REFERENCES:** For employees' tax and the employers' tax under the Federal Insurance Contributions Act, see Part 402 of this chapter. For Interstate Commerce Commission regulations relating to employees, see 49 CFR Parts 60, 61. For Railroad Retirement Board, see 20 CFR Chapter II. For Bureau of Old Age and Survivors Insurance, see 20 CFR Chapter III. For Bureau of Employees' Compensation, see 20 CFR Chapter I.

**SUBPART A—INTRODUCTORY**

§ 410.1 *Definitions of miscellaneous terms; applicability of provisions of Internal Revenue Code.* As used in the regulations in this part:

(a) The terms defined in the act shall have the meanings so assigned to them.

(b) "Act" means the Carriers Taxing Act of 1937 (Public Law 174, Seventy-fifth Congress).

(c) "Act of August 29, 1935," means the act entitled "An act to levy an excise tax upon carriers and an income tax upon their employees, and for other purposes" (Public Law 400, Seventy-fourth Congress; 49 Stat. 974), as amended by Public Resolution No. 9, Seventy-fifth Congress, approved February 27, 1937 (50 Stat. 23).

(d) "Railway Labor Act" means the act approved May 20, 1926 (44 Stat. 577), as originally adopted and any amendments thereto.

(e) "Social Security Act" means the act approved August 14, 1935 (Public Law 271, Seventy-fourth Congress; 49 Stat. 620).

(f) "Tax" means the employers' tax, the employees' tax, or the employee representatives' tax unless otherwise specified.

(g) "Employers' tax" means the tax imposed by section 3 of the act.

(h) "Employees' tax" means the tax imposed by section 2 of the act.

(i) "Employee representatives' tax" means the tax imposed by section 5 of the act.

(j) "Secretary" means the Secretary of the Treasury.

(k) "Commissioner" means the Commissioner of Internal Revenue.

(l) "Collector" means the collector of internal revenue.

(m) "Railroad Retirement Tax Act" means subchapter B of chapter 9 of the Internal Revenue Code, as amended.

(n) "Internal Revenue Code" means the act approved February 10, 1939 (53 Stat., Part 1), entitled "An Act To Consolidate and Codify the Internal Revenue Laws of the United States", as amended. Subchapter 8 of chapter 9 of the Internal Revenue Code corresponds to and, effective April 1, 1939, superseded the Carriers Taxing Act of 1937. Such subchapter comprises certain sections numbered from 1500 to 1538, both inclusive.

All provisions of, or references to, the Carriers Taxing Act of 1937 or other laws of the United States which have been codified in the Internal Revenue Code, but which remain in the regulations in this part as made applicable to the Code, shall be deemed to be, and shall be read as if they were, the corresponding provisions of the Internal Revenue Code or references thereto.

[Regs. 100, 2 F. R. 2559, as amended by T. D. 5574, 12 F. R. 5327]

§ 410.2 *Who are employers.* Each of the following persons is an employer within the meaning of the act:

(a) Any carrier, that is, any express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(b) Any company which:

(1) Is directly or indirectly owned or controlled by one or more employers as defined in paragraph (a) of this section, or under common control therewith, and

(2) Operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with:

(i) The transportation of passengers or property by railroad, or

(ii) The receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad.

(3) As used in paragraphs (a) and (b) of this section:

(i) The term "controlled" includes direct or indirect control, whether legally enforceable and however exercisable or exercised. The control may be by means of stock ownership, or by agreements, licenses, or any other devices which insure that the operation of the company is in the interest of one or more carriers. It is the reality of the control, however, which is decisive, not its form nor the mode of its exercise.

(ii) The term "employer" does not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation which on January 1, 1937, or thereafter, is operated by any other motive power.

(c) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (a) or (b) of this section.

(d) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and other association, bureau, agency, or organization controlled and maintained wholly or principally by two or more employers as defined in paragraph (a), (b), or (c) of this section and engaged in the performance of services in connection with or incidental to railroad transportation.

(e) Any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act. (44 Stat. 577; 45 U. S. C. Chapter 8)

(f) Any subordinate unit of a national railway-labor-organization employer, that is, any State or National legislative committee, general committee, insurance department, or local lodge or division, of an employer as defined in paragraph (e) of this section, established pursuant to the constitution and bylaws of such employer.

The term "employer" does not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities for such mining or supplying of coal, or in any of such activities.

[Regs. 100, 2 F. R. 2559, as amended by T. D. 5517, 5 F. R. 4268 T. D. 5574, 12 F. R. 5327]

§ 410.3 *Who are employees*—(a) *General.* (1) Within the meaning of the act, any person is an employee if he is in the service of one or more employers (as defined in section 1 (a) of the Carriers Taxing Act of 1937) for compensation. An individual is in the service of an employer if he is subject to the continuing authority of the employer to supervise and direct the manner in which he renders services for compensation. It is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so. The right of an employer to discharge an individual is also an important factor indicating that the individual is an employee. Other factors indicating that an

individual is an employee are the furnishing of tools and the furnishing of a place to work by the employer to the individual who performs the services. In general, if an individual is subject to the control or direction of an employer merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not subject to the continuing authority of the employer to supervise and direct the manner of rendition of such services.

(2) An individual rendering professional or technical services or other personal services prior to January 1, 1947, to an employer for compensation is in the service of the employer if he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of such services. The fact that an individual rendering professional or technical services prior to January 1, 1947, is integrated into the staff of an employer is an important factor indicating that such individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of such services. With respect to other personal services rendered prior to January 1, 1947, the fact that such services are rendered on the property used in the employer's operations and that the rendition of such services is integrated into the employer's operations are important factors indicating that the individual rendering such services is subject to the continuing authority of the employer to supervise and direct the manner of rendition of such services. However, with respect to professional or technical services or other personal services rendered after December 31, 1946, the aforementioned factors are not merely indicia of the continuing authority of the employer to supervise and direct the manner of rendition of such services but instead constitute independent tests for determining whether the individual rendering such services is in the service of the employer with respect to the rendition of such services. Thus, an individual rendering professional or technical services to an employer for compensation is in the service of the employer with respect to such services rendered after December 31, 1946, if he is integrated into the staff of the employer. Likewise, an individual rendering other personal services to an em-

ployer for compensation is in the service of the employer with respect to such services rendered after December 31, 1946, if the services are rendered on the property used in the employer's operations and the rendition of such services is integrated into the employer's operations. Under the two tests last mentioned, an individual rendering professional or technical services or other personal services after December 31, 1946, as an independent contractor may be, as to such services, in the service of an employer.

(3) Whether or not an individual is an employee will be determined upon an examination of the particular facts of the case.

(4) If an individual is an employee, it is of no consequence that he is designated as a partner, coadventurer, agent, independent contractor, or otherwise, or that he performs services on a part-time basis. The age of the individual, or the measurement, method, or designation of the remuneration, is immaterial, if he is in fact an employee.

(5) The act makes no distinction between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees within the meaning of the act. An officer of an employer is an employee. A director is not an employee unless he performs services other than those required by attendance at and participation in meetings of the board of directors.

(6) In determining whether an individual is an employee with respect to services rendered within the United States, the citizenship or residence of the individual, or the place where the contract of service was entered into is immaterial.

(7) If an individual performs services for an employer (other than a local lodge or division or a general committee of a railway-labor-organization employer) which does not conduct the principal part of its business within the United States, such individual shall be deemed to be in the service of such employer only to the extent that he performs services for it in the United States. Thus, with respect to services rendered for such employer outside the United States, such individual is not in the service of an employer.

(8) If an individual performs services for an employer (other than a local lodge

or division or a general committee of a railway-labor-organization employer) which conducts the principal part of its business within the United States, he is in the service of such employer whether his services are rendered within or without the United States. In the case of an individual, not a citizen or resident of the United States, rendering services in a place outside the United States to an employer which is required under the laws applicable in such place to employ, in whole or in part, citizens or residents thereof, such individual shall not be deemed to be in the service of an employer with respect to services so rendered.

(9) The term "employee" does not include any individual while he is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tippie, or the loading of coal at the tippie.

(b) *Employees of local lodges or divisions of railway labor organizations.*

(1) An individual is in the service of a local lodge or division of a railway-labor-organization employer (see § 410.2 (f)), only if:

(i) All, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or

(ii) The headquarters of such local lodge or division is located in the United States.

(2) An individual in the service of a local lodge or division is not an employee within the meaning of the law and the regulations in this part unless he was, on or after August 29, 1935, in the service of a carrier (see paragraph (a) of this section) or he was, on August 29, 1935, in the "employment relation" to a carrier.

With respect to services rendered prior to January 1, 1947, an individual was in the employment relation to a carrier on August 29, 1935, if on that date he was, in accordance with the established rules and practices in effect on the carrier, on furlough subject to call for service within or without the United States and ready and willing to serve, or on leave of absence, or absent on account of sickness or disability. However, an individual shall not be deemed to have

been in the employment relation to a carrier on August 29, 1935, unless during the last pay-roll period before August 29, 1935, in which he rendered service to it, he was, with respect to that service, in the service of an employer (see paragraph (a) of this section).

With respect to services rendered after December 31, 1946, an individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (a) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (b) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (c) if he was so called he was solely for such reason unable to render service in six calendar months as provided in subdivision (ii) of this subparagraph; or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights. However, an individual shall not be deemed to have been in the employment relation to a carrier on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which

he rendered service to a carrier he was not, with respect to any service in such pay-roll period, in the service of an employer (see paragraph (a) of this section).

(For definition of carrier, see § 410.2 (a).)

(c) *Employees of general committees of railway labor organizations.* An individual is in the service of a general committee of a railway-labor-organization employer (see § 410.2 (f)), only if:

(1) He is representing a local lodge or division described in § 410.3 (b) (1); or

(2) All, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or

(3) He acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer. In such case, if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only a part of his remuneration for such service shall be regarded as compensation. (See § 410.5.) The part of his remuneration regarded as compensation shall be in the same proportion to his total remuneration as the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1 (c) of the Railroad Retirement Act of 1937, as amended, shall be applicable. However, no part of his remuneration for such service rendered after December 31, 1946, shall be regarded as compensation if the application of such mileage formula, or such other formula as the Railroad Retirement Board may have prescribed, would result in his compensation for the service being less than 10 percent of his remuneration for such service.

[Regs. 100, 2 F. R. 2560, as amended by T. D. 5161, 7 F. R. 5212, T. D. 5574, 12 F. R. 5328]

§ 410.4 *Who are employee representatives.* An employee representative within the meaning of the act is:

(a) Any officer or official representative of a railway labor organization which is not included as an employer under section 1 (a) of the act who:

(1) Was in the service of an employer either before or after June 29, 1937, and

(2) Is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended.

(For railway labor organizations which are employers under section 1 (a) of the act, see § 410.2 (e), (f).)

(b) Any individual who is regularly assigned to or regularly employed by an employee representative as defined in paragraph (a) of this section in connection with the duties of such employee representative's office.

In determining whether an individual is an employee representative, his citizenship or residence is material only in so far as those factors may affect the determination of whether he was "in the service of an employer" (see § 410.3 (a)). The age of the individual is immaterial.

[Regs. 100, 2 F. R. 2561, as amended by T. D. 5017, 5 F. R. 4267]

#### § 410.5 *Definition of "compensation."*

(a) The term "compensation" means all remuneration in money, or in something which may be used in lieu of money (for example, scrip and merchandise orders), which is earned by an individual for services rendered as an employee to one or more employers, or as an employee representative. A payment for services rendered after December 31, 1946, which is made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by such individual as an employee of the employer. Likewise, a payment for services rendered after December 31, 1946, which is made by an employee organization (that is, a railway labor organization which is not included as an employer under the act) to an employee representative through the organization's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by the employee representative as such.

(b) The term "compensation" is not confined to amounts earned or paid for active service, but includes amounts earned or paid for an identifiable period during which the employee is absent from the active service of the employer

and, in the case of an employee representative, amounts earned or paid for an identifiable period during which the employee representative is absent from the active service of the employee organization. Amounts paid to an employee for an identifiable period of absence from the active service of the employer on account of personal injury are included within the term "compensation". Like payments made to an employee representative on account of personal injury also constitute compensation. If a payment is made to an employee or employee representative with respect to a personal injury and includes pay for an identifiable period of absence from active service, the total payment shall be deemed to be paid for such period of absence from active service unless, at the time of payment, a part of such payment is specifically apportioned to factors other than absence from active service, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for such period of absence from active service. The presumption set forth in the preceding sentence is applicable only with respect to an identifiable period of absence from active service after December 31, 1946. Amounts paid to an employee or employee representative for loss of earnings during an identifiable period as the result of the displacement of the employee or employee representative to a less remunerative position or occupation shall be deemed to be paid for absence from active service during such period. Such amounts are also included within the term "compensation".

(c) The term "compensation" does not include tips, or the voluntary payment by an employer of the employees' tax, without the deduction of such tax from the remuneration of the employee.

(See § 410.7, relating to when compensation is earned. See also §§ 410.201, 410.301, and 410.401, relating to the amount of compensation included for the purpose of determining the employees' tax, the employers' tax, and the employee representatives' tax, respectively. For special provisions relating to the compensation of certain general chairmen or assistant general chairmen of a general committee of a railway-labor-organization employer, see § 410.3 (c) of this chapter.)

§ 410.6 *Items included as compensation.* The following items are included

in compensation with respect to employees and in analogous situations with respect to employee representatives:

(a) Salaries, wages, commissions, fees, bonuses, and any other remuneration in money or in something which may be used in lieu of money. The name by which remuneration is designated, the amount, and the basis upon which it is paid are immaterial. It may be paid upon the basis of piece work, a percentage of profits, or on a daily, hourly, weekly, monthly, annual, or other basis.

(b) Sick pay, vacation allowances, or back pay upon reinstatement after wrongful discharge.

(c) Allowance or reimbursement for traveling or other expenses incurred in the business of the employer to the extent of the excess of such amount, if any, over such expenses actually incurred and accounted for by the employee.

(d) Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his employees are not compensation if the employee has no option to take the amount of the premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to the surrender value on termination of his employment).

(e) Amounts deducted from the remuneration of an employee, including the amount of the employees' tax deducted pursuant to section 2 (b) of the Carriers Taxing Act of 1937, constitute compensation paid to the employee.

(f) Payments made by an employer into a stock bonus, pension, or profit-sharing fund if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time, or upon resignation or dismissal or if the contract for services requires such payment as part of the remuneration. Whether or not under other circumstances such payments constitute compensation depends upon the particular facts of each case. For provisions relating to payments for personal injury or for loss of earnings resulting from displacement to a less remunerative position or occupation, see § 410.5.

[Regs. 100, 2 F. R. 2561, as amended by T. D. 5574, 12 F. R. 5330]

§ 410.7 *Compensation; when earned.* Compensation is earned when and as an employee or employee representative, as such, performs services for which he is paid or for which there is a present or future obligation to pay, regardless of the time at which payment is made or is to be made. Remuneration paid for any period of absence from active service shall be deemed to have been earned in the month in which such absence from service occurred. A payment made by an employer or employee organization (that is, a railway labor organization which is not included as an employer under the act) to an individual through the pay roll of the employer or employee organization for a period commencing after December 31, 1946, shall be presumed, in the absence of evidence to the contrary, to be for services rendered by such individual in the period covered by the pay roll and, thus, to have been earned in such period. (See §§ 410.5 and 410.6).

[Regs. 100, 2 F. R. 2561, as amended by T. D. 5574, 12 F. R. 5330]

§ 410.8 *Compensation; payment.* Compensation is deemed to be paid:

(a) When it is actually paid; or

(b) When it is constructively paid, that is, credited to the account of or set apart for an employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and made available to him so that it may be drawn upon at any time and its payment brought within his own control and disposition; or

(c) Within the period for which a return of tax is required to be made if the compensation was earned during such period and is payable during the calendar month following such period. (See § 410.501, relating to periods for which a return of tax is required.)

*Examples:* (1) During September, 1938 (which falls in a period for which a return of tax is required to be made), A is employed by employer B at a monthly salary of \$150, half of which is payable on the 25th of the month in which the services are performed and the other half on the 10th of the following month. Thus on October 10, A is paid \$75 which was earned during September. That \$75 is deemed to have been paid to A in September and should be included in B's return for the quarter July, August, and September.

(2) During December, 1937 (which falls in a period for which a return of tax is required

to be made), A is employed by employer B on the basis of a 6-day week at a weekly salary of \$60 payable on Saturday of each week. Thus on Saturday, January 1, 1938, A is paid \$60 for services performed during the week December 27, 1937, to January 1, 1938, inclusive. In such case five-sixths of that amount or \$50 is deemed to have been paid in December and should be included in B's return filed for the period in which December falls. The balance of A's salary for that week (\$10) should be included in the return filed for the period in which January, 1938, falls. (But see § 410.501 (b), relating to period covered by return where employer pays on a weekly basis. See § 410.7 as to when compensation is deemed earned; also § 410.202 relating to applicable rate of employees' tax.

[Regs. 100, 2 F. R. 2561]

#### SUBPART B—EMPLOYEES' TAX

SOURCE: §§ 410.201 to 410.203 contained in T. D. 5574, 12 F. R. 5330, except as noted following section affected.

§ 410.201 *Measure of employees' tax*—(a) *General rule*—(1) *Compensation earned or paid prior to January 1, 1947.* Except as provided in paragraph (b) of this section:

(i) The employees' tax with respect to compensation earned prior to January 1, 1947, is measured by the amount of compensation earned prior to such date by an individual as an employee for services rendered to one or more employers after March 31, 1939, excluding, however, the amount of such compensation in excess of \$300 which is earned by the employee for services rendered during any one calendar month;

(ii) The employees' tax with respect to compensation paid prior to January 1, 1947, for services rendered after December 31, 1946, is measured by the amount of compensation paid prior to January 1, 1947, to an individual for services rendered as an employee to one or more employers after December 31, 1946, excluding, however, the amount of such compensation in excess of \$300 which is paid prior to January 1, 1947, to the employee for services rendered during any one calendar month after 1946.

(For the purposes of the regulations in §§ 410.201 to 410.203, see §§ 410.5, 410.6, 410.7, and 410.8, relating to compensation.)

(2) *Compensation paid after December 31, 1946, for services rendered after such date.* Except as provided in paragraph (b) of this section, the employees' tax with respect to compensation paid after December 31, 1946, for services

rendered after such date is measured by the amount of compensation paid after December 31, 1946, to an individual for services rendered as an employee to one or more employers after such date, excluding, however, the amount of such compensation in excess of \$300 which is paid after December 31, 1946, to the employee for services rendered during any one calendar month after 1946.

(b) *Exception; employee of local lodge or division of railway-labor-organization employer.* If the amount of compensation earned in any calendar month by an individual as an employee in the service of a local lodge or division of a railway-labor-organization employer is less than \$3, such amount shall be disregarded for the purpose of determining the employees' tax, provided:

(1) Such compensation is earned before April 1, 1940, and the taxes thereon are not paid to the collector before July 1, 1940, or

(2) Such compensation is earned after March 31, 1940.

§ 410.202 *Rates and computation of employees' tax—(a) Compensation earned or paid prior to January 1, 1947.*

(1) The rates of employees' tax applicable for the respective calendar years with respect to compensation either earned or paid prior to January 1, 1947, are as follows:

	Percent
Compensation earned during the calendar year 1939.....	2¾
Compensation earned during the calendar years 1940, 1941, 1942.....	3
Compensation earned during the calendar years 1943, 1944, 1945.....	3¼
Compensation earned during the calendar years 1946, 1947, 1948.....	3½
Compensation earned during the calendar year 1949 and subsequent calendar years.....	3¾

(2) The employees' tax with respect to compensation either earned or paid prior to January 1, 1947, is computed by applying to the amount of the employee's compensation with respect to which the employees' tax is imposed the rate for the calendar year in which the compensation is earned.

(b) *Compensation paid after December 31, 1946, for services rendered after such date.* (1) The rates of employees' tax applicable for the respective calendar years with respect to compensation paid after December 31, 1946, for services rendered after such date are as follows:

	Percent
Compensation paid during the calendar years 1947, 1948.....	5¾
Compensation paid during the calendar years 1949, 1950, 1951.....	6
Compensation paid during the calendar year 1952 and subsequent calendar years.....	6¼

(2) The employees' tax with respect to compensation paid after December 31, 1946, for services rendered after such date is computed by applying to the amount of the employee's compensation with respect to which the employees' tax is imposed the rate for the calendar year in which the compensation is paid.

§ 410.203 *Collection of, and liability for, employees' tax—(a) Collection; general rule.* The employer shall collect from each of his employees the employees' tax imposed with respect to the compensation of the employee by deducting or causing to be deducted the amount of such tax from the compensation subject to the tax as and when such compensation is paid. (As to the measure of the employees' tax, see § 410.201.)

(b) *Collection; aggregate monthly compensation in excess of \$300 paid by two or more employers—(1) Compensation earned or paid prior to January 1, 1947.* If during any one calendar month before 1947 an employee earns compensation from two or more employers and if the aggregate of such compensation paid is in excess of \$300, each employer shall deduct, from the compensation as and when paid by him to the employee, the employees' tax with respect to that proportion of \$300 of compensation which the compensation paid by such employer to the employee for the month bears to the total compensation paid to such employee by all employers for that month. If an employee is paid compensation prior to January 1, 1947, by two or more employers for services rendered during any one calendar month after 1946, and if the aggregate compensation paid to such employee prior to January 1, 1947, by all employers for services rendered during such month is in excess of \$300, each employer shall deduct, from the compensation as and when paid by him to the employee, the employees' tax with respect to that proportion of \$300 of compensation which the compensation paid by such employer prior to January 1, 1947, to the employee for the month bears to the total compensation paid prior to January 1, 1947, to such em-

ployee by all employers for that month. (See § 410.201 (b), which provides that for the purpose of determining the employees' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-labor-organization employer shall be disregarded.)

(2) *Compensation paid after December 31, 1946, for services rendered after such date.* If an employee is paid compensation after December 31, 1946, by two or more employers for services rendered during any one calendar month after 1946, and if the aggregate compensation paid to such employee after December 31, 1946, by all employers for services rendered during such month is in excess of \$300, the employees' tax to be deducted by each employer from the compensation as and when paid by him to the employee shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see § 410.2 (f)), each employer shall deduct the employees' tax with respect to that proportion of \$300 of compensation which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all employers for that month (see Example 1 of this paragraph);

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, each subordinate unit shall deduct the employees' tax with respect to that proportion of \$300 of compensation which the compensation paid after December 31, 1946, by such subordinate unit to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month;

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after December 31, 1946, to the employee by the employer other than a subordinate unit equals or exceeds \$300 for the month, then no employees' tax shall be deducted by any such subordinate unit from the compensation paid by it after

December 31, 1946, to such employee for that month, and the employer other than a subordinate unit shall deduct the employees' tax with respect to \$300 of compensation paid by him after December 31, 1946, to such employee for that month (see Example 2 of this paragraph);

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by the employers other than a subordinate unit equals or exceeds \$300 for the month, then no employees' tax shall be deducted by any such subordinate unit from the compensation paid by it after December 31, 1946, to such employee for that month, and each employer other than a subordinate unit shall deduct the employees' tax with respect to that proportion of \$300 of compensation which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such employers other than a subordinate unit for that month (see Example 3 of this paragraph);

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate unit is less than \$300 for the month, then each employer other than the subordinate unit shall deduct the employees' tax with respect to the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and the subordinate unit of a national railway-labor-organization employer shall deduct the employees' tax with respect to the remainder of \$300 of compensation less the total compensation paid after December 31, 1946, to such employee for that month by all other employers (see Example 4 of this paragraph); or

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer,

and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate units is less than \$300 for the month, then each employer other than the subordinate units shall deduct the employees' tax with respect to the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and each subordinate unit of a national railway-labor-organization employer shall deduct the employees' tax with respect to that proportion of the remainder of \$300 of compensation less the total compensation paid after December 31, 1946, to such employee for the month by all employers other than the subordinate units which the compensation paid after December 31, 1946, by such subordinate unit to the employee for that month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month (see Example 5 of this paragraph).

(See § 410.201 (b), which provides that for the purpose of determining the employees' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-labor-organization employer shall be disregarded.)

(vii) The application of certain of the foregoing principles may be illustrated by the following examples:

*Example 1.* A, an employee, renders services during January 1947, for employers X, Y, and Z, none of whom is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$100 by X, \$100 by Y, and \$200 by Z, or an aggregate of \$400 for the month. In such case X pays one-fourth of A's aggregate compensation for the month, Y pays one-fourth, and Z pays one-half. X and Y, therefore, are each required to deduct the employees' tax with respect to one-fourth of \$300, or \$75, and Z is required to deduct the employees' tax with respect to one-half of \$300, or \$150.

*Example 2.* A, an employee, renders services during January 1947, for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$300 by X, \$50 by Y, and \$25 by Z. Since the compensation paid A for the month by X equals \$300, neither Y nor Z is required to deduct any employees' tax from the compensation paid by them to A for the month; and X is required to deduct the em-

ployees' tax with respect to the full \$300 paid by him to A for the month.

*Example 3.* A, an employee, renders services during January 1947, for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$200 by W and \$200 by X, or an aggregate of \$400 for the month, and compensation of \$50 by Y and \$50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of \$300, neither Y nor Z is required to deduct any employees' tax from the compensation paid by them to A for the month. Of the aggregate compensation of \$400 paid A for the month by W and X, W pays one-half and X pays one-half. W and X, therefore, are each required to deduct the employees' tax with respect to one-half of \$300, or \$150.

*Example 4.* A, an employee, renders services during January 1947, for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$250 by X and \$100 by Y. In such case X is required to deduct the employees' tax with respect to the full \$250 paid by him to A for the month; and Y is required to deduct the employees' tax only with respect to \$50 (\$300 minus \$250 paid by X).

*Example 5.* A, an employee, renders services during January 1947, for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$140 by W, \$100 by X, \$50 by Y, and \$100 by Z. In such case W and X are each required to deduct the employees' tax with respect to the full amount paid by them to A for the month, that is, W with respect to \$140 and X with respect to \$100; and Y and Z are each required to deduct the employees' tax with respect to their proportionate share of \$60 (\$300 minus \$240 paid by W and X). Of the aggregate compensation of \$150 paid by Y and Z, \$50, or one-third, was paid by Y, and \$100, or two-thirds, was paid by Z. In such case Y is required to deduct the employees' tax with respect to one-third of \$60, or \$20, and Z is required to deduct the employees' tax with respect to two-thirds of \$60, or \$40.

(3) *Undercollections or overcollections.* Any undercollection or overcollection of employees' tax resulting from the employer's inability to determine, at the time compensation is paid, the correct

amount of compensation with respect to which the deduction should be made shall be corrected in accordance with the provisions of subpart F, relating to an adjustment of employees' tax and employers' tax, and subpart G, relating to credits and refunds.

(c) *When fractional part of cent may be disregarded.* In collecting the employees' tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(d) *Employer's liability.* (1) The employer is liable for the employees' tax with respect to compensation paid by him subsequent to June 28, 1937, whether or not collected from the employee. If at any time subsequent to that date the employer deducts less than the correct amount of employees' tax or fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. With respect to compensation earned by any employee for the period from January 1, 1937, to June 28, 1937, inclusive, the employer shall be liable for the employees' tax only to the extent that the employee has under his control at any time subsequent to June 28, 1937, amounts of compensation earned at any time by the employee, or amounts deducted by the employer from the compensation of the employee under the act of August 29, 1935 (49 Stat. 974; 45 U. S. C., Chapter 10). Until collected from him, the employee is also liable for the employees' tax. Any employees' tax collected by or on behalf of an employer is a special fund in trust for the United States. An employer is not liable to any person for the amount of the employees' tax deducted by him and paid to the collector.

(2) See Subpart E, relating to returns and payment of employees' tax; Subpart F, relating to adjustment of employees' tax; Subpart G, relating to interest and penalties.

[Regs. 100, 2 F. R. 2562, as amended by T. D. 5574, 12 F. R. 5330]

#### SUBPART C—EMPLOYERS' TAX

SOURCE: §§ 410.301 and 410.302 contained in T. D. 5574, 12 F. R. 5332.

§ 410.301 *Measure of employers' tax—*

(a) *General rule—*(1) *Compensation paid prior to January 1, 1947.* Except as provided in paragraphs (b) (1) and (c) of this section, the employers' tax

with respect to compensation paid prior to January 1, 1947, is measured by the amount of compensation paid prior to such date by an employer to his employees for services rendered after December 31, 1936, excluding, however, the amount of compensation in excess of \$300 which is paid prior to January 1, 1947, by the employer to any employee for services rendered during any one calendar month. (For the purposes of this subpart, see §§ 410.5, 410.6, and 410.7, relating to compensation, and particularly § 410.8, relating to the time when compensation is deemed to be paid.)

(2) *Compensation paid after December 31, 1946.* Except as provided in paragraphs (b) (2) and (c) of this section, the employers' tax with respect to compensation paid after December 31, 1946, is measured by the amount of compensation paid after such date by an employer to his employees for services rendered after December 31, 1936, excluding, however, the amount of compensation in excess of \$300 which is paid after December 31, 1946, by the employer to any employee for services rendered during any one calendar month.

(b) *Aggregate monthly compensation in excess of \$300 paid by two or more employers—*(1) *Compensation paid prior to January 1, 1947.* If an employee is paid compensation prior to January 1, 1947, by two or more employers for services rendered during any one calendar month after 1936, and if the aggregate compensation paid to such employee prior to January 1, 1947, by all employers for services rendered during such month is in excess of \$300, then there is included in the measure of the employers' tax of each employer with respect to the compensation paid by him prior to January 1, 1947, to the employee for the month only that proportion of \$300 which the compensation paid to the employee prior to January 1, 1947, by such employer for the month bears to the total compensation paid prior to January 1, 1947, to such employee by all employers for that month. (See paragraph (c) of this section, which provides that for the purpose of determining the employers' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-l a b o r-organization employer shall be disregarded.)

(2) *Compensation paid after December 31, 1946.* If an employee is paid compensation after December 31, 1946, by

two or more employers for services rendered during any one calendar month after 1936, and if the aggregate compensation paid to such employee after December 31, 1946, by all employers for services rendered during such month is in excess of \$300, the measure of the employers' tax of each employer with respect to the compensation paid by him after December 31, 1946, to the employee for the month shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see § 410.2 (f)), the measure of the employers' tax of each employer shall be that proportion of \$300 which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all employers for that month (see Example 1 of this paragraph);

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, the measure of the employers' tax of each subordinate unit shall be that proportion of \$300 which the compensation paid after December 31, 1946, by such subordinate unit to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month;

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after December 31, 1946, to the employee by the employer other than a subordinate unit equals or exceeds \$300 for the month, then no subordinate unit shall be liable for any employers' tax with respect to the compensation paid by it after December 31, 1946, to such employee for that month, and the measure of the employers' tax of the employer other than a subordinate unit with respect to the compensation paid by him after December 31, 1946, to such employee for that month shall be \$300 (see Example 2 of this paragraph);

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one

or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by the employers other than a subordinate unit equals or exceeds \$300 for the month, then no subordinate unit shall be liable for any employers' tax with respect to the compensation paid by it after December 31, 1946, to such employee for that month, and the measure of the employers' tax of each employer other than a subordinate unit shall be that proportion of \$300 which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such employers other than a subordinate unit for that month (see Example 3 of this paragraph);

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate unit is less than \$300 for the month, then the measure of the employers' tax of each employer other than the subordinate unit shall be the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and the measure of the employers' tax of the subordinate unit of a national railway-labor-organization employer shall be the remainder of \$300 less the total compensation paid after December 31, 1946, to such employee for that month by all other employers (see Example 4 of this paragraph); or

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate units is less than \$300 for the month, then the measure of the employers' tax of each employer other than the subordinate units shall be the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and the measure of the employers' tax of each subordinate unit of a national railway-labor-organ-

ization employer shall be that proportion of the remainder of \$300 less the total compensation paid after December 31, 1946, to such employee for the month by all employers other than the subordinate units which the compensation paid after December 31, 1946, by such subordinate unit to the employee for that month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month (see Example 5 of this paragraph).

(See paragraph (c) of this section, which provides that for the purpose of determining the employers' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-labor-organization employer shall be disregarded.)

(vii) The application of certain of the foregoing principles may be illustrated by the following examples:

*Example 1.* A, an employee, renders services during January 1947, for employers X and Y, neither of whom is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$200 by X and \$300 by Y, or an aggregate of \$500 for the month. In such case X pays two-fifths of A's aggregate compensation for the month, and Y pays three-fifths. X, therefore, is liable for the employers' tax with respect to two-fifths of \$300, or \$120, and Y is liable for the employers' tax with respect to three-fifths of \$300, or \$180.

*Example 2.* A, an employee, renders services during January 1947, for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$350 by X and \$50 by Y. Since the compensation paid A for the month by X exceeds \$300, Y is not liable for any employers' tax with respect to the compensation paid A for the month; and X is liable for the employers' tax with respect to \$300 of the compensation paid by him to A for the month.

*Example 3.* A, an employee, renders services during January 1947, for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$150 by W and \$300 by X, or an aggregate of \$450 for the month, and compensation of \$100 by Y and \$50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of \$300, neither Y nor Z

is liable for any employers' tax with respect to the compensation paid by them to A for the month. Of the aggregate compensation of \$450 paid A for the month by W and X, W pays one-third and X pays two-thirds. W, therefore, is liable for the employers' tax with respect to one-third of \$300, or \$100, and X is liable for the employers' tax with respect to two-thirds of \$300, or \$200.

*Example 4.* A, an employee, renders services during January 1947, for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$250 by X and \$100 by Y. In such case X is liable for the employers' tax with respect to the full \$250 paid by him to A for the month; and Y is liable for the employers' tax with respect to \$50 (\$300 minus \$250 paid by X).

*Example 5.* A, an employee, renders services during January 1947, for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. After December 31, 1946, A is paid for the month compensation of \$140 by W, \$100 by X, \$50 by Y, and \$100 by Z. In such case W and X are each liable for the employers' tax with respect to the full amount paid by them to A for the month, that is, W with respect to \$140 and X with respect to \$100; and Y and Z are each liable for the employers' tax with respect to their proportionate share of \$60 (\$300 minus \$240 paid by W and X). Of the aggregate compensation of \$150 paid by Y and Z, \$50, or one-third, was paid by Y, and \$100, or two-thirds, was paid by Z. In such case Y is liable for the employers' tax with respect to one-third of \$60, or \$20, and Z is liable for the employers' tax with respect to two-thirds of \$60, or \$40.

(c) *Nominal monthly compensation earned by employee of local lodge or division of railway-labor-organization employer.* If the amount of compensation earned in any calendar month by an individual as an employee in the service of a local lodge or division of a railway-labor-organization employer is less than \$3, such amount shall be disregarded for the purpose of determining the employers' tax, provided:

(1) Such compensation is earned before April 1, 1940, and the taxes thereon are not paid to the collector before July 1, 1940, or

(2) Such compensation is earned after March 31, 1940.

(d) *Underpayments or overpayments.* Any underpayment or overpayment of

employers' tax resulting from the employer's inability to determine, at the time such tax is paid, the correct amount of compensation with respect to which the tax should be paid shall be corrected in accordance with the provisions of § 410.603, relating to adjustment of employers' tax, and Subpart G relating to credits and refunds.

§ 410.302 *Rates and computation of employers' tax*—(a) *Compensation paid prior to January 1, 1947.* (1) The rates of employers' tax applicable for the respective calendar years with respect to compensation paid prior to January 1, 1947, are as follows:

	Percent
Compensation earned during the calendar year 1939.....	2%
Compensation earned during the calendar years 1940, 1941, 1942.....	3
Compensation earned during the calendar years 1943, 1944, 1945.....	3½
Compensation earned during the calendar years 1946, 1947, 1948.....	3½
Compensation earned during the calendar year 1949 and subsequent calendar years.....	3%

(2) The employers' tax with respect to compensation paid prior to January 1, 1947, is computed by applying to the amount of compensation with respect to which the employers' tax is imposed the rate for the calendar year in which the compensation is earned.

(b) *Compensation paid after December 31, 1946.* (1) The rates of employers' tax applicable for the respective calendar years with respect to compensation paid after December 31, 1946, are as follows:

	Percent
Compensation paid during the calendar years 1947, 1948.....	5%
Compensation paid during the calendar years 1949, 1950, 1951.....	6
Compensation paid during the calendar year 1952 and subsequent calendar years.....	6½

(2) The employers' tax with respect to compensation paid after December 31, 1946, is computed by applying to the amount of compensation with respect to which the employers' tax is imposed the rate for the calendar year in which the compensation is paid.

**SUBPART D—EMPLOYEE REPRESENTATIVES' TAX**

§ 410.401 *Measure of employee representatives' tax*—(a) *Compensation earned or paid prior to January 1, 1947.* The employee representatives' tax with respect to compensation earned prior to

January 1, 1947, is measured by so much of the compensation earned prior to such date by an individual for services rendered after March 31, 1939, as an employee representative, as does not exceed \$300 for any one calendar month. (The employee representatives' tax with respect to compensation paid prior to January 1, 1947, for services rendered after December 31, 1946, is measured by so much of the compensation paid prior to January 1, 1947, to an individual for services rendered after December 31, 1946, as an employee representative, as does not exceed \$300 for any one calendar month. (For the purposes of this subpart, see §§ 410.5, 410.6, 410.7, and 410.8, relating to compensation.)

(b) *Compensation paid after December 31, 1946, for services rendered after such date.* The employee representatives' tax with respect to compensation paid after December 31, 1946, for services rendered after such date is measured by so much of the compensation paid after December 31, 1946, to an individual for services rendered after such date, as an employee representative, as does not exceed \$300 for any one calendar month.

[T. D. 5574, 12 F. R. 5334]

§ 410.402 *Rates and computation of employee representatives' tax*—(a) *Compensation earned or paid prior to January 1, 1947.* (1) The rates of employee representatives' tax applicable for the respective calendar years with respect to compensation either earned or paid prior to January 1, 1947, are as follows:

	Percent
Compensation earned during the calendar year 1939.....	3½
Compensation earned during the calendar years 1940, 1941, 1942.....	3
Compensation earned during the calendar years 1943, 1944, 1945.....	3½
Compensation earned during the calendar years 1946, 1947, 1948.....	7
Compensation earned during the calendar year 1949 and subsequent calendar years.....	7½

(2) The employee representatives' tax with respect to compensation either earned or paid prior to January 1, 1947, is computed by applying to the amount of compensation with respect to which the employee representatives' tax is imposed the rate for the calendar year in which the compensation is earned.

(b) *Compensation paid after December 31, 1946, for services rendered after such date.* (1) The rates of employee

representatives' tax applicable for the respective calendar years with respect to compensation paid after December 31, 1946, for services rendered after such date are as follows:

	Percent
Compensation paid during the calendar years 1947, 1948-----	11½
Compensation paid during the calendar years 1949, 1950, 1951-----	12
Compensation paid during the calendar year 1952 and subsequent calendar years-----	12½

(2) The employee representatives' tax with respect to compensation paid after December 31, 1946, for services rendered after such date is computed by applying to the amount of compensation with respect to which the employee representatives' tax is imposed the rate for the calendar year in which the compensation is paid.

[T. D. 5574, 12 F. R. 5334]

#### SUBPART E—RETURNS AND PAYMENT OF TAX

§ 410.501 *Initial and quarterly returns of tax*—(a) *General*. For the period beginning January 1, 1937, and ending September 30, 1937, and for each subsequent period of three calendar months ending December 31, March 31, June 30, and September 30, each employer shall prepare a return of tax, in triplicate, on Form CT-1, and each employee representative shall prepare a return of tax, in triplicate, on Form CT-2. Each employer and employee representative is required to file his own return. Consolidated returns of parent and subsidiary corporations are not permitted.

(b) *Returns of employers required by State law to pay compensation on weekly basis*. If any employer is required by the laws of any State to pay compensation weekly, the return of tax with respect to such compensation may, at the election of such employer, cover all pay-roll weeks which, or the major part of which, fall within the period for which a return of tax is required by paragraph (a) of this section. This provision shall not apply, however, to any pay-roll week which falls in 2 calendar years. Any employer who elects to file a return as provided in this paragraph shall notify the Commissioner in writing of such election and shall include therein a statement setting forth the facts which entitle him to make the election. Such notice shall be in duplicate and shall be attached to the return for the first period to which such election applies. Any election so

made shall be binding upon the taxpayer with respect to all returns subsequently made by him until the Commissioner authorizes or directs the taxpayer to make a return on a different basis. For the purpose of determining the time when compensation is paid in accordance with § 410.8 (c), and of determining the due date of a return in accordance with § 410.505, the calendar month following the period covered by the return of an employer making such election is the same calendar month which would be determinative for such purposes if the employer had not made the election.

*Example*: Employer A is required by State law to pay his employees within 6 days after the compensation is earned. In compliance with the State law, Employer A, for services rendered to him for the period September 27 to October 2, 1937, pays his employees on the last-named date. September, 1937, is the last month of a period for which a return of tax is required to be filed. Employer A may elect to include in the return required under paragraph (a) of this section for the period January 1 to September 30, 1937, the compensation paid to his employees for the week of September 27 to October 2, 1937, inclusive, although the compensation for October 1 and 2 falls within another period for which a return is required under paragraph (a) of this section. If, in this example, the pay-roll week ended on October 5, 1937, the compensation paid for the pay-roll week September 29 to October 5 would be included in the return period in which October falls although the compensation earned for September 29 and 30 fell in a prior return period under the general rule.

[Regs. 100, 2 F. R. 2563, as amended by T. D. 4859, 3 F. R. 2179]

§ 410.502 *Final returns*. (a) The last return on Form CT-1 for any person who ceases to be an employer, shall be marked "Final return." Such return shall be filed with the collector on or before the sixtieth day after the date of the final payment of compensation with respect to which the tax is imposed, except that if such final payment was made prior to April 1, 1939, the return shall be filed on or before the thirtieth day after the date of such payment. The period covered by each such return shall be plainly written on the return, indicating the date of the final payment of compensation.

(b) The last return on Form CT-2 for any person who ceases to be an employee representative shall be marked "Final return."

(c) There shall be executed as part of each final return a statement giving the

address at which the records required by § 410.806 will be kept and the name of the person keeping the records.

[Regs. 100, 2 F. R. 2564, as amended by T. D. 4891, 4 F. R. 1391]

§ 410.503 *Execution of returns.* (a) Each return on Form CT-1 shall be signed and (except as provided in this section) verified under oath or affirmation by (1) the individual, if the employer is an individual; (2) the president, vice president, or other principal officer, if the employer is a corporation; or (3) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization. Each return on Form CT-2 shall be signed and (except as provided in this section) verified under oath or affirmation by the employee representative.

(b) The oath or affirmation may be administered by any officer duly authorized to administer oaths for general purposes by the law of the United States or of any State or Territory, wherein such oath is administered, or by a consular officer of the United States. Returns executed abroad may be attested free of charge before a United States consular officer. If a foreign notary or other official having no seal acts as attesting officer, the authority of such attesting officer should be certified to by some judicial officer or other proper officer having knowledge of the appointment and official character of the attesting officer. If the tax shown to be payable by any return is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath.

(c) Each return for a period beginning after December 31, 1943, shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of the oath or affirmation, or the signing or acknowledgment before two witnesses, otherwise required.

[Regs. 100, 2 F. R. 2564, as amended by T. D. 5302, 8 F. R. 14000]

§ 410.504 *Use of prescribed forms.* Each return, together with any prescribed copies and supporting data, shall be filled out in accordance with the instructions contained thereon and the regulations applicable thereto. The prescribed forms may be obtained from collectors. A taxpayer will not be ex-

cused from making a return for the reason that no form has been furnished to him. Application should be made to the collector for the prescribed forms in ample time to have the return prepared, verified, and filed with the collector on or before the due date. Returns shall be carefully prepared so as fully and clearly to set forth the data therein called for. Returns which have not been so prepared will not be accepted as meeting the requirements of the act. In case the prescribed form is not available, a statement made by the taxpayer disclosing for the period for which a return is required the amount of compensation with respect to which the tax is imposed, together with the amount of tax due, may be accepted as a tentative return. If filed within the prescribed time the statement so made will relieve the taxpayer from liability to the penalty imposed for the delinquent filing of the return by section 3176 of the United States Revised Statutes (26 U. S. C. 1512, 1524), as amended, and section 406 of the Revenue Act of 1935 (49 Stat. 1027; 26 U. S. C., Sup., 1525) (see § 410.805), provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form.

[Regs. 100, 2 F. R. 2564]

§ 410.505 *Place and time for filing returns.* (a) Each return on Form CT-1 shall be filed with the collector for the district in which is located the principal place of business of the employer. Each return on Form CT-2 shall be filed with the collector for the district in which is located the legal residence or principal place of business of the employee representative. If the employer has no principal place of business in the United States or if the employee representative has no legal residence or principal place of business in the United States, the return shall be filed with the collector at Baltimore, Md.

(b) The return for the period January 1, 1937, to September 30, 1937, inclusive, shall be filed on or before November 30, 1937; the return for each quarterly period thereafter up to and including the period ended December 31, 1938, shall be filed on or before the last day of the first calendar month following the period for which it is made; and the return for each quarterly period subsequent to December 31, 1938, shall be filed on or before the last day of the

second calendar month following the period for which it is made. If such last day falls on Sunday or a legal holiday, the return may be filed on the next following business day. If placed in the mails, the return shall be posted in ample time to reach the collector's office under ordinary handling of the mails, on or before the date on which the return is required to be filed. As to additions to the tax in the case of failure to file the return within the prescribed time, see § 410.805.

[Regs. 100, 2 F. R. 2564, as amended by T. D. 4891, 4 F. R. 1391]

§ 410.506 *Payment of tax.* The tax required to be reported on any return is due and payable to the collector without assessment by the Commissioner or notice by the collector, at the time fixed for filing the return. For provisions relating to interest, see § 410.803 and for provisions relating to penalties, see §§ 410.804, 410.805; also section 1114 of the Revenue Act of 1926 (44 Stat. 116), made applicable by section 7 (c) of the act.

[Regs. 100, 2 F. R. 2564]

§ 410.507 *When fractional part of cent may be disregarded.* In the payment of taxes to the collector a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent shall not be disregarded in the computation of taxes. See § 410.203 (c) for provisions relative to fractional parts of a cent in connection with the deduction of employees' tax from compensation.

[Regs. 100, 2 F. R. 2564]

#### SUBPART F—ADJUSTMENT OF EMPLOYEES' TAX AND EMPLOYERS' TAX

SOURCE: §§ 410.601 to 410.603 contained in Regulations 100, 2 F. R. 2565.

§ 410.601 *Adjustments in general.* Sections 2 (c) and 3 (b) of the act provide in certain cases for the adjustment of errors in the payment of employees' tax and employers' tax without the formality of a claim being filed for refund or credit of an overpayment or without formal demand being made by the collector for payment of any additional amount due by reason of an underpayment. Not all corrections of erroneous collections or payments of tax, however, constitute "adjustments" within the meaning of the act and the regulations in

this part. The various situations under which such adjustments shall be made are set forth in §§ 410.602, 410.603. Such sections also contain provisions relating to settlement other than by adjustment under certain circumstances set forth therein. Subpart G deals further with settlement other than by adjustment. If an employer makes an erroneous collection of employees' tax from two or more of his employees, a separate adjustment must be made with respect to each employee. Thus, an overcollection of employees' tax from one employee may not be used to offset an undercollection of such tax from another. No interest shall be allowed or collected with respect to any erroneous collection or payment adjusted pursuant to § 410.602 or § 410.603.

§ 410.602 *Adjustment of employees' tax—(a) Undercollections—(1) Prior to filing of return.* If no employees' tax or less than the correct amount of employees' tax is deducted from any payment of compensation to an employee and the error is discovered prior to the time the return of tax with respect to such compensation is filed with the collector, the employer shall nevertheless report on such return and pay to the collector the correct amount of employees' tax. While, in such case, the employer may reimburse himself by deductions from subsequent remuneration of the employee, such deductions do not constitute adjustments within the meaning of this section, and shall not be reported as adjustments on any return.

(2) *After return is filed.* If no employees' tax or less than the correct amount of employees' tax is deducted from any payment of compensation to an employee, and the correct amount of such tax is not reported and paid pursuant to subparagraph (1) of this paragraph, the employer shall adjust the undercollection by deducting the amount thereof from the first payment of compensation made to such employee after the error is discovered. Amounts so deducted shall be reported as adjustments on the return for the quarter in which deducted. The undercollection shall be deducted from such first payment of compensation in addition to the employees' tax imposed with respect to such compensation. If the individual whose employees' tax was undercollected leaves the employ of the employer who

failed to make the deduction and is entitled to no further remuneration from such employer, the undercollection is not adjustable under this section. In such case if the undercollection has not been reported and paid pursuant to subparagraph (1) of this paragraph, the employer shall report and pay the tax with the next quarterly return filed after discovery of the error. No undercollection of employees' tax shall be adjusted after receipt from the collector of formal notice and demand for payment thereof based upon assessment approved by the Commissioner, but the amount shall be paid pursuant to such notice and demand. While in such case the employer may reimburse himself by deductions from remuneration of the employee, such deductions do not constitute adjustments within the meaning of this section and shall not be reported as adjustments on any return.

(b) *Overcollections*—(1) *Prior to filing of return.* If an employer (i) collects more than the correct amount of employees' tax from any employee with respect to any quarterly period, and (ii) reimburses the employee in the amount of the overcollection prior to the time the return for such period is filed with the collector, then the employer shall not report or pay to the collector the amount of the overcollection. Such reimbursement does not constitute an adjustment within the meaning of this section and shall not be reported as an adjustment on any return. However, every overcollection not repaid to the employee as provided in this subparagraph must be reported and paid to the collector with the return for the quarter in which the overcollection took place.

(2) *After return is filed.* If an employer collects from any employee and pays to the collector more than the correct amount of employees' tax, the employer shall adjust the overcollection when the first payment of compensation is made to the employee after discovery of the error. The adjustment shall be made by applying the overcollection against the employees' tax which is imposed with respect to such first payment of compensation, and by deducting the remainder, if any, of the tax from such compensation. In case the overcollection is greater in amount than the employees' tax imposed with respect to such first payment of compensation, the balance shall be applied against the em-

ployees' tax imposed with respect to the next consecutive payments of compensation until the adjustment is completed. No adjustment shall be made under this subparagraph after the expiration of four years after the overcollection was paid to the collector. A claim for credit or refund (in accordance with §§ 411.701, 410.702) may be filed within such 4-year period for such part of any overcollection as can not be adjusted within such period. After the employee leaves the employ of the employer who made an overcollection and is entitled to no further compensation from such employer, adjustments under this section are not permitted. In such case the employer may pay the amount of the overcollection, or such part thereof as remains unadjusted under this section, to the employee, and file a claim for credit or refund in accordance with §§ 410.701, 410.702. In lieu of paying such amount prior to filing a claim, the employer may obtain the employee's written consent to allowance of the claim.

§ 410.603 *Adjustment of employers' tax*—(a) *Underpayments.* If no employers' tax or less than the correct amount of employers' tax is paid with respect to any payment of compensation, the employer shall adjust the error by (1) reporting the additional amount due by reason of the underpayment as additional tax on his next return filed after the discovery of the error and (2) paying the amount thereof to the collector at the time such return is filed. However, no underpayment shall be adjusted under this section after receipt from the collector of formal notice and demand for payment thereof based upon an assessment approved by the Commissioner, but the amount thereof shall be paid to the collector pursuant to such notice and demand.

(b) *Overpayments.* If an employer pays more than the correct amount of employers' tax, the employer shall adjust the error by applying the excess payment as a credit against the tax due upon his next return filed after the discovery of the error. No overpayment shall be adjusted under this section after the expiration of 4 years after the date the overpayment was made to the collector.

#### SUBPART G—CREDITS AND REFUND;

SOURCE: §§ 410.701 to 410.707 contained in Regulations 100, 2 F. R. 2566, except as noted following section affected.

**§ 410.701 Credit or refund in general.**

(a) A claim for credit or refund shall be made on Form 843 in accordance with the instructions printed on such form and in accordance with the regulations in this part. It should be clearly indicated on the form whether the claim is for credit or refund. Each claim for credit must be attached to the return on which the credit is claimed. The prescribed form may be obtained from any collector. There shall be set forth under oath all grounds in detail and all facts alleged in support of the claim including the amount and date of each payment to the collector of the tax for which credit or refund is claimed, the name and address of the person who paid the tax to the collector, and the period covered by the return on which such tax was reported.

(b) If any tax is paid by or on behalf of an individual who thereafter dies and a claim for refund or credit is filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence shall be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary pays any tax and thereafter a claim for refund or credit is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the tax was paid by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the tax was paid, the necessary documentary evidence shall accompany the claim. The affidavit on the claim form may be made by the agent of the person assessed, but in such case a power of attorney shall accompany the claim.

(c) No credit or refund will be allowed for any tax (including interest or penalty, if any) which has been erroneously, illegally, or otherwise wrongfully collected, after the expiration of 4 years after the payment to the collector of tax, penalty, or interest, except upon one or

more of the grounds set forth in a claim filed prior to the expiration of such 4-year period.

**§ 410.702 Credit or refund of overpayments of tax under this act which are not adjustable.**

(a) If more than the correct amount of tax (including interest or penalty, if any) is paid to the collector and if the overpayment can not be adjusted pursuant to § 410.602 or § 410.603, the person paying such tax to the collector may take a credit for such overpayment upon any return of tax subsequently filed or may file a claim for refund of such overpayment. In case a credit is taken under this section, a claim on Form 843 is not required, but the return on which such credit is taken shall have securely attached thereto a statement under oath, setting forth in detail the grounds and facts relied upon in support of the credit.

(b) In case a credit is taken on any return or a claim is filed by an employer for refund of employees' tax as provided by paragraph (a) of this section, the employer shall attach to the return on which a credit is taken, or shall include in the claim, a statement that he has repaid the tax to the employee or has secured the written consent of such employee to allowance of the refund or credit. In every such case the employer shall keep as part of his records the written receipt of the employee acknowledging payment or the written consent of the employee, whichever is used in support of the credit or refund.

(c) If (1) more than the correct amount of employees' tax is collected by an employer from an employee and paid to the collector; and (2) the employee leaves the employ of such employer; and (3) the employee does not receive reimbursement by way of adjustment or otherwise from such employer and does not authorize the employer to file a claim and receive refund or credit, then such employee may file a claim for a refund of such overpayment. (For claims filed by a legal representative, see § 410.701 (b).)

(d) In case a claim for refund is filed by an employee as provided by paragraph (c) of this section, the claimant shall attach to the claim a statement of a responsible officer of the employer giving the complete details of the overcollection, including the date and amount and a statement by such officer showing

that the employer has not reimbursed the employee in the amount of the over-collection and showing the amount, if any, of any credit or refund of such over-collection claimed or to be claimed by such employer.

§ 410.703 *Credit and refund of taxes paid under title VIII of the Social Security Act for period during which liability existed under this act.* If any person pays any tax imposed by title VIII of the Social Security Act with respect to any period for which he was not liable for such tax but was liable with respect to such period for a tax imposed under the Carriers Taxing Act of 1937, the amount paid as tax under title VIII of the Social Security Act (49 Stat. 636-639; 42 U. S. C., 1001-1011) shall be credited against the amount of tax for which such person is liable under the Carriers Taxing Act of 1937 and the balance, if any, shall be refunded. Each person claiming a credit or refund of any such tax shall file a claim in accordance with § 410.701.

§ 410.704 *Credit and refund of taxes paid under this act for period during which liability existed under title VIII of the Social Security Act.* If any person pays any tax imposed by this act with respect to any period for which he was not liable for such tax but was liable with respect to such period for a tax imposed under title VIII of the Social Security Act, the amount paid as tax under this act shall be credited against the tax for which such person is liable under title VIII of the Social Security Act and the balance, if any, shall be refunded. Each person claiming any such refund shall file a claim therefor in accordance with § 410.701.

§ 410.705 *Credit and refund of taxes imposed under the act of August 29, 1935, which were paid to the collector—(a) General.* Every claim for refund or credit under the provisions of this section shall be made on Form 843 in accordance with the provisions of this section and § 410.701. A claim which does not comply with these requirements will not be considered for any purpose as a claim for refund or credit. No interest shall be allowed with respect to any refunds or credits provided for by this section.

(b) *Representatives' tax.* Every individual who as a representative, as defined in section 1 (b) of the act of August 29, 1935 (49 Stat. 974.; 45 U. S. C.,

Sup. II, 241 (b)), paid to the collector any representatives' tax under such act with respect to remuneration earned prior to January 1, 1937, may obtain a refund of the amount of such tax. Every individual who as a representative, as defined in section 1 (b) of the act of August 29, 1935, paid to the collector any representatives' tax under such act with respect to remuneration earned during the period January 1, 1937, to June 28, 1937, inclusive, may obtain a refund of the amount of such tax if he establishes to the satisfaction of the Commissioner that the employees' tax or employee representatives' tax for such period, if any, for which he is liable under the Carriers Taxing Act of 1937 has been paid to the collector. If the employees' tax or the employee representatives' tax for which an individual is liable under the Carriers Taxing Act of 1937 for the period January 1, 1937, to June 28, 1937, inclusive, has not been paid, then so much of the representatives' tax paid by such individual under the act of August 29, 1935, with respect to remuneration earned during such period as is not in excess of the tax for which the individual is liable under the Carriers Taxing Act of 1937 for the same period shall be credited against such tax under the Carriers Taxing Act of 1937. Such individual may obtain a refund of so much of the tax paid under the act of August 29, 1935, as is in excess of the amount credited against his liability under the Carriers Taxing Act of 1937. Any person claiming a refund or crediting any amount under this paragraph shall file a claim in accordance with paragraph (a) of this section.

(c) *Carriers' tax period for March 2, 1936, to December 31, 1936.* Every carrier, as defined in section 1 (a) of the act of August 29, 1935, which paid any carriers' tax imposed by that act with respect to remuneration earned prior to January 1, 1937, may obtain a refund of such tax, or may obtain a credit for the amount thereof against the employers' tax imposed upon such carrier as an employer under the Carriers' Taxing Act of 1937, by filing a claim pursuant to paragraph (a) of this section.

(d) *Carriers' tax for period January 1, 1937, to June 28, 1937.* Every carrier as defined in section 1 (a) of the act of August 29, 1935, which paid any carriers' tax imposed by that act with respect to remuneration earned during the period

January 1, 1937, to June 28, 1937, inclusive, shall credit against the amount of the employers' tax imposed for the same period upon such carrier as an employer under the Carriers Taxing Act of 1937, an equal amount of carriers' tax so paid under the act of August 29, 1935. Each carrier required to credit any such tax shall file a claim therefor in accordance with paragraph (a) of this section. The carrier may obtain a refund of any balance of the carriers' tax paid under the act of August 29, 1935, which remains after the allowance of the foregoing credit, or may obtain a credit for the amount of such balance against its employers' tax for any period subsequent to June 28, 1937, by filing a claim pursuant to paragraph (a) of this section.

(e) *Employees' tax for period March 2, 1936, to December 31, 1936.* Every carrier as defined in section 1 (a) of the act of August 29, 1935, which paid to the collector any employees' tax imposed by that act upon its employees with respect to remuneration earned prior to January 1, 1937, may obtain a refund of such tax, or may obtain a credit for the amount thereof against the employees' tax imposed under the Carriers Taxing Act of 1937, by filing a claim pursuant to paragraphs (a) and (g) of this section.

(f) *Employees' tax for period January 1, 1937, to June 28, 1937.* Every carrier as defined in section 1 (a) of the act of August 29, 1935, which paid to the collector any employees' tax imposed by that act upon its employees with respect to remuneration earned during the period January 1, 1937, to June 28, 1937, inclusive, shall credit against the amount of employees' tax imposed for the same period upon the same employees by the Carriers Taxing Act of 1937, an equal amount of the employees' tax so paid with respect to such employees under the act of August 29, 1935. Each carrier required to credit the amount of any such tax shall file a claim covering the amount thereof in accordance with paragraphs (a) and (g) of this section. The carrier may obtain a refund of any balance of employees' tax paid under the act of August 29, 1935, which remains after the allowance of the foregoing credit, or may obtain a credit for the amount of such balance against the employees' tax imposed for any period subsequent to June 28, 1937, by filing a claim pursuant to paragraphs (a) and (g) of this section.

(g) *Statements required in connection with claims for refund or credit of employees' tax.* (1) Every carrier as defined in section 1 (a) of the act of August 29, 1935, which files a claim for refund or credit of any employees' tax paid under such act shall include in the claim a statement that it has either repaid the tax to the employee and has the employees' written receipt acknowledging payment, or has secured the written consent of the employee to allowance of the claim. If the claim is made with respect to a deceased employee, the carrier shall set out in such statement that he has repaid the tax to the legal representative of the deceased employee and has such representative's written receipt acknowledging payment, or has secured his written consent to allowance of the claim. (See § 410.806 (e).)

(2) If any individual whose employees' tax was paid to the collector under the act of August 29, 1935, desires to file a claim for refund, there shall be attached to such claim a statement of a responsible officer of the carrier which employed him showing the amount, if any, of any credit taken or to be taken by such carrier against any employees' tax imposed by the Carriers Taxing Act of 1937 upon such employee. If the claim for such refund is filed by the legal representative of a deceased individual, there shall be attached thereto a statement of a responsible officer of the carrier showing the amount, if any, of any credits taken or to be taken by such carrier against any employees' tax imposed by the Carriers Taxing Act of 1937 upon such deceased individual, and the evidence required by § 410.701 (b) of his authority to act as such legal representative.

§ 410.706 *Employees' tax deducted from remuneration under the act of August 29, 1935, and not paid to collector—*

(a) *For period March 2, 1936, to December 31, 1936.* Every carrier, as defined in section 1 (a) of the act of August 29, 1935, which deducted the employees' tax imposed by such act from remuneration earned by any individual prior to January 1, 1937, and which has not paid such tax to the collector, shall repay the tax to the individual from whom collected (or in the case of a deceased individual, to his legal representative). Each such carrier shall maintain records showing the amount of the tax thus repaid and the dates on which such amounts were repaid.

(b) *For period subsequent to December 31, 1936.* (1) Every carrier, as defined in section 1 (a) of the act of August 29, 1935, which deducted the employees' tax imposed by such act from remuneration earned by any individual during any period subsequent to December 31, 1936, and which has not paid such tax to the collector, shall repay to the individual from whom collected (or in the case of a deceased individual, to his legal representative), any amount of such tax in excess of the employees' tax imposed by the Carriers Taxing Act of 1937 upon such individual for the same period. Each such carrier shall maintain records showing the amount of the tax thus repaid and the dates on which such amounts were repaid.

(2) So much of the sums not paid to the collector, which were deducted as tax from the compensation of an employee under the act of August 29, 1935, with respect to compensation earned subsequent to December 31, 1936, as is not in excess of the employees' tax imposed by the Carriers Taxing Act of 1937 upon such employee for the same period, shall be paid to the collector the same as though such amounts had been deducted as and for employees' tax with respect to such compensation under the Carriers Taxing Act of 1937.

§ 410.707 *Treatment under section 4 (b) of the act approved August 13, 1940, of taxes with respect to certain services performed in the employ of carriers by railroad.* Section 4 (b) of the act approved August 13, 1940 (54 Stat. 786), provides that no person shall be entitled, by reason of the provisions of such act, to a refund of, or relief from liability for, taxes paid or accrued prior to August 13, 1940, pursuant to the Carriers Taxing Act of 1937 or subchapter B of chapter 9 of the Internal Revenue Code, with respect to employment in the service of any carrier by railroad subject to part I of the Interstate Commerce Act. (See sections 3 and 4 of the act of August 13, 1940; and see § 410.3 (a).) However, under further provisions of such section 4 (b) the amount of such taxes paid to the collector may in accordance with such section be applied in reduction of the tax liability, under Title VIII of the Social Security Act or under the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code), incurred by reason of the provisions of the act of August

13, 1940. In any such case, a claim for credit shall be made on Form 843 in accordance with the instructions relating to such form and the applicable provisions of § 410.701. There shall be set forth under oath all grounds in detail and all facts alleged in support of the claim including the amount and date of each payment to the collector of the tax for which credit is claimed the name and address of the person who paid the tax to the collector, and the period covered by the return on which such tax was reported. Such other or additional proof as the Commissioner may deem necessary to establish the right to the credit shall be submitted.

(See, however, section 14 of the act approved April 8, 1942 (56 Stat. 209); 26 U. S. C. 1532 (d) for special provisions relating to interest and penalties in the case of certain local lodges and divisions and general committees of railway-labor-organization employers.)

[T. D. 5017, 5 F. R. 4269]

#### SUBPART H—MISCELLANEOUS PROVISIONS

§ 410.801 *Assessment and collection of underpayments.* (a) If any employees' tax or employers' tax is not paid to the collector when due, the Commissioner may, as the circumstances warrant, assess the tax (whether or not the underpayment is adjustable) or afford the employer opportunity to adjust the underpayment pursuant to § 410.602 or § 410.603. Unpaid employers' tax or employees' tax may be assessed against the employer. Employees' tax not collected by the employer may also be assessed against the employee. If any employee representatives' tax is not paid when due, it shall be assessed against the employee representative.

(b) The amount of any underpayment, together with interest and penalty, if any, will be collected, pursuant to section 3184 of the United States Revised Statutes (26 U. S. C. 1545) and other applicable provisions of law, from the person against whom assessment is made. If any amount of an assessment has been previously reported and paid to the collector as an adjustment or otherwise the person against whom the assessment is made is privileged to file with the collector a claim on Form 843 for abatement of such amount, together with interest and penalties thereon if included in the assessment.

(c) If an employer pays employees' tax pursuant to an assessment against him without an adjustment having been made pursuant to § 410.602, reimbursement with respect to such payment is a matter to be settled between the employer and the employee. See § 410.803, relating to interest, and § 410.804, relating to penalty for failure to pay an assessment after notice and demand. See also § 410.802, relative to jeopardy assessment.

[Regs. 100, 2 F. R. 2568]

§ 410.802 *Jeopardy assessment.* (a) Whenever, in the opinion of the collector, it becomes necessary to protect the interests of the Government by effecting an immediate return and collection of the tax, the case should be promptly reported to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the amount of taxes due, the period involved, and a statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment, such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice and demand for payment of the tax, penalty, and interest.

(b) The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired and with such sureties as the collector may deem necessary. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

(c) Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3187 of the United States Revised

Statutes (26 U. S. C. 1580, 1581), as amended.

CROSS REFERENCES: For Department of the Treasury regulations relating to the acceptance of bonds, notes, or other obligations issued or guaranteed by the United States as security in lieu of surety or sureties on penal bonds, see 31 CFR Part 225. For general regulations of the Public Debt Service concerning United States bonds and notes, see 31 CFR Chapter II.

§ 410.803 *Interest.* If the tax is not paid to the collector when due and is not adjusted under § 410.602 or § 410.603, interest accrues at the rate of 6 percent per annum.

(See, however, section 14 of the act approved April 8, 1942 (56 Stat. 209; 26 U. S. C. 1532 (d) for special provisions relating to interest and penalties in the case of certain local lodges and divisions and general committees of railway-labor-organization employers.)

[Regs. 100, 2 F. R. 2569, as amended by T. D. 5161, 7 F. R. 5212]

§ 410.804 *Penalty for failure to pay an assessment after notice and demand.*

(a) In case the taxpayer fails to pay to the collector the entire amount of any assessment of tax, penalty, or interest within a period of 10 days after the date of issuance of the form for first notice and demand, based on such assessment, there accrues under section 3184 of the United States Revised Statutes (except as provided in paragraph (b) of this section) a penalty of 5 percent of the amount of such assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of the first notice and demand, a claim for abatement of any amount of the assessment is filed with the collector who issued the form, the 5 percent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the collector shall issue notice and demand for such amount. If payment is not made within 10 days after the date the collector issues the notice and demand, the 5 percent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.

(See, however, section 14 of the act approved April 8, 1942 (56 Stat. 209; 26 U. S. C. 1532 (d) for special provisions relating to interest and penalties in the

case of certain local lodges and divisions and general committees of railway-labor-organization employers.)

[Regs. 100, 2 F. R. 2569, as amended by T. D. 5161, 7 F. R. 5212]

§ 410.805 *Penalties for delinquent or false returns*—(a) *Delinquent returns.*

(1) Unless the person required to file a return establishes to the satisfaction of the Commissioner that a reasonable cause exists for the delinquency, the failure to file such return on or before the due date causes to accrue a penalty equal to the following percentage of the taxes required to be reported thereon:

(i) 5 percent, if the return is filed on or before the thirtieth day after the due date;

(ii) 10 percent, if the return is filed after such thirtieth day and on or before the sixtieth day after the due date;

(iii) 15 percent, if the return is filed after such sixtieth day and on or before the ninetieth day after the due date;

(iv) 20 percent, if the return is filed after such ninetieth day and on or before the one hundred and twentieth day after the due date; or

(v) 25 percent, if the return is filed after such one hundred and twentieth day or if the return is never filed by the person required to file it.

(2) In computing the period of delinquency all Sundays and holidays after the due date are counted.

(3) Every person filing a return after the due date shall securely attach to the return his statement under oath setting out in detail the reason for his delinquency. The collector shall forward the statement to the Commissioner with the return. The Commissioner will determine whether a penalty has been incurred and, if so, make the assessment.

(See, however, section 14 of the act approved April 8, 1942 (56 Stat. 209; 26 U. S. C. 1532 (d) for special provisions relating to interest and penalties in the case of certain local lodges and divisions and general committees of railway-labor-organization employers.)

(b) *False returns.* If a false or fraudulent return is wilfully made, the penalty under section 3176 of the United States Revised Statutes (26 U. S. C. 1512, 1524), as amended, is 50 percent of the total taxes due for the entire period involved, including any tax previously paid.

[Regs. 100, 2 F. R. 2569, as amended by T. D. 5161, 7 F. R. 5212]

§ 410.806 *Records*—(a) *Records of employees.* While not mandatory, it is advisable for each employee to keep permanent accurate records showing the name of each employer for which he performs services as an employee, the duration of employment by each, the amount of each payment of remuneration, the date of its receipt, and the amount of employees' tax deducted from each such payment.

(b) *Records of employers.* The records of each employer shall show with respect to each employee, beginning with January 1, 1937:

(1) the name and address of the employee,

(2) the total amount and date of each payment of compensation to the employee (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment,

(3) the amount of such payment of compensation with respect to which the tax is imposed, and

(4) the amount of employees' tax withheld or collected with respect to such payment of compensation, and, if collected at a time other than the time such payment was made, the date collected.

If the total payment of compensation (subparagraph (2) of this paragraph) and the amount thereof with respect to which the tax is imposed (subparagraph (3) of this paragraph) are not equal, the reason therefor shall be made a matter of record. Accurate records of the details of every adjustment of employees' tax or employers' tax shall also be kept, including the date and amount of each adjustment. (See subpart F, relating to adjustments.)

(c) *Records of employee representatives.* The records of each individual liable for employee representatives' tax shall show, beginning with January 1, 1937:

(1) The name of each employee organization and each employer employing him, and

(2) The amount of compensation earned as an employee representative and as an employee, and the period for which earned. With respect to services rendered after December 31, 1946, the records of each individual liable for employee representatives' tax shall show, in lieu of the information required by sub-

paragraph (2), of this paragraph the amount and date of each payment of compensation (including any sum withheld therefrom) earned as an employee representative and as an employee and the period of services covered by such payment.

(d) *Records of payments under the act of August 29, 1935, and of overpayments under this act.* Every person claiming refund or credit of any payment of tax under the act of August 29, 1935, or of any overpayment of tax, penalty, or interest, under this act, shall keep a complete and detailed record of the alleged payment or overpayment. If claim is made under § 410.702 (a) for refund or credit of employees' tax, there shall also be kept as part of the records the evidence of repayment of the tax to the employee or the written consent of the employee obtained pursuant to the provisions of § 410.702 (b).

(e) *Records with respect to claims for refund of employees' tax imposed by the act of August 29, 1935, and paid to collector.* Every employer who files a claim for refund under § 410.705 (e), (f) shall keep as part of his records the written receipts or written consents of employees

obtained pursuant to the provisions of § 410.705 (g) (1).

(f) *Form of records.* No particular form is prescribed for keeping the records required by this section. Each person required to keep records shall use such forms and systems of accounting as will enable the Commissioner to ascertain whether the taxes for which such person is liable are correctly computed and paid.

(g) *Place and period for keeping records.* All records required by the regulations in this part shall be kept, by the person required to keep them, at some convenient and safe location accessible to internal revenue officers. Such records shall at all times be open for inspection by such officers. Records required by paragraphs (b) and (c) of this section shall be maintained for a period of at least 4 years after the date the tax to which they relate becomes due, or the date the tax is paid, whichever is later. Records required by paragraphs (d) and (e) of this section relating to a claim shall be maintained for a period of at least 4 years after the date the claim is filed.

[Regs. 100, 2 F. R. 2570, as amended by T. D. 5574, 12 F. R. 5334]

## SUBCHAPTER E—ADMINISTRATIVE PROVISIONS COMMON TO VARIOUS TAXES

### Part 450—Withdrawal of Oleomargarine, Filled Cheese, Playing Cards, Tobacco, Snuff, Cigars, and Cigarettes, From Factories, Free of Tax, for Use of the United States

Sec.	
450.0	Promulgation of regulations.
450.1	Departmental requisition.
450.2	Bond.
450.3	Manufacturer's application.
450.4	Permit to withdraw.
450.5	Packing, branding, or canceling.
450.6	Entries in manufacturer's records and reports.
450.7	Bills of lading.
450.8	Certificate of receipt by Government officer.

**AUTHORITY:** §§ 450.0 to 450.8 issued under 53 Stat. 467; 26 U. S. C. 3791. Interpret or apply 53 Stat. 403; 26 U. S. C. 3331.

**SOURCE:** §§ 450.0 to 450.8 contained in Regulations 34, Feb. 2, 1928, except as noted following sections affected.

**CROSS REFERENCES:** For shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes for use as sea stores without payment of internal revenue tax under Tariff Act of 1930, see Part 141 of this chapter. For tax on playing cards, see Part 305 of this chapter. For taxes on oleomargarine, adulterated butter, and process or renovated butter, see Part 310 of this chapter. For taxes on tobacco, snuff, cigars, cigarettes, cigarette papers and tubes, and purchase and sale of leaf tobacco, see Part 140 of this chapter.

§ 450.0 *Promulgation of regulations.* Pursuant to this provision of law, the regulations in this part are prescribed for the withdrawal of oleomargarine, filled cheese, playing cards, tobacco, snuff, cigars, and cigarettes from factories, free of tax, for the use of the United States. Withdrawals for the purpose of sale by Federal agencies are not for the use of the United States within the meaning of the statute. Institutions owned or controlled by the governments of the several States, Territories, or the District of Co-

lumbia are not entitled to make withdrawals under this law.

[Regs. 34, Feb. 2, 1928, as amended by T. D. 5440, 10 F. R. 2347]

§ 450.1 *Departmental requisition.* Whenever a product within the scope of the regulations in this part is purchased for the use of the United States and it is proposed to make withdrawals, tax free, from the place of manufacture, a requisition in duplicate on Form 663, approved by the head of the institution or organization desiring the product, must be filed with the Commissioner of Internal Revenue. The requisition must specify the total quantity of the product contracted for at a price not including the tax thereon, the name of the manufacturer, his factory number, district, and State, the location of the factory from which the product purchased or contracted for is to be withdrawn and the institution or the name of the person or officer to whom, and the address to which, shipment or delivery is to be made. One copy of the requisition will be forwarded by the commissioner to the collector of internal revenue for the district in which is located the factory designated to furnish the product.

§ 450.2 *Bond.* Hereafter transportation and delivery bonds will not be required for the withdrawal free of tax of oleomargarine, filled cheese, tobacco, snuff, cigars, and cigarettes, for use of the United States. The manufacturers' bond of manufacturers making such withdrawals will be held responsible for any tax liability incurred under the regulations in this part. A manufacturer of playing cards is not required to file a manufacturer's bond and before withdrawing playing cards under the regulations in this part must furnish a transportation and delivery bond in duplicate on Form 665 with satisfactory sureties and in a penal sum of not less than the tax on the total quantity specified in the requisition. The bond, which shall state the quantity of playing cards requisitioned, the number of the factory and its location, including the district and State, from which withdrawal is to be made, and the institution or the name of the person or officer to whom, and the address to which, shipment or delivery is to be made, may be executed by corporate surety or individual sureties. If given with individual sureties, each individual surety will be required to show qualifica-

tion on Form 33 executed in duplicate. The original and duplicate bond must be filed with the collector for the district in which the factory furnishing the playing cards is located, who will, if the bond meets his approval, enter an indorsement to that effect on both the original and duplicate, and forward the duplicate immediately to the Commissioner of Internal Revenue. In case the bond is given with personal sureties, the duplicate Form 33 shall be attached to the duplicate bond.

[Regs. 34, Feb. 2, 1928, as amended by T. D. 5440, 10 F. R. 2347]

§ 450.3 *Manufacturer's application.* The manufacturer must also file application in duplicate on Form 664 for permit to make withdrawal of the product in specific lots from his factory. In addition to giving the number of the factory, district and State, the number of original or statutory packages and contents of each, and in the case of oleomargarine, the number of inner packages, if any, and weight of each, shall be set forth in each application, as well as the total quantity covered by the application, the rate of tax applicable, and amount of tax to be remitted, also the institution or the name of the person or officer to whom, and the address to which, shipment or delivery is to be made. These applications may be forwarded direct to the Commissioner of Internal Revenue or filed with the collector for the district. In the first case, the duplicate application will be forwarded by the commissioner to the collector, and in the latter case, the collector must forward the original application immediately to the commissioner. Applications on Form 664 should be filed a sufficient time in advance of the date upon which withdrawal is contemplated to be made to allow of receipt and issuance of the permit (see § 450.4) by the commissioner and receipt thereof by the manufacturer prior to that date.

§ 450.4 *Permit to withdraw.* The requisition (and in the case of playing cards, also a transportation and delivery bond) having been filed, permit in duplicate on Form 666 for each withdrawal, for which application is made and approved, will be issued by the Commissioner of Internal Revenue. The original permit will be forwarded direct to the manufacturer and should be retained by him as his authority for making the withdrawal. The duplicate will be for-

warded to the collector of internal revenue. No more than the quantity named in the permit may be withdrawn thereunder. No withdrawal shall be made in advance of the receipt by the manufacturer of a permit. When it is desired to withdraw an amount different from the amount specified in the permit, application must be made for a new permit, and the original permit must be returned to the commissioner for cancellation. The product must not be withdrawn until the new permit is received. When immediate delivery of a product is desired by an institution, an informal permit authorizing release of the same will be telegraphed to the manufacturer upon his request and at his expense and a formal permit will be later sent to him. Withdrawals for which permits have been issued must be made within a reasonable time after receipt of permit or else request should be made for cancellation of the permit. All products withdrawn in advance of the receipt by the manufacturer of a permit will be held subject to tax, and a manufacturer who violates the law by withdrawing products on which the tax has not been paid without permit will be liable also to the penalties denounced by the statutes.

§ 450.5 *Packing, branding, or cancelling.* (a) Oleomargarine, put up in cartons or other packages of less than 10 pounds each, must be inclosed in packages of not less than 10 pounds each, as the statute requires. (Section 2302 (b) (1), I. R. C.) Each such statutory package shall, in addition to the branding and stenciling required by other regulations, have legibly and durably branded or stenciled thereon the statement, "For use of U. S. Government," together with the number of permit and the date thereof, the letters and figures therein to correspond in size and style with other stenciling required by such other regulations to be on the package.

(b) Each individual pack of playing cards shall be labeled or branded, "For use of U. S. Government," together with the number of permit and the date thereof. The letters and figures of such printing shall be conspicuous, in bold-face type of not less than one-quarter of an inch in height.

(c) Tobacco manufactures intended to be withdrawn free of tax for use of the United States must be put up in packages

of the sizes prescribed by statute. Each individual package of tobacco, snuff, cigars, or cigarettes, must comply with the statutes in respect to caution notice label and factory brand. There shall be affixed to each such package a label or sticker of white paper corresponding to the Internal Revenue stamp in dimensions and method of affixture, on which shall be printed in legible letters and figures the words, "Free of Tax—Use of U. S.," and date to include the month and year.

(d) Filled cheese withdrawn free of tax for use of the United States must be packed and labelled as the statute requires. (Sec. 2352 (b), Internal Revenue Code.) Each statutory package shall, in addition to the markings otherwise required, have legibly and durably marked, stamped, or branded thereon the statement "For use of U. S. Government", together with the number of permit and the date thereof, the letters and figures therein to correspond in size and style with the markings required by section 2352 (b) (1) of the Internal Revenue Code.

**CROSS REFERENCES:** For requirements concerning caution notices for tobacco, see § 140.84 of this chapter. For classification labels, see § 140.86 of this chapter. For packing and branding requirements for oleomargarine, see §§ 310.28–310.33 of this chapter. For Bureau of Customs regulations relating to classification labels, internal revenue stamps, and other markings for tobacco, see 19 CFR 11.1 to 11.3. For Bureau of Customs regulations relating to the detention, stamping, and reporting of oleomargarine, see 19 CFR 11.5.

[Regs. 34, Feb. 2, 1928, as amended, by T. D. 5440, 10 F. R. 2347]

§ 450.6 *Entries in manufacturer's records and reports.* Each withdrawal of a product from the factory under the provisions of the regulations in this part shall be entered by the manufacturer in his revenue book or other Government record on the day withdrawal is made and shall be included in his monthly or annual report under an appropriate heading and carried into the recapitulation as a special credit.

§ 450.7 *Bills of lading.* Where the product withdrawn free of tax under the regulations in this part is transported by common carrier, the manufacturer must file, with the collector of the district in which the factory making withdrawal is

located, bills of lading in duplicate covering each shipment from the factory to the point of final destination. These bills of lading must be filed promptly after withdrawal is made. One of the bills of lading will be filed with the copy of the application and permit which it covers in the collector's office and the other shall be forwarded as provided in § 450.8 (b).

§ 450.8 *Certificate of receipt by Government officer.* (a) (1) The Government receiving officer at the place of delivery should inspect each shipment of a tax-free product received by him in order that he may certify as to the quantity received and the date of receipt. The certificate of such officer will be made on Form 667 in duplicate and forwarded promptly to the manufacturer from whose factory the withdrawal was made. The manufacturer must file both copies of the certificate of receipt with the collector of internal revenue for the district within 30 days from the date of withdrawal from the factory or must file a satisfactory statement explaining his failure to do so, otherwise assessment of the tax on the product withdrawn will be made.

(2) Where there is a loss of goods in transit, the receipt should specify the number of statutory packages, the number of inner packages, if any, and the total quantity so lost. The amount reported lost or any difference between the quantity withdrawn under a permit and that certified to by the receiving officer will remain as a charge against the manufacturer's bond in the case of oleomargarine, filled cheese and tobacco manufactures and against the transportation bond in the case of playing cards, and assessment of the tax thereon will be made against the manufacturer in the absence of evidence showing that the goods not covered by the receiving officer's certificate were actually destroyed.

(b) The collector will forward the original certificate of receipt (or, if none has been filed, the statement required by paragraph (a) of this section) with one copy of bill of lading, to the commissioner immediately after the certificate of receipt (or statement) is received by him. Credit on the transportation bond for playing cards will be allowed in the commissioner's office.

[Regs. 34, Feb. 2, 1928, as amended by T. D. 5440, 10 F. R. 2347]

## Part 451—Exportation Without Payment of Tax of Tobacco Manufactures, Oleomargarine, Adulterated Butter, Mixed Flour, and Playing Cards; Shipments to Possessions of the United States, and Drawback on Tobacco Manufactures and Stills Exported, or Shipped to Puerto Rico or Philippine Islands

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**AUTHORITY:** §§ 451.1 to 451.58 issued under 53 Stat. 467; 26 U. S. C. 3791.

**CROSS REFERENCES:** For shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes for use as sea stores without payment of internal revenue tax under Tariff Act of 1930, see Part 141 of this chapter. For tax on playing cards, see Part 305 of this chapter. For taxes on oleomargarine, adulterated butter, and process or renovated butter, see Part 310 of this chapter. For taxes on tobacco, snuff, cigars, cigarettes, cigarette papers and tubes, and purchase and sale of leaf tobacco, see Part 140 of this chapter.

**SUBPART A—EXPORTATION WITHOUT THE PAYMENT OF TAX**

**SOURCE:** §§ 451.1 to 451.10 contained in Regulations 73, June 14, 1928, except as noted following sections affected.

§ 451.1 *Scope of this subpart.* The regulations in this subpart are made to

govern the removal of tobacco, snuff, cigars and cigarettes, oleomargarine, adulterated butter, mixed flour, and playing cards, without the payment of tax, for export to a foreign country. Shipments to the Panama Canal Zone have the same status as exportations to foreign countries. Where reference is made in the regulations in this part, and in the forms prescribed, to exportation to a foreign country, their provisions will apply to like removals and shipments to the Philippine Islands, Puerto Rico, or Virgin Islands, also, to removal of tobacco manufactures and playing cards, without the payment of tax for shipment to other possessions of the United States, which include Guam, American Samoa (Tutuila), Wake, and other small Pacific islands, the same as though such removals and shipments were expressly mentioned. The law makes no provision for removal of oleomargarine or adulterated butter without the payment of tax for shipment to the Territories of Alaska and Hawaii, or to possessions other than the Philippine Islands, Puerto Rico, or Virgin Islands. Under the amendment made by section 508 of the Revenue Act of 1943, playing cards may, beginning January 1, 1942, and continuing indefinitely, be removed without payment of tax for shipment to a possession of the United States. By the same amendment, the privilege is granted of removing playing cards without payment of tax for shipment to a territory of the United States for the use of members of the military or naval forces of the United States. However, this privilege, and the amendments of the regulations in this part pursuant thereto, are effective only during the period January 1, 1942, to the date on which the President proclaims that hostilities in the present war have terminated.

[Regs. 73, June 14, 1928, as amended by T. D. 5352, 9 F. R. 3480]

§ 451.2 *Exportation; definition; when not bona fide.* (a) An exportation is a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. The export character of a shipment will be determined by the intention with which it is made and it assumes an export character only where destined for, and intended for use in, a foreign country. (b) Proof of landing in a foreign country, as provided in § 451.28, will

be required where there is reason to believe a shipment is not a bona fide exportation. In case any product which has been removed without the payment of tax under the regulations in this part is used on the exporting vessel as ship's stores or on the exporting vehicle the shipment will not be regarded as a bona fide exportation. In every case where a shipment is made which is not a bona fide exportation, the tax due thereon will be assessed.

§ 451.3 *Export bond.* (a) The manufacturer of any of the products within the scope of the regulations in this part, who desires to export the same without the payment of tax, will be required, either before or at the time of filing his first application for withdrawal (and entry for exportation) on Form 550, revised, to furnish to the collector of the district in which the place of manufacture is located, a bond, in duplicate, on Form 549, with surety satisfactory to that officer. Parcel post as well as other shipments may be made under Form 549, revised May, 1928. A separate bond must be filed to cover exportation of "large cigars," "small cigars," "small cigarettes," "large cigarettes," and each other product except tobacco and snuff, both of which will be covered by one bond. The penal sum of the bond must be sufficient to cover the estimated amount of tax which will at any time constitute a charge against the bond, and in no case less than \$500. The liability under such bond will be a continuing one, subject to increase as successive withdrawals are made thereunder and to decrease as evidence of exportation, hereinafter required, is received by the collector. When the limit of liability under any such bond has been reached, no further withdrawals may be made thereunder; a new bond in duplicate must be filed under which subsequent withdrawals will be made. When an export bond, in duplicate, is submitted to the collector, he will, if the bond meets his approval, make indorsement to that effect on both the original and duplicate copies and forward the duplicate bond immediately to the commissioner. The bonds may be executed by corporate surety or individual sureties; if given with individual sureties, each individual surety will be required to furnish affidavit in duplicate on Form 33, which will be attached to the original and duplicate bond, respectively.

(b) Before removal of playing cards without the payment of tax for use of members of the military or naval forces of the United States in Alaska or Hawaii, the manufacturer shall submit to the collector for his district the consent of the surety on his bond to such removal. Such consent shall be executed in duplicate. No particular form has been provided for this purpose; any form may be used so long as it is adequate to accomplish the intended purpose. The collector shall forward to the Commissioner the duplicate consent of surety to be attached to the duplicate bond in force.

[Regs. 73, June 14, 1928, as amended by T. D. 5352, 9 F. R. 3480]

§ 451.4 *Requirements as to packing and marking, or branding; exemptions.*

(a) Tobacco and snuff may be put up for export in packages of any desired size or description. Section 2100 (c), I. R. C., provides that its limitations and descriptions of packages shall not apply to tobacco and snuff transported in bond for exportation and actually exported. Cigars (including cigarettes) packed expressly for export and which shall be exported to a foreign country under the regulations in this part are by section 2111 (a) (3), I. R. C., exempt from the provisions relating to factory brand and also from the provisions of section 2111 (d), I. R. C., requiring a label to be affixed to each box, and may be packed in such quantity and in such kind of packages as may be desired. (T. D. 19124.) Any label used to seal a package for export must be readily distinguishable from an internal-revenue stamp.

(b) Every tub, firkin, or other package containing oleomargarine to be exported without payment of tax, must, before removal from the factory, be branded with the word "Oleomargarine" in plain Roman letters not less than one-half inch square. Inner containers, which may be of wood, metal, paper, or other material, shall have the word "oleomargarine" legibly branded thereon. Metallic inner containers may have the word "Oleomargarine" lithographed thereon or printed on a label affixed thereto.

(c) Every firkin, tub, or other package containing adulterated butter to be exported without payment of tax, must, before removal from the factory, be branded with the words "Adulterated butter" in plain Roman letters not less than one-half inch square. A product coming within the classification of adul-

terated butter as defined in section 2320 (b), I. R. C., when manufactured for export to a foreign country, on orders or specifications received from foreign customers, may be labeled, marked, or branded "Preserved Butter" in lieu of "Adulterated Butter" when not in violation of or in conflict with the laws of the country to which exported, or the provisions of the pure food law, act of June 30, 1906, as amended, and regulations made under authority thereof by the Department of Agriculture. (T. D. 1970.)

(d) Packages containing mixed flour shall have plainly marked thereon the words "Mixed Flour," the name and ingredients composing the same, the name of the maker or packer, and the place where made or packed. Such packages must not contain more than 196 pounds each.

(e) Playing cards must be put up in packs the same as for domestic use. Each pack of playing cards intended to be removed from the factory for use of members of the military or naval forces of the United States in Alaska or Hawaii shall have affixed in place of the internal revenue stamp a label, which label shall be readily distinguishable from the internal revenue stamp and shall bear the following legend:

Free of tax—for use only of U. S. military and naval forces in Alaska or Hawaii, or for use outside the jurisdiction of the internal revenue laws of the United States.

[Regs. 73, June 14, 1928, as amended by T. D. 4249, Nov. 24, 1928, T. D. 5352, 9 F. R. 3480]

**CROSS REFERENCES:** For requirements concerning caution notices for tobacco, see § 140.84. For classification labels for tobacco, see § 140.86. For packing and branding requirements for oleomargarine, see §§ 310.28-310.33. For Bureau of Customs regulations relating to classification labels, internal revenue stamps, and other markings for tobacco, see 19 CFR 11.1 to 11.3. For Bureau of Customs regulations relating to the detention, stamping, and reporting of oleomargarine, see 19 CFR 11.5.

§ 451.5 *Shipping cases.* (a) Each shipping case, crate, or other package containing an article to be exported without the payment of tax under the regulations in this part must be stenciled or plainly marked by the manufacturer as follows:

(1) *Consignment.* Each case, etc., should be consigned to the collector of customs at the port of exportation, notify agent of shipper there, except shipments

to foreign contiguous territory, or for export by parcel post, which must be consigned to the foreign consignee at destination; shipments to foreign contiguous territory must be stenciled in the care of the collector or deputy collector of customs at the border port of exit. However, where playing cards are removed without payment of tax for shipment to Alaska or Hawaii for the use of military or naval forces of the United States, the case, etc., shall, if the shipment is direct, be consigned to the consignee in Alaska or Hawaii, or, if the shipment is to an Army port of embarkation or Navy supply depot, to the Army port transportation officer or Navy supply officer.

(2) *Shipping marks and number.* Each case, etc., must show the shipper's marks and number, such number to be a consecutive one of a series adopted by the person ordering the goods for export, or in the absence of such serial number the manufacturer will assign a consecutive number beginning with No. 1 and beginning again with No. 1 on July 1 of each year.

(3) *Legend.* Each case, etc., must show the legend herewith (with the first three lines properly filled in) in letters and figures not less than three-fourths of an inch in length. A manufacturer who exports goods in behalf of another person or firm may, if desired, substitute on the second line of the legend, in lieu of his own name, the name of the person or firm for whom the exportation is made. In case of such substitution the first two lines of the legend should be separated from the matter below by conspicuous black horizontal line. The deputy detailed by the collector (§ 451.7) to inspect articles offered for export and to verify the quantity thereof, will fill in the last two lines of the legend on each case, crate, or other package in letters and figures of the same length. In the case of small packages to be exported by parcel post, a corresponding reduction may be made in the length of the letters and figures in the legend.

-----	for export
(Name of article)	
By -----	
Fac. No. -----	Dlst. -----
Inspected -----	19-----
-----	D. C.

(b) When one or more packages which bear marks or brands required by § 451.4

(b), (c), or (d) are crated, such marks and brands must be plainly visible.

(c) The shipping cases should in no instance be fastened until their contents have been inspected and verified by the deputy detailed for that purpose. (See § 451.7.)

[Regs. 73, June 14, 1928, as amended by T. D. 4273, Oct. 30, 1929, T. D. 5352, 9 F. R. 3480]

§ 451.6 *Application for withdrawal and entry for exportation, Form 550, revised.* (a) After acceptance of the prescribed bond by the collector (§ 451.3), the principal named therein shall file with the collector of the district in which the place of manufacture is located, for each intended withdrawal, an application for withdrawal (and entry for exportation) on Form 550, revised. Such application shall be executed and filed in triplicate except for shipments by parcel post. Applications will be filed in duplicate for parcel-post shipments, except where the amount of tax involved is not in excess of \$10, in which case one copy only will be filed.

(b) When the contents of the shipping cases (packages) are not uniform, the manufacturer shall specify on application on Form 550, revised, by marks and numbers the contents of each such package. The "name of carrier"—that is, vessel or vehicle on which shipment will be carried from the exterior limits of the United States—unless known to the manufacturer, will be filled in by the agent of the manufacturer at the port of exportation, who will sign the entry as exporter. All copies of each application on Form 550, revised, must be clearly legible, completely filled in, and be given a serial number by the manufacturer, beginning with No. 1, and commencing again with No. 1 on July 1 of each year.

(c) In the case of shipments (other than by parcel post) of playing cards to Alaska and Hawaii without payment of tax for the use of military or naval forces of the United States, the application on Form 550 shall be modified as set forth in § 451.10 (a) (3), and shall be executed and filed in duplicate. The port of lading, name of vessel, and the port of destination need not be entered on the application Form 550, but in all other respects the preparation, execution, and filing of such application form shall be in accordance with the provisions of this section.

[Regs. 73, June 14, 1928, as amended by T. D. 5352, 9 F. R. 3480]

§ 451.7 *Deputy's inspection.* Upon receipt of each application the collector will, if the tax liability thereon will not increase the outstanding liability beyond the penal sum of the export bond, immediately after signing each copy of Form 550, revised, detail a deputy collector to make the inspections and verifications.

(a) It will be the duty of the deputy to determine definitely that the shipment contains the exact kind and quantity of goods specified in the application and meets the requirements of § 451.4. He shall supervise the packing and affix his signature, also the dates of inspection in the legend to be stenciled or branded on each shipping case.

(b) Where the amount of tax involved in a parcel-post shipment does not exceed \$10, the inspection of such articles by a deputy collector will be waived.

(c) Articles which have been inspected for export may be removed from the place of manufacture only for immediate exportation; any such articles found stored elsewhere except as provided in § 451.11 will be liable to seizure for forfeiture.

(d) (1) In case shipment is not removed from the place of manufacture for exportation within 10 days after inspection by the deputy, the manufacturer must advise the collector by letter as to the probable date of removal for export; if the order for the shipment has been canceled he will so state and request permission to return the article to stock.

(2) Where, after inspection of an export shipment by a deputy, but before removal, the manufacturer, for good and sufficient reasons, desires to change the name and address of the consignee thereon, he will forward both copies of Form 550, revised, left with him by the deputy with letter to the collector for correction, indorsement, and return. Any other change in respect to an export shipment must be approved by the Commissioner of Internal Revenue.

(3) A manufacturer who desires to return an export shipment to the place of manufacture must make application to the commissioner for permission so to do and identify the shipment, recite where it has been since it left the manufactory, where then held and in whose custody, and reasons for return. The commissioner will then issue appropriate instructions.

§ 451.8 *Deputy's report.* After inspection and verification of the articles by the deputy have been completed and the shipping cases have been made ready for delivery, the deputy will fill in and sign his report on each copy of application on Form 550, revised, and certify on each that he has compared them and that they agree in every respect. The shipment will then be released by the deputy to the manufacturer for delivery to carrier or into customs custody. (See § 451.9.) The deputy will then return one copy of Form 550, revised, to the collector of internal revenue for the district and deliver the other copies to the manufacturer for disposition as provided in § 451.10.

§ 451.9 *Delivery of shipments; bills of lading.* With the exception (1) of shipments of playing cards to Alaska or Hawaii without payment of tax for use of members of the military or naval forces of the United States, as to which see § 451.10 (a) (3); and (2) parcel post shipments, as to which see § 451.10 (b); the manufacturer, upon release of a shipment for export (§ 451.8) will deliver such shipment either to the carrier or directly for customs inspection, as follows:

(a) If the place of manufacture is located at the port of exportation, he will deliver the shipment directly for customs inspection and supervision of lading. A copy of the export bill of lading shall be procured and filed with the collector of customs. (See § 451.10 (a) (1).)

(b) If the place of manufacture is located elsewhere than at the port of exportation, he will deliver the shipment to the common carrier for transportation to the port of exportation. He shall procure two copies of the bill of lading covering such transportation. In case of exportation through a border port to foreign contiguous territory, the bill of lading will cover transportation to destination, and must show the routing, particularly the carrier which will deliver the shipment for customs inspection at the border; also that shipment was sent in care of the collector or deputy collector of customs at the border port. He will dispose of one copy of the bill of lading as provided in § 451.10 (a) (2), and transmit the other immediately by letter to the Collector of Internal Revenue for attachment to the copy of application

and entry on Form 550, revised, returned by the deputy.

[Regs. 73, June 14, 1928, as amended by T. D. 5352, 9 F. R. 3480]

§ 451.10 *Copies of Form 550, revised—*  
(a) *Disposition by manufacturer.* The several copies of application for withdrawal and entry for exportation, Form 550, revised, executed and delivered by the deputy to the manufacturer as provided in § 451.8, shall be filled in by the manufacturer, reporting the date of removal of shipment from the factory, and be disposed of as follows:

(1) If the place of manufacture is located at the port of exportation, the manufacturer shall file with the collector of customs of said port, at least 6 hours prior to lading, two copies of the application and entry on Form 550, revised. One copy will be treated as the customs entry in accordance with §§ 451.12, 451.13, and the other copy will be disposed of as provided in the section last referred to.

(2) If the place of manufacture is located elsewhere than at the port of exportation the manufacturer shall, if shipment is to be exported by vessel, immediately after delivery of the merchandise to the common carrier and obtaining the two copies of bill of lading required (§ 451.9 (b)), forward to his agent at the port of exportation two copies of application and entry on Form 550, revised, and one copy of the bill of lading. Such papers must reach the agent in sufficient time for him to file them with the collector of customs of the port at least 6 hours prior to lading. The agent will see that the "Name of carrier" or exporting vessel is properly filled in, give location of pier where it will be laden, and subscribe his name as exporter. In case of exportation to foreign contiguous territory by rail through a border port, the manufacturer will forward the two copies of Form 550, revised, and bill of lading immediately to the collector of customs of the border port through which the shipment will be routed for exportation. (§ 451.9 (b).)

(3) In the case of shipments of playing cards to Alaska or Hawaii without payment of tax for use of members of the military or naval forces of the United States the Form 550 shall be modified and disposed of as follows:

(i) The manufacturer shall insert on the original Form 550 immediately preceding the "Certificate of Mailing by

Parcel Post", a "Certificate of Receipt" as follows:

CERTIFICATE OF RECEIPT

I certify that the playing cards herein described, except for the discrepancies as listed below, were delivered to me on -----, 19----, and that said playing cards are intended for shipment or delivery only for consumption or use outside the jurisdiction of the internal revenue laws of the United States, or for delivery to a territory of the United States for the use of military or naval forces of the United States therein.

Discrepancies -----

-----

(Name)

-----

(Title)

(ii) If the shipment is to be made from the factory direct to the consignee in Alaska or Hawaii, the original Form 550, and the case, etc., containing the playing cards, shall be forwarded by the manufacturer to the consignee.

(iii) If the shipment is made to an Army port of embarkation or Navy supply depot for transshipment to Alaska or Hawaii, the original Form 550, and the case, etc., containing the playing cards, shall be forwarded by the manufacturer to the Army port transportation officer, or Navy supply officer, as the case may be.

(iv) Upon receipt and verification of the shipment, the consignee in the territory or the Army or Navy officer in the continental United States to whom the original Form 550 had been forwarded by the manufacturer shall execute the "Certificate of Receipt" appearing on such Form 550, note thereon any discrepancies in the shipment, and return the executed form to the manufacturer. Such executed form shall then be forwarded promptly by the manufacturer to the appropriate collector.

[Regs. 73, June 14, 1928, as amended by T. D. 5352, 9 F. R. 3481]

(b) *Parcel-post shipments.* The original copy of application and entry on Form 550, revised, covering shipments intended for exportation by parcel post, or shipments of playing cards by parcel post to Alaska or Hawaii for use of members of the military or naval forces of the United States showing date of removal of shipment from the factory, should be presented, together with the packages containing the goods, at the post office. Waiver of the right to with-

draw such packages from the mails must be indorsed on each package and signed by the manufacturer, who will request the postmaster or his agent to execute the certificate of mailing on the back of said form. Immediately thereafter such form should be forwarded by the manufacturer to the collector of internal revenue for the district. In case the tax on the shipment to be exported by parcel post is in excess of \$10, inspection and verification by a deputy collector will be made prior to removal and reported on Form 550, revised (§451.7).

[Regs. 73, June 14, 1928, as amended by T. D. 5352, 9 F. R. 3481]

§ 451.10a *Penalties.* Section 1820 (b) and 3320 (a) of the Internal Revenue Code impose severe penalties for dealing in, within the United States, playing cards upon which the tax properly due has not been paid, or for possessing playing cards with design to avoid payment of the tax thereon. This subpart applies to playing cards removed without payment of tax under the regulations in this part, and accordingly, any person possessing, using, or dealing in, such playing cards otherwise than as authorized by these regulations may be subject to penalties prescribed therein.

[T. D. 5352, 9 F. R. 3481]

SUBPART B—CUSTOMS PROCEDURE AT PORTS OF EXPORTATION

SOURCE: §§ 451.11 to 451.16 contained in Regulations 73, June 14, 1928.

§ 451.11 *Delay in lading at the port of exportation.* (a) If, on arrival at the port of exportation of the articles described in an export entry, the vessel from any cause be not prepared to receive the same, such goods may be permitted with the consent of the transportation company, to remain in its custody for a period not exceeding 15 days, until released by permit issued by the collector of customs. Storage elsewhere for like cause and not exceeding the same period must be approved by the collector of customs.

(b) In the event of any further delay, the facts will be reported to the Commissioner of Internal Revenue. Unless he approves an extension, he will request the collector of customs to release the goods for immediate return to the place of manufacture.

§ 451.12 *Inspection and lading.* The collector of customs with whom entry on

Form 550, revised, must be filed will fill in on the back of each copy of said form the order for inspection and lading. The inspector of customs will carefully examine the packages of the articles described in the entry. He will examine the contents of such packages as are found broken or tampered with or which he is led to suspect do not contain the merchandise originally packed therein, and make a special report thereon. The inspector of customs will make note in his report of any deficiency in quantity or discrepancy between the article inspected and that described in the entry. After having complied with the order of inspection and after the goods have been duly laden on board the exporting vessel or car, the inspector will complete and sign the certificate of inspection and lading on the back of each copy of the entry on Form 550, revised. If the inspector discovers any evidence of fraud, he will detain the goods and notify the collector of customs who will inform the collector of internal revenue of the district in which said port is located. The collector of internal revenue will see that seizure is made and report immediately to the Commissioner of Internal Revenue.

§ 451.13 *Certificate of exportation.* After inspection and lading (§ 451.12) and clearance for a foreign port of the vessel or car on which the articles described in the entry are laden, and after receipt of the export or through bill of lading (§ 451.9), the collector of customs will execute certificate of exportation on the back of each copy of the entry on Form 550, revised. Said collector will retain one copy for his entry record and transmit the other copy of the application and entry on Form 550, revised, fully executed, to the collector of internal revenue for the district from which the goods were shipped.

§ 451.14 *Credit for exportation in account kept with each bond.* The collector of internal revenue receiving the executed application and entry on Form 550, revised, from the collector of customs at the port of exportation, and finding no discrepancy or shortage reported, and inspection, lading, and clearance for a foreign port properly certified, will enter the appropriate credit in the account kept with the export bond. In case a shortage is reported, said collector will enter credit for the actual quantity exported and advise the manufacturer to

tender at once remittance of the amount of tax due on the shortage reported.

§ 451.15 *Procedure in case of noninspection by customs.* Where, for any reason, a shipment which should be inspected by customs is laden on board the exporting vessel or car without such inspection and supervision, the manufacturer will be required to furnish to the collector of internal revenue for the district from which the goods were shipped a landing certificate in accordance with the provisions of § 451.28, or "Proof of loss at sea," in accordance with the provisions of § 451.29, and if necessary, comply with § 451.30, relative to "Extension of time for presentation of proof," and with § 451.31, concerning "collateral evidence as to landing."

§ 451.16 *Penalty for fraudulent relanding of tobacco.* Every person who relands or causes to be relanded in the United States any tobacco manufactures which have been shipped for exportation under the regulations in this part without filing customs entry therefor and without the payment of duty thereon, with intent to defraud the revenue laws of the United States, or who receives such relanded manufactures, and every person who aids and abets any such relanding or receiving, is liable upon conviction to be fined not exceeding \$5,000 or imprisoned not more than 3 years, and all such manufactures so relanded are forfeitable to the United States.

#### SUBPART C—DRAWBACK OF TAX ON TOBACCO, SNUFF, CIGARS, AND CIGARETTES EXPORTED

SOURCE: §§ 451.17 to 451.31 contained in Regulations 73, June 14, 1928, except as noted following sections affected.

§ 451.17 *Scope of this subpart.* The regulations in this subpart, which follow, are established pursuant to the laws in respect to allowance of drawback on tobacco, snuff, and cigars, also cigarettes (under sec. 2136, I. R. C.), on which the tax has been paid by suitable stamps affixed thereto before removal from the place of manufacture, when the same are exported to a foreign country, equal in amount to the value of the stamps found to have been so affixed. Where reference is made in the regulations in this part, and in the forms prescribed, to exportation to a foreign country their provisions will apply to like shipments to Puerto Rico or to the Philippine Islands, the same as though such shipments were expressly mentioned.

§ 451.18 *Drawback claim.* Claim for allowance of drawback of internal-revenue tax paid on tobacco manufactures exported must be filed by the exporter on Form 901 with the collector of internal revenue for the district in which such manufactures are held. The place where such manufactures are held must be elsewhere than the bonded premises of a manufacturer of tobacco, snuff, cigars, or cigarettes. No claim for allowance of drawback of such tax will be entertained or allowed until, in addition to other provisions, evidence satisfactory to the Commissioner of Internal Revenue has been furnished that the stamps affixed to the packages were totally destroyed before clearance for export. Therefore, claim must be filed as above provided, in sufficient time to permit of compliance with the regulations in this part. Such claim must be filed in quadruplicate and must set forth where the goods are held, in order that a deputy, to be detailed by the collector, may make the required examination, and supervise the destruction of the stamps.

§ 451.19 *Deputy's examination.* The collector of internal revenue receiving a claim on Form 901 will immediately (after signing order on each copy of such claim) direct a deputy to proceed to the place where the merchandise is held and there make the examinations, inspections, and verifications hereinafter required.

(a) The deputy detailed by the collector will first examine the packages and satisfy himself that the contents of each package have been properly tax paid and that the stamps thereon are genuine and have not been reused. Since the date of cancellation of each stamp determines the rate of tax paid and value of the stamp, the deputy will satisfy himself that the dates have not been changed and will keep a memorandum of the stamps, by act of series, classes, denominations, and dates of cancellation, for the purpose of comparison with and verification of the schedule to be made of same in the entry on Form 901. In case the deputy discovers that the stamps affixed to the packages do not show that the full amount of tax due has been paid, or he has reason to suspect that any of the stamps are counterfeit or have been reused or in any way tampered with, or that any of the packages have been re-filled, he will seize the merchandise and

make report immediately to the collector of internal revenue.

(b) The deputy will supervise the destruction of the stamps. Any omission on the part of the exporter and false certification by the deputy in this respect will not only vitiate the claim but subject the deputy to immediate dismissal from the service. No particular mode of destroying the stamps is prescribed, but the use of any indelible preparation which will render the stamps illegible is approved.

(c) He will supervise also the packing of the packages in each shipping case immediately after the stamps thereon have been destroyed. (See also § 451.20.) Where a large number of packages of tobacco, snuff, cigars, or cigarettes are offered for export, a sufficient number of persons should be employed in destroying the stamps and packing the merchandise under the supervision of the deputy as will assure accomplishment in the least possible time.

§ 451.20 *Stenciling the shipping cases.* Each shipping case containing tobacco manufactures to be exported with benefit of drawback, packed under supervision of the deputy (§ 451.19 (c)) the record of whose contents must be shown in entry on Form 901 (§ 451.21), must be stenciled or plainly marked by the exporter in the same manner as provided in § 451.5 (a), except the legend, which will be as shown herewith, the first, third, and fourth lines of which must be filled in by the exporter and the last two by the deputy detailed by the collector (§ 451.19). The deputy will then immediately release them for delivery to carrier for transportation to the port of exportation or into customs custody (§ 451.23).

-----	(Name of article)	for export
-----	Drawback of tax claimed by	
-----	Int. Rev. Dist.	-----
-----	Inspected	-----19--
-----	----- D. C.	

[T. D. 4225, Oct. 4, 1928]

§ 451.21 *Schedule of stamps in entry.* The memorandum or schedule required to be made of the stamps (§ 451.19) must be transcribed accurately in entry on Form 901. Such entry must show in respect to each shipping case the date of packing, the marks and number, its

gross, tare, and net weight, and in respect to the stamps found affixed to the packages and destroyed, the kind thereof, act or series, class, the date of cancellation, and the factory number, district and state shown by the cancellations of the stamps or caution notice labels on the packages, the number of stamps and denominations thereof, the quantity of the article tax paid, the rate of tax, and the total value of the stamps. The exporter must complete the entry, recapitulation, and affidavit, and execute oath required.

[T. D. 4225, Oct. 4, 1928]

§ 451.22 *Deputy's report.* The deputy will, upon the conclusion of the work and the execution of customs entry (§ 451.21), execute his report on each copy of claim, Form 901, certifying also that he has compared all copies and found them to agree in every respect. The merchandise will then be released by the deputy to the exporter for delivery to carrier or into customs custody (§ 451.23); the deputy will mail or deliver three copies (one of them the original) of Form 901, claim for allowance of drawback of internal-revenue tax paid on tobacco manufactures exported, and entry for exportation thereof, each completed identically, immediately to the collector of customs (§ 451.23), and forward the other copy to the collector of internal revenue.

[T. D. 4225, Oct. 4, 1928]

§ 451.23 *Delivery of shipment.* (a) Shipments of tax-paid tobacco manufactures for export, after release by the deputy (§ 451.20), will be delivered by the exporter for customs inspection, etc., in accordance with the provisions of § 451.9, wherein reference to "the place of manufacture" will be understood to mean the place where the merchandise to be exported with benefit of drawback is held in these cases.

(b) In case the merchandise is held elsewhere than at the port of exportation, instead of forwarding one copy of the bill of lading to the agent at the port of exportation as provided in § 451.9, the exporter shall forward same direct to the collector of customs of the port. It will be necessary for an agent to represent the exporter at the port in respect to transfer of the shipment from the carrier terminal to the dock, arranging ocean transportation, etc. Such representation is not necessary in case of a

shipment on through bill of lading through a border port for exportation to contiguous foreign territory.

§ 451.24 *Customs procedure.* In the case of shipments of tobacco manufactures for export with benefit of drawback, the procedure by customs in respect to inspection, lading, export bill of lading, and certificate of exportation will be practically the same as provided in §§ 451.12, 451.13 in the case of shipments for export without the payment of tax, except that the collector of customs will retain one copy as customs entry and transmit two copies (one of them the original) of claim and entry on Form 901, fully executed, to the collector of internal revenue for the district from which the goods were shipped.

§ 451.25 *Drawback bond.* No claim for an allowance of drawback of tax on tobacco manufactures exported under the statute may be allowed until the claimant has filed a bond with good and sufficient sureties, to be approved by the collector of the district from which the goods are shipped, in a penal sum double the amount of tax for which claim for drawback is made, conditioned that he will procure, within a reasonable time, evidence satisfactory to the Commissioner of Internal Revenue that said tobacco, snuff, or cigars (or cigarettes) have been landed at some port without the jurisdiction of the United States or that after shipment the same were lost at sea and have not been relanded within the limits of the United States. Such bond may be executed with corporate surety or with individual sureties; if given with individual sureties, each individual surety will be required to furnish affidavit on Form 33 in duplicate. When drawback bond in duplicate is submitted to the collector, he will, if the bond meets with his approval, make indorsement to that effect on both the original and duplicate copies and hold them until the collector of customs returns two copies of claim and entry on Form 901, properly certified as to inspection, lading and clearance for export. (§ 451.24.) Forms 33 shall be attached to the respective copies of bond Form 902, executed with individual sureties.

§ 451.26 *Approval and submission of claim.* (a) The collector of internal revenue will immediately examine the two copies of the claim for drawback on

Form 901 received from the collector of customs (§ 451.24), and if satisfied that the claim is a valid one, he will indorse his approval thereon, attach one copy to the duplicate bond on Form 902 (§ 451.25) and forward same together with the other (original) copy of the claim to the Commissioner of Internal Revenue.

(b) Upon a review of the claim by the Commissioner of Internal Revenue, appropriate action will be taken, and the amount of allowance of drawback due will be certified for payment by warrant on the Treasurer of the United States. The draft in settlement of such claim will be sent to claimant at the address given on the claim.

§ 451.27 *Penalty for fraudulently claiming drawback.* One who fraudulently claims or seeks to obtain an allowance of drawback on merchandise on which no tax has been paid, or a greater allowance of drawback than the tax actually paid, is liable to forfeiture of triple the amount claimed or \$500, at the election of the Secretary of the Treasury.

§ 451.28 *Landing certificate.* (a) Each claimant for drawback of tax paid on tobacco, snuff, cigars, or cigarettes exported agrees in the bond that he is required to execute (§ 451.25) that he will procure within a reasonable time evidence satisfactory to the Commissioner of Internal Revenue that said tobacco, snuff, or cigars (or cigarettes) have been landed at some port without the jurisdiction of the United States, or after shipment the same were lost at sea, and have not been relanded within the limits of the United States. The landing certificate must give such description of the merchandise as will readily identify the drawback bond to which it relates and show the entry number.

(b) Such landing certificate shall be signed by a revenue officer of the foreign country to which the merchandise is exported unless it is shown that said country has no customs administration, in which case the certificate should be signed by the consignee or by the vessel's agent at the place of landing and sworn to before a notary public or other officer authorized to administer oaths and having an official seal. The certificate must be filed within 6 months from the date of exportation of the merchandise.

(c) One landing certificate may cover several consignments made by the same shipper to the same consignee or to a

general agent on the same date by the same vessel or car and to the same foreign port, provided each consignment is specifically and separately described in the certificate. A certificate in a foreign language must be accompanied by a sworn translation thereof.

(d) The landing certificate shall be filed with the collector of internal revenue with whom the drawback claim was filed, who shall forward it immediately to the Commissioner of Internal Revenue, attention Tobacco Division.

§ 451.29 *Proof of loss at sea.* When the exporter is unable to procure any landing certificate in consequence of loss at sea he shall file with the collector with whom he filed the drawback bond an application for relief, setting forth the extent of the loss and, if possible, the location and manner of shipwreck or other casualty at sea and the time of its occurrence. Such application must be accompanied by the affidavits of two or more creditable and disinterested persons as to the loss aforesaid. If the goods have been insured the exporter shall also file certificates by officers of the insurance companies or board of underwriters that the insurance has been paid, and that, to the best of their knowledge and belief the goods were actually destroyed at sea, and, when obtainable, affidavits of the master and mate of the vessel detailing the manner and extent of the loss and the time and location of the disaster. The aforesaid proof should be furnished to the collector within 6 months from the date of exportation.

§ 451.30 *Extension of time for presentation of proof required.* In case the exporter, from causes beyond his control, is unable to furnish the required proof of landing (§ 451.28) or loss at sea (§ 451.29) within the time prescribed he may make an application to the collector for an extension of time for production of the evidence. Such application must state specifically the cause of failure to produce the evidence and be verified under oath. One extension of 3 months will be granted, and, if necessary, upon a second application an additional 3 months will be granted, provided the sureties on the bond in respect to each application assent in writing under seal thereto and the collector of internal revenue upon forwarding such applications and assents of the sureties will indorse his opinion thereon as to the propriety of

granting the same and will certify as to the sufficiency of the bond.

§ 451.31 *Collateral evidence as to landing.* (a) In case of inability to produce the prescribed evidence of landing, application for relief will be made to the Commissioner of Internal Revenue, through the collector of the district from which the goods were shipped.

(b) Such application must be made under oath and recite the facts connected with the alleged exportation, setting forth the date of shipment, the kind, quantity, and value of the merchandise shipped, the name of the consignee, and the name of the vessel by and the port to which the shipment was made, and the date and amount of the bond covering such shipment, also state in which particular the regulations respecting the proofs of landing have not been complied with, and the cause of failure to produce such proofs; that such failure was not occasioned by any lack of diligence on his part or that of his agents; and that he is unable to procure any other or better evidence than that submitted with his application.

(c) Each such application should be supported by such collateral evidence as the exporter may be able to submit. The evidence may embrace original or verified copies of letters from consignees advising the shipper of the arrival or sale of the goods, with such other statements respecting the failure to furnish the prescribed evidence of landing as may be obtained from the consignee or other persons having knowledge thereof. Letters and other documents in a foreign language must be accompanied by sworn translations, and when the letters fail to identify sufficiently the goods the original sales account must be produced.

(d) The collector receiving such application and evidence will indorse thereon his opinion as to its validity and forward the same to the commissioner.

#### SUBPART D—DRAWBACK OF TAX ON STILLS EXPORTED

SOURCE: §§ 451.32 to 451.35 contained in Regulations 73, June 14, 1928.

§ 451.32 *Branding or stamping.* Allowance of drawback is restricted to stills "manufactured for export and actually exported." Every manufacturer of stills intended for exportation will brand or stamp upon each still, and in a conspicuous place, the words "for export."

When such stills are manufactured from metal plates the words "For Export" will be stamped thereon with a suitable die (the letters of which must in no case be less than one-half inch in length), and directly under the manufacturer's name, which must also be stamped or otherwise permanently affixed to each still. Where the still is constructed of or encased in wood, the manufacturer's name, as also the words "For Export," will be branded thereon.

§ 451.33 *Notice to collector of intention to export.* After the completion of the stills, and before the same are removed from the place of manufacture, the manufacturer will forward to the collector of his district the following notice:

-----  
-----, 19--  
SIR: You are hereby notified that the following-described stills manufactured by me [or us] on or about the ----- day of -----, 19--, are now in my [or our] manufactory at -----, from which they have never been removed, and that the same are intended to be exported to -----, by -----.<sup>1</sup>

[Here describe the number, kind, and capacity of each.]

§ 451.34 *Payment of tax; inspection by deputy; certificate.* Upon the receipt of such notice, and upon the payment of the tax due, the collector will, by himself or deputy, proceed to the place of manufacture, and will, if the stills are found to agree with those described in the notice, and are properly stamped or branded as here required, indorse upon such notice the following certificate, which notice and certificate will be retained by the collector and forwarded to the Commissioner of Internal Revenue with the claim on Form 901.

-----, -----, 19--  
I hereby certify that the stills herein described were duly inspected by me; that the tax due thereon has been paid, and that stamps Nos. —, —, — were issued therefor on the ----- day of -----, 19--.

-----  
Collector.

§ 451.35 *Procedure.* The manufacturer or exporter of stills will file claim for allowance of drawback of internal-revenue tax paid on stills exported on Form 901 (§ 451.18) modified for the purpose. The provisions of Subpart C of this part, relating to drawback of in-

<sup>1</sup>Here describe mode of conveyance.

ternal-revenue tax on tax-paid tobacco manufactures exported, so far as applicable, except bond and landing certificate, will apply to exportation of stills with benefit of drawback. No bond is required in case of tax-paid stills exported. The stamps denoting the payment of the tax on stills on which drawback is claimed must be attached to the claim on Form 901 before such claim and entry is forwarded or delivered by the deputy to the collector of customs at the port of exportation.

#### SUBPART E—REIMPORTATION OF DOMESTIC ARTICLES

SOURCE: §§ 451.36 to 451.38 contained in Regulations 73, June 14, 1928.

§ 451.36 *American manufactures returned; consignee to file affidavit with entry; identification as of domestic manufacture.* When articles which have been exported are returned to the United States, the collector of customs will in every case, without regard to the time the articles have remained abroad, require the consignee to file with his declaration and entry an affidavit on Customs Form 3311. Such affidavit shall clearly set forth the circumstances under which the articles were shipped from and returned to the United States, and that such shipment and subsequent return were made in good faith and not for the purpose of evading the internal-revenue tax on said articles. Unless such affidavit or other satisfactory proof of the actual bona fide exportation is furnished, the articles so returned will be detained by the collector and the case reported to the Secretary of the Treasury. Where articles exported under internal-revenue laws, either in bond or with benefit of drawback, are returned to the United States in the original packages and can be fully identified as of domestic manufacture, the same, unless manufactured in a bonded warehouse, will be admitted to entry as reimported domestic articles, and a duty equal to the internal-revenue tax imposed thereon will be collected. Unless so identified, or if manufactured in a bonded warehouse, the same will be treated as imported articles, subject to the same rate of duty as if originally imported.

§ 451.37 *American tobacco manufactures returned.* When manufactured tobacco, snuff, cigars, or cigarettes, produced in factories operated under the internal revenue laws of the United

States, which have been exported, and upon which no internal-revenue tax has been paid or upon which such tax has been paid and refunded by allowance or drawback, are returned, they are liable to customs duty equal to the tax imposed by the internal-revenue laws upon such articles.

(a) All returned American cigars, cheroots, and cigarettes produced in factories operated under the internal-revenue laws must have customs inspection stamps affixed to denote payment of duty thereon, but need not have internal revenue stamps affixed. Customs Regulations (19 CFR 11.1), in respect to cigars and cigarettes, provide that inspectors shall write across the face of the customs inspection stamp, in red ink, "American goods returned," and their initials.

(b) All returned American manufactured tobacco produced in factories operated under the internal-revenue laws must have the proper internal revenue stamps, in payment of the duty, affixed and canceled before release from customs custody. Customs Regulations (19 CFR 11.2) provide that no customs inspection stamp need be affixed to returned American manufactured tobacco, but the packages of such tobacco shall be marked or stamped, preferably over the internal revenue stamp, with the inscription, "American goods returned."

(c) Tobacco products produced in customs bonded manufacturing warehouses, Class 6, and exported pursuant to law, are, upon their return to the United States, subject to the same rate of duty as if originally imported and to the same internal revenue tax as similar articles of foreign production. Therefore internal revenue stamps in payment of the legal tax shall be affixed to such articles in addition to customs stamps denoting the payment of duty thereon.

(d) Returned American tobacco manufactures after release by customs may not be received on the bonded premises of any internal revenue cigar or tobacco factory, except as provided in § 140.108. (§ 140.133.)

§ 451.38 *Returned oleomargarine, adulterated butter, etc.* Oleomargarine, adulterated butter, mixed flour, or playing cards produced in the United States and exported without the payment of tax will, upon reimportation, be liable to customs duty equal to the tax imposed by the internal revenue laws upon such

products. All packages of reimported oleomargarine, adulterated butter, mixed flour, or playing cards must have customs inspection stamps affixed to denote payment of duty thereon. Such packages are not required to have internal revenue stamps affixed.

**SUBPART F—BONDED INTERNAL REVENUE  
TOBACCO EXPORT WAREHOUSES**

SOURCE: §§ 451.40 to 451.58 contained in T. D. 5549, 12 F. R. 792.

§ 451.40 *Tobacco export warehouses.* Subject to the approval of the Commissioner of Internal Revenue, bonded internal revenue warehouses may be established for the purpose of exporting in accordance with the regulations in this subpart, unstamped (non-taxpaid) tobacco products received from factories bonded and registered under the internal revenue laws and regulations.

§ 451.41 *Application to establish warehouse.* (a) Any person desiring to establish a bonded tobacco export warehouse under the regulations in this subpart must make application in writing to the collector of internal revenue of the district in which the warehouse will be located, giving the location and a detailed description of the premises to be bonded and used.

(b) The collector shall detail one of his deputies to make an inspection of the particular premises intended to be used as the bonded tobacco export warehouse. The deputy shall furnish a report showing the particulars relating to the location, construction, and dimensions of the building in which it is proposed to establish the bonded tobacco export warehouse. If less than the entire building will be used, the deputy should show what room or rooms are intended to be used as the tobacco export warehouse premises, the location of all doors, windows, and other openings in the space to be used, and report any other facts to show the suitability of the premises for the purpose intended.

(c) The application, as well as the report of the deputy making the inspection of the premises of the proposed tobacco export warehouse, shall be forwarded to the Commissioner with the recommendation of the collector who will state whether in his opinion there is justification for the establishment of such a warehouse.

§ 451.42 *Warehouse bond.* (a) When an application to establish a bonded tobacco export warehouse is approved by the Commissioner, the applicant must furnish to the collector a bond on Form 549 appropriately modified. The bond shall be executed in duplicate in a penal sum sufficient to cover the amount of tax which may at any time constitute a charge against the bond and in no case less than \$1,000.00. A bond may be executed in anticipation of approval of the application and be transmitted to the collector with the application.

(b) When the bond, in duplicate, is submitted to the collector, he shall, if the bond meets with his approval, make endorsement to that effect on both the original and duplicate of the bond and forward the duplicate copy to the Commissioner. Bonds required under the regulations in this subpart may be executed with corporate surety or with at least two individual sureties. If given with individual sureties, each such surety shall be required to furnish affidavit in duplicate on Form 33, which shall be attached to the original and duplicate of the bond, respectively.

(c) If the principal on the bond is an incorporated company, there shall be submitted in duplicate with the bond, copies of the by-laws or resolutions showing what officer or officers are authorized to sign the corporate name and affix the corporate seal, also transcripts in duplicate showing the election of officers, or a statement in duplicate showing that such documents have been filed previously in connection with another bond, a full description of which bond shall be given. The copies required must be authenticated by an officer of the corporation under seal.

(d) The collector of internal revenue for the district in which the bonded tobacco export warehouse is located shall promptly notify the Commissioner of Internal Revenue of the death, financial irresponsibility, insolvency, or withdrawal of any of the parties to the bond, or of any circumstances requiring a new bond to protect the interest of the Government.

(e) The liability under a bond furnished under the regulations in this subpart shall be a continuing one, subject to increase upon receipt in the warehouse of unstamped tobacco products from bonded internal revenue factories and to decrease as proof of exportation herein-

after required is received by the collector of internal revenue for the district in which the warehouse is located. When the limit of liability under any bond has been reached, no further shipments of unstamped tobacco products shall be received into or withdrawn from the warehouse until the liability has been reduced sufficiently by credits for withdrawals for which satisfactory proof of exportation is furnished or until a new bond has been filed. Alterations in the premises of a bonded internal revenue tobacco export warehouse may be made only upon the approval of the collector, and with the consent of the surety on the bond. The collector shall assign a number to each warehouse in his district, beginning with No. 1.

§ 451.43 *Sign.* (a) A conspicuous sign in the English language must be placed at the main entrance to each warehouse, in form as follows:

Bonded Internal Revenue Tobacco Export  
Warehouse No. -----, ----- district  
of -----.

(b) The sign must show clearly the number of the warehouse and internal revenue district.

(c) Neglect to keep this sign posted shall be sufficient ground for the withdrawal of the right to continue the operation of the warehouse.

§ 451.44 *Requirements in regard to operation.* (a) No warehouse shall be used until the application to establish has been approved by the Commissioner and the warehouse bond has been approved by the collector. All the doors, windows, and other openings of a bonded internal revenue tobacco export warehouse must be secured by satisfactory locks or fastenings when the warehouse is not in operation. The warehouse premises may be inspected by an internal revenue officer at any time. No shipment of non-taxpaid tobacco products consigned to the warehouse shall be received into the warehouse until the collector has been notified and a deputy is detailed by him to supervise receipt of the shipment into the bonded premises of the warehouse and to execute the necessary certificate of receipt on the application, Form 550, appropriately modified by the manufacturer to cover the shipment. No shipment of non-taxpaid tobacco products may be withdrawn from the warehouse for export unless approved by the collector and inspected and released by one of his deputies as hereafter required by

the regulations in this subpart. The proprietor shall see to it that all non-taxpaid tobacco products received are properly and conveniently stored within the bonded premises of his tobacco export warehouse and see that no articles other than tobacco products intended for export are kept in such warehouse. An inventory of the tobacco products on hand in such warehouse may be taken at any time at the direction of the collector or of the Commissioner. Unstamped tobacco products delivered to the export warehouse, which are found stored outside of the bonded premises of the warehouse without the approval of the Commissioner shall be subject to seizure for forfeiture to the United States. The deputies detailed to supervise receipts of shipments into the warehouse and to inspect and release any shipments to be withdrawn therefrom, shall report any irregularity to the collector.

(b) A bonded internal revenue tobacco export warehouse may be discontinued upon application of the proprietor or its right to operate may be terminated by the Commissioner for reasonable cause.

§ 451.45 *Proprietor's account.* The proprietor of a bonded internal revenue tobacco export warehouse must keep an accurate account, which will show with respect to each month all tobacco manufactures on hand at the beginning of the month, received, withdrawn for export, or returned to manufacturers during the month, and on hand at the close of the month. The proprietor shall render a statement, in duplicate, to the collector for the district on or before the tenth day of each month, showing the above information for the preceding month.

§ 451.46 *Deliveries to warehouses by manufacturers.* (a) The provisions of Subpart A of this part except as modified by the provisions of this subpart apply to shipments of tobacco, snuff, cigars, or cigarettes, without payment of tax, from a factory to a bonded internal revenue tobacco export warehouse for subsequent exportation. A manufacturer desiring to make such shipments shall first furnish to the collector of the district in which his factory is located consent of the surety on his factory export bond, Form 549, to make such shipments. The consent of the surety must be filed in duplicate on Form 542, appropriately modified in accordance with instructions from the collector. Each such withdrawal must be made under an application on Form

550, modified in conformity with instructions from the collector. The manufacturer shall prepare the modified application, Form 550, in triplicate and shall type on the reverse side thereof or attach thereto a certificate reading as follows:

CERTIFICATE OF RECEIPT

I certify that the tobacco manufactures herein described, except as listed below have this ---- day of ----- 19--., been received in bonded internal revenue tobacco export warehouse No. -----, district of -----, under my supervision for subsequent exportation.

Discrepancies:-----  
-----  
-----

(Name)

(Title)

(b) The manufacturer shall file his application with the collector of internal revenue for his district. If the collector approves of the application he will execute the "Collector's Order to Deputy" on each copy and detail a deputy to inspect the shipment. The deputy at the conclusion of his inspection shall execute the "Deputy's Report" on each copy of the application, Form 550, and shall return one copy of the application to the collector and deliver the other two copies to the manufacturer.

(c) The manufacturer shall complete the copies of the application, Form 550, delivered to him by the deputy, to show date of removal of the shipment and shall transmit both copies of the completed form to the proprietor of the warehouse to which the shipment is made.

(d) The responsibility for the delivery to a bonded internal revenue export warehouse of a shipment removed from the factory under the regulations in this subpart shall rest upon the manufacturer making the withdrawal, who will be liable for the internal revenue tax on tobacco products shipped or delivered otherwise than in accordance with the regulations in this subpart.

§ 451.47 *Receipts in warehouse.* The collector of internal revenue for the district in which the warehouse is located must be notified immediately by the proprietor upon arrival of each shipment of tobacco products at the warehouse in order that the collector may detail one of his deputies to check the shipment and supervise receipt into the bonded premises of the warehouse. At the conclusion of his detail the deputy

shall execute the certificate of receipt on each copy of the appropriately modified Form 550 received by the proprietor of the warehouse from the manufacturer and deliver both completed copies to his collector. One copy of the Form 550 shall then be forwarded promptly by the collector of the district in which the warehouse is located to the collector of internal revenue for the district from which the shipment was made.

§ 451.48 *Credit for shipment by a manufacturer.* Upon receipt of a copy of Form 550 executed to show receipt of the shipment in the warehouse and where no discrepancy or shortage is reported, the collector of internal revenue for the district from which the shipment originated, will enter the appropriate credit in his account kept with the manufacturer's export bond, Form 549. In case a shortage is reported, the collector will enter credit for the actual quantity received into the warehouse and advise the manufacturer to tender at once remittance of the tax due on the shortage reported.

§ 451.49 *Withdrawals from warehouse.* The proprietor shall file for each intended withdrawal from his bonded internal revenue tobacco export warehouse, an application on Form 550 appropriately modified in conformity with instructions from the collector for his district. For shipments other than by parcel post Form 550 shall be filed in triplicate and for shipments by parcel post in duplicate. A number of separate parcel post packages may be included under one application, provided a list containing a description of each separate parcel covered by the application is submitted with each copy of the application. To facilitate the inspection of such a parcel post shipment by the deputy, the parcels should be grouped according to their size and contents. Each application shall be given a serial number by the proprietor, beginning with No. 1 and commencing again with No. 1 on July 1 of each year. The copies of each application must bear the same serial number as the original, and the original and all copies must be completely and legibly filled in to show the information as required on the form. The collector, if he approves of the application, shall execute his order to his deputy on all copies and deliver the copies to the deputy detailed to inspect the shipment and release it for export.

§ 451.50 *Inspection and report by deputy*—(a) *Inspection.* The deputy, upon receipt of the copies of the application on modified Form 550, with the collector's order executed thereon, shall inspect the shipment to determine that it consists of the class and quantity of merchandise as specified in the application and shall permit only the containers or articles described to be withdrawn thereunder. Shipping containers shall not be closed and fastened until after their contents have been inspected and verified by the deputy.

(b) *Report.* After inspection and verification of the shipment have been completed, and the shipping containers have been made ready for removal, the deputy shall fill in and sign his report on each copy of the application, Form 550. The shipment shall then be released by the deputy for removal from the warehouse for export. The deputy shall return one copy of the Form 550 to the collector of the district at once, and deliver the other copies to the proprietor or his agent to be disposed of as hereinafter required.

§ 451.51 *Delay in removal; cancellation of shipment.* In case a shipment is not removed from the bonded internal revenue tobacco export warehouse within ten days after being inspected and released by the deputy for that purpose, the proprietor must advise the collector of internal revenue for the district in which the warehouse is located as to the probable date of removal. If the order for the shipment has been canceled, the proprietor should so state and request permission to cancel his application and retain the merchandise in the stock in his warehouse.

§ 451.52 *Change in consignee.* If, after inspection and release by the deputy, but before removal of the shipment, the proprietor for good and sufficient reasons desires to change the name and address of the consignee, the proprietor shall forward to the collector for correction and endorsement the copies of the Form 550 left with him by the deputy, accompanied by a letter setting forth his reasons for the change. Any other change with respect to the shipment must be approved by the Commissioner.

§ 451.53 *Removal and delivery of shipment.* After the shipment has been released by the inspecting deputy for ex-

port, the shipment shall be handled by the proprietor or his agent as follows:

(a) *If shipped other than by parcel post.* (1) If the warehouse is located at the port of exportation, the shipment shall be delivered directly into the custody of the proper customs officer at the port for customs inspection, supervision of lading, and exportation.

(2) If the warehouse is located elsewhere than at the port of exportation, the shipment shall be consigned to the collector of customs at the port of exportation and shall be delivered to the carrier for transportation to the port.

(b) *Parcel post shipments.* Shipments intended for exportation by parcel post shall be presented directly to the post office by the proprietor or his agent.

§ 451.54 *Disposition of copies of Form 550 by proprietor of warehouse*—(a) *If shipped other than by parcel post.* The several copies of the modified application, Form 550, delivered by the deputy to the proprietor of the warehouse shall be disposed of as follows:

(1) If the warehouse is located at the port of exportation, the proprietor shall file with the collector of customs or customs officer in charge, at least six hours prior to lading, two copies of the Form 550. One copy completed by the customs authorities at the port to show inspection and lading, and clearance or exportation of the related shipment shall be filed with the collector of internal revenue for the district in which is located the tobacco export warehouse from which the shipment was made for export. The other copy of the Form 550 will be retained by customs.

(2) If the warehouse is located elsewhere than at the port of exportation, the proprietor shall, after delivery of the shipment to the common carrier, forward to his agent at the port of exportation the two copies of the related Form 550, which must reach the agent in sufficient time for him to file them with the collector of customs or the customs officer in charge at the port at least six hours prior to lading. The agent will see that Form 550 is filled in to show the name of the exporting vessel and the place or pier where the shipment is to be laden and will subscribe his name as exporter. In the case of exportation to a contiguous foreign country by rail or air through a border port, the proprietor of the warehouse will forward the two copies of Form 550 to

the collector of customs or customs officer in charge of the border port through which the shipment will clear the United States.

(b) *Shipments by parcel post.* If the shipment is to be made by parcel post, the proprietor shall execute on each package in the shipment a waiver of his right to withdraw the package from the mails and then, at the time of mailing, present the original Form 550, with the list attached if a number of parcels are covered by the Form 550 (see § 451.49), to the postmaster or his agent for execution of the certificate of mailing, as provided for on the back of the Form 550. The original Form 550 shall be forwarded promptly thereafter by the proprietor to the collector of internal revenue for the district in which the warehouse is located.

§ 451.55 *Return of shipment to warehouse.* If, after removal the proprietor desires to return a shipment to the bonded premises of his tobacco export warehouse, he must make application to the Commissioner for permission to do so. The proprietor must identify the shipment, set forth where it has been since it left the warehouse, where held, and in whose custody it is at the time of making application, and the reasons for return. Permission and appropriate instructions must be received from the Commissioner before the merchandise is returned.

§ 451.56 *Tax liability.* Responsibility for the proper exportation of tobacco products withdrawn from the warehouse under the regulations in this subpart shall rest upon the proprietor of the warehouse making the withdrawal, and he will be liable for the internal revenue tax on the tobacco products shipped or delivered otherwise than in accordance with the regulations in this subpart.

§ 451.57 *Credit for shipment.* Upon receipt of a copy of the application, modified Form 550, showing inspection, lading, and exportation of a shipment under customs supervision, with no discrepancy or shortage reported, or in the case of a shipment made for export by parcel post, upon receipt of a copy of Form 550 with certificate of mailing properly executed, the collector of internal revenue shall enter the proper credit in his account, Form 94, kept with the bond of the proprietor of the warehouse under which the shipment was withdrawn. In case a shortage is reported,

the collector shall enter credit for the actual quantity of tobacco products exported and require the proprietor to pay the amount of tax due on the shortage reported.

§ 451.58 *Penalties.* Sections 2160 and 2173 of the Internal Revenue Code impose severe penalties for the possession, use, or dealing in, within the United States (including its Territories), of manufactured tobacco, snuff, cigars, and cigarettes upon which the tax properly due has not been paid. These provisions of law apply to tobacco products removed without payment of tax under the regulations in this subpart, and accordingly, any person possessing, using, or dealing in, such products otherwise than as authorized by the regulations in this subpart, may be subject to the penalties prescribed in such provisions of law.

## Part 452—Taxes Under the Trading With the Enemy Act

### SUBPART B—PROPERTY VESTED IN THE ATTORNEY GENERAL ON AND AFTER DECEMBER 18, 1941

Sec.	Definitions.
452.21	Definitions.
452.22	Application of part.
452.23	Protection of internal revenue prior to tax determination.
452.24	Computation of taxes.
452.25	Payment of taxes.
452.26	Interest and penalties.
452.27	Claims for refund or credit.

**AUTHORITY:** §§ 452.21 to 452.27 issued under 53 Stat. 467, sec. 1, 60 Stat. 925; 26 U. S. C. 3791, 50 U. S. C. App. 36.

**SOURCE:** §§ 452.21 to 452.27 contained in Treasury Decision 5612, 13 F. R. 2039. Redesignation noted at 14 F. R. 5200.

§ 452.21 *Definitions.* When used in this part:

(a) The term "Attorney General" includes the Alien Property Custodian whose functions were transferred to the Attorney General pursuant to Executive Order 9788, 11 F. R. 11981; 3 CFR, 1946 Supp., and any other officers and agencies to which such functions are transferred or assigned pursuant to such Executive order, or otherwise.

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

(c) The term "person" includes an individual, a trust, estate, partnership, company, or corporation, and any entity having or claiming an interest in vested

property or liable or charged with liability to internal revenue tax in connection with such property.

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

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

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

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

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

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

(j) A term not defined in this section shall have the meaning, if compatible with the context, imputed thereto under the Internal Revenue Code.

§ 452.22 *Application of part—(a) Property covered.* This part is applicable in connection with property vested in the Attorney General on and after December 18, 1941. It is not applicable in connection with property or interest in property so vested or acquired by the United States prior to December 18, 1941, which property or interest is governed by Treasury Decision 4168, as amended by Treasury Decision 4254, January 7, 1929,

and Treasury Decision 4514, approved January 18, 1935 (26 CFR, 1938, ed., 452.1-452.10).

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

§ 452.23 *Protection of internal revenue prior to tax determination—(a) Suits and claims for return of vested property—(1) General.* The provisions of this paragraph apply in cases where there has been no final or tentative determination of internal revenue tax liability. In such cases vested property shall not be returned except in accordance with this paragraph.

(2) *Notice to Commissioner—(i) Suits for recovery.* Where suit for the return of vested property has been instituted under section 9 of the act, within a reasonable time after answer has been filed or after beginning of the trial of the case, the Attorney General shall in writing notify the Commissioner of the property involved and the name, address, citizenship, residence, and business organization of the claimant, and any other pertinent information.

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

(3) *Return of property—(1) Without security.* Vested property, the subject of a suit or proceeding pursuant to the Trading With the Enemy Act, may be returned without security prior to determination of applicable internal revenue taxes and prior to the judgment of the court or publication of the order of

the Attorney General directing such return, to the following described claimants under the conditions hereinafter stated:

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

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

(i) *When security required.* Except as provided in subdivision (i) of this subparagraph vested property shall not be released prior to determination of tax liability without security satisfactory to the Commissioner, but determination of tax liability will be expedited in order that release of the property or of the security shall not be unnecessarily delayed.

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

(1) *Bond.* A bond of the claimant conditioned upon payment of the full amount of internal revenue taxes determined to be due, filed with the collector in such amount, and with such sureties, as the Commissioner deems necessary. The sureties may be only surety companies certified by the Secretary of the Treasury as acceptable.

(ii) *Collateral security.* Collateral authorized by law deposited by the claimant

in lieu of surety conditioned upon the payment of the full amount of internal revenue tax determined to be due.

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

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

(2) *Action by Commissioner.* Upon receipt of the notice provided in subparagraph (1) of this paragraph the Commissioner shall, as soon as practicable and not later than 120 days after receipt of notice, unless the time is extended by the Commissioner after notice to the Attorney General: (i) Determine the taxes payable by the Attorney General in respect of the debtor, or (ii) advise the Attorney General of the provision, if any, to be made by him for payment of taxes in respect of the debtor.

#### § 452.24 Computation of taxes—

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

(b) *Relationship of Attorney General and former owner.* In the computation of tax liability under this part, except as otherwise provided in this part, the vesting of property shall be considered as not affecting the ownership thereof; and any act of the Attorney General in respect of such property (including the collection or operation thereof and any investment, sale, or other disposition and any payment or other expenditure) shall be considered as the act of the owner. Nevertheless, except as otherwise provided in the act or this part, insofar as taxes are

incident to vested property during the period of vesting, they shall be payable by the Attorney General, except that to the extent of the value of any of the property returned to the former owner the latter shall be liable for such tax not paid by the Attorney General. While tax incident to nonvested property is collectible out of both vested and nonvested property, the nonvested property will be regarded as the primary source of collection of such tax. In determining the amount of the liability to be paid out of property not vested by the Attorney General a computation shall be made covering the taxpayer's full period of liability, but without regard to the vested property, or the income received by, or the operations of, the Attorney General. The amount so computed shall be first asserted against and collected so far as practicable from the taxpayer or out of his property which is not vested. Such part of the total tax liability as is not paid by the taxpayer or collected out of property not vested shall be asserted against the vested property. (See §§ 452.25 and 452.27 (b).)

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

(d) *Periods for which computations made.* The amount of income, declared value excess profits, excess profits, capital stock, employment, and excise taxes under the internal revenue laws will be computed for each taxable year or period during all or part of which property is vested prior to the return of the property. (As to return of property prior to computation of tax see § 452.23.) Where vesting occurs during a taxable year or taxable period, any return filed or computation made covering vested or nonvested property should nevertheless be for the entire year or period. (See paragraph (b) of this section.) Unless facts are available indicating a liability for taxes for a taxable year or period occurring wholly prior or subsequent to the period of vesting of the property by the Attorney General, the computations under this part, both tentative and final, will be made only in respect of years and

periods during all or part of which the property is held by the Attorney General.

(e) *Tentative computation.* In order that the return of property or other appropriate action may not be delayed until the amount of taxes payable is finally computed and paid, a tentative computation of such amount will be made in every case, unless there are circumstances appearing to make such action inappropriate. Such circumstances would include (1) return of the property in accordance with § 452.23, (2) notice to the Commissioner of Internal Revenue by the person to whom the property is returnable or by the Attorney General that such person or the Attorney General, as the case may be, prefers that the return of the property be postponed until the amount of such taxes can be finally computed, or (3) belief on the part of the Commissioner that a final computation will not unduly delay the return of the property or other appropriate action. In making any such tentative computation of income, profits, or estate tax, the gross income or the gross estate, as the case may be, as shown by the records of the Attorney General (excluding therefrom items exempt from taxation) shall be considered as the net income or net estate, respectively, unless a tax return has been filed or facts are available upon which a more accurate computation can be made. In any case in which a duly authorized officer or employee of the Bureau of Internal Revenue has otherwise computed the amount of taxes payable in respect of any period, such computation will be accepted as a tentative computation, unless the facts clearly indicate that a more accurate computation can be made.

(f) *Final computation*—(1) *General.* A final computation of the amount of taxes payable by the person to whom property is returnable, or out of property to be returned, will be made as soon as practicable in every case. In any case in which the amount shown by a tentative computation has been paid, refund or credit of any amount paid in excess of the amount properly due will be made in accordance with the final computation, even though a claim therefor has not been filed, if the period of limitation applicable to the filing of such claim has not expired. However, if it is desired to protect the right to any credit or refund determined to be due, a claim for credit

or refund should be filed. (See § 452.27.) The sufficiency of any such claim in respect of an amount paid in accordance with a tentative computation under this part will not be questioned solely because facts upon which a more accurate computation could be made are not available or cannot be established at the time such claim is filed. Any such claim in respect of an amount paid in accordance with a final computation must, however, clearly set forth in detail under oath all the facts relied upon in support of the claim and must conform to the regulations applicable to an ordinary claim for refund or credit. (See, for example, § 29.322-2 (Regulations 111) and see § 452.27.)

(2) *Information required*—(i) *Income and profits taxes.* The following information submitted under oath by or for the taxpayer is necessary in each case for a final computation, for each taxable year for which the computation is to be made:

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

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

(1) The taxable year for which the return was made and the tax (whether income, declared value excess profits, or excess profits tax) paid;

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

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

(4) The office of the collector in which such return was filed.

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

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

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

(2) *Estates and trusts.* In the case of estates and trusts the fiduciaries shall file returns, including information returns as required by section 147 of the Internal Revenue Code.

(3) *Income tax forms to be used.* In the case of taxpayers engaged in trade or business in the United States Forms 1040-B and 1120, as may be appropriate, shall be used. Where the taxpayer is not engaged in trade or business in the United States Form 797-M may be used in lieu of Forms 1040-NB and 1120-NB.

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

(b) *Pursuant to final computations.* Upon a final computation of internal revenue taxes properly payable, the amount thereof remaining unpaid shall be paid by the Attorney General to the collector of internal revenue as soon as practicable after the final computation has been made, or, in case the property has been returned to the former owner, by such

owner. If the final computation shows that the full amount of internal revenue taxes properly payable is less than the amount previously paid, the difference shall be credited or refunded in accordance with the provisions of these and other applicable regulations. A final computation will not prohibit a subsequent recomputation if it is determined that the amount shown by the final computation is erroneous.

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

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

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

§ 452.27 *Claims for refund or credit.* (a) Claims for refund or credit must be filed within the period prescribed by section 322 of the Internal Revenue Code as modified by section 36 (c) of the Trade With the Enemy Act. Any such claim must contain a detailed statement under oath of all the facts relied upon in support of the claim and should be filed with the collector of internal revenue of the district in which the tax was paid. (See § 452.24 (f) (1).)

(b) Any act of the Attorney General for, or on behalf of, a taxpayer in respect of any claim under this part will be considered as the act of such taxpayer, unless such taxpayer notifies the Commissioner of Internal Revenue in writing, by the filing of a claim for refund or credit or otherwise, that he does not ratify such act. (See also § 452.24 (b).)

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

## Part 453—Release of Federal Tax Liens

- Sec.
- 453.1 Conditions precedent to issuance of certificate of release.
  - 453.2 Issuance of certificate of release upon acceptance of bond.
  - 453.3 Partial discharge of property; market value double amount of liability.
  - 453.4 Single bond covering release of lien and payment of income tax deficiency.
  - 453.5 Partial discharge of property on part payment.
  - 453.6 Written application and proof of market value required.
  - 453.7 Report of collector.
  - 453.8 Issuance of certificate of discharge.

AUTHORITY: §§ 453.1 to 453.8 issued under 53 Stat. 467; 26 U. S. C. 3791.

§ 453.1 *Conditions precedent to issuance of certificate of release.* The collector of internal revenue to whom is charged an assessment in respect of any internal-revenue tax shall issue a certificate of release of the tax lien whenever he finds that the liability for the amount assessed (together with all interest in respect thereof) has been satisfied or has become unenforceable. The word "unenforceable" as here used means unenforceable as a matter of law, and not merely uncollectible or unenforceable as a matter of fact. Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary non-possession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such period as the taxpayer by consent in writing may agree with the Commissioner shall constitute the time within which the tax assessed may lawfully be collected. Collectors should continue to investigate carefully all cases of delinquent taxpayers where notice of lien has been filed, with a view of obtaining, before the expiration of the collection period, such written consent for the extension of the collection period, whenever it is reasonably possible that the taxpayer may, in the future, acquire

property rights from which the tax liability may be satisfied.

[T. D. 4275, Nov. 13, 1929]

§ 453.2 *Issuance of certificate of release upon acceptance of bond.* The collector may in his discretion issue a certificate of release of the tax lien if he is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof) within the time agreed upon in the bond, but not later than 6 months prior to the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the Commissioner and the taxpayer. The form of any bond so furnished shall be the standard form (Form 1131), entitled "Bond for release of Federal tax lien." Such bond shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, except that, when specifically authorized by the Commissioner, such bond may be executed by a surety or sureties, individual or corporate, other than a surety company.

[T. D. 4275, Nov. 13, 1929, as amended by T. D. 4591, Oct. 11, 1935]

§ 453.3 *Partial discharge of property; market value double amount of liability.* The collector may also in his discretion issue a certificate of discharge of any part of the property subject to the tax lien if he finds that the fair market value of the part of the property not released from such lien is at least double the amount of the existing liability in respect of such tax plus double the amount of all liens prior to that of the tax lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property. Collectors must be conservative in determining property values and should make careful inquiry with respect thereto.

[T. D. 4275, Nov. 13, 1929]

§ 453.4 *Single bond covering release of lien and payment of income tax deficiency.* In cases where the collector issues a certificate to release of tax lien and at the same time an extension of time is granted for the payment of the deficiency in tax pursuant to the provisions of section 272, 871 (h), 890 (b), 893 (b) (3), or 3655 (b), I. R. C., a single bond may be accepted by the collector

conditioned upon the payment of the amount assessed (together with all interest in respect thereof) in accordance with the terms of the extension and not later than 6 months prior to the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the Commissioner and the taxpayer. Form 1131, mentioned in § 453.2, shall be used in these cases and shall be modified to meet the circumstances. Where a certificate of release of the tax lien has been issued by the collector, and the bond furnished to and accepted by the collector fully protects the interests of the United States with respect to the tax assessed, no additional bond will be required by the Commissioner as a condition to the granting of an extension of time for the payment of the deficiency in tax under the provisions of section 272, 871 (h), 890 (b), 893 (b) (3), or 3655 (b), I. R. C.

[T. D. 4275, Nov. 13, 1929]

§ 453.5 *Partial discharge of property on part payment.* In no case shall a certificate discharging property from a Federal tax lien be issued under the provisions of section 3674 (b), I. R. C., unless there is first a payment in such amount as the Commissioner has determined, to be applied towards satisfaction of the tax liability which gave rise to the Federal lien. In determining the amount to be paid the Commissioner will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is issued, as such value has been determined by the Commission in the light of the fair market value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien.

[T. D. 4446, July 10, 1934]

§ 453.6 *Written application and proof of market value required.* Any person desiring that a certificate discharging property from a Federal tax lien be issued under the provisions of section 3674 (b), should present to the collector of internal revenue charged with the assessment in respect to the tax, a written application requesting that the certificate be issued. Such application should give

the reasons for the request, and should clearly describe the property with respect to which the discharge is desired. In support of the request, the applicant must furnish the collector with proof sufficient to establish satisfactorily the fair market value of the property, the amounts, character, and dates (both of execution and of record) of all encumbrances of record prior to the Federal lien, as well as the amount and character of any unrecorded encumbrances believed to be prior to the Federal lien (including information as to how and when all such encumbrances arose). Appropriate references must be made to the pages and volumes of the recording books in which any such encumbrances have been recorded.

[T. D. 4446, July 10, 1934]

§ 453.7 *Report of collector.* (a) The collector should review the proof, check the accuracy of all material statements made, and forward to the Commissioner a report of the case together with his recommendation. The collector's report should include a statement of the expenses of his office incident to the placing and discharging of the lien as well as his conclusions with respect to the fair market value of the property involved and the value of the Government's interest therein, viewed in the light of such fair market value and the amount of liens and encumbrances on the property believed to have priority over the lien of the United States. Information as to the nature and amount of such encumbrances sufficient to enable a determination to be made whether, as a matter of law, they actually have priority over the Government's lien, should be included in the report.

(b) The report of the collector should also show the year or years and the dates of all assessments involved, the lists on which such assessments appear and the amounts thereof, the office or offices in which, and the dates when, notices of the Federal tax lien or liens were filed, and any payments made in partial satisfaction of the tax liability. In his discretion, the collector may submit with his report whatever documentary evidence he deems to be relevant. Upon receipt of the collector's report and recommen-

dation, the question whether a certificate of discharge may be issued and the amount to be paid as a prerequisite to its issuance, will be considered.

[T. D. 4446, July 10, 1934]

§ 453.8 *Issuance of certificate of discharge.* When so authorized by the Commissioner, the collector may issue a certificate discharging from the Federal tax lien such property as the Commissioner has authorized to be discharged, provided the amount determined by the Commissioner as a prerequisite to the issuance of the certificate is first paid to the collector to be applied by him towards satisfaction of the tax.

[T. D. 4446, July 10, 1934]

## Part 454—Resale of Personal Property Obtained by Government Under Distraint Proceedings

Sec.

454.1 Sale of personal property seized under distraint.

454.2 Resale after purchase for the United States.

SOURCE: §§ 454.1 and 454.2 contained in T. D. 4480, Oct. 8, 1934.

§ 454.1 *Sale of personal property seized under distraint.* (a) When personal property is seized by an internal revenue officer under a warrant of distraint, and is to be offered for sale at public auction, such officer shall fix a minimum price for the property, including the expenses of levy and the cost of advertising, and shall not accept a bid at such sale less than such minimum price. If the amount bid for the property at the sale is not equal to such minimum price, the officer conducting the sale may, in his discretion, declare the property to be purchased for the United States at such minimum price, or may adjourn the sale in accordance with section 3693, I. R. C. If at such sale, or adjourned sale, the property be neither sold to a bidder, nor purchased for the United States, it may again be offered for sale in accordance with the procedure outlined in section 3693, in which event the officer holding the sale may fix a new minimum price for the property.

(b) In fixing the minimum price, the officer charged with this duty must exercise the greatest care in order that a loss may be avoided if the property should be

purchased for the United States and resold. The officer making the sale should likewise use extreme caution in declaring the property purchased for the United States. Only such property as appears to have a resale value at or above the minimum price fixed should be bid in for the United States.

(53 Stat. 467; 26 U. S. C. 3791. Interprets or applies 53 Stat. 452; 26 U. S. C. 3695)

§ 454.2 *Resale after purchase for the United States.* (a) When such personal property has been declared purchased for the United States, the collector of the district in which the property was seized should make every effort to sell it at public sale. Tentative and informal bids from prospective purchasers may be procured. When the property is offered for resale, the highest of such bids should be used as an opening bid at the sale. If no such tentative bid can be procured, it is unlikely that the property would find a purchaser at a public sale. Whether under such circumstances the sale should be made rests in the discretion of the collector. If the property purchased for the United States consists of bonds or other securities of the Federal Government, these securities should not be sold but must be transmitted to the Commissioner of Internal Revenue for proper disposition immediately after they have been purchased for the United States.

(b) Ordinarily the resale of personal property so purchased for the United States should be advertised merely by public posting, that is, by display of notice at the collector's office, at the post office nearest the place where the resale is to take place, and at the place of resale. If the property is purchased for the United States at a price considerably less than its real market value, the collector may in his discretion insert an advertisement of resale in a newspaper. The selection of the place for such resale rests with the collector. If the place selected by the collector for resale is outside of the collection district where the property was seized the approval of the Commissioner of Internal Revenue must first be obtained. In making the request for the Commissioner's approval in such case the collector should state, with full details, the reasons for his request, and the procedure he expects to follow if the approval of the Commissioner be obtained. If it appears for the best interests of the United States, the Commissioner may ap-

prove the selection of the place for resale, but may alter or modify the proposed procedure.

(53 Stat. 467; 26 U. S. C. 3791. Interprets or applies 53 Stat. 452; 26 U. S. C. 3695)

### Part 455—Rewards for Information Leading to the Detection and Punishment of Persons Violating Internal Revenue Laws

§ 455.1 *Rewards for information.* (a) Under and by virtue of the provisions of section 3792 of the Internal Revenue Code, the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, does hereby offer for information that shall lead to the detection and punishment of persons guilty of violating the internal revenue laws, or conniving at the same, such reward as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall deem suitable. Any person furnishing such information shall be eligible for reward under this Treasury decision unless he was an officer or employee of the Department of the Treasury at the time he came into possession of his information or at the time he divulged it.

(b) The rewards hereby offered are limited in their aggregate to the sum appropriated therefor and shall be paid only in cases not otherwise provided for by law. The amount paid as a reward under the provisions of this Treasury decision is determined from the value of the information furnished. Payment of rewards will be made as promptly as the circumstances of the case permit.

(c) Information relative to violations of the internal revenue laws, furnished by persons desiring to claim rewards under the provisions of this Treasury decision, may be submitted in writing to the Commissioner of Internal Revenue, Washington 25, D. C., or to the Office of the Intelligence Unit, the Technical Staff, the Internal Revenue Agent in Charge or the Collector of Internal Revenue, in the locality in which the informant resides, or it may be given in person to the Office of the Chief of the Intelligence Unit in Washington, D. C., or to any of the above-mentioned field offices.

(d) If the information is given in person, either orally or in writing, the name

and official title of the person to whom it is given should be ascertained, as these data, together with the date on which the information was given, must be included in the formal claim for reward when filed.

(e) An informant who intends to claim a reward should notify the person to whom he gives his information of such intention, and should file formal claim therefor as soon thereafter as practicable. Claims for reward under the provisions hereof shall be made on Form 211, which may be obtained from Collectors of Internal Revenue or from the Bureau at Washington 25, D. C. Such claims for reward should be executed before a notary public or other officer duly authorized by law to administer oaths, and should be transmitted to the Commissioner of Internal Revenue, Washington 25, D. C., for the attention of the Chief Counsel.

(53 Stat. 467; 26 U. S. C. 3791. Interprets or applies 53 Stat. 467; 26 U. S. C. 3792) [T. D. 5661, 13 F. R. 6018]

### Part 457—Restamping Cases

Sec.

- 457.1 Statutory authority; liquor, tobacco.
- 457.2 Statutory authority; oleomargarine.
- 457.3 Regulations prescribed.
- 457.4 Applications.
- 457.5 Loss or destruction in transit.
- 457.6 Loss or destruction before or after shipment.
- 457.7 Inspection of packages.
- 457.8 Inspection of spirits in barrels.
- 457.9 Expense.
- 457.10 Additional evidence.
- 457.11 Bottled spirits.
- 457.12 Procedure.
- 457.13 Investigation.
- 457.14 Fermented malt liquors.
- 457.15 Failure to file application for restamping liquors.
- 457.16 Report where repackaging is required.
- 457.17 Authorization.
- 457.18 Repacking and restamping.
- 457.19 Issuance of stamps.
- 457.20 Credit for stamps issued.
- 457.21 Receipt.

**AUTHORITY:** §§ 457.1 to 457. 21 issued under 53 Stat. 467; 26 U. S. C. 3791. Interpret or apply 53 Stat. 252; 26 U. S. C. 2313.

**SOURCE:** §§ 457.1 to 457.21 contained in Treasury Decision 4744, 2 F. R. 1105.

§ 457.1 *Statutory authority; liquor, tobacco.* Sections 2103 (b), 2112 (b), 2802 (b), 3030 (b) (1), and 3152 (d), I. R. C., provide that the Commissioner

of Internal Revenue may, under regulations prescribed by him with the approval of the Secretary of the Treasury, issue stamps for restamping package; of tobacco, snuff, cigarettes, cigars, distilled spirits, wines, and fermented liquors, which have been duly stamped, but from which the stamps have been lost or destroyed by unavoidable accident.

**CROSS REFERENCES:** For Bureau of Customs regulations relating to the marking and stamping of spirits, wines, malt liquors, and alcoholic fruit juices in casks and similar containers, see 19 CFR 11.7. For the restriction of importation regulations, and the marking requirements for liquors, see 19 CFR 12.37, 12.38.

§ 457.2 *Statutory authority; oleomargarine.* Section 2313, I. R. C., provides with respect to oleomargarine stamps that "the provisions of existing law governing the engraving, issue, sale, accountability, effacement, and destruction of stamps relating to tobacco and snuff, as far as applicable, are hereby made to apply to stamps provided for by this section."

**CROSS REFERENCES:** For treatment of oleomargarine when imported by mail under the Bureau of Customs regulations, see 19 CFR 9.8. For regulations relating to detention and reporting of imported oleomargarine, see 19 CFR 11.5.

§ 457.3 *Regulations prescribed.* The regulations in this part are prescribed in conformity with the provisions of law above cited.

§ 457.4 *Applications.* Applications for restamping should be made in writing; to the collector of internal revenue for the district in which the packages to be restamped are situated. With respect to containers of distilled spirits required to bear strip stamps by section 2803 (b), I. R. C., the procedure outlined in §§ 457.11–457.13 hereof should be observed. The applicants should state in detail the number of packages, description of the contents, where the packages are located, the kind and denomination of the stamps lost or destroyed, and the nature of the applicant's interest in the property.

§ 457.5 *Loss or destruction in transit.* If the stamps were lost or destroyed in transit, the application should be accompanied by an affidavit of the consignor that the packages were properly stamped when shipped and, if possible, the affi-

davit of some one having knowledge of the facts attending their loss or destruction en route.

§ 457.6 *Loss or destruction before or after shipment.* In the event the stamps were lost or destroyed either before or after shipment and while in the possession of the applicant, the application should be accompanied by an affidavit of the applicant or some one in his employ stating that the packages were once duly stamped or properly stamped when received, as the case may be, and detailing all the circumstances connected with the destruction of the stamps.

§ 457.7 *Inspection of packages.* When an application is received, the collector will examine it and the supporting affidavits for the purpose of determining whether all of the papers have been correctly prepared. If so, the collector will order an immediate inspection of the packages by one of his deputy collectors, who will make a written report to the collector of the number of packages which need restamping, the condition and contents of each, and the kind of stamps or fragments of stamps still attached thereto.

§ 457.8 *Inspection of spirits in barrels.* In the case of spirits in barrels, the inspection should be made by a storekeeper-gauger, if possible, or by some other representative of the district supervisor's office. A full report of regauge on the prescribed gauging form and a statement of the marks and brands found upon the bung stave and stamp head of the packages must be made.

§ 457.9 *Expense.* If this inspection can not be made without substantial expense to the Government, the collector will, before expenses are incurred, forward to the Commissioner of Internal Revenue for consideration the application and accompanying papers as well as an estimate of the cost of completing the examination.

§ 457.10 *Additional evidence.* In the following cases where stamps for spirits and wine have been lost or destroyed, collectors of internal revenue will procure and forward to the Commissioner of Internal Revenue with the application, report of inspection, and report of regauge, additional evidence as follows, according to the nature of the case:

(a) *For tax-paid spirits in original packages.* Certified copy of the report

on the prescribed gauging form showing the contents of the packages at the time they were gauged for tax payment. Certificate of the collector in whose district the missing or mutilated stamps were purchased, which should contain all of the information shown on the stubs from which the original stamps were detached.

(b) *For rectified spirits in bulk packages.* Certified copy of the rectifier's "Notice of completion of rectification and return of rectified spirits, wines, or other liquors gauged, marked, and stamped." Certificate of the collector in whose district the missing or mutilated stamps were purchased, which should contain all of the information shown on the stubs from which the original stamps were detached.

(c) *For export spirits in bulk packages.* Certified copy of the prescribed gauging form showing the contents of the packages at the time they were gauged for withdrawal and exportation. This certificate should contain all of the information shown on the stubs from which the original stamps were detached.

(d) *For wholesale liquor dealer's packages of spirits.* Certified copy of the application for the stamps on the prescribed form.

(e) *For wine.* Affidavit from the taxpayer showing the contents of the cases or packages when stamped, value of stamps affixed to the cases or packages, taxable grade of wine, serial numbers of the cases or packages, and date on which the stamps were affixed to the packages.

(f) *For rectified products required to bear wine stamps.* Affidavit of the taxpayer and a certified copy of the prescribed form showing the serial numbers and the contents of the cases or packages when stamped, value of stamps affixed to the cases or packages, and the date of affixing.

§ 457.11 *Bottled spirits.* Applications under oath for restamping containers of distilled spirits required to be stamped by section 2803 (b), I. R. C., from which the original strip stamps have been lost or destroyed, shall be made to the local collector of internal revenue. The applicant in every case will state the cause of the loss or destruction of the original stamps, and submit evidence that the spirits have been tax-paid. Such evidence may consist of the invoices covering the purchase of the spirits, in addition to other available documents.

Where the stamps, which it is claimed have been destroyed, or any portion thereof, have become detached from the containers and recovered, they shall be submitted with the application.

§ 457.12 *Procedure.* Each application for new stamps, without cost, to replace those which have been lost or destroyed by unavoidable accident, shall be executed in duplicate and addressed to the local collector of internal revenue. It will be forwarded to the collector through the office of the appropriate district supervisor. If the evidence presented shows conclusively that the tax on the spirits has been paid and if the loss or destruction of the strip stamps has been satisfactorily explained, the district supervisor will approve the application and forward the original copy, together with supporting papers, to the local collector of internal revenue. The duplicate copy of the application shall be retained by the district supervisor for record purposes. The collector will transmit the application and accompanying evidence to the Bureau for consideration as required by § 457.19 hereof. If the Bureau approves the application, an appropriate authorization on Form 7706 will be mailed to the collector to cover the issuance of the duplicate strip stamps. Such stamps will then be sent to the district supervisor, who, after making suitable notations on the duplicate copy of the application filed in his office, will deliver the stamps to the applicant, either by mail or by a representative of his office, together with instructions in regard to marking and affixing them to the containers.

§ 457.13 *Investigation.* If in connection with any application for duplicate strip stamps to be affixed to containers of distilled spirits, the district supervisor has doubt, from the evidence submitted, as to whether the tax on the spirits has been paid or if the loss or destruction of the strip stamps has not been satisfactorily explained, he will cause the necessary investigation to be made before approving and forwarding such application to the collector.

§ 457.14 *Fermented malt liquors.* With respect to fermented malt liquors, upon receipt of an application, supported by an affidavit of tax payment and loss of stamps, and after report of inspection by a deputy collector, the

collector may, if the evidence is satisfactory, issue the stamps necessary to replace those lost or destroyed without securing formal authorization so to do from the Bureau. Such stamps will be affixed to containers under the direct supervision of a deputy collector. These reports by deputy collectors are required in all cases of application for restamping packages, except where an officer working under the jurisdiction of the district supervisor of the Alcohol Tax Unit discovers an unstamped package. The collector may act upon the report and recommendation of such officer without requiring a further investigation by a deputy collector. The collector should transmit all the papers in each case, including a signed report on Form 7706-A in duplicate, to the Bureau with his monthly stamp report, in order that credit may be allowed in his stamp account.

§ 457.15 *Failure to file application for restamping liquors.* Where an unstamped container of distilled spirits, fermented malt liquor, or wine, from which the original stamp has been lost or destroyed, is discovered and it is ascertained that no application for the restamping thereof has been made, such container will be detained pending appropriate action. If, upon investigation, it develops that the container has been tax-paid, the officer who made the discovery shall secure an affidavit from the proper party, setting forth the reason for the loss or destruction of the stamp as well as documentary evidence, if any, in support thereof. He shall then require the party involved to execute a suitable restamping application to be submitted through the office of the district supervisor to the local collector of internal revenue, accompanied by a statement of the facts and the officer's recommendation. Such officer will inform the possessor of the unstamped container of liquor that it is his privilege to submit an offer in compromise. In the event a suitable offer in compromise is tendered, the procedure shall thereafter conform with the procedure governing cases in which an application for restamping was made without the intervention of a Government officer. When received, the stamp may be issued and affixed, and the container of liquor may be released from detention without awaiting action on the offer in compromise. Where no offer in

compromise is submitted, the container of liquor shall be seized for forfeiture.

§ 457.16 *Report where repackaging is required.* Where packages of tobacco, cigars, snuff, cigarettes, or oleomargarine are found to be in such condition that they require repacking before new stamps can be attached, the deputy collector will in such cases include in his report of inspection the exact number, denomination, and class of stamps to be used.

§ 457.17 *Authorization.* If the collector is satisfied that the packages were once duly stamped and there appears to be no evidence of fraud, he will authorize their immediate repacking in new packages not before used for that purpose and of a size to contain a statutory quantity or number of articles, under the supervision of a deputy collector. The packages will then be held until the collector is authorized to issue the required stamps, which must be attached to the packages under the supervision of a deputy collector.

§ 457.18 *Repacking and restamping.* The work of repacking and restamping these packages must not be done within the factory premises of any manufacturer of articles subject to internal revenue taxes.

§ 457.19 *Issuance of stamps.* With the exception of applications for the restamping of containers of fermented malt liquors, as set forth in § 457.14, the collector will forward all applications, together with supporting evidence, to the Accounts and Collections Unit of the Bureau for consideration and an appropriate authorization on Form 7706, prior to issuing any duplicate stamps.

§ 457.20 *Credit for stamps issued.* The issuance of all stamps under the regulations in this part should be reflected in the appropriate monthly record of stamps received, issued, etc., in column headed "Issued by order of the Commissioner," and credit for the stamps should be taken on the proper line of the collector's monthly stamp report.

§ 457.21 *Receipt.* In every case, the collector should obtain a receipt from the party receiving duplicate stamps and transmit such receipt to the Bureau with his stamp report for the month in which the stamps were issued.

## Part 458—Inspection of Returns

### Subpart A—Inspection Under Regulations of General Application

#### INCOME, PROFITS, AND CAPITAL STOCK TAX RETURNS AND RETURNS UNDER TITLE IX OF THE SOCIAL SECURITY ACT

Sec.	
458.1	Return.
458.2	Corporation.
458.3	Partnership.
458.4	Stock.
458.5	Return of individual.
458.6	Joint return of husband and wife.
458.7	Partnership return.
458.8	Estates.
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458.10	Corporations.

#### ESTATE AND GIFT TAX RETURNS FILED AFTER JUNE 16, 1933, UNDER THE REVENUE ACT OF 1932, OR UNDER THE REVENUE ACT OF 1932, AS AMENDED

458.20	General.
458.21	Application for inspection.
458.22	Disclosure for investigation purposes.
458.23	Inspection by State officials.
458.24	Inspection discretionary in Commissioner in certain cases.

#### GENERAL PROVISIONS APPLICABLE TO §§ 458.1-458.24

458.30	Scope.
458.31	Permission to inspect.
458.32	Treasury Department officials and employees.
458.33	Inspection by branch of Government other than Treasury Department.
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458.35	Information returns.
458.36	Place of inspection.
458.37	Applications for inspection.
458.38	Penalties.

#### INCOME RETURNS (INCLUDING PERSONAL HOLDING COMPANY AND UNJUST ENRICHMENT RETURNS), AND EXCESS-PROFITS AND CAPITAL STOCK TAX RETURNS, AND RETURNS OF EMPLOYMENT TAX ON EMPLOYERS UNDER SUBCHAPTER C OF CHAPTER 9 OF THE INTERNAL REVENUE CODE

458.50	Introductory.
458.51	Terms used.
458.52	Return of individual.
458.53	Joint return of husband and wife.
458.54	Partnership return.
458.55	Estates.
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458.57	Corporations.

#### ESTATE AND GIFT TAX RETURNS UNDER THE INTERNAL REVENUE CODE

458.58	General.
458.59	Application for inspection.
458.60	Disclosures for investigation purposes.
458.61	Inspection by State officials.
458.62	Inspection discretionary with Commissioner in certain cases.

GENERAL PROVISIONS APPLICABLE TO  
§§ 458.51-458.82

- Sec.  
458.63 Scope.  
458.64 Permission to inspect.  
458.65 Treasury Department officials and employees.  
458.66 Inspection by branch of Government other than Treasury Department.  
458.67 Inspection by Government attorneys.  
458.68 Information returns.  
458.69 Place of inspection.  
458.70 Applications for inspection.  
458.71 Penalties.

INCOME AND EXCESS-PROFITS TAX RETURNS, EXCEPT RETURNS UNDER TITLE III OF THE REVENUE ACT OF 1936, CAPITAL STOCK TAX RETURNS, AND RETURNS UNDER TITLE IX OF THE SOCIAL SECURITY ACT

- 458.80 Introductory.  
458.81 Definitions.  
458.82 Access to returns by State officers.  
458.83 Examination of returns by shareholder.  
458.84 Penalties for disclosure of returns.

RETURNS UNDER TITLE III OF THE REVENUE ACT OF 1936

- 458.90 Inspection of returns by State taxing officials.  
458.91 Examination of returns by shareholder.

ESTATE AND GIFT TAX RETURNS FILED ON OR BEFORE JUNE 16, 1933

- 458.100 General.  
458.101 Inspection by executor or donor.  
458.102 Disclosure of information by revenue officer.  
458.103 Inspection by State officers.  
458.104 Inspection by person having material interest.  
458.105 Inspection by Government attorneys.  
458.106 Returns in custody of collector or revenue agent in charge.

GENERAL PROVISIONS

- 458.110 Use of returns in litigation.  
458.111 Furnishing of copies of returns.  
458.112 Supplemental documents, records and reports.

EXCISE TAX RETURNS

- 458.120 Introductory.  
458.121 Inspection of excise tax returns.

Subpart B—Use of Original Returns Open to Inspection in Accordance With §§ 458.50-458.71; Furnishing of Copies of Returns; Inspection of Returns of Corporations by State Officers and Shareholders

INTRODUCTORY

- 458.200 Introductory.

SPECIAL PROVISIONS

- Sec.  
458.201 Access to returns by State officers.  
458.202 Inspection of returns by State taxing officials.  
458.203 Examination of returns by shareholder.

GENERAL PROVISIONS

- 458.204 Use of returns in litigation.  
458.205 Furnishing of copies of returns.  
458.206 Supplemental documents, records and reports.  
458.207 Penalties for disclosure of returns.  
458.208 Terms used.  
458.209 Prior regulations under Code superseded.

Subpart C—Inspection Under Special Executive Orders

- 458.300 Inspection of returns by Department of Commerce.  
458.301 Inspection of statistical transcript punch cards by the Federal Security Agency.  
458.302 Inspection of income, excess-profits, and declared value excess-profits tax returns by the War Contracts Price Adjustment Board.  
458.303 Inspection of returns by Federal Trade Commission.

NOTE: Part 458 was reorganized and renumbered at 13 F. R. 7709.

AUTHORITY: §§ 458.1 to 458.303 issued under 53 Stat. 467; 26 U. S. C. 3791.

SUBPART A—INSPECTION UNDER REGULATIONS OF GENERAL APPLICATION

SOURCE: §§ 458.1 to 458.10 contained in Treasury Decision 4873, 3 F. R. 2689. Exceptions are noted in brackets following sections affected.

INCOME, PROFITS, AND CAPITAL STOCK TAX RETURNS UNDER TITLE IX OF THE SOCIAL SECURITY ACT

§ 458.1 *Return.* The word "return" when used in §§ 458.1 to 458.10, inclusive, shall include only income and profits tax returns; special excise tax returns of corporations made pursuant to section 1000 of Title X of each of the Revenue Acts of 1918 and 1921 and section 700 of Title VII of the Revenue Act of 1924; capital stock tax returns made pursuant to section 215 of Title II of the National Industrial Recovery Act, section 701 of Title V of the Revenue Act of 1934, section 105 of the Revenue Act of 1935, and section 601 of the Revenue Act of 1938; and returns under Title IX of the Social Security Act. Any other word or term used in this subpart which is defined by the Revenue Acts, the National Industrial Recovery Act, or the Social Security

Act, shall be given the respective definition contained in the Act under which the particular return is made.

§ 458.2 *Corporation.* The word "corporation" when used in this subpart includes associations, joint-stock companies, and insurance companies.

§ 458.3 *Partnership.* The word "partnership" when used in this subpart includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of the income tax laws, a trust or estate or a corporation.

§ 458.4 *Stock.* The word "stock" includes the shares in an association, joint-stock company, or insurance company; and the word "shareholder" includes a member in an association, joint-stock company or insurance company.

§ 458.5 *Return of individual.* The return of an individual shall be open to inspection (a) by the person who made the return, or by his duly constituted attorney in fact; (b) if the maker of the return has died, or become legally incompetent, by the administrator, executor, trustee, or guardian of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (c) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin, or beneficiary under the will, of such deceased person, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary, has a material interest which will be affected by information contained in the return; (d) as to returns under Title IX of the Social Security Act in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law; and (e) as to returns for any taxable year begun prior to January 1, 1935, in the discretion

of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer or employee of any State having a law imposing an income tax upon the individual, or a tax upon intangible property owned by the individual, measured by the income derived therefrom, upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. If the property of the person who made the return is in the hands of a receiver, or trustee in bankruptcy, the return of such person shall be open to inspection by such receiver or trustee, or by the duly constituted attorney in fact of such receiver or trustee. With respect to inspection on behalf of States or political subdivisions thereof, of income returns for taxable years beginning on or after January 1, 1935, see articles 55 (b)-1 to 55 (b)-4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV-1, 61, 71), and amended by Treasury Decision 4732 (C. B. 1937-1, 145), and section 55 of the Revenue Act of 1938.

[T. D. 4873, 3 F. R. 2689 as amended by T. D. 5019, 5 F. R. 4455]

§ 458.6 *Joint return of husband and wife.* Joint return of a husband and wife shall be open to inspection (a) by either spouse for whom the return was made, upon satisfactory evidence of such relationship being furnished, or by his or her duly constituted attorney in fact; (b) if either spouse has died, or become legally incompetent, by the administrator, executor, trustee, or guardian of his or her estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (c) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin, or beneficiary under the will, of such deceased spouse, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; and (d) for any taxable year begun prior to January 1, 1935, in the discretion of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an

officer or employee of any State having a law imposing an income tax upon either spouse or a tax upon intangible property owned by either spouse, measured by the income derived therefrom, upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. With respect to inspection on behalf of States or political subdivisions thereof of income returns for taxable years beginning on or after January 1, 1935, see articles 55 (b)-1 to 55 (b)-4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV-1, 61, 71), and amended by Treasury Decision 4732 (C. B. 1937-1, 145), and section 55 of the Revenue Act of 1938.

§ 458.7 *Partnership return.* The return of a partnership shall be open to inspection (a) by any individual who was a member of such partnership during any part of the time covered by the return, or by his duly constituted attorney in fact, upon satisfactory evidence of such fact being furnished; (b) if a member of such partnership during any part of the time covered by the return has died, or become legally incompetent, by the administrator, executor, trustee, or guardian, of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (c) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin, or beneficiary under the will, of such deceased person, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; (d) as to returns under Title IX of the Social Security Act in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such

inspection is solely for purposes of administering such State law; and (e) as to returns for any taxable year begun prior to January 1, 1935, in the discretion of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer or employee of any State having a law imposing an income tax upon the partnership or upon any member thereof in respect of income therefrom or a tax upon intangible property owned by the partnership, measured by the income derived therefrom, upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. If the property of the partnership is in the hands of a receiver, or trustee in bankruptcy, the return of the partnership shall be open to inspection by such receiver or trustee, or by the duly constituted attorney in fact of such receiver or trustee. With respect to inspection on behalf of States or political subdivisions thereof of income returns for taxable years beginning on or after January 1, 1935, see articles 55 (b)-1 to 55 (b)-4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV-1, 61, 71), and amended by Treasury Decision 4732 (C. B. 1937-1, 145, and section 55 of the Revenue Act of 1938.

[T. D. 4873, 3 F. R. 4873, as amended by T. D. 5019, 5 F. R. 4455]

§ 458.8 *Estates.* The return of an estate shall be open to inspection (a) by the administrator, executor, or trustee of such estate, or by his duly constituted attorney in fact; (b) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin, or beneficiary under the will, of the deceased person for whose estate the return is made, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, or if any such heir at law, next of kin or beneficiary has died or become legally incompetent, by his administrator, executor, trustee, or guardian of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian, upon a showing of material interest which will

be affected by information contained in the return; (c) as to returns under Title IX of the Social Security Act in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State Law; and (d) as to returns for any taxable year begun prior to January 1, 1935, in the discretion of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer or employee of any State having a law imposing an income tax upon the estate or upon any beneficiary of the estate in respect of income therefrom, or a tax upon intangible property owned by the estate, measured by the income derived therefrom, upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. With respect to inspection on behalf of States or political subdivisions thereof of income returns for taxable years beginning on or after January 1, 1935, see articles 55 (b)-1 to 55 (b)-4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C. B. XV-1, 61, 71 (1936)), and articles 55 (b)-1 to 55 (b)-4, inclusive, of Regulations 94, both as amended by Treasury Decision 4732 (C. B. 1937-1, 145), and section 55 of the Revenue Act of 1938.

§ 458.9 *Trusts.* The return of a trust shall be open to inspection (a) by the trustee or trustees, jointly or severally, or the duly constituted attorney in fact of such trustee or trustees; (b) by any individual who was a beneficiary of such trust during any part of the time covered by the return, or by his duly constituted attorney in fact, upon satisfactory evidence of such fact being furnished; (c) if any individual who was a

beneficiary of such trust during any part of the time covered by the return has died, or become legally incompetent, by the administrator, executor, trustee, or guardian, of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (d) in the discretion of the Commissioner of Internal Revenue, by any heir at law, next of kin or beneficiary under the will, of such deceased person, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; (e) as to returns under Title IX of the Social Security Act in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law; and (f) as to returns for any taxable year begun prior to January 1, 1935, in the discretion of the Commissioner of Internal Revenue, and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer or employee of any State having a law imposing an income tax upon the trust or upon any beneficiary of the trust in respect of income therefrom, or a tax upon intangible property owned by the trust, measured by the income derived therefrom upon written application signed by the governor of such State under the seal of the State, designating the person to make the inspection and showing that the inspection is solely for such State income or intangible property tax purposes. With respect to inspection on behalf of States or political subdivisions thereof of income returns for taxable years beginning on or after January 1, 1935, see articles 55 (b)-1 to 55 (b)-4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626 (C.B. XV-1, 61, 71 (1936)), and articles 55 (b)-1 to 55 (b)-4, inclusive, of Regulations 94, both

as amended by Treasury Decision 4732 (C. B. 1937-1, 145), and section 55 of the Revenue Act of 1938.

§ 458.10 *Corporations.* The return of a corporation shall be open to inspection (a) by any person designated by action of its board of directors, or other similar governing body, upon submission of satisfactory evidence of such action, or (b) by any officer or employee of such corporation upon written request to the Commissioner of Internal Revenue signed by any principal officer and attested by the secretary, or other officer under the corporate seal, if any, or (c) by the duly constituted attorney in fact of such corporation. The return of a corporation which has since been dissolved, shall, in the discretion of the Commissioner of Internal Revenue, be open to inspection by any person who under this subpart might have inspected the return at the date of dissolution. If the property of the corporation is in the hands of a receiver, or trustee in bankruptcy, the return of such corporation shall be open to inspection by such receiver or trustee, or by the duly constituted attorney in fact of such receiver or trustee.

Returns of corporations under Title IX of the Social Security Act, in the discretion of the Commissioner, and at such time and in such manner as the Commissioner may prescribe, shall be open to inspection by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 903 of the Social Security Act, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law.

[T. D. 4873, 3 F. R. 2689, as amended by T. D. 5019, 5 F. R. 4455]

**ESTATE AND GIFT TAX RETURNS FILED AFTER JUNE 16, 1933, UNDER THE REVENUE ACT OF 1932, OR UNDER THE REVENUE ACT OF 1932, AS AMENDED**

SOURCE: §§ 458.20 to 458.24 contained in Treasury Decision 4873, 3 F. R. 2689.

§ 458.20 *General.* Estate tax returns and notices, and gift tax returns, shall be treated as privileged communications and shall not be inspected nor their con-

tents disclosed, except as hereinafter provided.

§ 458.21 *Application for inspection.* Upon application to the collector, internal revenue agent in charge, or Commissioner, an estate tax return or notice may be inspected by the executor, or his successor in office, or by his duly authorized attorney in fact. Upon like application a gift tax return may be inspected by the donor or his duly authorized attorney in fact.

§ 458.22 *Disclosure for investigation purposes.* An internal revenue officer engaged in an official investigation of an estate tax or gift tax liability may disclose the returned value of any item or the amount of any specific deduction, or other limited information, if such disclosure is necessary in order to verify the same or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purposes of the investigation, and in no case extends to such information as the amount of the estate, the amount of tax, or other general data.

§ 458.23 *Inspection by State officials.* A return or notice may be exhibited, or information contained therein may be disclosed, to an officer of any State, for official use in connection with an estate, inheritance, legacy, succession, gift, or other tax of the State, provided a like cooperation is given by the State to the Commissioner of Internal Revenue or his representatives for use in the administration of the Federal tax laws. Such officer may also be permitted to inspect schedules, lists, and other statements designed to be supplemental to or to become a part of, the original return, and other records and reports which contain information included or required by statute to be included in the return.

§ 458.24 *Inspection discretionary in Commissioner in certain cases.* If any other person has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he may make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. Thereupon, the Commissioner may permit an inspection of, or furnish a copy of the return, or may furnish such information as he deems advisable.

**GENERAL PROVISIONS APPLICABLE TO  
§§ 458.1-458.24**

**SOURCE:** §§ 458.30 to 458.38 contained in Treasury Decision 4873, 3 F. R. 2689, except as noted following section affected.

**§ 458.30 Scope.** The provisions of §§ 458.30 to 458.38, unless otherwise stated, are applicable to all returns referred to in §§ 458.1 to 458.24 of these regulations.

**§ 458.31 Permission to inspect.** The Commissioner of Internal Revenue, upon written application setting forth fully the reason for the request, may grant permission for the inspection of returns in accordance with this subpart.

**§ 458.32 Treasury Department officials and employees.** The officers and employees of the Treasury Department whose official duties require inspection of returns may inspect any such returns without making such written application. If the head of a bureau or office in the Treasury Department, not a part of the Internal Revenue Bureau, desires to inspect, or to have an employee in his bureau or office inspect a return, in connection with some matter officially before him, for reasons other than tax administration purposes, the inspection may, in the discretion of the Secretary, be permitted upon written application to him by the head of such bureau or office, showing in detail why the inspection is desired.

**§ 458.33 Inspection by branch of Government other than Treasury Department—(a) General.** Except as provided in § 458.34, if the head of an executive department (other than the Treasury Department), or of any other establishment of the United States Government, desires to inspect or to have some other officer or employee of his branch of the service inspect a return in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury, be permitted upon written application to him by the head of such executive department or other Government establishment. The application shall be signed by such head and shall show in detail why the inspection is desired, the name and address of the taxpayer who made the return, and the name and official designation of the person it is desired shall inspect the return. The information obtained under this section

and § 458.32 may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

(b) *Inspection by District of Columbia, Alaska, Hawaii, the Philippine Islands, and Puerto Rico.* Any official, body, or commission, lawfully charged with the administration of any tax law of the District of Columbia, Alaska, Hawaii, the Philippine Islands, or Puerto Rico, or any representative or representatives of such official, body, or commission, may, in the discretion of the Commissioner of Internal Revenue, be permitted to inspect original income returns, for any taxable year, for the purpose of such administration.

Requests for permission to inspect original returns shall be in writing signed by the executive head of the government on whose behalf the inspection is to be made and shall be addressed to the Commissioner of Internal Revenue, Records Division, Washington 25, D. C. The request shall state (1) the kind of returns it is desired to inspect, (2) the taxable year or years covered by the returns it is desired to inspect, (3) the name of the official, body, or commission, by whom or which the inspection is to be made, (4) the name of the representative of such official, body, or commission, designated to make the inspection, (5) by specific references, the tax law which such official, body, or commission, is charged with administering and the law under which he, she, or it is so charged, and (6) the purpose for which the inspection is to be made.

[T. D. 4873, 3 F. R. 2689, as amended by T. D. 4991, 5 F. R. 2646]

**§ 458.34 Inspection by Government attorneys.** Any return shall be open to inspection by a United States attorney or by an attorney of the Department of Justice where necessary in the performance of his official duties. The request for inspection shall be in writing and, except as provided in § 458.37, shall be addressed to the Commissioner, and shall state the purpose for which inspection is desired. It may be signed by the Attorney General, the Assistant to the Attorney General, an Assistant Attorney General, or a United States attorney.

**§ 458.35 Information returns.** Information returns, schedules, lists, and other statements designed to be supplemental to, or to become a part of, the

returns shall be subject to the same rules and regulations as to inspection as are the returns themselves. In any case where inspection of the return is authorized by this part, the Commissioner may, in his discretion, permit inspection of other records and reports which contain information included or required by statute to be included in the return.

§ 458.36 *Place of inspection.* Generally, returns may be inspected only in the Bureau of Internal Revenue, Washington, D. C., unless such returns are in the custody of a collector of internal revenue or internal revenue agent in charge, in which event the returns may be inspected in the office of such collector or agent in charge, but only in the presence of an internal revenue officer, designated by the collector or agent for that purpose.

§ 458.37 *Applications for inspection.* Except as provided in § 458.33, and as hereinafter provided, all applications for permission to inspect returns must be made in writing to the Commissioner of Internal Revenue. When a return is in the custody of a collector of internal revenue or internal revenue agent in charge, such collector or revenue agent in charge, upon written application to him, is authorized to permit the inspection of such return by a United States attorney, or an attorney in the Department of Justice, or by the taxpayer or his duly authorized attorney in fact, in accordance with this subpart.

§ 458.38 *Penalties.* Section 3167, Revised Statutes, as amended by the Revenue Act of 1918, and reenacted without change by section 1115 of the Revenue Act of 1926, makes it a misdemeanor, punishable by fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both, at the discretion of the court, for any person to print or publish in any manner whatever not provided by law information contained in any income return, and further provides that if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. The penalties provided in section 3167, Revised Statutes, are applicable also to disclosure of information contained in excess-profits and capital stock tax returns and returns made under Title IX of the Social Security Act.

**INCOME RETURNS (INCLUDING PERSONAL HOLDING COMPANY AND UNJUST ENRICHMENT RETURNS), AND EXCESS-PROFITS AND CAPITAL STOCK TAX RETURNS, AND RETURNS OF EMPLOYMENT TAX ON EMPLOYERS UNDER SUBCHAPTER C OF CHAPTER 9 OF THE INTERNAL REVENUE CODE**

SOURCE: §§ 458.50 to 458.57 contained in Treasury Decision 4929, 4 F. R. 3779. Exceptions are noted in brackets following sections affected.

§ 458.50 *Introductory.* Certain returns of individuals, partnerships, estates, trusts, corporations, associations, joint-stock companies, and insurance companies made pursuant to the requirements of the Internal Revenue Code, shall be open to inspection in accordance and upon compliance with §§ 458.51–458.71.

§ 458.51 *Terms used.* The word "return" when used in §§ 458.50–458.57 shall include only income returns (including personal holding company and unjust enrichment returns), and excess-profits and capital stock tax returns; and returns of employment tax on employers under subchapter C of chapter 9 of the Internal Revenue Code. Any other word or term used in the regulations in this part which is defined in any chapter of the Internal Revenue Code shall be given the definition contained in the chapter which is applicable with respect to the particular return made.

§ 458.52 *Return of individual.* The return of an individual shall be open to inspection (a) by the person who made the return, or by his duly constituted attorney in fact; (b) if the maker of the return has died, or become legally incompetent, by the administrator, executor, trustee, or guardian of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (c) in the discretion of the Commissioner, by any heir at law, next of kin, or beneficiary under the will, of such deceased person, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; and (d) as to returns under subchapter C of chapter 9 of the Internal Revenue Code (relating to employment tax on employers), in the discretion of the Commissioner and at such time and in

such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 1603 of the Internal Revenue Code, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law. If the property of the person who made the return is in the hands of a receiver, or trustee in bankruptcy, the return of such person shall be open to inspection by such receiver or trustee, or by the duly constituted attorney in fact of such receiver or trustee. With respect to inspection on behalf of States or political subdivisions thereof, see further section 55 of the Internal Revenue Code.

[T. D. 4929, 4 F. R. 3779, as amended by T. D. 5019, 5 F. R. 4455]

§ 458.53 *Joint return of husband and wife.* A joint return of a husband and wife shall be open to inspection (a) by either spouse for whom the return was made, upon satisfactory evidence of such relationship being furnished, or by his or her duly constituted attorney in fact; (b) if either spouse has died, or become legally incompetent, by the administrator, executor, trustee, or guardian of his or her estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; and (c) in the discretion of the Commissioner by any heir at law, next of kin, or beneficiary under the will, of such deceased spouse, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return. With respect to inspection on behalf of States or political subdivisions thereof, see section 55 of the Internal Revenue Code.

§ 458.54 *Partnership return.* The return of a partnership shall be open to inspection (a) by any individual who was a member of such partnership during any part of the time covered by the return, or by his duly constituted attorney in fact, upon satisfactory evidence of such membership in the partnership being furnished; (b) if a member of such partnership during any part of the time

covered by the return has died, or become legally incompetent, by the administrator, executor, trustee, or guardian, of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (c) in the discretion of the Commissioner, by any heir at law, next of kin, or beneficiary under the will, of such deceased person, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; and (d) as to returns under Subchapter C of Chapter 9 of the Internal Revenue Code (relating to employment tax on employers), in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 1603 of the Internal Revenue Code, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law. If the property of the partnership is in the hands of a receiver, or trustee in bankruptcy, the return of the partnership shall be open to inspection by such receiver or trustee, or by the duly constituted attorney in fact of such receiver or trustee. With respect to inspection on behalf of States or political subdivisions thereof, see further section 55 of the Internal Revenue Code.

[T. D. 4929, 4 F. R. 3779, as amended by T. D. 5019, 5 F. R. 4455]

§ 458.55 *Estates.* The return of an estate shall be open to inspection (a) by the administrator, executor, or trustee of such estate, or by his duly constituted attorney in fact; (b) in the discretion of the Commissioner, by any heir at law, next of kin, or beneficiary under the will, of the deceased person for whose estate the return is made, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, or if any such heir at law, next of kin, or beneficiary has died or become legally incompetent, by his administrator, executor, trustee, or guardian of his estate, or by the duly constituted attorney in fact of

such administrator, executor, trustee, or guardian, upon a showing of material interest which will be affected by information contained in the return; and (c) as to returns under subchapter C of chapter 9 of the Internal Revenue Code (relating to employment tax on employers), in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for inspection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 1603 of the Internal Revenue Code, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law. With respect to inspection on behalf of States or political subdivisions thereof, see further section 55 of the Internal Revenue Code.

§ 458.56 *Trusts.* The return of a trust shall be open to inspection (a) by the trustee or trustees, jointly or severally, or the duly constituted attorney in fact of such trustee or trustees; (b) by any individual who was a beneficiary of such trust during any part of the time covered by the return, or by his duly constituted attorney in fact, upon satisfactory evidence being furnished that the individual was such beneficiary; (c) if any individual who was a beneficiary of such trust during any part of the time covered by the return has died, or become legally incompetent, by the administrator, executor, trustee, or guardian, of his estate, or by the duly constituted attorney in fact of such administrator, executor, trustee, or guardian; (d) in the discretion of the Commissioner, by any heir at law, next of kin, or beneficiary under the will, of such deceased person, or by the duly constituted attorney in fact of such heir at law, next of kin, or beneficiary, upon a showing that such heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; and (e) as to returns under subchapter C of chapter 9 of the Internal Revenue Code (relating to employment tax on employers), in the discretion of the Commissioner and at such time and in such manner as the Commissioner may prescribe for the in-

spection, by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 1603 of the Internal Revenue Code, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection and showing that such inspection is solely for purposes of administering such State law. With respect to inspection on behalf of States or political subdivisions thereof, see further section 55 of the Internal Revenue Code.

§ 458.57 *Corporations.* The return of a corporation shall be open to inspection (a) by any person designated by action of its board of directors, or other similar governing body, upon submission of satisfactory evidence of such action, or (b) by any officer or employee of such corporation upon written request to the Commissioner signed by any principal officer and attested by the Secretary, or other officer under the corporate seal, if any, or (c) by the duly constituted attorney in fact of such corporation. The return of a corporation which has since been dissolved, shall, in the discretion of the Commissioner, be open to inspection by any person who under the regulations in this subpart might have inspected the return at the date of dissolution. Returns of corporations under subchapter C of chapter 9 of the Internal Revenue Code (relating to employment tax on employers), in the discretion of the Commissioner, and at such time and in such manner as the Commissioner may prescribe, shall be open to inspection by an officer of any State having a law certified to the Secretary of the Treasury by the Social Security Board as having been approved in accordance with section 1603 of the Internal Revenue Code, upon written application signed by the governor of such State under the seal of the State, designating the officer to make the inspection, and showing that such inspection is solely for purposes of administering such State law. If the property of the corporation is in the hands of a receiver, or trustee in bankruptcy, the return of such corporation shall be open to inspection by such receiver or trustee, or by the duly constituted attorney in fact of such receiver or trustee. With respect to inspection on behalf of States or political

subdivisions thereof, see further section 55 of the Internal Revenue Code.

[T. D. 4929, 4 F. R. 3779, as amended by T. D. 5019, 5 F. R. 4455]

**ESTATE AND GIFT TAX RETURNS UNDER THE INTERNAL REVENUE CODE**

SOURCE: §§ 458.58 to 458.62 contained in Treasury Decision 4929, 4 F. R. 3779.

§ 458.58 *General.* Estate tax returns and notices and gift tax returns, filed under the Internal Revenue Code, shall be treated as privileged communications and shall not be inspected nor their contents disclosed except as hereinafter provided.

§ 458.59 *Application for inspection.* Upon application to the collector, internal revenue agent in charge, or Commissioner, an estate tax return or notice may be inspected by the executor, or his successor in office, or by his duly authorized attorney in fact. Upon like application a gift tax return may be inspected by the donor or his duly authorized attorney in fact.

§ 458.60 *Disclosures for investigation purposes.* An internal revenue officer engaged in an official investigation of an estate tax or gift tax liability may disclose the returned value of any item or the amount of any specific deduction, or other limited information, if such disclosure is necessary in order to verify the same or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purposes of the investigation, and in no case extends to such information as the amount of the estate, the amount of tax, or other general data.

§ 458.61 *Inspection by State officials.* A return or notice may be exhibited, or information contained therein may be disclosed, to an officer of any State, for official use in connection with an estate, inheritance, legacy, succession, gift, or other tax of the State, provided a like cooperation is given by the State to the Commissioner or his representatives for use in the administration of the Federal tax laws. Such officer may also be permitted to inspect schedules, lists, and other statements designed to be supplemental to or to become a part of, the original return, and other records and reports which contain information included or required by statute to be included in the return.

§ 458.62 *Inspection discretionary with Commissioner in certain cases.* If any other person has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he may make a written application to the Commissioner for such information, setting forth the nature of his interest and the purpose of the application. Thereupon, the Commissioner may permit an inspection of, or furnish a copy of the return, or may furnish such information as he deems advisable.

**GENERAL PROVISIONS APPLICABLE TO §§ 458.51-458.62**

SOURCE: §§ 458.63 to 458.71 contained in Treasury Decision 4929, 4 F. R. 3779. Exceptions are noted in brackets following sections affected.

§ 458.63 *Scope.* The following provisions, unless otherwise stated, are applicable to all returns referred to in §§ 458.51-458.62

§ 458.64 *Permission to inspect.* The Commissioner, upon written application setting forth fully the reason for the request, may grant permission for the inspection of returns in accordance with this subpart.

§ 458.65 *Treasury Department officials and employees.* The officers and employees of the Treasury Department whose official duties require inspection of returns may inspect any such returns without making such written application. If the head of a bureau or office in the Treasury Department, not a part of the Internal Revenue Bureau, desires to inspect, or to have an employee in his bureau or office inspect a return, in connection with some matter officially before him, for reasons other than tax administration purposes, the inspection may, in the discretion of the Secretary, be permitted upon written application to him by the head of such bureau or office, showing in detail why the inspection is desired.

§ 458.66 *Inspection by branch of Government other than Treasury Department—(a) General.* Except as provided in § 458.67, if the head of an executive department (other than the Treasury Department), or of any other establishment of the United States Government, desires to inspect or to have some other officer or employee of his branch of the service inspect a return in connection with some matter officially before him,

the inspection may, in the discretion of the Secretary of the Treasury, be permitted upon written application to him by the head of such executive department or other Government establishment. The application shall be signed by such head and shall show in detail why the inspection is desired, the name and address of the taxpayer who made the return, and the name and official designation of the person it is desired shall inspect the return. The information obtained under this section and § 458.65 may be used as evidence in any proceeding, conducted by or before any department or establishment of the United States, or to which the United States is a party.

(b) *Inspection by District of Columbia, Alaska, Hawaii, the Philippine Islands, and Puerto Rico.* Any official, body, or commission, lawfully charged with the administration of any tax law of the District of Columbia, Alaska, Hawaii, the Philippine Islands, or Puerto Rico, or any representative or representatives of such official, body, or commission, may, in the discretion of the Commissioner of Internal Revenue, be permitted to inspect original income returns, for any taxable year ending on or after July 31, 1939, for the purpose of such administration.

Requests for permission to inspect original returns shall be in writing signed by the executive head of the government on whose behalf the inspection is to be made and shall be addressed to the Commissioner of Internal Revenue, Records Division, Washington 25, D. C. The request shall state (1) the kind of returns it is desired to inspect, (2) the taxable year or years covered by the returns it is desired to inspect, (3) the name of the official, body, or commission, by whom or which the inspection is to be made, (4) the name of the representative of such official, body, or commission, designated to make the inspection, (5) by specific reference, the tax law which such official, body, or commission, is charged with administering and the law under which he, she, or it is so charged, and (6) the purpose for which the inspection is to be made.

Within a reasonable time after the returns are filed the copies thereof (including photostats and photographs), under such procedure as may be prescribed by the Commissioner, shall be made available for inspection in the office of the

collector of internal revenue in which the returns are filed, by any official, body, or commission, lawfully charged with the administration of any tax law of the District of Columbia, Alaska, Hawaii, the Philippine Islands, or Puerto Rico, or by the properly designated representatives of such official, body, or commission, for the purpose of such administration. The respective heads of the above-designated governments shall be notified by the Commissioner of the date the copies of the returns are available for inspection and inspection thereof shall not be permitted after 1 year from such date. Requests for inspection of copies of returns shall conform with the requirements relating to requests for permission to inspect original returns as prescribed by this paragraph.

[T. D. 4929, 4 F. R. 3779, as amended by T. D. 4991, 5 F. R. 2646]

§ 458.67 *Inspection by Government attorneys.* Any return shall be open to inspection by a United States attorney or by an attorney of the Department of Justice where necessary in the performance of his official duties. The request for inspection shall be in writing and, except as provided in § 458.70, shall be addressed to the Commissioner, and shall state the purpose for which inspection is desired. It may be signed by the Attorney General, the Assistant to the Attorney General, an Assistant Attorney General, or a United States attorney.

§ 458.68 *Information returns.* Information returns, schedules, lists, and other statements designed to be supplemental to, or to become a part of, the returns shall be subject to the same rules and regulations as to inspection as are the returns themselves. In any case where inspection of the return is authorized by the regulations in this subpart, the Commissioner may, in his discretion, permit inspection of other records and reports which contain information included or required by statute to be included in the return.

§ 458.69 *Place of inspection.* Generally, returns may be inspected only in the Bureau of Internal Revenue, Washington, D. C., unless such returns are in the custody of a collector of internal revenue or internal revenue agent in charge or the head of a field division of the Technical Staff, in which event the returns may be inspected in the office of such collector or agent in charge

or head of division, but only in the presence of an internal revenue officer, designated by the collector or agent or head of division for that purpose.

§ 458.70 *Applications for inspection.* Except as provided in § 458.66, and as hereinafter provided, all applications for permission to inspect returns must be made in writing to the Commissioner of Internal Revenue. When a return is in the custody of a collector of internal revenue or internal revenue agent in charge or the head of a field division of the Technical Staff, such collector or revenue agent in charge or head of division, upon written application to him, is authorized to permit the inspection of such return by a United States attorney, or an attorney in the Department of Justice, or by the taxpayer or his duly authorized attorney in fact, in accordance with this subpart.

§ 458.71 *Penalties.* Section 55 (f) (1) of the Internal Revenue Code makes it a misdemeanor, punishable by a fine not exceeding \$1,000, or by imprisonment not exceeding 1 year, or both, at the discretion of the court, for any person to print or publish in any manner whatever not provided by law information contained in any income return, and further provides that if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. The penalties provided in section 55 (f) (1) of the Internal Revenue Code are applicable also to disclosure of information contained in excess-profits, unjust enrichment, and capital stock tax returns and returns made under subchapter C of chapter 9 of the Internal Revenue Code.

**INCOME AND EXCESS-PROFITS TAX RETURNS,  
EXCEPT RETURNS UNDER TITLE III OF THE  
REVENUE ACT OF 1936, CAPITAL STOCK TAX  
RETURNS, AND RETURNS UNDER TITLE IX  
OF THE SOCIAL SECURITY ACT**

SOURCE: §§ 458.80 to 458.84 contained in Treasury Decision 4878, 4 F. R. 76.

§ 458.80 *Introductory.* By Executive Order 8005 dated November 12, 1938, the President ordered that income, excess-profits, and capital stock tax returns, estate and gift tax returns made under the Revenue Act of 1932 and filed after June 16, 1933, and returns made under Title IX of the Social Security Act, shall be open to inspection in accordance and

upon compliance with the rules and regulations promulgated in Subpart A of this part approved by the President on the same date. That subpart deals with the inspection of returns in so far as inspection is permissible only upon order of the President and under regulations approved by the President. Under authority of law, and without action by the President, returns of corporations, except income and excess-profits tax returns and returns for the purpose of surtax on personal holding companies for years beginning after December 31, 1934, are open to inspection by the proper officers of any State; all returns of corporations are open to inspection by bona fide shareholders of record owning 1 percent or more of the outstanding stock; and all returns under Title III of the Revenue Act of 1936 (or copies thereof) are open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities.

Pursuant to sections 62, 409, 601 (e), and 602 (c) of the Revenue Act of 1938, sections 62, 351 (c), and 503 (a) of the Revenue Act of 1936, sections 105 (d) and 106 (c) of the Revenue Act of 1935, sections 62, 351 (c), 701 (d), and 702 (b) of the Revenue Act of 1934, sections 62, 403, and 530 of the Revenue Act of 1932, section 62 of the Revenue Act of 1938, sections 257 and 1101 of the Revenue Act of 1926, section 905 (c) of the Social Security Act, and sections 215 (e) and 216 (b) of the National Industrial Recovery Act, the following regulations are hereby prescribed with respect to the use of original, and the furnishing of copies of, returns open to inspection in accordance with Subpart A of this part, or otherwise; with respect to examinations by shareholders of the returns of corporations; by State officers of returns of corporations made under the income, capital stock, or excess-profits tax provisions of the Revenue Act of 1926, the Revenue Act of 1928, the Revenue Act of 1932, sections 215 and 216 of the National Industrial Recovery Act, the Revenue Act of 1934, the Revenue Act of 1935, the Revenue Act of 1936, the Revenue Act of 1938, and under Title IX of the Social Security Act, except income and excess-profits tax returns and returns for the

purpose of surtax on personal holding companies for years beginning after December 31, 1934; with respect to the inspection of returns under Title III of the Revenue Act of 1936 by any official, body, or commission, lawfully charged with the administration of any State tax law; and with respect to the inspection of estate and gift tax returns made under the Revenue Act of 1932 and filed prior to June 17, 1933, and made under the Revenue Act of 1926 and under prior Revenue Acts. For inspection by State taxing officials of income returns other than returns under Title III of the Revenue Act of 1936, for any taxable year beginning after December 31, 1934, see articles 55 (b)-1 to 55 (b)-4, inclusive, of Regulations 86, as substituted by Treasury Decision 4626, C. B. XV-1, 61, 71 (1936), and articles 55 (b)-1 to 55 (b)-4, inclusive, of Regulations 94 both as amended by Treasury Decision 4732, C. B. 1937-1, p. 145, and section 55 of the Revenue Act of 1938.

§ 458.81 *Definitions.* When used in §§ 458.81-458.84:

(a) The term "return" means the original return (except a return under Title III of the Revenue Act of 1936) made for income, excess-profits, or capital stock tax purposes, or for purposes of the tax imposed by Title IX of the Social Security Act;

(b) The term "corporation" includes associations, joint-stock companies, and insurance companies;

(c) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of the Federal tax laws, a trust or estate or a corporation;

(d) The term "stock" includes shares in an association, joint-stock company, or insurance company; and the term "shareholder" includes a member in an association, joint-stock company, or insurance company.

§ 458.82 *Access to returns by State officers.* (a) The proper officers of a State are entitled as of right upon the request of its governor to have access to the returns of a corporation or to an abstract thereof, showing its name and income.

(b) The request or application of the governor must be in writing, signed by

him under the seal of his State, and must show why access is desired, and the names and official positions of the officers designated to have the access. The request or application should be addressed to the Commissioner, who will set a convenient time and place for the access to the returns (or to an abstract thereof as he may determine).

(c) Access shall be given only in the office of the Commissioner, unless such returns are in the custody of a collector of internal revenue or internal revenue agent in charge, in which event the return may be inspected in the office of such collector or agent, but only in the presence of an internal revenue officer designated by the collector or agent for that purpose.

§ 458.83 *Examination of returns by shareholder.* A bona fide shareholder of record owning 1 percent or more of the outstanding stock of a corporation shall be entitled as of right, upon making request of the Commissioner, to examine the returns of such corporation and of its subsidiaries. His request for permission to examine such returns must be made in writing, verified by affidavit, and shall show his address, the name of the corporation, the period of time covered by the return he desires to inspect, the amount of the corporation's outstanding capital stock, the number of shares owned by him, the date when he acquired them, and whether he has the beneficial as well as the record title to such shares. It shall also show that he has not acquired his shares for the purpose of the examination of the returns of the corporation. If he has acquired them for such purpose, he is not a bona fide shareholder within the meaning of the statute. The application shall be supported by satisfactory evidence showing that the applicant is a bona fide shareholder of record of the required amount of stock of the corporation. The supporting evidence may be in the form of a certificate signed by the president or vice president of the corporation and countersigned by the secretary under the corporate seal. Upon being satisfied from the evidence presented that the applicant has fully met these conditions, the Commissioner will grant the permission to examine the returns and set a convenient time and place for the examination. This privilege is personal and will be granted only to the shareholder, who cannot delegate

it to another. In the case of a corporation which has been dissolved, the returns may be examined by any person who would have been entitled to examine them at the date of dissolution.

§ 458.84 *Penalties for disclosure of returns.* Section 3167, Revised Statutes, as amended by the Revenue Act of 1918 and reenacted without change by section 1115 of the Revenue Act of 1926, makes it a misdemeanor punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding 1 year, or both, at the discretion of the court, for any person to print or publish in any manner whatever not provided by law information contained in any income return, and further provides that if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. The penalties provided in section 3167, Revised Statutes, are applicable also to disclosure of information contained in excess-profits and capital stock tax returns and returns made under Title IX of the Social Security Act.

RETURNS UNDER TITLE III OF THE REVENUE  
ACT OF 1936

SOURCE: §§ 458.90 and 458.91 contained in Treasury Decision 4878, 4 F. R. 76.

§ 458.90 *Inspection of returns by State taxing officials.* Original returns of taxes imposed by Title III shall be open to inspection, at convenient times and places, by any official, body, or commission lawfully charged with the administration of any State tax law, or by the representatives of such official, body, or commission designated in writing by the governor of the State, for the purpose of such administration, or for the purpose of obtaining information to be furnished to local taxing authorities, as provided in section 55 (b) (1) and (2) of the Revenue Act of 1936. Requests for permission to inspect the returns must be in writing signed by the governor under the seal of his State, and must be addressed to the Commissioner of Internal Revenue, Records Division, Washington 25, D. C. The request shall state (a) the kind of returns it is desired to inspect, (b) the taxable year or years covered by the returns it is desired to inspect, (c) the name of the official, body, or commission by whom or which the inspection is to be made, (d) the name of the representative of

such official, body, or commission, designated to make the inspection, (e) by specific references, the State tax law which such official, body, or commission is charged with administering and the law under which he, she, or it is so charged, (f) the purpose for which the inspection is to be made, and (g) if the inspection is for the purpose of obtaining information to be furnished to local taxing authorities, (1) the name of the official, body, or commission of any political subdivision of the State, lawfully charged with the administration of the tax laws of such political subdivision, if any, to whom, or to which the information secured by the inspection is to be furnished, and (2) the purpose for which the information is to be used by such official, body, or commission.

§ 458.91 *Examination of returns by shareholder.* A bona fide shareholder of record owning 1 percent or more of the outstanding stock of a corporation shall be entitled as of right, upon making request of the Commissioner, to examine the returns of such corporation and of its subsidiaries. His request for permission to examine such returns shall be made in writing, verified by affidavit, and shall show his address, the name of the corporation, the period of time covered by the return he desires to inspect, the amount of the corporation's outstanding capital stock, the number of shares owned by him, the date when he acquired them, and whether he has the beneficial as well as the record title to such shares. It shall also show that he has not acquired his shares for the purpose of the examination of the returns of the corporation. If he has acquired them for such purpose, he is not a bona fide shareholder within the meaning of the statute. The application shall be supported by satisfactory evidence showing that the applicant is a bona fide shareholder of record of the required amount of stock of the corporation. The supporting evidence may be in the form of a certificate signed by the president or vice president of the corporation and countersigned by the secretary under the corporate seal. Upon being satisfied from the evidence presented that the applicant has fully met these conditions, the Commissioner will grant the permission to examine the returns and set a convenient time and place for the examination. This privilege is personal and will be granted only to the share-

holder, who cannot delegate it to another. In the case of a corporation which has been dissolved, the returns may be examined by any person who would have been entitled to examine them at the date of dissolution.

ESTATE AND GIFT TAX RETURNS FILED ON OR BEFORE JUNE 16, 1933

SOURCE: §§ 458.100 to 458.106 contained in Treasury Decision 4878, 4 F. R. 76.

§ 458.100 *General.* Estate tax returns and notices, and gift tax returns, shall be treated as privileged communications and shall not be inspected nor their contents disclosed, except as in §§ 458.101–458.106.

§ 458.101 *Inspection by executor or donor.* Upon application to the Commissioner an estate tax return or notice may be inspected by the executor, or his successor in office, or by his duly authorized attorney in fact. Upon like application a gift tax return may be inspected by the donor or by his duly authorized attorney in fact.

§ 458.102 *Disclosure of information by revenue officer.* An internal revenue officer engaged in an official investigation of an estate tax or gift tax liability may disclose the returned value of any item or the amount of any specific deduction or other limited information, if such disclosure is necessary in order to verify the same or to arrive at a correct determination of the tax. This right of disclosure, however, is limited to the purposes of the investigation, and no case extends to such information as the amount of the estate, the amount of tax, or other general data.

§ 458.103 *Inspection by State officers.* Upon written application to the Commissioner, a return or notice may be exhibited, or information contained therein may be disclosed, to an officer of any State, for official use in connection with an estate, inheritance, legacy, succession, gift, or other tax of the State, provided a like cooperation is given by the State to the Commissioner of Internal Revenue or his representatives for use in the administration of the Federal tax laws. Such officer may also be permitted to inspect schedules, lists, and other statements designed to be supplemental to, or to become a part of, the original return, and other records and reports which contain information in-

cluded or required by statute to be included in the return.

§ 458.104 *Inspection by person having material interest.* If any other person has a material interest in ascertaining any fact disclosed by the return, or in obtaining information as to the payment of the tax, he may make a written application to the Commissioner of Internal Revenue for such information, setting forth the nature of his interest and the purpose of the application. Thereupon, the Commissioner may permit an inspection of, or furnish a copy of, the return, or may furnish such information as he deems advisable.

§ 458.105 *Inspection by Government attorneys.* Returns shall be open to inspection by a United States Attorney or by an attorney of the Department of Justice in the course of his official duties. The request for inspection shall be in writing and, except as provided in § 458.106, shall be addressed to the Commissioner, and shall state the purpose for which inspection is desired. It may be signed by the Attorney General, the Assistant to the Attorney General, an Assistant Attorney General, or a United States Attorney.

§ 458.106 *Returns in custody of collector or revenue agent in charge.* If the return is in the custody of a collector or internal revenue agent in charge, such collector or agent in charge may, upon like written request made to him, permit inspection thereof by a United States Attorney or an attorney of the Department of Justice. Upon written application to him such collector or agent in charge may also permit inspection by the executor or his successor in office, or his duly authorized attorney in fact, in case of estate tax returns, or the donor or his duly authorized attorney in fact in case of gift tax returns, in accordance with the regulations in this subpart.

GENERAL PROVISIONS

SOURCE: §§ 458.110 to 458.112 contained in Treasury Decision 4878, 4 F. R. 76.

§ 458.110 *Use of returns in litigation.* The return of an individual partnership, corporation, or fiduciary, or a copy thereof, may be furnished to a United States Attorney for official use in proceedings before a United States grand jury or in litigation in any court, if the United States is interested in the result, or for use in preparation for such proceedings

or litigation; or to an attorney of the Department of Justice, for like use, upon written request of the Attorney General, the Assistant to the Attorney General, or an Assistant Attorney General. If a return or copy is thus furnished, it shall be limited in use to the purpose for which it is furnished and is under no condition to be made public except to the extent that publicity necessarily results from such use. The original return will be furnished only in exceptional cases, and then only if it is made to appear that the ends of justice may otherwise be defeated. Neither the original nor a copy of a return desired for use in litigation in court will be furnished if the United States Government is not interested in the result, but this provision is not a limitation on the use of copies of returns by the persons entitled thereto.

§ 458.111 *Furnishing of copies of returns.* A copy of a return may be furnished to any person who is entitled to inspect such return upon written application therefor and the submission of evidence satisfactory to the Commissioner of his right to receive the same except that if a return is in the custody of a collector or of an internal revenue agent in charge, such collector or agent in charge may furnish a copy of such return to a United States Attorney, or an attorney of the Department of Justice, or to the taxpayer or his duly authorized attorney in fact, in accordance with the regulations in this subpart. Certified copies will be furnished only upon specific request therefor sent to the Commissioner at Washington.

The Commissioner may prescribe a reasonable fee for furnishing copies of returns.

§ 458.112 *Supplemental documents, records and reports.* Persons entitled to inspect returns may have access to information returns, schedules, lists, and other statements designed to be supplemental to, or to become a part of, the returns to which they are given access, and the Commissioner may, in his discretion, permit such persons to inspect other records and reports which contain information included or required by statute to be included in the return.

#### EXCISE TAX RETURNS

SOURCE: §§ 458.120 and 458.121 contained in Treasury Decision 5138, 7 F. R. 2991.

§ 458.120 *Introductory.* (a) Section 55 (a) (2) of the Internal Revenue Code as amended, provides:

And all returns made under this chapter, subchapters A, B, D, and E of chapter 2, subchapter B of chapter 3, chapters 4, 7, 12, and 21, subchapter A of chapter 29 and chapter 30, shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(b) Section 55 (Title I) of the Revenue Act of 1932, as amended by section 218 (h), Title II, of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195, 209), provides:

Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926; and all returns made under this Act after the date of enactment of the National Industrial Recovery Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(c) Section 55 (a) (Title I) of the Revenue Act of 1934, provides:

Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926; and all returns made under this Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

§ 458.121 *Inspection of excise tax returns.* Pursuant to the above-mentioned provisions of law excise tax returns filed with respect to any tax imposed by chapter 7 or 12 or 21, or subchapter A of chapter 29, or chapter 30, of the Internal Revenue Code, or filed after June 16, 1933, with respect to any tax imposed by Title IV, V, or VII of the Revenue Act of 1932, or filed with respect to the tax imposed by Title IV of the Revenue Act of 1934, or by any of the above-mentioned provisions as amended, shall be open to inspection to the same extent as provided with respect to income tax returns in Executive Order No. 7849, approved March 25, 1938, and §§ 458.51 to 458.57, inclusive, and §§ 458.64 to 458.70, inclusive, of this part.

**SUBPART B—USE OF ORIGINAL RETURNS OPEN TO INSPECTION IN ACCORDANCE WITH §§ 458.50–458.71; FURNISHING OF COPIES OF RETURNS; INSPECTION OF RETURNS OF CORPORATIONS BY STATE OFFICERS AND SHAREHOLDERS**

SOURCE: §§ 458.200 to 458.209 contained in Treasury Decision 4945, 4 F. R. 4037.

**INTRODUCTORY**

§ 458.200 *Introductory.* By Executive Order 8320 dated August 28, 1939, the President ordered that returns made under chapter 1, subchapters A, B, and D of chapter 2, chapters 3, 4, and 6, and subchapter C of chapter 9 of the Internal Revenue Code, shall be open to inspection in accordance and upon compliance with the rules and regulations promulgated in §§ 458.50–458.71 approved by the President on the same date. Those sections deal with the inspection of returns in so far as inspection is permissible only upon order of the President and under regulations approved by the President. Under authority of law, and without action by the President, returns of corporations under chapter 1 (income tax), subchapters A (surtax on personal holding companies), B (excess-profits tax), and D (unjust enrichment tax), of chapter 2, chapter 6 (capital stock tax), and subchapter C of chapter 9 (employment tax on employers), of the Internal Revenue Code, are open to inspection by the proper offices of any State; all returns under chapter 1, and subchapters A, B, and D, of chapter 2 of the Internal Revenue Code (or copies thereof) are open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities; and all returns of corporations are open to inspection by bona fide shareholders of record owning 1 percent or more of the outstanding stock.

Pursuant to sections 55, 62, 508, 603, 702 (a), 1204, 1207, 1604 (c), and 3791 of the Internal Revenue Code, the following rules and regulations are hereby prescribed with respect to the use of original, and the furnishing of copies of, returns open to inspection in accordance with §§ 458.50–458.71, or otherwise; with respect to examinations by shareholders of the returns of corporations; with respect to inspection of returns of corpora-

tions under chapter 1, subchapters A, B, and D of chapter 2, chapter 6, and subchapter C of chapter 9 of the Internal Revenue Code, by the proper officers of any State; and with respect to the inspection of returns under chapter 1, and subchapters B and D of chapter 2 of the Internal Revenue Code by any official, body, or commission, lawfully charged with the administration of any State tax law. For inspection by State taxing officials of income returns other than returns under subchapters B and D of chapter 2 of the Internal Revenue Code, see section 55 (b) of the Internal Revenue Code and the regulations with respect thereto.

**SPECIAL PROVISIONS**

§ 458.201 *Access to returns by State officers.* (a) The proper officers of a State are entitled as of right upon the request of its governor to have access to the following returns of a corporation (or abstracts thereof): Income returns (including personal holding company and unjust enrichment returns), and excess-profits and capital stock tax returns, and returns of employment tax by employers under subchapter C of chapter 9 of the Internal Revenue Code.

(b) The request or application of the governor must be in writing, signed by him under the seal of his State, and must show why access is desired, and the names and official positions of the officers designated to have the access. The request or application should be addressed to the Commissioner, who will set a convenient time and place for the access to the returns (or to an abstract thereof as he may determine).

(c) Access shall be given only in the office of the Commissioner, unless such returns are in the custody of a collector of internal revenue or an internal revenue agent in charge or the head of a field division of the Technical Staff, in which event the return may be inspected in the office of such collector or agent or head of division, but only in the presence of an internal revenue officer designated by such collector or agent or head of division for that purpose.

§ 458.202 *Inspection of returns by State taxing officials.* Original returns of taxes imposed by subchapters B and D of chapter 2 of the Internal Revenue Code shall be open to inspection, at convenient times and places, by any official, body, or commission lawfully charged

with the administration of any State tax law, or by the representatives of such official, body, or commission designated in writing by the governor of the State, for the purpose of such administration, or for the purpose of obtaining information to be furnished to local taxing authorities, as provided in section 55 (b) (2) of the Internal Revenue Code. Requests for permission to inspect the returns must be in writing signed by the governor under the seal of his State, and must be addressed to the Commissioner of Internal Revenue, Records Division, Washington, D. C. The request shall state (a) the kind of returns it is desired to inspect, (b) the taxable year or years covered by the returns it is desired to inspect, (c) the name of the official, body, or commission by whom or which the inspection is to be made, (d) the name of the representative of such official, body, or commission, designated to make the inspection, (e) by specific references, the State tax law which such official, body, or commission is charged with administering and the law under which he, she, or it is so charged, (f) the purpose for which the inspection is to be made, and (g) if the inspection is for the purpose of obtaining information to be furnished to local taxing authorities, (1) the name of the official, body, or commission of any political subdivision of the State, lawfully charged with the administration of the tax laws of such political subdivision, if any, to whom or to which the information secured by the inspection is to be furnished, and (2) the purpose for which the information is to be used by such official, body, or commission.

§ 458.203 *Examination of returns by shareholder.* A bona fide shareholder of record owning 1 percent or more of the outstanding stock of a corporation shall be entitled as of right, upon making request of the Commissioner, to examine the returns of such corporation and of its subsidiaries. His request for permission to examine such returns shall be made in writing, verified by affidavit, and shall show his address, the name of the corporation, the period of time covered by the return he desires to inspect, the amount of the corporation's outstanding capital stock, the number of shares owned by him, the date when he acquired them, and whether he has the beneficial as well as the record title to such shares. It shall also show that he has not acquired his shares for the purpose of the examination of the returns

of the corporation. If he has acquired them for such purpose, he is not a bona fide shareholder within the meaning of the statute. The application shall be supported by satisfactory evidence showing that the applicant is a bona fide shareholder of record of the required amount of stock of the corporation. The supporting evidence may be in the form of a certificate signed by the president or vice president of the corporation and countersigned by the secretary under the corporate seal. Upon being satisfied from the evidence presented that the applicant has fully met these conditions, the Commissioner will grant the permission to examine the returns and set a convenient time and place for the examination. This privilege is personal and will be granted only to the shareholder, who cannot delegate it to another. In the case of a corporation which has been dissolved, the returns may be examined by any person who would have been entitled to examine them at the date of dissolution.

#### GENERAL PROVISIONS

§ 458.204 *Use of returns in litigation.* The return of an individual, partnership, corporation, or fiduciary, or a copy thereof, may be furnished to a United States attorney for official use in proceedings before a United States grand jury or in litigation in any court, if the United States is interested in the result, or for use in preparation for such proceedings or litigation; or to an attorney of the Department of Justice, for like use, upon written request of the Attorney General, the Assistant to the Attorney General, or an Assistant Attorney General. If a return or copy is thus furnished, it shall be limited in use to the purpose for which it is furnished and is under no condition to be made public except to the extent that publicity necessarily results from such use. The original return will be furnished only in exceptional cases, and then only if it is made to appear that the ends of justice may otherwise be defeated. Neither the original nor a copy of a return desired for use in litigation in court will be furnished if the United States Government is not interested in the result, but this provision is not a limitation on the use of copies of returns by the persons entitled thereto.

§ 458.205 *Furnishing of copies of returns.* A copy of a return may be furnished to any person who is entitled to

inspect such return upon written application therefor and the submission of evidence satisfactory to the Commissioner of his right to receive the same, except that if a return is in the custody of a collector or an internal revenue agent in charge or the head of a field division of the Technical Staff, such collector or agent in charge or head of division may furnish a copy of such return to a United States attorney or an attorney of the Department of Justice, or to the taxpayer or his duly authorized attorney in fact, in accordance with the regulations in this part. Certified copies will be furnished only upon specific request therefor sent to the Commissioner at Washington.

The Commissioner may prescribe a reasonable fee for furnishing copies of returns.

§ 458.206 *Supplemental documents, records and reports.* Persons entitled to inspect returns may have access to information returns, schedules, lists, and other statements designed to be supplemental to, or to become a part of, the returns to which they are given access, and the Commissioner may, in his discretion, permit such persons to inspect other records and reports which contain information included or required by statute to be included in the return.

§ 458.207 *Penalties for disclosure of returns.* Section 55 (f) (1) of the Internal Revenue Code makes it a misdemeanor punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding 1 year, or both, at the discretion of the court, for any person to print or publish in any manner whatever not provided by law information contained in any income return, and further provides that if the offender be an officer or employee of the United States he shall be dismissed from office or discharged from employment. The penalties provided in section 55 (f) (1) of the Internal Revenue Code are applicable also to disclosure of information contained in excess-profits, unjust enrichment and capital stock tax returns, and returns made under subchapter C of chapter 9 of the Internal Revenue Code.

§ 458.208 *Terms used.* Any word or term used in §§ 458.200–458.209 which is defined in any chapter of the Internal Revenue Code shall be given the definition contained in the chapter which is applicable with respect to the particular return made.

§ 458.209 *Prior regulations under Code superseded.* This Treasury decision supersedes §§ 458.80–458.112, approved January 4, 1939, only insofar as such sections were made applicable by the Treasury Decision 4885, approved February 11, 1939, to returns made under the Internal Revenue Code.

#### SUBPART C—INSPECTION UNDER SPECIAL EXECUTIVE ORDERS

§ 458.300 *Inspection of returns by Department of Commerce.* Pursuant to the provisions of sections 55 (a), 508, 603, 729 (a), and 1204 of the Internal Revenue Code, income, excess profits, declared value excess profits, and capital stock tax returns made under the Internal Revenue Code, as amended, for the year 1941 and subsequent years, shall be open to inspection by the Department of Commerce. The inspection of such returns herein authorized may be made by any officer or employee of the Department of Commerce duly authorized by the Secretary of Commerce to make such inspection. Upon written notice by the Secretary of Commerce to the Secretary of the Treasury stating the classes of returns which it is desired to inspect, the Secretary of the Treasury and any officer or employee of the Treasury Department, with the approval of the Secretary of the Treasury, may furnish the Department of Commerce with any data on such returns or make the returns, or any of them, available in the Office of the Commissioner of Internal Revenue for inspection, and taking of such data as the Secretary of Commerce may designate. The information so obtained may be published or disclosed in statistical form, provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer.

[T. D. 5417, 9 F. R. 13557]

§ 458.301 *Inspection of statistical transcript punch cards by the Federal Security Agency.* Statistical transcript punch cards prepared by the Bureau of Internal Revenue from individual income tax returns made under the Internal Revenue Code, as amended, for taxable years beginning in 1944 and ending on or before June 30, 1945, may be open to inspection by the Federal Security Agency. The inspection of such transcript cards herein authorized may be made by any officer or employee of the Agency duly authorized by the Administrator of the Agency to make such inspection. Upon

written notice by such Administrator to the Secretary of the Treasury giving the classes of selected transcript cards it is desired to inspect, the Secretary and any officer or employee of the Treasury Department, with the approval of the Secretary, may furnish such Agency with any data on such cards or may make the cards, or any of them, available in the office of the Commissioner of Internal Revenue for inspection and copying by the Agency or by such examiners or agents as the Administrator thereof may designate. The information so obtained may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer. [T. D. 5453, 10 F. R. 4789]

§ 458.302 *Inspection of income, excess-profits, and declared value excess-profits tax returns by the War Contracts Price Adjustment Board.* Pursuant to the provisions of sections 55 (a), 508, 603, and 729 (a) of the Internal Revenue Code, income, excess-profits, and declared value excess-profits tax returns made under the Internal Revenue Code, as amended, for the year 1939 and subsequent years, shall be open to inspection by the War Contracts Price Adjustment Board. The inspection of such returns herein authorized may be made by any officer or employee of such Board duly authorized by the Chairman of the Board to make such inspection. Upon written notice by the Chairman to the Secretary of the Treasury stating the classes of returns which it is desired to inspect, the Secretary of the Treasury and any officer or employee of the Treasury Department, with the approval of the Secretary of the Treasury, may furnish the Board with any data on such returns or make the returns, or any of them, available in the Office of the Commissioner of Internal Revenue for inspection, and taking of such data as the Chairman may designate. The information so obtained may be published or disclosed in statistical form, provided such publication does not disclose, directly or indirectly, the name or address of any taxpayer. [T. D. 5493, 11 F. R. 1432]

§ 458.303 *Inspection of returns by Federal Trade Commission.* (a) Pursuant to the provisions of sections 55 (a), 508, 603, 729 (a), and 1204 of the Internal Revenue Code (53 Stat. 29, 111, 171; 54

Stat. 989, 1008; 55 Stat. 722; 26 U. S. C. 55 (a), 508, 603, 729 (a), and 1204), and in the interest of the internal management of the Government, corporation income, excess-profits, declared value excess-profits, and capital stock tax returns made for the calendar year 1943 and fiscal years ended in the calendar year 1943, and statistical transcript cards prepared by the Bureau of Internal Revenue from the returns included in such classes made for any taxable year ending after June 30, 1943, and before July 1, 1944, shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914, 38 Stat. 717. The inspection of such returns and cards authorized in this section may be made by any officer or employee of the Federal Trade Commission duly authorized by the Chairman of the Federal Trade Commission to make such inspection. Upon written notice by the Chairman of the Federal Trade Commission to the Secretary of the Treasury stating the classes of corporations the returns or transcript cards of which it is desired to inspect, the Secretary and any officer or employee of the Treasury Department, with the approval of the Secretary of the Treasury, may furnish the Federal Trade Commission with any data on such returns or cards or may make the returns or cards available in the office of the Commissioner of Internal Revenue for the taking of such data as the Chairman of the Federal Trade Commission may designate. Any information thus obtained shall be held confidential except to the extent that it shall be published or disclosed in statistical form, provided such publication shall not disclose, directly or indirectly, the name or address of any taxpayer.

(b) This section shall be effective upon its filing for publication in the Federal Register (March 7, 1947). [T. D. 5552, 12 F. R. 1655]

## Part 459—Claims for Payment of Judgments Against the United States

§ 459.1 *Claims for judgments.* Claims for the payment of judgments rendered by United States district courts and the

United States Court of Claims against the United States representing taxes, penalties or other sums, should be executed on Form 843 in duplicate and filed directly with the Commissioner of Internal Revenue, Washington, D. C. The claimant should state the grounds of his claim under oath, giving the names of all parties to the suit, the cause of action, the date of its commencement, the date of the judgment, the court in which it was recovered, and its amount. To this affidavit there should be annexed two certified copies of the final judgment, and an itemized bill of the costs paid, receipted by the clerk or other proper officer of the court. In the case of a judgment rendered by the Court of Claims, there may be submitted in lieu of a certified copy of the final judgment, a certificate of judgment issued by the clerk of the court and two copies of the court's opinion, if any was rendered.

(53 Stat. 467, 477; 26 U. S. C. 3791, 3901)  
[T. D. 4262, Mar. 28, 1929]

## Part 462—Closing Agreements

§ 462.1 *Closing agreements relating to tax liability in respect of internal-revenue taxes.* (a) Closing agreements provided for in section 3760, I. R. C., may relate to any taxable period ending prior or subsequent to the date of the agreement. With respect to taxable periods ending prior to the date of the agreement, the matter agreed upon may relate to the total tax liability of the taxpayer or it may relate to one or more separate items affecting the tax liability of the taxpayer, as for example, the amount of gross income, deductions for losses, depreciation or depletion, or the year for which an item of income is to be included in gross income or the year for which an item of loss is to be deducted, or the value of property on a specified date. A closing agreement may also be entered into in order to provide a "determination under the income tax laws" as defined in section 3801 (a) (1) (A), I. R. C. With respect to taxable periods ending subsequent to the date of the agreement, the matter agreed upon may relate only to one or more separate items affecting the tax liability of the taxpayer. The following, among others, are examples of the latter type of

closing agreement: (1) A taxpayer may sell a portion of his holdings in a particular stock. A closing agreement may be entered into fixing the cost or other legal factor determining the basis for computing gain or loss on such sale, and, at the same time fixing the cost or other legal factor determining the basis (unless or until the statute is changed to require the use of some other factor to determine basis) of the remaining portion of the stock still held by the taxpayer upon which gain or loss will be computed when the taxpayer sells such stock in a later year; (2) if the taxpayer is undecided whether to sell property or hold it, or as to the price to which to sell it, a closing agreement may be entered into determining the market value of the property as of March 1, 1913, for future taxable periods, prior to the consummation of the sale by the taxpayer. A closing agreement with respect to any taxable period ending subsequent to the date of the agreement is subject to any change in or modification of the law enacted subsequent to the date of the agreement and applicable to such taxable period, and each closing agreement shall so recite. Closing agreements may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of agreements relating to the tax liability for a single period. Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded in accordance with the applicable provisions of law.

(b) The procedure in the Bureau of Internal Revenue with respect to applications for entering into closing agreements in accordance with these regulations will be under such rules as may be prescribed from time to time by the Commissioner.

(c) This part applies to any closing agreement entered into on and after May 28, 1938, the date of the enactment of the Revenue Act of 1938.

(53 Stat. 467; 26 U. S. C. 3791. Interprets or applies 53 Stat. 442, 462; 26 U. S. C. §644, 8760) [T. D. 4355, 3 F. R. 2064]

## Part 464—Assessment and Collection of Taxes of Insolvent Banks and Trust Companies

### Sec.

- 464.1 Effect of statutory amendments.
- 464.2 Banks and trust companies covered.
- 464.3 Definitions.
- 464.4 Scope of section, generally.
- 464.5 Segregated or transferred assets.
- 464.6 Unsegregated assets.
- 464.7 Earnings.
- 464.8 Abatement and refund.
- 464.9 Establishment of immunity.
- 464.10 Procedure during immunity.
- 464.11 Termination of immunity.
- 464.12 Collection of tax under termination of immunity.
- 464.13 Social Security taxes.

**AUTHORITY:** §§ 464.1 to 464.13 issued under 53 Stat. 467; 26 U. S. C. 3791. Interpret or apply 53 Stat. 470; 26 U. S. C. 3798.

**SOURCE:** §§ 464.1 to 464.13 contained in Treasury Decision 4958, 4 F. R. 4970, except as noted following sections affected.

§ 464.1 *Effect of statutory amendments.* The amendment of section 22 of the act of March 1, 1879, made by section 818 of the Revenue Act of 1938, was effective on May 28, 1938, the date of enactment of the Revenue Act of 1938. Section 406 of the Revenue Act of 1939 in substance makes identical amendments of subsection (c) of section 22, as amended by the Revenue Act of 1938, and section 3789 (c) of the Internal Revenue Code. The amendments made by section 406 of the Revenue Act of 1939 are effective as of May 28, 1938. Therefore section 22, as amended, of the Act of March 1, 1879, and section 3798 of the Internal Revenue Code, as amended by section 406 of the Revenue Act of 1939, in substance constitute a continuous section effective on May 28, 1938.

§ 464.2 *Banks and trust companies covered.* Section 22 (as amended) of the act of March 1, 1879, and section 3798 of the Internal Revenue Code, both as amended by section 406 of the Revenue Act of 1939, in substance apply as a continuous section to any national bank, or bank or trust company organized under State law, a substantial portion of the business of which consists of receiving deposits and making loans and discounts, and which has:

(a) Ceased to do business by reason of insolvency or bankruptcy, or

(b) Been released or discharged from its liability to its depositors for any part of their deposit claims, and the depositors have accepted in lieu thereof a lien upon its subsequent earnings or claims against its assets either (1) segregated and held by it for benefit of the depositors or (2) transferred to an individual or corporate trustee or agent who liquidates, holds or operates the assets for the benefit of the depositors.

§ 464.3 *Definitions.* As used in the regulations in this part:

(a) (1) The term "section", unless otherwise indicated by the context, means section 22 (as amended) of the act of March 1, 1879, section 3798 of the Internal Revenue Code (reenacting such section 22), and section 3798 of the Code as amended by section 406 of the Revenue Act of 1939, such sections in substance constituting a continuous section in effect on and after May 28, 1938. (See § 464.1.)

(2) Unless otherwise indicated, the term "subsection" means a subdivision of the "section" as defined in subparagraph (1) of this paragraph.

(b) The term "bank", unless otherwise indicated by the context, means any national bank, or bank or trust company organized under State law, within the scope of the section. See § 464.2.

(c) The terms "statute of limitations" and "limitations" mean all applicable provisions of law (including the section as herein defined) which impose, change, or affect limitations, conditions, or requirements relative to the allowance of refunds and abatements, or the assessment or collection of tax, as the case may be.

(d) The term "segregated assets" includes transferred or trusted assets, or assets set aside or earmarked, and to all or a portion of which, or the proceeds of which, the depositors are absolutely or conditionally entitled.

(e) The term "effective date" means May 28, 1938.

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

(g) The term "collector" means collector of internal revenue.

§ 464.4 *Scope of section, generally—*

(a) *Purpose.* The section prior to amendment by the Revenue Act of 1938, was intended to assist depositors of a bank which had ceased to do business

by reason of insolvency to recover their deposits, by prohibiting collection of taxes of the bank which would diminish the assets necessary for payment of its depositors. By the amendments like assistance is given to depositors of banks which are in financial difficulties but which, in certain conditions, continue in business.

(b) *Requisites of application.* In order that the section shall operate in a case where the bank continues business it is necessary that the depositors shall agree to accept, in lieu of all or a part of their deposit claims as such, claims against segregated assets, or a lien upon subsequent earnings of the bank, or both. When such an agreement exists, no tax diminishing such assets or earnings, or both, otherwise available and necessary for payment of depositors, may be collected therefrom. If, under such an agreement, the depositors have the right also to look to the unsegregated assets of the bank for recovery, in whole or part, the unsegregated assets are likewise, until they exceed the amount of the depositors' claims chargeable thereto, unavailable for tax collection. Any tax of such a bank, or part of any tax, which is once uncollectible under the section, cannot thereafter be collected except from any residue of segregated assets remaining after claims of depositors against such assets have been paid.

(c) *Interest.* For the purposes of the section, depositors' claims include bona fide interest, either on the deposits as such, or on the claims accepted in lieu of deposits as such.

(d) *Limitations on immunity.* The section is not primarily intended for the relief of banks as such. It does not prevent tax collection, from assets not necessary, or not available, for payment of depositors, from a bank within subsection (a), at any time within the statute of limitations. In other words the immunity of such a bank is not complete, but ceases whenever, within the statutory period for collection, it becomes possible to make collection without diminishing assets necessary for payment of depositors. In the case of a bank within subsection (b), any immunity to which the bank is entitled is absolute except as to segregated assets. Any tax coming within such immunity may never be collected. With respect to segregated assets, such a bank is subject to the same rule as a bank within subsection (a),

that is to say, after claims of depositors against segregated assets have been paid, any surplus is subject, within the statute of limitations, to collection of any tax, due at any time, the collection of which was suspended by the section. The section is not for the relief of creditors other than depositors, although it may incidentally operate for their benefit. See §§ 464.6 and 464.11 (b).

§ 464.5 *Segregated or transferred assets—(a) General.* In a case involving segregated or transferred assets, it is not necessary, for application of the section, that the assets shall technically constitute a trust fund. It is sufficient that segregated assets be definitely separated from other assets of the bank and that transferred assets be definitely separated both from other assets of the bank and from other assets held or owned by the trustee or agent to whom assets of the bank have been transferred; that the bank be wholly or partially released from liability for repayment of deposits as such; and that the depositors have claims against the separated assets. Any excess of separated assets over the amount necessary for payment of such depositors will be available for tax collection after full payment of depositors' claims under the agreement against such assets. But see § 464.11 (a).

(b) *Corporate transferees.* Where the segregated assets are transferred to a separate corporate trustee or corporate agent, the assets and earnings therefrom are within the protection of the section, until full payment of depositors' claims against such assets and earnings, no matter by whom the stock of such corporation is held, and no matter whether the assets be liquidated or operated or held for benefit of the depositors.

[T. D. 4958, 4 F. R. 4970, as amended by T. D. 5018, 5 F. R. 4318]

§ 464.6 *Unsegregated assets—(a) Depositors' claims against assets.* (1) Claims of depositors, to the extent that they are to be satisfied out of segregated assets, will not be considered in determining the availability of unsegregated assets for tax collection. If depositors have agreed to accept payment out of segregated assets only, collection of tax from unsegregated assets will not diminish the assets available and necessary for payment of the depositors' claims. Thus, it may be possible to collect taxes from the unsegregated assets

of a bank although the segregated assets are immune under the section.

(2) If the unsegregated assets of the bank are subject to any portion of the depositors' claims, such unsegregated assets will be within the immunity of the section only to the extent necessary to satisfy the claims to which such assets are subject. Taxes will still be collectible from the unsegregated assets to the extent of the amount by which the total value of such assets exceeds the liability to depositors to be satisfied therefrom. Therefore, if for example, in the case of a bank having a tax liability, not previously immune under the section, of \$50,000, the deposit claims against the bank are in the amount of \$75,000, and the assets available for satisfaction of deposit claims amount to \$100,000, the \$50,000 tax is collectible to the extent of the \$25,000 excess of assets over deposit claims. Collection is not to be postponed until the full amount of the tax is collectible.

(b) *Depositors' claims against earnings.* Even though under a bona fide agreement a bank has been released from depositors' claims as to unsegregated assets, if all or a portion of its earnings are subject to depositors' claims, all assets the earnings from which, in whole or part, are charged with the payment of depositors' claims, will be immune from tax collection. But see § 464.7 (a).

§ 464.7 *Earnings—(a) Availability for tax collection.* Earnings of a bank within subsection (b), whether from segregated or unsegregated assets, which are necessary for, applicable to, and actually used for, payment of depositors' claims under an agreement, are within the immunity of the section. If only a portion or percentage of income from segregated or unsegregated assets is available and necessary for payment of depositors' claims, the remaining income is available for tax collection. Earnings of the bank's first fiscal year ending after the making of the agreement not applicable to payment of depositors will be assumed to be applicable for collection of any tax due prior or subsequent to execution of the agreement. Earnings of subsequent fiscal periods from unsegregated assets not applicable to depositors' claims will be assumed to be applicable to payment of taxes as to which immunity under the section has not previously attached.

Earnings from segregated assets are available for collection of tax, whether previously uncollectible under the section or not, after depositors' claims against such assets have been paid in full. See §§ 464.5 (a) and 464.11 (a).

(b) *Tax computation.* The fact that earnings of a given year may be wholly or partly unavailable under the section for collection of taxes does not exempt the income for that year, or any part thereof, from tax liability. The section affects collectibility only, and is not concerned with taxability. Accordingly, the taxpayer's income tax return shall correctly compute the tax liability, even though in the opinion of the taxpayer it is immune from tax collection under the section. The tax shall be determined with respect to the entire taxable income and not merely with respect to the portion of the earnings out of which tax may be collected. As to establishment of immunity from tax collection see § 464.9.

(c) *Example.* An agreement, executed in the year 1938 between a bank subject to tax under section 14 (d) of the Revenue Act of 1938 and its depositors, provides (1) that certain assets are to be segregated for the benefit of the depositors who have waived (as claims against unsegregated assets of the bank) a percentage of their deposits; (2) that 60 percent of the bank's net earnings for fiscal years beginning with the fiscal year ending December 31, 1938, from unsegregated assets, shall be paid to the depositors until the portion of their claims waived with respect to unsegregated assets of the bank has been paid; and (3) that the unsegregated assets shall not be subject to depositors' claims. The special class net income of the bank for the calendar year 1938 is \$10,000, \$4,000 produced by the segregated, and \$6,000 produced by the unsegregated assets, and that amount, \$10,000 also constitutes its net earnings for that year before deducting Federal income taxes. Such amount shall be considered the net earnings for the purpose of the regulations in this part in computing the portion of the earnings to be paid to depositors. The bank has an outstanding tax liability for prior years of \$7,000. The income tax liability of the bank for 1938 is 16½ percent of \$10,000, or \$1,650, making a total outstanding tax liability of \$8,650. The portion of the earnings of the bank for 1938 remaining after provision for depositors

is \$2,400 (\$6,000 less 60 percent thereof, or \$3,600). It will be assumed that of the total outstanding tax liability of \$8,650, \$2,400 may be assessed and collected, leaving \$6,250 to be collected from any excess of the segregated assets after claims of depositors against such segregated assets have been paid in full. No part of the \$6,250 immune from collection from 1938 earnings may be collected thereafter from unsegregated assets of the bank or earnings therefrom, so that except for any possible surplus of the segregated assets the \$6,250 is uncollectible.

In the year 1939 the earnings are again \$10,000, \$4,000 from segregated and \$6,000 from unsegregated assets, as in the previous year. However, the return filed shows income of \$5,000 and a tax liability of \$900. An investigation shows the true income to be \$10,000, on which the tax is \$1,800. The full \$1,800 will be assumed to be collectible. The \$600 difference between \$2,400 (the excess of earnings from unsegregated assets over the amount going to the depositors), and the \$1,800 tax for 1939, is not available for collection of the tax for prior years, which became immune as described above, but may be available for collection of tax for subsequent years.

No significance attaches to the selection of the years 1938 and 1939 for the example. The rules indicated by the example are equally applicable to subsequent or prior years not excluded by limitations.

§ 464.8 *Abatement and refund.* (a) An assessment or collection, no matter when made, if contrary to the section as amended by the Revenue Act of 1938 and the Revenue Act of 1939, is subject to abatement or refund within the applicable statutory period of limitations.

(b) An abatement or refund after May 28, 1938, the effective date of the amendments, is equally allowable whether assessment or collection was erroneous because contrary to the amended section, or because, in the case of a bank within subsection (a), the same tax had been properly abated or refunded, or in the case of a bank within subsection (b), had been properly refunded, on or before the effective date of the amendments, and reassessed or collected after such date. See § 464.12 (b). If there was a prior proper abatement or refund in the case of a bank within subsection (a), or a proper refund in the case of a

bank within subsection (b), on or before the effective date of the amendments, a claim for abatement or refund of the same tax reassessed or recollected after the effective date of the amendments may be allowed even though the second assessment or collection was otherwise in accordance with the amended section. However, in the absence of abatement or refund in the case of a bank within subsection (a), or of a refund in the case of a bank within subsection (b), on or before the effective date of the amendments, the mere fact that the tax was due before the effective date of the amendments will not be ground for allowance of a claim.

(c) Collection from a bank within subsection (b) which diminished assets necessary for payment of depositors, if made prior to agreement with depositors, is not contrary to the amended section, and affords no ground for refund.

(d) Any abatement or refund is subject to existing statutory periods of limitation, which periods are not suspended or extended by the amended section. In order to secure refund of any taxes paid for any taxable year during the period of immunity the bank must file claim therefor.

§ 464.9 *Establishment of immunity.*

(a) The mere allegation of insolvency, or that depositors have claims against segregated or other assets or earnings will not of itself secure immunity from tax collection. It must be affirmatively established to the satisfaction of the Commissioner that collection of tax will be contrary to the amended section. (See also § 464.10)

(b) Any claim, by a bank, of immunity under subsection (b), shall be supported by a statement, under oath or affirmation, which shall show: (1) the total of depositors' claims outstanding, and (2) separately and in detail, the amount of each of the following, and the amount of depositors' claims properly chargeable against each: (i) segregated or transferred assets; (ii) unsegregated assets; (iii) estimated future average annual earnings and profits; (iv) amount collectible from shareholders; and (v) any other resources available for payment of depositors' claims. The detail shall show the full amount of depositors' claims chargeable against each of the items mentioned in subsections (i) to (v), inclusive, of this subparagraph, even though part or all of the amount charge-

able against a particular item is also chargeable against some other item or items. There shall also be filed a copy of any agreement between the bank and its depositors, and any other agreement or document bearing on the claim of immunity under the section. The statement shall show the basis, as "book", "market", etc., of valuation of the assets.

§ 464.10 *Procedure during immunity—(a) Statements to be filed.* As long as, pursuant to the section complete or partial immunity is claimed, a bank within subsection (b) shall file with each income tax return a statement as required by § 464.9, in duplicate, and shall also file such additional statements as the Commissioner may require. Whether or not additional statements shall be required, and the frequency thereof, will depend on the circumstances, including the financial status and apparent prospects of the bank, and the time which is available for assessment and collection. If a copy of an agreement or document has once been filed, a copy of the same agreement or document need not again be filed with a subsequent statement, if it is shown by the subsequent statement, when and where and with what return the copy was filed. In case of amendment a copy of the amendment must be filed with the return for the taxable year in which the amendment is made.

(b) *Failure to file.* Failure of a bank to file any required statement will be treated as indicating that the bank is not entitled to immunity under the section.

§ 464.11 *Termination of immunity—(a) General.* In the case of a bank within subsection (a) immunity will end whenever, and to the extent that, taxes may be assessed and collected, within the applicable limitation periods as extended by the section, without diminishing the assets available and necessary for payment of depositors. Immunity of a bank within subsection (b) is terminated, as to segregated assets, whenever claims of depositors against such assets have been paid in full. See § 464.5. As to segregated assets, the termination of immunity is complete, and any balance remaining after payment of depositors is available, within statutory limitations, for collection of tax due at any time. However, taxes of the bank will be collectible from segregated assets only to the extent that the bank has a legal or

equitable interest therein. Assets as to which there has been a complete conveyance for benefit of depositors, and the bank has bona fide been divested of all legal and equitable interest, are not available for collection of the bank's tax liability.

As to unsegregated assets of a bank within subsection (b), immunity terminates only as to taxes thereafter becoming due. When taxes are once immune from collection, the immunity as to unsegregated assets is absolute. But see the second paragraph of § 464.6 (a).

(b) *General creditors.* While the immunity from tax collection is for protection of depositors, and not for benefit of general creditors, in some cases the immunity will not end until the assets are sufficient to cover indebtedness of creditors generally. This situation will exist where under applicable law the claims of general creditors are on a parity with those of depositors, so that to pay depositors in full it is necessary to pay all creditors in full.

(c) *Shareholder liability.* In determining the sufficiency of the assets to satisfy the depositors' claims, shareholders' liability to the extent collectible shall be treated as available assets. See § 464.9.

(d) *Deposit insurance.* Deposit insurance payable to depositors shall not be treated as an asset of the bank and shall be disregarded in determining the sufficiency of the assets to meet the claims of depositors.

(e) *Notice by bank.* A bank within subsection (b), upon termination of immunity with respect to (1) earnings, (2) segregated or transferred assets, or (3) unsegregated assets, shall immediately notify the collector for the district in which the taxpayer's returns were filed of such termination of immunity. See § 464.10 (b).

(f) *Payment by bank.* As immunity terminates with respect to any assets, it will be the duty of the bank, without notice from the collector, to make payment of taxes collectible from such assets.

§ 464.12 *Collection of tax under termination of immunity—(a) General.* If, in the case of a bank within subsection (b), segregated assets (including earnings therefrom), in excess of those necessary for payment of outstanding deposits become available, such excess of

segregated assets shall be applied toward satisfaction of accumulated outstanding taxes previously immune under the section, and not barred by the statute of limitations. (But see § 464.5.) Where sufficient segregated assets or unsegregated assets are available, statutory interest shall be collected with the tax. When unsegregated assets or earnings therefrom previously immune become available for tax collection, they will be available only for collection of taxes (including interest and other additions) becoming due after immunity ceases. See example in § 464.7 (c).

(b) *Tax due before the effective date of the amendments.* In the case of a bank within subsection (a), the section does not permit assessment or reassessment or collection of tax abated or refunded, if the abatement or refund was in accordance with the section prior to the amendments by the Revenue Acts of 1938 and 1939.

In the case of a bank within subsection (b) the section does not permit assessment or reassessment of collection, from segregated or unsegregated assets, of tax refunded on or before May 28, 1938, if the refund was in accordance with the section prior to the amendments by the Revenue Acts of 1938 and 1939.

With the exceptions indicated by the preceding two paragraphs, tax due on or before May 28, 1938, and still outstanding on the said date, is within the provisions of the amended section and collectibility is determinable in accordance with the amended section the same as in the case of tax due after such date. Accordingly, a tax due prior to the effective date of the amendments and then collectible under the section may not be assessed or collected thereafter if such assessment or collection would be contrary to the section as amended. See § 464.8.

If the statutory period for assessment or collection had expired before the effective date of the amendments, the section does not revive it. Accordingly, in such situation the tax is not collectible under the amended section, regardless of other circumstances.

§ 464.13 *Social Security taxes.* The regulations in this part do not relate to Social Security taxes, since the immunity granted by the amended section does not apply to taxes imposed by the Social Security Act.

**Part 466—Seizure, Forfeiture, and Disposition of Vessels, Vehicles, and Aircraft Under the Act of August 9, 1939**

- Sec.
- 466.1 Officers who will make seizures.
- 466.2 Custody.
- 466.3 Other duties.

**AUTHORITY:** §§ 466.1 to 466.3 issued under sec. 8, 53 Stat. 1293; 49 U. S. C. 788. Interpret or apply secs. 3, 4, 53 Stat. 1292; 49 U. S. C. 783, 784.

**SOURCE:** §§ 466.1 to 466.3 contained in Treasury Decision 31, 4 F. R. 3840.

§ 466.1 *Officers who will make seizures.* For the purpose of carrying out the provisions of the act of Congress approved August 9, 1939 (53 Stat. 1291; 49 U. S. C. 781-788), the following persons are hereby authorized and designated to seize such vessels, vehicles, and aircraft as may be subject to seizure by virtue of the provisions of the said act:

(a) All officers engaged in the enforcement of the Federal narcotic drug laws and the Marihuana Tax Act of 1937; and

(b) The Commissioner of Internal Revenue, and all persons authorized by or pursuant to any provisions of law relating to internal revenue to make seizures.

§ 466.2 *Custody.* The following officers are hereby authorized and designated to hold in custody, awaiting disposition pursuant to the provisions of the said act of August 9, 1939, and any regulations issued thereunder, vessels, vehicles, and aircraft seized pursuant to the said act:

(a) The narcotic district supervisor for the district in which the seizure is made, when the seizure is made in connection with a violation involving a contraband article covered by section 1 (b) (1) of the said act; and

(b) The collector of internal revenue for the district in which the seizure is made, when the seizure is made in connection with a violation involving a contraband article covered by section 1 (b) (2) of the said act:

*Provided,* That in the case of any seizure involving contraband articles covered by two or more of the subsections (b) (1), (b) (2) and (b) (3) of section 1 of the said act, custody shall be in the appropriate officer (as above indicated in this

section or in the order relating to seizures involving subsection (b) (3) of the branch of the Treasury service to which the seizing officer belongs.

§ 466.3 *Other duties.* The respective officers authorized and designated in § 466.1 to hold in custody seized vessels, vehicles, and aircraft under this act are hereby authorized and designated to perform such other duties with respect to seizures and forfeitures of vessels, vehicles, and aircraft under this act, as are imposed upon the collectors of customs and appraisers with respect to seizures and forfeitures of vessels and vehicles under the customs laws.

### Part 468—Seizures of Vessels, Vehicles, and Aircraft in Connection With Contraband Firearms Covered by Section 1 (b) (2), Act of August 9, 1939

Sec.	
468.1	Definitions.
468.2	Reports of seizure.
468.3	Custody and storage.
468.4	Appraisalment.
468.5	Advertisement.
468.6	Requirements as to claim and bond.
468.7	Summary forfeiture.
468.8	Presentation for judicial action.
468.9	Petitions for remission or mitigation of forfeiture.
468.10	Time for filing petition.
468.11	Handling of petition.
468.12	Expenses; disposition of proceeds.
468.13	Release on payment of appraised value.
468.14	Awards.
468.15	Payments to officers prohibited.
468.16	Procedural details.

**AUTHORITY:** §§ 468.1 to 468.16 issued under 53 Stat. 294, 467, sec. 8, 53 Stat. 1293; 26 U. S. C. 2732, 3791, 49 U. S. C. 788.

**SOURCE:** §§ 468.1 to 468.16 contained in Treasury Decision 5066, 6 F. R. 4565, except as noted following sections affected.

§ 468.1 *Definitions.* As used in the regulations in this part, except as otherwise indicated by the context:

(a) "Conveyance" means a vessel, vehicle, or aircraft within the scope of the act of August 9, 1939, and the regulations in this part.

(b) "Seizing officer," "officer seizing," etc., mean the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit, the district supervisor, investigator in charge, investigator, or inspector of the proper district, or such

other officer of internal revenue as may be specially authorized by the Commissioner pursuant to section 3720 of the Internal Revenue Code to seize property legally subject to seizure and who has made or adopted a seizure within the scope of the regulations in this part.

(c) "Secretary" means the Secretary of the Treasury.

(d) "Commissioner" means the Commissioner of Internal Revenue.

(e) "Deputy Commissioner" means the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit.

(f) "District supervisor" means the person having charge of a supervisory district of the Alcohol Tax Unit of the Bureau of Internal Revenue.

(g) "Investigator in charge" means the person having charge of a subdivision of a supervisory district of the Alcohol Tax Unit of the Bureau of Internal Revenue.

(h) "Collector" means the collector of internal revenue.

(i) The terms defined in the act of August 9, 1939, shall have the meanings thereby ascribed to them.

§ 468.2 *Reports of seizure.* An officer seizing or adopting the seizure of a conveyance or contraband firearm shall promptly make a complete written report to the district supervisor for the district in which the seizure was made. The report shall be in such form and submitted in such manner as the Deputy Commissioner may require.

§ 468.3 *Custody and storage.* Any conveyance or contraband firearm seized under the law and the regulations in this part shall be in the custody of the district supervisor or investigator in charge for the district in which the seizure is made. The seizing officer shall store the conveyance or contraband firearm in a place designated, either generally or in the particular case, by the district supervisor or investigator in charge. The place of storage shall be in the judicial district in which the seizure occurred. Government storage facilities shall be utilized if practicable. If the conveyance is stored on private premises there shall be secured from the proprietor thereof and forwarded with the report to the district supervisor a receipt for the conveyance coinciding with the description in the report to the district supervisor. Conveyances or contraband

firearms may not be used prior to forfeiture and award for official use.

§ 468.4 *Appraisalment.* The district supervisor or investigator in charge shall appraise the conveyance or firearm to determine the value at the time and place of appraisalment, or if there is no market for the conveyance or firearm at the place of appraisalment, the value in the principal market nearest the place of appraisalment. The appraisal may be based upon the report of the seizing officer and any other information which may be acquired.

§ 468.5 *Advertisement.* If the appraised value does not exceed \$1,000 the district supervisor shall cause a notice of the seizure and of the intention to forfeit and sell or otherwise dispose of the property to be published once a week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the seizure occurred. The notice shall not be inserted oftener than three times, unless the district supervisor is of the opinion that, because of circumstances peculiar to the particular case, a greater number of insertions will be to the advantage of the government. The notice shall:

(a) Describe the conveyance or firearm seized, and show the registration, motor and serial numbers of the conveyance and the number or other identifying mark of the firearm, if any;

(b) Show the reason for, and time and place of, seizure; and

(c) State that any person desiring to claim the conveyance or firearm may, within 20 days from the date of first publication of the notice in the case of a conveyance and within 30 days from the date of first publication of the notice in the case of a firearm, file with the investigator in charge a claim for the conveyance or firearm and a bond for costs of judicial condemnation with satisfactory sureties in the sum of \$250; and that unless such claim and bond are filed within the stated time the conveyance or firearm will be disposed of in accordance with law. The form of notice used in seizures under other laws by the Alcohol Tax Unit will, as far as applicable, be followed.

§ 468.6 *Requirements as to claim and bond.* The bond and claim shall be in triplicate. The bond shall sufficiently identify the conveyance or firearm, shall run to the United States of America,

have sureties approved by the district supervisor, and be conditioned that in case of condemnation of the conveyance or firearm the obligor shall pay all the costs and expenses of the proceeding to obtain the condemnation. Bond, Form 175, may be adapted for the purposes of the regulations in this part. When a claim and bond are received in proper form and the sureties are satisfactory, the district supervisor and the investigator in charge shall proceed in accordance with § 468.8. If the documents are not in satisfactory form when first received by the district supervisor or investigator in charge, a reasonable time for correction may be allowed. If correction is not made within a reasonable time the documents may be treated as nugatory, and the case may proceed as though they had not been tendered. The filing in proper form of the claim and bond does not entitle the claimant to possession of the conveyance or firearm but stops the summary proceedings.

§ 468.7 *Summary forfeiture.* If the appraised value does not exceed \$1,000, and the claim and bond mentioned in § 468.6 are not filed within the time required, the investigator in charge shall execute, in quadruplicate, a declaration of forfeiture, one copy of which will be retained and the original and two copies forwarded to the district supervisor. The declaration should state that it is made in accordance with section 609 of the Tariff Act of 1930 in the case of a conveyance and with section 3724 of the Internal Revenue Code in the case of a firearm, and should follow, with necessary modifications, Form 1570. Thereafter the conveyance shall be disposed of in accordance with official instructions duly received by the district supervisor. No notice of public sale of any such forfeited firearm shall be given and no such firearm shall be sold at public sale. Any such firearm forfeited as provided in this section shall be delivered by the district supervisor to the Director of Procurement for appropriate disposition.

§ 468.8 *Presentation for judicial action.* If the appraised value is greater than \$1,000, or if the appraised value is not more than \$1,000 but a claim and satisfactory bond have been received (see § 468.6), the investigator in charge shall transmit a copy of the report of the seizing officer, and a supplemental report of any pertinent facts and circumstances additional to those disclosed by

the seizing officer's report (see § 468.2), to the United States Attorney for the judicial district in which the seizure was made for institution of condemnation proceedings. If the seizure has been advertised the report shall include copies of the newspapers containing the advertisement. Immediately upon reference of a case to the United States Attorney, the district supervisor shall notify the Deputy Commissioner. If deemed appropriate, the Commissioner will, in the case of a conveyance, request the Director of Procurement to petition the court for delivery of the same for official use. See Treasury Decision 4625 (section 3), Cumulative Bulletin XV-1 (1936), page 492.

§ 468.9 *Petitions for remission or mitigation of forfeiture.* (a) Any person interested in any conveyance or firearm within the scope of the regulations in this part which has been forfeited by summary or administrative proceedings, or which is held for summary or administrative forfeiture, may within the time prescribed (see § 468.10) petition the Secretary for remission or mitigation of the forfeiture, and, if the conveyance or firearm has been sold, or delivered to a governmental agency for official use, for restoration of the proceeds of sale or such part thereof as may be claimed by the petitioner. The petition shall be filed in triplicate with the district supervisor or the investigator in charge.

(b) The petition shall be addressed to the Secretary and shall be executed and sworn to by the petitioner. The petition shall state in clear and concise terms the following:

(1) A complete description of the conveyance or firearm, including registration number and motor and serial numbers of the conveyance and the number or other identifying mark of the firearm, if any, the name of the owner, and of the person from whom seized, as well as the date and place of seizure.

(2) The interest of the petitioner in the conveyance or firearm, which shall be established by bills of sale, contracts, mortgages, or other satisfactory documentary evidence filed with the petition.

(3) The circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation.

(c) Where the forfeiture and sale have already occurred (see § 468.10), it

must be established by satisfactory proof that the petitioner did not know of the seizure prior to the forfeiture, and was in such circumstances as prevented him from knowing thereof.

(d) Where the petitioner is not the one who in person committed the act which caused the forfeiture, the petition should show how the property came into the possession of such other person, and what investigation, if any, was made of such person prior to parting with the conveyance or firearm. If such investigation was not made, the reason for not making it should be stated.

§ 468.10 *Time for filing petition.* A petition for remission or mitigation of a forfeiture must be seasonably filed. Where the petition is for restoration of the proceeds of sale, it must be filed within three months after the date of sale. In the case of a conveyance or firearm which is retained or awarded for official use, the retention or delivery shall be regarded as a sale for the purposes of the regulations in this part.

§ 468.11 *Handling of petition.* Where the petition is in proper form, the district supervisor shall, upon completion of any investigation necessary to determine the merits of the petition, forward to the Deputy Commissioner the original of the petition (including all supporting documents), together with the original of the investigation report, a copy of the case report, a copy of the appraisal list, and the district supervisor's recommendation. One copy of the petition will be retained by the district supervisor and one copy by the investigator in charge.

§ 468.12 *Expenses; disposition of proceeds.* (a) Expenses in connection with a seizure and forfeiture within the scope of the regulations in this part shall be paid from the internal revenue appropriation. Where a conveyance is forfeited and sold through summary or administrative proceedings, the investigator in charge shall transmit to the collector with the gross proceeds of the sale a statement of all expenses incurred in connection with the seizure and forfeiture. The collector shall, after reimbursing the internal revenue appropriation for all such expenses, deposit the net proceeds as other internal revenue receipts.

(b) Where a forfeited conveyance is transferred to another Federal agency

such agency shall reimburse the internal revenue appropriation for the costs of hauling, transporting, towing and storage from the date of seizure to the date of delivery.

(c) If the forfeiture and sale be by court proceedings, the sum recovered after deducting all appropriate charges for marshal's fees, court costs (where no bond was given therefor), etc., is payable to the collector. When such sum is received, the collector shall, after reimbursing the internal revenue appropriation for all expenses incurred in connection with the seizure before delivery of the conveyance to the marshal, deposit the net proceeds as other internal revenue receipts. The investigator in charge shall transmit to the collector immediately the conveyance is delivered to the marshal a statement of such expenses.

§ 468.13 *Release on payment of appraised value.* (a) If any person claiming an interest in any conveyance within the scope of the regulations in this part offers to pay the appraised value thereof (see § 468.4), and it appears that the claimant has in fact a substantial interest in the conveyance, the Commissioner may, subject to the approval of the Secretary, accept the offer and release the conveyance upon payment of the money, which shall be distributed in accordance with § 468.12.

(b) The offer must be in writing, addressed to the Secretary, signed by the claimant, and submitted in triplicate to the district supervisor or investigator in charge. It must express assent to forfeiture of the conveyance and waive further proceedings. The offer shall be supported by such proof of ownership as in the opinion of the district supervisor is necessary. The district supervisor shall forward the offer to the Deputy Commissioner and retain custody of the conveyance pending action on the offer and payment of the amount of the offer if it is approved.

§ 468.14 *Awards.* (a) Any person not an officer of the United States who takes and seizes any conveyance within the scope of the regulations in this part, and reports the matter to an officer of internal revenue or who furnishes information leading to the forfeiture of such a conveyance, may be awarded compensation of 25 percent of the net amount realized, but not exceeding \$50,000 in any

case which shall be paid out of the internal revenue appropriation. If a forfeited conveyance is destroyed in lieu of sale, or devoted to official use, compensation of 25 percent of the appraised value, not to exceed \$50,000 in any case, may be awarded and paid. Awards may not be paid out of the proceeds of sale.

(b) When information of the existence of legal basis for seizure is furnished to an internal revenue officer in writing, the original will be forwarded immediately to the Commissioner. The officer shall retain a copy. If the information is furnished orally, a memorandum thereof will be made and likewise forwarded. However, appropriate action shall be taken in the case without awaiting instructions from the Commissioner.

(c) The claim of an informer, or of a detector and seizer, shall be executed in triplicate on Form No. 211, appropriately amended. The original of the claim for compensation shall contain the signatures of the respective parties to the claim. Any number of additional copies necessary to complete the district supervisor's files may be required. The claim must show the date when, and the circumstances under which, the information was furnished or the conveyance was detected and seized, and fairly state all the pertinent facts of the case.

(d) The district supervisor of the district in which the claim originated will attach a statement showing the following facts: (1) The place of seizure; (2) the date of seizure; (3) the statutes on the violation of which the seizure was based; (4) a full description of the conveyance and any other property seized; (5) the names of the persons involved in the violation; (6) the net amount realized from the forfeitures; (7) the date when the amount realized was deposited, and the amount of the certificate of deposit; (8) the amount paid in compromise, if any, and the date of payment; (9) the amount of expenses payable from the internal revenue appropriation; and (10) if the conveyance was released upon payment of the appraised value, or the conveyance was devoted to official use, the appraised value, as well as costs and expenses incurred, or that would properly have been incurred had the ordinary procedure been followed.

(e) The district supervisor shall indicate his approval or disapproval of the claim and shall certify whether or not the claimant was an officer of the United

States, and if an informer, whether he furnished the original information in the case, and if a detector and seizer, whether the claimant actually detected and seized the conveyance, and in either case whether any person other than the claimant gave original information in the case.

(f) Claims will be transmitted by the district supervisor to the Commissioner in duplicate. Where there is a decree or order of court designating the informer a copy thereof shall also be forwarded. In a contested case the district supervisor shall forward the applications of all claimants and furnish a statement of the facts bearing on the merits of the several claims together with his recommendation.

§ 468.15 *Payments to officers prohibited.* If any officer of the United States directly or indirectly receives, accepts, or contracts for the receipt of, any portion of any award which may accrue to any person detecting and seizing, or furnishing information in a case within the scope of the regulations in this part, he will be guilty of a felony, and upon conviction will be liable to a fine of not more than \$10,000, or imprisonment for not more than 2 years, or both fine and imprisonment, and shall be thereafter ineligible to any office. Any money or property so paid may be recovered. [T. D. 4961, 5 F. R. 107]

§ 468.16 *Procedural details.* With respect to procedural details not expressly covered by the regulations in this part, district supervisors and other officers will follow the procedure governing the forfeiture and disposition of personal property seized under other laws administered by the Alcohol Tax Unit, in so far as applicable and not inconsistent with these or any other regulations or any statutory provision, with such variations as may be appropriate in the circumstances.

## Part 471—Acceptance of Treasury Notes in Payment of Income, Estate, and Gift Taxes

Sec.

471.1 Acceptance of Treasury Notes of Tax Series A-1943, B-1943, A-1944, B-1944, A-1945, Treasury Notes of Tax Series C, and Treasury Savings Notes, Series C, in payment of income (including excess profits), estate and gift taxes.

Sec.

471.2 Procedure with respect to Treasury Notes of Tax Series A-1943, B-1943, A-1944, B-1944, A-1945, Treasury Notes of Tax Series C, and Treasury Savings Notes, Series C.

§ 471.1 *Acceptance of Treasury Notes of Tax Series A-1943, B-1943, A-1944, B-1944, A-1945, Treasury Notes of Tax Series C, and Treasury Savings Notes, Series C, in payment of income (including excess profits), estate and gift taxes.*

(a) Notes of the United States designated as Treasury Notes of Tax Series A-1943, B-1943, A-1944, B-1944, A-1945, Treasury Notes of Tax Series C, and Treasury Savings Notes, Series C, may be accepted in payment of income taxes (current and back personal and corporation taxes, and excess profits taxes) and estate and gift taxes (current and back), at par and interest accrued to the month, inclusive, in which presented (but no accrual beyond the maturity date). Collectors of internal revenue are authorized and directed to accept such notes during and after the second calendar month after the month of purchase (as shown by the issuing agent's dating stamp on each note). For example, a note of Tax Series A-1945 purchased in September 1942 may be accepted in November 1942 but such a note purchased in October 1942 may not be accepted until December 1942.

(b) Such notes may be accepted only in payment of income (including excess profits), estate, and gift taxes (current and back) due from the original purchaser thereof or his estate. Such notes shall be in the name of the taxpayer (individual, corporation, or other entity) and may be presented for tax payment by only the taxpayer, his agent, or his estate. There is no limit upon the amount of such notes which may be accepted in payment of income (including excess profits), estate or gift taxes.

(c) Such notes, inscribed in the name of a taxpayer, may be accepted in payment of income tax withheld at the source by such taxpayer, and such notes inscribed in the name of a taxpayer may be accepted in payment of transferee liability assessed against such taxpayer for income (including excess profits), estate, or gift taxes.

(d) Collectors of internal revenue shall not in any case allow credit to a taxpayer on account of such notes, or accept such notes, for an amount greater than their principal amount plus accrued

interest, nor shall such notes be accepted in an amount (including accrued interest) greater than the unpaid liability of the taxpayer. Such notes shall be forwarded to the collector of internal revenue with whom the tax return is filed, at the risk and expense of the taxpayer, and, for the taxpayer's protection, should be forwarded by registered mail, if not presented in person.

(53 Stat. 467, sec. 1, 40 Stat. 1309, as amended; 26 U. S. C. 3791, 31 U. S. C. 753. Interprets or applies 53 Stat. 447; 26 U. S. C. 3657) [T. D. 5308, 8 F. R. 16318]

§ 471.2 *Procedure with respect to Treasury Notes of Tax Series A-1943, B-1943, A-1944, B-1944, A-1945, Treasury Notes of Tax Series C, and Treasury Savings Notes, Series C.* Deposits of Treasury Notes of Tax Series A-1943, B-1943, A-1944, B-1944, A-1945, Treasury Notes of Tax Series C, and Treasury Savings Notes, Series C, received in payment of taxes shall be made by the collector of internal revenue in a Federal Reserve Bank or a branch Federal Reserve Bank. Prior to deposit the collector of internal revenue will certify on the reverse side of the notes that they were received in payment of income (including excess profits), estate, or gift tax, as the case may be, and will show in the endorsement stamp the date of deposit. (53 Stat. 467, sec. 1, 40 Stat. 1309, as amended; 26 U. S. C. 3791, 31 U. S. C. 753. Interprets or applies 53 Stat. 447; 26 U. S. C. 3657) [T. D. 5308, 8 F. R. 16318]

**Part 472—Regulations Under Section 3804 of the Internal Revenue Code**

**Subpart A—Introductory Provisions**

- Sec.
- 472.0 Scope of part.
- 472.1 Introductory provisions.

**Subpart B—General Provisions**

- 472.101 Definitions and use of terms.
- 472.102 Acts postponed.
- 472.103 Computation of time.
- 472.104 Exceptions.
- 472.105 Notices to Commissioner under section 3804 (e) (2) and (3).
- 472.106 Different periods of time disregarded with respect to same matter.
- 472.107 Computation of amount of credit or refund and of interest thereon.

**Subpart C—Tax of Member of Armed Forces**

- 472.201 Application of Subpart C.
- 472.202 Income tax due dates for taxable years beginning after December 31, 1940.

Sec.

- 472.203 Tax liability in general.
- Subpart D—Joint Return if Husband or Wife Is Member of Armed Forces**
- 472.301 Joint return if husband or wife is member of armed forces.
- Subpart E—Income Tax of Spouse of Member of Armed Forces**
- 472.401 Application of Subpart E.
- 472.402 Return and tax payment if spouse's gross income is \$1,200 or over.
- 472.403 Income tax due dates postponed if spouse's gross income is less than \$1,200.
- 472.404 Matters other than due dates.
- 472.405 Income of spouse under community property law.
- Subpart F—Tax of Individual Not Member of Armed Forces**
- 472.501 Application of Subpart F.
- 472.502 Circumstances under which period of time is disregarded.
- 472.503 Period of time disregarded.
- Subpart G—Joint Return if Neither Husband nor Wife Is Member of Armed Forces**
- 472.601 Joint return if neither husband nor wife is member of armed forces.
- Subpart H—Income Tax of Spouse of Individual Not Member of Armed Forces**
- 472.701 Application of Subpart H.
- 472.702 Return and tax payment if spouse's gross income is \$1,200 or over.
- 472.703 Income tax due dates postponed if spouse's gross income is less than \$1,200.
- 472.704 Matters other than due dates.
- 472.705 Income of spouse under community property law.
- Subpart I—Tax of Corporations, Trusts, and Estates**
- 472.801 Application of Subpart I.
- 472.802 Circumstances under which period of time is disregarded.
- 472.803 Period of time disregarded.
- 472.804 Inspection of determinations made by the Commissioner.
- 472.805 Interest payable by foreign corporations subject to section 231 (a), I. R. C.
- 472.806 China Trade Act corporations.
- Subpart J—Tax of Individual in Extraordinary Circumstances**
- 472.901 Application of Subpart J.
- 472.902 Circumstances under which period of time is disregarded.
- 472.903 Period of time disregarded.
- 472.904 Inspection of determinations made by the Commissioner.

**AUTHORITY:** §§ 472.0 to 472.904 issued under 53 Stat. 467; 26 U. S. C. 3791. Interpret or

apply sec. 507 (a), 56 Stat. 961; 26 U. S. C. 3805.

SOURCE: §§ 472.0 to 472.904 contained in Treasury Decision 5279, 8 F. R. 9602, except as noted following sections affected.

#### SUBPART A—INTRODUCTORY PROVISIONS

§ 472.0 *Scope of part*—(a) *Subjects covered*. The regulations in this part relate to the provisions of sections 3804 and 3805 of the Internal Revenue Code, added by section 507 of the Revenue Act of 1942, enacted October 21, 1942, concerning the postponement, by reason of the present war, of the time for performing certain acts. They deal with:

(1) The acts (with respect to which periods of time may be disregarded) specified in section 3804 and these regulations. For a list of such acts, see section 3804 (a) (1) and § 472.102.

(2) The circumstances under which periods of time are disregarded under section 3804 (a) and section 3804 (b) in determining whether the acts referred to above are timely performed, and in determining amounts of interest and of refunds and credits.

(3) The duration of the period of time to be disregarded under section 3804 in each case, expressed in some cases in terms of a postponed due date and in others in terms of a period of days to be excluded, in determining whether an act is timely performed and in determining amounts of interest and of refunds and credits.

(4) General limitations and exceptions under section 3804.

(5) Postponement under section 3805 of certain income tax due dates of China Trade Act corporations.

(b) *Treasury Decision 5216 superseded*. The preliminary regulations under section 3804 (relating to certain notices to the Commissioner of Internal Revenue under section 3804 (e) (2) and (3)), prescribed by Treasury Decision 5216, approved January 19, 1943, are hereby superseded. For provisions now in force relating to such notices to the Commissioner, see § 472.105.

§ 472.1 *Introductory provisions*—(a) *Taxes to which section 3804 is applicable*. Section 3804 is applicable only in the case of Federal taxes. But the section is applicable to all Federal taxes, whether income tax, manufacturers' excise tax, or any other tax, and whether imposed by the Internal Revenue Code

or by any other internal revenue law. While the section is applicable to all Federal taxes, it is not applicable to all acts with respect to each tax. For a list of the acts to which the section has application, see § 472.102.

(b) *General purpose of section 3804*. Section 3804 has for its purpose the postponement of the time for performing acts affecting Federal tax liabilities and rights in the cases specified in the section in which timely performance is impossible or impracticable by reason of the war. Such cases include those in which individuals are outside the Americas, or in which members of the military or naval forces of the United States are serving outside the continental United States (including cases in which such members are serving on sea duty). Impairment or stoppage of transportation and communications in the foregoing cases makes clear the necessity for the suspension of time limitations, both in the case of acts to be performed by the taxpayer (for example, making a return and payment of income tax, or filing a claim for refund or credit of any tax) and in the case of acts to be performed by the Government (for example, the assessment or collection of any tax). In some cases assets and essential records of taxpayers (including taxpayers other than individuals) are in an enemy country or enemy controlled territory; and in such cases, depending upon the circumstances, a period of time may be disregarded under section 3804 (see Subparts I and J of this part).

(c) *Outline of section 3804*. Section 3804 (a) relates only to the tax liability of individuals outside the Americas, but is applicable whether or not the individual is a citizen or resident of the United States.

Section 3804 (b) relates to the tax liability of corporations, trusts, and estates, and, in cases in which no period of time is disregarded under section 3804 (a) or with respect to which a different or additional period of time is to be disregarded, to the tax liability of individuals. Section 3804 (b) is operative only as provided by these regulations.

Section 3804 (c) contains an over-all limitation on the period of time to be disregarded under section 3804. Section 3804 (c), as amended by section 13 of the act approved August 8, 1947 (Public Law 384, 80th Congress), provides that the period of time disregarded under

section 3804 in respect of any tax liability shall in no event extend beyond the date specified in subparagraphs (1) or (2) of this paragraph, whichever is the earlier:

(1) December 31, 1947, or such date later than December 31, 1947, as the Commissioner of Internal Revenue may fix in any case in which he makes a determination under section 3804 (b), if such determination is made after August 8, 1947, and is based on the existence prior to January 1, 1948, of one or more of the circumstances specified in paragraph (1), (2), or (3) of section 3804 (b); or

(2) In the case of an individual with respect to whom a period of time is disregarded under section 3804, the 15th day of the third month following the month in which an executor, administrator, or a conservator of the estate of such individual qualifies.

Section 3804 (d) contains exceptions to the general rules under section 3804 for postponing the time for performing certain acts.

Section 3804 (e) contains definitions.

(d) *Provisions of section 507 (b) of Revenue Act of 1942*—(1) *Public Law 490 (77th Congress)*. Sections 13 and 14 of the Act approved March 7, 1942 (*Public Law 490, 77th Congress*) postpone the due dates for filing income tax returns and paying income tax (for taxable years beginning after December 31, 1940) in case of certain members of the military or naval forces of the United States serving on sea duty or serving outside the continental United States, and in case of certain civilian employees of the United States detained by enemy governments or besieged by enemy forces. Under the provisions of section 507 (b) (1) of the Revenue Act of 1942, the time for filing the returns and paying the tax in such cases may not be shortened under any provision of section 3804, except section 3804 (d) (1) (relating to tax in jeopardy, bankruptcy and receiverships, and transferred assets).

The postponed due date under these regulations in every case to which sections 13 and 14 of Public Law 490 apply is the same date as for a later date than that provided under such sections, except as provided in section 3804 (d) (1). The due dates fixed under these regulations therefore govern in all such cases. (See §§ 472.202, 472.502, and 472.503.)

(2) *Soldiers' and Sailors' Civil Relief Act of 1940*. Section 513 of the *Soldiers'*

and *Sailors' Civil Relief Act of 1940* authorizes the deferment of collection of income tax from any person in the military service (as defined in such act) whose ability to pay the tax is materially impaired by reason of such service. Under the provisions of section 507 (b) (2) of the Revenue Act of 1942, if such a deferment for any taxable year is granted such person, the time for paying the tax for such year may not be shortened under any provision of section 3804 except section 3804 (d) (1) (relating to tax in jeopardy, bankruptcy and receiverships, and transferred assets). Except in cases to which section 3804 (d) (1) applies, no provision of these regulations shall be construed to shorten the time which is allowed under section 513 with respect to any taxable year for paying the income tax for such year.

(e) *Provisions of section 507 (c) of the Revenue Act of 1942*. Section 507 (c) of the Revenue Act of 1942 provides, in part, that section 3804 shall be effective as if it were enacted on December 7, 1941; except that the phrase "date of enactment of this section", when used in sections 3804 (d) (3) and 3804 (e) (2) and (3) means the date of enactment of the act, that is, October 21, 1942. Section 507 (c) also provides for the refund or credit of any amount of interest, penalty, additional amount, or addition to the tax collected at any time (whether before, on, or after October 21, 1942) with respect to any period required to be disregarded under section 3804. No interest is payable by the United States upon the amount of any such refund or credit.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5610, 13 F. R. 1477]

#### SUBPART B—GENERAL PROVISIONS

§ 472.101 *Definitions and use of terms.*  
As used in the regulations in this part:

(a) The terms defined in the applicable laws shall have the meanings so assigned to them.

(b) The term "member of the military or naval forces of the United States" includes any individual in the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, the Army Nurse Corps, Female, the Women's Army Auxiliary Corps, the Women's Army Corps, the Navy Nurse Corps, Female, the Women's Reserve branch of the Naval Reserve, the Women's Reserve branch of the Coast Guard Reserve, and

the Women's Reserve branch of the Marine Corps Reserve (Marine Corps Women's Reserve), and any commissioned officer of the Coast and Geodetic Survey or of the Public Health Service.

(c) The term "active duty" includes active service in any branch of the military or naval forces of the United States mentioned in paragraph (b) of this section, as well as the period during which a member of the military or naval forces of the United States on active duty is absent therefrom on account of sickness, wounds, leave, or other lawful cause.

(d) The term "continental United States" means the States of the Union and the District of Columbia.

(e) The term "Americas" means North, Central, and South America (including the West Indies, Bermuda, Newfoundland, and the Aleutian Islands, but not Greenland or Iceland), and the Hawaiian Islands.

(f) The term "tax" or "tax liability" means any tax due the United States under any internal revenue law (including any interest, penalty, additional amount, or addition to the tax) or any other liability to the United States in respect thereof.

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

(h) The term "collector" means collector of internal revenue.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5610, 13 F. R. 1478]

§ 472.102 *Acts postponed*—(a) *Acts specified in section 3804 (a) (1) (G), (H), (I), and (J)*. The acts specified in subsection (a) (1) (G), (H), (I), and (J) of section 3804 with respect to which a period of time may be disregarded under such section in determining whether such acts are timely performed are:

(1) Assessment of any tax.

(2) Giving any notice with respect to, or making any demand for the payment of, any tax.

(3) Collection, by the Commissioner or the collector, by distraint or any other proceeding, of any tax.

(4) Bringing suit by the United States, or any officer on its behalf, for any tax.

(b) *Other acts*. The other acts with respect to which a period of time may be disregarded under section 3804 in determining whether such acts are timely performed are:

(1) Filing any return of income, estate, or gift tax (except the return by a withholding agent of income tax required to be withheld at source and the return by an employer of income tax imposed by chapter 9 of the Internal Revenue Code or any law superseded thereby).

(2) Payment of any income, estate, or gift tax (except payment by a withholding agent of income tax required to be withheld at source and payment by an employer of income tax imposed by chapter 9 of the Internal Revenue Code or any law superseded thereby) or any installment of such tax.

(3) Filing a petition with the Board of Tax Appeals or The Tax Court of the United States for redetermination of a deficiency, or for review of a decision rendered by such Board or Tax Court.

(4) Allowance of a credit or refund of any tax.

(5) Filing a claim for credit or refund of any tax.

(6) Bringing a suit upon a claim for credit or refund of any tax.

(7) Release of a power of appointment, as defined in section 811 (f) (2), I. R. C., which was created on or before October 21, 1942, except in the case of a release by a person under a legal disability who by reason thereof is granted a longer period under any provision of the internal revenue laws than under these regulations within which to effect such release.

(8) Release of a power of appointment, as defined in section 1000 (c), I. R. C., which was created on or before October 21, 1942, except in the case of a release by a person under a legal disability who by reason thereof is granted a longer period under any provision of the internal revenue laws than under these regulations within which to effect such release.

(9) Filing any return of capital stock tax for any year ending on or after June 30, 1942.

(10) Payment of any capital stock tax for any year ending on or after June 30, 1942.

(11) Relinquishment by the grantor, as provided in section 1000 (e), I. R. C., of power to change the disposition of the property in certain trusts described in such section or the income therefrom.

(12) In the case of the written election of the shareholder (other than a corporation), the filing required by section 112 (b) (7) (D), I. R. C., within 30 days after the adoption of the plan of liquidation, but only if the 80 percent requirement of section 112 (b) (7) (C) (1) is satisfied by the filing of elections which are timely without regard to this provision of the regulations in this part.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5293, 8 F. R. 12083, T. D. 5429, 10 F. R. 697, T. D. 5444, 10 F. R. 2574]

§ 472.103 *Computation of time.* For the purposes of the regulations in this part, in determining the duration of any period of time during which a member of the military or naval forces of the United States is serving on sea duty or outside the continental United States, the period shall be deemed to commence at the first moment of the day following the date on which the member commences to serve on sea duty or at the first moment of the day following the date of departure of the member from the continental United States, as the case may be, and shall be deemed to terminate at the last moment of the date on which the member ceases to serve on sea duty or the date of return of the member to the continental United States, as the case may be. A similar rule is applicable to the determination of the duration of any period of time during which an individual is outside the Americas.

§ 472.104 *Exceptions—(a) Tax in jeopardy; bankruptcy and receiverships; transferred assets.* Section 3804 (d) (1) contains exceptions in certain cases under which collection of tax and action preliminary thereto may be effected notwithstanding the fact that in such cases such collection or action would otherwise be stayed because a period of time is or would be disregarded under the provisions of section 3804. Such exceptions are applicable to cases relating to tax in jeopardy, bankruptcy and receivership, and transferred assets.

For example, if the 90-day or 150-day period after the mailing of notice of a deficiency of income tax of an individual (before the expiration of which the assessment of the deficiency is prohibited under section 272 (a), I. R. C.) is extended under the terms of section 3804 (a) by reason of the individual being outside the Americas for more than 90 days, the deficiency may nevertheless by reason of section 3804 (d) (1) be assessed before

the expiration of such extended period if the Commissioner believes that the assessment or collection of the deficiency will be jeopardized by delay. Similarly, for example, if the 10-day period after notice and demand under section 3690, I. R. C. (before the expiration of which collection of certain taxes by distraint and sale is prohibited under section 3690) is extended under the terms of section 3804 (a) by reason of an individual being outside the Americas for more than 90 days, collection by distraint and sale may nevertheless by reason of section 3804 (d) (1) be effected before the expiration of such extended period if the tax is in jeopardy.

If under any provision of law the Commissioner or the collector is, in any case to which section 3804 (d) (1) is applied, required to give any notice or make any demand upon any person, and if the address of such person last known to the Commissioner or collector is in an area for which United States post offices under instructions of the Postmaster General are not, by reason of the war, accepting mail for delivery at the time the notice or demand is signed, the requirement for giving notice or making demand is deemed to be satisfied if the notice or demand is prepared and signed. In such case, the notice or demand is deemed to have been given or made upon the date it is signed. In each such case a record, available for inspection by any person, relating to the notice or demand, shall be maintained in the Office of the Commissioner. There shall be set forth in such record the name and last known address of the taxpayer, a statement of the character of the notice or demand or a reference to the provision of law under which it is issued, the date on which the notice or demand was signed, and the taxable period and kind of tax involved.

(b) *Action taken before ascertainment of right to benefits.* Section 3304 (d) (2) contains an exception which has the effect of validating action taken, without regard to a period of time required to be disregarded under section 3804 but otherwise pursuant to law, in collecting tax or taking action preliminary thereto if such action is taken prior to the time it is ascertained that the person concerned is entitled to the benefits of section 3804. Section 3304 (d) (2) applies to cases in which the action taken would, except for such section 3804 (d) (2), be prohibited. Thus,

for example, if the facts of a case are such that a period of time is disregarded, thereby extending the 10-day period under section 3690, I. R. C., after notice and demand before the expiration of which distraint and sale is prohibited, but property of the taxpayer is distrained upon and sold before the expiration of such extended period, the collector not being aware of the extension of the period, the distraint and sale are nevertheless valid. See, however, section 507 (c) of the Revenue Act of 1942 under which the taxpayer may obtain a refund or credit (without interest) of the amount collected from him, if any, of interest, penalty, additional amount, or addition to the tax (but not of the tax itself) which is attributable to any period required to be disregarded.

Section 3804 (d) (2) does not apply to cases in which a lapse of time is not, under the law pursuant to which action is taken, a condition precedent to the taking of such action, and in which therefore neither section 3804 (a) nor section 3804 (b) may operate to preclude the taking of such action prior to the expiration of an extended period of time. Thus, for example, an investigation to determine liability for any tax may be made, or an assessment of manufacturers' excise tax or alcohol tax may be made, even after it is ascertained that the taxpayer is entitled to the benefits of section 3804 (a) or (b), since under the law pursuant to which such investigation or assessment is made no lapse of time is prescribed as a condition precedent to the taking of such action.

(c) *Expiration of period of limitations prior to October 21, 1942.* Section 3804 (d) (3) provides that section 3804 shall not operate to extend the time for performing any act specified in section 3804 (a) (1) (G), (H), (I), or (J) (see § 472.102 (a)) if such time under the law in force prior to October 21, 1942 (the date of enactment of the Revenue Act of 1942), expired prior to such date.

§ 472.105 *Notices to Commissioner under section 3804 (e) (2) and (3)—(a) Requirement.* If a period of time is disregarded under any provision of section 3804, the time within which the acts specified in section 3804 (a) (1) (G), (H), (I), or (J) (see § 472.102 (a)) may be performed by or on behalf of the Government may be extended indefinitely (subject to the limitations provided in section 3804 (c) (1) and (d) (3)) unless

the notice provided for in section 3804 (e) (2) or (3) is given to the Commissioner. For purposes of determining whether such acts are timely performed, the event fixing the date of termination of the period to be disregarded, if such event occurred after October 21, 1942 (the date of the enactment of the Revenue Act of 1942), shall not be deemed to have occurred until the notice (described in paragraph (b) of this section) of such event is received by the Commissioner.

The notice provided for in section 3804 (e) (2) or (3) should be furnished by the person concerned to the Commissioner of Internal Revenue, Washington, D. C., after the occurrence of one of the following enumerated events, in case a period of time is disregarded under section 3804 (including cases in which a period of time is disregarded under Subpart I or J of this part) and the date of termination of such period is dependent upon the time when:

(1) An individual (whether or not the taxpayer) returns to the Americas; or

(2) An individual (whether or not the taxpayer) in the military or naval forces of the United States returns to the continental United States or ceases to serve on sea duty; or

(3) An individual (whether or not the taxpayer) leaves an area of enemy action or control; or

(4) A person qualifies as executor, administrator, or conservator of the estate of an individual with respect to whom a period of time is disregarded under section 3804.

In order that periods of time within which acts may be performed, and interest or penalty, if any, may be properly computed, notice should be furnished to the Commissioner in every case in which the termination of a period disregarded under section 3804 is dependent upon the time when an individual returns to the Americas or to the continental United States, or upon the time when an individual ceases to serve on sea duty, or upon the time when an individual leaves an area of enemy action or control, or upon the time when an executor, administrator, or conservator qualifies as such. Thus, the notice should be furnished in those cases in which the event (fixing the date of termination of the period to be disregarded) occurred on or before October 21, 1942, although in such cases failure to furnish the notice does not under the provisions of section 3804 (e)

(2) or (3) extend the period within which the Government may perform the acts specified in section 3804 (a) (1) (G), (H), (I), or (J).

With the exception noted in the last preceding sentence, the consequence of failure to furnish the information called for in paragraph (b) is the extension in favor of the Government of the time within which the acts specified in section 3804 (a) (1) (G), (H), (I), and (J) may be performed. Such failure cannot operate to extend the time within which other acts specified in section 3804 (see § 472.102 (b)) may be performed. While no time is prescribed for furnishing the information, it is to the advantage of the taxpayer that the information be furnished as promptly as possible for each period disregarded under section 3804.

(b) *Form and contents of notice.* No particular form is prescribed for giving the notice provided for in section 3804 (e) (2) or (3). The notice shall be filed, in duplicate, with the Commissioner of Internal Revenue, Washington, D. C., and it shall be stated therein that the notice is filed pursuant to section 3804 of the Internal Revenue Code.

Each such notice shall be signed and dated by the person filing it, and shall contain the following information:

(1) Name and present address of the taxpayer.

(2) Name and present address of the person furnishing the information, if not furnished by the taxpayer.

(3) Kind and amount of tax or taxes which are believed to be involved (for example, income, estate, or gift tax).

(4) Address of each collector with whom returns of the tax or taxes involved have been or are intended to be filed.

(5) Each taxable year or period believed to be involved.

(6) For the period, if any, during which the individual was a member of the military or naval forces of the United States, (i) if outside the continental United States or serving on sea duty on December 7, 1941, the last date prior to December 7, 1941, on which the individual left the continental United States or commenced to serve on sea duty; (ii) each date after December 6, 1941, on which the individual left the continental United States or commenced to serve on sea duty; and (iii) each date

after December 6, 1941, on which the individual returned to the continental United States or ceased to serve on sea duty.

(7) For the period, if any, during which the individual was not a member of the military or naval forces of the United States, (i) if outside the Americas on December 7, 1941, the last date prior to December 7, 1941, on which the individual left the Americas and the name of the port of departure; (ii) each date after December 6, 1941, on which the individual left the Americas and the name of each port of departure; and (iii) each date after December 6, 1941, on which the individual returned to the Americas and the name of each port of entry.

(8) If any period of time is disregarded under section 3804 by reason of an individual being in a locality which is an area of enemy action or control (see Subparts I and J), the beginning and ending dates of each period after December 6, 1941, during which the individual was within such a locality and the name of the locality.

(9) In the case of a person who has qualified as an executor, administrator, or conservator of the estate of an individual with respect to whom a period of time is disregarded under section 3804, the date on which, and the name and location of the court in which, such person qualified as such, together with the information called for in subparagraphs (1) to (8) of this paragraph.

In case more than one period of time is disregarded under section 3804 with respect to a taxpayer, information previously furnished in such case to the Commissioner in notices given under this section of the regulations in this part need not be included in subsequent notices to the Commissioner thereunder.

In case a person, having the intent of giving notice pursuant to the provisions of section 3804, furnishes the notice prior to the receipt by such person of advise as to the requirements of this section of the regulations in this part (whether before or after the promulgation thereof), such notice will be considered as satisfying such provisions as of the date of actual receipt thereof in Washington, D. C., by the Commissioner, if in the opinion of the Commissioner there has been substantial compliance with this section. A notice furnished to a collector will not be considered as a notice to the Commissioner.

§ 472.106 *Different periods of time disregarded with respect to same matter.* This section applies to the case of any person with respect to whom under one provision of the regulations in this part a specified period of time is disregarded in the determination of any matter, and under another provision of the regulations in this part a longer period of time is disregarded in the determination of the same matter. Unless a contrary intent is expressly indicated in the regulations in this part or in a determination by the Commissioner with respect to such person, the longer period of time shall be the one disregarded in determining whether the act is timely performed. For example, if a member of the military forces of the United States who is serving on active duty outside the continental United States on March 15, 1943, returns to the continental United States on May 29, 1943, and does not again serve outside the continental United States until after September 15, 1943, under § 472.202 the due date for filing the separate income tax return of the member and paying the tax for the taxable year beginning on January 1, 1942, is September 15, 1943. If the spouse of such member has gross income of less than \$1,200 for the taxable year beginning on January 1, 1942, under § 472.403 the due date for filing the separate income tax return of the spouse and paying the tax for such taxable year is likewise September 15, 1943. If, however, the spouse leaves the Americas on December 1, 1942, and returns thereto on November 2, 1943, under § 472.503 the due date for filing the separate income tax return of the spouse and paying the tax for the taxable year beginning on January 1, 1942, is January 31, 1944 (the 90th day after the date of the return of the spouse to the Americas). Inasmuch as the longer period of time is to be disregarded under the provisions of this section, the due date for filing the income tax return of the spouse and paying the tax for the taxable year is January 31, 1944, instead of September 15, 1943. (In the foregoing example it is assumed that the member had for the taxable year gross income of \$1,200 or more. For that reason the due date of the member for filing a separate income tax return and paying the tax for the taxable year is not postponed under § 472.702 or § 472.703 by reason of the spouse of the member being outside the Americas.)

This section also applies in case under one provision no period of time is disre-

garded and under another provision a period of time is disregarded, and in such case a similar rule shall be applied, that is, unless a contrary intent is expressly indicated in these regulations or in a determination by the Commissioner, the disregarded period of time is applicable in determining whether the act is timely performed. For example, if a wife's gross income is \$1,200 or more for the taxable year beginning on January 1, 1942, the due date of her separate income tax return and of payment of the tax for such taxable year is not postponed under § 472.402, even though the due date of her husband's return and tax payment for such year is postponed under § 472.202 by reason of his being a member of the naval forces of the United States serving on sea duty. But if her due date for such taxable year is postponed under § 472.502, by reason of her being outside the Americas, the disregarded period of time prescribed in § 472.503 is applicable in determining whether her return is timely filed and her tax is timely paid.

§ 472.107 *Computation of amount of credit or refund and of interest thereon—(a) Application of section.* This section applies to the determination of the period of time, if any, which shall be disregarded under the regulations in this part for the purpose of determining under the internal revenue laws the amount of any credit or refund and the amount of interest upon any credit or refund.

(b) *General rule.* If any period of time is disregarded under the regulations in this part with respect to any taxpayer in determining whether any act specified in § 472.102 is timely performed, such period of time shall also be disregarded for the purpose specified in paragraph (a), except in the cases specified in paragraph (c) (2), (3), and (4) of this section.

(c) *Exception when amount of credit or refund would not be affected—(1) Application of paragraph.* This paragraph applies only to cases in which the disregarding of the period of time prescribed in paragraph (b) of this section would not result:

(i) In a credit or refund being allowable where a credit or refund would not otherwise be allowable, or

(ii) In a greater amount of credit or refund being allowable than would otherwise be allowable.

(2) *When taxpayer is an individual and section 3804 (a) is applicable.* In case the taxpayer is an individual, if:

(i) The facts of the particular case are such that the conditions specified in paragraph (c) (1) of this section is met, and

(ii) A period of time is required to be disregarded under section 3804 (a) by reason of such individual being outside the Americas continuously for 91 or more days after December 6, 1941, and

(iii) The period of time required to be disregarded under section 3804 (a) is different from the period of time required to be disregarded under paragraph (b) of this section,

then only the period of time required to be disregarded under section 3804 (a) shall be disregarded for the purpose specified in paragraph (a) of this section.

(3) *When taxpayer is an individual and section 3804 (a) is not applicable.* In case the taxpayer is an individual, if:

(i) The facts of the particular case are such that the condition specified in paragraph (c) (1) of this section is met, and

(ii) No period of time is required to be disregarded under section 3804 (a), then no period of time shall be disregarded for the purpose specified in paragraph (a) of this section.

(4) *When taxpayer is not an individual.* In the case of a taxpayer other than an individual, no period of time shall be disregarded for the purpose specified in paragraph (a) of this section if the facts of the particular case are such that the condition specified in paragraph (c) (1) of this section is met.

**SUBPART C—TAX OF MEMBER OF ARMED FORCES**

§ 472.201 *Application of Subpart C.* This subpart applies to the cases in which a period of time is disregarded in respect of the tax liability of a member of the military or naval forces of the United States on active duty. Section 472.202 relates to the due date for filing income tax returns and the due date for paying income tax, in the case of taxable years beginning after December 31, 1940. Section 472.203 relates to (a) income tax liability (other than due dates of returns and payments) with respect to taxable years beginning after December 31, 1940, (b) income tax liability with respect to taxable years beginning

before January 1, 1941, and (c) tax liability with respect to all taxes other than income tax.

§ 472.202 *Income tax due dates for taxable years beginning after December 31, 1940—(a) Application of section.* This section applies only to the due dates of returns and of payments of income tax for taxable years beginning after December 31, 1940.

(b) *Circumstances under which due date is postponed.* The due date for any income tax return and for any payment (including any installment payment) of income tax is, subject to the limitations prescribed in paragraph (c) of this section, postponed in the case of any individual in the military or naval forces of the United States serving on sea duty or outside the continental United States after December 6, 1941, and prior to January 1, 1948, in case:

(1) At any time on the day on which the return or payment would otherwise become due (such day being after December 6, 1941, and prior to January 1, 1948) the individual is serving on sea duty or outside the continental United States; or

(2) The date on which the return or payment would otherwise become due falls prior to the 90th day after the last day of a period of 91 days or more of continuous service by the individual on sea duty or outside the continental United States if such last day occurred prior to January 1, 1945 (for provisions relative to computing duration of service on sea duty or outside the continental United States, see § 472.103); or

(3) The date on which the return or payment would otherwise become due falls prior to the 15th day of the sixth month following the month in which falls the last day of a period of 91 days or more of continuous service by the individual on sea duty or outside the continental United States, if such last day occurs after December 31, 1944, and such 91st day occurs prior to January 1, 1948.

(4) The date on which the return or payment would otherwise become due occurs after the individual, while serving outside the continental United States or on sea duty after December 6, 1941, and prior to January 1, 1948 (irrespective of the duration of such service), dies or becomes incompetent.

See section 53 for provisions relating to the date when an income tax return

would otherwise (that is, but for this section of these regulations) become due. See section 56 for provisions relating to the date when an income tax payment would otherwise become due.

(c) *New due date.* The new due date, in the case of any postponement required by paragraph (b), is the earliest of the following dates (except in the case of certain installment payments as prescribed in paragraph (e) of this section):

In the application of this paragraph, if the individual ceases (except by reason of death or incompetency) to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States after December 31, 1944, the 15th day of the sixth month shall be substituted for the 15th day of the fourth month in subparagraph (1) of this paragraph.

(1) The 15th day of the fourth month following the month in which the individual ceases (except by reason of death or incompetency) to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States, unless prior to the expiration of such 15th day he is again a member of the military or naval forces serving on sea duty or outside the continental United States; or

(2) June 15, 1948; or

(3) The 15th day of the third month following the month in which an executor, administrator, or a conservator of the estate of the taxpayer qualifies.

(d) *Installment privilege where due date for payment of tax is postponed.* In case the due date for paying the tax (as distinguished from the due date of an installment of the tax) is postponed under the provisions of paragraph (b) of this section, the tax may, at the option of the taxpayer, be paid in accordance with the provisions of section 56 (b) in four equal installments instead of in a single payment. In such case the first installment is to be paid on or before the new due date prescribed by paragraph (c) of this section, the second installment on or before the 15th day of the third month, the third installment on or before the 15th day of the sixth month, and the fourth installment on or before the 15th day of the ninth month, after such new due date. This is true even though the date on or before which the second, third, or fourth installment is

to be paid falls after the date prescribed in paragraph (c) (2) or (3) of this section.

(e) *Installment privilege where due dates for paying installments are postponed.* In any case in which the taxpayer has exercised the installment privilege, in accordance with section 56 (b), I. R. C., for paying the tax for any taxable year, if the due dates of more than one installment (but not the first installment) of the tax for such year are postponed under the provisions of paragraph (b) of this section, the new due dates for such postponed installments shall be as follows:

(1) The new due date of the first postponed installment shall be the new due date prescribed in paragraph (c) of this section;

(2) The new due date of the second postponed installment shall be the 15th day of the third month after the new due date of the first postponed installment; and

(3) The new due date of the third postponed installment, if any, shall be the 15th day of the sixth month after the new due date of the first postponed installment.

However, in no event shall the new due date of the second or third such postponed installment be later than the earlier of the dates prescribed in paragraph (c) (2) and (3) of this section.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5456, 10 F. R. 7039, T. D. 5610, 13 F. R. 1478]

#### § 472.203 *Tax liability in general—*

(a) *Application of section.* This section shall apply, in the case of a member of the military or naval forces of the United States, to:

(1) Income tax liability with respect to taxable years beginning after December 31, 1940, other than in the case of due dates of returns and payments (as to such dates, see § 472.202); and

(2) Income tax liability with respect to taxable years beginning before January 1, 1941; and

(3) Tax liability with respect to all taxes other than income tax.

If the circumstances are such that a period of time is required to be disregarded under paragraph (b) of this section, the period of time prescribed in paragraph (c) of this section shall be disregarded, in the above cases of tax liability to which this section applies, in

determining, under the internal revenue laws, whether any act specified in § 472.102 was performed within the time prescribed therefor.

(b) *Circumstances under which period of time is disregarded.* In the cases specified in paragraph (a) of this section, the period of time prescribed in paragraph (c) of this section shall be disregarded if the member of the military or naval forces of the United States serves, after December 6, 1941, and prior to January 1, 1948, on sea duty or outside the continental United States:

(1) Continuously for 91 days or more (for provisions relative to computing duration of service on sea duty or outside the continental United States, see § 472.103; or

(2) For any period (irrespective of the duration of such period) if, while on sea duty or outside the continental United States, he dies or becomes incompetent.

(c) *Period of time disregarded.* If a period of time is required to be disregarded under paragraph (b) of this section, the period of time disregarded shall commence at the first moment of the day following the date on which the taxpayer commences to serve on sea duty or at the first moment of the day following the date of departure of the taxpayer from the continental United States, whichever is the earlier. It shall terminate at the last moment of whichever of the following dates is the earliest:

(1) The 15th day of the fourth month following the month in which the taxpayer ceases (except by reason of death or incompetency) to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States, unless prior to the expiration of such 15th day the taxpayer is again a member of the military or naval forces serving on sea duty or outside the continental United States; or

(2) June 15, 1948; or

(3) The 15th day of the third month following the month in which an executor, administrator, or a conservator of the estate of the taxpayer qualifies. In the application of this paragraph, if the individual ceases (except by reason of death or incompetency) to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States after December 31, 1944, the 15th day of the sixth month shall be substituted for the

15th day of the fourth month in (1) hereof.

The application of § 472.203 (c) (1) may be illustrated by the following example:

*Example.* On April 1, 1943, the Commissioner duly mailed to A, a member of the military forces of the United States, a notice of deficiency in respect of A's income tax for the taxable year beginning on January 1, 1941. Under the provisions of section 272, I. R. C., A has 90 days after the notice is mailed within which to file a petition with The Tax Court of the United States for a redetermination of the deficiency. A leaves the continental United States on May 1, 1943, and serves on active duty outside the continental United States until he returns thereto on April 30, 1944. A does not again serve outside the continental United States until after October 14, 1944. Under the provisions of this section the last day on which A may timely file a petition with The Tax Court of the United States for a redetermination of the deficiency is October 14, 1944. This date is determined as follows: the day on which the notice of deficiency was mailed, that is, April 1, 1943, is excluded and the day of A's departure from the continental United States, that is, May 1, 1943, is included in determining that portion of the 90-day period which had expired on A's departure from the continental United States, which is 30 days; the period of time which is disregarded commences at the first moment of May 2, 1943, the day following A's departure from the continental United States, and terminates at the last moment of August 15, 1944, the 15th day of the fourth month following the month in which A ceases to serve outside the continental United States; and the 60th day thereafter (the 90 days for filing a petition with The Tax Court less 30 days thereof which had expired on A's departure from the continental United States) is October 14, 1944.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5456, 10 F. R. 7039, T. D. 5610, 13 F. R. 1478]

**SUBPART D—JOINT RETURN IF HUSBAND OR WIFE IS MEMBER OF ARMED FORCES**

§ 472.301 *Joint return if husband or wife is member of armed forces.* This subpart applies to the election of husband and wife to make a joint return (or separate returns) of income for any taxable year beginning after December 31, 1940, in case:

(a) Either the husband or wife is a member of the military or naval forces of the United States; and

(b) The due date for filing the return of the member for such taxable year is postponed under the provisions of § 472.202; and

(c) The spouse and the member would be entitled to file a joint return for such taxable year if an election to file such a return is timely made. (For provisions relating to joint returns, see sections 51 (b) and 400 and regulations promulgated thereunder.)

In such a case the election to file a joint return (or separate returns) for such taxable year may be made on or before the last day on which a return of the member may be timely filed under § 472.202. That is, an election may be made to file a joint return where a separate return or returns have previously been filed, or where neither the spouse nor the member has filed a return; or an election may be made to file separate returns where a joint return has previously been filed. In any such case the due date of the joint return and tax thereunder is the date on or before which the election may be timely made under this section. However, where separate returns are made, the due date of the return and tax of neither taxpayer is affected by this section, but is governed by the provisions of the regulations in this part applicable to the due date of the separate return and tax of the respective taxpayer. In any case in which the due dates of the returns of both spouses are postponed under the regulations in this part and one of such postponed due dates is later than the other (as, for example, where both spouses are members of the military or naval forces of the United States serving outside the continental United States and one of the spouses returns later than the other), the election may be made on or before the later due date of the two. But see § 472.402 for provisions under which a spouse is required to make an income tax return and pay the tax due thereunder on the normal due date.

In case the member is not required under section 51, I. R. C., to make a return for a taxable year (as, for example, where the member does not have any gross income for the taxable year by reason of the exclusion from gross income provided in section 22 (b) (13) I. R. C.) but the facts are such that the due date would be postponed if he were required to make a return for such year, this subpart shall nevertheless have application in the same manner and to the same extent as though the member were required to make a return for such year and the due date thereof were postponed.

#### SUBPART E—INCOME TAX OF SPOUSE OF MEMBER OF ARMED FORCES

§ 472.401 *Application of Subpart E.* This subpart applies to the income tax liability, with respect to any taxable year beginning after December 31, 1940, of the spouse of a member of the military or naval forces of the United States in case:

(a) The due date for filing the return of the member for such taxable year is postponed under the provisions of § 472.202; and

(b) The spouse and the member would be entitled to file a joint return for such taxable year if an election to file such a return is timely made. (For provisions relating to joint returns, see sections 51 (b) and 400, I. R. C., and §§ 29.51-1 (b) and 29.400-1 of this chapter.

In case the member is not required under section 51 to make a return for a taxable year (as, for example, where the member does not have any gross income for the taxable year by reason of the exclusion from gross income provided in section 22 (b) (13), I. R. C.) but the facts are such that the due date would be postponed if he were required to make a return for such year, this subpart shall nevertheless have application in the same manner and to the same extent as though the member were required to make a return for such year and the due date thereof were postponed.

§ 472.402 *Return and tax payment if spouse's gross income is \$1,200 or over.* If the spouse of the member of the military or naval forces of the United States has for the taxable year gross income of \$1,200 or more (or \$1,500 or more, in the case of a taxable year beginning in 1941), the due date of the income tax return and of payment of the tax of the spouse for such year is not postponed under the provisions of this subpart. Such due date of the spouse may, however, be postponed under provisions of the regulations in this part other than this subpart if the spouse is also a member of the military or naval forces of the United States serving on sea duty or outside the continental United States (see Subpart C of this part), or if the spouse is outside the Americas (see Subpart F of this part), or if the circumstances are such as to fall within the provisions of Subpart J. The filing of a return by the spouse does not preclude the making of

a joint return subsequently by the husband and wife (see § 472.301).

§ 472.403 *Income tax due dates postponed if spouse's gross income is less than \$1,200.* If the spouse of the member of the military or naval forces of the United States has for the taxable year gross income of less than \$1,200 (or less than \$1,500, in the case of a taxable year beginning in 1941), the income tax return and tax of the spouse for such year shall be due at the same time as the return and tax of the member for such year are due under the provisions of § 472.202. If the due date for paying the tax is postponed under this section, the tax may, at the option of the taxpayer, be paid in four equal installments, as provided in § 472.202 (d).

§ 472.404 *Matters other than due dates.* In the case of the income tax liability for a taxable year of a spouse of a member of the military or naval forces of the United States, the disregarded period of time under § 472.203 in the case of tax liability of the member shall also be disregarded with respect to the income tax liability for such year of the spouse in determining whether any act specified in section 3804 (a) (1) (D), (E), (F), (G), (H), (I), or (J) was performed within the time prescribed therefor. Thus, for example, in the case of the income tax of the spouse for such year, the time within which the spouse may file a claim for refund is thereby extended, and the time within which the United States may enforce collection against the spouse is thereby extended. In no event, however, shall this section operate to extend any period prescribed in Subchapter C of Chapter 36 of the Internal Revenue Code (relating to distraint) before the expiration of which distraint or sale for the collection of income tax may not be made.

§ 472.405 *Income of spouse under community property law.* This section applies to the income tax liability, with respect to any taxable year beginning after December 31, 1940, of the spouse of a member of the military or naval forces of the United States in case:

(a) The due date for filing the return of the member for such taxable year is postponed under the provisions of § 472.202; and

(b) The spouse and member are domiciled in a so-called community property state; and

(c) Community income is derived by the spouse during the taxable year but is neither actually nor constructively received by the spouse during such year.

In such case the inclusion, in a return made by the spouse for the taxable year, of such community income shall be deemed to be timely for all purposes if so included in a return filed on or before the due date, under § 472.202, of a return of the member for such taxable year. The tax with respect to such community income shall be deemed to be timely paid for all purposes if paid at or before the time or times fixed by § 472.202 for the payment of tax by the member for such year. The provisions of this section do not postpone the due date of the spouse for filing a return of, or paying the tax with respect to, income other than such community income. In cases in which a return for any taxable year is filed from which such community income has been excluded, such community income shall be included in an amended return for such taxable year filed on or before the due date, under § 472.202, of a return of the member for such year.

For the purpose of determining whether the due date of the income tax return and of payment of the tax for a taxable year is postponed under the provisions of §§ 472.402 and 472.403, community income neither actually nor constructively received by the spouse during such year shall be excluded in ascertaining the amount of the gross income of the spouse for such year.

For purposes of determining any due date under this subpart, receipt of community income by the member of the military or naval forces of the United States shall not be deemed to constitute constructive receipt of such income by the spouse of such member.

**SUBPART F—TAX OF INDIVIDUAL NOT MEMBER OF ARMED FORCES**

§ 472.501 *Application of Subpart F—*

(a) *Individuals to whom applicable.* This subpart applies to the tax liability of any individual other than a member of the military or naval forces of the United States. (For provisions relating to different periods of time disregarded with respect to same matter, see § 472.106.)

(b) *Acts with respect to which period of time is disregarded.* If a period of time is required to be disregarded under § 472.502, the period of time prescribed

in § 472.503 shall be disregarded, in the above cases of tax liability to which this subpart applies, in determining, under the internal revenue laws, whether any act specified in § 472.102 was performed within the time prescribed therefor.

§ 472.502 *Circumstances under which period of time is disregarded.* In the cases specified in § 472.501, the period of time prescribed in § 472.503 shall be disregarded if the individual is, after December 6, 1941, and prior to January 1, 1948, outside the Americas:

(a) For a period of 91 or more days continuously; or

(b) For any period (irrespective of the duration of such period) if, while outside the Americas, he dies or becomes incompetent; or

(c) For any period (irrespective of the duration of such period) if the individual makes a voyage or departs upon a voyage from (or to) a point of land in the Americas to (or from) a point of land outside the Americas, on which voyage while en route a point or points of land within the Americas are touched, and

(1) The period during which the individual is outside the Americas plus the period of the stopover or stopovers within the Americas equals or exceeds 91 days, or

(2) The individual dies or becomes incompetent during the period of a stopover within the Americas while en route on the voyage.

For purposes of paragraph (c) of this section, the term "voyage" means a voyage by vessel or aircraft (whether or not continuously on the same vessel or aircraft), if in case of a stopover en route at a point of land within the Americas the voyage is resumed not later than the 30th day after the date of arrival at the point within the Americas.

The due date for any income tax return and for any payment (including any installment payment) of income tax, for any taxable year beginning after December 31, 1940, is postponed in the case of any civilian officer or employee of any executive department, independent establishment, or agency (including corporations) in the executive branch of the Federal Government who, at the time the return or payment would otherwise become due, is detained by any foreign government with which the United States is at war, or is beleaguered or besieged by enemy forces. For the

postponed due date in such case, see § 472.503.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5610, 13 F. R. 1478]

§ 472.503 *Period of time disregarded—*  
(a) *General rule.* If a period of time is required to be disregarded under § 472.502, the period of time disregarded is the aggregate of the following periods:

(1) The period during which the individual is continuously outside the Americas, prior to January 1, 1948, including, if § 472.502 (c) is applicable, the period or periods of any stopovers while en route on a voyage; plus

(2) The next 90 days after the period referred to in subparagraph (1) of this paragraph; or, if the last day of such 90-day period falls after December 30, 1947, the period beginning immediately after the period referred to in subparagraph (1) of this paragraph and ending on the 15th day of the sixth month following the month in which the period referred to in subparagraph (1) of this paragraph terminates.

However, in case an income tax due date of a civilian employee of the United States is postponed under § 472.502 by reason of the employee being detained for a foreign government with which the United States is at war or by reason of the employee being beleaguered or besieged by enemy forces, the new due date is the 15th day of the fourth month following the month in which the employee returns to the continental United States (or, if such 15th day falls after either date prescribed in paragraph (c) of this section, then the new due date is the earlier of the dates prescribed in paragraph (c) of this section). In the application of the preceding sentence, if the 15th day of the fourth month following the month in which the employee returns to the continental United States falls after December 30, 1947, the 15th day of the sixth month shall be substituted for the 15th day of the fourth month in such sentence.

(b) *Death or incompetency of individual.* If the individual dies or becomes incompetent while outside the Americas or, if § 472.502 (c) is applicable, while on a stopover within the Americas, the period of time disregarded is the aggregate of the following periods:

(1) The period during which the individual is continuously outside the Americas plus (if § 472.502 (c) is ap-

pllicable) the period of the stopover or stopovers within the Americas; and

(2) The period, after the period prescribed in subparagraph (1) of this paragraph terminating at the last moment of the earlier of the two dates prescribed in paragraph (c) of this paragraph.

(c) *Limitation on time to be disregarded.* The period of time disregarded with respect to the tax liability of an individual shall not extend beyond whichever of the following dates is the earlier:

(1) June 15, 1948; or

(2) The 15th day of the third month following the month in which an executor, administrator, or a conservator of the estate of the individual qualifies.

(d) *Installment privilege where due date for payment of income tax is postponed.* In case the due date for paying income tax (as distinguished from the due date of an installment of the tax) is postponed under the provisions of § 472.502, the tax may, at the option of the taxpayer, be paid in accordance with the provisions of section 56 (b), I. R. C., in four equal installments instead of in a single payment. For example, if the postponed due date for paying income tax is June 29, 1944, as determined in accordance with the provisions of paragraphs (a), (b), and (c) of this section, the tax may be paid in four equal installments, the first on June 29, 1944, the second on September 15, 1944, the third on December 15, 1944, and the fourth on March 15, 1945. This is true even though the date on or before which the second, third, or fourth installment is to be paid falls after the date prescribed in paragraph (c) (1) or (2) of this section.

(e) *Installment privilege where due dates for paying income tax installments are postponed.* In any case in which the taxpayer has exercised the installment privilege, in accordance with section 56 (b), for paying income tax for any taxable year, if the due dates of more than one installment (but not the first installment) of the tax for such year are postponed under the provisions of § 472.502, the new due dates for such postponed installments shall be as follows:

(1) The new due date for the first postponed installment shall be the new due date determined in accordance with the provisions of paragraphs (a), (b), and (c), of this section;

(2) The new due date of the second postponed installment shall be the 15th day of the third month after the new due date of the first postponed installment; and

(3) The new due date of the third postponed installment, if any, shall be the 15th day of the sixth month after the new due date of the first postponed installment.

However, in no event shall the new due date of the second or third such postponed installment be later than the earlier of the dates prescribed in paragraph (c) (1) and (2) of this section. [T. D. 5279, 8 F. R. 9602, as amended by T. D. 5610, 13 F. R. 1478]

#### SUBPART G—JOINT RETURN IF NEITHER HUSBAND NOR WIFE IS MEMBER OF ARMED FORCES

§ 472.601 *Joint return if neither husband nor wife is member of armed forces.* This subpart applies to the election of husband and wife to make a joint return (or separate returns) of income for any taxable year beginning after December 31, 1940, in case:

(a) The due date for filing the return of either of the individuals of such taxable year is postponed under the provisions of § 472.502 by reason of the individual being outside the Americas; and

(b) Such individual and spouse would be entitled to file a joint return for such taxable year if an election to file such a return is timely made. (For provisions relating to joint returns, see sections 51 (b) and 400, I. R. C., and §§ 29.51-1 (b) and 29.400-1 of this chapter.)

In such a case the election to file a joint return (or separate returns) for such taxable year may be made on or before the last day on which a return of the individual (whose due date is postponed by reason of being outside the Americas) may be timely filed under § 472.503. That is, an election may be made to file a joint return where a separate return or returns have previously been filed, or where neither spouse has filed a return; or an election may be made to file separate returns where a joint return has previously been filed. In any such case the due date of the joint return and tax thereunder is the date on or before which the election may be timely made under this section. However, where separate returns are made, the due date of the return and tax of neither taxpayer is affected by this section, but is

governed by the provisions of these regulations applicable to the due date of the separate return and tax of the respective taxpayer. In any case in which the due dates of the returns of both spouses are postponed under these regulations and one of such postponed due dates is later than the other (as, for example, where both husband and wife have been outside the Americas and one of the spouses returns to the Americas later than the other), the election may be made on or before the later due date of the two. But see § 472.702 for provisions under which a spouse is required to make an income tax return and pay the tax due thereunder on the normal due date.

In case the individual who is outside the Americas is not required under section 51 to make a return for a taxable year (as, for example, where the individual does not have any gross income for the taxable year) but the facts are such that the due date would be postponed if he were required to make a return for such year, this subpart shall nevertheless have application in the same manner and to the same extent as though such individual were required to make a return for such year and the due date thereof were postponed.

**SUBPART H—INCOME TAX OF SPOUSE OF INDIVIDUAL NOT MEMBER OF ARMED FORCES**

§ 472.701 *Application of Subpart H.* This subpart applies to the income tax liability, with respect to any taxable year beginning after December 31, 1940 of the spouse of an individual not a member of the military or naval forces of the United States in case:

(a) The due date for filing the return of such individual for such taxable year is postponed under the provisions of § 472.502 by reason of the individual being outside the Americas; and

(b) Such individual and spouse would be entitled to file a joint return for such taxable year if an election to file such a return is timely made. (For provisions relating to joint returns, see sections 51 (b) and 400, I. R. C., and §§ 29.51-1 (b) and 29.400-1 of this chapter.)

In case the individual who is outside the Americas is not required under section 51 to make a return for a taxable year (as, for example, where the individual does not have any gross income for the taxable year) but the facts are such that the due date would be postponed

if he were required to make a return for such year, this subpart shall nevertheless have application in the same manner and to the same extent as though such individual were required to make a return for such year and the due date thereof were postponed.

§ 472.702 *Return and tax payment if spouse's gross income is \$1,200 or over.* In the case of the spouse of an individual whose income tax return and payment due date is postponed under § 472.502, if such spouse has for the taxable year gross income of \$1,200 or more (or \$1,500 or more, in the case of a taxable year beginning in 1941), the due date of the income tax return and of payment of the tax of the spouse for such year is not postponed under the provisions of this subpart. Such due date of the spouse may, however, be postponed under provisions of these regulations other than this subpart if such spouse is also outside the Americas (see Subpart F of this part), or is a member of the military or naval forces of the United States serving on sea duty or outside the continental United States (see Subpart C of this part), or if the circumstances are such as to fall within the provisions of Subpart J of this part. The filing of a return by the spouse does not preclude the making of a joint return subsequently by the husband and wife (see § 472.601).

§ 472.703 *Income tax due dates postponed if spouse's gross income is less than \$1,200.* In the case of the spouse of an individual whose income tax return and payment due date for a taxable year is postponed under § 472.502, if such spouse has for such year gross income of less than \$1,200 (or less than \$1,500, in the case of a taxable year beginning in 1941), the income tax return and tax of the spouse for such year shall be due at the same time as the return and tax of such individual for such year are due under the provisions of § 472.503. If the due date for paying the tax is postponed under this section, the tax may, at the option of the taxpayer, be paid in four equal installments as provided in § 472.503 (d).

§ 472.704 *Matters other than due dates.* In the case of the income tax liability for a taxable year of the spouse of an individual whose income tax return and payment due date for a taxable year is postponed under § 472.502, the disregarded period of time under § 472.503 in

the case of tax liability of such individual shall also be disregarded with respect to the income tax liability for such year of the spouse in determining whether any act specified in section 3804 (a) (1) (D), (E), (F), (G), (H), (I), or (J) was performed within the time prescribed therefor. Thus, for example, in the case of the income tax of the spouse for such year, the time within which the spouse may file a claim for refund is thereby extended, and the time within which the United States may enforce collection against the spouse is thereby extended. In no event, however, shall this section operate to extend any period prescribed in Subchapter C of Chapter 36 of the Internal Revenue Code (relating to distraint) before the expiration of which distraint or sale for the collection of income tax may not be made.

§ 472.705 *Income of spouse under community property law.* This section applies to the income tax liability, with respect to any taxable year beginning after December 31, 1940, of the spouse of an individual not a member of the military or naval forces of the United States in case:

(a) The due date for filing the return of such individual for such taxable year is postponed under the provisions of § 472.502; and

(b) The spouse and such individual are domiciled in a so-called community property state; and

(c) Community income is derived by the spouse during the taxable year but is neither actually nor constructively received by the spouse during such year. In such case the inclusion, in a return made by the spouse for the taxable year, of such community income shall be deemed to be timely for all purposes if so included in a return filed on or before the due date, under § 472.503, of a return of such individual for such taxable year. The tax with respect to such community income shall be deemed to be timely paid for all purposes if paid at or before the time or times fixed by § 472.503 for the payment of tax by such individual for such year. The provisions of this section do not postpone the due date of the spouse for filing a return of, or paying the tax with respect to, income other than such community income. In cases in which a return for any taxable year is filed from which such community income has been excluded, such community income shall be included in an

amended return for such taxable year filed on or before the due date, under § 472.503, of a return for such year of the individual who is outside the Americas.

For the purpose of determining whether the due date of the income tax return and of payment of the tax for a taxable year is postponed under the provisions of §§ 472.702 and 472.703, community income neither actually nor constructively received by the spouse during such year shall be excluded in ascertaining the amount of the gross income of the spouse for such year.

For purposes of determining any due date under this subpart, receipt of community income by the individual who is outside the Americas shall not be deemed to constitute constructive receipt of such income by the spouse of such individual.

#### SUBPART I—TAX OF CORPORATIONS, TRUSTS, AND ESTATES

##### § 472.801 *Application of Subpart I—*

(a) *Persons to whom applicable.* This subpart applies to the tax liability of corporations, trusts, and estates. Paragraph (b) of this section and §§ 472.802, 472.803, and 472.804 apply to all corporations, trusts, and estates, except that such sections shall not apply with respect to the determination, in the cases to which § 472.805 applies, of the amount of interest payable by foreign corporations subject to section 231 (a), I. R. C. Except to the extent provided in § 472.805 and in § 472.806 (relating to China Trade Act corporations), no period of time is disregarded with respect to any corporation, trust, or estate unless the Commissioner determines under the regulations in this part that a period of time shall be disregarded with respect to such corporation, trust, or estate.

Such determinations may be made by the Commissioner upon his own initiative based upon the facts available to him, or upon application by any interested person. Applications for such determinations shall be filed with the Commissioner of Internal Revenue, Washington, D. C. Notice of each determination under this subpart shall, if practicable, be furnished to the taxpayer or taxpayers whose tax liability is affected thereby.

(b) *Acts with respect to which period of time is disregarded.* If the circumstances are such that a period of time is required to be disregarded under § 472.802 in determining whether any act specified in § 472.102 was performed

within the time prescribed therefor, the period of time prescribed under § 472.803 shall be disregarded, in the above cases to which this subpart applies, in determining, under the internal revenue laws, whether such act was performed within the time prescribed therefor. Thus, under this subpart a period of time may be disregarded with respect only to such act or acts as are specified in the determination of the Commissioner.

§ 472.802 *Circumstances under which period of time is disregarded.* In the cases specified in § 472.801, the period of time prescribed under § 472.803 shall be disregarded in any case in which timely performance of any act specified in § 472.102 is determined by the Commissioner to be impossible or impracticable:

(a) By reason of any individual being outside the Americas; or

(b) By reason of any locality being an area of enemy action or control, as determined by the Commissioner; or

(c) By reason of any member of the military or naval forces of the United States serving on sea duty or outside the continental United States.

Whether or not the circumstances of a particular case are such that a period of time shall be disregarded is dependent upon the facts of the particular case. In general, consideration will be given to the fact of absence, as indicated above, of individuals who are directors or officers of the corporation or fiduciaries or beneficiaries of the trust or estate, and to the fact that assets and essential records are in an area of enemy action or control.

§ 472.803 *Period of time disregarded.* If the Commissioner determines under § 472.802 that the circumstances of a particular case are such that a period of time shall be disregarded with respect to any corporation, trust, or estate, or class of corporations, trusts, or estates, the Commissioner shall also determine the duration of such period. The Commissioner may subsequently modify the duration of such period if in his opinion such action is necessary or desirable in order to carry out the purpose and intent of section 3804. No period prior to December 7, 1941, shall be disregarded, nor, in case the Commissioner's determination was made on or before August 8, 1947 (the date of the enactment of Pub-

lic Law 384, 80th Congress), shall a period after December 31, 1947, be disregarded. Such period after December 31, 1947, as the Commissioner may fix shall be disregarded in any case in which the Commissioner makes a determination under this subpart after August 8, 1947, provided such determination is based on the existence prior to January 1, 1948, of one or more of the circumstances specified in § 472.802 (a), (b), or (c). The duration of the period which shall be disregarded under this subpart shall be stated in the determination or determinations by the Commissioner with respect to the taxpayer or taxpayers affected.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5610, 13 F. R. 1478]

§ 472.804 *Inspection of determinations made by the Commissioner.* Each determination made by the Commissioner under this subpart with respect to a taxpayer shall be available for inspection by the same persons as are entitled to inspect the return of the taxpayer (or would be so entitled if the return were filed). Such inspection shall be subject to the same conditions as in the case of inspection of the return of the taxpayer.

§ 472.805 *Interest payable by foreign corporations subject to section 231 (a), I. R. C.* In determining the amount of interest payable by any foreign corporation with respect to income tax imposed by section 231 (a) for any taxable year beginning after December 31, 1939, there shall be disregarded the period beginning with December 7, 1941, and ending with December 31, 1947; except that there shall be included in the period disregarded only that portion thereof during which payment of such tax by the corporation was prevented due to restrictions imposed with respect to the corporation by any foreign government with which the United States is at war or by the government of any country under the control of the enemy.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5610, 13 F. R. 1478]

§ 472.806 *China Trade Act corporations—(a) Income tax.* Section 3805, I. R. C., provides that in the case of any taxable year beginning after December 31, 1940, no Federal income tax return of, or payment of any Federal income tax by, any corporation organized under the China Trade Act, 1922, shall become due until December 31, 1947. Section 3805 further provides that such due date is

prescribed subject to the power of the Commissioner to extend the time for filing such return or paying such tax, as in other cases.

(b) *Capital stock tax.* In the case of the capital stock tax, for any year ending on or after June 30, 1942, of any corporation organized under the China Trade Act, 1922, no return or payment of such tax shall become due until December 31, 1947.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5610, 13 F. R. 1478]

#### SUBPART J—TAX OF INDIVIDUAL IN EXTRAORDINARY CIRCUMSTANCES

##### § 472.901 *Application of Subpart J—*

(a) *Individuals to whom applicable.* This subpart applies to any tax liability of an individual or class of individuals with respect to which no period of time is disregarded under Subparts C to H, inclusive, or with respect to which a period of time is disregarded under such subparts but with respect to which a different or additional period of time is to be disregarded. No period of time is disregarded under this subpart with respect to any tax liability unless the Commissioner determines under this part that a period of time shall be disregarded with respect to such tax liability.

Such determinations may be made by the Commissioner upon his own initiative based upon the facts available to him, or upon application by the individual. Applications for such determinations shall be filed with the Commissioner of Internal Revenue, Washington, D. C. Notice of each determination under this subpart shall, if practicable, be furnished to the individual or individuals whose tax liability is affected thereby.

(b) *Acts with respect to which period of time is disregarded.* If the circumstances are such that a period of time is required to be disregarded under § 472.902 in determining whether any act specified in § 472.102 was performed within the time prescribed therefor, the period of time prescribed under § 472.903 shall be disregarded, in the above cases to which this subpart applies, in determining under the internal revenue laws, whether such act was performed within the time prescribed therefor. Thus under this subpart a period of time may be disregarded with respect only to such act or acts as are specified in the determination of the Commissioner.

§ 472.902 *Circumstances under which period of time is disregarded.* In the cases specified in § 472.901, the period of time prescribed under § 472.903 shall be disregarded in any case in which no period of time is disregarded under any other subpart of the regulations in this part or in which the period of time disregarded under any other subpart is considered by the Commissioner to be inadequate to carry out the purpose and intent of section 3804, if in such case the timely performance of any act specified in § 472.102 is determined by the Commissioner to be impossible or impracticable:

(a) By reason of any individual (whether or not the taxpayer) being outside the Americas; or

(b) By reason of any locality being an area of enemy action or control, as determined by the Commissioner; or

(c) By reason of any member (whether or not the taxpayer) of the military or naval forces of the United States serving on sea duty or outside the continental United States.

Whether or not the circumstances of a particular case are such that a period of time shall be disregarded is dependent upon the facts of the particular case.

§ 472.903 *Period of time disregarded.* If the Commissioner determines under § 472.902 that the circumstances of a particular case are such that a period of time shall be disregarded under this subpart with respect to any individual or class of individuals, the Commissioner shall also determine the duration of such period. The Commissioner may subsequently modify the duration of such period if in his opinion such action is necessary or desirable in order to carry out the purpose and intent of section 3804, I. R. C. No period prior to December 7, 1941, shall be disregarded, nor, in case the Commissioner's determination was made on or before August 8, 1947 (the date of the enactment of Public Law 384, 80th Congress), shall a period after December 31, 1947, be disregarded. Such period after December 31, 1947, as the Commissioner may fix shall be disregarded in any case in which the Commissioner makes a determination under this subpart after August 8, 1947, provided such determination is based on the existence prior to January 1, 1948, of one or more of the circumstances specified in § 472.902 (a), (b), or (c). In no event, however, shall the period

disregarded extend beyond the 15th day of the third month following the month in which an executor, administrator, or a conservator of the estate of the individual qualifies as such. The duration of the period which shall be disregarded under this subpart shall be stated in the determination or determinations by the Commissioner with respect to the individual or class of individuals.

[T. D. 5279, 8 F. R. 9602, as amended by T. D. 5610, 13 F. R. 1478]

§ 472.904 *Inspection of determinations made by the Commissioner.* Each determination made by the Commissioner under this subpart with respect to a taxpayer shall be available for inspection by the same persons as are entitled to inspect the return of the taxpayer (or would be so entitled if the return were filed). Such inspection shall be subject to the same conditions as in the case of inspection of the return of the taxpayer.

## Part 473—Period of Limitations in Case of Related Taxes Under Chapter 1 and Chapter 2 of the Internal Revenue Code

Sec.

- 473.1 Purpose and scope of section 3807, I. R. C.
- 473.2 Tax previously determined.
- 473.3 The same taxable year.
- 473.4 Extension of period of limitations.
- 473.5 Types of adjustments permissible under section 3807, I. R. C.
- 473.6 Ascertainment of amount of increase or decrease.
- 473.7 Application to affiliated groups.

**AUTHORITY:** §§ 473.1 to 473.7 issued under 53 Stat. 467; 26 U. S. C. 3791.

**SOURCE:** §§ 473.1 to 473.7 contained in Treasury Decision 5409, 9 F. R. 12712.

§ 473.1 *Purpose and scope of section 3807, I. R. C.* Section 3807 provides for an adjustment under the circumstances specified in section 3807 (b) with respect to any tax imposed by chapter 1 or chapter 2 when one or more provisions of law, such as the statute of limitations, or one or more rules of law, such as *res judicata*, would otherwise prevent such adjustment. Section 3807 and this part are applicable to taxable years beginning after December 31, 1939.

§ 473.2 *Tax previously determined.* For purposes of section 3807, the term "tax previously determined" shall have

the meaning assigned to such term by section 3801 (d), I. R. C.

§ 473.3 *The same taxable year.* For purposes of section 3807, the term "the same taxable year" includes any taxable year which coincides in whole or in part with the taxable year for which the determination specified in section 3807 (b) is made.

§ 473.4 *Extension of period of limitations.* (a) If as a result of a determination (including a determination under section 124, 3801, 3806, or 3807 itself) in respect of any tax imposed by chapter 1 or chapter 2 referred to as "the first tax") a deficiency is assessed or a credit or refund of an overpayment of such tax is allowed, within the period of limitations properly applicable thereto, certain adjustments described in § 473.5 may be made in certain instances for the same taxable year in respect of any other tax of the same taxpayer imposed by chapter 1 or chapter 2. If (1) the application of the law or facts which were the subject of such determination to any other tax imposed by chapter 1 or chapter 2 of the same taxpayer for the same taxable year would result in an increase or decrease in the amount of such other tax as previously determined, and if (2) on the date such deficiency in respect of the first tax was assessed, or credit or refund allowed, or at any time within one year from such date, the assessment of a deficiency, or the allowance of a credit or refund, as the case may be, in respect of such other tax is prevented (except for the provisions of section 3801 or 734, I. R. C.) by the operation of any provision of law or rule of law (other than section 3807 or section 3761, I. R. C., relating to compromises), then upon the date the deficiency was assessed, or credit or refund allowed, in respect of the first tax the increase or decrease specified in this sentence in such other tax shall be considered a deficiency or any overpayment, as the case may be, in respect of such other tax. Such deficiency may be assessed and collected, or credit or refund of such overpayment allowed, as if on the date the deficiency is assessed, or credit or refund allowed, in respect of the first tax one year remained before the expiration of the period of limitations upon assessment, or filing claim for refund of overpayment, of the tax in respect of which the increase or decrease is determined.

(b) All provisions of law, for example, the suspension of the running of the statute of limitations under the provisions of section 277, I. R. C., in case a statutory notice of deficiency is sent to the taxpayer, not inconsistent with the provisions of section 3807, will be applicable to the assessment of such increase or the refunding of such decrease. Such increase may be assessed, or decrease refunded, notwithstanding any provision of law, such as section 272 (f) or 322 (c), I. R. C., or any rule of law, e. g., res judicata, other than section 3807 itself or section 3761, relating to compromises.

(c) Any increase determined under section 3807 may be assessed and collected, or any decrease may be credited or refunded, even though no deficiency, as defined in section 271, I. R. C., or no overpayment, as the case may be, in respect of the given tax for the given taxable year would be found to exist were consideration permitted of all the factors which enter into the computation of the tax liability for the given taxable year, including those items in which no change may be made under the provisions of section 3807 (c). If an assessment or a refund, as the case may be, is permissible during all or part of the above one-year period without regard to section 3807, then on any date during such period on which an assessment or a refund could be made or allowed without regard to section 3807 only such an amount may be assessed as a deficiency or allowed as a credit or refund as could be assessed or allowed without regard to the provisions of section 3807. If an assessment or refund could be made or allowed without regard to section 3807 during part of such one-year period and not during the remainder of such period, any increase or decrease determined under section 3807 may be assessed or credited or refunded during such remainder of the one-year period without regard to whether or not any deficiency, as defined in section 271, or any overpayment, as the case may be, in respect of the given tax for the given taxable year would be found to exist were consideration permitted of all the factors which enter into the computation of the tax liability for the given taxable year, including those items in which no change may be made under the provisions of section 3807 (c).

(d) If a deficiency has been assessed, or a credit or refund allowed, in respect of any tax imposed by chapter 1 or chapter

2, the adjustments permitted under section 3807 may be made even though such assessment or such credit or refund is made or allowed pursuant to a determination prior to the time such determination becomes final.

(e) The extension of the period of limitations upon making an assessment, or allowing a refund, under the provisions of section 3807 may be illustrated by the following example:

*Example.* Corporation X on March 15, 1941 filed a return and paid a tax as a personal holding company for the calendar year 1940. The period of limitations provided in section 322, I. R. C., upon filing a claim for refund of such personal holding company tax expired on March 15, 1944. The Commissioner within the applicable period of limitations asserted a deficiency against Corporation X in respect of the excess profits tax for such taxable year. On March 1, 1946, it was determined under a decision of The Tax Court of the United States that Corporation X was not a personal holding company and was therefore subject to excess profits tax. Such excess profits tax was assessed on May 1, 1946. Under the provisions of section 3807 Corporation X may file a claim for refund of the personal holding company tax which it paid, or credit or refund may be allowed or made if no claim is filed, as if the period of limitations upon filing claim for credit or refund, or the allowing of credit or refund if no claim is filed, did not expire until May 1, 1947.

§ 473.5 *Types of adjustments permissible under section 3807, I. R. C.* If as a result of a determination in respect of any tax imposed by chapter 1 or chapter 2 referred to as "the first tax") a deficiency is assessed, or a credit or refund of an overpayment of such tax is allowed, within the period of limitations properly applicable thereto, adjustments which may be made for the same taxable year in respect of any other tax (hereinafter referred to as "the second tax") of the same taxpayer imposed by chapter 1 or chapter 2 include the following:

(a) The item, or items, which was the subject of the determination in respect of the first tax shall be treated in conformity with such determination in computing the amount of income subject to the second tax;

(b) If the first tax is allowable as a deduction in computing the amount of income subject to the second tax, or if the income subject to the first tax is a credit against net income for purposes of computing the amount of income subject to the second tax, the amount which may be deducted or credited, as the case

may be, shall be the amount of the first tax paid or accrued, or the amount of income subject to the first tax, as the case may be, determined after making the adjustments in the first tax resulting from the determination specified in paragraph (a) of this section; and

(c) In computing any deduction or credit which is limited to or by net income or the amount of income from property, the amount to or by which such deduction or credit is limited shall be the net income or the amount of income from property computed after making the adjustments specified in paragraphs (a) and (b) of this section.

(d) The adjustments permissible under section 3807 may be illustrated by the following example:

*Example.* Assume that Corporation X, which makes its income and excess profits tax returns on the calendar year basis, filed returns on March 15, 1942 for the year 1941 showing a net income of \$1,500,000 before taking into account the deduction for contributions, a net income of \$1,425,000 after taking such deduction into account, and an excess profits tax of \$1,000,000. Corporation X made charitable contributions of \$100,000 in 1941, and deducted 5 percent of \$1,500,000, or \$75,000, in respect of such contributions in computing its normal tax net income and its surtax net income. On March 1, 1944 a deficiency in income tax due to an adjustment in respect of long-term capital gains was assessed pursuant to a decision of The Tax Court of the United States which had become final. This adjustment did not affect the excess profits tax since long-term capital gains are not subject to such tax.

In computing its net income, Corporation X deducted from gross income an amount of \$100,000 as depreciation on a given property. It was later determined that the correct amount which should have been deducted for such depreciation is \$50,000. A deficiency of \$30,000 in excess profits tax was assessed pursuant to such determination on March 1, 1945. The following adjustments may be made under section 3807 in respect of Corporation X's income tax, i. e., normal tax and surtax, for the year 1941:

(1) \$50,000 instead of \$100,000 shall be allowed as a deduction for depreciation in computing normal tax net income and surtax net income;

(2) \$1,030,000 instead of \$1,000,000 shall be allowed as a deduction for excess profits tax paid or accrued in computing normal tax net income and surtax net income; and

(3) \$76,000, or 5 percent of \$1,520,000, shall be allowed as a deduction for contributions.

Corporation X's normal tax net income and surtax net income each is therefore to be increased by \$19,000 (i. e., \$50,000 less \$30,000 less \$1,000), and the increase in normal tax and surtax computed on the basis of such

increased normal tax net income and surtax net income over the amount of normal tax and surtax previously determined is to be considered a deficiency under the provisions of section 3807. The amount of such increase shall be determined and shall be assessed in accordance with the provisions of section 3807 (b) and (c) and of §§ 473.4 and 473.6.

(e) Section 3807 may operate several times upon the same tax and, likewise, may operate simultaneously upon several taxes. However, an adjustment under the provisions of section 3807 in respect of any tax for a given taxable year does not of itself authorize an adjustment in any tax for any prior or subsequent taxable year by reason of a carry-over or a carry-back of a net operating loss or of an unused excess profits credit or a carry-over of a net capital loss from the given taxable year to such prior or subsequent taxable year. Adjustments in such prior or subsequent taxable year may be made only if the assessment of a deficiency or the allowing of a credit or refund, as the case may be, in the case of such prior or subsequent taxable year, is not prevented by the operation of any law or rule of law.

§ 473.6 *Ascertainment of amount of increase or decrease.* (a) The tax previously determined must be recomputed to ascertain the increase or decrease in tax, if any, resulting from the adjustments specified in section 3807 (b) and in § 473.5. The difference between the tax previously determined and the tax as recomputed after such adjustments have been made will be the amount of the increase or decrease. In recomputing the tax previously determined to ascertain whether any increase or decrease in the amount of the tax previously determined shall be considered to result from the adjustment specified in section 3807 (b) and in § 473.5, only those items which were the subject of the determination specified in section 3807 (b) (1) and in § 473.4 or which were affected by such determination, and no other items, shall be considered in making such recomputation. If the treatment of any item upon which the tax previously determined was based, or if the application of any provision of the internal revenue laws with respect to such tax depends upon the amount of income or the amount of income from property (e. g., charitable contributions, depletion, or foreign tax credit), readjustments must be made in such items as part of the recomputation in conformity

with the change in the amount of income or the amount of income from property which results from the correct treatment of the item or items in respect of which the above determination was made. Interest on any increase or decrease shall be assessed or allowed under the general rule applicable to the assessment of interest in connection with amounts determined as deficiencies and to the allowance of interest in connection with amounts determined as overpayments.

(b) The amount of any increase or decrease determined under section 3807 and under these regulations shall not be diminished by any credit or set-off based upon any item which was not the subject of the determination specified in section 3807 (b) (1) and in § 473.4, or was not affected by such determination. For example, if the Commissioner asserts a deficiency in respect to any tax imposed by chapter 1 or chapter 2 under the provisions of section 3807, no question relating to a deficiency or an overpayment of tax, unless based upon an item which was the subject of the determination specified in section 3807 (b) (1) and in § 473.4, or was affected by such determination, may be raised either by the Commissioner or by the taxpayer in a proceeding before The Tax Court of the United States. The fact that an adjustment is made in a given tax for a given taxable year under the provisions of section 3807 shall not mean, however, that any deficiency which could otherwise be assessed, or any refund which could otherwise be allowed, without regard to section 3807 cannot be assessed or allowed either simultaneously with or on some date after the adjustment in such tax is made under the provisions of section 3807. Thus, if the taxpayer petitions The Tax Court for a redetermination of a deficiency which the Commissioner has asserted under the provisions of section 3807, the decision of The Tax Court shall not be res judicata as to the taxpayer's liability in respect of the given tax for the taxable year in question, and neither such decision of The Tax Court nor section 322 (c), I. R. C., shall prevent the taxpayer from being allowed a credit or refund otherwise allowable in respect of such tax for such taxable year or from instituting suit in any court for the recovery of any part of such tax, except in respect of items which were the subject of the determination specified in section

3807 (b) (1) and in § 473.4 or which were affected by such determination.

(c) If the Commissioner has assessed and collected the amount of any increase under section 3807, no part thereof may be recovered by the taxpayer in any suit for refund (except in connection with the subsequent application of section 3807) based upon any item other than the one which was the subject of the determination specified in section 3807 (b) (1) and in § 473.4 or was affected by such determination. If the Commissioner has refunded the amount of any decrease under section 3807, the amount so refunded may not subsequently be recovered by the Commissioner in a suit for erroneous refund (except in connection with a subsequent application of section 3807) based upon any item other than the one which was the subject of the determination specified in section 3807 (b) (1) and in § 473.4 or was affected by such determination.

(d) If any decrease in tax is determined under the provisions of section 3807, it may be credited, under the applicable law and regulations thereunder, against any tax imposed by chapter 1 or chapter 2, including the tax in respect of which the decrease was determined, on installment thereof, due from the taxpayer. Likewise, if any increase in tax is determined under the provisions of section 3807, any overpayment by the taxpayer of any tax imposed by chapter 1 or chapter 2, including the tax in respect of which the increase was determined, may be credited against the amount of such increase in accordance with the applicable law and regulations thereunder. (See section 322, I. R. C. and §§ 29.322-1 to 29.322-8 of this chapter.) Accordingly, it may be possible for the Commissioner and the taxpayer to settle at one time the taxpayer's tax liability with respect to all the taxes imposed by chapter 1 and chapter 2 for the taxable year for which the determination specified in section 3807 (b) (1) and in § 473.4 was made.

(e) Adjustments permitted by section 3807 are in addition to and do not affect other adjustments in the tax increased or decreased which are permissible under any other law or rule of law. Thus, if any decrease in tax determined under section 3807 is to be credited against an amount due from the taxpayer in respect of the same tax, or if any overpayment of tax is to be credited against an increase in respect of the same tax determined

under section 3807, such decrease or such overpayment shall not be so credited until all other items, including barred deficiencies and barred overpayments, have been taken into account in determining the amount of such tax due from the taxpayer or the amount of overpayment in respect of such tax. The rule that adjustments made under section 3807 in the tax previously determined do not affect other adjustments to such tax which may be made under any other law or rule of law is illustrated by the following example:

*Example.* Corporation X filed its income tax return for the calendar year 1940 on March 15, 1941 and on that date paid the full amount of tax shown on such return. The Commissioner granted Corporation X an extension of six months for filing its excess profits tax return for the calendar year 1940. Corporation X filed its excess profits tax return for 1940 on September 15, 1941 and on that date paid the full amount shown on such return. On March 1, 1943 Corporation X paid a deficiency of \$1,500 in respect of its income tax for 1940.

It was determined on June 1, 1944 that there was a deficiency in respect of excess profits tax, and such deficiency was assessed on September 15, 1944. Adjustments which could be made in the income tax for 1940 under the provisions of section 3807 as a result of such assessment of excess profits tax would produce an increase of \$750 in such income tax as previously determined. On October 1, 1944 Corporation X filed a claim for refund of \$1,000 in respect of its income tax for 1940 based upon an adjustment in respect of long-term capital gains, and the Commissioner agreed that such adjustment would be a proper one. The Commissioner asserts, however, and Corporation X agrees, that Corporation X claimed a deduction for interest on its income tax return for 1940 to which it was not entitled and that Corporation X's income tax for 1940 would properly be increased by \$400 if such deduction were eliminated. This \$400 cannot be assessed inasmuch as the ordinary period of limitations upon assessment of income tax for 1940 expired on March 15, 1944. However, such \$400 can be used to offset the \$1,000 which Corporation X claims is an overpayment of income tax. There is, therefore, an overpayment of \$600 in income tax for 1940. The \$750 increase in income tax for 1940 which was determined under section 3807 may be assessed as if on September 15, 1944 one year remained before the expiration of the period of limitations upon assessment of income tax for 1940. The \$600 overpayment of income tax for 1940 may then be credited against the assessment of \$750 increase in income tax for 1940. The remaining \$150 of such increase in income tax may be col-

lected under the law and regulations applicable to the collection of such tax.

The crediting of the above \$600 overpayment of income tax against the above \$750 increase in income tax is, moreover, the allowance of a credit under a determination in respect of a tax imposed by chapter 1 within the meaning of section 3807 (b) (1) so as to serve as the basis for a further adjustment in excess profits tax for 1940 under the provisions of section 3807.

§ 473.7 *Application to affiliated groups.*

(a) Section 3807, I. R. C., is applicable to affiliated groups which filed consolidated returns, and operates whether the determination specified in section 3807 (b) (1) and in § 473.4 is made in respect of a tax reported on the basis of a consolidated return or in respect of a tax reported on the basis of a separate return. In the case of a member of an affiliated group, the words "any other tax of the taxpayer" are to include any other tax imposed by chapter 1 or chapter 2 upon any other member of the group, whether such tax is reported on the basis of a consolidated return or on the basis of a separate return. Thus, if a deficiency is assessed, or a refund allowed, in respect of a tax reported on the basis of a consolidated return, adjustments under section 3807 may be made in respect of the other taxes of the affiliated group reported on the basis of a consolidated return and also in respect of the taxes of all the members of such group not reported upon the basis of such a consolidated return. Similarly, if the deficiency or refund is in respect of a tax of a member of an affiliated group not reported on the basis of a consolidated return, adjustments may be made not only in other taxes of such member, but also in any tax which such group reported upon the basis of a consolidated return and in any tax of any other member of the group which was reported on the basis of a separate return. These adjustments may be made even though the several taxable periods involved are not the same if the taxable year for which the adjustments are made coincides in whole or in part with the taxable year for which the deficiency was assessed or the refund allowed.

(b) The application of section 3807 to affiliated groups may be illustrated by the following example:

*Example:* Corporation X, which makes its tax returns upon the basis of the calendar year, becomes a member of an affiliated group on July 1, 1940. Such group likewise makes its returns on the basis of the calendar year. A consolidated excess profits tax return was

filed for the group for the year 1940 on March 15, 1941. Likewise, Corporation X filed an excess profits tax return for the short taxable year January 1 through June 30, 1940, and an income tax return for the calendar year 1940. On December 1, 1945 Corporation X is allowed a refund of income tax for 1940 attributable to a casualty loss. Proper adjustments, though barred under other provisions of law or rules of law, may be made under section 3807 in the consolidated excess profits tax (1) to reflect such loss, (2) to reflect any other deductions, credits, allowances, or adjustments which are limited to or by net income or the amount of income from property, and (3) to reflect the proper deduction for Corporation X's income tax in computing consolidated excess profits net income. Similarly, such adjustments may be made in Corporation X's separate excess profits tax return for the short taxable year January 1 through June 30, 1940. Adjustments may likewise be made in the taxes of other members of the group which were reported on the basis of separate returns. Any adjustment to taxes of other members of the affiliated group reported on the basis of separate returns which flow from the adjustments made in the consolidated excess profits tax, or from adjustments made to Corporation X's taxes reported on the basis of separate returns, may likewise be made. All such adjustments may be made as if the period of limitations upon assessment or upon allowance of refunds, as the case may be, did not expire until December 1, 1946.

(c) If a deficiency or refund is assessed or allowed in respect of a tax reported on the basis of a consolidated return, appropriate adjustments can be made in any tax of the affiliated group reported on the basis of a consolidated return, or in any tax of any member of such group reported on the basis of a separate return.

**Part 474—Extensions of Time for Payment of Taxes By Corporations Expecting Carry-backs, and Tentative Carry-back Adjustments**

- Sec.
- 474.1 Extensions of time for payment of taxes by corporations expecting carry-backs.
- 474.2 Contents of statement.
- 474.3 Amount of tax the time for payment of which may be extended.
- 474.4 Payment of remainder of tax where extension relates to only part of the tax.
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- Sec.
- 474.7 Termination by Commissioner.
- 474.8 Payments on termination.
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- 474.10 Tentative carry-back adjustments.
- 474.11 Computation of increase or decrease in prior years' taxes affected by the carry-back.
- 474.12 Allowance of adjustments.
- 474.13 Assessment of erroneous allowances.

AUTHORITY: §§ 474.1 to 474.13 issued under 53 Stat. 467; 26 U. S. C. 3791. Interpret or apply sec. 4 (a), 59 Stat. 519, 521, 523; 26 U. S. C. 3779-3781.

SOURCE: §§ 474.1 to 474.13 contained in Treasury Decision 5498, 11 F. R. 2161.

§ 474.1 *Extensions of time for payment of taxes by corporations expecting carry-backs.* If a corporation files a statement with respect to an expected net operating loss carry-back or unused excess profits credit carry-back from any taxable year ending on or after September 30, 1945, such corporation may extend the time for the payment of all or any part of certain taxes to the extent and subject to the limitations provided in section 3779, I. R. C. A corporation may extend the time for payment with respect to only such taxes as meet the following three requirements:

- (a) The tax must be one imposed by chapter 1 or chapter 2;
- (b) The tax must be for the taxable year immediately preceding the taxable year of the expected net operating loss or unused excess profits credit;
- (c) The tax must be shown on the return or must be assessed within the taxable year of the expected net operating loss or unused excess profits credit; and

(d) The tax must not have been paid or required to have been paid prior to the filing of the statement.

The time for payment of the tax is automatically extended under section 3779 upon the filing of a statement by the corporation with the collector of internal revenue where the tax is payable with respect to the expected net operating loss carry-back or unused excess profits credit carry-back. The period of extension is that provided in section 3779 (d) unless sooner terminated by action of either the Commissioner of Internal Revenue (referred to in this part as the Commissioner) or the corporation.

§ 474.2 *Contents of statement.* (a) The statement with respect to an expected carry-back which must be filled by

a corporation in order to extend the time for payment of tax under section 3779 is to be filed on Form 1138. The statement must be filled out in accordance with the instructions accompanying the form, and all information required by the form and the instructions must be furnished by the taxpayer. The statement must be sworn to in the manner prescribed in section 52 in the case of a corporation income tax return. The collector, upon request, will furnish a receipt for any statement filed. Such receipt will show the date the statement was filed.

(b) The reduction, attributable to the expected carry-back, in the aggregate of the taxes previously determined for all taxable years, affected by the carry-back, prior to the taxable year of the expected net operating loss or unused excess profits credit will be the excess of the decreases over the increases, attributable to the expected carry-back or any related adjustments, in such taxes as previously determined. The tax previously determined is to be ascertained in accordance with the method prescribed in section 3801 (d), I. R. C. In general, therefore, the tax previously determined will be the tax shown by the taxpayer on its return, increased by any amounts assessed (or collected without assessment) as deficiencies prior to the date of the filing of the statement, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to such date. Any items as to which the Commissioner and the taxpayer are in disagreement at the time of the filing of the statement shall be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, prior to the date of the filing of the statement. The tax previously determined will reflect the foreign tax credit, the credit for tax withheld at source provided in section 32, I. R. C., the credit for debt retirement provided in section 783, I. R. C., and the 10-percent credit against the excess profits tax provided in section 784, I. R. C., but will not reflect the postwar credit provided in section 780, I. R. C. In the case of any taxable year beginning in 1944 for which the credit provided in section 784 is not claimed on the return, the tax shown on the return, for purposes of this subsection, shall be the tax shown

on the return as filed reduced by the excess of (1) the credit under section 784 to the extent that an amount has not been abated, credited, refunded, or otherwise repaid in respect of such credit prior to the date of filing the statement, over (2) any amount claimed on the return as a credit for debt retirement under section 783. In the case of any taxable year beginning prior to January 1, 1944, any amount abated, credited, refunded, or otherwise repaid in connection with the postwar credit under section 780, and the amount of any bonds issued as prescribed in sections 780 and 781 in connection with the excess profits tax for such taxable year, whether or not such bonds have been redeemed, shall not be considered an amount abated, credited, refunded, or otherwise repaid in respect of the excess profits tax for such taxable year.

(c) The increase or decrease, attributable to the expected carry-back or any related adjustments, in any tax previously determined is to be ascertained, except for such carry-back and related adjustments, on the basis of the items which entered into the computation of such tax as previously determined. Accordingly, as in ascertaining the tax previously determined, items must be taken into account only to the extent that such items were included in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, credited, refunded, or otherwise repaid, prior to the date of the filing of the statement. Thus, for example, if the taxpayer claimed a deduction for depreciation of \$10,000 in its return and the Commissioner asserts that only \$4,000 is properly deductible, no change is to be made in the \$10,000 depreciation deduction as shown by the taxpayer on his return unless a deficiency has been assessed, or an amount collected without assessment, prior to the date of the filing of the statement as a result of a change in the depreciation deduction, or unless such change in the depreciation deduction was reflected in an amount abated, credited, refunded, or otherwise repaid prior to such date. In determining the increase or decrease in any tax previously determined, any items which are affected by the carry-back must be adjusted to reflect such carry-back. Thus, any deduction limited, for example, by net income, such as the deduction for charitable contributions, is to be recomputed on the basis of the net income

as affected by the carry-back. Similarly, in any case where one tax is allowable as a deduction in computing a second tax, or where the income subject to one tax is a credit in computing the income subject to the second tax, such deduction or credit must be adjusted to reflect such carry-back. In determining the decrease in excess profits tax for any taxable year beginning prior to January 1, 1944, the tax as recomputed by taking into account the carry-back and any related adjustments is not to be decreased by the amount of the postwar credit under section 780, whether or not any amount has been abated, credited, refunded, or otherwise repaid in connection with such credit, or by the amount of any bonds, whether or not such bonds have been redeemed, issued as provided in sections 780 and 781 in connection with the excess profits tax for such taxable year. In determining the net operating loss deduction, the adjustments required by sections 122 (c), 711 (a) (1) (J), and 711 (a) (2) (L), I. R. C., are likewise to be made.

(d) The reduction in the aggregate of the taxes previously determined is a net reduction. That is, in determining such reduction, a decrease, attributable to a carry-back, in any one tax, e. g., the excess profits tax, will be offset by an increase in any other tax, e. g., the normal tax and surtax, resulting from such decrease.

(e) A decrease in excess profits tax attributable to an unused excess profits credit carry-back which itself results from, or is increased in amount by, a net operating loss carry-back will be considered to be attributable to such net operating loss carry-back. Thus, if a corporation has a net operating loss in the calendar year 1945 which when carried back to 1943 results in an unused excess profits credit for 1943, the decrease in excess profits tax for 1941 resulting from the unused excess profits credit carry-back from 1943 will be considered to be attributable to both the unused excess profits credit carry-back from 1943 and to the net operating loss carry-back from 1945. The decrease in the excess profits tax for 1941, however, will be considered to be attributable to the net operating loss carry-back from 1945 only to the extent that such decrease results from such net operating loss carry-back.

§ 474.3 *Amount of tax the time for payment of which may be extended—(a)*

*Total amount to which extension may relate.* The total amount of one or more taxes the time for payment of which may be extended under section 3779, I. R. C., may not exceed the amount shown in item 4 (c) of Form 1138.

(b) *Amount of any one tax to which extension may relate.* The taxpayer is to specify in item 5 (j) of Form 1138 the tax or taxes and the amount thereof the time for payment of which is to be extended. In case of any one tax the amount to which an extension may relate may not exceed the amount of such tax shown on the return as filed, increased by any amount assessed as a deficiency (or as interest or additions to the tax) prior to the date of filing the statement and decreased by any amount paid or required to be paid prior to such date. For taxable years beginning in 1944, the amount of tax to which an extension may relate is to be further reduced by any amount which is to be abated, credited, refunded, or otherwise repaid in connection with the credit provided in section 784, I. R. C., without regard to the date on which such abatement, credit, refund, or other repayment is in fact allowed or made. In determining the amount of tax required to be paid prior to the date of filing the statement, only the following amounts shall be taken into consideration:

(1) The amount of the tax shown on the return as filed; and

(2) Any amount assessed as a deficiency (or as interest or additions to the tax) if the tenth day after notice and demand for its payment occurs prior to the date of the filing of the statement.

Delinquent installments are to be considered amounts required to be paid prior to the date of filing the statement. In the case of any authorized extension of time under section 56 (c), I. R. C., the amount of tax the time for payment of which is so extended is not to be considered required to be paid prior to the end of such extension. Similarly, any amount assessed as a deficiency (or as interest or additions to the tax) is not to be considered required to be paid prior to the date of the filing of the statement unless the tenth day after notice and demand for its payment falls prior to the date of the filing of the statement.

The taxpayer may choose to extend the time for payment of all of one or more taxes, or it may choose to extend the time for payment of portions of several

taxes. The taxes chosen by the taxpayer need not be those taxes which are affected by the carry-back. The amount to which an extension may relate in the case of any one tax may not exceed the amount specified in section 3779 (c), I. R. C., and shown in item 5 (i) of Form 1138, and the total amount of all taxes the time for payment of which may be extended may not exceed the amount specified in section 3779 (c) and shown on item 4 (c) of Form 1138. Such amounts represent the maximum amounts the time for payment of which may be extended; the amount the time for payment of which is extended in the case of any one tax, or the total of such amounts, may be less than the maximum amounts specified in section 3779 (c) and shown in items 5 (i) and 4 (c), respectively, of Form 1138.

§ 474.4 *Payment of remainder of tax where extension relates to only part of the tax.* If an extension of time relates to only part of the tax, the time for payment of the remainder of the tax shall be considered to be the dates on which payments would have been required if such remainder had been the tax and the taxpayer had elected to pay the tax in four equal installments.

The provisions of this section may be illustrated by the following example:

*Example.* Corporation A, which keeps its books and makes its tax returns on the calendar year basis, filed its income tax return for 1945 on March 15, 1946. The corporation showed a tax of \$1,000 on its return and paid one-fourth of such tax, or \$250, on March 15, 1946. On June 1, 1946, Corporation A, pursuant to the provisions of section 3779 and these regulations, extended the time for payment of \$600 of such tax. The remainder of the tax the time for payment of which was not so extended, i. e., \$400, is to be considered the tax for purposes of determining when it is to be paid. Such remainder is to be paid in four equal installments on each of the normal installment dates. Since the corporation has already paid \$250 on March 15, 1946, it will have nothing to pay on June 15, 1946, it will pay \$50 on September 15, 1946, and \$100 on December 15, 1946.

§ 474.5 *Period of extension.* If the time for the payment of any tax has been extended pursuant to section 3779, I. R. C., such extension shall expire:

(a) On the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for the filing of

the return for the taxable year of the expected net operating loss or unused excess profits credit; or

(b) If an application for a tentative carry-back adjustment provided in section 3780, I. R. C., with respect to such loss or unused credit is filed before the expiration of the period specified in paragraph (a) of this section, on the date on which notice is mailed by registered mail to the taxpayer that such application is allowed or disallowed in whole or in part.

§ 474.6 *Revised statements.* A corporation may file more than one statement under section 3779 with respect to any one taxable year. Each statement is to be considered a new statement and not an amendment of any prior statement. Each such new statement is to be in lieu of the last statement previously filed with respect to the taxable year of the statement and may extend the time for payment of a greater or lesser amount of tax than was extended under the prior statement. The extension may not relate to any amount of tax which was paid or required to be paid prior to the date of filing the new statement. Any amount of tax the time for payment of which was extended under a prior statement, however, may continue to be extended under the new statement. If the amount the time for payment of which is extended under the new statement is less than the amount so extended under the last statement previously filed, the extension of time shall be terminated on the date the new statement is filed as to the difference between the two amounts. See section 3779 (g) for the dates on which such difference must be paid. If a corporation pays any amount of tax, the time for payment of which was extended, prior to the date the extension would otherwise terminate, the extension with respect to such amount shall be deemed terminated, without regard to whether a new statement is filed, on the date such amount is paid. The corporation shall indicate on each new statement filed that it has already filed one or more prior statements with respect to the taxable year of the statement. The corporation shall likewise indicate the dates each prior statement was filed and the amount of each tax the time for payment of which was extended under each prior statement.

The provisions of this section may be illustrated by the following example:

*Example.* Corporation B, which keeps its books and makes its tax returns on the calendar year basis, filed its income tax return for 1945, showing a tax of \$100,000, on March 15, 1946. At the same time it filed a statement under section 3779 in which it stated that it expected to have a net operating loss of \$75,000 in 1946 and that the reduction in the aggregate of all taxes previously determined for taxable years prior to 1946, attributable to the expected net operating loss carry-back resulting from such expected loss, would be \$30,000. The corporation accordingly extended the time for payment of \$30,000 of its income tax for 1945, and paid \$17,500 of such tax on March 15, 1946 (see sections 3779 (c) and § 474.4). As a result of its operations during the next several months, the corporation filed a second statement on June 1, 1946, in which it stated that its expected net operating loss for 1946 would amount to \$300,000 and that the corresponding reduction in the aggregate of all taxes previously determined for taxable years prior to 1946 would amount to \$120,000. Corporation B under the new statement may extend the time for payment of the three installments of \$17,500 due on June 15, 1946, September 15, 1946, and December 15, 1946, and the time for payment of the \$30,000 extended under the first statement filed on March 15, 1946, may continue to be extended under the second statement. The \$17,500 which was paid on March 15, 1946, will not be affected by the second statement filed on June 1, 1946. If the corporation had failed to pay the \$17,500 on March 15, 1946, and had not secured an extension of time under section 56 (c) until at least June 1, 1946, with respect to such amount, the time for payment of such \$17,500 could not be extended under the second statement filed on June 1, 1946.

Corporation B might file a second statement to show that it had overestimated the amount of its expected net operating loss and accordingly to terminate the extension with respect to part or all of the tax. The corporation might file a second statement even though its estimate of its expected net operating loss had not changed since it filed its first statement. For example, the corporation might have computed incorrectly the reduction, attributable to the expected net operating loss carry-back from 1946, in the aggregate of its taxes previously determined for all taxable years prior to 1946. In such case, the corporation might file a second statement showing the correct computation of such reduction and increasing or decreasing the amount of tax the time for payment of which was extended to correspond to the correct computation. The corporation might file a second statement in order to change the kind of tax the time for payment of which is to be extended even though the total amount of tax the time for payment of which was extended is not to be changed.

§ 474.7 *Termination by Commissioner—*(a) *After an examination of the statement filed by the corporation is made.* The Commissioner is authorized to make such examination of the statements filed as he deems necessary and practicable. If upon such examination as he may make, the Commissioner believes that, as of the time he makes the examination, all or any part of the statement is in a material respect erroneous or unreasonable, he will terminate the extension as to any part of the amount to which such extension relates which he deems should be terminated.

(b) *Jeopardy.* If the Commissioner believes that the collection of any amount to which an extension under section 3779, I. R. C., relates is in jeopardy, he will immediately terminate the extension. In the case of such a termination, notice and demand is to be made by the collector for payment of such amount, and there may be no further extension of time under section 3779 with respect to such amount.

§ 474.8 *Payments on termination.* If an extension of time under section 3779 is terminated with respect to any amount either (1) by the filing of a new statement by the taxpayer under section 3779 (e) extending the time for payment of a lesser amount than was extended in a prior statement or (2) by action of the Commissioner under section 3779 (f) after making an examination of the statement filed by the corporation, no further extension of time may be made under section 3779 with respect to such amount. The time for payment of such amount shall be the dates on which payments would have been required if there had been no extension with respect to such amount and the taxpayer had elected under section 56 (b), I. R. C., to pay the tax in four equal installments.

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

*Example (1).* Corporation C, which keeps its books and makes its tax returns on a calendar year basis, filed its 1945 income tax return, showing a tax of \$1,000, on March 15, 1946. At the same time the corporation filed a statement under section 3779 and this part extending the time for payment of the entire \$1,000 on the basis of an expected unused excess profits credit carry-back from 1946. On July 1, 1946, the corporation filed a new statement indicating that the reduction, attributable to the expected unused excess profits credit carry-back from 1946, in the aggregate of its taxes for years prior to 1946 would be only \$600, and thus

terminated the above extension to the extent of \$400. The time for payment of such \$400 may not be extended again, and such \$400 is payable as if it were the tax for 1946 and Corporation C had elected to pay such tax in four equal installments. That is, \$100 is payable on March 15, 1946, \$100 on June 15, 1946, \$100 on September 15, 1946, and \$100 on December 15, 1946. Interest is payable under section 3779 (1) (2) on such amounts at the rate of 6 percent per annum and is to be computed from the respective dates on which such amounts were payable. Inasmuch as the March 15 and June 15 dates had already passed when Corporation C terminated the extension with respect to the \$400, \$200 is payable immediately upon such termination, and \$100 is payable on September 15, 1946, and \$100 on December 15, 1946. The fact that the corporation did not pay the \$100 on March 15, 1946, and the \$100 on June 15, 1946, is not to be considered such a failure to pay an installment on or before the date fixed for its payment as would make the entire tax become due under the provisions of section 56 (b). Interest, however, will be computed upon the first \$100 from March 15, 1946, and upon the second \$100 from June 15, 1946. See section 3779 (1) and § 474.9.

*Example (2).* If Corporation C in example (1) had shown a tax of \$1,200 on its return and accordingly had paid \$50 on March 15, 1946, and \$50 on June 15, 1946, the other facts being the same as in example (1), then upon the termination as to the \$400, \$200 would be payable immediately (i. e., \$100 which in the light of the termination should have been paid on March 15, 1946, and \$100 which should have been paid on June 15, 1946), and two installments of \$150 each would be payable on September 15, 1946, and on December 15, 1946. Interest would be computed from the same dates as in example (1).

The above examples would also apply if the extension of time for the payment of the \$400 were terminated by the Commissioner under section 3779 (f) because he believed that the statement filed by Corporation C under section 3779 extending the time for payment of tax was clearly erroneous or unreasonable in a material respect. If, however, the Commissioner on July 1, 1946, terminated the extension with respect to such \$400 under section 3779 (h) because he believed the collection of such amount was in jeopardy, the entire \$400 would be payable immediately upon notice and demand by the collector. In such case interest would be computed on \$100 from March 15, 1946, on \$100 from June 15, 1946, and on the remaining \$200 from July 1, 1946. See section 3779 (i) and § 474.9.

**§ 474.9 Interest.** Interest is payable on any amount the time for payment of which is extended under section 3779. The interest, which is to be collected as part of such amount, is to be computed from the dates on which payments would have been required if there had been no extension, and the taxpayer had elected under section 56 (b) to pay the tax in four equal installments, at the following rates:

(a) At the rate of 3 percent per annum on so much of such amount as is satisfied by applying or crediting thereto, within the period of extension (see section 3779 (d)), a decrease in tax determined in respect of an application for a tentative carry-back adjustment, as provided in section 3780 (a), I. R. C., to the date of such satisfaction, except that the rate is to be 6 percent per annum upon so much of the satisfied amount as does not exceed the amount of the deficiencies assessed under section 3780 (b) in respect of such application which is not so satisfied; and

(b) At the rate of 6 percent per annum upon the remainder of the amount the time for payment of which was extended to the date such amount is paid. Interest thus will be payable at the rate of 3 percent per annum upon any amount the time for payment of which has been extended under section 3779 to the extent that such amount is satisfied by applying or crediting thereto, within the period of extension, a decrease in tax determined in respect of an application for a tentative carry-back adjustment under section 3780 (a). The application for the tentative carry-back adjustment must be with respect to the same taxable year as that of the expected net operating loss or unused excess profits credit. In determining whether an amount has been so satisfied, however, the net effect of the carry-back, including any resulting deficiencies, must be taken into account. Interest upon any amount not so satisfied will be payable at the rate of 6 percent per annum.

The provisions of this section may be illustrated by the following example:

*Example.* Corporation D, which came into existence on January 1, 1945 and which keeps its books and makes its tax returns on the calendar year basis, extended the time for payment of \$855 of its excess profits tax for 1945 on the basis of an expected unused excess profits credit carry-back from 1946. The corporation in fact had an unused excess profits credit in 1946 and it filed an

application for a tentative carry-back adjustment under section 3780 (a) on March 31, 1947. Such application showed a decrease in excess profits tax for 1945 of \$855 and a resulting increase in income tax for 1945 of \$400. Corporation D's application was allowed in full on June 29, 1947, and the resulting decrease of \$855 in excess profits tax for 1945 was applied against the \$855 of excess profits tax for 1945 the time for payment of which had been extended (see section 3780 (b)). The Commissioner, however, simultaneously assessed, and notice and demand was made for, the \$400 increase in Corporation D's income tax for 1945. Inasmuch as the entire decrease in its excess profits tax for 1945 had been applied against the unpaid amount of its excess profits tax for 1945, the corporation paid such \$400 increase in income tax in cash within ten days after notice and demand. The reduction in the aggregate of the corporation's taxes as previously determined for 1945, attributable to the unused excess profits credit carry-back from 1946, was only \$455, and the corporation therefore should not have extended the time for payment of more than \$455 of its 1945 taxes. Inasmuch as in effect only \$455 of the amount the time for payment of which had been extended was satisfied by reason of the carry-back, interest is to be collected at the rate of 3 percent per annum on the \$455 and at the rate of 6 percent per annum on the remaining \$400. The interest will be computed on the \$455 and on the \$400 at the rates of 3 percent and 6 percent per annum, respectively, as if one-fourth of each such amount were payable on March 15, 1946, one-fourth on June 15, 1946, one-fourth on September 15, 1946, and one-fourth on December 15, 1946. Interest on the \$455 will run until the date the reduction in excess profits tax for 1945, determined in respect of the above application for a tentative carry-back adjustment, is applied against the excess profits tax for 1945 the time for payment of which was extended, and interest on the \$400 will run until the date such \$400 is paid. No interest will be payable in this case on the above \$400 increase in income tax for 1945 resulting from the decrease in excess profits tax for 1945. See section 292 (c). The corporation, however, will be liable for a penalty of 5 percent of \$286.25, or \$14.31, for extending the time for payment of an amount substantially in excess of an amount the time for payment of which might properly have been extended. See section 294 (e) and § 29.294-2 of this chapter.

If an extension of time under section 3779 is terminated either by action of the taxpayer (by paying an amount the time for payment of which had been extended or by filing a new statement extending the time for payment of a lesser amount than was extended in a prior statement) or by the Commissioner (because he believes the statement filed was erroneous or unreason-

able in a material respect or because he believes that the collection of an amount to which the extension relates is in jeopardy), interest is payable on the amount to which such termination relates at the rate of 6 percent per annum to the date of payment. Likewise, if the taxpayer fails to file an application for a tentative carry-back adjustment prior to the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the expected net operating loss or unused excess profits credit, interest is payable on the amount to which the extension relates at the rate of 6 percent per annum to the date of payment. In such case interest will be payable at the rate of 6 percent per annum without regard to whether the taxpayer could have filed an application for a tentative carry-back adjustment, which would have been allowed by the Commissioner, prior to such last date and without regard to whether the taxpayer in fact does file such an application at some time after such last date. If part of an amount the time for payment of which has been extended is satisfied by applying or crediting thereto, within the period of extension, a decrease in tax determined in respect of an application for a tentative carry-back adjustment and part is not so satisfied, interest will be payable on the first part at the rate of 3 percent per annum and on the second part at the rate of 6 percent per annum.

The action of the Commissioner in allowing or disallowing an application for a tentative carry-back adjustment determines the interest payable on amounts the time for payment of which has been extended under section 3779; such interest is not to be affected by a later determination by the Commissioner or any court, including The Tax Court of the United States. If, however, the Commissioner determines, either at the time of the termination of the extension or at some time thereafter, that during the period of extension a credit or refund of an overpayment has been allowed or made, or a deficiency assessed, affecting the amount to which the extension under section 3779 relates and that the corporation could not have taken such overpayment or deficiency into account in the statement or in a revised statement, an appropriate adjustment will be made in determining what part of such amount shall bear interest at the rate of 3 percent and what part at the rate of 6 percent per annum.

§ 474.10 *Tentative carry-back adjustments*—(a) *In general.* (1) Any taxpayer who claims a net operating loss or unused excess profits credit for any taxable year ending on or after September 30, 1945 may file an application under section 3780 for a tentative carry-back adjustment of the taxes for all taxable years prior to the taxable year of the

loss or unused credit which are affected by the net operating loss carry-back or the unused excess profits credit carry-back resulting from such loss or unused credit. The right to file an application for a tentative carry-back adjustment is not limited to corporations, but is available to any taxpayer who has a carry-back from a taxable year ending on or after September 30, 1945. A corporation may file an application for a tentative carry-back adjustment even though it has not extended the time for payment of tax under section 3779. If a corporation has both a net operating loss and an unused excess profits credit in any taxable year ending on or after September 30, 1945, it may file an application for a tentative carry-back adjustment in respect of both the net operating loss carry-back and the unused excess profits credit carry-back resulting from such loss and unused credit.

(2) A decrease in excess profits tax attributable to an unused excess profits credit carry-back which itself results from, or is increased in amount by, a net operating loss carry-back will be considered to be attributable to both the unused excess profits credit carry-back and the net operating loss carry-back. If a corporation has, e. g., a net operating loss in the calendar year 1945 which when carried back to 1943 results in an unused excess profits credit for 1943, the decrease in excess profits tax for 1941 resulting from the unused excess profits credit carry-back from 1943 will be considered to be attributable to both the unused excess profits credit carry-back from 1943 and to the net operating loss carry-back from 1945. The decrease in excess profits tax for 1941, therefore, will be taken into account in determining the effect on prior years' taxes of the net operating loss carry-back from 1945 if the corporation files an application for a tentative carry-back adjustment with respect to the net operating loss carry-back from 1945. The decrease in the excess profits tax for 1941 will be taken into account, however, only to the extent that it resulted from the net operating loss carry-back from 1945.

(b) *Contents of application.* (1) The application for a tentative carry-back adjustment in the case of a corporation is to be filed on Form 1139, and in the case of taxpayers other than corporations on Form 1045. The applications are to be filed out in accordance with the instruc-

tions accompanying such forms, and all information required by the forms and the instructions must be furnished by the taxpayer. The application in the case of a corporation is to be sworn to in the manner provided in section 52, I. R. C., in the case of a corporation income tax return. The application in the case of a taxpayer other than a corporation is to be verified in the manner provided in sections 51 and 142, I. R. C., in the case of an income tax return of such taxpayer.

(2) An application for a tentative carry-back adjustment does not constitute a claim for credit or refund. If such application is disallowed by the Commissioner in whole or in part, no suit may be maintained in any court for the recovery of any tax based on such application. The taxpayer, however, may file a regular claim for credit or refund under section 322, I. R. C., at any time prior to the expiration of the applicable period of limitation, and may maintain a suit based on such claim if it is disallowed or if the Commissioner does not act on the claim within six months from the date it is filed. Such regular claim may be filed before, simultaneously with, or after the filing of the application for a tentative carry-back adjustment. The filing of an application for a tentative carry-back adjustment will not constitute the filing of a claim for credit or refund within the meaning of section 322 (b) for purposes of determining whether a claim for credit or refund was filed prior to the expiration of the applicable period of limitation. A regular claim for credit or refund under section 322 filed after the filing of an application for a tentative carry-back adjustment is not to be considered an amendment of such application but is to be considered a new claim. Such regular claim, however, in proper cases may constitute an amendment to a prior regular claim filed under section 322.

(c) *Time and place of filing application.* The application for a tentative carry-back adjustment is to be filed on or after the date of the filing of the return for the taxable year of the net operating loss or the unused excess profits credit, and must be filed within a period of 12 months from the end of such taxable year. Any application filed prior to the date the return for the taxable year of the loss or unused credit is filed shall be considered to have been filed on the date such return is filed. The application is to be filed with the collector of internal

revenue where the tax was paid or the assessment was made.

§ 474.11 *Computation of increase or decrease in prior years' taxes affected by the carry-back.* (a) The taxpayer is to determine the amount of increase or decrease, attributable to the carry-back, in each tax previously determined, which is affected by such carry-back, for each taxable year prior to the taxable year of the net operating loss or unused excess profits credit. The tax previously determined is to be ascertained in accordance with the method prescribed in section 3801 (d), I. R. C. In general, therefore, the tax previously determined will be the tax shown on the return as filed, increased by any amounts assessed (or collected without assessment) as deficiencies prior to the date of the filing of the application for a tentative carry-back adjustment, and decreased by any amounts abated, credited, refunded, or otherwise repaid prior to such date. Any items as to which the Commissioner and the taxpayer are in disagreement at the time of the filing of the application shall be taken into account in ascertaining the tax previously determined only if, and to the extent that, they were reported in the return, or were reflected in any amounts assessed (or collected without assessment) as deficiencies, or in any amounts abated, credited, refunded, or otherwise repaid, prior to the date of filing the application. The tax previously determined, therefore, will reflect the foreign tax credit, the credit for tax withheld at source provided in section 32, I. R. C., the credit for debt retirement provided in section 783, I. R. C., and the 10-percent credit against excess profits tax provided in section 784, I. R. C., but will not reflect the postwar credit provided in section 780, I. R. C. In the case of any taxable year beginning in 1944 for which the credit provided in section 784 is not claimed on the return, the tax shown on the return, for purposes of this section, shall be the tax shown on the return as filed reduced by the excess of (a) the credit under section 784 to the extent that an amount has not been abated, credited, refunded, or otherwise repaid in respect of such credit prior to the date of filing the application, over (b) any amount claimed on the return as a credit for debt retirement under section 783. In the case of any taxable year beginning prior to January 1, 1944, any amount abated, credited, refunded, or

otherwise repaid, prior to the date of filing the application, in connection with the postwar credit provided in section 780, and the amount of any bonds issued as provided in sections 780 and 781 in connection with the excess profits tax for such taxable year, whether or not such bonds have been redeemed, shall be considered an amount abated, credited, refunded, or otherwise repaid in respect of the excess profits tax for such taxable year prior to the date of filing the application.

(b) The increase or decrease in each tax previously determined which is affected by the carry-back or any related adjustments, is to be determined, except for such carry-back and related adjustments, on the basis of the items which entered into the computation of such tax as previously determined; the tax previously determined being ascertained in the manner described in this section. In determining any such increase or decrease, accordingly, items shall be taken into account only to the extent that they were reported in the return, or were reflected in amounts assessed (or collected without assessment) as deficiencies, or in amounts abated, credited, refunded, or otherwise repaid, prior to the date of filing the application for a tentative carry-back adjustment. If the Commissioner and the taxpayer are in disagreement as to the proper treatment of any item, it shall be assumed for purposes of determining the increase or decrease in the tax previously determined that such item was correctly reported by the taxpayer unless, and to the extent that, the disagreement has resulted in the assessment of a deficiency (or the collection of an amount without an assessment), or the allowing or making of an abatement, credit, refund, or other repayment, prior to the date of filing the application. Thus, if the taxpayer claimed a deduction on its return of \$50,000 for salaries paid its officers but the Commissioner asserts that such deduction should not exceed \$20,000, and the Commissioner and the taxpayer have not agreed on the amount properly deductible prior to the date the application for a tentative carry-back adjustment is filed, \$50,000 shall be considered as the amount properly deductible for purposes of determining the increase or decrease in each tax previously determined in respect of the application for a tentative carryback adjustment. In determining the increase

or decrease in any tax previously determined, any items which are affected by the carry-back must be adjusted to reflect such carry-back. Thus, any deduction limited, for example, by net income or adjusted gross income, such as the deduction for charitable contributions, is to be recomputed on the basis of the net income or adjusted gross income as affected by the carry-back. Similarly, in any case where one tax is allowable as a deduction in computing a second tax, or where the income subject to one tax is a credit in computing the income subject to the second tax, such deduction or credit must be adjusted to reflect such carry-back. In determining the decrease in excess profits tax for any taxable year beginning prior to January 1, 1944, the tax as recomputed by taking into account the carry-back and any related adjustments is to be decreased by any amount which has been abated, credited, refunded, or otherwise repaid, prior to the date of filing the application, in connection with the postwar credit under section 780, and by the amount of any bonds, whether or not such bonds have been redeemed, issued as provided in sections 780 and 781 in connection with the excess profits tax for such taxable year, to the extent that such amounts are properly allocable to such tax as recomputed. In computing the net operating loss deduction for purposes of determining any such increase or decrease, proper adjustments as required by sections 122 (c), 711 (a) (1) (J), and 711 (a) (2) (L), I. R. C., are to be made.

(c) In determining the increase or decrease in any tax previously determined which is affected by the carry-back, the tax previously determined is to be increased or decreased by the amount of any increase or decrease in such tax shown on an application filed under section 124 (j), I. R. C., relating to applications for tentative adjustments with respect to the amortization deduction, to the extent that such increase or decrease shown in the application filed under section 124 (j) has not been assessed or allowed prior to the date of filing the application for the tentative carry-back adjustment. The items which enter into the computation of the tax previously determined are to be adjusted in conformity with such increase or decrease shown on the application filed under section 124 (j) for a tentative adjustment with respect to the amortization deduction. The provisions of this paragraph

with respect to an application filed under section 124 (j) are not to apply in any case in which such application has been disallowed prior to the date the application for a tentative carry-back adjustment is filed.

§ 474.12 *Allowance of adjustments.*

(a) The Commissioner is to act upon any application for a tentative carry-back adjustment filed under section 3780 (a), I. R. C., within a period of 90 days from whichever of the following two dates is the later:

(1) The date the application is filed; or

(2) The last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss or unused excess profits credit from which the carry-back results.

(b) Within the above 90-day period the Commissioner will make, to the extent he deems practicable in such period, an examination of the application to discover omissions and errors of computation. He is to determine within such period the increase or decrease in any tax previously determined, affected by the carry-back or any related adjustments, upon the basis of the application and such examination. Such increases and decreases are to be determined in the same manner as that provided in section 3780 (a) for the determination by the taxpayer of the increases and decreases in taxes previously determined which must be set forth in the application for a tentative carry-back adjustment. The Commissioner, however, may correct any errors of computation or omissions he may discover upon examination of the application. In determining the increase or decrease in each tax previously determined which is affected by the carry-back or any related adjustments, he accordingly may correct any mathematical error appearing on the application and he may likewise correct any adjustment required by the law and incorrectly made by the taxpayer in computing its net operating loss, its unused excess profits credit, the resulting carry-backs, or its net operating loss deduction or unused excess profits credit adjustment. If the required adjustment has not been made by the taxpayer and the Commissioner has available the necessary information to make such adjustment within the above 90-day period, he

may, in his discretion, make such adjustment. Thus, if the taxpayer's application fails to take into account certain tax-free interest which he received in the year of the net operating loss, or in a prior year the taxes for which are affected by the resulting net operating loss carry-back, the Commissioner, if he knows the amount of such tax-free interest received by the taxpayer in such year, may take such tax-free interest into account in determining the increases and decreases in the taxes previously determined which are affected by the carry-back. In determining such increases and decreases, however, the Commissioner will not, for example, change the amount claimed on the return as a deduction for depreciation because he believes that the taxpayer has claimed an excessive amount; likewise, he will not include in gross income any amount not so included by the taxpayer even though the Commissioner believes that such amount is subject to tax and properly should be included in gross income.

(c) If the Commissioner finds that an application for a tentative carry-back adjustment contains material omissions or errors of computation, he may disallow such application in whole or in part without further action. If, however, he deems that any error of computation can be corrected by him within the above 90-day period, he may do so and allow the application in whole or in part. The Commissioner's determination as to whether he can correct any error of computation within the above 90-day period shall be conclusive. Similarly, his action in disallowing, in whole or in part, any application for a tentative carry-back adjustment shall be final and may not be challenged in any proceeding. The taxpayer in such case, however, may file a regular claim for credit or refund under section 322, I. R. C., and may maintain a suit based on such claim if it is disallowed or if the Commissioner does not act upon the claim within six months from the date it is filed.

In the case of any application for a tentative carry-back adjustment which the Commissioner allows in whole or in part, any increase determined by the Commissioner in any tax previously determined which is affected by the carry-back or any related adjustments shall be deemed to have been determined as a deficiency and shall be assessed without regard to the restrictions on assessment

provided in section 272, I. R. C. Such increase may be assessed, for example, without regard to whether a notice of deficiency in respect of such increase is sent to the taxpayer and without regard to whether a prior notice of deficiency has been mailed to the taxpayer. The taxpayer will not have the right to contest the assessment before The Tax Court of the United States whether or not the Commissioner sends him a notice in respect of such increase.

(d) Each decrease determined by the Commissioner in any tax previously determined which is affected by the carry-back or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. Such unpaid amount of tax may include one or more of the following:

(1) An amount with respect to which the taxpayer is delinquent;

(2) An amount the time for payment of which has been extended under section 3779, I. R. C., which is due and payable on or after the date on which the decrease is allowed; and

(3) An amount (including an amount the time for payment of which has been extended under section 56 (c), I. R. C., but not including an amount the time for payment of which has been extended under section 3779) which is due and payable on or after the date on which the decrease is allowed.

(e) In case the unpaid amount of tax includes more than one of such amounts, the Commissioner, in his discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in paragraph (d) (1), (2), and (3) of this section in the order named. If there are several amounts of the type described in subparagraph (3) of this paragraph, any amount of the decrease which is to be applied against such amounts will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is "the tax" and the taxpayer had elected to pay such tax in four equal installments. The unpaid amount of tax against which a decrease may be applied may not include any amount of tax for any taxable year other than the year of the decrease. After making such application, the Com-

missioner will credit any remainder of the decrease as follows:

(1) Against any increase (including additions to the tax) determined in any tax which is attributable to the carry-back or any related adjustments and which has been assessed under section 3780 (b), I. R. C.; and then

(2) Against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss or the unused excess profits credit the time for payment of which has been extended under section 3779.

(f) Any remainder of the decrease after such application and credits may, within the above 90-day period, in the discretion of the Commissioner, be credited against any income, war profits, or excess profits tax or installment thereof then due from the taxpayer, and, if not so credited, is to be refunded to the taxpayer within such 90-day period.

(g) The application, credit, or refund of a decrease in tax determined under section 3780 shall constitute a credit or refund of an overpayment within the meaning of sections 781 (b) and 3807 (b) (1), relating, respectively, to postwar credits or postwar bonds in the case of credits or refunds and to the period of limitations in the case of related taxes under chapter 1 and chapter 2.

§ 474.13 *Assessment of erroneous allowances.* (a) If the Commissioner determines that any amount applied, credited, or refunded under section 3780 (b) with respect to an application for a tentative carry-back adjustment is in excess of the overassessment properly attributable to the carry-back upon which such application was based, he may assess the amount of the excess as a deficiency as if such deficiency were due to a mathematical error appearing on the face of the return. That is, the Commissioner may assess an amount equal to the excess, and such amount may be collected, without regard to the restrictions on assessment and collection imposed by section 272, I. R. C. Thus, the Commissioner, for example, may assess such amount without regard to whether he has mailed the taxpayer a prior notice of deficiency. Either before or after assessing such an amount, the Commissioner will notify the taxpayer that he has made, or will make, such assessment. Such notice will not constitute a notice of deficiency, and the taxpayer may not file a petition with

The Tax Court of the United States based on such notice. The taxpayer, however, within the applicable period of limitation may file a regular claim for credit or refund under section 322 based on the carry-back, if he has not already filed such a claim, and may maintain a suit based on such claim if it is disallowed or if it is not acted upon by the Commissioner within six months from the date the claim was filed.

(b) Upon assessing any deficiency under section 3780 (c), the Commissioner will schedule as an overassessment the decrease in any other tax resulting from the adjustments reflected in the computation of the deficiency so assessed. Thus, if the Commissioner determines that \$855 of excess profits tax for 1944 was applied, credited, or refunded in respect of an application for a tentative carry-back adjustment in excess of the amount which properly should have been so applied, credited, or refunded, the Commissioner may assess such \$855 as a deficiency without regard to the restrictions on assessment imposed by section 272. Generally, however, such deficiency will result in a decrease of income tax for 1944 in the amount of \$400. Upon assessing the \$855 of excess profits tax for 1944, the Commissioner accordingly will schedule such decrease of \$400 in income tax for 1944 as an overassessment, and such \$400 overassessment of income tax will be credited against the \$855 deficiency in excess profits tax. The taxpayer, therefore, will be required to pay only the difference between the two amounts, or \$455, in satisfaction of the deficiency.

(c) The method provided in section 3780 (c) to recover any amount applied, credited, or refunded in respect of an application for a tentative carry-back adjustment which the Commissioner later determines should not have been so applied, credited, or refunded is not an exclusive method. Two other methods are available to recover such amount: (1) by way of a deficiency notice under section 272 (a); or (2) by a suit to recover an erroneous refund under section 3746, I. R. C. The Commissioner, in his discretion, may proceed by way of any one or more of the three available methods to recover any amount which he determines was improperly applied, credited, or refunded in respect of an application for a tentative carry-back adjustment.

## SUBCHAPTER F—RECORDS AND PROCEDURE

## Part 600—Records

Sec.

600.1 Classification.

600.2 Publication and public inspection.

§ 600.1 *Classification.* Matters of official record in the Bureau of Internal Revenue include:

(a) Documents submitted by members of the public pursuant to the internal revenue laws or regulations, such as tax returns, information returns, statements required by statute or regulation, claims for credit, refund, or abatement, offers in compromise, bonds, applications for registration, and waivers of statutes of limitation.

(b) Final opinions and orders under the internal revenue laws and regulations in tax matters, such as assessment lists, certificates of overassessment, and statutory deficiency letters, and documents evidencing determinations of such matters as claims for abatement, credit, or refund, offers in compromise, applications for excess profits tax relief, registration applications, closing agreements, and distraints and seizures.

(R. S. 161; 5 U. S. C. 22) [11 F. R. 177A-22, 14261; redesignated at 13 F. R. 7710]

§ 600.2 *Publication and public inspection.* (a) *General.* Sections 55, 2556, 2557, 2595, 3275, and 4047 of the Internal Revenue Code contain broad prohibitive and penal provisions against the disclosure of certain information described therein obtained by the Bureau of Internal Revenue from members of the public in the performance of its functions. The above provisions necessitate severe limitations by the Bureau of Internal Revenue upon publication and public inspection of its official records, including final opinions or orders in particular cases. The extent to which public disclosure may be made of matters of official record to persons properly and directly concerned is set forth in this section.

(1) *Inspection of tax returns.* The inspection of returns is governed by the provisions of the internal revenue laws and rules promulgated by the President or by the Secretary of the Treasury pursuant to such provisions. See Treasury Decision 4873, approved by the President November 12, 1938, as amended; Treasury Decision 4878, approved by the Secretary January 4, 1939; Treasury Decision

4929, approved by the President August 28, 1939, as amended; Treasury Decision 5138, approved by the President April 20, 1942 (Subpart A of Part 458 of this chapter); Treasury Decision 4945, approved by the Secretary September 20, 1939 (Subpart B of Part 458 of this chapter).

(2) *Public lists of persons making income tax returns.* Lists of persons making income tax returns in each year are available to public inspection in the offices of collectors of internal revenue. See section 55 (e) of the Code.

(3) *Public lists of persons paying occupational taxes.* Lists of persons paying occupational taxes under Chapter 27 of the Code are available for public inspection in the offices of collectors of internal revenue pursuant to the provisions and limitations of section 3275 of the Code. See Regulations 20 cited in § 601.66 (c) and regulations cited in § 601.93 of this chapter.

(4) *Record of seizure and sale of real estate.* Record 21 "Record of seizure and sale of real estate" is open for public inspection in offices of collectors of internal revenue and copies are furnished on application. See Treasury Decision 5428, 10 F. R. 622.

(5) *State liquor cases.* If the interests of the United States will not be jeopardized thereby, and if information will not be divulged contrary to section 4047 (a) (1), Internal Revenue Code, District Supervisors of the Alcohol Tax Unit may upon receipt of subpoenas or requests of State authorities, and at the expense of the State, authorize investigators and other employees under their supervision to attend trials and administrative hearings in liquor cases in which the State is a party, produce records and testify as to facts coming to their knowledge in their official capacities.

(6) *Public lists of employers making returns under the Federal Unemployment Tax Act.* Lists of employers of eight or more making annual returns on Form 940 under the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Code) are available for public inspection in the offices of collectors of internal revenue. See sections 55 (e) and 1604 (c) of the Code.

(b) *Final opinions and orders.* In conformity with the policy of the provi-

sions of law referred to in paragraph (a) of this section, final opinions and orders in the adjudication of cases arising under the internal revenue laws are, with limited exceptions, treated by the Bureau as confidential and are not published nor made available for public inspection. The exceptions are:

(1) *Excess profits tax relief; publication of allowances.* Pursuant to the provisions of section 722 (g) of the Code, there is published from time to time in the FEDERAL REGISTER the information specified in such section relative to excess profits tax relief allowed particular taxpayers.

(2) *Publication of decisions.* Rulings and decisions on matters arising under the internal revenue laws which because they announce a ruling or decision upon a novel question or upon a question in regard to which there exists no previously published ruling or decision, or for other reasons, are of such importance to be of general interest, or which revoke, amend or affect in any manner a published ruling or decision are, after rephrasing to eliminate any confidential information relating to a particular case, including identity of persons, regularly published in the Internal Revenue Bulletin. No unpublished ruling or decision will be cited or relied upon by any officer or employee of the Bureau of Internal Revenue as a precedent in the disposition of other cases.

(c) *Rules.* All rules relating to the functions of the Bureau of Internal Revenue other than those dealing solely with internal management will, to the extent consistent with the limitations contained in the provisions of law referred to in paragraph (a) of this section, be made available to public inspection. As to rules generally and their publication see § 601.13 of this chapter.

(d) *Requests.* Requests for information in connection with matters of official record in which the procedure for inspection is not set out in rules referred to in subparagraphs above should be submitted to the Commissioner of Internal Revenue, Washington 25, D. C. The request should clearly state the information desired and must set forth the interest of the applicant in the subject matter and purpose for which the information is desired. If the applicant is an agent or attorney acting for another he will attach to the application evidence of his authority to act for his

principal. If such evidence is satisfactory such agent or attorney will be given access to any record to which his principal would be given access. The determination as to whether the information requested is available for disclosure in any particular case will be made by the Commissioner of Internal Revenue or such other officer authorized under the provisions of law referred to in paragraph (a) of this section.

Whenever it is determined that a matter of official record is available for disclosure in a particular case, a copy of said official record will be furnished the party requesting the same or the officer passing upon the request may in his discretion allow a personal inspection of the official record in question at the place where the document is normally kept. A reasonable fee may in the discretion of the determining officer be charged for furnishing copies of official records.

(R. S. 161; 50 U. S. C. 22) [11 F. R. 177A-22, 14261, as amended at 12 F. R. 3220, 13 F. R. 4122, redesignated at 13 F. R. 7710]

## Part 601—Procedure

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AUTHORITY: §§ 601.1 to 601.119 issued under R. S. 161; 50 U. S. C. 22.

**SUBPART A—GENERAL PROCEDURE**

SOURCE: §§ 601.1 to 601.6 appear at 11 F. R. 177A-34, 14262, as amended at 12 F. R. 950, 13 F. R. 4123, 7710. Redesignation noted at 14 F. R. 5200.

§ 601.1 *Introductory.* The general function of the Bureau of Internal Revenue is collection of internal revenue taxes. Certain other miscellaneous functions are described below in Subpart H of this part. Generally, the taxes collected currently are imposed by, and the procedures of the Internal Revenue Bureau are based on the Internal Revenue Code, sometimes referred to in this part as the Code. As to rules and rule making see subpart L of this part.

§ 601.2 *Classification of taxes collected by the Bureau.* (a) Internal revenue taxes fall generally into the following principal divisions:

- (1) Taxes collected by assessment;
- (2) Taxes collected by means of revenue stamps.

(b) Taxes in paragraph (a) (2) of this section may in special circumstances be collected by assessment, but references hereinafter to the assessment process do not contemplate taxes ordinarily collectible by means of stamps, except as specially stated. Taxes collectible by assessment may be collected by suit without assessment, but this is practically never done.

(c) Taxes collected principally by assessment fall into the following two main classes:

(1) Taxes within the jurisdiction of The Tax Court of the United States. These include:

- (i) Income and excess profits taxes,
- (ii) Estate taxes,
- (iii) The gift tax;

(2) Taxes not within the jurisdiction of The Tax Court of the United States. These include:

- (i) Employment taxes,
- (ii) Various sales taxes collected by assessment, and
- (iii) Miscellaneous excise taxes collected by assessment.

(d) The difference between these two main classes is that only taxes in paragraph (c) (1) of this section, i. e., those within the jurisdiction of The Tax Court, may be contested before an independent tribunal prior to payment. Taxes of both classes may be contested by first making payment and then bringing suit to recover. As to other means of contesting disputed tax liability, see § 601.4.

§ 601.3 *Collection procedure*—(a) *Returns*. (1) In regular course an internal revenue tax assessment is based upon a return required by law to be filed by the taxpayer upon which he himself computes the tax in the manner indicated by the return. Forms for the making of returns are prescribed and supplied by the Bureau. Forms are obtainable at the principal and branch offices of collectors of internal revenue. Collectors commonly mail forms to persons whom the collectors have reason to believe may be subject to tax, but failure to receive a form from the collector does not serve to excuse failure to comply with the legal duty to make a required return. Supplemental returns or statements and the

time for filing them may sometimes be prescribed by regulations issued under authority of law by the Commissioner with the approval of the Secretary of the Treasury. They may, in some circumstances, be required by the Commissioner of his own volition. See sections 54, 3603, 3604, and 3611 of the Code.

(2) The time for filing returns is generally fixed by law. The time varies in the case of particular taxes. See sections hereinafter dealing specially with particular taxes. While the time for filing the returns is generally prescribed by law, statutory authority to extend the time for a limited period is commonly granted to the Commissioner of Internal Revenue or to the collector. The Commissioner's authority in such regard is commonly delegated to the collectors. Generally, a return is required to be filed with the collector of internal revenue in which the taxpayer's principal office, or if he has none, his residence, is located.

(b) *Enforcement procedure*. (1) If a taxpayer fails to make a return it may be made by the Commissioner or by the collector or deputy collector. Section 3612 of the Code. The return is either audited by the collector by whom it is received, or forwarded by him to another branch of the internal revenue service for audit. Authority to examine books and papers is conferred by law. Sections 3614 and 3615 of the Code. Revenue officers visit taxpayers at their places of business to make examinations to determine the accuracy of returns or whether all required returns have been made. Section 3792 of the Code authorizes the Commissioner, with the approval of the Secretary, to make payments for detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws. Under this section rewards to informers are made. See Treasury Decision 5661, Part 455 of this chapter. Claims for rewards should be made on Form 211. Relevant facts should be stated on the form, which after execution should be forwarded to the Chief Counsel for the Bureau of Internal Revenue.

(2) If any person neglects or refuses to pay a tax for which he is liable, it is lawful for the collector or his deputy to make collection by distraint on his property. Section 3690 of the Code. Except where liability is before The Tax Court, no suit for the purpose of restraining collection

of internal revenue tax may be made. Section 3653 of the Code. Property taken under authority of any revenue law of the United States is irrepleviable. United States Revised Statutes, section 934; 28 U. S. C. 747. The United States' claim for taxes is a lien on the taxpayer's property. Such lien is not valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice has been filed by the collector. Despite such filing, the lien is not valid with respect to certain securities as against any mortgagee, pledgee or purchaser, of such security, for an adequate and full consideration in money or money's worth, who is without notice or knowledge of the existence of such lien. A valid lien, generally, continues until the liability is satisfied or becomes unenforceable by reason of lapse of time. A certificate of release of lien may be issued upon the taxpayer furnishing proper bond in lieu of the lien, or when the liability is satisfied or becomes unenforceable by reason of lapse of time. See, generally, Chapter 36, subchapter B, of the Code.

(c) *Penalties*—(1) *Imposition*. In case of failure to file a return within the prescribed time, a certain percentage of the amount of the tax is, pursuant to statute, added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate. If a false or fraudulent return is willfully made, the penalty is 50 percent of the total tax due for the entire period involved, including any tax previously paid. Section 3612 (d) of the Code. Other severe ad valorem (not percentage) penalties are imposed for willful failure to pay, collect, or truthfully account for and pay over tax, attempting to evade or defeat tax or the payment thereof, or make returns, keep records, supply information, etc. See sections 3601, 3604, and 3116 of the Code.

(2) *Mitigation of penalties*. The severity of the ad valorem penalties may be mitigated through exercise of the compromise authority (see § 601.4 (c)). Only in very exceptional cases is there any compromise of the percentage penalties.

§ 601.4 *Disputed liability*—(a) *General*. (1) Except as to taxes within the jurisdiction of The Tax Court the taxpayer may, after an assessment has been made, file a claim in abatement. Section 3770 of the Code. Form 843 is used in executing the claim and may be obtained from the collector. The claim is filed with the collector. Filing of an abatement claim does not stop the application of the 5 percent penalty nor interest which, by section 3655 (b) of the Code, is imposed for delinquent payment, if the claim is rejected. The collector may demand a bond to insure against possible failure of collection due to postponement of collection while the claim is under consideration.

(2) After payment of the tax a taxpayer may contest the assessment by filing a claim for refund of all or any part of the amount paid. A claim for refund is made on Form 843, which is obtainable from the collector. A claim once filed may not be amended after the period allowed for filing the claim unless the Commissioner fails to consider it within that period. If the claim is allowed, an appropriate notice of allowance with a check for the amount of the refund and allowable interest is forwarded to the collector of internal revenue. The collector forwards the check to the taxpayer, unless he finds that there are other unpaid taxes outstanding against the taxpayer, in which event, delivery of the refund check to the taxpayer is held in abeyance pending payment of the unpaid taxes. If the claim is rejected, the taxpayer is notified of the rejection by registered mail, and he may then bring suit in the United States District Court or the Court of Claims for recovery of the tax. Such suits must be filed within two years from the date of the rejection notice. Suit without limitation as to amount may be brought in the District Court against the collector of internal revenue or in the Court of Claims against the United States. Suit may be brought in the District Court sitting as a Court of Claims against the United States for not more than \$10,000, except that there is no limitation as to the amount where the collector to whom the tax was paid is dead or out of office as collector. The suit may not be begun before the expiration of six months from the date of filing of the claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of

2 years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which the suit refers. Section 3772 of the Code.

(b) *Closing agreements.* (1) The Commissioner is authorized to enter into a written agreement with a taxpayer in order to make conclusive the determination of tax liability for a preceding taxable period (Form 866), or the determination of one or more separate items affecting the tax liability of the taxpayer for any taxable period (Form 906). Such an agreement, called a "closing agreement", is provided for in section 3760 of the Code. Form 866 is used primarily for income and profits taxes, although it is sometimes also availed of with respect to estate and gift taxes. The use of Form 906 is confined almost entirely to income and profits taxes. The Commissioner has not authorized any field or other officers to enter into such agreements, although officers receiving taxpayers' requests for such agreements are authorized to make recommendations as to acceptance thereof.

(2) When Form 866 is used for a closing agreement, the agreement clears through the Special Deputy Commissioner. After approval by the Special Deputy Commissioner, the proposed agreement is forwarded to the Commissioner and the Chief Counsel for approval and then to the Secretary's Office for final approval. Closing agreements on Form 906 are prepared (after request by the taxpayer) in the Income Tax Unit, and if they cover future transactions are considered by the Closing Agreement Committee, composed of representatives of the Chief Counsel's Office and of the Income Tax Unit. Closing agreements on Form 906 which refer to past transactions are not considered by the Closing Agreement Committee, but are reviewed by the Chief Counsel's Committee. The proposed agreement is then referred to the Chief Counsel who recommends to the Commissioner whether it should be executed. The Commissioner informs the taxpayer by letter whether he will approve the proposed agreement, and, if he will approve, encloses the agreement for the taxpayer's signature. Upon return of the agreement signed by the taxpayer, it is routed for approval of the Commissioner and Chief Counsel and then trans-

mitted to the Secretary's Office for final approval.

(3) Except as otherwise expressly provided by statute, as, for example, in sections 3801, 3806, and 3807 of the Code, where a closing agreement is approved by the Secretary, Under Secretary, or an Assistant Secretary of the Treasury, it is final and conclusive and the case may not be reopened or modified or set aside except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

(4) Another type of agreement as to the extent of liability for internal revenue tax may be made by the taxpayer and the internal revenue agent. This is concluded by the taxpayer's consent to assessment and collection of the deficiency in tax agreed upon. For this purpose Form 870 is used for the income tax (see Subpart B of this part) and Forms 890 and 890A are used for the estate and gift taxes, respectively (see § 601.28). While this procedure is not common in the case of miscellaneous excise and sales taxes, where so used Form 870 may be altered for the purpose. The agreement referred to in this paragraph may be submitted by the taxpayer conditioned upon the approval of a final closing agreement.

(c) *Compromises.* (1) Under section 3761 of the Internal Revenue Code the Commissioner, with the approval of the Secretary, the Under Secretary, or an Assistant Secretary, may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense. Instructions as to the preparation and filing of an offer in compromise may be secured from the appropriate collector of internal revenue. Offers in compromise are submitted on Form 656 (Form 656C in case of installment offers) to the offices of collectors of internal revenue. In addition, the taxpayer must submit a financial statement on Form 433 with the offer. Such offers are channeled to the Bureau office, etc., handling the case (such as, the Technical Staff, the Income or Miscellaneous Tax Unit, or one of the divisions of the Chief Counsel's office, as the case may be). When a case is covered by the report of a revenue agent or has been referred to the United States attorney, or where both such situations exist, the collector will procure from either such agent or such United States attorney, or

both, as the case may be, statements in regard to the advisability of accepting the offer and will forward the originals of such statements with the offer.

(2) After an offer of compromise has been approved by the head of the unit, office, etc., it is considered in the office of the Special Deputy Commissioner. Taxpayers may request conferences in the office of the Special Deputy Commissioner for the purpose of exploring the possibilities of compromising unpaid Federal tax liability before filing a formal offer in compromise or they may request conferences after all investigations have been made for the purpose of determining the amount which may be acceptable as a compromise, if it is determined that there is a compromisable case. If a compromise is approved by the Special Deputy Commissioner, the Commissioner, and the Chief Counsel, it is forwarded to the Secretary's office for final approval. When the offer is acted upon, the collector is notified, and the collector in turn notifies the proponent. If the offer is rejected, the sum submitted to the collector is returned to the proponent and forfeiture, prosecution, or collection proceedings are resumed. If the offer is accepted the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

(d) *Conferences.* The Bureau has a liberal policy relative to discussion of disputed tax liability. Opportunity for conference is generally accorded either in the office of the collector or one of the other Bureau offices. Application for such a hearing should be made in person, or preferably by letter. The rules governing conferences are set forth in "Conference and Practice Requirements, Bureau of Internal Revenue, Revised February, 1942," published in the Internal Revenue Bulletin, 1942-1, page 384. Such Conference and Practice Requirements read as follows:

**CONFERENCE AND PRACTICE REQUIREMENTS,  
BUREAU OF INTERNAL REVENUE; REVISED  
FEBRUARY 1942**

**QUALIFICATIONS FOR CONFERENCE**

I. Conferences may be accorded only to taxpayers or their duly authorized representatives. Any individual taxpayer may appear on his own behalf or in behalf of a member of his immediate family if such appearance is without compensation; and

a member of a partnership, executor or administrator of an estate, trustee of a trust, officer of a corporation, receiver, or guardian, or a fully authorized regular employee of an individual, partnership, estate, trust, or corporation may appear for himself or for such individual, partnership, estate, trust, corporation, receivership, or guardianship, solely upon adequate identification. This rule also applies to an individual, a partnership, an estate or trust, or a corporation with respect to the liability of the individual, partnership, estate or trust, or corporation as a transferee of property of a taxpayer and to a fiduciary with respect to the liability of the fiduciary under section 3467 of the Revised Statutes, as amended (U. S. C., Title 31, section 192). In cases where the appearance is on behalf of a member of the individual's immediate family, as above authorized, appropriate requirements, herein provided, respecting the filing of powers of attorney, will not be waived. All other persons appearing as attorneys or agents, including attorneys or agents of transferees or fiduciaries, must exhibit evidence that the requirements of Department Circular No. 230 (revised), which contains the statutes and regulations governing practice before the Treasury Department, have been complied with and must also conform with the following requirements:

**POWER OF ATTORNEY TO BE FILED AND EVIDENCE  
OF ENROLLMENT TO BE SUBMITTED BEFORE  
RECOGNITION IS ACCORDED**

II. No attorney or agent representing a claimant or other person before any of the offices of the Bureau of Internal Revenue shall appear or be recognized in any case, matter, claim, or other proceeding or business pending in such office unless the attorney or agent representing the claimant presents and files a power of attorney, or a certified copy thereof, from his principal in proper form authorizing him to prosecute the case, claim, or matter in question. Such power of attorney shall always be filed and evidence of enrollment submitted before such attorney or agent is recognized. In the event, however, that an attorney or agent presents himself for conference who is not familiar with this requirement, or who can show that he has not had reasonable opportunity to obtain who has not applied for enrollment, but is able to produce such evidence as will reasonably convince the Bureau's representative that he has authority to represent the taxpayer, such attorney or agent may be heard with the understanding that a power of attorney in proper form and evidence of enrollment will be promptly forwarded to the Bureau, and that until such power of attorney and evidence of enrollment shall have been filed information will not be disclosed to such attorney or agent relative to the Bureau's attitude in respect of the issues raised or to any other matter relating to the taxpayer's case.

**POWER OF ATTORNEY TO BE FILED PRIOR TO FINAL DETERMINATION OF TAX LIABILITY**

III. No power of attorney will be accepted which is filed after final determination of the tax liability, unless the power of attorney recites that the principal is cognizant of such settlement and of the amount of deficiency or overassessment determined. (See also title "Checks in payment of refunds," paragraph XXI herein.)

**POWER OF ATTORNEY NOT REQUIRED IN CERTAIN CASES PENDING BEFORE THE UNITED STATES BOARD OF TAX APPEALS (NOW KNOWN AS THE TAX COURT OF THE UNITED STATES)**

IV. In a docketed petition before the Board, it is considered that the petitioner and the Commissioner stand in the position of parties litigant before a quasi judicial body. The Board of Tax Appeals has its own rules of practice and procedure, and its own rules respecting admission to practice before it. A Staff division in the decentralized areas is authorized to deal with the counsel of record before the Board in a petition docketed by the Board. Therefore, correspondence in connection with Board dockets will, ordinarily, be addressed to counsel of record before the Board; and in any event the position of the Bureau is that such counsel of record shall receive copies of any correspondence, or be advised as to the general nature of any communications, which for good and sufficient reason may be addressed direct to the taxpayer.

In all cases handled by the decentralized offices of the Technical Staff, other than cases docketed before the Board, the customary power of attorney will be required.

**POWER OF ATTORNEY REQUIREMENTS**

V. Any power of attorney offered in evidence in any case will be accepted only if it is in regular form. Only one power of attorney shall be in effect in any case and there shall be included in such power of attorney the names and addresses of all attorneys or agents to whom the taxpayer has delegated authority to represent him.

A. *Technical language unnecessary.* It is considered necessary in all cases that the power of attorney contain language to convey the principal's intention, though not necessarily in strictly legal form.

B. *Attestation of execution of instrument or witnesses thereto.* The power of attorney must be executed before a notary public, or, in lieu thereof, witnessed by two disinterested individuals. The notarial seal must be affixed unless such seal is not required under the laws of the State wherein the power of attorney is executed. No attorney or agent as notary public shall take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters pending before the Bureau in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested. (See Act of June 29, 1906, 34 Stat. 622.)

C. *Extent of authority delegated.* The authority delegated to an attorney or agent in a power of attorney enumerating certain specific acts which may be done will be considered limited to those acts.

(A) *Express authority required for certain acts.* Express authority to do the following acts must be granted and shown in the power of attorney or such acts will be considered beyond the scope of the agent's authority:

1. To receive but not to indorse and collect checks in settlement of any refund. (See section 3477 of Revised Statutes, which prohibits assignments of claims or portions thereof, and title "Checks in payment of refunds," paragraph XXI herein.)

2. To delegate authority or to substitute another agent or attorney.

3. To execute consents agreeing to a later determination and assessment of taxes than is provided by statute of limitations.

4. To execute closing agreements relative to the tax liability.

D. *Signature of grantor.* The power of attorney should be signed as follows:

a. In the case of an individual taxpayer, by such individual.

b. In the case of any taxable year for which a joint return was made by a husband and wife, by both husband and wife, except that either spouse may sign for the other if duly authorized in writing so to act.

c. In the case of a partnership, either by all members or in the name of the partnership by one of the partners duly authorized to act.

d. In the case of a corporation by an officer of the corporation having authority to bind same and be attested by the secretary of the corporation over the corporate seal.

1. A power of attorney granted by a corporation should state whether or not the corporation has a seal, and the seal should be affixed to the power in all cases where one is used by the corporation. If the power of attorney shows that the corporation has no seal, a certified copy of a resolution duly passed by the board of directors of the corporation giving its officers authority to sign the same should be submitted.

2. If the officer who signs the power of attorney is also secretary, another officer of the corporation, preferably the president, vice president, or treasurer, must also sign the instrument so that two different individuals' signatures will appear thereon.

e. In the case of an association, the same requirements shall apply as in the case of a corporation.

f. *Special cases:*

If the taxpayer is dissolved, insolvent, deceased, or has a similar status, the additional requirements beginning with paragraph XV herein should be followed.

E. *Certification of copies of powers of attorney and evidence filed in connection therewith.* The certification of copies of powers of attorney or papers or documents filed in connection therewith must be made

by a notary public, or other proper official, who should state that he has personally compared the copy with the original and finds it to be a true and correct copy. This certification applies to all copies of powers of attorney and related papers, including printed and photostatic copies.

*F. Certain powers of attorney to be filed in field offices.* Powers of attorney covering income, profits, estate, and gift tax cases, also Vinson Act cases, shall be filed in the office of the internal revenue agent in charge in which the case is under consideration, accompanied by sufficient authenticated copies thereof for attachment to the return for each tax year under consideration.

Free statements respecting contingent or partially contingent fee agreements required to be filed by attorneys and agents under the provisions of paragraph (g), section 2, Department Circular No. 230, revised, effective October 1, 1936, as amended (see C. B. 1937-2, page 645) (31 CFR Part 10), should be signed only by the attorney or agent and filed with the internal revenue agent having the case under consideration.

#### SUBSTITUTION OF ATTORNEYS OR AGENTS

VI. Substitution of attorneys or agents may be effected only where the power of attorney, under which the attorney or agent is acting, expressly confers the right of substitution. Such attorney or agent, if in good standing before the Department, may, by a duly executed substitute power of attorney, substitute another or others in his stead. The Bureau reserves the right to refuse recognition to a substituted attorney or agent where, in its opinion, such substitution will only delay the final adjustment of the case. Furthermore, the Bureau will not accept a substitute power of attorney granted by an attorney or agent, who is acting under a substitute power of attorney from the attorney or agent, unless specific authority is granted in the principal's power of attorney to the attorney or agent to pass on to his substitute the right of substitution. (See also title "Checks in payment of refunds," paragraph XXI herein.)

#### NEW POWER OF ATTORNEY REQUIRED WHEN NEW OR ADDITIONAL ATTORNEYS OR AGENTS RETAINED

VII. In any case in which a power of attorney has been filed and the taxpayer subsequently desires to authorize other or additional attorneys or agents to represent him before the Bureau with respect to the same case, a new power of attorney must be filed, which shall include the names of all attorneys or agents who are authorized to act for such taxpayer. Such new power of attorney shall contain a clause specifically revoking any and all powers of attorney previously filed with respect to the same case. The revocation of an authority to prosecute a matter before the Bureau shall in no case be effective, so far as the Bureau is concerned, before due notice in writing has been

given the Bureau, and the filing of evidence of notification of the revocation to the attorney or agent whose power has been revoked. Where consideration of a matter has been held in abeyance awaiting the furnishing of evidence for which a call has been made on an attorney or agent, failure on his part to take action thereon within three months from the date on which consideration of the matter was suspended may be deemed by the administrative officer before whom the case is pending cause for refusal to further recognize the authority of the attorney or agent. Such administrative officer shall, however, give written notice of such refusal to the client of such attorney or agent, and shall state briefly the reason such action has been taken.

#### EVIDENCE REQUIRED TO SUBSTANTIATE FACTS ALLEGED IN CONFERENCES

VIII. No reduction in taxes proposed nor increases in allowance of claims shall be made unless the evidence upon which such action is taken is submitted in writing and in verified form. All evidence except that of a supplementary or incidental character shall be submitted over the sworn signature of the taxpayer.

The sworn statement of facts must be submitted at least five days before the conference date except as hereinafter provided, and must meet all the issues raised by the Bureau which the taxpayer desires to contest. If the sworn statement of facts is not submitted at least five days before the conference, then it must be accompanied by a sworn statement setting out specifically the reasons for not having complied with the 5-day rule. Nothing herein shall preclude the taxpayer from submitting additional or supporting evidence within a reasonable time after the conference.

Every affidavit, agreement, brief, or statement of facts prepared or filed by an attorney or agent as argument or evidence in the matter of a claim or tax matter pending before the Bureau shall have thereon a statement signed by such attorney or agent showing whether or not he prepared such document and whether or not the attorney or agent knows of his own knowledge that the facts contained therein are true.

#### CONFERENCE TO BE PREARRANGED

IX. Conferences with taxpayers or their representatives will not ordinarily be held without previous arrangement. Cases in which taxpayers or their representatives can submit some unusual reason for requesting an immediate conference without previous arrangement will be given consideration by Bureau officials charged with the arrangement of conferences, who may, if the circumstances warrant, make an exception to the rule.

In order that the case under consideration may be closed at one conference, if at all possible, the requirements of paragraph VIII of this circular to the effect that the brief

submitted in advance of conference must meet all issues raised will be strictly enforced, and another conference will not be granted on the same case except to meet new issues raised by the Bureau in the course of the first conference which could not have been anticipated prior to such conference.

#### RECOGNITION OF UNENROLLED EMPLOYEES OF QUALIFIED ATTORNEYS OR AGENTS

X. Unenrolled employees of enrolled attorneys or agents will not be recognized in any matter by offices of the Bureau except for the purpose of filing papers or securing information as to the status of cases. Recognition for the latter purpose will be given only when the employee presents in each case written authority from his employer to act as the latter's substitute in obtaining the information desired regarding status and when the power of attorney of his employer in each case provides for the substitution of such employee. To facilitate recognition of such employees, it is requested that the employee present at the time of making inquiry concerning any case the receipt for the power of attorney issued to his employer by the taxpayer in that case and the receipt for the substitute power of attorney issued to him. (These receipts are furnished if requested when the powers of attorney are filed.)

#### POWERS OF ATTORNEY AND ENROLLMENT REQUIREMENTS OF AGENTS AND ATTORNEYS HANDLING MATTERS BY CORRESPONDENCE

XI. Where recognition is desired through correspondence with the Department, enrollment and power of attorney requirements must be met by attorneys or agents even though no actual appearance is made before the Department. If a proper power of attorney is filed authorizing only one of the following acts by the attorney or agent, enrollment will not be required:

Authority to sign but not to prosecute any claim of the taxpayer.

Authority to inspect or receive copies of returns where Executive order or regulations permit such action by agent.

The Commissioner reserves the right to withhold making the above exceptions in any specific case.

If the power of attorney authorizes the attorney or agent to do one or both of the above acts and some other acts or acts, enrollment will be considered necessary, notwithstanding that the agent or attorney does not expect to use all of the power conferred upon him.

#### SPECIFIC AUTHORITY REQUIRED IN VINSON ACT CASES

A power of attorney authorizing an attorney or agent to represent a taxpayer before the Bureau of Internal Revenue in connection with income tax matters will not be recognized by the Bureau as evidence of an attorney's or agent's authority to act as representative for a contractor or subcontractor in

connection with excess profit liability under section 3 of the Vinson Act (48 Stat., 503), as amended, as applied to Navy contracts and contracts for aircraft for the Army, and to subcontracts made with respect to such contracts. In such cases a separate power of attorney must be secured specifically authorizing the attorney or agent to appear in behalf of his client.

#### LETTERS ARRANGING CONFERENCES TO ADVISE OF REQUIREMENTS

XII. Letters arranging conferences will apprise the taxpayer or his representative of the requirements as to powers of attorney, the necessity of being enrolled to practice before the Department, and to whom he should apply for enrollment, unless it is known that the addressee is aware of the requirements. Owing to the expense involved, it will not be the practice, except in rare cases, to incorporate the above requirements in telegrams. Where sufficient time intervenes between the date of the telegram and the conference the telegram will be confirmed by letter and conference requirements stated.

#### PRACTITIONERS MUST CONDUCT THEMSELVES IN AN ETHICAL MANNER

XIII. Attorneys or agents representing taxpayers before the Bureau are expected at all times to conduct themselves in an ethical manner, and will be held strictly accountable for the withholding of known material information or for any deliberately false or misleading statement.

“\* \* \* whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.” (Section 80, Title 18, United States Code.)

“Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.” (Section 3793 (b) 1 of the Internal Revenue Code.)

For gross misconduct the Commissioner may refuse to recognize any person as an attorney or agent in any particular case.

Attempting to influence the conduct of any official or employee of the Bureau in any case or other proceeding pending before the Bureau by the use of threats, false accusations, duress, or by the offer of any special inducement or promise of advantage, or by the bestowing of gifts or favors upon officials or employees before whom an attorney or agent is appearing is considered grounds for disbarment from practice before the Treasury Department.

"Whosoever shall promise, offer, or give, or cause or procure to be promised, offered, or given, any money or other thing of value, or shall make or tender any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, . . . with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made or tendered, and imprisoned not more than three years." (Section 91, Title 18, United States Code.)

#### EFFECT OF PREVIOUS CONNECTION WITH THE UNITED STATES GOVERNMENT

XIV. No enrolled person or other person authorized to appear before the Treasury Department without enrollment shall represent a claimant before the Treasury Department in any matter to which such person, as officer or employee of the United States, gave personal consideration or as to the facts of which he gained knowledge while in the Government service.

No former officer, clerk, or employee of the Treasury Department shall act as attorney or agent, or as the employee of an attorney or agent, within two years after the termination of such Treasury employment, in any matter pending in such Department during the period of his employment therein, unless he shall first obtain the written consent thereto of the Secretary of the Treasury, or his duly authorized representative. This consent will not be granted unless it appears (1) that the applicant was not, during the period of two years immediately preceding the date of application, employed in the particular departmental or field section in which was pending the matter to handle which con-

sent is sought, provided that this requirement shall not apply to persons employed in an administrative capacity such as head of a unit, division, or section, or employed as a reviewer or conferee or in an advisory capacity, and (2) that employment as an agent or attorney is not prohibited by title 5, section 99, United States Code, or other law, or by the regulations of the Treasury Department. Such applicant shall be required to file an affidavit to the effect that he gave no personal consideration to such matter and had no knowledge of the facts involved in such matter while he was employed in the Department, and that he is not now associated with, and will not be associated with, any former employee who has gained knowledge of the case while employed by the Treasury Department, and that his employment is not prohibited by title 5, section 99, United States Code, or other law, or by the regulations of the Treasury Department. The statements contained in such affidavit shall not be sufficient if disproved by an examination of the files and records pertaining to the case. Applications for consent should be directed to the Committee on Practice on Form 901 and should state the former connection with the Department of the applicant and identify the matter in which the applicant desires to appear. The applicant shall be promptly advised as to his privilege to appear in the particular matter, and this notice shall be filed by him in the record of the case.

Nor shall any enrolled person knowingly (1) assist a person who has been employed by a client to represent him before the Treasury Department in connection with any matter to which such person gave personal consideration or as to the facts of which such person gained personal knowledge while in the Government service, or (2) accept assistance from any such person in connection with any such matter, or (3) share fees with any such person in connection with any such matter.

#### INSTRUCTIONS FOR EXECUTION OF POWER OF ATTORNEY IN SPECIAL CASES WHICH MUST BE MET IN ADDITION TO GENERAL REQUIREMENTS

XV. *Dissolved partnership.* A power of attorney to act with respect to matters involving the affairs of a dissolved partnership must be signed by all of the former partners. In case some of the partners are dead, their legal representatives must sign in their stead. (See paragraph XVIII.) If however, under the laws of the particular State, the surviving partners at the time of the execution of the power of attorney have exclusive right to the control and possession of the firm's assets for the purpose of winding up its affairs, their signatures alone will be sufficient. If only the surviving partners sign the power of attorney, a copy of the pertinent provisions of the State law under which they claim authority, exclusive of the legal representatives of the deceased partners, should be noted and citation given thereto.

**XVI. Dissolved corporation.** If a liquidating trustee, or trustee under dissolution, has been appointed, or if a trustee derives authority under a statute of the State in which the corporation was organized the power of attorney should be executed by such trustee. If there is more than one trustee, all must join unless it is established that less than all have authority to act in the premises. The power of attorney must be accompanied by a copy of the instrument under which the trustee derives his authority, properly authenticated, or if the authority is derived under a State statute, the statute should be cited and quoted, and an affidavit by a third party, setting forth the facts required by the statute as a precedent to the vesting of the authority in said trustee must be furnished. It must also appear in the case of any trustee that his authority has not been terminated. If there is no trustee, then a power of attorney executed before a notary public by a sufficient number of individuals to make up a representation of a majority in the voting stock of the corporation at the date of dissolution will be accepted for purposes of conference and correspondence relating to the tax liability in the particular case. Such instrument must show the total number of outstanding shares of voting stock at the date of dissolution and the number held by each signatory to the power of attorney. The instrument must also contain positive averments as to the nonexistence of any trustee, and the date of dissolution must appear.

**XVII. Insolvent taxpayer.** A certificate from the court having jurisdiction over the insolvent should be furnished showing the appointment and qualification of the trustee or receiver, and it should appear that the authority has not terminated. In cases pending before a district court of the United States an authenticated copy of the order approving the bond of the trustee will meet this requirement. If an attorney has been appointed under authority of court for the trustee or receiver, a copy of the court order appointing such attorney (where he is to represent the trustee) should be furnished. If no attorney has been appointed, the trustee or receiver should execute the power of attorney, the acknowledgment or witnessing thereof to be the same as in the case of an individual, and the above-described evidence showing the appointment of the trustee or receiver furnished therewith. If the trustee or receiver does not wish to appoint an attorney, he will be recognized upon establishing his authority in the manner above described.

**XVIII. Deceased taxpayer.** The executor or administrator should execute the power of attorney, which must be accompanied by a short-form certificate (or authenticated copies of letters testamentary or letters of administration) showing that his authority is in full force and effect at the time such evidence is submitted. The executor or ad-

ministrator will be recognized in his own right if he does not wish to appoint an attorney or agent, upon submission of the above-described court certificate, and such executor or administrator is not required to be enrolled to practice. In the event that the executor has been discharged and a trustee under the will is acting, the power of attorney must come from the trustee, and evidence of the discharge of the executor and of the appointment of the trustee must be submitted with the power of attorney. In such cases, where the executor is discharged and the estate is distributed to the residuary legatees, the power of attorney must come from the residuary legatee or legatees, and be accompanied by a statement from the court certifying to the discharge of the executor and naming the residuary legatees and indicating the proper share to which each is entitled. In the event that the decedent died intestate and the administrator had been discharged or none was ever appointed, the power of attorney must come from the distributees and be accompanied by evidence of the discharge of the administrator, if one had been appointed, and affidavits and such other evidence as can be adduced tending to show the relationship to the deceased of the signatories to the power of attorney and the right of each of them to the respective shares claimed under the law of the domicile of the deceased.

**XLX. Guardians and other fiduciaries appointed by a court of record.** The power of attorney should be executed by the fiduciary and must be accompanied by a court certificate or court order showing that such fiduciary has been appointed and that his appointment has not been terminated.

**XX. Trustee under deed, declaration, etc.** Powers of attorney must be executed by the trustee and be accompanied by documentary evidence of the authority of the trustee to act. Such evidence may be either a copy of the trust instrument, properly certified, or a certified copy of extracts from the trust instrument, showing—

- a. Date of instrument.
- b. That it is or is not of record in any court.
- c. The beneficiaries.
- d. The appointment of the trustee, the authority granted, and such other information as may be necessary to show that such authority extends to Federal tax matters.
- e. That the trust has not been terminated, and that the trustee appointed thereby is still acting.

Self-serving affidavits by the trustee in this connection are not acceptable. In the event that the trustee appointed in the original trust instrument is no longer acting and has been replaced by another trustee, documentary evidence of the appointment of the new trustee must be submitted. In cases where there are more than one trustee appointed, all must join, unless it is shown that less than all have authority to act.

**XXI. Checks in payment of refunds.** The Bureau is not bound to deliver any check in payment of refund of internal-revenue taxes, penalties, or interest to a representative of any taxpayer acting under authority evidenced by a power of attorney. However, it will be the general policy of the Bureau to mail such checks in care of an enrolled attorney or agent who has filed power of attorney from the principal, specifically authorizing him to receive but not to indorse such check, provided that such power of attorney shall have been filed in sufficient time for the section or division preparing the certificate of overassessment to show thereon the mailing address as "care of" the attorney or agent. Where an attorney or agent has more than one address, request to mail the check to another address than is shown in the power of attorney will not be granted unless the address shown in the power of attorney is no longer that of the attorney or agent. In the event that a power of attorney is filed specifically authorizing more than one attorney or agent to receive checks on the taxpayer's behalf, and such attorneys or agents have different addresses, the Bureau will not mail the check in care of any of the attorneys or agents named in the power of attorney but will mail the check direct to the taxpayer, unless a statement is furnished, signed by all of the attorneys or agents named in the power of attorney, requesting that the check be mailed in care of one of their number. Furthermore, it will be the policy of the Bureau not to mail checks in payment of refunds to an attorney or agent who holds authority to receive such check by reason of a substitute power of attorney obtained from the attorney or agent designated by the taxpayer.

Where there is a contest between members of a dissolved firm or between two or more attorneys or agents acting under the same power of attorney as to which one is entitled to prosecute a matter pending before the Bureau or to receive a draft, warrant, or check, the client only shall thereafter be recognized, unless the members or survivors of the dissolved firm, or the contesting attorneys or agents, file an agreement signed by all designating which of them shall be entitled to prosecute such matter or to receive the said draft, warrant, or check. In no case shall the delivery of a final draft, warrant, or check to the client be delayed more than 60 days by reason of failure to file such agreement. Deliveries of all checks in payment of refunds will be made by or through the office of the collector to whom the tax was paid.

#### REQUIREMENTS APPLICABLE TO FIELD OFFICES

**XXII.** The foregoing conference and practice requirements apply to all offices in the Internal Revenue Service.

As to conference practice relative to taxes within the jurisdiction of The Tax Court, see also sections dealing specially with such taxes.

(e) **Rulings.** (1) Rulings are made on prospective transactions only where the law or regulations provide for a determination by the Commissioner of the effect of a proposed transaction for tax purposes, as in the case of a transfer under the provisions of sections 1250 to 1253 of the Internal Revenue Code, or an exchange under the provisions of section 112 (i) of the Internal Revenue Code, or in connection with the execution of a closing agreement under the provisions of section 3760 of the Internal Revenue Code with respect to a taxable period ending subsequent to the date of the agreement. The established policy of the Bureau is not to comply with requests for rulings on prospective transactions, except in the instances hereinabove provided.

(2) A request received from a taxpayer or his representative for a ruling on a question involving an issue in a return or returns filed for a year or years with respect to which the period of limitation on assessment or refund of income or excess-profits taxes has not expired is referred to the internal revenue agent in charge having jurisdiction of the return, or returns, for appropriate action on the request and consideration in connection with the examination of such return or returns. It is not intended, however, in such cases to prevent the internal revenue agent in charge from seeking advice or information from Washington before taking action.

(3) The established policy is to give advice upon request of taxpayers or their representatives on questions relating to the character and extent of tax liabilities resulting from consummated transactions affecting a return to be filed, under the following circumstances:

(i) The complete facts relative to the transaction, together with a copy of each contract, or other document, necessary to present the question are given.

(ii) The names of all the real parties interested are stated regardless of who presents the question, whether an interested party, attorney, accountant, or other representative.

(iii) The request is signed by the taxpayer, or in case he is represented by an attorney or agent, the request is accompanied by properly executed power of attorney.

(4) A copy of a letter addressed to a taxpayer is not furnished to his attorney

or agent unless the Bureau is specifically authorized to do so by the taxpayer.

(5) As to rules issued for the guidance of the general public, see Subpart M of this part.

§ 601.5 *Legal review.* Many matters are referred to the Office of the Chief Counsel for legal review or advice before final action. It is the function of the Office of the Chief Counsel to furnish legal advice to the administrative units of the Bureau and to handle the legal aspects of all matters pertaining to the assessment and collection of Federal taxes. The Office of the Chief Counsel reviews cases involving, and makes recommendations relative to, the imposition of penalties and institution of criminal proceedings for fraud and violations of tax laws. The Chief Counsel's Office also reviews claims for refund, credit, or abatement of taxes proposed for allowance in all cases in which the amount involved exceeds \$75,000; reviews and makes recommendations relative to the acceptance of offers in compromise and the entering into of closing agreements; and supervises the collection of taxes from individuals and corporations involved in reorganization, bankruptcy, receivership, and other insolvency or liquidation proceedings, and from decedents' estates.

§ 601.6 *Description of forms.* The forms of special application in connection with particular taxes are covered in the sections specially devoted to those taxes. A few of the forms used in procedures of the Bureau which are of general application are as follows:

*Form 211.* Claim for reward for information leading to the detection and punishment of persons guilty of violating the internal revenue laws. See paragraph (c) (2).

*Form 433.* Statement of financial condition and other information. Required to be submitted by proponents when tendering offers in compromise in lieu of liabilities in certain cases.

*Form 656.* Offer in compromise and collector's recommendation. This form is to be used by taxpayers in all cases except offers submitted on installment basis in submitting offers in compromise of liability incurred because of violation of law. The reverse side of the form is to be filled in by the collector, giving a brief history of the case and his recommendation as to the acceptance or rejection of the offer.

*Form 656-C.* Offer in compromise (deferred installment payments). This form is used where amount tendered as offer in compromise is to be paid by deferred payment or payments.

*Form 843.* Claim for abatement, or refund. Claim for the abatement of taxes erroneously or illegally assessed; claim for refund of taxes erroneously or illegally collected; and claim for the refund of amounts paid for stamps used in error or excess, will be made upon this form.

*Form 866.* Agreement to final determination and assessment of tax. This form provides for an agreement between the taxpayer and the Commissioner that determination and assessment of tax shall be final and conclusive.

*Form 900.* Tax collection waiver. This form is used to extend the statutory period within which to collect outstanding assessments by agreement between the taxpayer and the Commissioner.

*Form 906.* Closing agreement as to final determination covering specific matters. This form is used by a taxpayer for a closing agreement as to final determination covering specific matters in pursuance of section 3760, Internal Revenue Code.

*Form 907.* Agreement to suspend running of statute of limitations. This form is used by a taxpayer to enter into an agreement with the Commissioner to suspend running of statute of limitations for filing suit for recovery of taxes overpaid until a final decision of similar cases before the courts is rendered.

*Form 927.* Proof of worthlessness of mineral rights. Questionnaire to be filed by all persons asserting a value or absence of value of oil and gas rights in land at any specific date, whether for income tax, estate tax, or gift tax purposes. The schedules call for descriptive data, development statistics, and a map. A separate form must be filed for each property.

*Form 1131.* Bond for release of Federal tax lien. To be used where a taxpayer desires to have a tax lien removed under the provisions of section 3673 (b), Internal Revenue Code, and where the tax liability has not been satisfied.

*Form 1171.* Statement relative to fees to be filed with power of attorney.

#### SUBPART B—INCOME AND EXCESS PROFITS TAXES

SOURCE: §§ 601.11 to 601.17 appear at 11 F. R. 177A-34, 14262, as amended at 12 F. R. 953, 2560, 5485, 13 F. R. 2195, 4123, 4870, 7710. Redesignation noted at 14 F. R. 5200.

§ 601.11 *General.* (a) Individual and corporation income taxes are imposed by Chapter 1 of the Internal Revenue Code. Additional income taxes are imposed under chapter 2 of the Code as follows: subchapter A—personal holding companies; subchapter C—excess profits on Navy contracts; subchapter D—unjust enrichment. Subchapter B of chapter 2, imposing the declared value excess profits tax, was repealed by section 202 of the Revenue Act of 1945, effective with

respect to income tax taxable years ending after June 30, 1946. Subchapter E of chapter 2, imposing the wartime excess profits tax, was made inapplicable by section 122 of the Revenue Act of 1945 to any taxable year beginning after December 31, 1945, except for the purpose of computing certain "carry-backs" applicable to the determination of taxes imposed by such subchapter for taxable years beginning before January 1, 1946.

(b) Current rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with the taxes in paragraph (a) of this section are contained in the following regulations promulgated by the Commissioner, with the approval of the Secretary:

(1) Regulations 111 (Part 29 of this chapter), relating to taxes imposed by chapter 1 and subchapter A of chapter 2 of the Internal Revenue Code;

(2) [Reserved]

(3) Regulations 104 (Part 23 of this chapter), relating to consolidated income tax returns of affiliated corporations;

(4) Regulations 110 (26 CFR, 1938 Ed. and Supps., Part 33), relating to consolidated excess profits tax returns of affiliated corporations;

(5) Regulations 116 (Part 405 of this chapter), relating to collection of income tax at source on wages under subchapter D and subchapter E of Chapter 9 of the Internal Revenue Code;

(6) [Reserved]

(7) [Reserved]

(8) Treasury Decision 4906 (Part 17 of this chapter), relating to excess profits on contracts for Army aircraft;

(9) Treasury Decision 4909 (Part 16 of this chapter), relating to excess profits on contracts for Army aircraft;

(10) Treasury Decision 5409 (Part 473 of this chapter), relating to periods of limitation in cases of related taxes under chapter 1 and chapter 2 of the Internal Revenue Code;

(11) Treasury Decision 5498 (Part 474 of this chapter), relating to extensions of time for payment of taxes by corporations expecting carry-backs, and tentative carry-back adjustments; and

(12) Treasury Decision 5330 (Part 32 of this chapter), relating to the establishment of construction reserve funds under the Merchant Marine Act, 1936, as amended.

(13) Treasury Decision 4917 (26 CFR, 1943 Cum. Supp., Part 20) relating to returns of information with respect to foreign corporations under section 3604 of the Code.

(14) Treasury Decision 4958 (Part 464 of this chapter), relating to taxes of insolvent banks and trust companies.

(15) Treasury Decision 4975 (Part 7, Subpart—Sweden, of this chapter) relating to taxation under Tax Convention between United States and Sweden.

(16) Treasury Decisions 5157 and 5206 (Part 7, Subpart—Canada, of this chapter) relating to taxation under Tax Convention between United States and Canada.

(17) Treasury Decision 5499 (Part 7, Subpart—France, of this chapter) relating to taxation under Tax Convention between United States and France.

(18) Treasury Decision 5532 (§§ 7,500–7,511 of this chapter) relating to taxation under Tax Convention between United States and United Kingdom.

(19) Treasury Decision 5279 (Part 472 of this chapter), relating to time for performing certain acts postponed because of War under section 3804 of the Code.

(20) Treasury Decision 5300 (26 CFR, 1938 Ed., 1943 and 1944 Supps., Part 36), relating to relief from double payment of tax for 1943 under section 6 of Current Tax Payment Act of 1943.

(21) Treasury Decision 5569 (§§ 7,512–7,532 of this chapter) relating to the taxation of nonresident aliens who are residents of the United Kingdom and foreign corporations managed and controlled in the United Kingdom, under the income tax convention and protocol between the United States and the United Kingdom, proclaimed by the President of the United States on July 30, 1946.

(22) Treasury Decision 4168 (26 CFR, 1938 Ed., 452.1–452.10) and Treasury Decision 5612 (Part 452, Subpart B, of this chapter), relating to taxes under the Trading With the Enemy Act, as amended.

§ 601.12 *Tax collection*—(a) *General*. Income and profits taxes are collected by means of returns, in the case of corporations, estates and trusts, and by means of returns, declarations of estimated tax, and withholding at the source, in the case of individuals. Returns and other forms especially applicable to income and profits taxes are described in § 601.17 (a).

(b) *Withholding at the source on wages.* In the case of wage earners, the tax is collected in large part through the withholding by employers of taxes on wages paid to their employees. The tax withheld by the employer is required to be paid quarterly to the collector of internal revenue or may be deposited monthly in a depository bank authorized by the Secretary of the Treasury to receive such deposits. The tax withheld at the source on wages is applied in payment of the individual's income tax liability for the taxable year.

(c) *Declarations of estimated tax.* Declarations of estimated tax are required of every citizen or resident of the United States whose gross income for the taxable year from all sources or from wages only is expected to exceed a specified amount. Under existing law a declaration is required if the expected gross income from wages exceeds \$4,500 plus \$600 for each exemption, or the expected gross income from sources other than wages exceeds \$100 and the expected total gross income equals or exceeds \$600. The time for filing declarations is determined by reference to the time during the taxable year when the facts and circumstances first become such as to indicate that the expected gross income for the taxable year will meet the requirements of the statute. In the case of a calendar year taxpayer, the filing dates prescribed are March 15, June 15, September 15 of the calendar year and January 15 of the succeeding year. If a declaration of estimated tax has been filed, an amended declaration may be filed on any of the specified dates. In the case of a taxpayer who makes his return on a fiscal year basis, the filing dates for declarations of estimated tax will be the 15th day of the last month of the first, second, and third quarters of his fiscal year and the 15th day of the first month of his next fiscal year. The estimated tax may be paid in full with the declaration or in as many equal installments as there are quarters remaining in the taxable year beginning with the quarter in which the declaration is filed. The installment dates are the same as the dates prescribed for the filing of declarations or amended declarations and the first installment must accompany the declaration. If an amended declaration is filed, the remaining installments of estimated tax are adjusted accordingly. Payments of estimated tax are applied in payment

of the tax for the taxable year. A husband and wife neither of whom is a non-resident alien, may make a single declaration jointly and the amount of the estimated tax paid may be applied in payment of the income tax liability of either spouse in any proportion they may specify.

(d) *Individual returns.* Every individual having for the taxable year a gross income of \$600 or more is required to make a return setting forth the information necessary to determine the tax liability and, except in the case of certain wage earners, the amount of such tax liability. The balance of the tax, if any, after deducting any estimated tax payments and tax withheld at the source is payable on or before the 15th day of the third month following the close of the taxable year. In the case of wage earners whose gross income is less than \$5,000 and consists entirely of wages subject to withholding plus dividends and interest of not more than \$100, the withholding tax statement may be used as a return, in which event the collector computes the tax and mails to the taxpayer a notice and demand for payment. A husband and wife may make a single return jointly, provided neither is at any time during the taxable year a nonresident alien.

(e) *Corporation returns.* A corporation income tax return is required to be filed with the collector by every corporation taxable under chapter 1 of the Code. Certain corporations may file consolidated returns under section 141 of the Code and the applicable regulations (see § 601.11). Corporation returns should be filed on or before the 15th day of the third month following the close of the taxable year and the tax is required to be paid on or before the 15th day of such third month unless the taxpayer elects to pay the tax in four equal installments, in which event the first installment shall be paid on the 15th day of such third month and the remaining installments on the 15th day of the sixth, ninth, and twelfth months following the close of the taxable year.

(f) *Returns for estates and trusts.* A return is required for every estate having a gross income for the taxable year of \$600 or more and for every trust having a gross income of \$600 or more or a net income of \$100 or more. The return in such case must be filed by the fiduciary acting for the estate or trust on or before

the 15th day of the third month following the close of the taxable year and the tax is required to be paid on such date. The fiduciary may, however, elect to pay the tax in four equal installments in which event the first installment shall be paid on the 15th day of such third month and the remaining installments on the 15th day of the sixth, ninth, and twelfth months following the close of the taxable year.

(g) *Extensions of time.* Under certain circumstances, the Commissioner is authorized to grant a reasonable extension of time for filing an income tax return or a declaration of estimated tax. This authority has been delegated to the several collectors. The total period for extensions with respect to a return or declaration in the case of a taxpayer cannot be in excess of 6 months, except in the case of taxpayers who are abroad. Written application for extension must be received by the collector on or before the date prescribed by law for filing the return or declaration, as the case may be. Generally, in the case of corporations, one-fourth of an estimated tax on a tentative return must be paid on or before the date prescribed by law for filing the return as a condition precedent to the granting of an extension of time for filing the return. An extension of time for filing the declaration of estimated tax automatically extends the time for paying the estimated tax (without interest) for the same period.

§ 601.13 *Examination of returns and determination of correct liability—(a) General.* (1) Section 57 of the Code provides that as soon as practicable after the tax return is filed the Commissioner shall examine it and shall determine the correct amount of tax. Authorization is contained in section 3614 of the Internal Revenue Code for the Commissioner, by any officer or employee of the Bureau, including the field service, designated by him, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in Federal tax returns and to take testimony relative thereto and to administer oaths.

(2) A preliminary examination is first made of income tax returns in the collectors' offices for mathematical errors. A correction notice of any such mathematical error is sent to the taxpayer. Demand is made for any deficiency so resulting, or credit or refund is made of

any overpayment of \$1,000 or less. If the overpayment exceeds \$1,000, the return is referred to the Washington office.

(3) Individual returns on Form W-2 (the withholding tax statement) are retained for audit in the collector's office. Collectors also retain for audit individual returns on Form 1040 reporting adjusted gross income under \$7,000 and total receipts from business under \$25,000. All other individual returns and all corporation returns are sent to Washington where they are examined and classified and referred to the appropriate field offices for consideration.

(4) Field audits and investigations are made by internal revenue agents, under the supervision of the internal revenue agent in charge, in the case of income tax returns of individuals (except those audited by collectors) and corporate income and profits tax returns.

(5) When any adjustment in a return filed by a taxpayer is proposed as a result of an investigation (or a claim for refund or credit filed by a taxpayer is to be disallowed in whole or in part as a result of an investigation), the internal revenue agent in charge issues to the taxpayer a preliminary (30-day) letter, and (except in certain fraud cases) furnishes the taxpayer a copy of the report of the examining officer showing the adjustments proposed. Where the circumstances permit, the taxpayer is usually accorded 30 days in which to protest in writing any action proposed in the case with which he is in disagreement, and is afforded an opportunity to file a brief and supporting evidence to sustain the protest, and an opportunity for an oral hearing before a representative of the conference staff of the field office if he desires. No particular form of protest has been prescribed but it is required to be made under oath and must set forth all issues raised by the taxpayer. If an agreement is reached in the case, the necessary forms are executed consenting to the immediate assessment and collection of any deficiency in taxes involved as well as consenting to any overassessment (refund) that may be agreed upon. These conferences are held in accordance with provisions of the published Conference and Practice Requirements, Revised February 1942 (C. B. 1942-1, 184). The case record then moves to the appropriate Audit Review Division of the Income Tax Unit in Washington for post-review.

(6) In any case in which the closing action in the field is agreed to by the taxpayer, but is disapproved upon post review in Washington, and the internal revenue agent in charge and the taxpayer or his representative are unable to reach an agreement with respect to the issue, the taxpayer or his representative may, if he so desires, be granted a hearing in the office of the internal revenue agent in charge before a representative of the Income Tax Unit in Washington.

(b) *Deficiencies.* (1) If a deficiency in tax is involved in a case in which a preliminary notice was sent and no agreement in respect thereof is reached, before the Commissioner is authorized to assess the deficiency he must, under the provisions of section 272 (a) (1) of the Internal Revenue Code, issue to the taxpayer by registered mail a notice of the deficiency. Thereafter, the taxpayer has ninety days after such mailing (or one hundred and fifty days, if the letter was addressed to a person outside the States of the Union and the District of Columbia) not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day, to file his petition with the United States Tax Court for a redetermination of the deficiency. Assessment of the deficiency or steps to enforce its collection (except in jeopardy cases falling within the provisions of section 273 of the Internal Revenue Code) are prohibited until the notice of deficiency is mailed and until the expiration of the ninety-day period (or one-hundred-and-fifty-day period, as the case may be) if no petition is filed, or, if such a petition is filed, until the decision of The Tax Court has become final. Statutory notices of deficiency under authority delegated by the Commissioner are issued by internal revenue agents in charge.

(2) If the taxpayer indicates his agreement to a deficiency by submitting a waiver notice consenting to the assessment and collection of the amount due, together with interest, or by making payment direct to the collector, either before or after the mailing of the statutory notice, the internal revenue agent in charge will transmit the case to the appropriate collector who will list the tax and interest, if any, for assessment.

(3) Under established procedure, before the issuance of a statutory notice of deficiency by the internal revenue agent in charge, the taxpayer may request

transfer of the case to a field division of the Technical Staff for its consideration. A request may be submitted for such a transfer while the case is in the ninety-day status if the request is not made prior to issuance of the statutory notice. When such a case is referred to the Staff division, the internal revenue agent in charge thereafter takes such action thereon as the Staff may direct. As to the Staff division procedure, see Subpart C of this part.

§ 601.14 *Claims for credit or refund.*

(a) In the event of overpayment of income or profits taxes, the taxpayer may file a claim for credit or refund with the collector. Generally, claim for refund or credit should be filed on Form 543 (see § 601.6), within 3 years from the time the return was filed or within two years from the time the tax was paid, whichever period expires the later. Special procedure is provided with respect to overpayment occasioned by deductions for bad debts and worthless securities (section 322 (b) (5) of the Code), by net operating loss and unused excess profits credit carry-backs (section 322 (b) (6) and (g)), and by amortization deductions (section 124). In the case of individuals, a properly executed return may, if the taxpayer so elects, operate as a claim for credit or refund of the amount of the overpayment disclosed by such return. If the taxpayer elects to use the withholding statement as a return, such return operates automatically as a claim for refund for the amount of the overpayment shown by the collector's computation of the tax on the basis of the return.

(b) Claims for credit or refund (except those involving individual returns audited by collectors) are investigated and considered under the supervision of the internal revenue agents in charge. The taxpayer may have a hearing with a representative of the agent in charge, and, if agreement is not reached, may request review by a Staff division of the action proposed by the agent in charge. As to Staff division procedure, see Subpart C of this part. If a credit or refund is allowed, a certificate of overassessment is issued by the Commissioner. In the event of the disallowance in whole or in part of a claim for refund, the Commissioner notifies the taxpayer of his decision by registered mail (section 3772 (a) (2) of the Code). Such notices are

issued in the central office of the Income Tax Unit of the Bureau.

(c) As to suits for credit or refund and compromises and closing agreements with respect to disputed liability, see § 601.4.

(d) A special procedure is applicable to claims for excess profits tax relief (including credit or refund) under section 722 of the Code. See section 732 of the Code for provisions respecting the issuance of registered notices of disallowances of claims for relief filed under section 722. These notices are under authority delegated by the Commissioner issued by internal revenue agents in charge. Action proposed by an internal revenue agent in charge on the claim of a taxpayer for relief under section 722 of the Internal Revenue Code is reviewable by the Excess Profits Tax Council, Bureau of Internal Revenue, Washington, D. C.

(e) There is also a special procedure applicable to applications for tentative adjustment with respect to amortization deductions under section 124 of the Code (see Forms 1046 and 1140 under § 601.17 (a)) and applications for tentative carry-back adjustments under section 3780 of the Code (see Forms 1045 and 1139 under § 601.17 (a)).

§ 601.15 *Rulings.* A taxpayer may request rulings from the Bureau as to the application of the income and profits tax laws to the facts of his situation. A request for a ruling upon an issue involved in a return filed for a year with respect to which the period of limitations on assessment or refund has not expired should be addressed to the internal revenue agent in charge having jurisdiction of such return. In other cases, the inquiry may be directed to the Deputy Commissioner, Income Tax Unit, Washington 25, D. C. (Mim. 4963, C. B. 1939-2, 459). As to authorization of attorneys seeking rulings and the policy of the Bureau generally in making rulings, see § 601.4 (e).

§ 601.16 *Administrative procedures for collection—(a) Periods of limitation on deficiencies.* (1) In general, the statutory period of limitation for assessment of income and profits taxes is three years after the return is filed. Exceptions in certain unusual cases are provided in sections 275 and 276 of the Code. In case of a false or fraudulent return with intent to evade tax or of a failure to file a return no time limitation on as-

essment or on a proceeding in court for collection applies. As indicated in § 601.13, the statutory period is suspended (except in jeopardy cases) for the period during which the Commissioner is prohibited from making the assessment or beginning a proceeding in court (and if a proceeding is placed upon the docket of The Tax Court, until the decision of the Court becomes final), and for sixty days thereafter. An additional period of assessment is provided for transferees and fiduciaries under section 311 of the Code.

(2) The period for assessment of a deficiency may be extended by an agreement (called a consent, Form 872) entered into by the taxpayer (or transferee or fiduciary) and the Commissioner prior to the expiration of the time otherwise provided for assessment. (See sections 275 (b) and 311 (b) (4), I. R. C.) Such a consent extends, with respect to the taxpayer, the period for claiming credit or refund for the agreed time of extension of the assessment period plus six months. (Section 322 (b) (3), I. R. C.)

(3) Special rules for mitigation of the effect of statutes of limitations are provided where a determination is made inconsistent with an earlier treatment of an item in the case of the taxpayer, or certain related taxpayers (section 3301 of the Code), or where an adjustment is made in a tax imposed under chapters 1 and 2 of the Code which effects a related tax under such chapters (section 3807 of the Code).

(b) *General procedure for enforcement.* For general procedure applicable to income and profits taxes with respect to distraint, liens, and penalties, see § 601.3 (b) and (c).

§ 601.17 *Forms—(a) Description.* The following described forms which are prescribed and furnished by the Bureau for use in connection with the taxes imposed under chapters 1 and 2 of the Code may be obtained at the principal and branch offices of collectors of internal revenue:

*Form D.* Schedules for substantiation of valuations and depletion based on cost or value metal mines. Questionnaire. Taxpayers engaged in the metal industries should use this form in furnishing, upon request of the Commissioner, detailed information necessary in auditing their returns.

*Form E.* Schedule for valuation of coal properties. Questionnaire to be filed upon

request of the Commissioner by taxpayers owning or leasing coal properties.

*Form F.* Schedules for substantiation of cost or value claimed for depletion of non-metallic mineral properties. Questionnaire to be filed upon request of the Commissioner by taxpayers engaged in the non-metallic mineral industries for use in the audit of their returns.

*Form O.* Oil and gas depletion data. Questionnaire to be filed by oil and gas producers and all persons claiming depletion of oil and gas properties. The schedules call for information necessary to determine depletion of cost or other basis, and percentage depletion, as well as depreciation at the rate of production.

*Form P.* Schedule for substantiation of valuations, depletion, and depreciation in royalty interests in metal mines. Questionnaire to be filed by owners of royalty interests in metal mines in substantiation of valuations in depletion and depreciation.

*Form T-P.* Special forest industries questionnaire for the pulp and paper industry. Questionnaire. This questionnaire is intended for those individuals, partnerships, corporations, or other "persons" subject to United States income or profits tax liability during the period 1912 to date who either owned or operated some kind of pulp, paper, or paperboard making plant, regardless of location, with or without standing timber as auxiliary property.

*Form T (Timber).* Forest industries schedule. Questionnaire to be filed, upon request of the Commissioner, by taxpayers operating, buying, leasing, or selling timberlands as a supplement to their income-tax returns.

*Form E-1.* Schedule for valuation of coal properties. Information required to substantiate depletion allowances under Revenue Acts.

*Form F-1.* Schedule of information by corporations of compensation of officers and employees in excess of \$75,000. To be filed by corporations with and as part of Form 1120, if the aggregate amount paid as compensation to any officer or employee is in excess of \$75,000.

*Form W-1.* Return of income tax withheld on wages. This is the quarterly tax return made by each employer who withholds income tax upon the wages of his employees under Subchapter D, Chapter 9, I. R. C.

*Form W-2.* Withholding statement. This is a statement of wages paid during the calendar year and the amount of income tax withheld on such wages, if any. The original and duplicate are furnished by the employer to the employee at the close of the calendar year or upon termination of his status as an employee. The original is used as an optional income tax return by the employee in lieu of Form 1040.

*Form W-2a.* This is the triplicate copy of the withholding statement, Form W-2, to be filed by the employer with the collector of

internal revenue at the same time as the withholding tax return (Form W-1) for the fourth quarter of the calendar year.

*Form W-2b.* Withholding statement of wages paid and income tax withheld on wages. This form is provided for use of employers where extra copies of Form W-2 are required for their files.

*Form W-3.* Reconciliation of quarterly returns of income tax withheld on wages (Forms W-1), with income tax withholding statements (Forms W-2a). This is an annual return filed by the employer as a reconciliation form at the same time Forms W-2a are filed.

*Form W-4.* Employee's withholding exemption certificate. This is an exemption certificate to be filed by the employee with the employer at commencement of employment or to reflect change in withholding exemption status.

*Form E-3.* Schedule for valuation of coal properties.

*Form 56.* Notice to the Commissioner of Internal Revenue of fiduciary relationship.

*Form 851.* Affiliation schedule. List of companies to be considered for consolidation. To be filed with return on Form 1120 by the parent corporation.

*Form 870.* Waiver of restrictions on assessment and collection of deficiency in tax. This form is forwarded to taxpayers with copy of agents' reports. Its execution by a taxpayer secures immediate assessment of the deficiency and interest on such deficiency ceases 30 days after this waiver is filed.

*Form 870-C.* Waiver of restrictions on assessment and collection. This form is forwarded to taxpayers filing consolidated returns with copy of agents' reports. Its execution by a taxpayer secures immediate assessment of the deficiency and interest on such deficiency ceases 30 days after this waiver is filed.

*Form 870-D.* Waiver of restrictions on assessment and collection of deficiency in excess profit on Navy contracts and subcontracts. This form is used in connection with excess profit on Navy contracts or subcontracts completed prior to first income-taxable year beginning after December 31, 1935.

*Form 870-E.* Waiver of restrictions on assessment and collection of deficiency in excess profit on Navy contracts and subcontracts. This form is used in connection with excess profit on Navy contracts or subcontracts completed within income-taxable years beginning after Dec. 31, 1935.

*Form 870-TS.* Waiver of restrictions on assessment and collection of deficiency in tax. This form is used by field divisions of the Technical Staff for settlements of non-docketed income-tax cases. It is similar to Form 870 in providing for prompt assessment of deficiencies but by its terms is not effective until approved by the head of division. It evidences a finality of settlement which is not accomplished by use of Form 870.

**Form 872.** Consent fixing period of limitation upon assessment of income and profits tax. This form is to be used by taxpayer when he consents to have an assessment of tax made after the expiration of the statutory period prescribed by law.

**Form 872-D.** Consent fixing period of limitation upon assessment of excess profit on Navy contracts or subcontracts. This form is used in connection with excess profit on Navy contracts or subcontracts completed prior to first income-taxable year beginning after Dec. 31, 1935.

**Form 873.** Acceptance of proposed over-assessment. This form is furnished taxpayers with a revenue agent's report in case the report indicates overassessments for years covered. Its execution by a taxpayer authorizes the agent in charge to forward his recommendation to the Bureau without affording the taxpayer further opportunity for discussion of the agent's findings.

**Form 873-D.** Acceptance of proposed over-assessment in excess profit on Navy contracts and subcontracts. This form is used in connection with excess profit on Navy contracts or subcontracts completed prior to first income-taxable year beginning after Dec. 31, 1935.

**Form 873-E.** Acceptance of proposed over-assessment in excess profit on Navy contracts and subcontracts. This form is used in connection with excess profit on Navy contracts or subcontracts completed within income-taxable years beginning after Dec. 31, 1935.

**Form 874.** Waiver of restrictions on assessment and collection of deficiency in tax and acceptance of overassessment. This form combines Forms 870 and 873.

**Form 874-D.** Waiver of restrictions on assessment and collection of deficiency and acceptance of overassessment in excess profit on Navy contracts and subcontracts. This form is used in connection with excess profit on Navy contracts or subcontracts completed prior to first income-taxable year beginning after Dec. 31, 1935.

**Form 874-E.** Waiver of restrictions on assessment and collection of deficiency and acceptance of overassessment in excess profit on Navy contracts and subcontracts. This form is used by a taxpayer to enter into an agreement with the Commissioner to suspend the running of the statute of limitations for filing suit for recovery of processing taxes.

**Form 875.** Acceptance of revenue agent's findings by a partnership or fiduciary. This form acknowledged receipt of a revenue agent's report by a partnership or fiduciary and accepts as correct the findings of the examining officer.

**Form 903.** Waiver of restrictions upon the assessment and collection of a deficiency. Waiver of restrictions upon the assessment and collection of a deficiency determined by the collector.

**Form 903-A.** Acceptance of proposed over-assessment. Acceptance of proposed over-assessment determined by the collector.

**Form 906.** Closing agreement as to final determination covering specific matters. This form is used by a taxpayer for a closing agreement as to final determination covering specific matters in pursuance of section 3760, I. R. C.

**Form 921.** Consent fixing period of limitation upon assessment of income and profits tax. This form is used in connection with the tentative allowance for income-tax purposes of estimated future expense liabilities under contract for sale of real estate.

**Form 921-A.** Consent fixing period of limitation upon assessment. Same as Form 921, except for use only of trust beneficiaries and partnership members.

**Form 934.** Power of attorney—departing alien—Income tax. This form is used by aliens who intend to depart from the United States and whose taxable year has not been terminated by the Commissioner. The taxpayer should file it with Form 1040-D with the collector or revenue agent in charge for the district in which he resides.

**Form 935.** Power of attorney—individual return or declaration—Income tax. This form is filed by the attorney in fact with the income tax return or declaration executed by him as such attorney in fact.

**Form 936.** Income tax—authorization joint returns or declarations. This form is filed with the joint income tax return or declaration of a husband and wife signed by one spouse for the other.

**Form 949.** Annual report of profit on Navy contracts. This form of report is required under the provisions of the Vinson Act, as amended, to be filed by every contracting party completing within its taxable year a Navy contract or subcontract for the construction or manufacture of any completed Naval vessel or aircraft or any portion thereof entered into (a) after December 31, 1945, in the case of a contracting party making its income tax return on the calendar year basis, or (b) after the close of the contracting party's taxable year ending in 1946, in the case of a contracting party making its income tax return on a fiscal year basis.

**Form 949-A.** Annual report of profit on Army contracts. This form of report is required under the provisions of the Vinson Act, as amended, to be filed by every contractor or subcontractor completing within its taxable year an Army contract for the construction or manufacture of any completed Army aircraft or any portion thereof, entered into (a) after December 31, 1945, in the case of a contracting party making its income tax return on the calendar year basis, or (b) after the close of the contracting party's taxable year ending in 1946, in the case of a contracting party making its income tax return on a fiscal year basis.

**Form 952.** Consent fixing period of limitation upon assessment of income and profits tax. This form of waiver is required to be filed by the corporation receiving property distributed in complete liquidation of an-

other corporation, such liquidation covering more than one year.

*Form 953.* Power of attorney and agreement. Form for use in connection with waiver Form 952.

*Form 954.* Income and profits tax bond under section 112 (b) (6), I. R. C. Form for use in connection with waiver Form 952.

*Form 955.* Income and profits tax bond under section 112 (b) (6), I. R. C. Form for use in connection with waiver Form 952.

*Form 957.* United States information return by an officer, director, or United States shareholder with respect to foreign personal holding company. This form is to be used (1) by officers, directors, or United States shareholders in making monthly information returns with respect to foreign personal holding companies; and (2) by such shareholders in making annual returns with respect to such foreign personal holding companies.

*Form 958.* United States annual information return by an officer or director with respect to foreign personal holding company. This form is to be used by officers and directors of foreign personal holding companies in making annual information returns respecting such companies.

*Form 962.* Statement of net worth. This form is required to be prepared and submitted in duplicate by the taxpayer for the purpose of assisting internal revenue agents in charge in obtaining certain desired information with respect to individual taxpayers having a net income of \$100,000 or over for 1936 and subsequent years.

*Form 964.* Election of shareholder under sec. 112 (b) (7), I. R. C.

*Form 966.* Return of information under sec. 148 (d), I. R. C., to be filed by corporations within 30 days after adoption of resolution or plan of distribution or liquidation. This form is to be used by corporations contemplating dissolution or liquidation.

*Form 969.* Election of taxpayer respecting basis of deductions for depreciation or amortization of improvements to leaseholds or capital expenditures incurred in acquiring leaseholds, where the lease contains an option for renewal. Used where taxpayer, who for any taxable year ended prior to Dec. 31, 1939, has been allowed depreciation or amortization through spreading cost or other basis of a lease or improvements over the period of the lease, including any exercised or unexercised renewal period, and such taxable year has been closed on that basis and the tax for that year cannot be redetermined, elects to make deductions on such basis for subsequent taxable years.

*Form 970.* Election under section 22 (d) I. R. C., relating to inventories in certain industries. This form is to be used by taxpayers electing to have the method provided in sec. 22 (d), I. R. C., applied in taking inventories of raw materials coming within the provisions of such subsection.

*Form 972.* Consent of shareholder to include specific amount in gross income under

sec. 28, I. R. C., or sec. 28 of the Revenue Act of 1938, as amended. This form is to be used by shareholders of a corporation agreeing to include in their gross income for their taxable year in which falls the last day of the taxable year of the corporation a specific amount as a taxable dividend, as the basis for the availability to the corporation of a consent dividends credit under such sections.

*Form 973.* Return of information to be filed by corporations claiming consent dividends credit under sec. 28, I. R. C., or sec. 28 of the Revenue Act of 1938, as amended. This form is to be used by a corporation claiming a consent dividends credit; accompanied by filed consents on Form 972.

*Form 973-A.* Return of information to be filed by personal holding companies claiming consent dividends credit.

*Form 975.* Notice of intention to claim a deficiency dividend credit under sec. 506, I. R. C. This form is required to be filed by corporations to notify of intention to have dividends considered as deficiency dividends for the purpose of allowance of credit under sec. 506. (See Form 976.)

*Form 976.* Claim for deficiency dividends credit, or credit or refund under sec. 506, I. R. C. This form of claim for a deficiency dividend credit under sec. 407 (a), relating to credit against unpaid deficiency, and under sec. 407 (b), relating to credit or refund of deficiency paid, is required to be filed after filing of notice of intention on Form 975.

*Form 977.* Consent fixing period of limitation upon assessment of liability at law or in equity for income and profits tax against a transferee. This form is to be used by a transferee when he consents to have assessment of his transferee liability made after the expiration of the statutory period prescribed by law.

*Form 982.* Consent of corporation to adjustment of basis of its property under sec. 113 (b) (3), I. R. C. This form is used by a corporation excluding from gross income any amounts of income attributable to the discharge, within the taxable year, of its indebtedness or for which it is liable evidenced by a security as defined in sec. 22 (b) (9), I. R. C.

*Form 982-A.* Consent of corporation to have the basis of its property adjusted under section 372 (a) (2), I. R. C.

*Form 985.* Cost depletion schedule. This schedule provides for the computation of allowances for depletion of oil reserves.

*Form 985A.* Depreciation schedule. This schedule is used for the computation of depreciation involving oil reserves on the basis of unit of production computation.

*Form 990.* Information return of organization exempt or claiming exemption from income tax.

*Form 991.* Application for relief under sec. 722, I. R. C. This form to be used by a corporation claiming the benefits of sec. 722, I. R. C., with respect to adjustment of average base period net income.

*Form 1000.* Ownership certificate—Interest on bonds of domestic and resident corporations. This form to be used by a citizen

or resident individual, fiduciary, or partnership in connection with interest on bonds of a domestic or resident corporation whether or not containing a tax-free covenant when (1) no tax is to be paid by corporation or (2) 2 percent tax is to be paid by corporation.

**Form 1001.** Ownership certificate—interest on bonds of domestic and resident corporations. This form is used by (1) nonresident alien individual, fiduciary, or partnership, (2) corporation having no office or place of business in the United States, or (3) where the owner is unknown, when presenting for payment interest coupons on bonds of domestic and resident corporations with or without a tax-free covenant clause.

**Form 1001-UK.** Ownership certificate. This form is to be used by a nonresident alien individual, foreign fiduciary, partnership, or corporation in connection with interest on coupon obligations of the United States or any agency or instrumentality thereof or bonds of a domestic or resident corporation exempt under the Tax Convention between the United States and the United Kingdom, signed April 16, 1945.

**Form 1001A-UK.** Exemption certificate. This form is to be used by a nonresident alien individual, foreign fiduciary, partnership, or corporation claiming exemption from, or reduction in rate of, United States tax under the Tax Convention between the United States and the United Kingdom signed April 16, 1945.

**Form 1010.** License for the collection of foreign income. When banks or agents collecting foreign items have filed with the Commissioner application for license on Form 1017, he is authorized to issue to the applicant a license on Form 1010.

**Form 1012.** Quarterly return of ownership certificates and income tax to be paid at source on interest derived from bonds and similar obligations of domestic and resident corporations. Quarterly statement to the Commissioner of Internal Revenue showing the number of Forms 1000 transmitted on which no tax is to be paid at source and names and addresses of owners of bonds and similar obligations of domestic and resident corporations, the amount of interest paid to each owner as reported on Forms 1000 and/or 1001, and the amount of tax withheld on such interest payments.

**Form 1012-A.** Continuation sheet for Form 1012. To be used in case additional sheets are required when preparing Form 1012.

**Form 1013.** Annual return of income tax to be paid at source on interest derived from bonds and similar obligations of domestic and resident corporations. Revised annually. Annual statement to the Commissioner of Internal Revenue showing by months the totals of interest paid and the tax deducted thereon as reported on Form 1012.

**Form 1017.** Application for license for collection of income from foreign countries.

Banks or agents, collecting foreign items, to make returns of information with respect thereto, must obtain a license from the Commissioner to engage in such business. Application for such license should be made on Form 1017 and the license, which is issued without cost, will be on Form 1010. See sec. 150, I. R. C.

**Form 1023.** Exemption Affidavit for religious, charitable, scientific, literary, or educational organizations. This form is used by the organizations claiming exemption from tax.

**Form 1024.** Exemption Affidavit for labor, agricultural, horticultural organizations; fraternal beneficiary societies; business leagues, chambers of commerce; civic leagues; social welfare organizations and local associations of employees. This form is used by the organizations claiming exemption from tax.

**Form 1025.** Exemption Affidavit for social clubs. This form is used by social clubs claiming exemption from tax.

**Form 1026.** Exemption Affidavit for local benevolent life insurance associations and mutual irrigations, etc.; companies and corporations holding title to property for exempt organizations and voluntary employees' beneficiary associations. This form is used by the organizations claiming exemption from tax.

**Form 1027.** Exemption Affidavit for building and loan associations. This form is used by building and loan associations, cooperative banks, and credit unions claiming exemption from tax.

**Form 1028.** Exemption Affidavit for farmers', fruit growers', or like associations. This form to be used by farmers', fruit growers', or like associations claiming exemption from tax.

**Form 1040.** Individual income tax return for net incomes from salaries, wages, dividends, interest, annuities, and incomes from other sources regardless of amounts, for calendar or fiscal year. A return must be made on this form, unless Form W-2 is filed, by every citizen of the United States whether residing at home or abroad, and every person residing in the United States, though not a citizen thereof, having for the calendar or fiscal year a gross income equal to or in excess of the amount prescribed in the revenue act applicable to the year involved.

**Form 1040-B.** Nonresident alien income tax return. A return shall be made on this form by every nonresident alien who is in receipt of taxable income, regardless of the amount, from sources within the United States, unless the tax on such income has been fully paid at the source.

**Form 1040-C.** Individual income tax return to be used by departing aliens. This form is used by resident and nonresident aliens who intend to depart from the United States, for the purpose of reporting income received up to and including the date of their intended departure. The taxpayer should present the return for certification to the

collector or revenue agent in charge for the district in which he resides.

**Form 1040-D.** Information income tax returns to be used by departing aliens. This form is used by aliens who intend to depart from the United States, and whose taxable year has not been terminated by the Commissioner.

**Form 1040-E.** Schedule for citizens entitled to benefits of sec. 251, I. R. C. This schedule should be filled in by citizens who claim the benefits of sec. 251, I. R. C., and filed with the collector, attached to the return on Form 1040.

**Form 1040-ES.** Declaration of estimated tax. To be used for reporting estimated tax by citizens and resident aliens under the provisions of sec. 58, I. R. C.

**Form 1040-F.** Schedule of farm income and expenses. This schedule is used by farmers who keep their accounts on a cash basis, and if desired may be used when the books of account are kept on the accrual basis. The schedule should be attached to the income tax return and filed with the collector.

**Form 1040FY.** Computation of income tax under section 108 of the Code for taxable years beginning in 1947 and ending in 1948. This form must be filed with and as a part of the individual income tax return Form 1040 (1947) only in case the taxpayer's taxable year begins in 1947 and ends in 1948.

**Form 1040-NB.** Nonresident alien income-tax return. This form is used by a nonresident alien (other than a resident of Canada) not engaged in trade or business within the United States and having a gross income of not more than \$15,400 received from sources within the United States, and by a nonresident alien (a resident of Canada) not engaged in trade or business within the United States and having gross income from sources within the United States, regardless of the amount.

**Form 1040-NB-a.** Nonresident alien income-tax return. This form (rather than Form 1040-NB) is used by a nonresident alien (other than a resident of Canada) not engaged in trade or business within the United States and having a gross income of more than \$15,400 from sources within the United States.

**Form 1040-NB (United Kingdom).** Nonresident alien income tax return. This form is used by a resident of the United Kingdom with no permanent establishment in the United States and subject to United Kingdom tax with respect to income from sources within the United States, as provided in the Tax Convention between the United States and the United Kingdom, signed April 16, 1945.

**Form 1041.** Fiduciary income tax return for calendar or fiscal year. This form is used by a fiduciary if the gross income for the taxable year of the estate or trust for which he acts is \$500 or over, or the net income for the trust is \$100 or over, or if any beneficiary is a nonresident alien.

**Form 1042.** Annual return of income tax to be paid at source on income, paid to nonresident alien individuals, or to foreign partnerships and foreign corporations not engaged in trade or business within the United States. Annual return to the collector of internal revenue showing the names and addresses of nonresident aliens, foreign partnerships, or nonresident foreign corporations to which income other than corporate bond interest was paid during the previous taxable year, the nature and amount of such income paid and the amount of tax withheld.

**Form 1042-A.** Continuation sheet for Form 1042. To be used in case additional sheets are required when preparing Form 1042.

**Form 1042-B.** United States annual return of income tax withheld from Canadian addressees. This return, in duplicate, is required to be made by all United States withholding agents who withheld 5 percent and 15 percent tax from Canadian addressees. Reported on this return are not only items of income listed on Form 1042, but also items of interest listed on monthly returns, Forms 1012, including items of interest where the liability for withholding is only 2 percent.

**Form 1042-C.** Annual return of income tax withheld from French addressees. This return (in duplicate) is required to be made by all United States withholding agents who have paid to persons whose addresses of record are in France any fixed or determinable annual or periodical income. There shall be reported on this return, not only items of income listed on Form 1042, but also items of interest listed on quarterly returns, Form 1012, including items of interest where the liability for withholding is only 2 percent.

**Form 1042-D.** Annual return of income tax withheld from United Kingdom addressees. This return (in duplicate) is required to be made by all United States withholding agents who have paid to residents of the United Kingdom or corporations managed and controlled in the United Kingdom any fixed or determinable annual or periodical income. There shall be reported on this return not only items of income listed on Form 1042, but also items of income exempt from tax under the United States-United Kingdom income tax Convention. However, items of interest need not be listed where Form 1001-UK (in duplicate), or substitute Form 1001-UK (in duplicate), has been filed.

**Form 1044.** Alien's questionnaire. To be filled in by aliens who, while present in the United States, derived profits from transactions in the United States since January 1, 1940, in commodities, or in stock or securities, and claim to be nonresident aliens not engaged in trade or business in the United States and, therefore, exempt from Federal income tax on such profits.

**Form 1045.** Application for tentative carry-back adjustment. For use by taxpayers other than corporations who (1) have

a net operating loss carry-back; and (2) desire a tentative carry-back adjustment.

*Form 1046.* Application for tentative adjustment with respect to amortization deduction. For use by taxpayers other than corporations who (1) have elected to terminate the amortization period with respect to an emergency facility; and (2) desire a tentative adjustment with respect to the amortization deduction.

*Form 1065.* Partnership return of income for calendar or fiscal year. A return shall be made on this form by every domestic partnership and every foreign partnership doing business within the United States or in receipt of income from sources therein, regardless of the amount of its gross or net income. This form is to be filed also by syndicates, pools, joint ventures, etc.

*Form 1078.* Certificate of alien claiming residence in the United States. To be filed with the withholding agent by an alien residing in the United States for the purpose of claiming the benefit of such residence for income-tax purposes.

*Form 1087.* Ownership certificate—dividends on stock. For use in disclosing actual ownership of stock issued by domestic and resident corporations.

*Form 1090.* Statement of income and profit and loss accounts for the year. To be compiled for each railroad company included in the income-tax return on Form 1120 and filed therewith.

*Form 1096.* Annual information return. This form contains a statement showing the number of information returns filed on Form 1099, and is used as a letter of transmittal when forwarding such forms to the Commissioner.

*Form 1099.* Information return for calendar year of income payments. Annual information return filed by an individual, partnership, fiduciary, or corporation with the Commissioner, giving the name and address of each individual, partnership, or fiduciary to whom income as described on the form was paid during the calendar year.

*Form 1099-L.* Information return—Distributions in liquidation for calendar year. To be used by every corporation making any distribution of the whole or any part of its capital stock, with respect to each shareholder to whom such distribution was made during the calendar year.

*Form 1114.* Application to establish a replacement fund. To be used in case a taxpayer elects to establish a replacement fund for the purpose of restoring property which he has been compulsorily or involuntarily deprived of as a result of fire, shipwreck, theft, condemnation, or similar causes.

*Form 1116.* Statement to support claim for credit on individual income-tax return for taxes paid or accrued to foreign countries and possessions of the United States. When credit is sought for income, war-profits, or excess profits taxes paid other than to the United States, the income-tax return of the individual must be accompanied by this form.

*Form 1117.* Income-tax bond (for foreign taxes claimed by individuals). When claim for credit is made by an individual on Form 1116 for a tax accrued to a foreign government but not paid, the Commissioner may require this bond from the taxpayer as a condition precedent to the allowance of such credit.

*Form 1118.* Statement to support claim for credit on a domestic corporation income-tax return for taxes paid or accrued to a foreign country or a possession of the United States. To be filed by a domestic corporation. When credit is sought for income, war-profits, or excess-profits taxes paid other than to the United States, the income and profits tax return of the corporation must be accompanied by this form.

*Form 1119.* Income-tax bond (for foreign taxes claimed by domestic corporations). When claim for credit is made by a corporation on Form 1118 for a tax accrued to a foreign government but not paid, the Commissioner may require bond from the taxpayer as a condition precedent to the allowance of such credit.

*Form 1120.* Corporation income tax return for calendar or fiscal year. A return shall be made on this form by every domestic corporation, joint-stock company, association, or insurance company (other than life insurance company and certain forms of mutual insurance companies), and every foreign corporation engaged in trade or business within the United States or having an office or place of business therein, and not specifically exempt.

*Form 1120-H.* Income return of personal holding companies for surtax purposes. A return shall be made on this form by every domestic or foreign corporation classified as a personal holding company.

*Form 1120-L.* Life insurance company income-tax return. To be filed by every domestic life insurance company and every foreign life insurance company doing business within the United States or holding reserve funds upon business transacted within the United States, therein issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 percent of its total reserve funds.

*Form 1120-M.* Mutual insurance company income tax return. To be filed by a mutual insurance company other than a life or marine insurance company or a fire insurance company issuing perpetual policies.

*Form 1120-NB.* Nonresident foreign corporation income tax return. Form of return to be used by foreign corporations not engaged in trade or business within the United States and not having an office or place of business therein at any time within the taxable year.

*Form 1120-NB (United Kingdom).* Nonresident foreign corporation income tax return. To be used by a corporation managed and controlled in the United Kingdom with no permanent establishment in the United

States and chargeable to United Kingdom tax with respect to income from sources within the United States, as provided by the Tax Convention between the United States and the United Kingdom, effective January 1, 1945.

**Form 1122.** Return of information and authorization and consent of subsidiary corporation included in a consolidated income-tax return. To be filed by every subsidiary corporation in case its net income is included in a consolidated return filed by the parent corporation for income-tax purposes.

**Form 1127.** Application for an extension of time for payment of a deficiency in tax or installment of tax. To be filed by a taxpayer in case an extension in time is desired for the payment of a deficiency in income tax or installment of tax when the payment of such deficiency would result in an undue hardship.

**Form 1127-B.** Income and profits tax bond. To be used when a bond is required in connection with extension granted for payment of a deficiency in tax.

**Form 1128.** Application for change in accounting period. To be filed by the taxpayer in case it is desired to make a change in the basis of the accounting period.

**Form 1129.** Income and profits tax bond. To be used by taxpayer when an extension of time is desired in the case of a jeopardy assessment.

**Form 1130.** Income and profits tax bond. To be used in connection with granting an extension of time for payment of tax determined by taxpayer or an installment thereof.

**Form 1132.** Income tax bond. To be used where gain upon transmission at death of installment obligations is not reported in decedent's return.

**Form 1133.** Income tax bond—departing alien. For certificate of compliance by departing alien.

**Form 1138.** Statement for the purpose of extending time for payment of taxes by corporations expecting carry-backs. Applicable to taxes imposed by Chapters 1 and 2 of the Internal Revenue Code, which in general include all income and profits taxes.

**Form 1139.** Application for tentative carry-back adjustment. For use by corporations which (1) have a net operating loss carry-back or an unused excess profits credit carry-back; and (2) desire a tentative carry-back adjustment.

**Form 1140.** Application for tentative adjustment with respect to amortization deduction. For use by corporations which (1) have elected to terminate the amortization period with respect to an emergency facility; and (2) desire a tentative adjustment with respect to the amortization deductions.

**Form 1285.** Waiver of restrictions on the assessment and collection of deficiency tax. Its execution by taxpayer secures assessment of the portion of a deficiency not in controversy.

**Form 1289.** Election and consent relative to recovery of unconstitutional Federal taxes.

**Form 1289A.** Consent fixing period of limitation upon assessment of deficiency under section 128 of the I. R. C.

**Form 1291.** Receipt of taxpayer for copy of revenue agent's report.

**Form 1297.** Agreement—husband and wife agreeing to offset an overassessment against a deficiency in tax.

**Form 1310.** Statement of claimant to refund due on behalf of deceased taxpayer.

**Form 7494.** Annual statement of insurance companies, life and accident. Insurance schedule filed by assessment, life, and accident associations supplemental to returns of annual net income.

**Form 7495.** Annual statement of insurance companies—miscellaneous stock. Insurance schedule filed by miscellaneous stock companies supplemental to returns of annual net income.

**Form 7495A.** Underwriting and investment exhibit. Insurance schedule to accompany Form 7495.

**Form 7496.** Annual statement of life insurance companies. Insurance schedule filed by life insurance companies supplemental to returns of annual net income.

**Form 7497.** Annual statement of stock, fire and marine insurance companies. Insurance schedule filed by stock, fire, and marine companies supplemental to returns of annual net income.

**Form 7497A.** Underwriting and investment exhibit. Annual statement—insurance schedule, to accompany 7497, annual statement—stock, fire, and marine companies.

(b) *Additional forms applicable generally.* For a list and description of additional forms prescribed by the Bureau for use in connection with internal revenue taxes generally, see § 601.6.

#### SUBPART C—TECHNICAL STAFF

**SOURCE:** §§ 601.21 to 601.23 appear at 11 F. R. 177A-34, 14263, as amended at 12 F. R. 953, 13 F. R. 7710. Redesignation noted at 14 F. R. 5200.

§ 601.21 *Appellate functions and procedures in the determination of income, profits, estate or gift tax liability.* (a) Under existing procedure the Internal Revenue Agent in Charge, or other members of his office advise the taxpayer of his opportunity of appeal from positions taken by that office in a tax matter to the field division of the Technical Staff, and upon the taxpayer's oral or written request to the internal revenue agent in charge the case and its administrative record is thereupon referred to the staff field division. Also a taxpayer, if he so desires may make written request to a Staff field division for consideration of a case remaining unsettled after proceed-

ings had in the office of an internal revenue agent in charge. There are no prescribed forms or procedures to be used or followed in requesting the Staff division to take jurisdiction of such a case.

(b) No taxpayer is required to submit his case to a Staff division for consideration. Appeal is at the option of the taxpayer. In order, however, to encourage the proper settlement of tax disputes in the offices of the internal revenue agents in charge and to insure the fullest development of the issues in unsettled cases, the submission of disputed liabilities to a Staff division without first filing a petition to The Tax Court of the United States is restricted to taxpayers who have tried in good faith to reach agreements with the internal revenue agents in charge. However, if a taxpayer asks for immediate consideration by a Staff division without prior conference or other proceedings in the office of the internal revenue agent in charge, that official may, in the exercise of his reasonable discretion, grant that request.

(c) Proceedings before the Technical Staff are informal. Testimony under oath is not taken, although matters alleged as fact may be required to be submitted in the form of affidavits. Taxpayers may appear in person or by or with a representative duly enrolled for practice before the Treasury Department and whose appearance must be under a proper power of attorney authorizing him to act for the taxpayer. See § 601.22. The taxpayer is free to present whatever he desires by way of asserted fact or argument, orally or by brief, in support of his contentions. However, any material matter of fact originally presented to the Staff will be subject, at the option of the Division Head, to reference to the local internal revenue agent in charge for investigation and report.

(d) The determinations of the Staff are governed by the law applicable to the particular case with which the Staff is dealing. The administrative settlement of disputed tax liabilities comprehends the mutual concession of debatable issues on the part of both the taxpayer and the Government and with each party weighing for itself the litigating possibilities of the case. The Technical Staff endeavors to avoid discrimination between taxpayers in the practical handling of cases. However, its action in

disposing of a specific case is not intended to constitute a precedent to be cited or regarded as a *stare decisis*.

(e) Where the case settled is not one pending before The Tax Court, disposal is by administrative procedure under which the taxpayer consents to the assessment of such, if any, deficiency as has been agreed upon or agrees to accept such, if any, overassessment as may result under the agreed settlement. As an incident to such settlements the taxpayer is ordinarily required to execute an agreement to make prompt payment of the agreed deficiency and statutory interest thereon; not to file any offer in compromise in respect to the agreed tax liability; and, upon request by the Commissioner, to execute at any time a final closing agreement (see § 601.4 (c)) under the provisions of section 3760 of the Internal Revenue Code in respect to the tax liabilities determined under the agreed basis of settlement.

(f) Where the proceedings involve the agreed settlement of a case pending before The Tax Court, disposition is effected by a stipulation of agreed deficiency or overassessment to be filed with The Tax Court and in conformity with which the Court will enter its final order.

(g) Cases not filed with The Tax Court and which remain unsettled after proceedings before the Technical Staff are returned to the internal revenue agent in charge under an Action Memorandum directing, as the tax liabilities determined by the Division Head may disclose as proper, either the issuance of a statutory notice of deficiency, a statutory notice of disallowance of a claim in whole or in part, the preparation of a certificate of overassessment, or other appropriate action.

(h) Cases pending before The Tax Court and unsettled after proceedings had before the Technical Staff are returned to the Division Counsel for preparation of defense of such tax liability as the Division Head may have determined as a result of his consideration of the case.

§ 601.22 *Practice and procedure requirements.* (a) Commissioner's Mimeograph 4960, approved by the Secretary, effective October 1, 1939 (Report of the Commissioner of Internal Revenue, 1940, page 39), provides in part as follows:

*Procedure in Pre-90-Day Cases*

(In which statutory notice of deficiency has not issued)

4. Each Staff Division will accord hearings upon protested cases referred to it in accordance with prescribed procedure by the Internal Revenue Agent in Charge situated within the territorial jurisdiction of the Division. It will not, however, consider before the issuance of the statutory notice of deficiency any case in which no protest has been filed with the Internal Revenue Agent in Charge. In any case in which protest has been filed with the Internal Revenue Agent in Charge, it will not be required to consider prior to the issuance of the statutory notice new contentions or new evidence that may be decisive with respect to any major issue, but upon the presentation of such contentions or evidence, may refer the issues involved to the Internal Revenue Agent in Charge for further consideration and for conference with the taxpayer if advisable.

5. When the Head of a Staff Division has reached a final conclusion with respect to any case, he will prepare a memorandum thereof setting forth the exact grounds upon which his conclusion rests. This memorandum will be transmitted with all the papers in the case to the proper Internal Revenue agent in charge, who will—

(a) Certify a deficiency to the Collector in accordance with Mimeograph 3552 (procurable from collectors);

(b) Issue a statutory notice of deficiency; or

(c) Transmit the case to the Bureau for the preparation of a certificate of over-assessment, or other appropriate action.

*Jurisdiction After Statutory Notice*

6. The Staff Divisions will have complete jurisdiction of all cases after the issuance of the statutory notice. Upon the taxpayer's request, the Head of a Staff Division may take up for settlement any case in which a statutory notice has been issued, and may grant the taxpayer a hearing thereon. Except in unusual circumstances, however, he will not grant a hearing in such a case prior to the filing of the petition if a hearing has been had in the office of the Internal Revenue Agent in Charge, or if the taxpayer has refused an opportunity to be heard there.

7. After the filing of the petition in any case, the Head of the proper Staff Division will continue to have sole authority, subject to the provisions of paragraph 2 above [quoted in § 600.53 (b) (2)], for the settlement of the case, and will have the custody of all files, papers, and documents relating to the case, which will, however, at all times be available to the Division Counsel for the preparation of the answer to the petition and for the defense before the Board [Tax Court] of the Commissioner's determination.

*Hearings*

8. At any hearing granted by a Staff Division, whether at a local or branch office or on circuit, the Internal Revenue Agent in Charge will be represented if he so desires, or if the Head of the Staff Division, or the Technical Adviser in Charge of a local office, as the case may be, deems it advisable; and at any such hearing on a case involving the ad valorem fraud or negligence penalty, the Special Agent in Charge will be represented if he so desires. Except as may be otherwise directed by the Commissioner, through the head of the Technical Staff, the conduct of hearings and other proceedings by the Staff Division will be in accordance with the procedure customarily followed by the Technical Staff.

(b) In general the practice and conference procedure before the Technical Staff is governed by Treasury Department Circular 230 (31 CFR Part 10), and the Bureau of Internal Revenue Conference and Practice Requirements (see § 601.4 (d)). In addition to such rules, but not in modification of them, the following rules applicable to practice before the Technical Staff were promulgated February 17, 1942:

*Rule I.* The Staff conferee shall bear in mind that an exaction by the United States Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the United States Constitution. The conferee, in his conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be the duty of the conferee to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

*Rule II.* Settlement Policy. In recognition of the difference between abstract theory and practical administration, where substantial uncertainties exist either in law or in fact, or both, as to the correct application of the law to the whole record of a controversy, the Staff will give serious consideration to an offer of settlement of the dispute on a basis which fairly reflects the strength or weakness of the opposing views. However, no settlement will be countenanced based upon nuisance value of the case to either party.

*Rule III.* Conference Policy. Where the Staff conferee, or a majority of the conferees who conducted the hearing in a case, recommended acceptance of the taxpayer's proposal of settlement, or, in the absence of a proposal, recommend action favorable to the taxpayer, and said recommendation is disapproved in whole or in part by a reviewing officer in the Staff Division, the taxpayer shall be so advised by such reviewing officer and

upon written request shall be accorded a rehearing before such reviewing officer. The Staff disregards this rule where the interests of the Government would be injured by delay, as for example, a case involving the imminent expiration of the statute of limitations, dissipation of assets, etc.

**Rule IV.** Where the Head of a Staff field division deems it advisable to secure advice from the Headquarters office of the Staff in Washington, D. C., respecting determination of tax liability in a case, the taxpayer shall be so advised and given an opportunity to transmit his own statement respecting the case along with the request made by the Division Head. The Division Head shall clearly state his own position or recommendation on the question submitted. No conference will be held on the case in Washington. Where the Head, Technical Staff, Washington, D. C., disagrees with the recommendation of the Division Head, and the recommendation of the Division Head was favorable to the taxpayer, then before making reply to the request for advice, the Head or a Coordinator, with full authority to represent the Headquarters office in rendering advice, will proceed to the local office where the case originated and conduct a conference on the case with the taxpayer. Where the recommendation of the Division Head was adverse to the taxpayer, then a conference in the field will be held only in case the Head, Technical Staff, considers it desirable under the circumstances.

**Rule V.** Any taxpayer who considers that a case pending before the Technical Staff should be handled before the Bureau in Washington, D. C., may so request in a communication addressed to the Commissioner of Internal Revenue, Washington, D. C., Attention Head, Technical Staff, setting forth in detail the reasons therefor. The request so made will receive prompt consideration, and may be discussed with the Head. The Staff policy in acting upon such requests is that no case will be withdrawn from the jurisdiction of a Staff field division, where adequate technical facilities are available or can be made available, for the determination of the case in such field division. In a case docketed with the Board of Tax Appeals, the joint action of the Chief Counsel for the Bureau of Internal Revenue and the Commissioner is required to withdraw a case from the jurisdiction of a Staff field division.

**Rule VI.** Where the Division Head or the Technical Adviser in Charge of a local Staff office, as the case may be, deems it advisable, whether or not upon request of the taxpayer, the Internal Revenue Agent in Charge will be requested to be represented at any Staff conference on the case, in which event such representative (or representatives) will be invited and expected to enter into the discussion and oral argument at the conference on an equal footing with the taxpayer.

**Rule VII.** In order to bring a case before the Technical Staff in pre-statutory notice status, the taxpayer must first file with the

Internal Revenue Agent in Charge a written protest setting forth specifically the reasons for his refusal to accept the Agent's preliminary findings. The Agent in Charge may also, in the reasonable exercise of his discretion, require a conference on the case in his office before complying with the taxpayer's request that the case be referred to the Technical Staff.

**Rule VIII.** A taxpayer cannot withhold evidence from the Internal Revenue Agent in Charge and expect to introduce it for the first time before the Technical Staff, at a conference in pre-statutory notice status, without being subject to having the case returned for reconsideration to the Agent in Charge. Where newly discovered evidence is submitted for the first time to the Staff, in a case pending in pre-statutory notice status, that office, in the reasonable exercise of its discretion, may transmit same to the Internal Revenue Agent in Charge for his consideration and comment.

**Rule IX.** Where the taxpayer has had the benefit of a conference either before the office of the Internal Revenue Agent in Charge or before the Technical Staff, as the case may be, in the pre-statutory notice status, or where the opportunity for such a conference was accorded but not availed of, there will be no conference granted before the Technical Staff in the 90-day status after the mailing of the statutory notice of deficiency, in the absence of unusual circumstances.

**Rule X.** In any case docketed before the United States Board of Tax Appeals [now The Tax Court of the United States] on which a conference is being conducted before a Staff conferee, the Division Counsel is privileged to be represented and to participate in the discussion. In cases not docketed before the United States Board of Tax Appeals [Tax Court] on which the conference is being conducted before a Staff conferee, the Division Counsel or his representative may be requested to attend and to give legal advice in the more difficult cases, or on matters of legal or litigating policy.

**Rule XI.** A taxpayer may request the reopening or resumption of settlement conferences in a docketed case, before the Division Head or the Technical Advisor in Charge of a local Staff office, and whenever such request is granted, the Staff conferee who originally heard the case shall ordinarily be present and participate in any conference thereon.

**Rule XII.** In cases of exceptional difficulty and complexity, or where serious matters of policy are involved, there may be a conference arranged before a Group of Three to be presided over by the Division Head or the Technical Advisor in Charge; a second member of the Group shall be the Staff conferee to whom the case is assigned; and the third member of the Group may be an attorney of the Chief Counsel's office or any employee of the Bureau of Internal Revenue at large, who is qualified as regards the question presented.

(c) Commissioner's Mimeograph, R. A. 940, T. S. No. 5, approved by the Secretary on October 8, 1938, provides in part as follows:

(1) It will be the policy of the Department not to reopen cases closed as the result of action by a field division of the Technical Staff, unless the disposition involves fraud, malfeasance, concealment or misrepresentation of material fact, or an important mistake in mathematical calculations, and then only by appropriate action through the Head of the Technical Staff. \* \* \*

§ 601.23 *Offers in compromise.* (a) The classes of offers in compromise over which the Technical Staff has jurisdiction are required to be submitted upon a properly executed Treasury Department Form 656 or 656C, attached to which there must be a properly executed Treasury Department Form 433. These forms are available and can be had at the offices of collectors of internal revenue. When executed, the documents are customarily filed with the collector charged with the duty of collecting the tax sought to be compromised. The documents may, however, be submitted to a field division office of the Technical Staff for transmittal to and filing with the appropriate collector.

(b) Offers in compromise are first considered by the collector with whom filed. After examination that officer makes a written recommendation for acceptance or rejection. Under regular administrative procedure the case record is transmitted to the appropriate field division of the Technical Staff. There a conference may be had at the instance of either the taxpayer or the Staff Division.

(c) Within the class of compromise cases under Technical Staff jurisdiction, the Head of each field division is authorized to reject, in the name of the Commissioner, any offer in compromise referred for his consideration. He may not, however, reject any offer in which rejection has not been recommended by the collector without first calling upon that officer for a statement of his views and affording him an opportunity to be heard with respect to the proposed rejection.

(d) If the head of a Staff division considers an offer to be acceptable, a memorandum recommending acceptance is prepared, submitted to the Division Counsel for approval or adverse comment, and the case is then transmitted to the Technical Staff headquarters office in Washington. At Staff headquar-

ters the recommendation for approval is reviewed, and if considered acceptable it is submitted to the Special Deputy Commissioner (see Subpart B of this part) for his review and submission to the Commissioner.

(e) If the head of a Staff division decides that an offer in compromise is unacceptable, he promptly notifies the taxpayer of his decision. If, however, the Division Head recommends acceptance, the taxpayer is not notified of such action until the recommendation is accepted by the Commissioner and the Secretary.

#### SUBPART D—ESTATE AND GIFT TAXES

SOURCE: §§ 601.26 to 601.33 appear at 11 F. R. 177A-34, as amended at 12 F. R. 5485, 13 F. R. 4121, 7710. Redesignation noted at 14 F. R. 5200.

§ 601.26 *General.* (a) The estate tax is imposed by chapter 3 of the Internal Revenue Code on the transfer of net estates of decedents. The gift tax is imposed by chapter 4 of the Code with respect to transfers of property by gift during the calendar year.

(b) Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with the estate tax are contained in Regulations 105 (Part 81 of this chapter), and in the regulations promulgated pursuant to the Death Duty Convention between the United States and Canada set forth in T. D. 5455 (Part 82 of this chapter), and the Death Duty Convention between the United States and United Kingdom set forth in T. D. 5565 (Part 82 of this chapter).

(c) Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with the gift tax are contained in Regulations 108 (Part 86 of this chapter).

§ 601.27 *Tax collection—*(a) *Estate tax.* (1) Estate taxes are collected by means of returns. The estate tax return on Form 706 of every decedent whose gross estate exceeds the applicable specific exemption provided by the Code must be filed in duplicate within 15 months after date of death with the collector of internal revenue. The tax is payable to the collector at the time the return is required to be filed. Upon receipt of the return, the collector will conduct a preliminary examination thereof for mathematical accuracy and proper execution. The tax shown on the return as computed by the executor

or administrator, or as corrected and agreed to by him will be listed for assessment. Thereafter the collector will refer one copy of the return to the appropriate field division of the Bureau for examination and determination of the correct tax liability, under the procedure described in § 601.28.

(2) Under certain circumstances the collector is authorized to grant an extension of time for filing the estate tax return for a period not in excess of 30 days from the due date. Written application therefor must be received by the collector prior to the expiration of the period for which the extension is requested and authorized. For extensions granted by the Commissioner see § 601.32. Application for an extension of time for payment of the tax shown on the return must be filed with the collector. Such application will be transmitted to the Bureau at Washington, for the attention of the Deputy Commissioner, Miscellaneous Tax Unit, for disposition.

(3) If it is determined upon the decedent's death that his estate will be subject to the estate tax, the Code requires that written notice be filed for the estate with the collector within 2 months after death or within 2 months after the executor has qualified. Form 704 should be used in the case of a citizen or resident of the United States, and Form 705 in the case of a nonresident not a citizen.

(4) Detailed information as to the return, and all other forms, prescribed for use in connection with the estate tax are contained in the regulations referred to in § 601.26. Copies of the regulations, together with copies of all necessary forms and instructions as to their preparation and filing, may be obtained from the collector.

(b) *Gift tax.* (1) Gift taxes are collected by means of returns. The tax is payable to the collector at the time the return is required to be filed. The gift tax return on Form 709 of any individual who makes a transfer or transfers by gift to any one donee within the calendar year 1940, or any calendar year thereafter, of a total value in excess of the applicable exclusion must be filed with the collector of internal revenue for the district in which the donor has his legal residence. The return must be filed in duplicate on or before the 15th day of March following the close of the calendar year in which gifts were made. Upon receipt of the return, the collector will conduct a

preliminary examination thereof for mathematical accuracy and proper execution. The tax shown on the return as computed by the donor, or as corrected and agreed to by the donor, will be listed for assessment.

(2) Upon receipt of the donor's gift tax return in Washington it will be examined and the correct tax determined under the procedure described in § 601.28.

(3) Under certain circumstances the collector is authorized to grant an extension of time for filing the gift tax return for a period not in excess of 30 days from the due date. Written application therefor must be received by the collector prior to the expiration of the period for which the extension is requested and authorized.

(4) Every donee or trustee (except exempt charitable, etc., organizations) receiving property by gift from a donor must file an information return or notice, if the value of such gift is in excess of \$3,000 (or regardless of value in the case of a gift of a future interest in property).

(5) Detailed information as to the return form, and all other forms, prescribed for use in connection with gift taxes are contained in § 601.26. Copies of these regulations, together with all necessary forms and instructions as to their preparation and filing, may be obtained from the collector.

§ 601.28 *Examination of estate and gift tax returns and determination of correct tax liability.* (a) The internal revenue agents in charge have jurisdiction in the initial determination of estate tax liabilities of decedents' estates.

(b) The examination of gift tax returns is generally made in Washington in the Miscellaneous Tax Unit of the Bureau. If the examination in any such case discloses a deficiency in tax, the Miscellaneous Tax Unit will advise the donor of the proposed deficiency in a preliminary (30-day) letter in which he will be accorded an opportunity to file protest and request a conference in the appropriate field division. If the Miscellaneous Tax Unit determines that an examination should be made by an internal revenue agent in a field division, the return will be referred to the appropriate field office. Accordingly, under the foregoing procedure the donor is privileged to submit a protest against a proposed deficiency and request a hearing in the appropriate field division, whether the ex-

amination is conducted in Washington or in the field office.

(c) As soon as practicable after an estate or gift tax return is received by the internal revenue agent in charge of a field division, it will be examined and the amount of the tax determined. If the examination results in the acceptance of the return as filed without change in tax liability, the case will be transmitted to Washington for post audit review in the Miscellaneous Tax Unit, and for issuance of the closing letter to the taxpayer. If, on the other hand, the examination results in a proposed deficiency in tax, and the internal revenue agent making the examination is unable to secure the taxpayer's agreement to the proposed adjustment, a preliminary (30-day) letter advising of the proposed adjustment in tax liability, together with a copy of the nonconfidential report, will be sent to the taxpayer. The taxpayer is accorded the opportunity in such letter to submit a protest and to request a conference in regard to the proposed deficiency.

(d) If the case involves a deficiency and no protest is submitted within the 30-day period, or during an additional period allowed upon the taxpayer's request, the internal revenue agent in charge will close the case and send the taxpayer a statutory (90-day) letter by registered mail as provided by law.

(e) If a protest is filed but the taxpayer declines a conference, the internal revenue agent in charge will reconsider the case in conjunction with the protest and advise the taxpayer of his conclusions. If an agreement is not reached with the taxpayer, the internal revenue agent in charge will ordinarily thereafter issue the statutory (90-day) letter, but he may advise the taxpayer that on request the case will be referred to the appropriate division of the Technical Staff for hearing. See Subpart C of this part for Technical Staff procedure.

(f) If a protest is filed and a conference is held, but without agreement, the internal revenue agent in charge will notify the taxpayer of his conclusions, advising him that upon request the case will be referred to the appropriate Staff division for hearing, but in the absence of such request the statutory (90-day) letter will be mailed at the expiration of a specified period.

(g) In any estate or gift tax case involving an overassessment the taxpayer

may, after receiving the preliminary (30-day) letter, file a protest (against determinations reducing the overassessment), in which case the procedure to be followed will be substantially the same as that described above with respect to deficiency cases. The taxpayer will be advised of the conclusions reached after consideration of the protest, and, in the absence of a request to have the case referred to a Staff division, the internal revenue agent in charge will recommend to the Commissioner the issuance of a certificate of overassessment. If the taxpayer requests that his protest be referred to a Staff division, the internal revenue agent in charge will transmit the case to the appropriate Technical Staff division.

(h) In all cases in which a deficiency in respect of a tax is determined, and a statutory (90-day) letter is sent to the taxpayer by registered mail covering such deficiency, the taxpayer may file a petition with The Tax Court for a redetermination of the deficiency, other than a deficiency resulting from the correction of a mathematical error appearing upon the return. The petition must be filed within 90 days after the mailing of the statutory letter (or within 150 days after such mailing where such letter is addressed to a person outside the States of the Union and the District of Columbia) not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day.

(i) If the taxpayer indicates his agreement to a deficiency by submitting a waiver notice consenting to the assessment and collection of the amount due together with interest, or by making payment direct to the collector, either before or after the mailing of the statutory notice, the internal revenue agent in charge will transmit the case to the appropriate collector who will list the tax and interest, if any, for assessment. The report of examination will be submitted to Washington for post audit review in the Miscellaneous Tax Unit of the Bureau.

(j) If a field determination to which the taxpayer has agreed is disapproved upon post review in Washington and the taxpayer or his representative and the internal revenue agent in charge are unable to reach an agreement with respect to the issue, the taxpayer or his representative may, if he so desires, be granted a hearing in the office of the internal revenue agent in charge before a repre-

sentative of the Miscellaneous Tax Unit in Washington.

(k) With respect to cases referred to Technical Staff divisions for consideration, at the request of the taxpayers, see Subpart C of this part. As to closing agreements, compromises, and court proceedings, see § 601.4.

§ 601.29 *Claims for credit or refund.*

(a) In the case of collection of estate tax, interest, or penalties believed by the executor of the estate to be erroneous or illegal, such executor is privileged to file a claim for refund. A claim for refund of estate tax imposed by the Code must be filed within three years after the payment of the amount sought to be refunded.

(b) A donor is likewise privileged to file a claim for credit or refund of gift tax, interest, or penalties which he considers to have been erroneously or illegally collected. Such claim must be filed within three years after the payment of the tax sought to be credited or refunded. A separate claim should be made for each taxable year.

(c) Claims for credit or refund with respect to estate and gift taxes should be executed on Form 843, copies of which may be obtained from collectors' offices. The claim should be filed with the collector to whom the tax, credit or refund of which is claimed, was paid. After listing of tax payments by the collector on the back of the claim form, it is transmitted to the Bureau in Washington for consideration and action.

(d) If the claim is acted upon in Washington, the taxpayer will be advised as to the conclusions reached. If the claim is referred to a field division for examination, the internal revenue agent in charge will handle the claim in the same manner as in the case of an initial examination of an estate or gift tax return. See procedure described under § 601.28. For court proceedings, see § 601.4; for Technical Staff procedure, see Subpart C of this part.

§ 601.30 *Post audit review of determinations of estate and gift tax liabilities made in field divisions by internal revenue agents in charge.* (a) The determinations of estate and gift tax liabilities by internal revenue agents in charge of field divisions, as set forth in revenue agents' reports of examination, under the procedure described in § 601.28 are subject

to technical review by the Bureau, in the Miscellaneous Tax Unit.

(b) If upon review of a case in which no change in tax liability has been recommended, the Bureau agrees with the conclusions of the internal revenue agent in charge, it will close the case, and in estate tax cases will issue a closing letter addressed to the executor. In gift tax cases a closing letter will be issued only when such a letter is requested by the donor. If, however, the Bureau disagrees with conclusions of the internal revenue agent in charge in any such case, it will refer the case to that officer for reconsideration upon the basis of the exceptions noted. Any adjustment in tax liability made thereafter by the internal revenue agent in charge will be brought to the attention of the taxpayer, and he will be accorded the same privilege of filing a protest and requesting a hearing with respect to such adjustment as in the case of an initial examination under the procedure described in § 601.28.

(c) In the review of cases in which the internal revenue agent in charge has obtained the taxpayer's agreement to an adjustment in tax, it is the policy of the Bureau not to revise the determination made by the internal revenue agent in charge unless a material error has been made or a substantial difference in tax is involved, and then only after the internal revenue agent in charge has been given an opportunity to consider the Bureau's exceptions. If the Bureau agrees with the conclusion of the internal revenue agent in charge in any such case, it will take appropriate action to close the case. In any estate or gift tax case involving a deficiency in tax, the closing letter will be issued to the taxpayer. If an overassessment is involved, a certificate of overassessment will be issued to the taxpayer. If, however, the Bureau disagrees with the conclusions of the internal revenue agent in charge in any such case, and an adjustment in tax liability is thereafter proposed by the internal revenue agent in charge, the taxpayer will be afforded the same privilege of filing a protest and requesting a hearing with respect to such adjustment as was extended to him during the initial examination of the return, under the procedure described in § 601.28.

(d) While a review is also conducted by the Bureau of every case closed by statutory (90-day) letter, it is the policy

of the Bureau not to revise such determinations made by the internal revenue agent in charge except in cases where a material error has been made or other special circumstances require a revision.

§ 601.31 *Rulings.* (a) Any executor of an estate, or donor, who is in doubt as to the application of the tax to the particular facts in his case, may address a letter to the Deputy Commissioner, Miscellaneous Tax Unit, Washington 25, D. C., requesting advice. Where information is sought regarding an estate or gift tax return which is being considered by a field division of the Bureau, under the procedure described in § 601.28, the request for information should be addressed to the internal revenue agent in charge in whose office the case is under consideration.

(b) If an attorney or other person asks a ruling on a question of law arising in a specific case, the Commissioner will require satisfactory evidence of the right to obtain such ruling. Hypothetical questions relating to the application of the estate and gift taxes cannot be answered.

(c) Powers of attorney authorizing an attorney or agent to represent the executor of an estate, or the donor in a gift tax case, should accompany the request for information or ruling.

(d) As to the policy of the Bureau generally relative to rulings, see § 601.4 (e).

§ 601.32 *Administrative provisions relating to extensions of time to file returns and pay taxes; issuance of releases of liens and transfer certificates, etc.* (a) Under certain circumstances an extension of time for filing an estate tax return for a decedent's estate, not to exceed three months from the due date, may be granted by the Commissioner. Written application for such extension should be filed with the Commissioner on or prior to the due date of the return.

(b) In any estate or gift tax case in which an extension of time is desired for the payment of tax shown on the return or of a deficiency in tax, a written application for such extension under oath and accompanied or supported by the required evidence must be timely filed with the collector, who will transmit it to the Commissioner with his recommendation as to the extension. When it is received by the Commissioner, it will be examined, and, if possible, within 30 days will be denied, granted, or tentatively granted

subject to certain conditions of which the executor, or donor, as the case may be, will be notified.

(c) In addition to the general provisions for liens for taxes (see § 601.3 (b)), section 827 (a) of the Code specially provides in connection with the estate tax for a lien upon the gross estate and section 1009 provides a similar lien in connection with the gift tax upon all gifts. Under certain circumstances releases of the estate and gift tax liens imposed by the Code with respect to property included in the returns will be granted by the Commissioner. Applications for such releases should be addressed to the Deputy Commissioner, Miscellaneous Tax Unit, Washington 25, D. C. If granted, certificates releasing the property involved will be furnished.

(d) In any estate tax case in which the executor desires that a prompt determination be made of the amount of the estate tax due from the decedent's estate and that he be discharged from personal liability therefor, such request should be made by written application to the Commissioner.

(e) Certificates permitting the transfer of property of nonresident decedents, regardless of citizenship, without liability will be issued by the Commissioner when he is satisfied that the tax imposed upon the estate, if any, has been fully discharged or provided for. Requests for such certificates should be addressed to the Deputy Commissioner, Miscellaneous Tax Unit, Washington 25, D. C.

(f) Under certain circumstances estate and gift tax returns may be inspected pursuant to the Code and regulations.

§ 601.33 *Description of forms*—(a) *Estate and gift tax forms.* The following described forms which are prescribed and furnished by the Bureau for use in connection with estate and gift taxes may be obtained at the principal and branch offices of collectors of internal revenue:

#### ESTATE TAX

*Form 704. Preliminary Notice, Estate of Citizen or Resident of the United States.* This form is for use of the executor or administrator of the estate of a deceased citizen or resident of the United States in reporting the estimated values of the various classes of property belonging to the decedent, and must be filed with the collector within two months after the date of death or within two months after qualification of such executor or administrator.

**Form 705. Preliminary Notice, Estate of Nonresident Not a Citizen of the United States.** This form is for use of the executor or administrator of the estate of a deceased nonresident not a citizen of the United States in reporting the estimated values of the various classes of the decedent's property having a situs in the United States, and must be filed with the collector of internal revenue within two months after the date of death or within two months after qualification of such executor or administrator.

**Form 706. Estate Tax Return.** This form is for the use of the executor or administrator of a deceased citizen or resident of the United States, and of a nonresident decedent not a citizen, in reporting the estate tax due and setting forth an itemized inventory by schedule of the decedent's property and lists of the deductions under the appropriate schedules. This return must be filed with the appropriate collector of internal revenue.

**Form 706NA. Nonresident alien estate tax return.** Form 706NA is a simplified form of return for use of the executor or administrator of a nonresident decedent, not a citizen of the United States. This form must be filed with the appropriate collector of internal revenue.

**Form 706b. Supplemental Schedule R (1) (Estate Tax Return), Computations of Net Estates for Estate of Decedent Domiciled in Canada and not a Citizen of the United States.** This form is for use of the executor or administrator of the estate of a decedent domiciled in Canada, not a citizen of the United States, in computing the net estate of the decedent pursuant to the Death Duty Convention between the United States and Canada. This schedule is a substitute for Schedule R of Estate Tax Return, Form 706.

**Form 706c. Computation of Estate Tax With Credit for Canadian Succession Duties, for Estate of Decedent Domiciled in or a Citizen of the United States.** This form is for use of the executor or administrator of the estate of a decedent domiciled in or a citizen of the United States, in computing credit against the Federal estate tax for Canadian succession duties paid with respect to property situated in Canada and subjected to such taxes by both countries, pursuant to the Death Duty Convention between the United States and Canada. This form is supplemental to the "Computation of Tax" schedule in the estate tax return, Form 706.

**Form 706d. Certification of Dominion Succession Duties for Credit Against Federal Estate Taxes.** This form is for use of the executor or administrator of a decedent domiciled in or a citizen of the United States, in securing a certification from Canadian officials with respect to succession duties paid in order that credit therefor may be allowed against the Federal estate tax.

**Form 706e. Computation of estate tax with credit for United Kingdom estate duties, for estate of decedent domiciled in or a citizen of the United States.** This form is for use

of the executor or administrator of the estate of a decedent domiciled in or a citizen of the United States, in computing credit against the Federal estate tax for United Kingdom estate duties paid with respect to property situated in the United Kingdom and subjected to such taxes by both countries, pursuant to the Death Duty Convention between the United States and the United Kingdom. This form is supplemental to the "Computation of Tax" schedule in the estate tax return, Form 706.

**Form 706f. Certification of United Kingdom estate duties for credit against Federal estate taxes.** This form is for use of the executor or administrator of a decedent domiciled in or a citizen of the United States, in securing a certification from United Kingdom officials with respect to estate duties paid in order that credit therefor may be allowed against the Federal estate tax.

**Form 711. Estate Tax Power of Attorney.** This form is provided for the use of attorneys who represent decedents' estates in estate tax matters.

**Form 712. Life Insurance Statement, Estate Tax.** This form is for use of the executor or administrator of a decedent's estate in securing information from the insurance company with respect to a policy of insurance on the decedent's life. A form should be prepared for each policy of insurance held by the decedent. All such completed forms should be associated with the decedent's estate tax return, Form 706, and filed with the appropriate collector of internal revenue.

**Form 890. Waiver of Restrictions Against Assessment and Collection of Deficiency in Estate Tax.** This form is for the use of the executor in waiving the statutory restrictions against the immediate assessment and collection of a deficiency in estate tax. The form is enclosed with the notice of deficiency to the executor and when signed should be returned to the internal revenue agent in charge who forwarded the notice.

**Form 896. Application for Extension of Time for Payment of Deficiency in Estate Tax.** This form is for use of the executor in applying for an extension of time for payment of a deficiency due from the decedent's estate and must be filed with the appropriate collector of internal revenue.

#### GIFT TAX

**Form 709. Gift Tax Return.** This form is for use of the donor in reporting the gift tax due for the calendar year involved and in setting forth every transfer by gift to any one donee during such year exceeding the applicable exclusion. The return must be filed in duplicate with the collector of internal revenue for the district in which the donor has his legal residence.

**Form 710. Donee's or Trustee's Information Return of Gifts.** This form is for use of the donee or trustee in reporting property received by gift from the donor, if the value of such gift is in excess of the applicable exclusion. This return should be filed in

duplicate with the appropriate collector of internal revenue or with the Commissioner of Internal Revenue at Washington, D. C. Public, charitable, etc., organizations coming under the Code are not required to file such information return.

**Form 890A. Waiver of Restrictions Against Assessment and Collection of Deficiency in Gift Tax.** This form is for the use of the donor in waiving the statutory restrictions against the immediate assessment and collection of a deficiency in gift tax. It is sent to the taxpayer with the notice of deficiency and when signed should be returned to the Bureau or to the agent in charge who sent the notice.

**Form 938. Life Insurance Statement, Gift Tax.** This form is for use of the donor in securing information from the insurance company with respect to an insurance policy transferred by gift. When completed such forms should be associated with the gift tax return, Form 709, and filed with the appropriate collector of internal revenue.

(b) *Additional forms applicable generally.* For a list and description of additional forms prescribed by the Bureau for use in connection with internal revenue taxes generally, see § 601.6.

#### SUBPART E—EMPLOYMENT TAXES

Source: §§ 601.41 to 601.43 appear at 11 F. R. 177A-34, 14263, as amended at 13 F. R. 4123. Redesignation noted at 14 F. R. 5200.

§ 601.41 *General.* (a) The internal revenue employment taxes are imposed by chapter 9, subchapter A, of the Internal Revenue Code (Federal Insurance Contributions Act); chapter 9, subchapter C, of the Code (Federal Unemployment Tax Act); and chapter 9, subchapter B, of the Code (Railroad Retirement Tax Act).

(b) Rules bearing upon the functioning of the Bureau, the forms used, and other information relative to the employment taxes, are as follows:

(1) *Federal Insurance Contributions Act.* Regulations 106 (Part 402 of this chapter).

(2) *Federal Unemployment Tax Act.* Regulations 107 (Part 403 of this chapter).

(3) *Railroad Retirement Tax Act.* Regulations 100 (Part 410 of this chapter).

§ 601.42 *General procedure—(a) Tax collection.* (1) Employment taxes are collected by means of returns, required to be filed by persons liable for tax (except employees) with collectors of internal revenue. The tax is payable at the time the return is required to be filed.

However, the Federal unemployment tax may be paid in four equal installments. Upon receipt by collectors a preliminary examination is made of the returns, the payments of tax deposited in due course, and the tax, penalty, and interest liabilities, if any, listed for assessment. The returns under the Federal Insurance Contributions Act and the Railroad Retirement Tax Act are retained in the collectors' offices where they are audited. Returns under the Federal Unemployment Tax Act are forwarded to Washington 25, D. C., for audit and disposition.

(2) The Federal Insurance Contributions Act imposes a tax on employers of one or more individuals engaged in "employment" as defined in the act. Employees covered by the act are also required to pay a tax which is deducted by the employer from their "wages" as defined in the act. A return must be filed by each employer for each quarter of the year on Form SS-1a in accordance with the instructions on the form, reporting thereon the employers' tax and the employees' tax with respect to wages paid during the quarter covered by the return.

(3) The Federal Unemployment Tax Act imposes a tax on employers of eight or more individuals engaged in "employment" as defined in the act. The returns are required to be filed annually on Form 940 in accordance with the instructions on the form with respect to "wages" paid during the calendar year.

(4) The Railroad Retirement Tax Act imposes a tax on employers and their employees with respect to "service" rendered as defined in the act. It also imposes a tax on employee representatives with respect to "service" rendered as defined in the act. A return on Form CT-1 must be filed for each quarter by each employer in accordance with the instructions on the form, and a return on Form CT-2 must be filed for each quarter by each employee representative in accordance with the instructions on such form.

(5) Tax return forms and all instructions necessary in connection with the preparation and filing thereof may be obtained from the collector of internal revenue for the district in which the taxpayer is located.

(b) *Rulings.* Any taxpayer who is in doubt as to his liability under any of the several employment tax laws, to a particular item of coverage, wage item, or other related matter, may address a

letter to the Commissioner of Internal Revenue, Washington 25, D. C., requesting advice. Such letter should disclose the complete facts involved and, if a contract or agreement is involved, include an executed copy thereof. Any oral agreement involved should be accurately stated in the letter. Upon receipt of such letter disclosing the complete facts the taxpayer is advised by letter as to the Bureau's views.

(c) *Conferences.* A taxpayer who desires a conference in the Bureau of Internal Revenue regarding a situation involving any of the employment taxes may secure such conference by addressing a letter to the Commissioner of Internal Revenue, Washington 25, D. C. If a conference is desired in a collector's office, the letter should be addressed to the collector. There are no formal requirements if the conference is to be held with the taxpayer. If a representative of the taxpayer desires to appear, the representative must be enrolled to practice before the Treasury Department and be authorized by appropriate power of attorney to represent the particular taxpayer concerned. See § 601.4 (d).

(d) *Claims for refund, credit and abatement.* In the case of an assessment or collection of any kind of employment tax referred to herein, believed by the taxpayer to be erroneous, he is privileged to file a claim for refund, credit, or abatement. See § 601.4 (a). Such claim should be executed on Form 843, and filed with the collector to whom the tax was paid or from whom notice of assessment was received. Instructions for preparing a claim are contained on Form 843 and any necessary additional instructions may be obtained from the collector. In the case of a claim for abatement, the collector may require the taxpayer to furnish bond in double the amount of the tax involved to secure postponement of collection while the claim is pending. A claim for refund or credit must be filed within four years from the date the tax was paid, except in the case of special refunds under section 1401 (d) of the Federal Insurance Contributions Act, discussed in paragraph (f) (1) and (2) of this section. Where a claim for refund is rejected, an official notice of rejection is mailed to the taxpayer by registered mail. The taxpayer may bring suit for recovery in the appropriate court within two years from the date of mailing of the rejection

notice. See § 601.4 (a). An appeal to The Tax Court may not be filed in connection with employment taxes. See § 601.2.

(e) *Offers in compromise.* A taxpayer may, in certain circumstances, submit an offer to compromise the taxes, penalties, or interest imposed by any of the several employment tax laws. Form 656 must be used in submitting a cash offer and Form 656-C in case of an installment offer. The taxpayer must submit a financial statement on Form 433-B with the offer. Any necessary instructions with regard to the preparation and filing of such offer are obtainable from the appropriate collector of internal revenue.

(f) *Provisions special to the Federal Insurance Contributions Act—(1) Identification and account numbers.* (i) Under the Federal Insurance Contributions Act each employer must have an identification number. Any employer who does not have an identification number must secure a Form SS-4 from the collector of internal revenue or from a field office of the Social Security Administration and, after executing the form in accordance with the instructions contained thereon, file it with the collector or the field office. At a subsequent date the collector will furnish the employer with a number which must appear in the appropriate space on each tax return, Form SS-1a, filed thereafter.

(ii) Each employee who does not have an account number must file an application on Form SS-5, a copy of which may be obtained from any field office of the Social Security Administration or from a collector of internal revenue. The form, after execution in accordance with the instructions thereon, must be filed with the field office of the Social Security Administration, and at a later date the employee will be furnished an account number. Such number must be given to each employer for whom an employee works in order that such number may be entered on each tax return filed thereafter by the employer.

(iii) Form SS-1a requires as a part of the return that the wages of each employee paid during the quarter be reported thereon. It is necessary at times that employers correct wage information previously reported. A special form, Form SS-1c, has been adopted for use in correcting erroneous wage information

or omissions of such wage information in Schedules A of Form SS-1a. Instructions on Form SS-1a and on Form SS-1c explain the manner of preparing and filing the forms. Any further instructions should be obtained from the collector for the district in which the returns are filed.

(2) *Special refunds of employees' tax on wages over \$3,000 received before 1947.* Under section 1401 (d) (1) of the Federal Insurance Contributions Act (section 1401 (d) (1) of the Internal Revenue Code) an employee, who received wages prior to January 1, 1947, in excess of \$3,000 from two or more employers for services performed during the calendar year 1940 or any subsequent calendar year, may file a claim for refund of the amount by which the employees' tax deducted and paid to a collector with respect to such wages exceeds the employees' tax with respect to the first \$3,000 of such wages.

(i) A separate claim shall be made with respect to wages for services performed within each calendar year.

(ii) The employee shall submit with the claim a statement from each employer (on Form SS-9) for whom he performed services during the calendar year. If the statement of any employer cannot be submitted with the claim, the employee shall include in the claim an explanation of his inability to submit such statement.

(iii) The employee's claim shall be made on Form 843 and shall be filed with the collector for the district in which the employee resides.

(iv) No refund will be made under section 1401 (d) (1) of the Federal Insurance Contributions Act unless (a) the employee files a claim, establishing his right thereto, after the calendar year in which the employment was performed with respect to which refund of tax is claimed, and (b) such claim is filed within two years after the calendar year in which the wages are paid with respect to which refund of tax is claimed.

(3) *Special refunds of employees' tax on wages over \$3,000 received after 1946.* Under section 1401 (d) (2) of the Federal Insurance Contributions Act (section 1401 (d) (2) of the Internal Revenue Code) an employee, who receives wages in excess of \$3,000 from two or more employers in any calendar year beginning after December 31, 1946, may

file a claim for refund of the amount, if any, by which the employees' tax imposed with respect to such wages and deducted therefrom exceeds the employees' tax with respect to the first \$3,000 of such wages. The necessary forms and instructions may be obtained from the collector's office. With respect to such special refund claims, the following applies:

(i) A separate claim shall be made with respect to wages received within one calendar year (regardless of the year or years after 1936 during which the services are performed for which such wages are received).

(ii) The employee shall submit with the claim, as a part thereof, a statement executed by him on Form SS-9a.

(iii) The employee's claim shall be made on Form 843 and shall be filed with the collector for the district in which the employee resides.

(iv) No refund will be made under section 1401 (d) (2) of the Federal Insurance Contributions Act unless (a) the employee files a claim, establishing his right thereto, after the calendar year in which the wages are received with respect to which refund of tax is claimed, and (b) such claim is filed within 2 years after the calendar year in which such wages are received.

§ 601.43 *Forms*—(a) *Description.* The forms specially applicable in connection with the employment taxes, copies of which may be secured from collectors of internal revenue, are as follows:

#### FEDERAL INSURANCE CONTRIBUTIONS ACT

*Form SS-1a. Employer's Tax Return under Federal Insurance Contributions Act.* This form is required to be filed on a quarterly basis by each employer of one or more individuals. The information required to be shown on the form includes the number of employees listed on Schedule A of the form, the total taxable wages paid, any credits or adjustments, the amount of employers' and employees' tax, and the name and address of the employer and his identification number. It is required on Schedule A of the form that the employee's Social Security Account number be shown, his name, wages paid, and the State in which employed.

*Form SS-1b. Continuation sheet of Schedule A of Form SS-1a, Employer's Tax Return under the Federal Insurance Contributions Act.* This form should be used if there is not sufficient space on Form SS-1a for the listing of employees.

*Form SS-1c. Statement to correct information previously reported under the Federal*

*Insurance Contributions Act.* If the account number, name, or wages of one or more employees were omitted from or erroneously reported in Schedule A of one or more returns on Form SS-1a, each such error should be corrected on this form.

*Form SS-4. Employer's Application for Identification Number.* This form is required to be filed by each employer of one or more individuals. The information required to be shown on the form includes the employer's name, trade name, form of operation, principal place of business, number of employees, date business established, first date after December 31, 1936, on which employer had one or more employees, name and identification number of previous owner, reason for filing application, whether employer had previously filed application, whether employer operates more than one place of employment, and if so, the name, address, nature of business, and number of employees, exact nature of business carried on, and if primarily engaged in manufacturing, the principal products manufactured and percentage of total value of all products which each represents.

*Form SS-5. Application for Social Security Account Number.* This form is required to be filed by each employee. The information required to be shown on the form includes the employee's name, address, age, date and place of birth, father's name, mother's maiden name, sex, race, whether previous application for number has been filed, and if so, the State in which applied and date, and account number issued.

*Form SS-9. Employer's Statement to Support Employee's Claim for Special Refund of Employees' Tax.* This form, which is to be executed by the employer, is filed in support of the special refund claim on Form 843 of an employee who received wages prior to January 1, 1947, in excess of \$3,000 from two or more employers for services performed during a calendar year. The information required to be shown on the form includes the name, address, and identification number of the employer, name and account number of employee, the year involved, address of collector to whom employer paid tax, calendar year of wage payment, amount of wages paid to employee during year, and the amount of employees' tax collected and paid to collector.

*Form SS-9a. Employee's statement to support claim on Form 843 for special refund of employees' tax under the Federal Insurance Contributions Act.* This form is executed and filed by the employee in support of his claim on Form 843 for special refund of employees' tax with respect to wages received by him in any calendar year after 1946. The information required to be shown on the form with respect to each employer from whom wages were received during the calendar year includes the name and address of the employer, the amount of wages received, and the amount of employees' tax deducted.

## FEDERAL UNEMPLOYMENT TAX ACT

*Form 940. Annual Return of Excise Tax on Employers of Eight or More Individuals.* This form is required to be filed annually by each employer of eight or more individuals. The information required to be shown on the form includes the name and address of the taxpayer, nature of business, form of organization, date of organization, total remuneration paid during year for services of employees, total nontaxable remuneration paid, amount of credit for contributions paid into State funds, and the amount of tax.

*Form 1135. Application for extension of time for payment of the excise tax or any part thereof imposed by the Federal Unemployment Tax Act.* This form is filed under oath by taxpayers to show that the payment of the tax or any part thereof at the time prescribed for payment would result in undue hardship. The information required to be shown on the form and to be submitted in support of the application includes the extended date, the amount of tax, the year involved, reasons why extension is necessary, sworn statement of assets and liabilities, itemized list of receipts and disbursements for three months prior to prescribed date for payment, reasons why taxpayer is unable to borrow money to pay tax, and a list of the security to be posted.

## RAILROAD RETIREMENT TAX ACT

*Form CT-1. Employer's tax return under the Railroad Retirement Tax Act (Chapter 9, Subchapter B, of the Internal Revenue Code).* This form is required to be filed on a quarterly basis by each employer. The information required to be shown on the form includes the number of employees to whom taxable compensation was paid during the quarter, the amount of such compensation, credits or adjustments, and the amounts of employers' tax and employees' tax.

*Form CT-2. Employee representative's return under the Railroad Retirement Tax Act (Chapter 9, Subchapter B, Internal Revenue Code).* This form is required to be filed on a quarterly basis by each employee representative. The information required to be shown on the form includes the total taxable compensation paid to the taxpayer during the quarter for services rendered as employee representative, credits, and total tax due.

## FORM COMMON TO FEDERAL INSURANCE CONTRIBUTIONS ACT AND FEDERAL UNEMPLOYMENT TAX ACT

*Form SS-8. Information for Use in Obtaining Ruling From Bureau of Internal Revenue on Status of Salesmen Under Federal Insurance Contributions Act and Federal Unemployment Tax Act.* This form gives an outline of the information to be submitted to the Bureau in doubtful cases in order to obtain a ruling whether a salesman is an employee.

**FORMS COMMON TO FEDERAL INSURANCE CONTRIBUTIONS ACT, FEDERAL UNEMPLOYMENT TAX ACT, AND RAILROAD RETIREMENT TAX ACT**

*Form SS-10. Consent Fixing Period of Limitation Upon Assessment of Taxes Under Titles VIII and IX of the Social Security Act, the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, the Carriers Taxing Act of 1937, and Subchapter B, Chapter 9, of the Internal Revenue Code.* This form is used by a taxpayer to enter into an agreement with the Commissioner to suspend running of statute of limitations for making assessment of taxes. The information required to be shown on the form includes the name and address of taxpayer, the periods involved, and the extended date to which the taxes may be assessed.

(b) *Additional forms applicable generally.* For a list and description of additional forms prescribed by the Bureau for use in connection with internal revenue taxes generally, see § 601.6.

**SUBPART F—SALES TAXES COLLECTED BY ASSESSMENT**

SOURCE: §§ 601.46 to 601.52 appear at 11 F. R. 177A-34, 14263, as amended at 13 F. R. 4121, 7710. Redesignation noted at 14 F. R. 5201.

§ 601.46 *General.* (a) Chapter 29, subchapter A, of the Internal Revenue Code imposes certain taxes on sales by manufacturers, producers, and importers of the following articles and commodities:<sup>1</sup>

Automobiles, trucks, tractors, buses, trailers, motorcycles, etc., and parts and accessories therefor.  
Business and store machines.  
Electric, gas, and oil appliances.  
Electric light bulbs and tubes.  
Electrical energy for domestic and commercial consumption.<sup>2</sup>  
Firearms, shells, and cartridges.  
Photographic apparatus, cameras, lenses, film, and sensitized paper.  
Radio receiving sets and components, phonographs, phonograph records, and musical instruments.  
Refrigerators, air conditioning units, and components.  
Sporting goods.  
Tires and inner tubes.

(b) Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with these taxes are con-

tained in Regulations 46 and Order May 31, 1944, and Order June 27, 1944 (Part 316 of this chapter).

(c) Chapter 29, subchapter A, of the Code also imposes certain taxes on sales by manufacturers, producers, and importers of gasoline and matches, and on sales by manufacturers and producers of lubricating oils. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with these taxes are contained in Regulations 44 (Part 314 of this chapter).

(d) Section 2700 of chapter 25 of the Code imposes certain taxes on sales by manufacturers, producers, and importers of pistols and revolvers. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with these taxes are contained in Regulations 47 (Part 302 of this chapter).

(e) Chapters 9A and 19 of the Code impose certain taxes on sales by retailers of the following articles:

Fur articles.  
Jewelry, watches and clocks, etc.  
Luggage, handbags, wallets, and certain other related articles.  
Toilet preparations.

(f) Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with these taxes are contained in Regulations 51 and Order June 27, 1944 (Part 320 of this chapter).

§ 601.47 *Procedure*—(a) *Tax collection.* (1) The sales taxes are collected by means of returns required to be filed monthly by persons liable for tax with collectors of internal revenue for the district in which their principal place of business is located. The return is due not later than the last day of the month following the month for which it is made and the tax is payable, without notice from the collector, at that time.

(2) Upon receipt by collectors, the returns are given a preliminary examination, all remittances accompanying them are deposited, and the tax, together with any applicable interest, is entered on an assessment list. A copy of the assessment list, together with the original copies of the returns, is then forwarded to the Bureau in Washington where the list and returns are compared and all necessary corrections are appropriate additions to the list, including any applicable penalties or interest, are made, after which the copy of the list is formally approved by the Commissioner and

<sup>1</sup> The descriptive terms used to designate the various articles and commodities subject to tax are intended only to indicate their general classes. For specific information as to the scope of each tax, reference should be had to the applicable regulations.

<sup>2</sup> The tax on electrical energy applies to sales by "vendors".

a certificate of such approval returned to the collector. This approval of the list by the Commissioner constitutes the "assessment" of the taxes, penalties, and interest listed thereon. Under the law, this assessment is prima facie correct for all legal purposes, the burden to disprove its correctness being upon the taxpayer. The receipt by the collector of the assessment list also makes it possible for him to take any forcible action (such as the issuance of warrants for distraint or notices of levy) necessary to effect collection of any liabilities shown on the list which remain due and unpaid after notice and demand for their payment has been served upon the taxpayer.

(3) Detailed information as to the return forms, and all other forms, prescribed for use in connection with the sales taxes, are contained in the regulations referred to in § 601.46. Copies of these regulations, together with copies of all necessary forms and instructions as to their preparation and filing, may be obtained from the office of the collector of internal revenue for the district in which the taxpayer is located.

(b) *Rulings.* (1) Any person who is in doubt as to his liability for any of the manufacturers' or retailers' sales taxes, or as to the taxability of any particular article or commodity, may address a letter to the Deputy Commissioner, Miscellaneous Tax Unit, Bureau of Internal Revenue, Washington 25, D. C., requesting advice. Such letter should completely disclose all of the pertinent facts involved and, if advice as to the taxability of a particular article or commodity is requested, should describe the article or commodity in sufficient detail to permit of a proper determination as to its taxable status. Where the article or commodity is of such nature as not to lend itself readily to a written description, and it is feasible to submit a sample, this should be done. Upon receipt of such an inquiry disclosing the complete facts involved, the taxpayer is advised by letter of the Bureau's views as to his liability for the tax. This letter will be signed either by the Commissioner of Internal Revenue or the Deputy Commissioner in charge of the Miscellaneous Tax Unit, or, in some cases, by the Secretary of the Treasury or an Assistant Secretary. A copy of this letter is also forwarded to the local collector of internal revenue.

(2) Where a sales tax ruling has been issued with which the taxpayer is not in agreement, the taxpayer is privileged to request reconsideration of the ruling by addressing a letter to the official who signed the ruling setting forth in full detail the basis for his request. If desired, a conference in the matter may also be requested. In such event, a conference will be accorded the taxpayer either in the Miscellaneous Tax Unit in Washington or, if the taxpayer so desires, with a representative of the local collector or, in the case of taxpayers located in or near New York, Chicago, or Los Angeles, with an internal revenue agent attached to one of the three field offices of the Miscellaneous Tax Unit located in those cities.

(3) Where a ruling or a conference is requested by the taxpayer himself, no formal requirements are prescribed. Where, however, the taxpayer desires to be represented by an attorney or agent, the attorney or agent must be enrolled to practice before the Treasury Department and be authorized by appropriate power of attorney, either already on file with the Bureau or submitted with the request for the ruling or at the conference, to represent the taxpayer concerned. (See § 601.4 (d).)

§ 601.48 *Proposed assessments of additional or delinquent taxes.* (a) Assessments of additional tax proposed to be made by the Bureau may arise in one of two ways, i. e., either as the result of the audit of the taxpayer's return in Washington, or as the result of an examination of the taxpayer's books and records by an internal revenue agent attached to the Miscellaneous Tax Field Force, or by a deputy collector attached to one of the collectors' offices. Assessments of delinquent taxes (i. e., taxes asserted against taxpayers who have filed no returns) ordinarily arise as the result of investigations conducted by internal revenue agents or deputy collectors as the result of information obtained in the field.

(b) When the occasion for an additional assessment arises as the result of an audit of the taxpayer's return (and except in cases where delay may jeopardize collection of the tax, or where the amount involved is nominal or the result of an evident mathematical error), a preliminary letter is addressed to the taxpayer advising him briefly of the basis and amount of the proposed assessment

and according him a period of at least fifteen days from the date of the letter to submit a protest with supporting facts, or to request a conference. If no reply is received from the taxpayer within the stated period, the assessment is made. If, however, the taxpayer submits a protest or requests a conference within the stated period, assessment of the additional tax is deferred until such facts and arguments as are submitted by the taxpayer in his protest or at the conference have been considered, unless it appears that the taxpayer is merely endeavoring to delay assessment without good cause or that further delay may jeopardize collection of the tax. The foregoing procedure is followed in all cases involving proposed assessments of additional tax arising as the result of an audit of the taxpayer's return except in cases where, as the result of conferences in or correspondence with the Bureau, the taxpayer has already agreed to the proposed assessment.

(c) When the occasion for the proposed assessment of additional or delinquent tax arises as the result of an examination of the taxpayer's books and records conducted by an internal revenue agent assigned to the Miscellaneous Tax field force or by a deputy collector of internal revenue, the taxpayer is furnished with a copy of the investigator's report (except in situations where the report contains information of a confidential nature, such as a case involving fraud) and is given an opportunity to confer with the investigator and, if desired with the internal revenue agent in charge of the Miscellaneous Tax field force for that area, in the case of an investigation conducted by an agent attached to that force, or with the chief field deputy attached to the office of the collector of internal revenue for the taxpayer's district, in a case where the investigation was conducted by a deputy collector. If, as the result of such a conference, the taxpayer agrees to the investigating officer's findings, he is advised to make remittance of the additional tax due to the collector's office, to whom appropriate notice of the additional liability, together with a copy of the report of the investigation is forwarded. (Agreements as to additional or delinquent tax in these cases are not evidenced by any special form of written instrument, the amount of the addi-

tional or delinquent tax being reported by way of an amended or original return.) The original of the investigating officer's report is forwarded to the Washington office of the Miscellaneous Tax Unit for review. Should this review disclose any errors in the assertion or computation of the tax, the matter is taken up with the field office involved for any adjustment which appears to be in order.

(d) In cases where no agreement can be reached in the field as to the amount and payment of any additional or delinquent tax disclosed by the investigation, the original of the investigating officer's report, as approved by the internal revenue agent in charge or the collector of internal revenue, as the case may be, together with any protest or submission the taxpayer may have made while the case was in the field, is forwarded to the Washington office of the Miscellaneous Tax Unit. A copy of such report is also given to the taxpayer. If, after review of the report in Washington, it is considered that no additional or delinquent tax is due, the investigating officer is so notified and no further action on the part of the taxpayer is necessary. If, however, it is concluded that assessment of the tax is in order, the taxpayer is advised that he is privileged to submit a protest or request a conference in regard to the proposed assessment within a period of fifteen days or such other longer period as may be appropriate under the circumstances. If, after consideration has been given to the taxpayer's contentions as to why the tax should not be assessed, it is concluded that no assessment should be made, the investigating officer is so notified and the case is then closed without further action. If, however, no protest or request for a conference is received from the taxpayer within the stated period or, if after consideration has been given to any protest submitted, it is concluded that assessment of the additional or delinquent tax is in order, the amount of tax (together with any applicable penalties and interest) is entered on an assessment list for collection in the usual manner. See S. T. 915, Internal Revenue Bulletin, 1941-1, page 455.

(e) Conferences regarding proposed assessments of additional or delinquent taxes are subject to the same general rules as are conferences on rulings, as described in § 601.47.

§ 601.49 *Administrative remedies available to taxpayers after assessment and/or payment of sales taxes alleged to have been erroneously or illegally assessed or collected*—(a) *Before payment has been made.* (1) After a sales tax, which the taxpayer considers is not due, has been assessed but not yet paid, he is privileged to file a claim for the abatement of such tax. See § 601.4. The form prescribed for use in filing an abatement claim is Form 843, copies of which may be obtained from collectors of internal revenue. The claim should be prepared in accordance with the instructions contained on the form and filed with the collector from whom notice of assessment of the tax was received. After appropriate certification of the claim by the collector, the claim is forwarded to the Bureau in Washington for consideration and action. Notice as to the allowance or disallowance of the claim is then forwarded both to the taxpayer and to the collector concerned. If the claim is allowed, no further action on the part of the taxpayer is necessary. If, however, the claim is rejected, the collector is instructed to proceed with the collection of the rejected amount.

(2) In the case of a claim for abatement, the collector may require the taxpayer to furnish bond in double the amount of the tax involved so that the interests of the Government will be protected while the claim is pending.

(b) *After payment has been made.*

(1) After a sales tax, which the taxpayer considers is not due, has been assessed and paid, he is privileged either to file a claim for the refund of such tax or to take a credit for the amount paid on a sales tax return, covering the same kind of tax, filed by him after the alleged erroneous payment has been made. Under the law, however, the claim for refund must be filed, or the credit taken, within four years from the date the tax was paid. The form prescribed for filing a claim for refund is Form 843, copies of which may be obtained from collectors' offices. The claim should be prepared in accordance with the instructions shown thereon and should be filed with the collector of internal revenue to whom the tax, refund of which is claimed, was paid. After appropriate certification of the claim by the collector, the claim follows the same general course as does a claim for abatement referred to in paragraph (a) of this section.

(2) If the claim for refund is rejected, the taxpayer is notified of the rejection by registered mail and, in such a case, the taxpayer may bring suit for recovery of the tax in the appropriate court within two years from the date of the rejection notice. See § 601.4. The Tax Court has no jurisdiction over sales tax cases and, consequently, this forum is not available for the adjudication of disputes as to sales tax liability. See § 601.4.

(3) When a claim for refund is allowed, an appropriate notice of allowance, together with a check in the amount of the refund and any allowable interest, is forwarded by the Bureau in Washington to the collector of internal revenue to whom the tax was originally paid. If the collector finds that there is no other due and unpaid tax indebtedness outstanding against the claimant, the check, accompanied by the notice of allowance, is mailed by the collector to the claimant. If any due and unpaid indebtedness is found to be outstanding, however, the refund check is not released until such indebtedness is discharged.

(4) In the case of a credit claimed for an amount of tax alleged to have been erroneously paid, no particular forms for the claiming of such a credit are prescribed. The procedure to be followed in such a case is for the taxpayer to enter on the line provided for credits on the return form the amount claimed to have been erroneously paid and to accompany the return, when filed, with a supporting statement, executed under oath, which should set out clearly and fully the basis on which the credit is claimed. These statements accompany the returns when they are forwarded by the collectors to the Bureau in Washington where they are examined in the course of the regular audit of the returns. Notice as to the disallowance of any credit is forwarded to the taxpayer and the amount of the credit is then entered on an assessment list for collection in the usual manner.

(5) Detailed instructions as to the manner in which claims for refund or credit should be prepared are contained in § 601.46.

§ 601.50 *Offers in compromise.* Under certain special circumstances, a taxpayer against whom sales tax liability (including any applicable penalties and interest) has been assessed, may submit an offer in compromise of such liability. See section 3761 of the Code and § 601.4 (c).

The circumstances under which the compromise authority may be exercised are very restricted. The forms prescribed for use in the submission of an offer in compromise are Form 656, which is used in the case of a cash offer, and Form 656 (c) which is required in the case of an installment offer. In addition, the taxpayer must submit a financial statement on Form 433 with the offer. Instructions as to the preparation and filing of an offer in compromise may be secured from the appropriate collector of internal revenue.

§ 601.51 *Registration and bonding requirements special to certain of the taxes on sales by manufacturers, producers, and importers.* (a) Every producer or importer of gasoline, every producer of lubricating oils, and every person desiring to purchase taxable article tax free for use in further manufacture of other taxable articles, who qualifies as a manufacturer of articles taxable under chapter 29, subchapter A, of the Internal Revenue Code (except manufacturers of tires or inner tubes), or as a vendee with an established place of business reselling direct to manufacturers of taxable articles, must make application for registry to the collector of internal revenue for the district in which his principal place of business is located (or, if he has no principal place of business in the United States to the collector at Baltimore, Maryland). The form provided for this purpose is Form 637-A, Application for Registry, copies of which may be obtained from the collector. The form should be prepared in accordance with the instructions shown thereon and the provisions of the applicable regulations referred to in § 601.46. In the case of producers and importers of gasoline and producers of lubricating oil, the application must also be accompanied by a bond on Form 928 in a sum equivalent to the approximate amount of tax which might be incurred by the taxpayer during an average three-month period at the rates of the tax then in effect, but in no case shall the bond be for less than \$2,000.

(b) Upon receipt by the collector of the application for registry and, in the case of gasoline and lubricating oil, upon acceptance of the bond required, the collector will furnish to the applicant Form 637, Certificate of Registry, which will bear the applicant's registration number. Detailed instructions as to the use of this number and as to the requirements

necessary to be complied with in connection with the filing of applications for registry and the submission of bonds are set forth in the applicable regulations referred to in § 601.46.

§ 601.52 *Forms*—(a) *Description.* The forms specially applicable in connection with the manufacturers' and retailers' sales taxes are as follows:

*Form 726. Return form for use by manufacturers, producers, and importers in reporting the taxes on gasoline, lubricating oils, and matches.* The information required to be shown on the form includes the month covered by the return, the amount of tax due for each month, any applicable credits, the name and address of the taxpayer, and the signature and title of the person making the return. If the amount of tax reported on the return is more than \$10, the return must be executed under oath. If the amount is \$10 or less, the return may be signed or acknowledged before two subscribing witnesses.

*Form 728. Return form for use by manufacturers, producers, and importers in reporting the taxes on: automobiles, trucks, tractors, buses, trailers, motorcycles, etc., and parts and accessories therefor; business and store machines; electric, gas, and oil appliances; electric light bulbs and tubes; electrical energy for domestic and commercial consumption; firearms, shells, and cartridges; mechanical refrigerators, air conditioning units and components; photographic apparatus and sensitized paper; pistols and revolvers; radio receiving sets and components, phonographs, phonograph records, and musical instruments; sporting goods; and tires and inner tubes.* The information required to be shown on the form includes the amount of tax due for such month, any applicable credits, the name and address of the taxpayers, and the signature and title of the person making the return. If the amount of tax reported on the return is more than \$10, the return must be executed under oath. If the amount is \$10 or less, the return may be signed or acknowledged before two subscribing witnesses.

*Form 728-A. Return form for use by retail dealers in reporting the taxes on: fur articles; jewelry, watches and clocks, etc.; luggage, handbags, wallets, and certain other related articles; and toilet preparations.* The information required to be shown on the form includes the month covered by the return, the amount of tax due for such month, any applicable credits, the name and address of the taxpayer, and the signature and title of the person making the return. If the amount of tax reported on the return is more than \$10, the return must be executed under oath. If the amount is \$10 or less, the return may be signed or acknowledged before two subscribing witnesses.

*Form 637-A. Application for Registry to be filed by certain manufacturers, producers, importers, and vendees.* The information

required to be shown on the form includes the name, trade name, and address of the applicant, the nature of his business, and the signature and title of the person making the application. The form must be executed under oath.

*Form 928. Form of bond furnished by producers and importers of gasoline and manufacturers and producers of lubricating oil.*

(b) *Forms generally applicable.* For a list of forms of general application, see Subpart A of this part. Forms are obtainable from collectors.

**SUBPART G—MISCELLANEOUS EXCISE TAXES COLLECTED BY ASSESSMENT**

SOURCE: §§ 601.56 to 601.62 appear at 11 F. R. 177A-34, 14263, as amended at 13 F. R. 4121. Redesignation noted at 14 F. R. 5201.

§ 601.56 *General*—(a) *Classification.* These taxes may be grouped into the following four general classes: (1) the taxes on admissions, cabaret, dues and initiation fees; (2) the communications taxes; (3) the transportation taxes; and (4) other miscellaneous excise taxes. Each class is discussed briefly in the paragraphs which follow.<sup>1</sup>

(1) *Admissions, etc.* Chapter 10, subchapter A, of the Internal Revenue Code imposes certain taxes on admissions (including certain taxes on amounts charged by ticket brokers, box office employees, etc., in excess of the established price), and on charges made by cabarets, roof gardens, etc. Subchapter B of this chapter imposes certain taxes on amounts paid as dues or initiation fees to any social, athletic, or sporting club or organization. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with these taxes are contained in Regulations 43 (Part 101 of this chapter).

(2) *Communications.* Chapter 30, subchapter B, of the Internal Revenue Code imposes certain taxes on amounts paid for local telephone service; long distance telephone messages, etc., telegraph, cable, or radio dispatches, or messages; leased wires, etc.; and wire and equipment service. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with these taxes are contained in Regulations 42 (Part 130 of this chapter).

<sup>1</sup> The descriptive terms used to designate the various classes of taxes are intended only to indicate their general character. For specific information as to the scope of each tax, reference should be had to the applicable regulations.

(3) *Transportation.* Chapter 30 of the Internal Revenue Code imposes certain taxes with respect to various kinds of transportation services as follows: Subchapter A of the chapter imposes a tax on amounts paid for the transportation of oil by pipe line; subchapter C imposes a tax on amounts paid for the transportation of persons and for seating or sleeping accommodations furnished in connection with such transportation; and subchapter E imposes a tax on the transportation of property. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with these taxes are contained in Regulations 42 (applicable to the taxes on the transportation of persons and the transportation of oil by pipe line) (Part 130 of this chapter), and Regulations 113 (applicable to the tax on the transportation of property) (Part 143 of this chapter).

(4) *Miscellaneous*—(i) *Coconut and other vegetable oils.* Chapter 21 of the Internal Revenue Code imposes a tax upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts from any of the foregoing or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids or salts. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with this tax are contained in Regulations 48 (Part 306 of this chapter).

(ii) *Hydraulic mining.* The act entitled "An Act to create the California Debris Commission and regulate hydraulic mining in the State of California," approved March 1, 1893, as amended (27 Stat. 507; 34 Stat. 1001; 48 Stat. 1118, imposes a tax with respect to certain hydraulic gold mining in the State of California. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with this tax are contained in T. D. 4952 (Part 317 of this chapter).

(iii) *Safe deposit boxes.* Chapter 12 of the Internal Revenue Code imposes a tax on the amount collected for the use of a safe deposit box. The rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with this tax are contained in the same regulations referred to in paragraph (a) (2) of this section relating to the communications taxes.

(iv) *Sugar.* Chapter 32 of the Internal Revenue Code imposes a tax upon manufactured sugar manufactured in the United States. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with this tax are contained in Regulations 99, as amended (Part 312 of this chapter).

(v) *Circulation other than of national banks.* Chapter 13 of the Internal Revenue Code imposes certain taxes with respect to (a) the average circulation outstanding of any bank, association, corporation, company or person, and (b) the circulation paid out by every person, firm, association other than national bank associations, and every corporation, state bank, or state banking association. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with these taxes are contained in Part 135 of this chapter.

(b) *Other rules.* Other rules of particular application to certain of these taxes are the authorization of the Secretary of the Treasury with respect to the nonapplicability of the taxes on the transportation of persons and property in the case of passenger transportation furnished to the United States upon a United States Government transportation request and property shipped to or from the Government of the United States on a United States Government bill of lading (9 F. R. 4615; and Executive Orders Nos. 9698, 9751, 9823, 9863, 9887, and 9911 issued by the President designating certain international organizations as being entitled to enjoy the privilege, exemptions, and immunities conferred by the International Organizations Immunities Act (3 CFR 1946, 1947 Supps.)).

§ 601.57 *General procedure—(a) Tax collection.* (1) The tax on charges made by cabarets, roof gardens, etc., the taxes on admission charges in excess of the established price, the tax on the transportation of oil by pipe line, the tax on the first domestic processing of certain vegetable oils, and the tax on the manufacture of sugar, are all collected in the same manner as are the manufacturers' and retailers' sales taxes, as set forth in § 601.47. The tax on hydraulic mining and the tax on circulation other than of national banks are collected in the same manner also, except that the return of the former tax is filed annually and the latter on the first day of

June and the first day of December of each calendar year.

(2) The other miscellaneous excise taxes described in § 601.56 are imposed on the person making the payment for the admission, telephone service, transportation, etc., involved and are required to be collected by the theater, telephone company, railroad, etc., receiving the payment. All taxes so collected are held by the collecting agent in trust for the United States until paid over to the collector of internal revenue. The collecting agencies are required to file monthly returns which are due not later than the last day of the month following the month for which the return is made and the tax is payable, without notice from the collector, at that time. If the person from whom the tax is required to be collected refuses to pay it or, if for any reason it is impossible for the collecting agency to collect the tax from such person, the collecting agency is required to report to the collector of internal revenue for the district in which its returns are filed the name and address of such person, the nature of the service or facility rendered, the amount paid therefor, and the date on which paid. Upon receipt of this information, the collector will report the item to the Commissioner of Internal Revenue for direct assessment.

(b) *Rulings.* The procedure to be followed in procuring a ruling with respect to any miscellaneous excise tax collected by assessment is the same as that set forth in § 601.47 (b) concerning sales taxes.

§ 601.58 *Proposed assessments of additional or delinquent tax.* Assessment of additional or delinquent miscellaneous taxes is made in the same manner as are assessments of additional or delinquent sales taxes, as set forth in § 601.48, except that where the proposed assessment results from the bona fide inability of a collection agency to collect the tax from the person legally liable for it, the Bureau's dealings are then had directly with such person rather than with the collecting agency. If the failure of the collecting agency to collect the tax, however, was willful, a penalty in the full amount of the tax not collected may be imposed upon the collecting agency. Such a penalty may also be imposed in case of failure on the part of a collecting agency to truthfully account for and pay

over any tax collected, or an attempt in any manner to evade or defeat the tax.

§ 601.59 *Administrative remedies available to taxpayers after assessment and/or payment of miscellaneous excise taxes alleged to have been erroneously or illegally assessed or collected.* The administrative remedies available to taxpayers in the case of the miscellaneous excise taxes collected by assessment are the same as those available in the case of sales taxes, as set forth in § 601.49.

§ 601.60 *Offers in compromise.* The procedure in the case of offers in compromise of liability for miscellaneous excise taxes collected by assessment is the same as that set forth in § 601.50, applicable to sales taxes.

§ 601.61 *Provisions special to taxes on admissions, etc., hydraulic mining, and the transportation of property—(a) Admissions.* Every person (1) required by any provisions of law to collect any tax on admissions, or (2) being the owner or lessee of any place which he ordinarily or at times leases or subleases to other persons who impose charges for admissions to it, or (3) required to pay any tax on charges in excess of established prices, or (4) required to pay tax on charges for admission, refreshment, service and merchandise at any roof garden, cabaret, or other similar place furnishing a public performance for profit, is required to make application for registry. The form provided for this purpose is Form 752, Application for Registry, which may be obtained from collectors of internal revenue. The form should be prepared in accordance with the instructions shown thereon and the provisions of the applicable regulations, Regulations 43 (Part 101 of this chapter), referred to in § 601.56 (a) (1). The collector, if satisfied that all statements made in the application for registry are correct, will issue a certificate of registry on Form 753 to the person who made the application. This certificate of registry must be kept conspicuously posted in the principal place of business of the registrant, or be carried about with him if he has no fixed place of business. This certificate is not transferable from one person or firm to another.

(b) *Hydraulic mining.* Every person who desires to engage in hydraulic mining operations in the State of California within the scope of the act must procure a license to operate the mine from the

California Debris Commission before beginning operations, in accordance with the rules and regulations promulgated by that Commission.

(c) *Transportation of property.* Every person engaged in the business of transporting property for hire shall, within sixty days after first engaging in such business, register his name and his place of business with the collector of internal revenue for the district in which is located his principal place of business. The form provided for this purpose is Form 800, Application for Registry, which may be obtained from the collector. The form should be prepared in accordance with the instructions shown thereon and the provisions of the applicable regulations, Regulations 113 (Part 143 of this chapter), referred to in § 601.56 (a) (3). The collector receiving the application for registry will issue Certificate of Registry, Form 800A, which must be posted in the registered place of business.

§ 601.62 *Description of forms.* The forms specially applicable in connection with the miscellaneous excise taxes collected by assessment covered by this section are as follows:

*Form 727.* Monthly return for use in reporting the communications and transportation taxes, and the tax on the use of safe deposit boxes. The information required to be shown on the form includes the month covered by the return; the character of tax; the amount of each class of tax due for such month; the total tax due; any applicable credits; the name and address of the party making the return; and the signature and title of the individual by whom it was executed. If the amount of tax reported on the return is more than \$10, the return must be executed under oath. If the amount is \$10 or less, the return may be signed or acknowledged before two subscribing witnesses.

*Form 729.* Monthly return for use in reporting tax on admissions, dues and initiation fees, and cabaret charges. The information required to be shown on the form is the same as that indicated with respect to Form 727, above.

*Form 932.* Monthly return for use in reporting tax on the first domestic processing or first use of coconut oil, palm oil, palm-kernel oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils. The information required to be shown on the form is the same as that indicated with respect to Form 727, above.

*Form 1 (California Debris).* Annual return for use in reporting tax on certain hydraulic mining in California. The information required to be shown on the form includes the

year covered by the return; the name and address of the mine operator; the name and address of the mine owner; the name and location of the mine; the name of the dam restraining the debris; the date of issue and the number of license issued by the California Debris Commission; the dates mining operation began and ended; the amount of tax due; an affidavit of the licensed engineer or other qualified person conducting a survey as to the cubic yardage mined during the taxable year; and the signature and title of the person executing the return. The return is required to be executed under oath.

*Form 1 (Sugar). Monthly return for use in reporting the tax on the manufacture of sugar into manufactured sugar.* The information required to be shown on the form includes the month covered by the return; the name and principal office of the taxpayer; the location of the plant; the raw sugar account; manufactured sugar account; the amount of tax due; and the signature and title of the person executing the return. If the amount of tax reported on the return is more than \$10, the return must be executed under oath. If the amount is \$10 or less, the return may be signed or acknowledged before two subscribing witnesses.

*Form 729-A. Information return of broker's sales of admission tickets.* The information required to be shown on the form includes the month covered by the return; the name and address of the broker; the name and address of the theatre or other place admissions to which were sold; the established price of the ticket including tax; the broker's selling price; whether evening or matinee performance; the total number of tickets sold at excess charges; and the total tax due.

*Form 731. Exemption certificate filed by the officers and employees of a State or territory, or political subdivision thereof, or the District of Columbia, for exemption from tax on the transportation of persons in connection with travel in performance of official duties.* The information to be shown on the return includes the date and place of issue of ticket; the name of issuing carrier; the class of transportation (i. e., seat, berth or stateroom); the places from and to which transportation is desired; name of the State, etc., for account of which exemption is authorized; and the signature and title of the person signing the certificate.

*Form 752. Application for Registry to be filed by every person (1) required by any provision of law to collect any tax on admissions, or (2) being the owner or lessee of any place which he ordinarily or at times leases or subleases to other persons who impose charges for admissions to it, or (3) required to pay any tax on charges in excess of established prices, or (4) required to pay tax on charges for admission, refreshment, service and merchandise at any roof garden, cabaret, or other similar place furnishing a public performance for profit.* The information to be shown on the form

includes the name and trade name, if used, and address of the applicant; the type of business; the date business was commenced; the name and address of each person interested in the business or, if a corporation, the names, addresses and titles of the officers; and the signature, under oath, of the applicant.

*Form 754. Notification to collector by lessor where lessee is responsible for collection of tax on admissions.* This form must be forwarded to the collector of internal revenue for the district where the place covered therein is located, before or at the time the lease is made. The information to be shown on the form includes the name and address of the lessee; the character of amusement or entertainment; the place where the amusement or entertainment will be given; the date thereof; and the name, registry number, and address of the lessor.

*Form 798. Temporary exemption certificate filed with carriers by persons claiming exemption from tax on amounts paid for the transportation of property which is to be exported, or shipped to a possession of the United States.* The information to be shown on the form includes the name and address of the shipper or consignee who paid the transportation charges; the name of the carrier; the commodity shipped and the weight thereof; the point of origin of the shipment; the date shipped from such point; the port of exportation; the date the transportation charges were paid; and the amount of such charges.

*Form 799. Certificate of Exportation to be filed with the Bureau by the shipper or consignee who paid transportation charges in connection with the transportation of property which is exported, or shipped to a possession of the United States, upon receipt of documentary evidence of exportation.* The information required to be shown on this form is the same as that required to be shown on Form 798, above.

*Form 800. Application for Registry of a person engaged in the business of transporting property for hire to be filed within sixty days after first engaging in such business.* The information required to be shown in this form includes the name and address of the applicant; the class of transportation furnished, i. e. rail, motor vehicle, water, or air; the collector to whom application is made; and the signature of the applicant.

*Form 827. Advance report to collector by the owner or lessee who operates any theatre, hall, park, ballroom or other place for a term not exceeding ten days and collects taxable admission charges.* The information required to be shown includes the nature of the entertainment given; by whom given; the date given; the name of the theatre, etc.; the address thereof; the number of admissions sold; established price exclusive of tax; the amount of tax collected; and the signature and permanent address of the owner-operator or lessee.

*Form 933. Form of export bond furnished by processors of vegetable oils subject to tax under Chapter 21 of the Internal Revenue Code with respect to the processing of such oils for export without payment of tax.*

*Form 2 (Sugar). Affidavit or certificate of producer of sugar beets or sugarcane to be filed in support of exemptions claimed by manufacturers on Form 1 (Sugar) with respect to sugar delivered to such producers. The information required to be shown on such form includes the name and address of the producer; the name and address of the sugar manufacturer; the number of pounds of sugar beets or sugarcane delivered and the date of delivery; the test of the sugars received in return; the number of pounds received and the date of receipt; the number of persons for whom such sugar is to be used; and the signature of the producer.*

#### SUBPART H—ALCOHOL TAX UNIT PROCEDURE

SOURCE: §§ 601.66 to 601.73 appear at 11 F. R. 177A-34, 14263, as amended at 13 F. R. 2427, 4124. Redesignation noted at 14 F. R. 5201.

§ 601.66 *General*—(a) *Taxes on liquors.* Chapter 26, subchapters A, B, C, and D, of the Internal Revenue Code imposes taxes on distilled spirits (including alcohol), wine (including champagne and vermouth, and cordials and liqueurs made with fortified wine), and fermented malt liquors. Additional taxes are imposed when distilled spirits and wines are rectified by blending, compounding, etc. Chapter 27, subchapter A, of the Internal Revenue Code imposes taxes on stills, worms, and condensers used to manufacture spirits and occupational taxes are imposed upon still manufacturers, brewers, rectifiers, dealers in liquors, and manufacturers of nonbeverage products as prerequisite for drawback under section 3250 (1), Internal Revenue Code.

(b) *Licensing.* Distillers, winemakers, brewers, warehousemen, rectifiers, bottlers, liquor bottle manufacturers, users and transporters of tax-free and specially denatured alcohol, and wholesalers and importers of liquors, are required to qualify with the Bureau, usually by filing notice or application and bond with, and procuring permit from, the District Supervisor of the Alcohol Tax Unit of the district in which operations are to be conducted. Detailed information respecting such qualification, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in paragraph (c) of this section.

(c) *Previously published rules.* The procedural requirements with respect to

matters within the jurisdiction of the Alcohol Tax Unit are published in the regulations cited below. These regulations contain full information as to the general course and method by which the functions of the Alcohol Tax Unit are channeled and determined, including the nature and requirements of formal and informal procedures, the forms and other documents required and the contents of applications, notices, registrations, permits, bonds, and other documents. Copies of prescribed forms may be obtained from the offices of district supervisors, excepting Forms 45, 52-A, 52-B, 52-C, 52-D, 52-E, 122, 230, 237, and 338 and Records 52 and 64, which may be purchased from the Superintendent of Documents, Washington 25, D. C., or from commercial printers, who may procure specimen copies of the forms from district supervisors. The following is a brief description of the several regulations:

(1) Treasury Order No. 30, (Part 171 of this chapter), *Miscellaneous Regulations Related to Liquor.* These regulations prescribe the duties of the Alcohol Tax Unit, and contain delegations of authority to the Unit and its officers, and deal with other miscellaneous matters, including basic permit procedure and violations under the Federal Alcohol Administration Act, remission or mitigation of forfeitures, seizures in connection with contraband firearms, floor stocks taxes on liquors; and production, redistillation, withdrawal, transportation, etc., of high proof spirits and denatured alcohol during the unlimited national emergency proclaimed by the President on May 27, 1941, not contained in the regulations cited below.

(2) *Gauging Manual* (Part 186 of this chapter). This manual contains the procedural and substantive requirements relative to the gauging of spirits, including alcohol, the marking and stamping of packages, allowances for losses, computation of tax, etc.

(3) *Regulations 3 and appendix* (Part 182 of this chapter), *Industrial Alcohol.* These regulations contain the procedural and substantive requirements relative to the production, disposition, and use of industrial alcohol, including denatured alcohol. The regulations cover the establishment and operation of industrial alcohol plants, bonded warehouses, and denaturing plants, the tax payment, transfer, exportation, and de-

naturation of alcohol, formulas for denaturation, the use of alcohol free of tax, the sale and use of denatured alcohol, the transportation of tax-free and specially denatured alcohol, the packaging, labeling, and sale of articles containing denatured alcohol, and the bringing into this country of alcohol and articles containing alcohol from abroad. The regulations also cover the issuance and revocation of permits covering the production of alcohol and denatured alcohol and the transportation and use of tax-free and specially denatured alcohol.

(4) Regulations 4 (Part 183 of this chapter), Production of Distilled Spirits. These regulations contain the procedural and substantive requirements relative to the production of distilled spirits, other than brandy and alcohol, and the removal of such spirits from the distillery. The regulations cover the establishment and operation of distilleries, including the location, construction, equipment, and qualifying documents for such distilleries.

(5) Regulations 5 (Part 184 of this chapter), Production of Brandy. These regulations contain the procedural and substantive requirements relative to the production of brandy and its removal from the distillery. The regulations cover the establishment and operation of fruit brandy distilleries, including the location, construction, equipment, and qualifying documents for such distilleries.

(6) Regulations 6 (Part 188 of this chapter), Bottling of Distilled Spirits in Bond. These regulations contain the procedural and substantive requirements relative to the bottling of distilled spirits in bond at internal revenue bonded warehouses, including the establishment, use, construction, equipment of, and qualifying documents for, the bottling in bond premises, and the stamping and marking of bottles and cases.

(7) Regulations 7 (Part 178 of this chapter), Wine. These regulations contain the procedural and substantive requirements relative to the production and removal of wine, including vermouth or other aperitif wine, and champagne, from the winery. The regulations cover the establishment and operation of bonded wineries, storerooms, and field warehouses for the production, cellar treatment, and storage of wines, including amelioration, blending, fortification, and other cellar treatment, tax payment,

exportation, and use for distilling material and manufacture of vinegar.

(8) Regulations 10 (Part 185 of this chapter), Warehousing of Distilled Spirits. These regulations contain the procedural and substantive requirements relative to the warehousing of distilled spirits, other than alcohol, and the withdrawal of such spirits from warehouse. The regulations cover the establishment and operation of internal revenue bonded warehouses, including the location, construction, equipment of, and qualifying documents for, such warehouses, the blending of beverage brandies, and the withdrawal of distilled spirits from the warehouses upon tax-payment, or for exportation, fortification of wine, denaturation (rum), use of United States, or transfer to other bonded warehouses.

(9) Regulations 11 (Part 189 of this chapter), Bottling of Tax-Paid Distilled Spirits. These regulations contain the procedural and substantive requirements relative to the bottling of tax-paid distilled spirits after withdrawal from bond, including the establishment, location, use, construction, equipment, and qualifying documents for tax-paid bottling houses, and the stamping and marking of bottles and cases.

(10) Regulations 13 (Part 175 of this chapter), Traffic in Containers of Distilled Spirits. These regulations contain the procedural and substantive requirements relative to the manufacture, sale, and use for packaging distilled spirits for sale at retail of containers of one-half pint capacity or greater, including the issuance and revocation of permits for the manufacture of such containers, and the marking, possession, importation, and exportation thereof.

(11) Regulations 15 (Part 190 of this chapter), Rectification of Spirits and Wines. These regulations contain the procedural and substantive requirements relative to the rectification of spirits and wines, including the location, use, construction, equipment, and qualifying documents of rectifying plants, the payment of rectification tax, and the bottling, stamping, and marking of containers.

(12) Regulations 16 (Part 187 of this chapter), Denaturation of Rum. These regulations contain the procedural and substantive requirements relative to the denaturation of rum and its withdrawal from the denaturing bonded warehouse.

The regulations cover the establishment and operation of denaturing bonded warehouses, including the location, construction, equipment, and qualifying documents for such warehouses, and the exportation of denatured rum.

(13) Regulations 17 (Part 173 of this chapter), Disposition of Substances Used in the Manufacture of Distilled Spirits. These regulations contain the procedural and substantive requirements relative to the disposition of substances used in the manufacture of distilled spirits.

(14) Regulations 18 (Part 192 of this chapter), Fermented Malt Liquor. These regulations contain the procedural and substantive requirements relative to the manufacture and tax payment of fermented malt liquor, including the manufacture of cereal beverages, and the location, use, construction, equipment, and qualifying documents for breweries and bottling houses, the exportation of fermented malt liquor, and the filing of claims for refund of tax on beer spoiled or lost in bottling house after payment of tax.

(15) Regulations 19 (Part 195 of this chapter), Production of Vinegar by the Vaporizing Process. These regulations contain the procedural and substantive requirements relative to the production of vinegar by the vaporizing process (fermentation and distillation of alcoholic liquid) including the location, use, construction, equipment, process used, and records of vinegar plants using such process.

(16) Regulations 20 (Part 194 of this chapter), Wholesale and Retail Dealers in Liquors. These regulations contain the procedural and substantive requirements, relative to the payment of occupational taxes, maintenance of records, destruction of stamps and marks on containers, and packaging of alcohol for industrial purposes.

(17) Regulations 21 (Part 191 of this chapter), Importation of Distilled Spirits and Wines. These regulations contain the procedural and substantive requirements relative to the importation into this country of distilled spirits and wines, and perfumes containing distilled spirits, from foreign countries, the taxes levied thereon and the stamping of containers (bottles) of distilled spirits.

(18) Regulations 23 (Part 181 of this chapter), Stills and Distilling Apparatus. These regulations contain the procedural and substantive requirements

relative to the manufacture, tax-payment, removal, use, and registration of stills and worms or condensers, and the exportation of stills with benefit of drawback of internal revenue tax and the exportation free of tax of distilling apparatus not intended for use in distilling spirits.

(19) Regulations 24 (Part 180 of this chapter), Articles from Puerto Rico and Virgin Islands. These regulations contain the procedural and substantive requirements relative to the collection of internal revenue taxes on alcoholic products coming into the United States from Puerto Rico and the Virgin Islands, including procedure in those countries in connection with shipment of the products to the continental United States, the submission of formulas, and the stamping and marking of containers. (The application of the provisions in these regulations relative to the Philippine Islands has been modified by the recent independence of the Islands.)

(20) Regulations 28 (Part 176 of this chapter), Drawback of Internal-Revenue Tax on Distilled Spirits and Wines. These regulations contain the procedural and substantive requirements relative to the allowance of drawback of internal revenue tax on (i) domestic alcohol used in the manufacture or production of flavoring extracts, and medicinal or toilet preparations (including perfumery), upon the exportation of such products, (ii) distilled spirits and wines bottled or packaged especially for export, upon the exportation thereof, and (iii) distilled spirits exported in distillers' original packages containing not less than 20 wine gallons each.

(21) Regulations 29 (Part 197 of this chapter), Drawback of Tax on Distilled Spirits Used in the Manufacture of Nonbeverage Products. These regulations contain the procedural and substantive requirements relative to the allowance of drawback of internal revenue tax on tax-paid domestic distilled spirits used in the manufacture or production of medicine, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, including payment of occupational tax, maintenance of records, and filing of claims for drawback.

(22) Regulations 92 (Part 174 of this chapter), Disposition of Denatured Alcohol, Denatured Rum, and Substances or Preparations Containing Denatured Al-

cohol or Denatured Rum. These regulations contain the procedural and substantive requirements relative to keeping of records and making returns covering the disposition, by sale or otherwise, of denatured alcohol, denatured rum, and substances or preparations containing denatured alcohol or denatured rum.

(23) Treasury Decision 4961, as amended by Treasury Decisions 5066, and 5067 (Part 171 and Part 468 of this chapter), Regulations relating to seizures of vessels, vehicles, and aircraft in connection with contraband firearms covered by section 1 (b) (2), act of August 9, 1939, 53 Stat. 1291, 49 U. S. C. 1281. These regulations contain the procedural and substantive requirements relative to the seizure of vessels, vehicles, and aircraft in connection with contraband firearms, including forfeitures of such conveyances or firearms, the filing of claims therefor and petitions for remission or mitigation of forfeiture, and awards for seizures or furnishing information leading to forfeiture by persons not officers of the United States.

(24) Regulations No. 1 (27 CFR Part 1) (Part 171 of this chapter), Basic Permits: Issuance and Proceedings to Rescind or Suspend, issued under the Federal Alcohol Administration Act, as amended. These regulations contain the procedural and substantive requirements relative to procuring basic permits by importers, producers, rectifiers, blenders, bottlers, warehousemen, and wholesalers of distilled spirits, wines, or malt beverages, including issuance, revocation, suspension, and annulment proceedings.

**Note:** The procedure prescribed by Regulations 3 (Part 182 of this chapter) for the issuance, amendment, denial, and revocation of industrial alcohol permits has been extended, so far as applicable (§ 171.4d of this chapter), to the issuance, amendment, denial, revocation, suspension, and annulment of permits under the Federal Alcohol Administration Act.

(25) Regulations No. 2 (27 CFR Part 2), Non-Industrial Use of Distilled Spirits and Wine, issued under the Federal Alcohol Administration Act, as amended. These regulations contain the substantive requirements relative to the non-industrial use of distilled spirits and wine under the Federal Alcohol Administration Act, including distilled spirits in containers of a capacity of one gallon or less. No procedural requirements are prescribed.

(26) Regulations No. 3 (27 CFR Part 3), Bulk Sales and Bottling of Distilled Spirits, issued under the Federal Alcohol Administration Act, as amended. These regulations contain the substantive requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk. No procedural requirements are prescribed.

(27) Regulations No. 4 (27 CFR Part 4), Labeling and Advertising of Wine, issued under the Federal Alcohol Administration Act, as amended. These regulations contain the procedural and substantive requirements relative to the labeling and advertising of wine under the Federal Alcohol Administration Act, including standards of identity for wine, standards of fill for containers of wine, and the issuance of certificates of label approval and certificates of exemption from label approval.

(28) Regulations No. 5 (27 CFR Part 5), Labeling and Advertising of Distilled Spirits, issued under the Federal Alcohol Administration Act, as amended. These regulations contain the procedural and substantive requirements relative to the labeling and advertising of distilled spirits, including standards of identity for distilled spirits, standards of fill for bottled distilled spirits, and the issuance of certificates of label approval and certificates of exemption from label approval.

(29) Regulations No. 6 (27 CFR Part 6), Inducements Furnished to Retailers, issued under the Federal Alcohol Administration Act, as amended. These regulations contain the substantive requirements relative to the furnishing of equipment, fixtures, signs, supplies, money, services, or other things of value to retailers of distilled spirits, wine, and malt beverages, by other members of the liquor industry (principally vendors), including the furnishing of samples and advertising cuts. No procedural requirements are prescribed.

(30) Regulations No. 7 (27 CFR Part 7), Labeling and Advertising of Malt Beverages, issued under the Federal Alcohol Administration Act, as amended. These regulations contain the procedural and substantive requirements relative to the labeling and advertising of malt beverages, including the withdrawal of imported malt beverages from customs custody and the issuance of cer-

tificates of label approval and release for imported malt beverages, and certificates of approval of labels for malt beverages domestically bottled or packed.

(31) Regulations No. 8 (27 CFR Part 8), Credit Period to be Extended to Retailers of Alcoholic Beverages, issued under the Federal Alcohol Administration Act, as amended. These regulations contain the substantive requirements relative to the credit period which may be extended to retailers of alcoholic beverages under the Federal Alcohol Administration Act. No procedural requirements are prescribed.

§ 601.67 *Procedure*—(a) *Collection of tax*. Taxes on liquors are paid principally by stamp. The stamps are purchased from the collector of internal revenue of the district and are attached to the containers of the liquors. In some cases the collector certifies to the payment of the tax or issues certificates of tax-payment in lieu of stamps. Such certifications are presented to the Government officer or are attached to the containers of the liquors. When the tax on liquors is not paid in the prescribed time and manner, the unpaid taxes are assessed against the taxpayer. Special tax stamps are issued to denote the payment of occupational taxes by liquor dealers and others. Such stamps are required to be posted in the taxpayer's place of business as evidence of tax payment. Detailed information respecting the payment of taxes on liquors and the payment of occupational taxes by still manufacturers, brewers, rectifiers, dealers in liquors, and manufacturers of nonbeverage products as prerequisite for drawback under section 3250 (1), Internal Revenue Code, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in § 601.66 (c).

(b) *Claims for remission*. When the taxpayer claims that liquors on which tax has not been paid have been lost, and the tax thereon may be remitted, he may file claim for remission, setting out all the facts surrounding the loss, with the district supervisor of the Alcohol Tax Unit of the district. Upon receipt of the claim, the district supervisor makes a factual determination and forwards the claim to the Commissioner for consideration. The Deputy Commissioner of the Alcohol Tax Unit notifies the district supervisor of the allowance or rejection

of the claim, and he in turn notifies the taxpayer. If the claim is rejected, the tax is assessed, and the collector of internal revenue issues to the taxpayer a notice and demand for payment of the tax.

(c) *Claims for abatement*. When the tax is assessed and the taxpayer thinks that the tax is not due under the law, he may file a claim in abatement of the tax on Form 843 with the collector of internal revenue of the district. Forms 843 may be procured from such collector. The collector forwards the claim to the Commissioner for consideration, and the collector may call upon the taxpayer to file a bond in double the amount of the tax in order to insure collection of the tax if the claim is rejected. When the claim is acted upon, both the taxpayer and the collector are notified of the allowance or rejection of the claim. If the claim is rejected, the collector again makes demand on the taxpayer for payment of the tax. See § 601.4 (a).

(d) *Claims for refund*. The taxpayer may, after payment of the tax, file a claim for refund on Form 843 with the collector of internal revenue to whom the tax is paid. Such claim must be filed within four years after the date of payment of the tax. The collector forwards the claim to the Commissioner for consideration. If the claim is rejected, the taxpayer is notified of the rejection by registered mail, and he may then bring suit in the United States District Court or the Court of Claims for recovery of the tax. Such suits must be filed within two years from the date of the rejection notice. If the claim is allowed, an appropriate notice of allowance with a check for the amount of the refund and allowable interest is forwarded to the collector of internal revenue. The collector forwards the check to the taxpayer, unless he finds that there are other unpaid taxes outstanding against the taxpayer, in which event, delivery of the refund check to the taxpayer is held in abeyance pending payment of the unpaid taxes. See § 601.4 (a).

(e) *Tort claims*. Claims for property loss or damage, personal injury or death caused by the negligent or wrongful act or omission of any Bureau employee, acting within the scope of his office or employment, filed under the Federal Tort Claims Act, must be prepared and filed in accordance with Treasury Department regulations (31 CFR Parts 1 and 3)

entitled respectively "Central Office Procedures" and "Claims Regulations." The regulations in this part contain the procedural and substantive requirements relative to such claims, and set forth the manner in which they are handled. The claims should be filed with the district supervisor of the district in which the accident or incident occurred, and must be filed within one year thereafter.

(f) *Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.* Any person who is an officer or director of a corporation now engaged in business as a distiller, rectifier or blender of distilled spirits, or of an affiliate thereof, who desires to take office in other companies similarly engaged, must obtain permission to do so from the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit. Applications for such permission to take office shall be prepared and filed in accordance with AT Circular 956, copies of which have been furnished to distillers, rectifiers, and blenders of distilled spirits, and additional copies of which may be procured from district supervisors or the Deputy Commissioner in charge of the Alcohol Tax Unit.

§ 601.68 *Offers in compromise.* The statutes provide forfeitures and penalties for violation of the statutory requirements relative to liquors, and authorize the Commissioner, with the approval of the Secretary of the Treasury, to compromise such liabilities. The Commissioner is also authorized to compromise tax liabilities where there is substantial doubt as to the taxpayer's liability or his ability to pay the tax. Persons desiring to submit offers in compromise of such liabilities, in order to avoid forfeiture or prosecution proceedings, and taxpayers who disclaim liability for taxes assessed, or claim inability to pay the taxes in full, may submit offers in compromise on Form 656 to the collector of internal revenue, or to a deputy collector, of the district. Form 656-C is used when the offer is payable in installments. Such offers are forwarded by the collector to the district supervisor or the Commissioner for consideration. When the offer is acted upon, the collector and the district supervisor are notified of the acceptance or rejection of the offer, and the district supervisor in turn notifies the proponent.

If the offer is rejected, the sum submitted to the collector is returned to the proponent and forfeiture, prosecution, or collection proceedings are resumed. If the offer is accepted, the taxpayer is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities. See § 601.4 (c).

§ 601.69 *Additional claims procedure.* (a) Claims for remission of tax on alcohol lost at industrial alcohol plants, bonded warehouses, and denaturing plants, and for losses of tax-free and specially denatured alcohol at denaturing plants and at dealers and users' premises, must be prepared and filed in accordance with Regulations 3, (Part 182 of this chapter). See § 601.66 (c). These regulations contain full information in respect to the procedure in the verification and examination of such claims.

(b) Claims for remission of tax on distilled spirits lost at distilleries must be prepared and filed in accordance with Regulations 4 and 5 (Parts 183, 184 of this chapter) (see § 601.66 (c)), which contain complete information respecting the procedure followed in verifying and examining such claims.

(c) Claims for redemption or refund of bottled-in-bond stamps must be prepared and filed in accordance with Regulations 6 (Part 188 of this chapter) (see § 601.66 (c)), which contain full information in respect thereto. Such claims must be for an amount of \$5.00 or more and must be filed within two years after the date of purchase of the stamps. The stamps for which redemption is claimed must be surrendered with the claim, or proof of destruction must be submitted.

(d) Claims for remission of tax on wines lost at wineries and bonded storerooms and for the redemption of wine stamps must be filed in accordance with Regulations 7 (Part 178 of this chapter). See § 601.66 (c). These regulations contain the procedure respecting such claims.

(e) Claims for losses of spirits at bonded warehouses, other than by leakage and evaporation, and for losses of spirits withdrawn free of tax for exportation, etc., must be prepared and filed in accordance with Regulations 10 (Part

185 of this chapter). See § 601.66 (c). These regulations contain full information relative to the investigation and consideration of such claims.

(f) Claims for redemption of red strip stamps for bottles of tax-paid spirits must be prepared and filed in accordance with Regulations 11 (Part 189 of this chapter). See § 601.66 (c). Such claims must be filed with the collector of internal revenue within two years from the date the stamps were purchased, and the stamps must be surrendered with the claim or proof of destruction must be submitted. Regulations 11 contain the procedure respecting the filing and handling of such claims. Procedure respecting the exchange or refund of such stamps purchased by rectifiers is contained in Regulations 15 (Part 190 of this chapter). See § 601.66 (c).

(g) Claims for losses of rum and specially denatured rum at denaturing bonded warehouses and in transit after removal from the warehouse must be prepared and filed in accordance with Regulations 16 (Part 187 of this chapter) (see § 601.66 (c)), which set out the procedure followed in the handling and consideration of such claims.

(h) Claims for refund of tax paid on spoiled beer destroyed in the brewery bottling house must be prepared and filed in accordance with Regulations 18 (Part 192 of this chapter). See § 601.66 (c). Such claims must be filed within ninety days after the destruction of the beer or its return to the brewery for reconditioning.

(i) Claims for remission of tax on low wines (distilled spirits) lost at vinegar plants producing vinegar by the vaporizing process must be prepared and filed in accordance with Regulations 19 (Part 195 of this chapter) (see § 601.66 (c)), which regulations set forth the procedure in the handling of such claims.

(j) Claims for abatement or refund of occupational taxes and penalties erroneously assessed or collected, and claims for redemption of special tax stamps for occupational taxes, must be prepared and filed in accordance with Regulations 20 (Part 194 of this chapter). See § 601.66 (c). When claim for redemption of a special tax stamp is filed, the stamp must be surrendered with the claim and the claim must be submitted within four years from the date of payment of the tax.

(k) Claims for drawback of tax paid on stills manufactured for export and actually exported must be prepared and filed in accordance with Regulations 23 (Part 181 of this chapter) (see § 601.66 (c)), which regulations set forth the procedure to be followed and the forms to be used.

(l) Claims for drawback of taxes paid on (1) domestic alcohol used in the manufacture of flavoring extracts, medicinal or toilet preparations which are exported, (2) distilled spirits and wines bottled especially for export and actually exported, and (3) distilled spirits exported in distillers' original packages, must be prepared and filed in accordance with Regulations 28 (Part 176 of this chapter). See § 601.66 (c). These regulations contain full information in respect to the procedure to be followed, the forms to be used, the time within which the claims must be filed, and the supporting documents which must be submitted with the claims.

(m) Claims for drawback of tax on domestic distilled spirits used in the manufacture or production of medicine, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes, must be prepared and filed in accordance with Regulations 29 (Part 197 of this chapter). See § 601.66 (c). Such claims must be filed within the three months next succeeding the quarter in which the spirits are used. Regulations 29 contain full information respecting the preparation of such claims, the supporting documents to be filed therewith, the verification of the claims by the district supervisor, and the action on the claims by the Commissioner.

§ 601.70 *Rulings.* Any person who is in doubt as to any matter arising in connection with his operations or transactions with respect to liquors may secure a ruling thereon by addressing a letter to the Deputy Commissioner, Alcohol Tax Unit, Bureau of Internal Revenue, Washington 25, D. C., or to the district supervisor of the district in which his business is located. Requests for such rulings may also be made by telegraph or telephone, or in person, at the offices of these officials.

§ 601.71 *Conferences.* Any person desiring a conference in the office of the district supervisor of his district or of the Deputy Commissioner, Alcohol Tax Unit,

in Washington, relative to any matter arising in connection with his operations will be accorded such a conference upon request. No formal requirements are prescribed for such conference.

§ 601.72 *Attorneys and agents.* Attorneys and agents representing taxpayers before the Bureau, in the office of the Deputy Commissioner in charge of the Alcohol Tax Unit, or in the offices of district supervisors or investigators in charge, must be enrolled to practice before the Treasury Department and be authorized by power of attorney, filed with the Bureau, to represent the taxpayer in the matter under discussion.

§ 601.73 *Forms.* For forms to be used, see § 601.66 (c).

#### SUBPART I—TOBACCO TAXES

SOURCE: §§ 601.81 to 601.88 appear at 11 F. R. 177A-34, 14263, as amended at 13 F. R. 4121, 7710. Redesignation noted at 14 F. R. 5201.

§ 601.81 *Introductory*—(a) *Imposition of tax.* Chapter 15, subchapter A, of the Internal Revenue Code imposes certain taxes on cigars, cigarettes, tobacco, and snuff manufactured in or imported into the United States, and upon cigarette papers and cigarette tubes sold by the manufacturer or importer.

(b) *Rules.* Rules bearing upon the function of the Bureau, the forms used, etc., in connection with these taxes are contained in the following regulations:

(1) Regulations 8, relating generally to the taxes on tobacco, snuff, cigars and cigarettes, cigarette papers and tubes, and to the purchase and sale of leaf tobacco (Part 140 of this chapter).

(2) Regulations 34, relating in part to the withdrawal of tobacco, snuff, cigars and cigarettes from factories, free of tax, for use of the United States (Part 450 of this chapter).

(3) Regulations 73, relating in part to the exportation of tobacco products without payment of tax, to shipments of such products to possessions of the United States, and to drawback of tax paid on tobacco products exported to foreign countries or shipped to possessions of the United States (Part 451 of this chapter).

(4) Regulations 76, relating to shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes for use as

sea stores without payment of tax (Part 141 of this chapter).

§ 601.82 *Special registration and bonding requirements.* (a) On commencing business and thereafter on the first day of July of each year, every dealer in leaf tobacco, manufacturer of tobacco, snuff, cigars, or cigarettes, and peddler of tobacco must register with the collector of the district his name or style, place of residence, and place where the business is carried on. The form prescribed for registration is Form 277, copies of which may be obtained from collectors of internal revenue. Every person required to so register must, at the time of commencing business, execute a bond, in duplicate, on the prescribed form and in such amount as is required by Regulations 8 (Part 140 of this chapter), referred to in § 601.81 (b) (1). When the application for registration and the bond are received and approved by the collector, the collector will issue to the person named in the application a certificate of registry. This certificate of registry must be posted in accordance with the requirements of Regulations 8.

(b) Proprietors of internal revenue tobacco sea stores and export warehouses are also required to furnish bonds to the collectors of their districts to cover the operation of such warehouses and to protect the Government with respect to any liability incurred in connection with unstamped (non-tax-paid) tobacco products received in such warehouses for temporary storage and subsequent withdrawal for purposes of export to foreign countries and shipment to possessions of the United States and for delivery to vessels for use as sea stores on the high seas beyond the jurisdiction of the internal revenue laws of the United States.

§ 601.83 *Tax collection.* (a) The taxes on cigars, cigarettes, tobacco, and snuff are paid by stamps affixed to the box or package, and are due upon withdrawal of domestic products from the factory and withdrawal of imported products from customs custody, or upon sale prior to withdrawal. Information returns are required to be filed with the collector of internal revenue of the district in which the taxpayer is located, on or before the 10th day of the month following the month in which domestic products are withdrawn from the fac-

tory. Such returns show the quantities of tobacco, tobacco products, leaf tobacco, and internal revenue tobacco stamps handled. In addition to the monthly information returns, each manufacturer and leaf tobacco leader is required to prepare on the prescribed form and submit to the collector a true inventory of the materials on hand, finished and unfinished, at commencement of business, on January 1 of each year, and at the time of discontinuing business. The collector, after abstracting for his record the information contained on the returns and the inventories, forwards them to Washington, D. C., for examination and audit.

(b) The taxes on cigarette papers and tubes, unlike the taxes on tobacco and tobacco products (see § 601.81 (a)), are sales taxes payable by the manufacturer or importer upon sale to any person, other than to a manufacturer of cigarettes for use by him in the manufacture of cigarettes. The tax due on sales by manufacturers of cigarette papers is payable on the basis of monthly returns filed on Form 734 on or before the 10th day of the month following that in which the sales occur, while the tax on sales by manufacturers of cigarette tubes is payable by stamp affixed at the time of sale to each package of cigarette tubes. Form 734 is also filed by manufacturers of tubes as an information return disclosing all sales during the preceding month. With respect to cigarette papers imported into the United States, importers are required to file a return on Form 735, covering each importation, accompanied by remittance of the amount of the tax. This form is also submitted as an information return covering each importation of cigarette tubes, showing the number of packages of tubes imported and the value of stamps affixed to the packages.

(c) Detailed information as to the return forms, and all other forms, prescribed for use in connection with tobacco taxes are contained in the regulations referred to in § 601.81 (b). Copies of these regulations, together with copies of all necessary forms and instructions as to their preparation and filing, may be obtained from the office of the collector of internal revenue for the district in which the taxpayer is located.

§ 601.84 *Rulings.* The procedure to be followed in securing a ruling on any

question arising in connection with the tobacco taxes is the same as that set forth in § 601.47 (b).

§ 601.85 *Proposed assessments of additional or delinquent taxes.* When additional or delinquent tobacco tax liability is discovered, the procedure followed is the same as that applicable in the case of sales taxes. (See § 601.48.)<sup>1</sup>

§ 601.86 *Administrative remedies available to taxpayers after the purchase of tobacco tax stamps or after assessment or payment of tobacco taxes—(a) Redemption of stamps.* Tobacco tax stamps which have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or have been used in excess of the amount of tax actually due, or affixed to tobacco products withdrawn from the market, may be redeemed by the owner upon proper claim filed with the collector. Such claims must be prepared on Form 843 in accordance with the instructions shown on the form and in Regulations 8 (Part 140 of this chapter), referred to in § 601.81 (b) (1). Copies of Form 843 are obtainable from offices of collectors of internal revenue.

(b) *Drawback claims.* Section 2136 of the Internal Revenue Code permits the filing by exporters of claims for drawback of internal revenue taxes paid by stamp on tobacco, snuff, cigars and cigarettes which are exported. The form used for this purpose is Form 901, copies of which are obtainable from collectors' offices. As a condition precedent to the allowance of any such drawback claim, the exporter is required to file a bond in a penal sum double the amount for which the claim is made conditioned that he will furnish satisfactory evidence that the tobacco products have been landed at a port outside the jurisdiction of the United States, or that the shipment was lost at sea, and has not been relanded within the limits of the United States.

(c) *Claims for abatement or refund.* (1) Where a tobacco stamp tax is not paid by stamp but the amount thereof is

<sup>1</sup> Unlike the sales taxes, however, the notice of the proposed additional assessment forwarded to the taxpayer in the case of the tobacco taxes is required by specific statutory provision. (See sections 2002 (b) (1) and 2060 of the Internal Revenue Code.)

assessed, the person against whom the assessment is made may file a claim for abatement of the tax or a claim for refund for any part of the assessment which has been paid. In either case, the procedure to be followed by the claimant is the same as that set forth in the case of claims for abatement or refund of sales taxes, as described in § 601.49. All claims for refund of tobacco taxes paid pursuant to an assessment must be filed within four years after payment of the tax.

(2) Detailed instructions as to the requirements necessary to be complied with in connection with the filing of claims for redemption, drawback, and refund are fully set forth in the regulations referred to in § 601.81 (b).

§ 601.87 *Offers in compromise.* The procedure in the case of offers in compromise of liability for tobacco taxes is the same as that set forth in § 601.50, applicable to sales taxes.

§ 601.88 *Forms—(a) Description.* The forms prescribed and furnished by the Bureau for use in connection with tobacco taxes are as follows:

*Form 33. Affidavit of Individual Surety on Bond.* Personal sureties on bonds (for which there must be two) must qualify by executing affidavit on this form, in triplicate.

*Form 36. Tobacco and Snuff Manufacturer's Statement.* Rendered in duplicate to collector by manufacturer before commencing business and in case of removal or change in bonded premises of factory, showing complete description of premises and equipment to be used.

*Form 36½. Cigar and Cigarette Manufacturer's Statement.* Rendered in duplicate to collector by manufacturer before commencing business and in case of removal or change in bonded premises of the factory, showing precise description of manufactory; also number of cigar makers, make and number of machines, and for whom cigars are to be manufactured.

*Form 40. Tobacco and Snuff Manufacturer's Bond.* Executed by manufacturer and submitted to collector in duplicate, before commencing business, or when factory is transferred to another district.

*Form 59. Record of Dealer in Leaf Tobacco.* Record in which dealer shall report all leaf tobacco received and shipped each day by the dealer. To be kept at dealer's registered and bonded place of business and open to inspection by revenue officers at all times.

*Form 62. Tobacco and Snuff Manufacturer's Monthly Return.* Return on which manufacturer shall report tobacco materials of all classes received and shipped each day during month, total manufactured tobacco

of each class and snuff on hand at the beginning and close of the preceding month, manufactured and removed, both tax-paid and tax-free, during the month, also tobacco and snuff stamps on hand, purchased and used during the month. The return is an abstract of the manufacturer's revenue book, Form 74.

*Form 62-A. "Quasi" Tobacco Manufacturer's Monthly Return.* Abstract of Form 74. Used by manufacturers of tobacco who do not produce a taxable product, for reporting tobacco materials of all classes received and shipped each day.

*Form 70-A. Inventory—Manufacturer of Tobacco and Snuff.* Made annually on January 1, or at time of commencing and at time of concluding business, and when new bond is filed by manufacturer and submitted to collector.

*Form 70-B. Inventory—Manufacturer of Cigars and Cigarettes.* Made annually on January 1, or at time of commencing and at time of concluding business, and when new bond is filed by manufacturer and submitted to collector.

*Form 72—Part 1. Cigar Manufacturer's Monthly Return.* Rendered on or before the 10th day of succeeding month by manufacturer to collector. Shows tobacco materials of all classes received and shipped, large cigars manufactured and removed (tax-paid and tax-free) each day during preceding month, also total cigars and value of stamps on hand beginning and close of month and value of stamps purchased and used during month. Return is abstract of manufacturer's revenue book, Form 73, Part 1.

*Form 72—Part 2. Cigar Manufacturer's Monthly Return.* Rendered in same manner as Form 72, Part 1, and shows similar information on small cigars, large and small cigarettes when such articles are produced. This return is abstract of manufacturer's revenue book, Form 73, Part 2.

*Form 73—Part 1. Book To Be Kept by Manufacturer of Large Cigars.* Daily account of all material received in and removed from factory; large cigars and large cigar stamps on hand beginning of each month, large cigars manufactured and removed (tax-paid and tax-free), large cigar stamps purchased and used each day, also a recapitulation of the large cigars and stamps for the month.

*Form 73—Part 2. Book to be kept by manufacturer of small cigars, large and small cigarettes, in a manner similar to Form 73, Part 1.*

*Form 74. Book To Be Kept by Manufacturers of Tobacco and Snuff.* Daily account of all classes of materials received into and removed from factory; tobacco and snuff manufactured and removed and stamps purchased and used.

*Form 95. Tobacco Peddler's Statement.* Rendered by peddler to collector before commencing business. Should set forth his place of residence, States through which he intends to travel, and persons for whom he sells.

**Form 111. Tobacco Peddler's Bond.** To be executed by every peddler of tobacco before commencing business. Bond forfeited if principal sells manufactured tobacco products, except in original and full packages as put up by the manufacturer.

**Form 152. Cigarette Manufacturer's Record of Nontaxpaid Cigarette Tubes Received, on Hand, and Used.** Kept by manufacturer showing date of receipt of tubes, persons from whom purchased, number of tubes on hand at beginning and close of each month, and number used each day.

**Form 168. Order for Stamps—Cigars—Large—Various Classes.** Executed by manufacturer for stamps desired, and submitted with remittance to collector.

**Form 172. Order for Stamps—Tobacco.** Executed by manufacturer for stamps desired, and submitted with remittance to collector.

**Form 173. Order for Stamps—Snuff.** Executed by manufacturer for stamps desired, and submitted with remittance to collector.

**Form 177. Schedule of Stamps.** To be used to report stamps affixed to packages of manufactured tobacco products withdrawn from the market after removal from factory or customhouse, removed and presented for redemption or destroyed under internal revenue supervision.

**Form 178. Statement of Stamps Returned for Redemption—Tobacco, etc.** This form to be used for reporting unused or spoiled stamps returned for redemption.

**Form 277. Return for Registry, Manufacturers of Tobacco Products, Dealers in Leaf Tobacco, and Peddlers of Tobacco.** Shows name and address, place of business. Is required to be filed on commencing business, annually in month of July thereafter and whenever any change in ownership or location is made.

**Form 485. Order for Stamps; cigarette and small cigar.** Executed by manufacturer for stamps desired and submitted with remittance to collector.

**Form 542. Consent of Sureties on Bonds of Cigar, Cigarette, Tobacco or Snuff Manufacturers or Dealers in Leaf Tobacco.** To cover changes in factory premises or leaf storage places, trade name, or to removal of factory or place of business. Executed in duplicate by sureties and submitted by manufacturers and dealers with new statements on Form 36, 36½, or 772, where factories or storage places are changed, closed, or opened.

**Form 549. Export Bond.** Filed in duplicate by manufacturer with collector. Covers exportation of tobacco products without payment of tax.

**Form 549-A. Tobacco Sea Stores Bond.** Filed in duplicate by manufacturer with collector. Covers shipment or delivery of tobacco sea stores without payment of tax.

**Form 549-B. Tobacco Sea Stores Warehouse Bond.** Filed in duplicate by proprietor of the warehouse with collector. Covers storage of tobacco products removed from factories without payment of tax and withdrawal for consumption beyond the jurisdic-

tion of the internal revenue laws of the United States.

**Form 550. Application for Withdrawal and Entry for Exportation.** Submitted in triplicate by manufacturer to collector showing description of articles to be exported.

**Form 550-A. Application for Withdrawal of Tobacco Products From Factory for Use as Sea Stores.** Submitted in quadruplicate by manufacturer to collector, showing full description of articles to be withdrawn.

**Form 550-B. Application for Withdrawal of Tobacco Products From Bonded Warehouse for Use as Sea Stores.** Submitted in quintuplicate by the proprietor of the bonded sea stores warehouse to collector, showing description of articles to be withdrawn.

**Form 550-C. Monthly Report of Proprietor of Tobacco Sea Stores Warehouse.** Report rendered monthly by the proprietor of the bonded sea stores warehouse, in duplicate, to the collector, showing tobacco manufactures received. In and withdrawn from bonded warehouse during month and on hand at beginning and close of month.

**Form 664. Application for Withdrawal of Articles From Factory, Free of Tax, for Use of the United States.** Executed in duplicate by manufacturer and submitted to collector for each intended withdrawal.

**Form 667. Certificate of Receipt of Articles Withdrawn From Factory, Free of Tax, for Use of the United States.** Executed in duplicate by Government receiving officer to manufacturer after inspection of each shipment of tax-free products. Manufacturer must file both copies with collector within 30 days from date of withdrawal.

**Form 688. Application for Permit to Remove Tobacco, etc., from factory and Collector's Permit for such removal.** Filed in duplicate with collector by manufacturer, approved by collector and original as permit returned to manufacturer.

**Form 734. Monthly Return of Manufacturer of Cigarette Paper and Tubes.** Monthly return of tax paid on cigarette paper made up into packages, books, and sets and sold by the manufacturer; cigarette tubes removed tax-free and tax-paid by stamp, filed with collector by each manufacturer, on or before the 10th day of the succeeding month.

**Form 735. Return by importer of tax paid on cigarette paper and cigarette tubes imported into the United States.** Return is filed with collector by the importer covering each importation.

**Form 771. Bond of Dealer in Leaf Tobacco.** Executed in duplicate by dealer in leaf tobacco with surety satisfactory to collector before commencing business, upon change in principal, or when increase in penal sum is required due to increased liability.

**Form 772. Statement of Dealer in Leaf Tobacco.** Executed in duplicate by dealer in leaf tobacco before commencing business or when changes are made in places of storage and submitted to collector, showing address of place of business and exact location of each place of storage of tobacco.

**Form 774. Tobacco Invoice.** Executed by dealers in leaf tobacco and manufacturers of tobacco products for each shipment or importation of tobacco or tobacco received from farmers.

**Form 775. Monthly Report of Dealer in Leaf Tobacco.** Rendered at close of each month by dealer in leaf tobacco, reporting transactions, in leaf tobacco, shown by invoices on Form 774 attached. Original of entries in record, Form 59.

**Form 776. Inventory of Dealer in Leaf Tobacco.** Rendered to collector January 1, each year, or at time of commencing and at time of concluding business by dealer in leaf tobacco.

**Form 777. Bond for use of Cigarette Tubes by Cigarette Manufacturer.** Executed in duplicate by manufacturer of cigarettes receiving tax-free cigarette tubes for use in manufacturing cigarettes and submitted to collector.

**Form 778. Cigarette Manufacturer's Cigarette Tube Monthly Return.** Rendered at close of each month by manufacturer of cigarettes receiving and using tax-free cigarette tubes, showing all tubes received, and on hand, and used during the month.

**Form 901. Claim for Allowance of Drawback of Internal Revenue Tax Paid on Tobacco, Snuff, Cigars, or Cigarettes Exported, and Entry for Exportation Thereof.** Filed in quadruplicate by claimant with collector; deputy supervises destruction of stamps.

**Form 902. Bond for Drawback of Internal Revenue Tax Paid on Tobacco, Snuff, Cigars or Cigarettes Exported.** Filed in duplicate with collector.

**Form 923. Order for Stamps—Imported Manufactures.** Executed by Customs officer, delivered to importer who tenders to collector with remittance for stamps to be affixed to packages of imported tobacco manufactures.

(b) *Additional forms applicable generally.* For a list and description of additional forms prescribed by the Bureau for use in connection with internal revenue taxes generally, see § 601.6.

#### SUBPART J—MISCELLANEOUS EXCISE TAXES COLLECTED BY SALE OF REVENUE STAMPS

**SOURCE:** §§ 601.91 to 601.100 appear at 11 F. R. 177A-34, 14263, as amended at 13 F. R. 4121, 7710. Redesignation noted at 14 F. R. 5201.

§ 601.91 *Introductory.* The miscellaneous excise taxes collected by the sale of revenue stamps may be grouped into the following three general classes: (a) documentary stamp taxes, (b) commodity stamp taxes, and (c) occupational stamp taxes. A brief description of each of these three classes, together with a reference to the applicable rules bearing upon the functioning of the Bureau, the

forms used, etc., in the case of each tax, is set forth in the sections which follow.<sup>1</sup>

#### § 601.92 *Documentary stamp taxes—*

(a) *Capital stock, bonds, deeds of conveyance, and foreign insurance policies.* Chapter 11, subchapter A, of the Internal Revenue Code imposes certain taxes on issues of corporate bonds, debentures, certificates of indebtedness, capital stock and similar interests; on sales and transfers of capital stock and similar interests, and on foreign insurance policies. Chapter 31 of the Internal Revenue Code also imposes a tax on all sales or transfers of corporate bonds, debentures, and certificates of indebtedness, and on deeds of conveyance of realty sold. See Regulations 71 (Part 113 of this chapter).

(b) *Silver bullion.* Chapter 11, subchapter A, section 1805 of the Internal Revenue Code also imposes a tax on the net profit realized on the transfer of any interests in silver bullion, subject to certain exemptions and abatements to registered dealers and producers. See Regulations 85 (Part 112 of this chapter), as prescribed and made applicable to the Code by Treasury Decision 4887 (Part 112 of this chapter), approved by the President February 11, 1939.

(c) *Cotton futures.* Chapter 14 of the Internal Revenue Code imposes a tax on each contract of sale of any cotton for future delivery. See Regulations 36 (Part 110 of this chapter).

#### § 601.93 *Commodity stamp taxes*<sup>2</sup>—

(a) *Oleomargarine, etc.* Chapter 16 of the Internal Revenue Code imposes certain taxes with respect to oleomargarine and adulterated and process or renovated butter. Chapter 27, subchapter A, of the Code also imposes certain occupational taxes on manufacturers of, and wholesale and retail dealers in oleomargarine and adulterated and process or

<sup>1</sup>The descriptive terms used to designate the various transactions, commodities, occupations, etc., subject to tax are intended only to indicate their general classes. For specific information as to the scope of each tax, reference should be had to the applicable regulations.

<sup>2</sup>In a number of instances, where a stamp tax has been imposed with respect to a particular commodity, an occupational tax has also been levied on manufacturers, dealers, etc., in such commodity. In these cases, for the sake of brevity, and because the occupational tax is treated in the same regulations with the commodity tax, both taxes are described under the "commodity stamp tax" classification.

renovated butter. See Regulations 9 (Part 310 of this chapter).

(b) *Filled cheese.* Chapter 17 of the Internal Revenue Code imposes a tax with respect to filled cheese. Chapter 27, subchapter A, section 3210 of the Code also imposes an occupational tax on manufacturers of, and wholesale and retail dealers in, filled cheese. See Regulations 22 (Part 301 of this chapter).

(c) *Opium, etc.* Chapter 23, subchapter A, of the Internal Revenue Code imposes a tax upon opium, etc., produced in or imported into the United States, and sold, or removed for consumption or sale. Chapter 27, subchapter A, section 3220 of the Code also imposes an occupational tax on (1) importers, manufacturers, or producers of opium, etc.; (2) wholesale and retail dealers in such narcotics; (3) physicians, dentists, veterinary surgeons and other practitioners dispensing them; and (4) persons engaged in research, instruction, or analysis and persons not otherwise taxed dispensing preparations containing such narcotics. See Regulations 5 (Part 151 of this chapter).<sup>3</sup>

(d) *Opium for smoking purposes.* Chapter 23, subchapter B, of the Internal Revenue Code imposes a tax upon all opium manufactured in the United States for smoking purposes. See Regulations 3 (Part 150 of this chapter).<sup>3</sup>

(e) *Marihuana.* Chapter 23, subchapter C, of the Internal Revenue Code imposes a tax upon all transfers of marihuana. Chapter 27, subchapter A, section 3230 of the Code also imposes an occupational tax with respect to marihuana on similar classes of persons as those enumerated above in connection with opium, etc. See Regulation 1 (Part 152 of this chapter).<sup>3</sup>

(f) *Machine guns and short-barrelled firearms.* Chapter 25, subchapter B, of the Internal Revenue Code imposes a tax upon machine guns and certain types of short-barrelled firearms transferred in the continental United States. Chapter 27, subchapter A, section 3260 of the Code also imposes an occupational tax upon every importer, manufacturer, dealer, and pawnbroker in such guns

and firearms. See Regulations 88 (Part 319 of this chapter).<sup>4</sup>

(g) *Playing cards.* Chapter 11, subchapter A, of the Internal Revenue Code imposes a tax on playing cards manufactured or imported, and sold, or removed for consumption or sale. See Regulations 66 (Part 305 of this chapter).

(h) *White phosphorus matches.* Chapter 24 of the Internal Revenue Code imposes a tax upon white phosphorus matches. See Regulations 32 (Part 300 of this chapter).

§ 601.94 *Occupational stamp taxes.* Chapter 27, subchapter A, Sections 3267 and 3268 of the Internal Revenue Code impose certain occupational taxes with respect to coin-operated amusement or gaming devices and bowling alleys, billiard and pool tables. See Regulations 59 (Part 323 of this chapter).

§ 601.95 *General procedure—(a) Tax collection.* (1) The documentary and commodity stamp taxes are paid by having affixed to the document, memorandum of sale, policy, package, container, etc., an internal revenue adhesive stamp or stamps in an amount equal to the tax due and by thereafter cancelling such stamps in the manner prescribed. Payment of occupational taxes is evidenced by the posting or displaying of a special occupational tax stamp on the premises where the business is operated. The stamps used for such purposes are prepared and distributed by the Bureau through collectors of internal revenue.

<sup>4</sup> In addition to the administration of the taxes with respect to machine guns and certain types of short-barrelled firearms, the Bureau of Internal Revenue is also charged with the administration of the Federal Firearms Act (52 Stat. 1250). This act is not a revenue measure but is a licensing statute and its provisions are not codified in the Internal Revenue Code. The act makes it unlawful for any manufacturer or dealer, except a manufacturer or dealer having a license issued under the provisions of the act, to transport, ship, or receive any firearms or ammunition in interstate or foreign commerce. Rules bearing upon the functioning of the Bureau, the forms used, etc., in connection with this act are contained in Treasury Decision 4898, as amended (Part 315 of this chapter). The procedure to be followed in making application for a license and all other requirements imposed under the act upon manufacturers and dealers in firearms and ammunition are set forth in such Treasury decisions.

<sup>3</sup> These regulations are issued jointly by the Bureau of Internal Revenue and the Bureau of Narcotics, which agencies share responsibility for the administration and enforcement of the narcotic taxes.

(2) Documentary taxes are payable with respect to every transaction, i. e., each issue, sale, transfer, etc., of the instrument subject to tax. Commodity taxes are payable with respect to the manufacture, importation, or transfer, as the case may be, of the contents of each package or container. Occupational taxes are payable annually for the privilege of doing business beginning with July 1 of each year, when the taxpayer is in business on that date, or from the beginning of the month in which the business is commenced on a pro rata basis.

(3) Documentary stamps may be purchased from (i) collectors of internal revenue and duly authorized deputy collectors; (ii) postmaster in all post offices in the first and second classes and such post offices of the third and fourth classes as are located in county seats; and (iii) designated depositories of the United States. Commodity and occupational tax stamps may be purchased only from collectors and duly authorized deputy collectors. Such purchases may be made only upon the filing of the prescribed requisition, application, or other form and from an official authorized by law to sell such stamps.

(4) Payment for such stamps must be made by means of cash, post office money order or certified check. In situations (i) where the instruments, documents, commodities, etc., subject to stamp tax are no longer in existence or (ii) where, for other reasons, such instruments, documents, etc., cannot be stamped, or (3) where it is discovered that occupational tax stamps are due for prior taxable years, or (iv) where a taxpayer, after being advised of his liability, refuses to affix stamps, the tax is collected by assessment. (See § 601.2)

(5) Detailed information as to the persons liable for tax, the forms of stamps, the prescribed applications or requisitions, and all other forms required in connection with miscellaneous excise taxes payable by revenue stamps is contained in the regulations referred to in previous subsections. Copies of these regulations, together with copies of all necessary forms and instructions as to their preparation and filing, may be obtained from the office of the collector of internal revenue for the district in which the taxpayer is located.

(b) *Rulings.* The procedure to be followed in securing a ruling with respect

to any miscellaneous excise tax collected by means of a revenue stamp is the same as that set forth in § 601.47 (b) relating to sales taxes.

§ 601.96 *Liability for additional or delinquent tax.* When liability for additional or delinquent tax is disclosed by the taxpayer or is discovered as a result of an examination of the taxpayer's books and records, payment thereof is evidenced by means of the prescribed stamp if the document, commodity, etc., is still in existence or, in the case of an occupational tax, if the liability is for the current period. Where the documents, commodities, etc., are no longer in existence, or where the taxpayer refuses to affix or purchase the stamps or where, in the case of an occupational tax, the liability is for a prior taxable period, the additional or delinquent tax is assessed in the same manner as sales taxes, as set forth in § 601.48. Whether the liability is proposed to be asserted by requiring the taxpayer to affix or purchase stamps or by making an assessment of the tax, the same opportunity for protest or conference is accorded him.

§ 601.97 *Administrative remedies available to taxpayers after purchase of documentary, commodity, or occupational tax stamps or after assessment and/or payment of tax—(a) Redemption of stamps.* Where stamps have been rendered useless by gumming or sticking together in transit or otherwise without fault of the purchaser, they may be exchanged by a collector of internal revenue for other stamps of the same quantity and denomination. Stamps which have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake have been improperly or unnecessarily used, or have been used in excess of the amount of tax actually due, may be redeemed upon proper claim filed with the collector. All such claims must be prepared on Form 843 (see § 601.6) and must be filed with the collector for the district in which is located the principal office of the claimant, or if he has no such office, with the collector for the district in which he resides. The claim must be filed within four years after the date of purchase of the stamps from the Government. The stamps either must be submitted with the claim, or if it is impracticable to remove them from the instruments, documents, etc., to which they are attached

they must be presented to a deputy collector or other internal revenue representative who will write on the face of the stamps the words "Claim for refund filed," and attach to the claim a statement showing that such endorsement has been made. In any case where the actual date of purchase of the stamps from the Government cannot be given, it must be definitely shown in the claim whether they were so purchased within four years prior to the date of filing of the claim. Once filed, a claim for redemption follows the same channels as do claims for refund of sales taxes, as set forth in § 601.49 (b).

(b) *Claims for abatement or refund.* Where a stamp tax is not paid by stamp but the amount thereof is assessed, the person against whom the assessment is made may file a claim in abatement of the tax or a claim for refund for any part of the assessment which has been paid. In either case, the procedure to be followed by the claimant is the same as set forth in the case of claims for abatement or refund of sales taxes, as described in § 601.49. All claims for refund of stamp tax paid pursuant to an assessment must be filed within four years next after payment of the tax.

(c) *Instructions.* Detailed instructions as to the manner in which claims for redemption of stamps and for abatement or refund of stamp taxes should be prepared and filed are contained in the various regulations listed in §§ 601.92, 601.93 and 601.94.

§ 601.98 *Offers in compromise.* The procedure in the case of offers in compromise of liability for miscellaneous excise taxes collected by stamp is the same as that set forth in § 601.50, applicable to sales taxes.

§ 601.99 *Provisions special to the documentary, commodity, and occupational stamp taxes—(a) Documentary stamp taxes.* (1) Every person engaged in any of the following businesses or activities is required to register with the collector of internal revenue for each district in which such business or activity is conducted: (i) Negotiating, making, or recording sales or transfers of stock, bonds, etc.; (ii) conducting or transacting a stock or bond brokerage business; (iii) accepting or procuring the transmission of orders for the purchase or sale or transfer of stocks, etc., to be executed at a stock or bond brokerage office or an exchange or similar place; (iv) transfer-

ring stock, bonds, etc., other than his own; and (v) conducting an exchange or clearing house, or clearing association, for the clearing, adjusting and settling of transactions made on exchanges or similar places.

(2) A statement for such registration is required to be made under oath on Form 741 procurable from collectors of internal revenue. The statement must set forth specifically the character of the business, the name under which it is operated, and the exact location. A concern having branches or agencies must file a statement in the district in which its principal office is located, showing the address of each branch office or agency and the name of the manager or agent thereof. A separate statement must also be filed in each of the other districts in which branches or agencies are maintained. The data shown in a statement covering a branch or agency must relate to such branch or agency rather than the principal office. For further information as to the proper execution of Form 741, see Regulations 71 (Part 113 of this chapter) referred to in § 601.92.

(3) Any person conducting a stock brokerage business who has registered with the collector as provided above may appoint some person to act as nominee in holding stock on his behalf. Also, any person acting in the capacity of a custodian may appoint some person to act as nominee in holding stocks or bonds on his behalf. The name of the person appointed as nominee of a broker or a custodian shall be registered with the collector for the district in which the principal place of business of the broker or the custodian is located. Substitution of a nominee may be effected by likewise registering the name of the successor nominee. No special form is prescribed for use in registering a nominee.

(4) Where proper registration statements have been filed, the collector will issue to such person a certificate of registration signed by him and setting forth the date of issue, the name of the person conducting the business and the nature of the business for which the certificate is issued. Such certificate must be kept at the place of business located within the district of the collector by whom the certificate is issued.

(b) *Commodity stamp taxes.* (1) Provision is made for the withdrawal of oleomargarine, filled cheese, and playing cards from factories, free of tax, for the

use of the United States. The procedure to be followed, the forms to be used, etc., in the case of such withdrawals are contained in Regulations 34 (Part 450 of this chapter). Provision is also made for the exportation without payment of tax of oleomargarine, adulterated butter, and playing cards. The procedure to be followed, and the forms to be used, etc., in the case of such exportation are contained in Regulations 73 (Part 451 of this chapter).

(2) Every manufacturer of opium manufactured in the United States for smoking purposes must, before commencing business, furnish to the collector of the district in which his place of manufacture is located a notice on Form 268 and a bond on Form 269 with sureties satisfactory to the collector and in a penal sum of not less than \$100,000. There shall not be less than three personal sureties, each of whom shall qualify in the full amount of the bond. The collector on approving the bond will issue to the manufacturer a certificate on Form 270 which will specify the penal sum of the bond furnished. This certificate shall contain a transcript from the manufacturer's notice, Form 268, giving an accurate description of the factory premises. This certificate must be posted by the manufacturer in a conspicuous place within his manufactory. (See Regulations 3 (Part 150 of this chapter) referred to in § 601.93 (d).)

§ 601.100 *Description of forms.* (a) The forms prescribed and furnished by the Bureau for use in connection with the miscellaneous excise taxes collected by sale of revenue stamps are as follows:

*Form 11. Special-tax return for use in making application for special tax stamps in connection with the carrying on of the business of a manufacturer of, or a retail or wholesale dealer in, oleomargarine, adulterated, process or renovated butter, and filled cheese.* The return is to be filed annually for the fiscal year beginning with July 1 of each year or, where business is begun after the month of July, from the first day of the month in which such business is begun. The information required to be shown on the form includes the name and address of the taxpayer; the trade name if used; the kind of tax involved; the period involved; the nature of the application; and the signature and title of the person making the return. If the amount of tax involved is more than \$10, the return must be executed under oath. If the amount is \$10 or less, the return may be signed or acknowledged before two subscribing witnesses.

*Form 11-B. Special-tax return for use in applying for special tax stamps for the operation of coin-operated amusement and gaming devices, bowling alleys, and billiard and pool tables.* The requirements as to filing, the information to be shown on the form, and the manner of execution are the same as those with respect to Form 11, above.

*Form 33. Affidavit of individual surety on bond.* Personal sureties on bonds (of which there must be two) must qualify by executing affidavit on this form in triplicate.

*Form 213. Form of notice for use by a manufacturer in giving notice to the collector before engaging in the business of manufacturing oleomargarine, adulterated and process or renovated butter, filled cheese, or white phosphorus matches.* This notice must also be filed on the first day of July of each year thereafter by those continuing in business. The information required to be shown on the form includes the name of the product to be manufactured; the date; the name and address of the manufacturer; the site of the factory; a description of the land where the factory is located; a full description of the building or portion of the building to be used for the factory; the capacity of production for each twenty-four hours; and the signature of the applicant.

*Form 214. Form of manufacturer's bond furnished by every manufacturer before commencing the business of manufacturing oleomargarine, adulterated and process or renovated butter, filled cheese and white phosphorus matches.*

*Form 215. Inventory to be filed by every manufacturer of oleomargarine, adulterated and process or renovated butter, filled cheese, and white phosphorus matches.* This form is to be filed on the first day of July of each year, or at the time of commencing and at the time of concluding business, if before or after the first day of July. The information required to be shown on the form includes the name of the product to be manufactured; the name of the manufacturer; the factory number assigned by the collector; the internal revenue district; the location of the factory; the date of the inventory; the name of and the quantity of pounds of each of the different kinds of material held for use in manufacturing; the kind of product to be manufactured; the number and net weight of packages of the product on hand, both stamped and unstamped; the value of the stamps, both attached and unattached; the signature of the taxpayer; and a certificate as to the correctness of the inventory as verified by a deputy collector from a personal examination.

*Form 216. Monthly return for use by manufacturer of oleomargarine, adulterated and process or renovated butter, and filled cheese.* The information required to be shown on the return includes the name of the product to be manufactured; the name and place of business of the manufacturer; the month for which the return is filed; the

new stock or manufactured account; the materials used during the month; the returned stock account; the stamp account and the signature of the taxpayer. The return is required to be made under oath.

*Form 216a. Supplemental sheet to Form 216 to be used in listing the names and addresses of the consignees to whom the taxable product is being shipped and the quantity in pounds.*

*Form 217. Monthly return of wholesale dealer in oleomargarine, adulterated and process or renovated butter, and filled cheese.* The information required to be shown on this form includes the name and place of business of the wholesale dealer; the month for which the return is filed; the total quantity of the commodity on hand at the beginning of the month, received during the month and returned goods received; the total quantity of the commodity disposed of during the month and the balance on hand at the end of the month; a transcript of the individual receipts showing date of invoice, name and address of consignor, whether manufacturer or wholesale dealer, and the quantity in pounds; and the signature of the dealer. This form must be executed under oath.

*Form 217a. Supplemental sheet to Form 217 to be used in reporting disposals of the commodity dealt in.* The information required to be shown includes the date of invoice; the name and address of the consignee; and the quantity shipped.

*Form 218. Stamp order form for use in ordering oleomargarine, adulterated and process or renovated butter, filled cheese and playing cards commodity tax stamps.* The information required to be shown on the form includes kind of stamp desired; the factory number assigned by the collector; the address of the collector of internal revenue; the date of the order; how the stamps are to be sent; to whom, and the address to which, the stamps are to be sent; the denomination of the stamp; the number and value of the stamps and the total amount involved.

*Form 268. Form of notice for use by a manufacturer in giving notice to the collector before engaging in the business of manufacturing opium for smoking purposes.* This form also must be filed upon any change in location. The information required to be shown on the form includes the name and address of the manufacturer; the number and description of the place where the opium will be manufactured; the number and kind of utensils, machines or other apparatus kept on the premises for use in the manufacture of the opium; and the signature of the person filing the notice. This form is required to be executed under oath.

*Form 269. Form of manufacturer's bond furnished by every manufacturer of smoking opium before commencing business.*

*Form 270. Form of certificate issued by the collector after receiving the notice on Form 268 and approving the bond on Form*

*269 of a manufacturer of smoking opium.* The certificate is required to contain a transcript from the manufacturer's notice on Form 268, giving an accurate description of the factory premises. The certificate must be posted by the manufacturer in a conspicuous place within his manufactory.

*Form 271. Form of book to be kept by a manufacturer of smoking opium.* The information required to be shown on the form includes a record of the materials on hand, as per inventory, on the first day of January of each year, or at the time of commencing or concluding business; materials and smoking opium purchased or received into the factory; materials sold or returned; prepared smoking opium manufactured, sold or removed; smoking opium stamps purchased and used; and the name, factory number and internal revenue collection district of the manufacturer.

*Form 272. Inventory of manufacturer of smoking opium to be filed with the collector on the first day of January of each year, or at the time of commencing or concluding business, if before or after the first of January.* The information required to be shown on the form includes the quantity of opium, crude or gum, on hand; the quantity of other materials on hand; the quantity of manufactured smoking opium on hand; and the number and value of stamps on hand. The form must be executed under oath and must also contain a sworn verification of a deputy collector who has made a personal examination of the inventory.

*Form 273. Monthly return of manufacturer of smoking opium.* The information required to be shown on the form includes the name, address and registry number of the taxpayer, the month for which the return is filed; all opium in crude form and other materials purchased, and smoking opium and other materials sold, with the name, address and business of the persons from whom purchased and to whom sales were made; the total quantity of opium suitable for smoking purposes and the size of the packages and the number of packages of each size manufactured and removed tax-paid; the number of packages of each size sold to each recipient; and the value of stamps purchased and used. The return is required to be executed under oath.

*Form 277. Form of return for registry to be used by every manufacturer of playing cards in registering with the collector for the district in which his factory is located.* The information required to be shown on the return includes the name and address of the manufacturer; the type of business to be engaged in; the place where the business is to be carried on; and the signature of the manufacturer. The form is required to be executed under oath.

*Form 382. Certificate of registry issued by collectors of internal revenue after receipt of return for registry filed on Form 277 by a manufacturer of playing cards.* The information shown on the form includes the pe-

riod covered thereby; the certification of the issuing collector; and the name and address of the registrant. This form is required to be kept conspicuously posted in the registrant's place of business.

*Form 396. Form of book to be kept by manufacturers of filled cheese.* The information required to be shown on this form includes a daily record of (1) the quantity in pounds of each material used in manufacture; (2) the number of taxable pounds of filled cheese produced; (3) the number of taxable pounds of filled cheese disposed of in each instance, name of person to whom shipped or delivered, date of shipment or delivery, and the address to which sent; (4) the number of taxable pounds of filled cheese returned to the factory, the name of person by whom returned, date of receipt, and address from which returned; (5) the number of taxable pounds of filled cheese reworked, dumped or destroyed; and (6) the total values of stamps purchased and used.

*Form 397. Form of book to be kept by wholesale dealer in filled cheese.* The information required to be shown on the form is a daily record of the number of pounds of each consignment of filled cheese received, showing the name and address of the consignor and the date of receipt; and the number of pounds of filled cheese disposed of showing the name of the person to whom shipped or delivered, date of shipment, and address to which sent.

*Form 427. Stamp order form for use in ordering documentary stamps.* The information required to be shown on the form includes the address of the collector; the date of the order; how the stamps are to be sent; to whom and the address to which the stamps are to be sent; the number of each denomination of stamps and the value thereof; and the total value of all stamps ordered.

*Form 549. Form of bond furnished by manufacturers of oleomargarine, adulterated butter and playing cards who desire to export such products without the payment of tax.*

*Form 550. Application for withdrawal and entry for exportation filed by every manufacturer of oleomargarine, adulterated butter and playing cards who desires to withdraw products for exportation to a foreign country or shipment to certain possessions of the United States without payment of tax.* The information required to be shown on the return includes the Internal Revenue district in which filed; the date of the application; the factory number; the Internal Revenue serial number; the kind of product manufactured; the location of the factory; to whom consigned; the port where the product is to be laden, the name of the vessel and the port of destination; the marks and numbers on the shipping cases; the contents thereof and the total quantity involved; the amount of tax liability; the signature of the manufacturer; and the signature of the exporter.

*Form 660. Form of monthly return for use by manufacturers of white phosphorus matches.* The information required to be shown on this return is a transcript of the daily record on Form 662, shown immediately below. The return is required to be executed under oath before a deputy collector.

*Form 662. Form of book to be kept by manufacturers of white phosphorus matches.* The information required to be entered in the book is a record of the quantity of each material used each day; the total number of matches produced; the number of stamped packages and original packages in which packed; the total number of stamped packages and original packages, together with the total number of matches, disposed of each day.

*Form 663. Form of requisition to be filed by governmental agency for withdrawal of oleomargarine, filled cheese and playing cards from factory, free of tax, for use of the United States.* The information required to be shown on the form includes the name of the department making the requisition; the date of such requisition; the total quantity and the name of the article desired to be withdrawn; by whom manufactured; the factory number and the district in which such factory is located; to whom to be shipped; the address to which shipped; and the signature and title of the officer preparing the requisition.

*Form 664. Form of application to be used by manufacturers for withdrawal of articles from factory, free of tax, for use of the United States.* The information required to be shown on the form includes the date of the form; the name of the article to be withdrawn; the factory number and the district where the factory is located; the date the shipment is to be made; the name of the department or agency and the place to which the shipment is to be made; the number of statutory packages; the contents of such package, by weight or number; the total taxable quantity; the rate of tax involved; the amount of tax remitted; and the signature of the manufacturer making the withdrawal.

*Form 665. Form of bond for transportation and delivery of playing cards from factory, free of tax, for use of the United States, to be executed by manufacturers of playing cards.*

*Form 666. Permit for withdrawal of articles from factory, free of tax, for use of the United States.* This permit is issued by the Bureau after approval of the requisition on Form 663 and the application on Form 664. The information required to be shown on the form is the same as that shown on Form 664, above, except that it is signed by the Deputy Commissioner in charge of the Miscellaneous Tax Unit.

*Form 667. Certificate of receipt of oleomargarine, filled cheese, or playing cards withdrawn from factory, free of tax, for use of the United States, to be executed by the receiving agency.* The information required to be shown on the return includes the date

of the certificate; the kind of articles received; the name of the manufacturer; the number of the factory; the district where the factory is located; the date of withdrawal; the date of receipt; the number of packages received; the contents of such packages, by weight or number; the total taxable quantity received; the rate of tax involved; the amount of tax remitted; a statement as to any shortages; and the signature and title of the receiving officer.

**Form 678.** *Form of application for registry and special tax stamp, to be filed by any person who is registered in one or more of the classes of occupations specified in section 3220 of the Internal Revenue Code (relating to the occupational taxes with respect to opium, etc.) and who desires to re-register for an ensuing period.* The information required to be shown on the form includes the period for which application is made; the name and address of the applicant; the class or classes of occupations for which application is being made; a description of the occupation to be engaged in; the State professional license or certificate number issued and date issued, or the State store or business registration number and date issued; and the signature of the applicant. If the amount of tax covered by the application is not in excess of \$10, it may be signed or acknowledged before two witnesses. Otherwise it must be executed under oath. (This application must also be supported by an affidavit showing the applicant to be legally qualified or permitted under the laws of the jurisdiction in which he is engaged, or proposes to engage, in any business or occupation within the scope of existing narcotic regulations, to engage in such business or occupation.)

**Form 678-A.** *Form of application for registry and special tax stamp, to be filed by any person who has not previously qualified in any of the classes of occupations specified in section 3220 of the Internal Revenue Code (relating to the occupational taxes with respect to opium, etc.)* The information required to be shown on the form is the same as that required to be shown on Form 678, above, with the addition of the previous occupation of the applicant and the name and address of his former employer.

**Form 678-C.** *Form of application for registry and special tax stamp to be filed by every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, or gives away marihuana.* The information required on this form is the same as that required to be shown on Form 678-A, above.

**Form 679.** *Form of requisition for blank order forms to be used in connection with opium, etc.* The information required to be shown on the form includes the date of the requisition; the taxpayer's name, address, registry number and class; the number of books of order forms desired; the number of unused forms on hand, including the

serial numbers and the date issued; and the signature of the purchaser.

**Form 679a.** *Form of requisition for blank marihuana order forms.* The information required to be shown on this form includes the date of the requisition; the collector to whom addressed; the transferee's name, address, and if registered, the registry number and class; the name and address of the transferer; a description, including quantities, of the desired articles or materials to be transferred; and the signature of the applicant.

**Form 713.** *Inventory of opium, coca leaves, marihuana, etc., to be filed annually by persons subject to tax under sections 3220 and 3230 of the Internal Revenue Code.* The information required to be shown on the form includes the name and address of the taxpayer; the class under which taxed; the date of the inventory; the name and description of the articles inventoried and the quantities thereof; and the signature and title of the person executing the form. The form is required to be executed under oath.

**Form 741.** *Form of statement for registration to be filed by every person engaged in any of the following businesses or activities: (1) negotiating, making or recording sales or transfers of stocks, bonds, etc.; (2) conducting or transacting a stock or bond brokerage business; (3) accepting or procuring the transmission of orders for the purchase or sale or transfer of stocks, etc., to be executed at a stock or bond brokerage office or an exchange or similar place; (4) transferring stock, bonds, etc., other than his own; and (5) conducting an exchange or clearing house, or clearing association, for the clearing, adjusting and settling of transactions made on exchanges or similar places.* The information required to be shown on the form includes the name and address of the applicant; the name under which the business is operated; the period covered by the application; character of the business; information concerning the organization of the firm or corporation; the date and place of issue of other licenses under state or federal laws; and the signature and title of the person making the application, together with his residence address. The application is required to be made under oath.

**Form 742.** *Certificate of registry issued by the collector of internal revenue after approval of the application for registry on Form 741.* The information required to be shown on the form includes the registrant's number; the district of the issuing collector; the date issued; the full name and address of the registrant; the period covered by the certificate; and the signature of the collector.

**Form 743.** *Stamp order form for use in ordering stock transfer stamps.* The information required to be shown on this form is the same as that required to be shown on Form 427 for use in ordering documentary stamps.

*Form 749. Monthly return of manufacturer or importer of playing cards.* The information required to be shown on the form includes the name and address of the manufacturer or importer; the factory number; the district in which filed; the month for which the return is filed; the production account by number or packs; the stamp account, setting forth the value of stamps on hand at the beginning of the month, purchased during the month, used during the month and on hand at the end of the month; and the signature of the taxpayer. The form is required to be executed under oath.

*Form 786. Stamp order form for use in ordering stamps for affixing to packages or containers of narcotics.* The information required to be shown on the form includes the class and registry number of the person ordering; the collector with whom the order is being filed; the date of the order; the name and address of the person making the order; how the stamps are to be sent; the number and value of each denomination of stamps; and the total value of the stamps ordered.

*Form 802. Manufacturer's quarterly return of exempt narcotic preparations, to be executed by all manufacturers of exempt narcotic preparations unless they are also registered as manufacturers of taxable narcotic drugs.* The information required to be shown on the return includes the name, registry number and address of the manufacturer; the district in which registered; period for which the return is filed; a summary of the purchase quota granted, and a report of all purchases since the beginning of the year for each kind of taxable narcotic; a summary of exempt preparations produced, used and on hand; a complete accounting for taxable narcotics purchased, used and on hand; and the signature and title of the person making the return.

*Form 810. Monthly return of importer, manufacturer, producer or compounder of taxable narcotic drugs and preparations.* The information required to be shown on the return includes the name, registry number and address of the person making the return; the district in which the return is filed; the month covered by the return; a summary accounting in detail for all stocks on hand at the beginning and end of the month and for receipts, dispositions, manufacture and packaging of taxable narcotics during the month; an accounting for stamps on hand at the beginning of the month, purchased during the month, affixed during the month and on hand at the end of the month; and the signature and title of the person filing the return. The form is required to be executed under oath.

*Forms 810A, 810B, 810C, and 810D. Supplements to Form 810 showing in detail the information summarized in that form.*

*Form 810E. Semi-annual inventory return to be filed by manufacturers, producers, and compounders covering taxable narcotic drugs and preparations on hand as of June 30 and*

*December 31 of each year.* The information required to be shown on the return includes the name, address, and registry number of the person making the return; the district in which the return is filed; the closing date of the period; and complete data as to the raw materials, goods in process, finished process goods, finished goods in marketable packages, and miscellaneous stock on hand on the date shown.

*Form 811. Monthly return of wholesale dealer in taxable narcotic drugs and preparations.* The information required to be shown on the return includes the name, registry number, and address of the person making the return; the district in which the return is filed; the month covered by the return; a summary showing the number of individual stamped packages on hand at the beginning of the month, received during the month, disposed of during the month, and on hand at the close of the month; and the signature and title of the person filing the return. The return is required to be executed under oath.

*Forms 811A and 811B. Supplements to Form 811 showing in detail the taxable narcotic drugs and preparations received and disposed of during the month as summarized on Form 811.*

*Form 811C. Semi-annual inventory return to be filed by wholesale dealers of taxable narcotic drugs and preparations on hand June 30 and December 31 of each year.* The information required to be shown on the return includes the name, address, and registry number of the person making the return; the district in which the return is filed; closing date of the period covered thereby; and complete data as to the name, quantity and narcotic contents of the drug or preparation, the size of the individual package, the number of packages, and the total content of all the packages covered by each entry, classified according to the kind of narcotic contained in the drug or preparation.

*Form 838. Form of monthly return required to be filed by brokers, dealers, etc., covering their documentary and stock transfer stamp account.* The information required to be shown on the return includes the month covered by the return; the name and address of the person making the return; the value of the stamps on hand at the beginning of the month, purchased during the month, used during the month, and on hand at the end of the month; and the signature and title of the person making the return. This return is required to be made under oath.

*Form 923. Form of order for stamps covering imported oleomargarine and playing cards.* The information required to be shown on the form includes the name and address of the owner or importer of the merchandise; the address of the collector; the date of the order; the description of the article subject to tax; the number and denomination of stamps desired; the rate of tax applicable; the value of the stamps; and a certificate of the collector of customs show-

ing from where imported and in what manner the products were imported.

*Form 960. Form of annual return of producer of marihuana.* The information required to be shown on the return includes the name, registry number and address of the person making the return; the district in which such return is filed; the period covered by the return; a summary concerning the cultivation and harvesting of marihuana; a summary concerning the production and disposition of bulk marihuana, and the purchase or receipt of seeds for planting; a detailed statement of all seeds received from outside sources for planting, and of all marihuana exported, sold or otherwise disposed of, and the signature and title of the person making the return. The return is required to be executed under oath.

*Form 961. Form of quarterly return of importer, manufacturer, or compounder of, or dealer in, nonmedicinal marihuana products.* The information required to be shown on the form includes the name, registry number, and address of the person making the return; the district in which the return is filed; the closing date of the period covered by the return; a summary of the importation, purchase and disposition of the bulk marihuana; a summary of the manufacture of nonmedicinal marihuana products; a summary of the production, importation, purchase and disposition of nonmedicinal marihuana products; and the signature and title of the person making the return. The return is required to be executed under oath.

*Form 961A. Form of supplemental statement to be attached to Form 961 showing in detail certain of the information summarized in Form 961.*

*Form 1 (Firearms). Form for use in the registration of firearms in conformity with the provisions of Part VIII, Subchapter A, Chapter 27, and Subchapter B, Chapter 25, of the Internal Revenue Code.* The information required to be shown on the form includes the date thereof; the address of the collector; the name, home address and place of business or employment of the person possessing the firearm; the date of acquisition of the firearms; the address where the firearm is usually kept; the kind of firearm; serial number, model, caliber and length of barrel; the name and address of the manufacturer; and the signature of the owner. This form is required to be executed under oath.

*Form 2 (Firearms). Form of return of firearms manufactured, imported, or received by manufacturer, importer, dealer (other than pawnbroker), and pawnbroker, under Chapter 25, Subchapter B, of the Internal Revenue Code.* This return is required to be filed immediately upon the manufacture, importation or receipt of any firearm. The information required to be shown on the return includes the date on which the firearm was manufactured, imported or received; the name and address of the manu-

facturer or the person for whom received; the place where the firearm is usually kept; the kind of firearms; the serial number, model and caliber of such firearm; the name and address of the person making the return; and the special tax stamp number issued to the person making the return. This return is required to be executed under oath.

*Form 3 (Firearms). Form of return of firearms transferred or otherwise disposed of by manufacturer, importer, dealer (other than pawnbroker) and pawnbroker under Chapter 25, Subchapter B, of the Internal Revenue Code.* This return is required to be filed immediately upon the transfer or other disposal of the firearm. The information required to be shown on this form includes the date on which the firearm was transferred or otherwise disposed of; the authority for the transfer; the name and address of the purchaser or the person to whom transferred; the kind of firearm; the serial number, model and caliber of the firearm; the signature and address of the person making the return; and the number of the special tax stamp issued to the person making the return. The return is required to be executed under oath.

*Form 4 (Firearms). Form of application and order form for transfer of firearms.* Every person seeking to obtain a firearm must make application on this form, in duplicate, to the transferor. The information required to be shown on the form by the applicant includes the name and address of the applicant; the address where the firearm will usually be kept; the object in seeking to obtain the firearm; the use to be made of the firearm; the provisions which will be made for the storage of the firearm; the person or persons who will be authorized to use it; a list of all places of residence of the applicant during the preceding five years; the present occupation of the applicant; the name and address of his employer; a record of any military service performed; a description of any defect of limb or other physical deformities; the weight and height of the applicant; a complete set of finger prints; details concerning any arrests; the photograph of the applicant; and the signature of the applicant. The applicant is required to execute this form under oath.

In addition, the transferor of the firearms must show the kind, serial number, model, caliber and other marks of identification of such firearm; the name and address of the manufacturer; and the signature and address of the transferor. The transferor must also attach the proper stamp to the form.

*Form 5 (Firearms). Application for exemption from payment of transfer tax on firearms under Chapter 25, Subchapter B, of the Internal Revenue Code.* The information required to be shown on the form includes the date of the application; the name and address of the transferee; the kind, serial number, model, caliber, length of barrel in inches, and other marks of identification of the firearm; the name and address of the manufacturer of the firearm; a statement as

to the basis for the exemption; the date of the transfer; the name of the transferor; and the signature and address of the transferee. This application is required to be executed under oath.

**Form 6 (Firearms).** *Application for importation of firearms under Chapter 25, Subchapter B, of the Internal Revenue Code.* The information required to be shown on this form includes the date of the application; name and address of the importer; the kind, serial number, model, caliber, length of barrel in inches, and other marks of identification of the firearm; the name and address of the manufacturer of the firearm; purpose for which the firearm is to be used; whether the applicant is a duly qualified importer; whether special tax has been paid for the current year; whether an attempt has been made to obtain a similar firearm in the United States; a detailed statement of the reasons why the firearm described is unique or of a type which cannot be obtained within the United States or any territory under its control or jurisdiction; and the signature of the applicant. The application is required to be executed under oath.

**Form 7 (Firearms).** *Form of application for license under the Federal Firearms Act (52 Stat. 1250).* The information required to be shown on this form includes the date of the application; the name, trade name if used, and address of the applicant; whether a manufacturer or dealer in firearms; post office addresses of any additional places of business; and the signature of the person making the application.

**Form 8 (Firearms).** *Form of license under the Federal Firearms Act.* This form is issued by the collector after approval of the application on Form 7 (Firearms). The information required to be shown on the form includes the district of the collector issuing the license; the number of the license; the name, trade name if used, and address of the licensee; the class of license; the period covered by the license; and the signature of the collector.

**Form 11A (Firearms).** *Special tax return and application for registry to be filed by manufacturers and importers of, and dealers in, and pawnbrokers handling, firearms.* The information required to be shown on the form includes the name, trade name if used, and address of the applicant; the kind of business being conducted; the period for which application is made; and the signature of the person making the application. The application is required to be executed under oath.

**Form 1 (Silver).** *Application for certificate of registration as a transferor regularly engaged in the business of furnishing silver bullion for industrial, professional or artistic use.* The information required to be shown on the form includes the address of the collector to whom application is made; the name and address of the applicant; data concerning the applicant's use of silver; the quantity of silver actually used; the trade

name of the applicant; and the signature of the applicant under oath.

**Form 1-A (Silver).** *Form of certificate issued by the collector evidencing the right of the person to whom issued to claim the benefits of the abatement or refund provisions of section 1805 of the Internal Revenue Code which imposes a tax on transfers of interests in silver bullion.* The information required to be shown on the form includes the registry number of the person to whom the certificate is issued; the address of the collector; the date of the certificate; the name and address of the person to whom the certificate is issued; whether such person is a manufacturer, producer or vendor; and the signature of the collector.

**Form 2 (Silver).** *Memorandum of transfer of an interest in silver bullion to be filed by the transferor of the bullion.* The information required to be shown on the return includes the date of the transfer; the name and address of the transferor; the name and address of the transferee; the interests in silver bullion transferred in fine troy ounces; data concerning the acquisition and sale of the silver interest; the amount on which tax is computed; the amount of tax covered by any claim for abatement attached to the Form 2 (Silver); the amount of tax due; and the signature under oath of the person filing the form.

**Form 3 (Silver).** *Form of monthly return of tax on transfer of interests in silver bullion to be filed by producers or registered dealers.* The information required to be shown on the return includes the date of the return; the name and address of the producer or registered dealer; the month for which the return is being filed; a summary of sales of silver during the month; a summary of purchases of silver during the month; an inventory of silver on hand at the close of the month; the total amount of tax payable; and the signature of the taxpayer. The return is required to be executed under oath.

**Form 3A (Silver).** *Supplemental sheet to be attached to the monthly return on Form 3 (Silver).* The information required to be shown on the form is the detailed data concerning the transfer of silver interests and the computation of the tax as summarized on Form 3 (Silver).

**Form 3B (Silver).** *Form of special monthly return which may be used only upon special authorization of the Commissioner.* The information required to be shown on this return is similar to that shown on Form 3 (Silver) except that it shows daily transactions instead of monthly totals. This return also is required to be executed under oath.

**Form 3C (Silver).** *Form of supplemental sheet to be attached to the monthly return on Form 3 (Silver) but only upon special authorization of the Commissioner.* The information required to be shown on this form relates to each transaction in silver separately and contains detailed data which are summarized on Form 3 (Silver).

*Form 6 (Silver).* Form of application for inventory determination filed by a transferor of silver interests for a certificate of registry under the provisions of Article 85 of Regulations 85 referred to in paragraph (a) above. The information required to be shown on this form includes the name, principal place of business and address of the applicant; data concerning the applicant's type of business; the names of the principal purchasers of the silver; the basis for the amount claimed as necessary inventory; the average cost of the necessary inventory and how determined; and the signature of the applicant. This form must be executed under oath.

*Form 7 (Silver).* The form of certificate issued by the collector upon approval of the application on Form 6 (Silver). The information required to be shown on this form includes the certificate number; the district where issued; the date of the certificate; the name and address of the person to whom the certificate is issued; the quantity in fine troy ounces of the necessary inventory; the average cost per fine troy ounce; and the signature of the collector.

*Form 8 (Silver).* Form of agreement executed by a person who has filed application on Form 6 (Silver) and has had issued the certificate on Form 7 (Silver). The information required to be shown on the form includes the address of the collector who issued the certificate; the number and date of the certificate; the type of business being engaged in by the applicant; and the signature of the person executing the agreement. This agreement must be executed under oath.

*Form 9 (Silver).* Form of order for silver tax stamps. The information required to be shown on the return includes the address of the collector; the date of the order; how the stamps are to be sent; to whom, and the address to which, the stamps are to be sent; the number of each denomination of stamp and the value thereof; and the total value of all stamps ordered.

*Form 9a (Silver).* Form of application for elective benefits of a person engaged in transactions in silver foreign exchange. The information required to be shown on this form includes the name and principal place of business of the applicant; data concerning the silver foreign exchange purchases and sales; whether transactions of branch offices located in foreign countries are excluded; and the signature of the applicant. The form must be executed under oath.

*Form 10 (Silver).* Form of certificate issued by collector upon approval of application on Form 9 (Silver), above. The information required to be shown on the form includes the certificate number; the district of the collector issuing the certificate; the date of the certificate; the name of the person to whom the certificate is issued; and the signature of the collector issuing the certificate.

*Form 11 (Silver).* Form of monthly return of a person who has been furnished a certificate on Form 10 (Silver), above. The

information required to be shown on the form includes the name of the taxpayer; the month for which the return is filed; detailed data concerning the transactions in silver foreign exchange; the amount of tax determined to be due; and the signature of the taxpayer. The return is required to be executed under oath.

*Form 11a (Silver).* Form of schedule to be attached to the monthly return on Form 11 (Silver), above. The information required to be shown on this schedule includes the name of the taxpayer; the month for which the schedule is prepared; and certain detailed data which is summarized in Form 11.

*Form 843 (Silver).* Form of claim for abatement exemption filed in support of exemptions claimed on Forms 2 and 3 (Silver). The information required to be shown on the form includes the name and the business and residence addresses of the claimant; the number of the return form on which the exemption is claimed; the date of such return form; the basis upon which the claim is made; and the signature of the claimant. The form is required to be executed under oath.

(b) For forms of general application, see § 601.6.

**SUBPART K—EXCESS PROFITS TAX COUNCIL; APPELLATE FUNCTIONS AND PROCEDURES UNDER SECTION 722 OF THE INTERNAL REVENUE CODE**

SOURCE: §§ 601.106 and 601.107 appear at 11 F. R. 177A-34, 14263, as amended at 12 F. R. 953, 13 F. R. 7710. Redesignation noted at 14 F. R. 5201.

§ 601.106 *General.* (a) Subchapter E of Chapter II of the Code imposed on corporations an excess profits tax based on their "excess profits tax net income" as defined in section 711 of the Code. This tax was effective as to taxable years beginning after December 31, 1939 and was repealed by the Revenue Act of 1945, as of January 1, 1946. Section 722 of the Code provides that if the taxpayer, pursuant to certain rules and standards in such section, establishes that the tax computed under subchapter E is excessive and discriminatory, relief under limitations contained in section 722 will be granted. The appellate functions of the Excess Profits Tax Council are limited to considering cases arising under section 722. The Council has no jurisdiction of issues respecting excess profits tax liability which do not fall under section 722. Such issues are handled under established procedures by the field divisions of the Income Tax Unit and field divisions of the Technical Staff.

(b) The rules bearing upon the procedure applicable with respect to section 722 of the Code are found in Regulations 109 and Regulations 112 (26 CFR, 1938 Ed. and Supps., Part 35) (see Subpart B of this part). There has also been published a "Bulletin on Section 722 of the Internal Revenue Code", copies of which may be obtained from the Superintendent of Documents, Government Printing Office, Washington 25, D. C. The authority, functions, and procedures of the Excess Profits Tax Council are shown in Commissioner's Mimeograph No. 6044, approved by the Secretary of the Treasury July 30, 1946. The Council has promulgated statements on organization and procedure, E. P. C. 1 and 2. Copies of Mimeograph No. 6044 and E. P. C. 1 and 2 may be obtained from the Council or a Field Committee. Practice and conference procedure before the Council is also governed by Treasury Department Circular 230 (31 CFR Part 10), and the Bureau of Internal Revenue Conference and Practice Requirements (see § 601.4 (d)).

§ 601.107 *Procedure.* (a) To secure excess profits tax relief under section 722 of the Code an application therefor must be filed with the Commissioner of Internal Revenue, Washington 25, D. C. Generally, such application must be filed within three years from the date the excess profits tax return was filed or within two years from the date the tax was paid, whichever is the later. See sections 722 (d) and 322 of the Code. The application is required to be filed in duplicate on Form 991, copies of which are obtainable at collectors' offices. The regulations promulgated under section 722 (see § 601.106) provide that an application must be filed for each year for which the benefits of section 722 are claimed and that only one section 722 application for each year may be filed. Such applications are required to be so framed as to adequately disclose the essential facts and issues involved.

(b) Applications for relief under section 722 are referred for investigation and consideration to section 722 field committees established at the offices of internal revenue agents in charge. After completion of investigation and consideration of an application for relief by a section 722 field committee the taxpayer is afforded opportunity for a conference for the consideration of the committee's findings. After field committee consid-

eration and conference with the taxpayer, the recommendations of the field committee are certified to the Excess Profits Tax Council for review. In the event that the taxpayer and the field committee cannot reach an agreement on the application or where an agreement between the taxpayer and the field committee is not approved by the Council, the taxpayer will be afforded an adequate opportunity to have its case heard before the Council.

(c) Hearing rules of the Council will be published when promulgated.

(d) Determinations of the Council are subject to appeal to The Tax Court of the United States under the provisions of section 732 of the Code.

#### SUBPART L—RULES

SOURCE: §§ 601.116 to 601.119 appear at 11 F. R. 177A-34, 14263, as amended at 13 F. R. 2195. Redesignation noted at 14 F. R. 5201.

§ 601.116 *Formulation.* Internal revenue rules take various forms. The most important rules are issued as regulations and Treasury decisions, prescribed by the Commissioner and approved by the Secretary. Less important rules may be issued over the signature of the Commissioner only. The channeling of rules varies with the circumstances. Regulations and Treasury decisions are prepared in the Bureau by representatives of the appropriate Deputy Commissioner and the Chief Counsel for the Bureau. After consideration by the Deputy Commissioner, the Chief Counsel, and the Commissioner, they are forwarded to the office of the General Counsel for the Treasury Department for further consideration. After being considered by the Tax Legislative Counsel and the General Counsel, they are submitted to the Secretary or to an Assistant Secretary for further consideration and final approval. General notice where required by section 4 of the Administrative Procedure Act (60 Stat. 237), and in such other instances as may be desirable is published in the FEDERAL REGISTER of proposed rules (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and includes (a) a statement of the time, place, and nature of public rule-making provisions; (b) reference to the authority under which the rule is proposed; and (c) either the terms or substance of the proposed rule or a de-

scription of the subjects and issues involved.

§ 601.117 *Petition to change rules.* Interested persons are privileged to petition for the issuance, amendment, or repeal of a rule and such petitions will be given careful consideration. Petitions should be addressed to the Commissioner of Internal Revenue, Washington 25, D. C.

§ 601.118 *Publication.* All internal revenue regulations and Treasury decisions (whether interpretative or substantive) are published in the **FEDERAL REGISTER** and in the Code of Federal Regulations. The Treasury decisions are also published in the semimonthly **Internal Revenue Bulletin** and the semi-annual **Cumulative Bulletin**. In addition, it is the policy of the Bureau to

publish all rulings and decisions, including opinions of the Chief Counsel, which because they announce a ruling or decision upon a novel question or upon a question in regard to which there exists no previously published ruling or decision, or for other reasons, are of such importance as to be of general interest. It is also the policy of the Bureau to publish all rulings or decisions which revoke, modify, amend, or affect in any manner whatever any published ruling or decision.

§ 601.119 *Executive orders.* Executive orders on matters arising under the internal revenue laws such as, for example, inspection of tax returns (see § 600.2 (a) (1) of this chapter) are ordinarily prepared in the office of the Chief Counsel for the approval of the President.

# CHAPTER II—THE TAX COURT OF THE UNITED STATES

## Part

- 701 Rules of practice.
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### Part 701—Rules of Practice

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AUTHORITY: §§ 701.1 to 701.64 issued under 53 Stat. 160, as amended; 26 U. S. C. 1111.

§ 701.1 *Business hours, time.* (a) The office of the Clerk of the Court at Washington, D. C., shall be open during business hours on all days, except Saturdays, Sundays, and legal holidays, for the purpose of receiving petitions, pleadings, motions, and the like. "Business hours" are from 8:45 o'clock a. m. to 5:15 o'clock p. m.

(b) Time, as provided in this and other sections and in orders and notices of the Court, means standard time in the city mentioned except when advanced time is substituted therefor by law. (See § 701.61.)

[10 F. R. 13489, as amended at 13 F. R. 6971]

§ 701.2 *Admission to practice.* (a) Applicants who establish to the satisfaction of the Court that they are citizens of the United States, of good moral char-

acter and repute, and possessed of the requisite qualifications to represent others in the preparation and trial of cases, may be admitted to practice before the Court.

(b) All applicants, before being admitted to practice, must take a written examination or examinations given by the Court: *Provided, however*, That a current certificate from the Clerk of the appropriate court, showing that the applicant is an attorney-at-law who has been admitted to practice before and is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or Territory or of the District of Columbia, may be accepted in lieu of examination. The Court, before admitting an applicant to practice, may require him to take an oral examination in addition to the written examination. Any person who has thrice failed a written examination given by the Court shall not thereafter be eligible for admission to practice before the Court.

(c) An application to be filed must be on the form provided by the Court. Application blanks and other necessary information will be furnished by the Clerk of the Court upon request.

(d) An applicant for admission by examination must be sponsored by at least three persons theretofore enrolled to practice before this Court, each of whom must send his letter of recommendation directly to the Court where it will be treated as a confidential communication. The sponsor shall state in his letter fully and frankly the extent of his acquaintance with the applicant, his opinion of the moral character and repute of the applicant, and his opinion of the qualifications of the applicant to practice before this Court. The Court may in its discretion accept an applicant with less than three such sponsors.

(e) The Court will hold an examination for applicants at its offices in Washington, D. C., on the second Wednesday in September of each year and at such other times and places as it may designate. The Court will notify each applicant, whose application is in order, of the time and place at which he is to present himself for examination, and the applicant must present that notice to the examiner as his authority for taking an examination. An applicant seeking to qualify by examination must accompany

his application with a fee of \$10. (For name of payee, see § 701.7 (b).)

(f) Corporations and firms will not be admitted or recognized.

(g) Practitioners before this Court shall carry on their practice in accordance with the letter and spirit of the canons of professional ethics as adopted by the American Bar Association.

(h) The Court may deny admission to, suspend or disbar any person who in its judgment does not possess the requisite qualifications to represent others, or who is lacking in character, integrity, or proper professional conduct. No person shall be suspended for more than 60 days or disbarred until he has been afforded an opportunity to be heard. A Division may immediately suspend any person for not more than 60 days for contempt or misconduct during the course of any proceeding.

(i) The Court may require any practitioner before it to furnish a statement under oath of the terms and circumstances of his employment in any proceeding. (See § 701.24.)

(j) All persons on the roll of practitioners on January 1, 1943, are enrolled to practice without further showing or examination.

[8 F. R. 1781, as amended at 11 F. R. 5441, 13 F. R. 6971]

§ 701.3 *Personal representation in lieu of counsel.* Any individual taxpayer or member of a taxpayer partnership may appear for himself or such partnership upon adequate identification to the Court. A taxpayer corporation may be represented by a bona fide officer of the corporation upon permission granted, in its discretion, by the Court or the Division sitting.

[2 F. R. 3407]

§ 701.4 *Form and style of papers.* (a) All papers filed with the Court shall be either printed or typewritten, and shall be fastened on the left side only, and shall have a caption and a signature, and copies, as specified in this section.

(b) Printed papers shall be printed in 10- or 12-point type, on good unglazed paper, 5 $\frac{1}{8}$  inches wide by 9 inches long, with inside margin not less than 1 inch wide, and with double-leaded text and single-leaded quotations.

(c) Typewritten papers shall be typed on only one side of plain white paper,

8½ inches wide by 11 inches long, and weighing not less than 16 pounds to the ream, and shall have no backs or covers.

(d) Citations shall be in italics when printed and shall be underscored when typewritten.

(e) The proper caption omitting all prefixes and titles shall be placed on all papers filed. The full given name and surname of each individual petitioner shall be set forth in the caption, but without any prefix or title, such as "Mrs.," "Dr.," etc. The name of the estate, the trust, or the other person for whom he acts, shall be given first by each petitioner who is a fiduciary, followed then by his own name and pertinent title, thus: "Estate of John Doe, deceased, Richard Roe, Executor." (See §§ 701.6 and 701.7 (c) (4) (i) and § 702.2 of this chapter.)

(f) The signature, either of the petitioner or of his counsel, shall be subscribed in writing to the original of all pleadings, motions, and briefs, and shall be in individual and not in firm name, except that the signature of a petitioner corporation shall be in the name of the corporation by one of its active officers, thus: "John Doe, Inc., by Richard Roe, President." The name and the mailing address of the petitioner or counsel actually signing shall be typed or printed immediately beneath the written signature.

(g) Four conformed copies shall be filed with the signed original of every paper filed, except as otherwise provided in the regulations in this part. Papers to be filed in more than one proceeding (as a motion to consolidate, or in proceedings already consolidated) shall include one additional copy for each such additional proceeding.

(h) All copies shall be clear and legible, but they may be on any weight paper. [2 F. R. 7112, as amended at 13 F. R. 6971]

§ 701.5 *Filing of all documents.* Any document to be filed with the Court, must be filed in the office of the Clerk of the Court in Washington, D. C., during business hours (see § 701.1): *Provided*, That a Division hearing a proceeding may permit documents pertaining thereto to be filed at the hearing.

[7 F. R. 4131, as amended at 13 F. R. 6971]

§ 701.6 *Proper parties.* (a) The proceeding shall be brought by and in the name of the person against whom the

Commissioner determined the deficiency (or liability, as the case may be), or by and in the full descriptive name of the fiduciary legally entitled to institute a proceeding on behalf of such person.

(b) In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition. (See §§ 701.4, 701.7, 701.23.)

[2 F. R. 3407, as amended at 13 F. R. 6971]

§ 701.7 *Initiation of a proceeding; petition; filing; fee; form—*(a) *Petition—*(1) *Filing.* A proceeding shall be initiated by filing with the Court a petition consisting of an original and four complete, accurately conformed, clear copies, either printed or typed. (See §§ 701.4 and 701.6.)

(2) *Improper petition; dismissal.* Failure of a petition to comply with this section and with §§ 701.4 and 701.6 shall be ground for dismissal of the proceeding for failure properly to prosecute.

(See also section 272 (a) and (c), Internal Revenue Code, in regard to absolute statutory time limit on filing.)

(b) *Fee for filing petition.* The fee for filing a petition with the Court shall be \$10, payable at the time of filing. Make checks, money-orders, etc., payable to The Treasurer of the United States.

(c) *Form of petition.* (1) The petition shall be substantially in accordance with § 702.2 of this chapter.

(2) It shall be complete in itself so as fully to state the issues.

(3) No telegram, cablegram, radio-gram, telephone call or similar communication will be recognized as a petition.

(4) The petition shall contain:

(i) A caption in the following form:

THE TAX COURT OF THE UNITED STATES

Docket No. --

-----  
Petitioner

v.

Commissioner of Internal Revenue,  
Respondent

PETITION

(ii) Proper allegations showing jurisdiction in the Court.

(iii) A statement of the amount of the deficiency (or liability, as the case may be), determined by the Commissioner,

the nature of the tax, the period for which determined, and the collection district in which the return was filed.

(iv) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency. Issues in respect of which the burden of proof is by statute placed upon the Commissioner will not be deemed to be raised by the petitioner in the absence of assignments of error in respect thereof. Each assignment of error shall be numbered.

(v) Clear and concise numbered statements of the facts upon which the petitioner relies as sustaining the assignments of error, except those assignments of error in respect of which the burden of proof is by statute placed upon the Commissioner.

(vi) A prayer, setting forth relief sought by the petitioner.

(vii) The signature of the petitioner or that of his counsel. (See § 701.4.)

(viii) A verification by the petitioner: *Provided*, That where the petitioner is sojourning outside the United States or is a nonresident alien, the petition may be verified by a duly appointed attorney in fact, who shall attach to the petition a copy of the power of attorney under which he acts and who shall state in his verification that he acts pursuant to such power, that such power has not been revoked, that petitioner is absent from the United States, and the grounds of his knowledge of the facts alleged in the petition. As used herein the term "United States" includes only the States and the District of Columbia. A notary public is not authorized to administer oaths, etc., in matters in which he is employed as counsel. (See Title 1, ch. 5, D. C. Code 1940, and 26 Op. A. G. 236.)

The verification shall contain a statement that the fiduciaries signing and verifying have authority to act for the taxpayer.

Where the petitioner is a corporation, the person verifying shall state in his verification that he has authority to act for the corporation.

The signature and the verification to the petition shall be considered the certificate of those performing these acts that there is good ground for the petition, the proceeding has not been instituted merely for delay, and it is not frivolous.

(ix) A copy of the notice of deficiency (or liability, as the case may be), shall be appended to the petition. If a statement has accompanied the notice of deficiency, so much thereof as is material to the issues set out in the assignments of error likewise shall be appended. If the notice of deficiency refers to prior notices from the Bureau, which are necessary to elucidate the determination, such parts thereof as are material to the issues set out in the assignments of error shall likewise be appended. (See § 702.2 of this chapter.)

[13 F. R. 6971]

§ 701.11 *Docket*. Upon receipt of the petition, the proceeding will be entered upon the docket and assigned a number and the parties notified thereof. This docket number shall be placed by the parties on all papers thereafter filed in the proceeding and referred to in all correspondence with the Court.

[13 F. R. 6971]

§ 701.12 *Service of the petition*. Upon filing of a petition and the copies, as prescribed in § 701.7, the Clerk will serve a copy upon the Commissioner.

[2 F. R. 3408]

§ 701.14 *Answer*. After service upon him of a copy of the petition, the Commissioner shall have 60 days within which to file an answer or 45 days within which to move in respect of the petition. The answer shall be so drawn as fully and completely to advise the petitioner and the Court of the nature of the defense. It shall contain a specific admission or denial of each material allegation of fact contained in the petition and a statement of any facts upon which the Commissioner relies for defense or for affirmative relief or to sustain any issue raised in the petition in respect of which issue the burden of proof is, by statute, placed upon the Commissioner. Paragraphs of the answer shall be numbered to correspond to those of the petition to which they relate. An original and three copies of the answer shall be filed, of which the original shall be signed by the Commissioner or his counsel and the copies conformed by him. The Clerk will serve one copy of the answer upon the petitioner or his counsel of record by registered mail.

[2 F. R. 3408, as amended by 11 F. R. 5441, 6075]

§ 701.15 *Reply*. (a) If the answer of the Commissioner sets forth facts upon

which he relies for affirmative relief, or contains a statement of the facts upon which he relies to sustain an issue in respect of which the burden of proof is placed upon him by statute, the petitioner shall, within 45 days after a copy of such answer is mailed to him or his counsel of record by registered mail, file a reply which shall contain a specific admission or denial of each material allegation of fact contained in the answer and shall set forth any facts upon which he relies for defense. Each paragraph contained in the reply shall be numbered to correspond with the paragraphs of the answer. An original and four copies of the reply shall be filed, of which the original shall be signed by the petitioner or his counsel and the copies conformed by him.

(b) The Court upon motion of the respondent in which good cause is shown, or upon its own motion, may require the verification of any reply.

(c) The Clerk will serve one copy of the reply upon the Commissioner.

[2 F. R. 3408]

§ 701.16 *Joinder of issue.* A proceeding shall be deemed at issue upon the filing of the answer unless a reply is required under § 701.15, in which event the proceeding shall be deemed at issue upon the filing of the reply.

[2 F. R. 8408]

§ 701.17 *Amended and supplemental pleadings.* (a) The petitioner may, as of course, amend his petition at any time before answer is filed. After answer is filed, a petition may be amended only by consent of the Commissioner or on leave of the Court.

(b) All motions to amend, made prior to the hearing, must be accompanied by the proposed amendments or amended pleading.

(c) Upon motion made, the Court may, in its discretion, at any time before the conclusion of the hearing, permit a party to a proceeding to amend the pleadings in stated particulars to conform to the proof.

(d) When motions to amend are granted at the hearing, the amendment or amended pleading shall be filed at the hearing or with the Court within such time as the Division may fix. (See §§ 701.4, 701.19.)

[2 F. R. 3408, as amended at 13 F. R. 6971]

§ 701.18 *Pleadings; general.* (a) The Court, upon motion of either party in which good cause is shown, or upon its own motion, may order a further and better statement of the nature of the claim or defense, or of any matter stated in any pleading. Such a motion filed by a party shall point out the defects complained of and the details desired. If such order of the Court is not obeyed within 15 days or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or may make such other order as it deems just.

(b) If no reply is required by this part, each and every material allegation of fact set out in the answer shall be deemed to be denied. Any new or affirmative matter contained in the reply shall be deemed to be denied.

(c) Where an answer has been filed, each and every material allegation of fact set out in the petition and not expressly admitted or denied in the answer, shall be deemed to be admitted. Where a reply is required by this part and a reply has been filed, each and every material allegation of fact set out in the answer and not expressly admitted or denied in the reply shall be deemed to be admitted.

(d) Where no answer is filed or where a reply is required by this part, but no reply is filed, the adverse party, within 45 days after the expiration of the time fixed by this part for filing the answer admission or denial of each material allegation or the reply, as the case may be, may file a motion with the Court calling attention to the fact that the pleading has not been filed within the specified time and certain material allegations of fact have not been denied, and requesting the Court to enter its order that those particular undenied allegations shall be deemed to be admitted. The Court will serve a copy of this motion upon the other party and issue an order to show cause, returnable on or before a day certain. If the above described motion is not filed within the prescribed time, the allegations of the pleading to which there was no response shall be deemed to be denied.

[2 F. R. 3408]

§ 701.19 *Motions.* (a) Motions must be timely, must fully set forth the alleged reasons for the action sought and must be prepared in the form and style prescribed by § 701.4.

(b) Motions will be acted upon as justice may require and may, in the discretion of the Court, be placed upon the motion calendar for argument. (See § 701.27 (a) and (c), and § 701.30 (b).) The Clerk will serve a copy of each motion upon the opposite party. (See § 701.22.)

(c) The filing of a motion shall not constitute cause for postponement of a hearing from the date set. (See also § 701.27 (c) on motions for continuance.)

(d) If a motion, other than one relating to the receipt of evidence during trial, is made orally during trial, the maker thereof shall promptly reduce it to writing and file it with the Court unless the Division sitting directs otherwise.

(e) No motion for rehearing, further hearing, or reconsideration may, except by special leave, be filed more than 30 days after the opinion has been served; and no motion to vacate or revise a decision may, except by special leave, be filed more than 30 days after the decision has been entered. Motions covered by this paragraph shall be separate and not joined to or made a part of any other motion.

[13 F. R. 6971]

§ 701.20 *Extensions of time.* (a) An extension of time (except for the absolute time limit on filing of the petition, see section 272 (a) and (c), Internal Revenue Code, and except as otherwise provided in the rules in this part) may be granted by the Court within its discretion upon a timely motion filed in accordance with the rules in this part setting forth good and sufficient cause therefor or may be ordered by the Court upon its own motion.

(b) If a motion is filed or an order issued in respect to the adequacy of any petition, the time prescribed in § 701.14 shall begin to run from the date upon which the Court takes final action with respect to the motion or the order unless the Court orders otherwise. The time for reply shall be similarly extended in the case of a motion or an order with respect to the adequacy of an answer unless the Court orders otherwise.

(c) Any extension of time for filing a brief shall correspondingly extend the time for filing all other briefs yet to be filed in that proceeding unless the Court orders otherwise. (See §§ 701.19, 701.22 and 701.35.)

(d) For continuances see § 701.27 (c). [13 F. R. 6972]

§ 701.21 *Dismissal.* A proceeding may be dismissed for cause upon motion of either party or of the Court. (See § 701.7 (a) (2).)

[2 F. R. 3409, as amended at 13 F. R. 6972]

§ 701.22 *Service*—(a) *Upon petitioner.* If there is no counsel of record, service will be made upon the petitioner.

(b) *Upon first counsel of record.* Service upon any counsel of record will be deemed service upon the party, but, where there are more than one, service will be made only upon counsel for petitioner whose appearance was first entered of record—unless the first counsel of record, by writing filed with the Court, designates other counsel to receive service, in which event service will be so made.

(c) *Upon respondent.* Service may be made upon any named respondent in person, upon deputies duly designated by him to accept service, or upon counsel appearing for the respondent in the proceeding. (See §§ 701.12, 701.14, and 701.15.)

[12 F. R. 7112]

§ 701.23 *Substitution of parties; change of names*—(a) *Successor fiduciaries; certificate needed.* A motion shall be filed to substitute parties who are successor fiduciaries and shall be supported by a certificate of the proper court or official showing the appointment and qualification of the party who seeks to be substituted. (See §§ 701.4 and 701.19.)

(b) *Change in name; certificate needed.* A motion shall be filed to amend the pleadings to show a change in the names of a corporation or other party and shall be supported by a proper official certificate or copy of the decree or other document by which the change was effected, duly certified by the official having its custody. (See §§ 701.4 and 707.19.)

(c) *Waiver of certificate.* No certificate need be filed, unless required by Court order, if the respondent consents to a change as described in paragraphs (a) and (b) of this section.

(d) *Court order.* The Court, on motion of a party or upon its own motion, may order the substitution of proper parties upon the death of a petitioner, where a mistake in the name or title of a party appears, or for other cause.

[13 F. R. 6972]

§ 701.24 *Counsel; appearance; withdrawal; substitution; changed address*—

(a) *Entry of appearance.* (1) Counsel enrolled to practice before this Court may enter his appearance by subscribing the initial petition.

(2) Counsel may later enter his appearance only by filing in duplicate, an entry of appearance which shall be signed by counsel individually, shall show his mailing address, and shall state that he is enrolled to practice before this Court. Form 305 should be obtained from the Court and used.

(3) Counsel not properly enrolled to practice before this Court will not be recognized except by special leave of the Court granted at a hearing and then only where it appears that counsel can and will promptly become enrolled. (See §§ 701.2, 701.4 (f) and 701.7 (c) (4) (vii).)

(b) *Withdrawal of counsel.* Counsel of record in any proceeding desiring to withdraw, or any petitioner desiring to withdraw counsel of record, must file a motion with the Court requesting leave therefor reciting that notice thereof has been given to the client or to the counsel being withdrawn, as the case may be. The Court may, in its discretion, deny such motion.

(c) *Substitution of counsel.* New counsel may be substituted by conforming to the provisions of paragraphs (a) (2) and (b) of this section. (See §§ 701.2, 701.4, 701.19 and 701.27 (c).) (See § 701.22 (b) in regard to substitution of "first counsel of record" for purposes of service.)

(d) *Change of address.* Notice of any change in the mailing address of either counsel or petitioner shall be filed promptly with the Court, in duplicate. Separate notices shall be filed for each proceeding.

Counsel may not act also as notary. (See § 701.7 (c) (4) (viii).)

[13 F. R. 6972]

§ 701.26 *Place of hearing on merits; requests and designation.* (a) The petitioner at the time of filing the petition shall also file a request showing the name of the place where he would prefer the hearing on the merits to be held. A copy of this request will be served upon the Commissioner by the Clerk of the Court.

(b) If the petitioner has filed no request the respondent shall file at the time he files his answer, a request showing the name of the place preferred by him. A

copy will be served upon the petitioner by the Clerk of the Court.

(c) These requests shall not be bound as a part of the petition or answer but shall be separate therefrom and shall consist of an original and two copies.

(d) The Court will designate the place of hearing in accordance with the statutory provision that the time and place of trial shall be fixed "with as little inconvenience and expense to taxpayers as is practicable," and, in all cases, will notify the parties of the place at which or in the vicinity of which the hearing on the merits will be held.

(e) If either party desires a change in designation of the place of hearing he must file a motion to that effect, stating fully his reasons therefor. Such motions, made after the notice of the time of the hearing has been mailed, will not be deemed to have been timely filed.

NOTE: The Court will fix the times and places for its hearings in order to secure reasonable opportunity to taxpayers to be heard with as little inconvenience and expense to taxpayers as is practicable. (Section 1105, I. R. C.) Hearings may be held at any place requested if suitable accommodations are available and a sufficient number of cases are ready for hearing there. A partial list of cities where a combination of these circumstances has justified a calendar of hearings recently appears below. It is published here merely to assist parties in making requests under this section. The grouping of certain cities in the list indicates that if one of those cities is requested, it may be necessary to hold the hearing at the other city in order to make up a sufficient calendar of hearings. Likewise, if sufficient cases are not ready for hearing in any particular city requested by taxpayers, or if suitable quarters are not available there, the Court may find it necessary to combine the hearings requested for that city and hold them along with the hearings requested for some other city in the vicinity.

#### LIST

Alabama: Birmingham; Mobile.  
 Arkansas: Little Rock (alternative, Memphis, Tenn.).  
 California: Los Angeles; San Francisco.  
 Colorado: Denver.  
 District of Columbia: Washington.  
 Florida: Jacksonville; Miami; Tampa (alternative, Miami).  
 Georgia: Atlanta.  
 Hawaii: Honolulu (alternative, Los Angeles or San Francisco, Calif.).  
 Illinois: Chicago.  
 Indiana: Indianapolis.  
 Iowa: Des Moines.  
 Kentucky: Louisville.  
 Louisiana: New Orleans; Shreveport.

Maine: Portland (alternative, Boston, Mass.).  
 Massachusetts: Boston.  
 Michigan: Detroit; Grand Rapids.  
 Minnesota: St. Paul.  
 Missouri: Kansas City; St. Louis.  
 Montana: Helena.  
 Nebraska: Omaha.  
 New Jersey: Newark.  
 New York: Buffalo; New York City.  
 North Carolina: Greensboro; Raleigh.  
 Ohio: Cincinnati (alternative, Columbus);  
 Cleveland; Columbus (alternative, Cincinnati).  
 Oklahoma: Oklahoma City (alternative, Tulsa); Tulsa (alternative, Oklahoma City).  
 Oregon: Portland.  
 Pennsylvania: Philadelphia (alternative, Washington, D. C., or New York, N. Y.);  
 Pittsburgh.  
 South Carolina: Charleston, Columbia.  
 Tennessee: Knoxville (alternative, Atlanta, Ga.); Memphis; Nashville.  
 Texas: Dallas; Houston.  
 Utah: Salt Lake City.  
 Washington: Seattle; Spokane.  
 West Virginia: Charleston.  
 Wisconsin: Madison (alternative, Milwaukee); Milwaukee.  
 (53 Stat. 160; 26 U. S. C. 1111) [8 F. R. 1781, as amended at 13 F. R. 6972]

§ 701.27 *Hearings; calendars; place, time, notice, attendance, continuances—*

(a) *Calendars of hearings on motions and other procedural and subsidiary matters.* (1) If it is necessary for the Court to hear the parties on matters other than the merits, the proceeding will be listed for such hearing on a motion calendar which is called in Washington, D. C., unless good cause for holding the hearing elsewhere is shown in a timely motion to the Court. Ordinarily such calendars will be set for call at 9:30 a. m. (see § 701.1) on Wednesdays throughout the year, but due notice of the time and place in each case will be given to the parties by the Clerk. (See § 701.22.)

(2) *Attendance at hearings on motion calendar.* If a party fails to appear at the call of the motion calendar, the Court will hear the proceeding *ex parte*. However, a memorandum or brief stating the position of the petitioner upon the pending motion will be accepted, when the failure of the petitioner to appear is justified by distance, shortness of time, or other good reason stated in such memorandum or brief.

(3) Where the motion or order is directed to defects in a pleading, prompt filing of a proper pleading correcting the defects may obviate the necessity of a hearing thereon.

(b) *Calendars of hearings on the merits.* (1) Each proceeding, when at issue, will be placed upon a calendar for hearing on the merits in accordance with § 701.26 and the Clerk, not less than 30 days in advance, will notify the parties of the place where and the date and time when it will be called.

(2) Each proceeding appearing on such a calendar will be called at the time and place scheduled. The cases will be called usually in the order listed, and counsel or the parties will state their estimate of the time required for trial or file stipulations in lieu of trial. The proceedings for trial will thereupon be heard in due course, but not necessarily in the order listed.

(3) The unexcused absence of a party or his counsel when a proceeding is called for hearing on the merits will not be the occasion for delay. The proceeding may be dismissed for failure properly to prosecute or the hearing may proceed and the case be regarded as submitted on the part of the absent party or parties.

(4) The Court may require appearance for argument or it may accept briefs in lieu of personal appearance.

(c) *Continuances; motions; merits.* (1) Court action on proceedings set for hearing on motions or merits will not be delayed by a motion for continuance unless it is timely, sets forth good and sufficient cause and complies with all applicable rules in this part.

(2) Conflicting engagements of counsel or the employment of new counsel will never be regarded as good ground for a continuance unless set forth in a motion filed promptly after the notice of hearing has been mailed or unless extenuating circumstances are shown which the Court deems adequate. (See § 701.20.)

(d) *Reserve calendar.* A proceeding once at issue may, upon motion, be placed on an inactive list called the reserve calendar. Good cause must be shown, as, for example, that the proceeding will be governed by the decision in a case pending in a higher court. The proceeding may be placed later on a hearing calendar by motion of either party or by the Court on its own motion when the reason for inaction no longer exists.

[13 F. R. 6972]

§ 701.30 *Submission without hearing or appearance—*(a) *Submission of cases without hearing where facts are uncon-*

*tested.* Any case not requiring a hearing for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, or included in the record in some other way), may be submitted at any time by notice of the parties filed with the Court. The parties need not wait for the proceeding to be calendared and need not appear in person. The Chairman will then assign the proceeding to a division for report, which division, upon request of the parties, will fix a time for filing briefs or for oral argument.

(b) *Where facts are contested.* A contested motion, not predicated upon an issue of fact, may be submitted in the same way. (See, however, §§ 701.27a, 701.31.)

[2 F. R. 3409, as amended at 13 F. R. 6972]

§ 701.31 *Evidence and the submission of evidence*—(a) *Rules applicable.* The proceedings of the Court and its Divisions will be conducted in accordance with the rules of evidence applicable in the courts of the District of Columbia in the type of proceedings which prior to September 16, 1938, were within the jurisdiction of the courts of equity of said District.

(b) *Stipulations.* (1) The parties by stipulation in writing filed with the Court or presented at the hearing, may agree upon any facts involved in a proceeding. Stipulations filed need not be formally offered to be considered in evidence. Written stipulations shall be filed in duplicate. Duplicates of exhibits appended to the stipulation need not be provided unless requested.

(2) Both parties shall endeavor to stipulate evidence to the fullest extent to which either complete or qualified agreement can be reached. If all evidence lending itself to stipulation, as, for example, entries or summaries from books of account and other records, has not been stipulated at the time the notice of the date of the hearing is mailed, then the party desiring to introduce such evidence shall confer with his adversary or opposing counsel promptly after receipt of the hearing notice, in an effort to stipulate such facts. Any objection to the relevancy of a particular part or all of a stipulation should be noted in the stipulation, but the Court will give consideration to any objection to the relevancy of stipulated facts made at the hearing. The

Court may set aside a stipulation where justice requires, but will not receive evidence tending to qualify, change, or contradict any fact properly introduced into the record by stipulation.

(c) *Depositions must be offered.* Testimony taken by deposition will not be considered until offered and received in evidence.

(d) *Exhibits.* Exhibits attached to a stipulation or a deposition shall be numbered serially, i. e., 1, 2, 3, etc., if offered by the petitioner; shall be lettered serially, i. e., A, B, C, etc., if offered by the respondent; and shall be marked serially, i. e., 1-A, 2-B, 3-C, etc., if offered as a joint exhibit.

(e) *Documentary evidence.* (1) When books, records, papers, or documents have been received in evidence, a copy thereof or of so much thereof as may be material or relevant may, in the discretion of the Division holding the hearing, be substituted therefor.

(2) After the decision of the Court in any proceeding has become final, the Court may, upon motion, permit the withdrawal by the party entitled thereto of original exhibits, or the Court may, on its own motion, make such other disposition thereof as it deems advisable.

(f) *Not evidence.* Statements in the petition, *ex parte* affidavits and briefs do not constitute evidence.

(g) *Failure of proof.* Failure to adduce evidence in support of the material facts alleged in the petition and denied by the Commissioner in his answer will be ground for dismissal. Where there is a joinder of issue on questions of fact, the provisions of § 701.30 do not relieve the party upon whom rests the burden of proof from properly producing evidence to support the issues.

[2 F. R. 3409, as amended at 6 F. R. 1684, 8 F. R. 1781, 10 F. R. 13489]

§ 701.32 *Burden of proof.* The burden of proof shall be upon the petitioner, except as otherwise provided by statute and except that in respect of any new matter pleaded in his answer, it shall be upon the respondent.

[3 F. R. 97]

§ 701.35 *Briefs.* (a) The parties should be prepared to make oral arguments at the conclusion of the hearing or to file written citations of authorities at that time if the Division so directs. The filing of briefs and the making of

oral arguments shall be in accordance with the directions of the Judge presiding at the hearing. If the Division does not direct otherwise, each party shall have 45 days after the day on which the hearing was concluded within which to file a brief and either party may file a reply brief within 15 days after the filing of the original brief by his opponent. After a brief has been filed, the Clerk will serve a copy upon the opposite party, unless the brief bears a notation that a copy has already been served. (See § 701.20 (c).)

(b) If briefs are typewritten, an original and two copies shall be filed; if printed, 20 copies. Each brief shall contain on its front flyleaf a table of contents with page references, supplemented by a list of all citations, alphabetically arranged as to cases cited, together with references to pages. Citations shall be in italics, when printed, and underscored, when typewritten. Briefs must be signed. (See § 701.4 (f).)

(c) The form of all briefs shall be as follows:

(1) A statement of the nature of the controversy, the tax involved, and the issues to be decided.

(2) (i) The party having the burden of proof shall set forth complete statements of the facts based upon the evidence. Each statement shall be numbered, shall be complete in itself, and shall consist of a concise statement of the essential fact and not a discussion or argument relating to the evidence or the law. Reference to the pages of the transcript or the exhibits relied upon in support thereof shall be inserted after each separate statement.

(ii) If the other party disagrees with any or all of the statements of fact, he shall set forth each correction which he believes the evidence requires and shall give the same numbers to his statement of fact as appear in his opponent's brief. His statement of fact shall be set forth in accordance with the requirements of this section.

(3) A concise statement of the points upon which the party relies.

(4) The argument shall set forth the points of law relied upon and any discussion of the evidence deemed necessary to support the statement of fact. (See § 701.4.)

[2 F. R. 3410, as amended at 4 F. R. 471, 8 F. R. 1781, 12 F. R. 7112, 13 F. R. 6972]

§ 701.40 *Transcripts of proceedings.* Hearings before the Court or its divisions shall be stenographically reported and a transcript thereof shall be made if, in the opinion of the Court or of the Division holding the hearing, a permanent record of the hearing is deemed necessary. Transcripts shall be supplied to the parties and to the public by the official reporter at such rates as may be fixed by contract between the Court and the reporter.

[2 F. R. 3410]

§ 701.44 *Subpenas—(a) How issued.* The party desiring a subpoena must make a timely application therefor, in writing.

(b) *Application.* The application shall state the name and address of each witness required, the time and place at which and the officer before whom he is to appear, and whether he may designate some one to appear in his place. Only the original of the application need be filed. (See § 702.3 of this chapter.)

(c) *For production of documents.* If evidence other than oral testimony is required, such as documents or written data, the application shall set forth in tabular form the specific matter to be produced and sufficient facts to indicate that each item is reasonably necessary to establish the cause of action or defense of the applicant.

(d) *Service and proof.* The Court will not serve subpoenas, but will leave service to be procured by the party making the application. Service may be made by any citizen of the United States over the age of 21 years and competent to be a witness, and not a party to or in any way interested in the proceeding. Proof of service may be made by affidavit.

[2 F. R. 3410, as amended at 9 F. R. 7046, 13 F. R. 6972]

§ 701.45 *Depositions—(a) Application to take.* When either party desires to take a deposition, he shall file with the Court a verified application and two conformed copies, together with an additional copy for each additional docket number involved. The Court upon request will furnish forms for this purpose. If the space in the form furnished by the Court is inadequate for setting forth the reasons in support of the application in any particular case, a substitute form may be used, but the substitute must contain all of the information called for on the Court's form. (See § 702.5.)

(b) *Limitation on time for application to take.* Applications to take depositions must be filed at least 30 days prior to the date set for the hearing of the proceeding, and such depositions must be completed and filed with the Court at least 10 days prior to the hearing: *Provided*, Such applications will not be regarded as sufficient ground for the granting of a continuance from the date or place of the hearing theretofore set, unless the proceeding shall have been at issue less than 60 days and the motion for continuance shall have been filed not less than 20 days prior to said date of hearing: *Provided further*, That under special circumstances, and for good cause shown, the Court may otherwise order.

(c) *Qualification of officer.* The officer before whom depositions are taken must be authorized to administer oaths. (Sec. 3632, I. R. C.) In no case shall a deposition be taken before any person who has any office connection or business employment with either party or his counsel except by consent of the parties and when no other officer is available, and in his certificate of return to such deposition such officer shall so certify.

(d) *Order for taking.* Upon receipt of such application, the Clerk will serve a copy thereof on the opposite party, and allow a reasonable time for objection thereto. Thereafter, the Court will, in its discretion, make an order, a copy of which will be mailed or delivered to the parties or their counsel, wherein the Court will name the witness whose deposition is to be taken and specify the time when, the place where, and the officer before whom the witness is to testify, but such time, place, and officer specified in the Court's order may or may not be the same as set forth in the application. The applicant shall thereupon make all necessary arrangements for the taking of each deposition and shall furnish the officer before whom it is to be taken with a copy of the order above mentioned.

(e) *By stipulation.* At any time after issue is joined, the parties or their counsel may, by stipulation duly signed and filed, take depositions. In such cases, the stipulation shall state the name and address of each witness, the time when and the place where such depositions will be taken, and the name, address, and official title of the officer before whom it is proposed to take the depositions. In such cases, no order to take depositions will be issued, but they shall be

taken and returned by the officer in accordance with the rules of the Court.

(f) *Manner of taking.* (1) Each witness must first take the oath or affirm. The questions propounded to him and his answers must be recorded verbatim.

(2) Objections to questions or answers shall be explicitly but briefly and concisely stated and recorded without any unnecessary comment, explanation, or argument by counsel for either party.

(g) *Other witnesses to be excluded.* At the request of either party, a person whom either expects or intends to call as a witness in the same or any related proceeding shall be excluded from the room where the testimony of a witness is being taken. If such person remains in the room or within hearing of the examination after such request has been made, he shall not thereafter be permitted to testify except by the consent of the party who requested his exclusion.

(h) *Depositions to be signed.* The testimony of the witness when transcribed shall be read to or by him and shall be signed by him. (See § 702.6 of this chapter.)

(i) *Form in which depositions must be returned to the Court.* (1) When a deposition is returned to the Court it must show the docket number and the caption (the names of the parties) of the proceeding as appears in the Court's records, the place and date of taking, the name of the witness, the party by whom called, the names of counsel present, indicating which party each counsel represents, and (in the body of the deposition) the name of counsel examining or cross-examining the witness.

(2) The officer must so fasten the sheets of the deposition that they cannot be tampered with. He must spare no pains to return to the Court the exact testimony he has taken. All exhibits must be carefully marked so as to be capable of identification, and when practicable must be attached to the deposition.

(3) The officer must properly execute and attach to the deposition a certificate of return in the form prescribed. (See § 702.6.)

(j) *Return.* The officer must enclose the original depositions and exhibits, together with two copies of the depositions, in a sealed packet, with postage or other transportation charges prepaid, and direct and forward the same to The Tax

Court of the United States, Washington 4, D. C. In each case, the original of the depositions must be directed and forwarded to the Court. The officer may, however, upon written request, deliver a copy of the depositions to either or to both of the parties, or to their representatives, in lieu of sending such copies to the Court as provided in this paragraph. If one or both of the required copies are delivered by the officer taking the depositions, he shall attach to his return the written request of the party or parties, or of their counsel to whom such copy or copies were delivered, and shall state in his certificate of return the fact of delivery by him of such copy or copies. If copies of the depositions are delivered by the officer taking the same, no service of copies of such depositions upon the party or his counsel of record will be made by the Court.

[2 F. R. 3410, as amended at 6 F. R. 1684, 8 F. R. 1781]

§ 701.46 *Depositions upon written interrogatories.* (a) Depositions may be taken in the discretion of the Court upon written interrogatories in substantially the same manner as provided in § 701.45 for depositions upon oral examination. An original and five copies of the interrogatories must be filed with the application. The Clerk will serve one copy of the application and of the interrogatories upon the opposite party. If the opposite party desires to file objections or cross-interrogatories, he must do so within 15 days after the application and interrogatories have been served upon him. Cross-interrogatories must consist of an original and five copies. The Clerk will serve one copy thereof upon the opposite party who, if he has any objection thereto, must file his objections within 15 days thereafter. The application and the interrogatories must be filed in sufficient time to allow for objections, cross-interrogatories, and objections thereto as provided above, and for filing of the complete depositions at least 10 days prior to the hearing.

(b) No person other than the witness, a stenographic reporter, and the officer taking the deposition upon written interrogatories and cross-interrogatories shall be present at the examination of the witness. This fact shall be certified by the officer taking the deposition. That officer shall propound the interrogatories and cross-interrogatories to

the witness in their order and cause the testimony to be reduced to writing in the witness' own words.

(c) Depositions obtained in foreign countries must be taken upon written interrogatories, except as otherwise directed by the Court for cause shown.

[2 F. R. 3411, as amended at 8 F. R. 1781, 10 F. R. 13490]

§ 701.47 *Tender of and objections to depositions.* (a) The deposition of any witness whether taken upon oral examination or upon written interrogatories shall not constitute a part of the record until offered and received in evidence (see § 701.31), but the consideration of any objections to the receipt of a deposition or any part thereof will be limited as set forth in this section.

(b) Where depositions are taken upon oral examination objections to the competency of a witness or to the competency, relevancy or materiality of testimony may be made at the hearing, even though not noted at or before the taking of the deposition, unless the ground for the objection is one which might have been obviated or removed if presented at or before the time of the taking of the deposition. Objections directed to errors and irregularities in the manner of taking the deposition, in the form of any question or answer, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might have been obviated, removed or cured if promptly presented will not be considered unless made at the taking of the deposition. (See § 701.45 (f).)

(c) No objections to written interrogatories or cross-interrogatories will be considered subsequent to the taking of the deposition unless they have been made in the manner and within the time prescribed therefor by § 701.46.

(d) Errors or irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed or otherwise dealt with by the officer under §§ 701.45 and 701.46 shall not form the basis for objections but questions in respect thereto shall be raised on a motion to suppress the deposition in whole or in part made with reasonable promptness after such defect is or with due diligence might have been ascertained.

[8 F. R. 1781]

§ 701.48 *Commissioners of the Tax Court.* (a) The term "commissioner" as used in this section applies to any attorney on the legal staff of this Court who shall have been designated by the Presiding Judge as a "commissioner in a particular case" pursuant to section 1114 of the Internal Revenue Code, as amended by section 503 of the Revenue Act of 1943.

(b) The commissioner shall conduct the hearing in such case in accordance with the Court's rules of practice. He shall rule upon objections and other evidentiary matters in accordance with the rules of evidence as provided in section 1111, and shall exercise such further and incidental authority, including the issuance of subpoenas, as may be necessary for the conduct of the hearing.

(c) (1) Unless otherwise directed the parties shall have 30 days from the closing of proof in the case for filing proposed findings of fact. Such findings of fact shall be prepared in the manner and form prescribed in § 701.35 (c) (2) (i).

(2) Upon the filing by the parties of their proposed findings of fact, the commissioner shall prepare and file a report of his findings of fact based upon the evidence in the case, and a copy thereof shall be served upon each party.

(3) Within 20 days from the filing of the commissioner's proposed findings of fact the parties shall file exceptions to all findings to which they object, which exceptions will be considered by the Division to which the case is assigned.

(d) Unless otherwise directed by the Court, the parties shall have 45 days from the date of the filing of the commissioner's proposed findings of fact within which to file briefs, and 15 days additional within which to file reply briefs. Each brief shall be prepared in the manner and form prescribed in § 701.35.

(e) Upon motion of either party made not later than at the time of filing the final brief, or upon its own motion, the Division to which the case is assigned may in its discretion direct oral argument and set a date therefor.

[9 F. R. 7046, as amended at 13 F. R. 6973]

§ 701.50 *Computations by parties for entry of decision.* (a) Where the Court has promulgated or entered its opinion determining the issues in a proceeding, it may withhold entry of its decision for the purpose of permitting the parties to

submit computations pursuant to the Court's determination of the issues, showing the correct amount of the deficiency or overpayment to be entered as the decision. If the parties are in agreement as to the amount of the deficiency or overpayment to be entered as the decision pursuant to the report of the Court, they or either of them shall file promptly with the Court an original and two copies of a computation showing the amount of the deficiency or overpayment and that there is no disagreement that the figures shown are in accordance with the report of the Court. The Court will then enter its decision. If, however, the parties are not in agreement as to the amount of the deficiency or overpayment to be entered as the decision, in accordance with the report of the Court, either of them may file with the Court a computation of the deficiency or overpayment believed by him to be in accordance with the report of the Court. The Clerk will serve a copy thereof upon the opposite party, will place the matter upon a motion calendar for argument in due course, and will serve notice of the argument upon both parties. If the opposite party fails to file objection, accompanied by an alternative computation, at least 5 days prior to the date of such argument, or any continuance thereof, the Court may enter decision in accordance with the computation already submitted. If in accordance with this section computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, the parties will be afforded an opportunity to be heard in argument thereon on the date fixed, and the Court will determine the correct deficiency or overpayment and enter its decision.

(b) Any argument under this section will be confined strictly to the consideration of the correct computation of the deficiency or overpayment resulting from the report already made, and no argument will be heard upon or consideration given to the issues or matters already disposed of by such report or of any new issues. This section is not to be regarded as affording an opportunity for rehearing or reconsideration.

[2 F. R. 3411, as amended at 13 F. R. 6973]

§ 701.51 *Estate tax deduction developing after trial.* If the parties in an estate tax proceeding are unable to agree under § 701.50 or under a remand upon a deduction involving expenses incurred at

or after the trial, the petitioner may move to reopen the case for further hearing on that issue provided it is raised in the petition or by amendment thereto.

[13 F. R. 6973]

§ 701.52 *Preparation of record on review; costs.* (a) Immediately after the contents of a record on review have been settled or agreed to, the Clerk will notify the petitioner of the costs and charges for the preparation, comparison, and certification of said records; such charges to be determined in accordance with the provisions of Section 1133, Internal Revenue Code, and the act of September 27, 1944, 58 Stat. 743.

(b) No transcript will be certified and transmitted to the appellate court until the costs and charges therefor have been paid. (For name of payee, see § 701.7 (b).)

(c) A petitioner for review who requests the Clerk to certify but not to prepare documents for transmission to a United States Court of Appeals shall furnish the Clerk with the copies of the documents to be certified, if duplicates are not already in the record. (See §§ 701.4 (g) and 701.31 (b).) (For statutory provisions relating to Court Review of Tax Court decisions see Subchapter B, Section 1140 et seq., I. R. C. For forms of bonds, see §§ 702.7 and 702.8 of this chapter. The rules of the appellate court to which the appeal is being taken should be consulted.)

[13 F. R. 6973]

§ 701.53 *Copies of records; fees for furnishing.* A plain or a certified copy of any document, record, entry, or other paper pertaining to a proceeding before this Court may be had upon application to the Clerk, the fee to be charged and collected therefor to be determined in accordance with the provisions of section 1133, Internal Revenue Code, and the act of September 27, 1944, 58 Stat. 743.

[11 F. R. 5441]

§ 701.60 *Fees and mileage.* (a) Section 1115 of the Internal Revenue Code provides:

(a) *Amount.* Any witness summoned or whose deposition is taken under section 1114 shall receive the same fees and mileage as witnesses in courts of the United States.

(b) *Payment.* Such fees and mileage and the expenses of taking any such deposition shall be paid as follows:

(1) *Witnesses for Commissioner.* In the

case of witnesses for the Commissioner, such payments shall be made by the Secretary out of any moneys appropriated for the collection of internal-revenue taxes, and may be made in advance.

(2) *Other witnesses.* In the case of any other witnesses, such payments shall be made, subject to rules prescribed by the Tax Court, by the party at whose instance the witness appears or the deposition is taken.

(b) No witness, other than one for the Commissioner, shall be required to testify in any proceeding before the Court until he shall have been tendered the fees and mileage to which he is entitled in accordance with the provision of law in this section.

[2 F. R. 3412]

§ 701.61 *Computation of time; Saturdays, Sundays, and holidays.* (a) The day of the act, event, or default starting any period of time prescribed or allowed by the regulations in this part or by an order of this Court shall not be counted as a part of the period, but Saturdays, and Sundays, and legal holidays in the District of Columbia shall count just as any other days, except that when the period would expire on a Saturday, Sunday, or legal holiday in the District of Columbia, it shall extend to and include the next succeeding day that is not a Saturday, Sunday or such legal holiday.

(b) The following-named days are legal holidays within the District of Columbia:

New Year's Day, January 1 (28 Stat. 96; 5 U. S. C. 87).

Washington's Birthday, February 22 (5 U. S. C. 87).

Inauguration Day, every fourth year (48 Stat. 879; 3 U. S. C. 41. D. C. Code, Title 22, sec. 126).

Decoration Day, May 30 (5 U. S. C. 87).

Fourth of July (5 U. S. C. 87).

Labor Day, first Monday in September (5 U. S. C. 87).

Armistice Day, November 11 (Act of May 13, 1938, 52 Stat. 351).

Thanksgiving Day, fourth Thursday of November, Joint Resolution approved December 26, 1941 (55 Stat. 862; 5 U. S. C. 87).

Christmas Day, December 25 (5 U. S. C. 87).

When legal holidays fall on Sunday the next day shall be a holiday (D. C. Code, Title 22, sec. 126).

[2 F. R. 3412, as amended at 7 F. R. 4131, 11 F. R. 5441]

§ 701.63 *Proceedings based upon disallowance of claims for refund or relief.* All of the rules of practice, with appropriate changes in wording wherever nec-

essary, shall apply to proceedings involving the disallowance of claims for refund or relief over which this Court has jurisdiction. Petitions in such cases shall have attached to them a copy of the notice of disallowance, together with whatever statements may accompany that notice, and shall also have attached to them a copy of the claim or application for refund or relief. In cases where no appeal lies from the decision of the Tax Court a copy of the claim or application need be attached only to the original and first copy of the petition.

[11 F. R. 5441, as amended at 11 F. R. 6075]

§ 701.64 *Renegotiation of war contracts cases.* (a) Except as otherwise prescribed by this section, proceedings for the redetermination of excessive profits under the Renegotiation Act<sup>1</sup> shall be governed by the existing regulations in this part. Where any of the existing regulations or the matter contained in the appendix thereto refer to the Commissioner, such regulations and the matter in the appendix, when applied to a proceeding for the redetermination of excessive profits under the Renegotiation Act, shall refer to the War Contracts Price Adjustment Board or to the Secretary as defined and used in that act. Similarly references to the taxpayer shall refer to the contractor or subcontractor; references to tax shall refer to profits under a contract or subcontract subject to renegotiation, or to excessive profits thereunder, dependent upon context; and references to the determination of a deficiency, or a notice of such determination, shall refer to the order of the Board or the Secretary determining the amount of excessive profits.

(b) (1) A proceeding for the redetermination of excessive profits under the Renegotiation Act shall be initiated by the filing of a petition, as provided in §§ 701.4, 701.6 and the pertinent parts of § 701.7. (See § 702.2 of this chapter.)

(2) In proceedings initiated under section 403 (e) (1) of the act, the War Contracts Price Adjustment Board shall be shown as the respondent. In proceedings initiated under section 403 (e) (2) of the act, the Secretary as referred to in that section shall be shown as the respondent.

(3) The petition shall be complete in

itself so as fully to state the issues. It shall contain:

(i) A caption in the following form:

THE TAX COURT OF THE UNITED STATES

Petitioner	}	Docket No. ----
v.		
Respondent		

PETITION

(ii) Proper allegations showing jurisdiction in the Court.

(iii) A statement of the amount of excessive profits determined by the Board or the Secretary, as the case may be, the period for which determined and the amount thereof in controversy. If the determination of excessive profits was made on the basis of a specific contract or contracts, the petition shall identify the contract or contracts and shall state the period covered thereby.

(iv) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Board or the Secretary in the determination of excessive profits. Each assignment of error shall be numbered.

(v) Clear and concise numbered statements of the facts upon which the petitioner relies as sustaining the assignments of error. The allegations of fact shall contain a statement of the amount received or accrued during the period in question under the contracts or subcontracts subject to renegotiation, the costs paid or incurred with respect thereto and the profits derived therefrom, the type and character of business done, and any other facts pertinent to a determination of the errors alleged.

(vi) A prayer, setting forth relief sought by the petitioner.

(vii) The signature of the petitioner or that of his counsel. (See § 701.4.)

(viii) A verification by the petitioner in accordance with the applicable provision of § 701.7 (c) (4) (viii).

(ix) A copy of the notice by the Board, and a copy of the order of the Board, or of its delegate, as the case may be, determining the amount of excessive profits, which notice and order form the basis for the initiation of the proceeding under section 403 (e) (1) of the act, or a copy of the order by the Secretary determining the amount of excessive profits, which order forms the basis for the

<sup>1</sup>Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended by section 701, Revenue Act of 1943.

initiation of the proceeding under section 403 (e) (2) of the act, shall be appended to the petition. If a statement has been furnished to the petitioner by the Board or the Secretary setting forth the facts upon which the determination of excessive profits was based and the reasons for such determination, a copy of such statement shall also be appended to the petition.

(c) Any claim for the redetermination of an amount of excessive profits greater than the amount shown in the notice of determination shall be made by the respondent in his answer filed under § 701.14, or in an amendment thereto filed under § 701.17 at or before the time of the hearing.

(d) With respect to the matter covered by § 701.60, attention is directed to section 403 (e) (1) of the Renegotiation Act.

[9 F. R. 3286, as amended at 10 F. R. 8686, 13 F. R. 6973]

Part 702—Forms

- Sec.
- 702.2 No. 2. Petition.
- 702.3 No. 3. Application for subpoena.
- 702.5 No. 5. Application for order to take depositions.
- 702.6 No. 6. Certificate on return of deposition.
- 702.7 Bond with corporate surety.
- 702.8 Bond; approved collateral.
- 702.8a Power of attorney and agreement by corporate appellants.
- 702.8b Power of attorney and agreement by individual appellants.

AUTHORITY: §§ 702.2 to 702.8b issued under 53 Stat. 160, as amended; 26 U. S. C. 1111.

§ 702.2 No. 2. Petition. (See §§ 701.4, 701.5, 701.6 and 701.7 of this chapter.)

THE TAX COURT OF THE UNITED STATES  
Docket No. ----

-----, Petitioner  
v.  
Commissioner of Internal Revenue,  
Respondent  
Petition

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (bureau symbols) dated -----, 19--, and as a basis of his proceeding alleges as follows:

1. The petitioner is (set forth whether individual, corporation, fiduciary, etc., as provided in § 701.7) with principal office (or residence) at -----

(Street) (City)  
-----  
(State) The return for the period

here involved was filed with the collector for the ---- district of -----

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on -----, 19--

3. The taxes in controversy are (income, profits, estate, or gift) taxes for the (calendar or fiscal year) year 19-- and in the amount of ----- dollars (state as exactly as possible the amount in dispute).

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors: (Enumerate specifically the assignments of error in a concise manner and avoid pleading facts which properly belong in the succeeding paragraph.)

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows: (Here set forth allegations of the facts relied upon—but not the evidence—in orderly and logical sequence, with subparagraphs lettered, so as fully to inform the Court of the issues to be presented and to enable the Commissioner to admit or deny each specific allegation.)

Wherefore, the petitioner prays that this Court may hear the proceeding and (Here state the relief desired).

(Signed) -----  
(Petitioner or counsel)  
-----  
(Post-office address)

State of -----  
County of -----, ss:

-----, being duly sworn, says that he is the petitioner (if a corporation, or fiduciary, state title of office or trust of person verifying and that he is duly authorized to verify the foregoing petition) above named: that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

(Signed) -----  
Subscribed and sworn to before me this  
---- day of -----, 19--  
(Signed) -----  
(Official title)

[SEAL]  
[2 F. R. 3412, as amended at 13 F. R. 6973. Redesignated at 13 F. R. 6971]

§ 702.3 No. 3. Application for subpoena.

The Tax Court of the United States  
Application for Subpoena  
Docket No. —

-----, PETITIONER  
v.  
COMMISSIONER OF INTERNAL REVENUE,  
RESPONDENT

<sup>1</sup>Application for a subpoena duces tecum shall be so identified in its title, and shall be in form similar to the above, and shall set forth the additional information required by § 701.44 (c) of this chapter.

To The Tax Court of the United States  
 Application is hereby made for the issuance of a subpoena for the attendance before \_\_\_\_\_, at \_\_\_\_\_  
 (The Tax Court of the United States or the name and official title of the person authorized to take depositions)  
 on \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ m. of the following persons whose oral testimony is desired on behalf of the \_\_\_\_\_ in \_\_\_\_\_  
 (Petitioner or respondent)  
 the above-entitled proceeding:

NAME	ADDRESS
_____	_____
_____	_____
_____	_____

Dated \_\_\_\_\_, 19\_\_\_\_  
 (Signed) \_\_\_\_\_  
 (Post-office address) \_\_\_\_\_

[2 F. R. 3413, as amended at 13 F. R. 6973. Redesignated at 13 F. R. 6971]

§ 702.5 No. 5. Application for order to take depositions.<sup>2</sup> (See §§ 701.45, 701.46.)

The Tax Court of the United States  
 Docket No. —  
 \_\_\_\_\_, PETITIONER  
 v.  
 COMMISSIONER OF INTERNAL REVENUE,  
 RESPONDENT

APPLICATION FOR ORDER TO TAKE DEPOSITIONS

To The Tax Court of the United States:

1. Application is hereby made by the above-named \_\_\_\_\_ (Petitioner or respondent) for an order to take the deposition \_\_\_\_\_ of the following-named person \_\_\_\_\_:  
 NAME OF WITNESS POST-OFFICE ADDRESS

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- (d) \_\_\_\_\_

2. It is desired to take the depositions of the persons above named and each of them for the following reasons:

<sup>2</sup> When the applicant seeks to take depositions upon written interrogatories the title of the application shall so indicate and the application shall be accompanied by an original and five copies of the proposed interrogatories. The taking of depositions upon written interrogatories is not favored, except when the depositions are to be taken in foreign countries, in which latter case any depositions taken must be upon written interrogatories, except as otherwise directed by the Court for cause shown. (See § 701.46 of this chapter.)

(a) \_\_\_\_\_ will testify to the following material matters:

\_\_\_\_\_ (set forth briefly the matter upon which said witness will be called to testify)

(b) \_\_\_\_\_ will testify to the following material matters:

(c) \_\_\_\_\_ will testify to the following material matters:

(d) \_\_\_\_\_ will testify to the following material matters:

3. The reasons why \_\_\_\_\_ (Petitioner or respondent) desires to take the testimony of the above-named persons rather than have them appear personally and testify before the Court are as follows: (State specifically reasons for each witness.)

4. It is desired to take the testimony of \_\_\_\_\_ (Names of witnesses)

on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ m. (A date sufficiently in advance of the day set for hearing of the proceedings to enable the deposition to be completed and filed with the Court at least 10 days prior to the hearing) before \_\_\_\_\_ in the \_\_\_\_\_ (State name and title of official)

City of \_\_\_\_\_ State of \_\_\_\_\_ at room \_\_\_\_\_ (Give number of room,

street number, and name of building)

5. That \_\_\_\_\_ (Name of official before whom

depositions are to be taken)

is a \_\_\_\_\_, who has no office (Give official title)

connection or business employment with the petitioner or his counsel.

Dated \_\_\_\_\_, 19\_\_\_\_ (Signed) \_\_\_\_\_ (Petitioner or counsel)

\_\_\_\_\_ (Post-office address)

STATE of \_\_\_\_\_ County of \_\_\_\_\_, ss:

\_\_\_\_\_ (Petitioner or counsel)

\_\_\_\_\_ being duly sworn, says that the foregoing application for order to take depositions is made in good faith and for the reasons therein stated and that the same is not made for purposes of delay.

(Signed) \_\_\_\_\_

Subscribed and sworn to before me this
day of 19--
(Signed) (Official title)

[SEAL]
2 F. R. 3413, as amended at 13 F. R. 6973.
Redesignated at 13 F. R. 6971]

§ 702.6 No. 6. Certificate on return of
deposition.

To The Tax Court of the United States:
I, the person
named in the foregoing order to take depositions,
hereby certify:

1. That I proceeded, on the day of
A. D. 19--, at the office
of in the City of
State of at o'clock
m., under the said order and in the presence
of and the
counsel for the respective parties, to take the
following depositions, viz:
a witness produced on
behalf of the
(Petitioner or respondent)
a witness produced on
behalf of the
(Petitioner or respondent)
a witness produced on
behalf of the
(Petitioner or respondent)

2. That each witness was examined under
oath at such times and places as conditions
of adjournment required, and that the testi-
mony of each witness (or his answers to the
interrogatories filed) was taken stenographi-
cally and reduced to typewriting by me or
under my direction.

3. That after the testimony of each witness
had been reduced to writing the transcript of
the testimony was read and signed by the
witness in my presence, and that each wit-
ness acknowledged before me that his testi-
mony was in all respects truly and correctly
transcribed.

4. That, after the signing of the deposition
in my presence, no alterations or changes
were made therein.

5. That I have no office connection or busi-
ness employment with the petitioner or his
attorney except that of
(State connection)
objection to which was waived by both parties
to the proceeding.

[SEAL]
Signature of person taking
deposition)
Official title)
(Post-office address)

NOTE: This form when properly executed
should be attached to and bound with the
transcript preceding the first page thereof.
It should then be enclosed in a sealed enve-
lope, with postage or other transportation
charges prepaid, and addressed to The Tax
Court of the United States, Washington 4,
D. C.

[2 F. R. 3413, as redesignated at 13 F. R.
6971]

§ 702.7 Bond with corporate surety.
The following is a satisfactory form of
bond for use in case bond with a corpo-
rate surety approved by the Treasury
Department is to be furnished to stay
the assessment and collection of tax in-
volved in an appeal from a decision of
the Tax Court.

THE TAX COURT OF THE UNITED STATES
Washington, D. C.

Docket No. --

Petitioner

v.

Commissioner of Internal Revenue,
Respondent

BOND

Know all men by these presents that we
as principal,
and as surety,
are held and firmly bound unto the above-
named Commissioner of Internal Revenue
and/or the United States of America, in the
sum of \$- (double the deficiency
or such sum as the Tax Court has fixed
upon petitioner's prior motion), to be paid
to the said Commissioner of Internal Re-
venue and/or the United States of America
for the payment of which well and truly to
be made we bind ourselves and each of us and
our successors and assigns jointly and sever-
ally firmly by these presents. Sealed with
our seals and dated the day of
in the Year of our Lord One
Thousand Nine Hundred and

Whereas, the above named
is filing or is about to file with The Tax
Court of the United States, a petition for
review of the said Court's decision in respect
of the tax liability of the above petitioner for
the taxable year or years
by the United States Court of Appeals for the
Circuit to reverse the de-
cision rendered in the above-entitled cause.

Now, therefore, the condition of this Obliga-
tion is such, that if the above-named
shall file its petition for review
and shall prosecute said petition for review to
effect and shall pay the deficiency as finally
determined, together with any interest, addi-
tional amounts or additions to the tax pro-
vided for by law, then this obligation shall be
void, otherwise the same shall be and remain
in full force and virtue.

By (Title)

Attest:
[CORPORATE SEAL] (Secretary)

By (Title)

Attest:
[CORPORATE SEAL] (Secretary)

[13 F. R. 6973]

§ 702.8 *Bond; approved collateral.* A satisfactory form of bond for use in case an appellant desires to furnish approved collateral (Treasury Department Circular #154), instead of furnishing a corporate surety bond, and also forms of powers of attorney covering the pledged collateral are shown below:

THE TAX COURT OF THE UNITED STATES

Washington, D. C.

Docket No. ...

Petitioner

v.

Commissioner of Internal Revenue,  
Respondent

BOND

Know all men by these presents that \_\_\_\_\_ is held and firmly bound unto the above-named Commissioner of Internal Revenue and/or the United States of America in the sum of \_\_\_\_\_ (\$\_\_\_\_\_) Dollars, to be paid to the said Commissioner of Internal Revenue and/or the United States of America, for the payment of which, well and truly to be made, the \_\_\_\_\_ binds itself and its successors, firmly by these presents. Sealed with our seal and dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord One Thousand Nine Hundred and \_\_\_\_\_

Whereas, the above-named \_\_\_\_\_ is filing or is about to file with The Tax Court of the United States, a petition for review of the said Court's decision in respect to the tax liability of the above petitioner for the taxable year or years \_\_\_\_\_ by the United States Court of Appeals for the \_\_\_\_\_ Circuit to reverse the decision rendered in the above-entitled cause.

Now, therefore, the condition of this obligation is such that if the above-named \_\_\_\_\_ shall file its petition for review and shall prosecute said petition for review to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

The above-bounden obligor, in order the more fully to secure the Commissioner of Internal Revenue and/or the United States

in the payment of the aforementioned sum, hereby pledges as security therefore bonds/notes of the United States in a sum equal at their par value to the aforementioned sum, to wit: \_\_\_\_\_ dollars (\$\_\_\_\_\_), which said bonds/notes are numbered serially and are in the denominations and amounts, and are otherwise more particularly described as follows: \_\_\_\_\_

\_\_\_\_\_ which said bonds/notes have this day been deposited with the Clerk of The Tax Court of the United States and his receipt taken therefor.

Contemporaneously herewith the undersigned has also executed and delivered an irrevocable power of attorney and agreement in favor of the Clerk of The Tax Court of the United States, authorizing and empowering him, as such attorney to collect or sell or transfer or assign the above-described bonds/notes so deposited, or any part thereof, in case of any default in the performance of any of the above-named conditions or stipulations.

[CORPORATE SEAL] \_\_\_\_\_  
By \_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Secretary)

Approved by \_\_\_\_\_  
(Judge, The Tax Court of the United States)

Date:  
[13 F. R. 6973]

§ 702.8a *Power of attorney and agreement by corporate appellants.*

Know all men by these presents, that \_\_\_\_\_, a corporation duly incorporated under the laws of the State of \_\_\_\_\_, and having its principal office in the city of \_\_\_\_\_, State of \_\_\_\_\_, in pursuance of a resolution of the Board of Directors of said corporation, passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a duly certified copy of which resolution is hereto attached, does hereby constitute and appoint the Clerk of The Tax Court of the United States as attorney for said corporation, for and in the name of said corporation to collect or to sell, assign, and transfer certain United States Liberty bonds, Treasury notes, or other United States bonds/notes, the property of said corporation, described as follows:

Title of coupon bonds/notes	Total face amount	Denomination	Serial No.	Interest dates
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Title of bonds/notes registered in name of and assigned in blank	Total face amount	Denomination	Serial No.	Interest dates
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----

such bonds/notes having been deposited by it, pursuant to authority conferred by Section 1126 of the Revenue Act of 1926, approved Feb. 26, 1926, and subject to the provisions thereof, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by it with the Commissioner of Internal Revenue and/or the United States under date of -----, which is hereby made a part thereof, and the undersigned agrees that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, its said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisalment or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and the undersigned further agrees that the authority herein granted is irrevocable.

And said corporation hereby for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of these presents.

In witness whereof, the -----, the corporation hereinabove named, by

-----  
 (Name and title of officer)  
 duly authorized to act in the premises, has executed this instrument and caused the seal of the corporation to be hereto affixed this ----- day of -----, 19--

[CORPORATE SEAL] -----  
 By -----

Before me, the undersigned, a notary public within and for the county of -----, in the State of -----, personally appeared -----

(Name and title of officer)  
 and for and in behalf of said -----, corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this ----- day of -----, 19--

[NOTARIAL SEAL] -----  
 (Notary Public)

My commission expires -----  
 [13 F. R. 6974]

§ 702.8b *Power of attorney and agreement by individual appellants.*

Know All Men by These Presents, that I, (we) -----, do hereby constitute and appoint the Clerk of The Tax Court of The United States as attorney for me (us), and in my (our) name to collect or to sell, assign and transfer certain United States Liberty bonds, Treasury notes, or other United States bonds/notes, being my (our) property described as follows:

Title of coupon bonds/notes	Total face amount	Denomination	Serial No.	Interest dates
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----

Title of bonds/notes registered in name of and assigned in blank	Total face amount	Denomination	Serial No.	Interest dates
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----
-----	-----	-----	-----	-----

such bonds/notes having been deposited by me (us) pursuant to authority conferred by Section 1126 of the Revenue Act of 1926, approved Feb. 26, 1926, and subject to the provisions thereof, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by me (us) with the Commissioner of Internal Revenue and/or the United States under date of \_\_\_\_\_, which is hereby made a part thereof, and I (we) agree that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, my (our) said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisalment or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands,

or deficiency arising by reason of such default, as may be deemed best, and I (we) further agree that the authority herein granted is irrevocable.

And for myself (ourselves), my (our several) administrators, executors, and assigns, I (we) hereby ratify and confirm whatever my (our) said attorney shall do by virtue of these presents.

In witness whereof, I (we) hereinabove named, have executed this instrument and affixed my (our) seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

[SEAL]

Before me, the undersigned, a notary public within and for the county of \_\_\_\_\_, in the State of \_\_\_\_\_, personally appeared \_\_\_\_\_

(Name of appellant)

and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

[NOTARIAL SEAL]

(Notary Public)

My commission expires \_\_\_\_\_  
[13 F. R. 6974]



# Title 27—Intoxicating Liquors



# CHAPTER I—BUREAU OF INTERNAL REVENUE

## DEPARTMENT OF THE TREASURY

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### *Part*

- 1 Basic permits; issuance and proceedings to revoke, suspend or annul.
- 2 Nonindustrial use of distilled spirits and wine.
- 3 Bulk sales and bottling of distilled spirits.
- 4 Labeling and advertising of wine.
- 5 Labeling and advertising of distilled spirits.
- 6 Inducements furnished to retailers.
- 7 Labeling and advertising of malt beverages.
- 8 Credit period to be extended to retailers of alcoholic beverages.

CROSS REFERENCES: Alcohol Tax Unit: See 26 CFR Part 171.

Bureau of Customs, Department of the Treasury: See 19 CFR Chapter I.

Bureau of Internal Revenue, Department of the Treasury: See 26 CFR Chapter I.

Department of the Army liquor regulations: See 34 CFR 631.1.

Federal Trade Commission: See 16 CFR Chapter I.

Food and Drug Administration, Federal Security Agency: See 21 CFR Chapter I.

Foreign Trade Statistics, Bureau of the Census, Department of Commerce: See 15 CFR Part 30.

Panama Canal Zone liquor regulations: See 35 CFR Part 6.

NOTE 1: Other regulations issued by the Department of the Treasury appear in Title 19 Chapter I, Title 21 Chapter II, Title 26 Chapter I, Title 31, Title 33 Chapter I, Title 41 Chapter I, Title 46 Chapter I.

NOTE 2: The regulations appearing in this title were originally issued by the Federal Alcohol Administration which was abolished by Reorganization Plan No. III, Apr. 2, 1940, 5 F. R. 2107, 3 CFR, 1940 Supp. Treasury Order 30, June 12, 1940, 5 F. R. 2212, issued under sections 2 and 8 of Reorganization Plan No. III (54 Stat. 1232) provided that these regulations continue in effect as regulations of the Alcohol Tax Unit of the Bureau of Internal Revenue (26 CFR Part 171).

ABBREVIATIONS: The following abbreviations are used in this chapter:

AT=*Alcohol Tax*. ATU=*Alcohol Tax Unit*. TD=*Treasury Decision*. Fed. Alc. Adm.=*Federal Alcohol Administration*.

**Part 1—Basic Permits; Issuance and Proceedings to Revoke, Suspend or Annul**

Sec.

1.1 Definitions.

**BASIC PERMITS**

- 1.20 When required.
- 1.21 Applications for permits.
- 1.22 Authorization.
- 1.23 Recalling permits for correction.
- 1.24 Duration of permits.
- 1.25 Changes in ownership, management, or control of business.
- 1.26 Denial of permit application.

**REVOCATION, SUSPENSION, OR ANNULMENT OF BASIC PERMITS**

- 1.30 Institution of proceedings.
- 1.33 Time and place of hearing.
- 1.35 Orders.

**HEARINGS**

- 1.44 Reconsideration of orders.

**MISCELLANEOUS**

- 1.50 Service of orders and notices.
- 1.56 Procedure.
- 1.57 Subpoenas.
- 1.58 Depositions.

**AUTHORITY:** §§ 1.1 to 1.58 issued under 53 Stat. 375; 26 U. S. C. 3176. Statutory provisions interpreted or applied are cited to text in parentheses.

**CROSS REFERENCES:** For modification of the procedure prescribed in this part, see 26 CFR 171.2. For filing of permits, see 26 CFR 192.230.

§ 1.1 *Definitions.* In this part the following words and phrases, unless otherwise stated, shall be considered as having the meaning defined in this section.

(a) "Act" shall mean the Federal Alcohol Administration Act.

(b) "Deputy Commissioner" shall mean the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit.

(c) "District Supervisor", unless otherwise indicated, shall mean the district supervisor of the Alcohol Tax Unit for that district in which the plant or premises in question are located.

(d) "Basic permit" shall mean a written authorization in the form prescribed by the Deputy Commissioner setting forth specifically therein the acts authorized and permitted.

(e) "Permittee" shall mean any person holding a basic permit issued under the act.

(f) "Respondent" shall mean any person holding a basic permit against which proceedings for revocation, suspension, or annulment have been instituted.

(g) "Applicant" shall mean any person who has filed with the district supervisor an application for a basic permit under the act.

(h) "Resale at wholesale" shall mean a sale to any trade buyer.

(i) Any other term defined in the Federal Alcohol Administration Act and used in this section, shall have the same meaning assigned to it by such act.

[Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended by Treasury Order 30, 5 F. R. 2212]

**BASIC PERMITS**

§ 1.20 *When required*—(a) *Importers of distilled spirits, wine, and malt beverages.* On and after November 23, 1935, no person, except pursuant to a basic permit issued under the act, shall:

(1) Engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or,

(2) While so engaged, sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

(b) *Domestic producers, rectifiers, blenders, and warehousemen.* On and after November 23, 1935, no person, except pursuant to a basic permit issued under the act, shall:

(1) Engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or,

(2) While so engaged, sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

(c) *Wholesalers.* On and after July 1, 1936, no person, except pursuant to a basic permit issued under the act shall:

(1) Engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or,

(2) While so engaged, receive, sell, offer or deliver for sale, contract to sell, or ship in interstate or foreign com-

merce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

(d) *State agencies.* This section shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of any such agency, and no such agency or officer or employee thereof shall be required to obtain a basic permit under this section.

(Sec. 3, 49 Stat. 978, as amended; 27 U. S. C. 203) [Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended Feb. 29, 1936, and by Treasury Order 30, 5 F. R. 2212]

§ 1.21 *Applications for permits.* (a) Applications for basic permits to engage in any of the operations set forth in § 1.20 shall be made on the appropriate form prescribed by the Deputy Commissioner, in triplicate, signed and sworn to, and shall be accompanied by such affidavits, documents, and other supporting data, in triplicate, as the Deputy Commissioner shall require. All data, written statements, affidavits, documents, or other evidence submitted in support of the application, or upon hearing thereon, shall be deemed to be a part of the application. All applications shall be filed by mailing or delivering the same to the office of the district supervisor. Incomplete or incorrectly executed applications will not be acted upon, but the applicant shall be entitled to file a new application, without prejudice, or to complete the application already filed. In the event of any change in the ownership, management, or control of the applicant (in case of a corporation, any change in the officers, directors, or persons holding more than 10 percent of the corporate stock), after the date of filing of any application for a basic permit and prior to the issuance of such permit, the applicant shall notify the district supervisor immediately of such change. Copies of the appropriate application forms and instructions to applicants may be secured from the district supervisor's office on request.

(b)<sup>1</sup> An application for basic permit must be filed, and permit issued to cover each individual plant or premises where any of the businesses specified in section 3 of the act is engaged in, such application to be filed with and permit issued by the district supervisor for the district

wherein such plant or premises is located.

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended by Treasury Order 30, 5 F. R. 2212, T. D. 5411, 9 F. R. 12953]

§ 1.22 *Authorization*—(a) *By whom issued, amended, denied, suspended, revoked, or annulled.* (1) The Commissioner of Internal Revenue may issue, amend, deny, suspend, revoke, and annul basic permits;

(2) Any Assistant Commissioner of Internal Revenue, when designated to do so by the Commissioner, upon consideration of appeals and petitions for review, may order the district supervisor to issue, deny, suspend, revoke, and annul basic permits;

(3) The Deputy Commissioner, upon consideration of appeals and petitions for review, may order the district supervisor to issue, deny, suspend, revoke and annul basic permits;

(4) District supervisors may: (i) issue, and amend except as to agency-initiated curtailment, basic permits, and (ii) deny applications for initial (original) basic permits and amendments of such permits;

(5) Hearing Examiners may: (i) make recommended decisions granting or denying applications for initial (original) basic permits and amendments of such permits, and (ii) render decisions suspending, revoking (in whole or in part), and annulling basic permits.

(b) *Persons entitled to basic permits.* Any person, who on May 25, 1935, held a basic permit issued by the Federal Alcohol Control Administration, authorizing him to engage in business as a distiller, rectifier, wine producer, or importer, shall be entitled upon application therefor to a basic permit as distiller, rectifier, wine producer, or importer, respectively, conforming to the act and this part. The application of any other person for a basic permit shall be granted and the permit issued by the district supervisor if the applicant proves to the satisfaction of the district supervisor that:

(1) Such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has not, within 5 years prior to the date of application, been convicted of a felony under Federal or State law, and has not, within 3 years prior to date of application, been convicted of a misdemeanor under any

<sup>1</sup> Subparagraph (b) also codified as 26 CFR 171.2 (a).

Federal law relating to liquor, including the taxation thereof;

(2) Such person, by reason of his business experience, financial standing, and trade connections, is likely to commence operations as a distiller, warehouseman and bottler, rectifier, wine producer, wine blender, importer, or wholesaler, as the case may be, within a reasonable period and to maintain such operations in conformity with Federal law; and

(3) The operations proposed to be conducted by such person are not in violation of the law of the State in which they are to be conducted.

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended by Treasury Order 30, 5 F. R. 2212, T. D. 5550, 12 F. R. 1649]

§ 1.23 *Recalling permits for correction.* Whenever it shall be discovered that any basic permit has been issued authorizing acts, or combinations of acts, which may not properly, under the law and regulations, as now or hereafter in force, be authorized, or that any material mistake has occurred in the issuance thereof, the holder of such permit shall forthwith surrender the same for correction or amendment upon demand of the district supervisor.

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended by Treasury Order 30, 5 F. R. 2212]

§ 1.24 *Duration of permits.* (a) A basic permit shall continue in effect until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated, as provided in the act and in this part.

(b) No basic permit shall be leased, sold, or otherwise voluntarily transferred, and, in the event of such lease, sale, or other voluntary transfer, the said basic permit shall be automatically terminated thereupon.

(c) If any basic permit is transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of 30 days thereafter: *Provided*, That if within such 30-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall

continue in effect until such time as the application is finally acted upon.

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended by Treasury Order 30, 5 F. R. 2212]

§ 1.25 *Changes in ownership, management, or control of business.* In the event of any change in the ownership, management, or control of any business operated pursuant to a basic permit (if the permittee is a corporation, if any change occurs in the officers, directors, or persons owning or controlling more than 10 percent of the voting stock of said corporation) the permittee shall immediately notify the district supervisor of such change, giving the names and addresses of all new persons participating in the ownership, management, or control of such business, or in the case of a corporation, the names and addresses of such new officers, directors, or persons owning or controlling more than 10 percent of the voting stock. Notice to the district supervisor of any such change shall be accompanied or supplemented by such data in reference to the personal or business history of such persons as the district supervisor may require.

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended by Treasury Order 30, 5 F. R. 2212]

§ 1.26 *Denial of permit applications.* If upon examination of any application for a basic permit the district supervisor has reason to believe that the applicant is not entitled to such permit he shall serve notice upon the applicant, setting forth the grounds upon which denial of such application is contemplated. (See 26 CFR 182.220-182.225.)

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended by Treasury Order 30, 5 F. R. 2212, T. D. 5039, 6 F. R. 950]

#### REVOCATION, SUSPENSION, OR ANNULMENT OF BASIC PERMITS

§ 1.30 *Institution of proceedings.* (a) Whenever the district supervisor has reason to believe that any permittee has wilfully violated any of the conditions of his basic permit or has not engaged in the operations authorized by the permit for a period of more than two years, he shall by order institute proceedings for the revocation or suspension of such permit.

(b) Whenever the district supervisor has reason to believe that any basic permit was procured through fraud, or mis-

representation or concealment of material fact, he shall, by order, institute proceedings for the annulment of such permit.

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [Regs. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended by Treasury Order 30, 5 F. R. 2212]

§ 1.33 *Time and place of hearing.* The time and place of the hearing shall be fixed by the Commissioner or the district supervisor, without regard to the limitations specified in Regulations 3 (26 CFR Part 182), but with due regard to the convenience and necessity of the parties or their representatives. Such time and place may for good cause be changed thereafter by the examiner. (See also 26 CFR 171.2.)

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [T. D. 5550, 12 F. R. 1649]

§ 1.35 *Orders.* If the order is for suspension of any basic permit, it may be conditioned upon such action by the respondent as will thereafter insure conformity with the act and the regulations thereunder. If the order is for revocation or annulment of any basic permit, it may authorize, in conformity with internal revenue or other laws, the disposition of stocks of distilled spirits, wines or malt beverages held by the respondent on the effective date of the order, upon such conditions as may be considered proper. (Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935]

CROSS REFERENCE: For Bureau of Internal Revenue regulations relating to the disposition of substances used in the manufacture of distilled spirits, and denatured alcohol, denatured rum, and substances or preparations containing denatured alcohol or denatured rum, see 26 CFR Parts 173, 174.

#### HEARINGS

§ 1.44 *Reconsideration of orders.* (a) Appeals to the Commissioner from orders denying permits shall be taken in conformity with the procedure applicable to appeals from orders revoking basic permits. (See also 26 CFR 171.2.)

(b) Where, upon appeal, the decision of an examiner denying, suspending, revoking, or annulling a basic permit, is affirmed, such action shall not supersede the decision of the examiner and such examiner's decision shall be the final decision.

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [T. D. 5550, 12 F. R. 1649]

#### MISCELLANEOUS

§ 1.50 *Service of orders and notices.* Citations, notices of disapproval of ap-

plications, notices of hearing, orders, and all documents, other than subpoenas, served in proceedings, shall be served in person by any officer, employee or agent of the Treasury Department, or by registered mail (with request for registry return receipt card, post-office Form 3811) to the last known address in the records of the Alcohol Tax Unit. A certificate of mailing and the registry return card (Post-office Form 3811), or a certificate of personal service, shall be filed as part of the record in each case. Subpoenas shall be served in person, and, when issued on behalf of the United States, service shall be made by an officer, employee or agent of the Treasury Department. (See also 26 CFR 171.2 (f).)

(Sec. 4, 49 Stat. 979; 27 U. S. C. 204) [T. D. 5039, 6 F. R. 950]

§ 1.53 *Oaths and affirmations.* Any document required by regulations or instructions of the Deputy Commissioner to be verified, shall be so verified upon oath or affirmation taken before a person authorized by the laws of the United States or by State or local law to administer oaths or affirmations in the State, Territory, or District wherein such document is to be executed. (See Secs. 9, 10, 38 Stat. 722, 723; 15 U. S. C. 49, 50.)

[Regs. No. 1, Fed. Alc. Adm., Oct. 9, 1935, as amended by Treasury Order 30, 5 F. R. 2212]

§ 1.56 *Procedure.* Except as otherwise provided in this part, the procedure prescribed by Regulations 3, Industrial Alcohol, as amended (26 CFR Part 182), for the issuance, amendment, and denial of permits, issuance of citations, holding of hearings, revocation of permits, and appeals to the Commissioner under part II of subchapter C of chapter 26 of the Internal Revenue Code, is hereby extended to the issuance, amendment, denial, revocation, suspension, and annulment of basic permits under the Federal Alcohol Administration Act, in so far as applicable and in so far as such procedure is not in conflict with the provisions of such act. (See also 26 CFR 171.2.)

[T. D. 5550, 12 F. R. 1649]

§ 1.57 *Subpoenas.* Upon written application, the attendance and testimony of any person, or the production of documentary evidence, in proceedings instituted under this section may be required by personal subpoena (Form 1644) or by subpoena duces tecum (Form 1645).

Subpoenas may be issued by the Commissioner, or the hearing examiner, or any person designated by them. Both the application and the subpoena shall set forth the title of the proceedings, the name and address of the person whose attendance is required, the date and place of his attendance, and, if documents are required to be produced, a description thereof; and the application shall set forth sufficient facts to show the relevancy of the testimony and documents. (With respect to subsequent immunity of witnesses and expenses and mileage of witnesses testifying under subpoena see AT Circular 762, May 10, 1944.) (See also 26 CFR 171.2 (d).)

[T. D. 5550, 12 F. R. 1649]

§ 1.58 *Depositions.* The Commissioner or the hearing examiner may order the taking of depositions in the proceedings at such time and place as he may designate before a person having the power to administer oaths. The testimony shall be reduced to writing by the person taking the deposition, or under his direction, and the deposition shall be subscribed by the deponent unless subscribing thereof is waived in writing by the parties. Any person may be subpoenaed to appear and depose and to produce documentary evidence in the same manner as witnesses at hearings. (See also 26 CFR 171.2 (e).)

[T. D. 5550, 12 F. R. 1649]

## Part 2—Nonindustrial Use of Distilled Spirits and Wine

### Sec.

- 2.1 Statutory definitions of "distilled spirits" and "wine".
- 2.2 Application of the term "non-industrial use."
- 2.3 Distilled spirits in containers of a capacity of one gallon or less.

**AUTHORITY:** §§ 2.1 to 2.3 issued under 53 Stat. 375; 26 U. S. C. 3176.

**SOURCE:** §§ 2.1 to 2.3 contained in Regulations No. 2, Federal Alcohol Administration, Dec. 20, 1935.

§ 2.1 *Statutory definitions of "distilled spirits" and "wine."* Section 17 (a) of the Federal Alcohol Administration Act (49 Stat. 989; 27 U. S. C., 211), for the purposes of that act, defines the terms "distilled spirits" and "wine" as follows:

(5) The term "distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits

of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

(6) The term "wine" means (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U. S. C. 3036, 3044, 3045) as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use.

§ 2.2 *Application of the term "non-industrial use."* (a) The following uses of distilled spirits and wine are regarded as "industrial" and therefore will be excluded from any application of the term "nonindustrial use":

(1) Uses of tax-free alcohol by any governmental agency, State or Federal, or any scientific university or college of learning, or by any laboratory exclusively in scientific research, or by any hospital or sanatorium.

(2) Uses of alcohol or other distilled spirits or wine which has been lawfully denatured or otherwise rendered unfit for beverage use.

(3) Uses of distilled spirits or wine for experimental purposes, and in the manufacture (i) of medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (ii) of toilet products; (iii) of flavoring extracts, sirups, or food products; or (iv) of scientific, chemical, mechanical, or industrial products; provided such products are unfit for beverage use.

(b) All other uses are regarded as "nonindustrial." Among the "nonindustrial" uses are the following: Uses for beverage purposes; or in the manufacture, rectifying or blending of alcoholic beverages; or in the preparation of food or drink by hotel, restaurant, tavern, or similar establishment; or for sacramental purposes; or as a medicine.

**CROSS REFERENCE:** For United States pharmacopoeia and national formulary alcoholic preparations, see 26 CFR 171.6, 171.7.

§ 2.3 *Distilled spirits in containers of a capacity of 1 gallon or less.* Distilled spirits in containers of a capacity of 1 wine gallon or less, except anhydrous alcohol and alcohol which may be with-

drawn tax free under the Internal Revenue laws, will be deemed to be for non-industrial use.

### Part 3—Bulk Sales and Bottling of Distilled Spirits

Sec.

- 3.1 Sales of distilled spirits in bulk.
- 3.2 Acquiring or receiving distilled spirits in bulk.
- 3.3 Warehouse receipts.
- 3.4 Sales by permittees of distilled spirits for industrial use.

**AUTHORITY:** §§ 3.1 to 3.4 issued under 53 Stat. 375; 26 U. S. C. 3176. Interpret or apply sec. 6, 49 Stat. 935; 27 U. S. C. 206.

**SOURCE:** §§ 3.1 to 3.4 contained in Regulations No. 3, Federal Alcohol Administration, Dec. 20, 1935.

#### § 3.1 *Sales of distilled spirits in bulk.*

(a) It is unlawful for any person to sell, offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk, for nonindustrial use, except for export or to the classes of persons enumerated in § 3.2.

(b) It is unlawful for any person to import distilled spirits in bulk, for non-industrial use, except for sale to or for use by the classes of persons enumerated in § 3.2.

(c) As used in this part the term "in bulk" means in containers having a capacity in excess of 1 wine gallon.

**§ 3.2 *Acquiring or receiving distilled spirits in bulk.*** (a) Persons holding warehousing and bottling permits may, pursuant to such permits, acquire or receive in bulk, and warehouse and bottle, distilled spirits as follows:

(1) If the permittee is a distiller or other person operating an internal-revenue bonded warehouse, he may acquire or receive in bulk, and warehouse and bottle in his bonded premises domestic untax-paid distilled spirits, so far as permitted by the internal-revenue laws. He may also acquire or receive in bulk, and warehouse and bottle, in his tax-paid warehouse, tax-paid domestic and imported distilled spirits.

(2) If the permittee is a rectifier, he may acquire or receive in bulk, and warehouse and bottle, tax-paid domestic and imported distilled spirits.

(3) If the permittee operates a class 8 customs-bonded warehouse, he may acquire or receive in bulk, and warehouse and bottle, imported distilled

spirits, so far as permitted by the customs laws.

(b) Persons holding permits as rectifiers of distilled spirits, or as producers and blenders of wine, may, pursuant to such permits, acquire, or receive distilled spirits in bulk for the following uses:

(1) A rectifier may acquire or receive in bulk tax-paid imported or domestic distilled spirits for use in rectifying and blending.

(2) A winemaker may acquire or receive in bulk alcohol or brandy for the fortification of wines.

(c) Any agency of the United States, or of any State or political subdivision thereof, may acquire or receive in bulk, and warehouse and bottle, imported and domestic distilled spirits in conformity with the internal-revenue laws.

**CROSS REFERENCE:** For customs warehouses, see 19 CFR Part 19.

**§ 3.3 *Warehouse receipts.*** (a) By the terms of the Federal Alcohol Administration Act, all warehouse receipts for distilled spirits in bulk issued on and after August 29, 1935, must require that the warehouseman shall:

(1) Package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or

(2) Deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

(b) Warehouse receipts for distilled spirits, in bulk, issued prior to August 29, 1935, may not be transferred unless they contain one or both of the conditions enumerated in paragraph (a) of this section, but any warehouse receipt for distilled spirits in bulk issued prior to August 29, 1935, which does not contain either of the above conditions, may be exchanged for a receipt conforming to the act.

(c) The provisions of the Federal Alcohol Administration Act, which forbid any person to sell, offer to sell, contract to sell or otherwise dispose of warehouse receipts for distilled spirits in bulk, do not apply to warehouse receipts for bottled distilled spirits.

**CROSS REFERENCE:** For labeling of distilled spirits, see Part 5 of this chapter.

**§ 3.4 *Sales by permittees of distilled spirits for industrial use.*** Distillers, rectifiers, and other permittees engaged in the sale or other disposition of distilled

spirits for nonindustrial use shall not sell or otherwise dispose of distilled spirits in bulk (other than alcohol) for industrial use, unless such distilled spirits are shipped or delivered directly to the industrial user thereof.

## Part 4—Labeling and Advertising of Wine

Sec.

### 4.1 Definitions.

#### STANDARDS OF IDENTITY FOR WINE

- 4.20 Application of standards.
- 4.21 The standards of identity.
- 4.22 Blends, cellar treatment, alteration of class or type.
- 4.23 Grape type designations.
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- 4.25 Appellations of origin.

#### LABELING REQUIREMENTS FOR WINE

- 4.30 General.
- 4.31 Misbranding.
- 4.32 Mandatory label information.
- 4.33 Brand names.
- 4.34 Class and type.
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- 4.36 Alcoholic content.
- 4.37 Net contents.
- 4.38 General requirements.
- 4.39 Prohibited practices.

#### REQUIREMENTS FOR WITHDRAWAL OF WINE FROM CUSTOMS CUSTODY

- 4.40 Label approval and release.

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- 4.50 Certificates of label approval.
- 4.51 Exhibiting certificates to Government officials.
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#### ADVERTISING OF WINE

- 4.60 Application.
- 4.61 Definitions.
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#### STANDARDS OF FILL FOR WINE

- 4.70 Application.
- 4.71 Standard wine containers.
- 4.72 Standards of fill.

#### GENERAL PROVISIONS

- 4.80 Exports.

**AUTHORITY:** §§ 4.1 to 4.80 issued under 53 Stat. 375; 26 U. S. C. 3176. Interpret or apply sec. 5, 49 Stat. 981, as amended; 27 U. S. C. 205.

**CROSS REFERENCES:** For regulations relating to the labeling and advertising of distilled

spirits, see Part 5 of this chapter. For regulations relating to the labeling and advertising of malt beverages, see Part 7 of this chapter. For production, fortification, and tax payment of wine, see 26 CFR Part 178.

§ 4.1 *Definitions.* As used in this part:

(a) The term “act” means the Federal Alcohol Administration Act.

(b) The term “Deputy Commissioner” means the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit.

(c) The term “district supervisor” means the district supervisor of the Alcohol Tax Unit for that district in which the permittee maintains its plant or premises.

(d) The term “permittee” means any person holding a basic permit under the Federal Alcohol Administration Act.

(e) The term “wine” means: (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U. S. C. 3036, 3044, 3045) and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance only if containing not less than 7 percent, and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

(f) The term “pure condensed must” means the dehydrated juice or must of sound, ripe grapes, or other fruit or agricultural products, concentrated to not more than 80° (Balling), the composition thereof remaining unaltered except for removal of water; the term “restored pure condensed must” means pure condensed must to which has been added an amount of water not exceeding the amount removed in the dehydration process; and the term “sugar” means pure cane, beet, or dextrose sugar in dry form containing, respectively, not less than 95 per cent of actual sugar calculated on a dry basis.

(g) As used in the phrase “added brandy or alcohol” the term “brandy” means brandy or wine spirits for use in the fortification of wine as permitted by internal revenue law. The term “alcohol” means ethyl alcohol distilled at or above 190° proof.

(h) The term "vintage wine" means a wine made wholly from grapes gathered in the same calendar year and grown and fermented in the same viticultural area, and conforming to the standards prescribed in Classes 1 and 2 of § 4.21.

(i) The term "container" means any bottle, barrel, cask or other closed receptacle irrespective of size or of the material from which made for use for the sale of wine at retail. The term "bottler" means any person who places wine in containers of a capacity of 1 gallon or less; and the term "packer" means any person who places wine in containers of a capacity in excess of 1 gallon.

(j) The term "gallon" means United States gallon of 231 cubic inches of alcoholic beverage at 60° F. All other liquid measures used are subdivisions of the gallon as so defined.

(k) The term "brand label" means the label carrying, in the usual distinctive design, the brand name of the wine.

(l) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(m) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(n) The term "person" means any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent, and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(o) Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by such act.

[Regs. No. 4, 1 F. R. 103, as amended by Amdt. 2, 3 F. R. 2093, Treasury Order 30, 5 F. R. 2212, T. D. 5618, 13 F. R. 3017]

#### STANDARDS OF IDENTITY FOR WINE

§ 4.20 *Application of standards.*  
The standards of identity for the sev-

eral classes and types of wine set forth herein shall be applicable to all regulations and permits issued under the act. Whenever any term for which a standard of identity has been established herein is used in any such regulation or permit, such term shall have the meaning assigned to it by such standard of identity.

[Regs. No. 4, Amdt. 2, 3 F. R. 2093]

§ 4.21 *The standards of identity.*  
Standards of identity for the several classes and types of wine set forth in this part shall be as follows:

(a) *Class 1; grape wine.* (1) "Grape wine" is wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed grape must), with or without the addition, after fermentation, of pure condensed grape must, and with or without added grape brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment: *Provided*, That the product may be ameliorated before, during or after fermentation by either of the following methods:

(i) By adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent; but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 15 percent by weight.

(ii) By adding, separately or in combination, not more than 15 percent by weight of dry sugar, or not more than 10 percent by weight of water.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural red wine, more than 0.14 gram, and for other grape wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

Grape wine deriving its characteristic color or lack of color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as "red wine," "pink (or rose) wine," "amber wine," or "white wine" as the case may be.

Any grape wine containing no added grape brandy or alcohol may be further designated as "natural".

(2) "Table wine" is grape wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated as "light wine," "red table wine," "light white wine," "sweet table wine," etc., as the case may be.

(3) "Dessert wine" is grape wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume. Dessert wine having the taste, aroma and characteristics generally attributed to sherry and an alcoholic content, derived in part from added grape brandy or alcohol, of not less than 17 percent by volume, may be designated as "sherry". Dessert wines having the taste, aroma and characteristics generally attributed to angelica, madeira, muscatel and port and an alcoholic content, derived in part from added grape brandy or alcohol, of not less than 18 percent by volume, may be designated as "angelica," "madeira," "muscatel," or "port" respectively. Dessert wines having the taste, aroma, and characteristics generally attributed to any of the above products and an alcoholic content, derived in part from added grape brandy or alcohol, in excess of 14 percent by volume but, in the case of sherry, less than 17 percent, or, in other cases, less than 18 percent by volume, may be designated as "light sherry," "light angelica," "light madeira," "light muscatel" or "light port," respectively.

(b) *Class 2; sparkling grape wine.* (1) "Sparkling grape wine" (including "sparkling wine," "sparkling red wine" and "sparkling white wine") is grape wine made effervescent with carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle.

(2) "Champagne" is a type of sparkling light white wine which derives its effervescence solely from the secondary fermentation of the wine within glass containers of not greater than one gallon capacity, and which possesses the taste, aroma, and other characteristics attributed to champagne as made in the champagne district of France.

(3) A sparkling light white wine having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for "champagne" may, in addition to but not in lieu of the class designation "sparkling wine" be further designated as "champagne style" or "champagne type" or "American (or New York State,

California, etc.) champagne—bulk process"; all the words in any such further designation shall be equally conspicuous and shall appear in direct conjunction with and in lettering approximately one-half the size of the words "sparkling wine".

(c) *Class 3; carbonated grape wine.* "Carbonated grape wine" (including "carbonated wine" "carbonated red wine", and "carbonated white wine") is grape wine made effervescent with carbon dioxide other than that resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle.

(d) *Class 4; citrus wine.* (1) (i) "Citrus wine" or "citrus fruit wine" is wine produced by the normal alcoholic fermentation of the juice of sound, ripe citrus fruit (including restored or un-restored pure condensed citrus must), with or without the addition, after fermentation, of pure condensed citrus must, and with or without added citrus brandy or alcohol, but without any other addition or abstraction except as may occur in cellar treatment: *Provided*, That the product may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 15 percent by weight.

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural citrus wine, more than 0.14 gram, and for other citrus wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(iii) Any citrus wine containing no added brandy or alcohol may be further designated as "natural."

(2) "Citrus table wine" or "citrus fruit table wine" is citrus wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated "light citrus wine," "light citrus fruit wine," "light sweet citrus fruit wine," etc., as the case may be.

(3) "Citrus dessert wine" or "citrus fruit dessert wine" is citrus wine having

an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume.

(4) Citrus wine derived wholly (except for sugar, water, or added alcohol) from one kind of citrus fruit, shall be designated by the word "wine" qualified by the name of such citrus fruit, e. g., "orange wine," "grapefruit wine." Citrus wine not derived wholly from one kind of citrus fruit shall be designated as "citrus wine" or "citrus fruit wine" qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Citrus wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as "sparkling"; and citrus wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as "carbonated."

(e) *Class 5; fruit wine.* (1) (i) "Fruit wine" is wine (other than grape wine or citrus wine) produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (including restored or unrestored pure condensed fruit must), with or without the addition, after fermentation, of pure condensed fruit must, and with or without added fruit brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment: *Provided*, That the product may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will increase the volume of the resulting product, in the case of wines produced from loganberries, currants or gooseberries, having a normal acidity of 20 parts or more per thousand, not more than 60 percent, and in the case of other fruit wines, not more than 35 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 15 percent by weight.

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural fruit wine, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(iii) Any fruit wine containing no added brandy or alcohol may be further designated as "natural."

(2) "Berry wine" is fruit wine produced from berries.

(3) "Fruit table wine" or "berry table wine" is fruit or berry wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated "light fruit wine," or "light berry wine."

(4) "Fruit dessert wine" or "berry dessert wine" is fruit or berry wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume.

(5) Fruit wine derived wholly (except for sugar, water, or added alcohol) from one kind of fruit shall be designated by the word "wine" qualified by the name of such fruit, e. g., "peach wine," "blackberry wine." Fruit wine not derived wholly from one kind of fruit shall be designated as "fruit wine" or "berry wine," as the case may be, qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Fruit wines which are derived wholly (except for sugar, water, or added alcohol) from apples or pears may be designated "cider" and "perry," respectively, and shall be so designated if lacking in vinous taste, aroma, and characteristics. Fruit wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as "sparkling"; and fruit wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as "carbonated."

(f) *Class 6; wine from other agricultural products.* (1) (i) Wine of this class is wine (other than grape wine, citrus wine, or fruit wine) made by the normal alcoholic fermentation of sound fermentable agricultural products, either fresh or dried, or of the restored or unrestored pure condensed must thereof, with the addition before or during fermentation of a volume of water not greater than the minimum necessary to correct natural moisture deficiencies in such products, with or without the addition, after fermentation, of pure condensed must, and with or without added alcohol or such other spirits as will not alter the character of the product, but without other addition or abstraction except as

may occur in cellar treatment: *Provided*, That the product may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or an unfermented residual sugar content, derived from added sugar, of more than 15 percent by weight.

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural wine of this class, more than 0.14 gram, and for other wine of this class, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(iii) Wine of this class containing no added alcohol or other spirits may be further designated as "natural".

(2) "Table wine" of this class is wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated as "light".

(3) "Dessert wine" of this class is wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume.

(4) "Raisin wine" is wine of this class made from dried grapes.

(5) "Sake" is wine of this class produced from rice in accordance with the commonly accepted method of manufacture of such product.

(6) Wine of this class derived wholly (except for sugar, water, or added alcohol) from one kind of agricultural product shall, except in the case of "sake," be designated by the word "wine" qualified by the name of such agricultural product, e. g., "honey wine," "raisin wine," "dried blackberry wine." Wine of this class not derived wholly from one kind of agricultural product shall be designated as "wine" qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Wine of this class rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of wine within a closed container, tank, or bottle shall be further designated as "sparkling"; and wine of this class rendered effervescent by carbon dioxide otherwise

derived shall be further designated as "carbonated."

(g) *Class 7; aperitif wine.* (1) "Aperitif wine" is wine having an alcoholic content of not less than 15 percent by volume, compounded from grape wine containing added brandy or alcohol, flavored with herbs and other natural aromatic flavoring materials, with or without the addition of caramel for coloring purposes, and possessing the taste, aroma, and characteristics generally attributed to aperitif wine and shall be so designated unless designated as "vermouth" under paragraph (b) of this section.

(2) "Vermouth" is a type of aperitif wine compounded from grape wine, having the taste, aroma, and characteristics generally attributed to vermouth, and shall be so designated.

(h) *Class 8; imitation and substandard wine.* (1) "Imitation wine" shall bear as a part of its designation the word "imitation," and shall include:

(i) Any wine containing synthetic materials.

(ii) Any wine made from a mixture of water with residue remaining after thorough pressing of grapes, fruit, or other agricultural products.

(iii) Any class or type of wine the taste, aroma, color, or other characteristics of which have been acquired, in whole or in part, by treatment with methods or materials of any kind, if the taste, aroma, color, or other characteristics of normal wines of such class or type are acquired without such treatment.

(iv) Any wine made from must concentrated at any time to more than 80° (Balling).

(2) "Substandard wine" shall bear as a part of its designation the word "substandard," and shall include:

(i) Any wine having a volatile acidity in excess of the maximum prescribed therefor in §§ 4.20 to 4.25.

(ii) Any wine for which no maximum volatile acidity is prescribed in §§ 4.20 to 4.25, inclusive, having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters (20° C.).

(iii) Any wine for which a standard of identity is prescribed in this §§ 4.20 to 4.25, inclusive, which, through disease, decomposition, or otherwise, fails to have the composition, color, and clean vinous

taste and aroma of normal wines conforming to such standard.

(iv) Any "grape wine," "citrus wine," "fruit wine," or "wine from other agricultural products" to which has been added sugar and water solution in an amount which is in excess of the limitations prescribed in the standards of identity for these products, unless, in the case of "citrus wine," "fruit wine" and "wine from other agricultural products" the normal acidity of the material from which such wine is produced is 20 parts or more per thousand and the volume of the resulting product has not been increased more than 60 percent by such addition.

[Regs. No. 4, Amdt. 2, 3 F. R. 2093, as amended by T. D. 5618, 13 F. R. 3018]

CROSS REFERENCE: For Internal Revenue regulations relating to fortified wine, see 26 CFR 178.227-178.316, 173.344-178.346.

§ 4.22 *Blends, cellar treatment, alteration of class or type.* (a) If the class or type of any wine shall be altered, and if the product as so altered does not fall within any other class or type either specified in §§ 4.20-4.25 or known to the trade, then such wine shall, unless otherwise specified in this section, be designated with a truthful and adequate statement of composition in accordance with § 4.34.

(b) Alteration of class or type shall be deemed to result from any of the following occurring before, during, or after production.

(1) Treatment of any class or type of wine with substances foreign to such wine which remain therein: *Provided*, That the presence in finished wine of not more than 350 parts per million of total sulphur dioxide, or sulphites expressed as sulphur dioxide, shall not be precluded under this paragraph.

(2) Treatment of any class or type of wine with substances not foreign to such wine but which remain therein in larger quantities than are naturally and normally present in other wines of the same class or type not so treated.

(3) Treatment of any class or type of wine with methods or materials of any kind to such an extent or in such manner as to affect the basic composition of the wine so treated by altering any of its characteristic elements.

(4) Blending of wine of one class with wine of another class or the blending of

wines of different types within the same class.

(5) Treatment of any class or type of wine for which a standard of identity is prescribed in this article with sugar or water in excess of the quantities specifically authorized by such standard: *Provided*, That the class or type thereof shall not be deemed to be altered (i) where such wine (other than grape wine) is derived from fruit, or other agricultural products, having a high normal acidity, if the unfermented residual sugar content, derived from added sugar, is not more than 20 percent by weight, and the content of natural acid is not less than 7.5 parts per thousand and (ii) where such wine is derived exclusively from fruit, or other agricultural products, the normal acidity of which is 20 parts or more per thousand, if the volume of the resulting product has been increased not more than 60 percent by the addition of sugar and water solution, for the sole purpose of correcting natural deficiencies due to such acidity, and (except in the case of such wines when produced from loganberries, currants, or gooseberries) there is stated as a part of the class and type designation the phrase "Made with over 35 percent sugar solution".

(c) Nothing in this section shall preclude the treatment of wine of any class or type in the manner hereinafter specified, provided such treatment does not result in the alteration of the class or type of the wine under the provisions of paragraph (b) of this section.

(1) Treatment with filtering equipment, and with fining or sterilizing agents.

(2) Treatment with pasteurization as necessary to perfect the wines to commercial standards in accordance with acceptable cellar practice but only in such a manner and to such an extent as not to change the basic composition of the wine nor to eliminate any of its characteristic elements.

(3) Treatment with refrigeration as necessary to perfect the wine to commercial standards in accordance with acceptable cellar practice but only in such a manner and to such an extent as not to change the basic composition of the wine nor to eliminate any of its characteristic elements.

(4) Treatment with methods and materials to the minimum extent necessary to correct cloudiness, precipitation, or

abnormal color, odor, or flavor developing in wine.

(5) Treatment with constituents naturally present in the kind of fruit or other agricultural product from which the wine is produced for the purpose of correcting deficiencies of these constituents, but only to the extent that such constituents would be present in normal wines of the same class or type not so treated.

[Regs. No. 4, Amdt. 2, 3 F. R. 2093, as amended by T. D. 5618, 13 F. R. 3019]

§ 4.23 *Grape type designations.* A name indicative of a variety of grape may be employed as the type designation of a grape wine if the wine derives its predominant taste, aroma, and characteristics, and at least 51 per cent of its volume, from that variety of grape. If such type designation is not known to the consumer as the name of a grape variety, there shall appear in direct conjunction therewith an explanatory statement as to the significance thereof.

[Regs. No. 4, Amdt. 2, 3 F. R. 2095]

§ 4.24 *Generic, semi-generic, and non-generic designations of geographic significance.* (a) (1) A name of geographic significance which is also the designation of a class or type of wine, shall be deemed to have become generic only if so found by the Deputy Commissioner.

(2) Examples of generic names, originally having geographic significance, which are designations for a class or type of wine are: Vermouth, Sake.

(b) (1) A name of geographic significance, which is also the designation of a class or type of wine, shall be deemed to have become semi-generic only if so found by the Deputy Commissioner. Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine, and if the wine so designated conforms to the standard of identity, if any, for such wine contained in the regulations in this part or, if there be no such standard, to the trade understanding of such class or type.

(2) Examples of semi-generic names which are also type designations for grape wine are Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port,

Rhine Wine (syn. Hock), Sauterne, Haut Sauterne, Sherry, Tokay.

(c) (1) A name of geographic significance, which has not been found by the Deputy Commissioner to be generic or semi-generic may be used only to designate wines of the origin indicated by such name, but such name shall not be deemed to be the distinctive designation of a wine unless the Deputy Commissioner finds that it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines.

(2) Examples of non-generic names which are not distinctive designations of specific wines are: American, California, Lake Erie Islands, Napa Valley, New York State, French, Spanish.

(3) Examples of non-generic names which are also distinctive designations of specific grape wines are: Bordeaux Blanc, Bordeaux Rouge, Graves, Medoc, St. Julien, Chateau Yquem, Chateau Margaux, Chateau Lafite, Pommard, Chambertin, Montrachet, Rhone, Liebfraumilch, Rudesheimer, Forster Deidesheimer, Schloss Johannisberger, Lagrima, Lacryma Christi.

[Regs. No. 4, Amdt. 2, 3 F. R. 2095, as amended by Treasury Order 30, 5 F. R. 2212, T. D. 5618, 13 F. R. 3019]

NOTE: These examples appeared in Circular Letter FA-187, Feb. 24, 1939, 4 F. R. 1044:

Examples of names, not generic or semi-generic, which are distinctive designations of specific natural table wines, when qualified by the word "wine," or its French or German equivalent: Bordeaux, Medoc, St. Julien, Margaux, Graves, Barsac, Pomerol, St. Emilion; Bourgogne, Grand Chablis or Bourgogne des Environs de Chablis, Cote de Nuits, Gevrey-Chambertin, Morey, Chambolle-Musigny, Flagey-Echezeaux, Vosne-Romanee, Nuits or Nuits-St. Georges, Cote de Beaune, Aloxe-Corton, Savigny, Beaune, Pommard, Volnay, Santenay, Meursault, Puligny-Montrachet, Chassagne-Montrachet, Cote Maconnaise or Maconnais, Macon, Cote Beaujolaise, Beaujolais; Rhone or Cote du Rhone, Cote Rotie, Hermitage, Chateauf-neuf-du-Pape, Tavel; Loire, Anjou, Coteaux du Layon, Coteaux de la Loire, Saumur, Anjou-Saumur, Touraine, Vouvray; Alsace or Alsatian; Mosel-Saar-Ruwer, Mosel; Swiss or Suisse.

§ 4.25 *Appellations of origin.* (a) A wine shall be entitled to an appellation of origin if (1) at least 75 percent of its volume is derived from fruit or other agricultural products both grown and fermented in the place or region indicated by such appellation, (2) it has

been fully manufactured and finished within such place or region, and (3) it conforms to the requirements of the laws and regulations of such place or region governing the composition, method of manufacture and designation of wines for home consumption.

(b) Wines subjected to cellar treatment outside the place or region of origin under the provisions of § 4.22 (c), and blends of wines of the same origin blended together outside the place or region of origin (if all the wines in the blend have a common class, type or other designation which is employed as the designation of the blend) shall be entitled to the same appellation of origin to which they would be entitled if such cellar treatment or blending took place within the place or region of origin.

[Regs. No. 4, Amdt. 2, 3 F. R. 2096]

#### LABELING REQUIREMENTS FOR WINE

§ 4.30 *General*—(a) *Application*. No person engaged in business as a producer, rectifier, blender, importer, or wholesaler, directly or indirectly or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any wine in containers unless such wine is packaged, and such packages are marked, branded, and labeled in conformity with this article. Wine domestically bottled or packed prior to Dec. 15, 1936, and imported wine entered in customs bond in containers prior to that date shall be regarded as being packaged, marked, branded and labeled in accordance with this article, if the labels on such wine (1) bear all the mandatory label information required by § 4.32, even though such information is not set forth in the manner and form as required by § 4.32 and other sections of this title referred to therein, and (2) bear no statements, designs, or devices which are false or misleading.

(b) *Alternation of labels*. (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label upon wine held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law, or except as provided in subparagraph (2) of this paragraph: *Provided*, That the District Supervisors of the Alcohol Tax Unit may, upon written application, permit addi-

tional labeling or relabeling of wine for purposes of compliance with the requirements of this part or of State law.

(2) No application for permission to relabel wine need be made in any case where there is added to the container, after removal from customs custody or from the premises where bottled or packed, a label identifying the wholesale or retail distributor thereof, and containing no reference whatever to the characteristics of the product.

[Regs. No. 4, 1 F. R. 103, as amended by T. D. 5051, 6 F. R. 2874]

CROSS REFERENCE: For customs warehouses and control of merchandise therein, see 19 CFR Part 19.

§ 4.31 *Misbranding*. Wine in containers shall be deemed to be misbranded:

(a) If the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by this part and conforming to the general requirements specified in this part.

(b) If the container or any label on the container or any individual covering, carton, or other wrapper of the container used for sale at retail (other than a shipping carton, covering or wrapper of the container) or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial or emblematic representation that is prohibited by this article.

(c) If the container is in an individual carton, covering, or other wrapper used for sale at retail (other than a shipping carton, covering, or wrapper of the container) displaying thereon any written, printed, graphic, or other matter, other than the name and address of the producer, importer, or person by whom bottled or packed (and in addition the name and address of the person for whom bottled or packed), and such individual covering, carton, or other wrapper obscures the mandatory label information required to be stated, and such individual covering, carton or other wrapper fails to reproduce on it, in the same manner, all information so obscured; or if any statement required by this section to appear upon the label, or upon such individual covering, carton, or other wrapper, is obscured in any other manner or is modified in any manner.

[Regs. No. 4, 1 F. R. 103]

§ 4.32 *Mandatory label information.*

(a) Except as otherwise provided in paragraph (c) of this section, there shall be stated on the brand label:

(1) Brand name, in accordance with § 4.33.

(2) Class, type, or other designation, in accordance with § 4.34.

(3) Name and address, in accordance with § 4.35.

(4) On blends consisting of foreign and domestic wines, if any reference to the presence of foreign wine is made, the exact percentage by volume of foreign wine.

(b) There shall be stated on the brand label, or on a separate label affixed in immediate proximity thereto on the same side of the container:

(1) Alcoholic content, or type designation in lieu thereof, in accordance with § 4.36.

(2) Net contents, in accordance with § 4.37.

(c) In the case of imported wine, the name and address of the importer need not be stated upon the brand label if it is stated upon any other label affixed to the container. In the case of domestic wine, bottled or packed for a retailer or other person under his private brand, the name and address of the bottler or packer need not be stated upon the brand label if the name and address of the person for whom bottled or packed appears upon the brand label, and the name and address of the bottler or packer is stated upon any other label affixed to the container.

[T. D. 5098, 6 F. R. 5828, as amended by T. D. 5618, 13 F. R. 3020]

§ 4.33 *Brand names*—(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the Deputy Commissioner finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the

age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualifications shall be in script, type, or printing as conspicuous as the trade name or brand.

[T. D. 5051, 6 F. R. 2874]

§ 4.34 *Class and type.* (a) The class of the wine shall be stated and such statement shall be in conformity with §§ 4.20 to 4.25 if the wine is defined therein, except that "table" ("light") and "dessert" wines need not be designated as such. In the case of still grape wine there may appear, in lieu of the class designation, any grape-type designation, semi-generic geographic type designation, or geographic distinctive designation to which the wine may be entitled. In the case of champagne, the type designation "champagne" may appear in lieu of the class designation "sparkling wine". If the class of the wine is not defined in §§ 4.20-4.25, a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation. In addition to the mandatory designation for the wine, there may be stated a distinctive or fanciful name, or a designation in accordance with trade understanding. All parts of the designation of the wine, whether mandatory or optional, shall be in direct conjunction and in lettering substantially of the same size and kind.

(b) An application of origin such as "American", "California", "Chilean", "New York State" or "Spanish", disclosing the true place of origin of the wine, shall appear in direct conjunction with and in lettering substantially as conspicuous as the class and type designation, (1) if a grape variety name having geographic significance is employed as the type designation of the wine pursuant to § 4.23, (2) if a semi-generic type designation of geographic significance is

employed as the type designation of the wine pursuant to § 4.24 (b), or (3) if the label bears any statement, design, device, or representation which indicates or infers origin.

[Regs. No. 4, Amdt. 2, 3 F. R. 2093, as amended by T. D. 5618, 13 F. R. 3019]

§ 4.35 *Name and address*—(a) *Domestic wine*. On labels of containers of domestic wine, there shall be stated the name of the bottler or packer and the place where bottled or packed (or in lieu of such place, the principal place of business of the bottler or packer if in the same State where the wine was bottled or packed, and, if bottled or packed on internal revenue bonded premises, the internal revenue registry number of such premises) immediately preceded by the words "Bottled by" or "Packed by" except that:

(1) If the bottler or packer is also the person who made not less than 75 percent of such wine by crushing the grapes or other materials, fermenting the must and clarifying the resulting wine, or if such person treated the wine in such manner as to change the class thereof, there may be stated, in lieu of the words "Bottled by" or "Packed by", the words "Produced and bottled by" or "Produced and packed by".

(2) If the bottler or packer has also either made or treated the wine, otherwise than as described in subparagraph (1) of this paragraph, there may be stated, in lieu of the words "Bottled by" or "Packed by", the phrases "Blended and bottled (packed) by," "Rectified and bottled (packed) by," "Prepared and bottled (packed) by," "Made and bottled (packed) by," as the case may be, or, in the case of imitation wine only, "Manufactured and bottled (packed) by."

(3) In addition to the name of the bottler or packer and the place where bottled or packed (but not in lieu thereof) there may be stated the name and address of any other person for whom such wine is bottled or packed, immediately preceded by the words "Bottled for" or "Packed for" or "Distributed by" or other similar statement; or the name and principal place of business of the rectifier, blender, or maker, immediately preceded by the words "Rectified by," "Blended by," or "Made by," respectively, or, in the case of imitation wine only, "Manufactured by."

(b) *Imported wine*. On labels of containers of imported wine, there shall be

stated the words "Imported by" or a similar appropriate phrase, and immediately thereafter the name of the permittee who is the importer, agent, sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person. In addition, but not in lieu thereof, there may be stated the name and principal place of business of the foreign producer, blender, rectifier, maker, bottler, packer, or shipper, preceded by the phrases "Produced by," "Blended by," "Rectified by," "Made by," "Bottled by," "Packed by," "Shipped by," respectively, or, in the case of imitation wine only, "Manufactured by."

(1) If the wine is bottled or packed in the United States, there shall be stated, in addition, the name of the bottler or packer and the place where bottled or packed immediately preceded by the words "Bottled by" or "Packed by." If, however, the wine is bottled or packed in the United States by the person responsible for the importation there may be stated, in lieu of the above required statements, the name and principal place of business in the United States of such person, immediately preceded by the phrase "Imported and bottled (packed) by" or a similar appropriate phrase.

(2) If the wine is blended, bottled, or packed in a foreign country other than the country of origin and the country of origin is stated or otherwise indicated on the label, there shall also be stated the name of the bottler, packer, or blender, and the place where bottled, packed, or blended, immediately preceded by the words "Bottled by," "Packed by," "Blended by", or other appropriate statement.

(c) *Form of address*. The "place" stated shall be the post-office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person unless (1) such person is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(d) *Trade names*. The trade name of any permittee appearing upon any label

shall be identical with the name in which his basic permit is issued by the district supervisor.

[Regs. No. 4, 1 F. R. 103, as amended by Treasury Order 30, 5 F. R. 2212, T. D. 5618, 13 F. R. 3019]

§ 4.36 *Alcoholic content.* (a) Alcoholic content shall be stated in the case of wines containing more than 14 percent of alcohol by volume, and, in the case of wine containing 14 percent or less of alcohol by volume, either the type designation "table" wine ("light" wine) or the alcoholic content shall be stated. Any statement of alcoholic content shall be made as prescribed in paragraph (b) of this section.

(b) Alcoholic content shall be stated in terms of percentage of alcohol by volume, and not otherwise, as provided in either subparagraph (1) or (2) of this paragraph:

(1) "Alcohol ----% by volume." Except as provided in paragraph (c) of this section, a tolerance of 1 percent, in the case of wines containing more than 14 percent of alcohol by volume, and of 1.5 percent, in the case of wines containing 14 percent or less of alcohol by volume, will be permitted either above or below the stated percentage.

(2) "Alcohol ----% to ----% by volume." Except as provided in paragraph (c) of this section, a range of not more than 2 percent, in the case of wines containing more than 14 percent of alcohol by volume, and of not more than 3 percent, in the case of wines containing 14 percent or less of alcohol by volume, will be permitted between the minimum and maximum percentages stated, and no tolerances will be permitted either below such minimum or above such maximum.

(c) Regardless of the type of statement used and regardless of tolerances normally permitted in direct statements and ranges normally permitted in maximum and minimum statements, alcoholic content statements, whether required or optional, shall definitely and correctly indicate the class, type and taxable grade of the wine so labeled and nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcoholic content statement in terms of maximum and minimum percentages which overlaps a prescribed limitation on the alcoholic content of any class, type, or taxable grade of wine, or a direct statement of alcoholic content which indicates that the alcoholic con-

tent of the wine is within such a limitation when in fact it is not.

[T. D. 5618, 13 F. R. 3020]

§ 4.37 *Net contents.* (a) The net contents of wine for which a standard of fill is prescribed in §§ 4.70-4.72 shall be stated in the same manner and form in which such standard of fill is set forth in said article.

(b) The net contents of wine for which no standard of fill is prescribed in §§ 4.70-4.72 shall be stated as follows, except that net contents may be expressed in the metric system of measure for containers of  $\frac{1}{2}$  liter, 1 liter and  $1\frac{1}{2}$  liter:

(1) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

(2) If less than a pint, the net contents shall be stated in fractions of a pint, or in fluid ounces.

(3) If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(5) If more than a gallon, the net contents shall be stated in gallons and fractions thereof.

(c) All fractions shall be expressed in their lowest denomination.

(d) The net contents need not be stated on any label if the net contents are displayed by having the same blown or branded in the container on the same side of the container as the brand label, in letters or figures in such manner as to be plainly legible under ordinary circumstances, and such statement is not obscured in any manner in whole or in part.

(e) Statement of net contents shall indicate exactly the volume of wine within the container, except that the following tolerances shall be allowed:

(1) Discrepancies due exclusively to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due exclusively to differences in the capacity of containers, resulting solely from unavoidable difficulties in manufacturing such containers so as to be of uniform capacity: *Provided*, That no greater tolerance shall be allowed in case of containers which, because of their design, cannot be made of

approximately uniform capacity than is allowed in case of containers which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in containers to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(f) Unreasonable shortages in certain of the containers in any shipment shall not be compensated by overages in other containers in the same shipment.

[Regs. No. 4, 1 F. R. 103, as amended by T. D. 5093, 6 F. R. 5465]

§ 4.38 *General requirements*—(a) *Contrasting background.* All labels shall be so designed that all the statements thereon required by §§ 4.30–4.39 are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.* All statements (other than alcoholic content statements upon labels of containers having a capacity of 1 gallon or less) required on labels by this article, shall be in readily legible script, type, or printing not smaller than 8-point gothic caps except that if contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter: *Provided*, That in the case of labels of containers having a capacity of less than one-half pint, such script, type, or printing thereon need not be in 8-point gothic caps, but shall be readily legible under ordinary conditions. Alcoholic content statements, whether required or optional, on labels on containers having a capacity of 1 gallon or less shall be readily legible under ordinary conditions but shall not appear in script, type, or printing larger or more conspicuous than 8-point gothic caps.

(c) *English language.* All mandatory label information shall be stated on labels in the English language: *Provided*, That the brand name, the place of production, and the name of the manufacturer, producer, blender, rectifier, maker, bottler, packer, or shipper appearing on the label need not be in the English lan-

guage if the words "Product of" immediately precede the name of the country of origin stated in accordance with customs' requirements. Additional statements in foreign languages may be made on labels, if no such statements in any way conflict with, or are contradictory to, the requirements of §§ 4.30–4.39.

(d) *Location of label.* No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall be affixed over the mouths of containers of wine, and no label shall obscure any such stamps or be obscured thereby.

(e) *Labels firmly affixed.* All labels shall be affixed to containers of wine in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.* Labels may contain information other than the mandatory label information required by §§ 4.30–4.39, provided such information complies with the requirements of such sections and does not conflict with, nor in any manner qualify statements required by, any regulations promulgated under the act.

(g) *Representations as to materials.* If any representation (other than representations or information required by §§ 4.30–4.39) is made as to the presence, excellence, or other characteristic of any ingredient in any wine, or used in the production thereof, the label containing such representation shall state, in print, type, or script, substantially as conspicuous as such representation, the name and amount in percent by volume of each such ingredient.

(h) *Statement of contents of containers.* Upon request of the Deputy Commissioner, there shall be submitted to him a full and accurate statement of the contents of the containers to which labels are to be or have been affixed.

[Regs. No. 4, 1 F. R. 103, as amended by Treasury Order 30, 5 F. R. 2212, T. D. 5618, 13 F. R. 3020]

§ 4.39 *Prohibited practices*—(a) *Statements on labels.* Containers of wine, or any label on such containers, or any individual covering, carton, or other wrapper of such container, or any written, printed, graphic, or other matter accompanying such container to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespec-

tive of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, blender, rectifier, importer, wholesaler, retailer, bottler, or warehouseman of wine, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.<sup>1</sup>

(7) Any statement, design, device, or representation (other than a statement of alcoholic content in conformity with § 4.36) which tends to create the impression that the wine has been "fortified", or contains distilled spirits, or has in-

toxicating qualities, except that a statement of composition, if required to appear as the designation of a product not defined in §§ 4.20-4.25, may include a reference to the type of distilled spirits employed therein.

(8) Any coined word or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

(b) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except that:

(1) In the case of domestic vintage wine bottled or packed in containers by the permittee who crushed the grapes, fermented the must, and clarified such wine, the year of vintage may be stated but only if there is likewise stated on the brand label, in direct conjunction with the class, type, or distinctive designation, and in lettering substantially as conspicuous as such designation, the name of the viticultural area in which the grapes were grown and the wine fermented.

(2) In the case of domestic vintage wine rebottled in containers of a capacity of 1 gallon or less by a person other than the producer thereof, the year of vintage may be stated but only if the container from which such wine is bottled is the original container of the permittee who produced such wine, and such container bears upon the brand label thereof a vintage date. If the year of vintage is stated upon the brand label of wine so rebottled, there shall also be stated the name of the viticultural area, and the class, type, or distinctive designation of the wine, in the same manner and form as such statements appear on the brand label of the original container.

(3) In the case of imported vintage wine, the year of vintage may be stated if such wine was bottled prior to importation in containers of 1 gallon or less.

(4) Truthful references of a general and informative nature relating to methods of wine production involving storage or aging, such as "This wine has been

<sup>1</sup> Under subparagraph (5) the Deputy Commissioner has permitted the use of statements in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

-----"  
(Name of permittee making statement)

mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars," may appear but only in an inconspicuous manner and then only on back labels or on other matter accompanying the container.

(c) *Statement of bottling dates.* The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears in lettering not greater than 8-point gothic caps and in the following form: "Bottled in ----" (inserting the year in which the wine was bottled).

(d) *Use of the word "old."* The use of the word "old" or other word denoting age, as part of the brand name, shall not be deemed to be a representation relative to age, if the word "brand" appears in direct conjunction with such brand name, in letters of equally conspicuous color and at least one-half the size of the lettering in which such brand name is printed.

(e) *Statement of miscellaneous dates.* No date, except as provided in paragraphs (b) and (c) of this section with respect to statement of vintage year and bottling date, shall be stated on any label unless in addition thereto and in direct conjunction therewith, in the same size and kind of printing, there shall be stated an explanation of the significance of such date: *Provided*, That if any date refers to the date of establishment of any business, such date shall not be stated in the case of containers of a capacity of 1 gallon or less in any printing, type, or script, larger than 8-point gothic caps, and shall only be stated in direct conjunction with the name of the person to whom it refers.

(f) *Simulation of Government stamps.*  
 (1) No labels shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the wine contained in the labeled container is produced, blended, bottled, packed, or sold under, or in accordance with, any municipal, State or Federal Government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State or municipal law or regulation, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State,

or Federal Government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.

(2) Bonded winery and storeroom numbers may be stated but only in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded winery or storeroom numbers may be made in the following form: "Bonded Winery No. ----", "B. W. No. ----", "Bonded Storeroom No. ----", "B. S. No. ----" No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under Government supervision or in accordance with Government specifications or standards.

(g) *Use of the word "Importer", or similar words.* The word "Importer", or similar words, shall not be stated on labels on containers of domestic wine except as part of the bona fide name of a permittee for or by whom, or of a retailer for whom, such wine is bottled or packed: *Provided*, That in all cases where such words are used as part of such name, there shall be stated on the same label the words "Product of the United States", or similar words to negative any impression that the product is imported, and such negative statements shall appear in the same size and kind of printing as such name.

(h) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the Deputy Commissioner finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(i) *Curative and therapeutic effects.* Labels shall not contain any statement,

design, or device representing that the use of any wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(j) *Individual coverings and cartons.* Individual coverings, cartons, or other wrappers of containers of wine, or any written, printed, graphic, or other matter accompanying the container, shall not contain any statement or any graphic pictorial, or emblematic representation or other matter which is prohibited from appearing on any label or container of wine.

[Regs. No. 4, 1 F. R. 103, as amended by Amdt. 2, 3 F. R. 2096, Treasury Order 30, 5 F. R. 2212, T. D. 5051, 6 F. R. 2874, T. D. 5618, 13 F. R. 3020]

#### REQUIREMENTS FOR WITHDRAWAL OF WINE FROM CUSTOMS CUSTODY

§ 4.40 *Label approval and release—*  
(a) *Application.* On or after December 15, 1936, imported wine shall not be released from customs custody for consumption, except pursuant to procedure and forms prescribed by this section.

(b) *Affidavit.* No imported wine shall be released from customs custody unless there shall have been deposited with the appropriate customs officer at the port of entry an "Affidavit for release of distilled spirits, wine or malt beverages under the Federal Alcohol Administration Act" (Form 1652), which document shall be properly filled out and sworn to by the importer or transferee in bond, covering the particular brand or lot of wine sought to be released, and which document shall be accompanied by the original or a photostatic copy firmly attached thereto of a "Certificate of label approval under the Federal Alcohol Administration Act" (Form 1649).

Such certificate shall be issued by the Deputy Commissioner upon application made on the form designated "Application for certificate of label approval under the Federal Alcohol Administration Act" (Form 1647), properly filled out and certified to by the importer or transferee in bond.

(c) *Release.* If the "Affidavit for release of distilled spirits, wine or malt beverages under the Federal Alcohol Administration Act" (Form 1652), is accompanied by the original or a photostatic copy of the "Certificate of label approval under the Federal Alcohol Administration Act" (Form 1649), the cer-

tificate of which bears the signature of the officer designated by the Deputy Commissioner, then the brand or lot of imported wine bearing labels identical with those shown on the original or a photostatic copy may be released from customs custody.

(d) *Relabeling.* Imported wine in customs custody which is not labeled in conformity with certificates of label approval issued by the Deputy Commissioner must be relabeled prior to release, under the supervision and direction of the customs officers of the port at which such wine is located.<sup>2</sup>

[Regs. No. 4, 1 F. R. 103, as amended by Amdt. 1, 1 F. R. 110, Treasury Order 30, 5 F. R. 2212]

#### REQUIREMENTS FOR APPROVAL OF LABELS OF WINE DOMESTICALLY BOTTLED OR PACKED

§ 4.50 *Certificates of label approval.*

(a) No person shall bottle or pack wine, other than wine bottled or packed in customs custody, or remove such wine from the plant where bottled or packed, unless upon application to the Deputy Commissioner he has obtained and has in his possession a "Certificate of label approval under the Federal Alcohol Administration Act" (Form 1649), covering such wine. Such certificate of label approval shall be issued by the Deputy Commissioner upon application made upon the form designated "Application for certificate of label approval under the Federal Alcohol Administration Act" (Form 1647), properly filled out and certified to by the applicant.

(b) Any bottler or packer of wine shall be exempt from the requirements of this section and §§ 4.51, 4.52 if upon application he shows to the satisfaction of the Deputy Commissioner that the wine to be bottled or packed by him is not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. A "Certificate of exemption from label approval under the Federal Alcohol Administration Act" (Form 1650) shall be issued by the Deputy Commissioner upon application upon the form designated "Application for certificate of exemption from label approval under the Federal Alcohol Administration Act" (Form

<sup>2</sup> Copies of Form 1647 may be secured from the district supervisors of the Alcohol Tax Unit on request; copies of Form 1652 may be secured from the local Customs office.

1648), properly filled out and certified to by the applicant.<sup>3</sup>

[Regs. No. 4, 1 F. R. 103, as amended by Treasury Order 30, 5 F. R. 2212]

§ 4.51 *Exhibiting certificates to Government officials.* Any bottler or packer holding an original or duplicate original of a certificate of label approval or a certificate of exemption shall, upon demand, exhibit such certificate to a duly authorized representative of the United States Government.

[Regs. No. 4, 1 F. R. 103]

§ 4.52 *Photoprints.* Photoprints or other reproductions of certificates of label approval or certificates of exemption are not acceptable, for the purposes of §§ 4.50–4.52, as substitutes for an original or duplicate original of a certificate of label approval, or a certificate of exemption. The Deputy Commissioner will, upon the request of the bottler or packer, issue duplicate originals of certificates of label approval or of certificates of exemption if wine under the same brand is bottled or packed at more than one plant by the same person, and if the necessity for the duplicate original is shown and there is listed with the Deputy Commissioner the name and address of the additional bottling or packing plant where the particular label is to be used.

[Regs. No. 4, 1 F. R. 103, as amended by Treasury Order 30, 5 F. R. 2212]

#### ADVERTISING OF WINE

§ 4.60 *Application.* No person engaged in business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter any advertisement of wine, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 4.60–4.64: *Provided*, That such sections shall not apply to outdoor adver-

<sup>3</sup> Copies of Forms 1647 and 1648 may be secured from the district supervisors of the Alcohol Tax Unit on request. For formula wines see AT Circular 879, May 20, 1946, with respect to submission of a copy of the approved formula on Form 698—Supplemental and a copy of the approved statement of process, in addition to Forms 1647 and 1648.

tising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising: *And provided further*, That such sections shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly, or through an affiliate.

[Regs. No. 4, 1 F. R. 103]

§ 4.61 *Definitions.* As used in §§ 4.60–4.64 the term “advertisement” includes any advertisement of wine through the medium of radio broadcast; or of newspapers, periodicals, or other publications; or of any sign or outdoor advertisement; or of any other printed or graphic matter, including trade booklets, menus, and wine cards—if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce; or is disseminated by mail; except that such term shall not include:

(a) Any label affixed to any container of wine; or any individual covering, carton, or other wrapper of such container or any written, printed, graphic, or other matter accompanying the container which constitutes a part of the labeling under §§ 4.30–4.39.

(b) Any editorial or other reading matter in any periodical or publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

[Regs. No. 4, 1 F. R. 103]

§ 4.62 *Mandatory statements*—(a) *Responsible advertiser.* The advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class, type, and distinctive designation.* The advertisement shall contain a conspicuous statement of the class, type, or distinctive designation to which the product belongs, corresponding with the statement of class, type, or distinctive designation which is required to appear on the label of the product.

[Regs. No. 4, 1 F. R. 103, as amended by T. D. 5150, 7 F. R. 3659]

§ 4.63 *Legibility of requirements.* Statements required under §§ 4.60–4.64 to appear in any written, printed, or graphic advertisement shall be in let-

tering or type of a size sufficient to render them both conspicuous and readily legible.

[Regs. No. 4, 1 F. R. 103]

NOTE: A circular letter concerning statements of mandatory information in advertisements, dated June 5, 1939, appearing at 4 F. R. 2305 and provided in part as follows:

Required statements as to neutral spirits content should ordinarily appear in direct conjunction with the most prominent reference in the advertisement to the class and type of the advertised product.

Mandatory information should be stated at least in type or lettering which is the equivalent of eight-point type. The size of the type should be increased proportionately with the size of the advertisement, and should not be smaller or less conspicuous than promotional copy or other unrequired descriptive matter appearing in the advertisement. In the case of signs, billboards, and displays, the mandatory information should be conspicuous and readily legible from the distance at which the advertisement is intended to be and is customarily viewed.

Mandatory information should be so stated as to be clearly a part of the advertisement and should not be separated in any manner from the remainder of the advertisement.

Mandatory information for two products should not be stated in direct conjunction unless clearly distinguished.

Mandatory information should not be buried or concealed by including it in unrequired descriptive matter.

In every case mandatory information should be stated so that it will come to the attention of persons viewing the advertisement.

§ 4.64 *Prohibited statements.* (a) *Restrictions.* The advertisement of wine shall not contain:

(1) Any statement that is false or misleading in any material particular.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer.

(6) Any statement that the wine is produced, blended, bottled, packed, or

sold under, or in accordance with, any municipal, State, or Federal Government authorization, law, or regulations; and if a municipal, State, or Federal permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto.

(7) Any statement of bonded winery and storeroom numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded winery or storeroom numbers may be made in the following form: "Bonded Winery No. ----," "B. W. No. ----," "Bonded storeroom No. ----," "B. S. No. ----". No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under Government supervision or in accordance with Government specifications or standards.

(8) Any statement, design, device, or representation which relates to alcoholic content, or which tends to create the impression that the wine has been fortified, or contains distilled spirits, or has intoxicating qualities, except that a statement of composition, if required to appear as a designation of a product not defined in §§ 4.20-4.25, may include a reference to the type of distilled spirits employed therein.

(b) *Statements inconsistent with labeling.* The advertisement shall not contain any statement concerning a brand or lot of wine that is inconsistent with any statement on the labeling thereof. This requirement shall become effective December 15, 1936.

(c) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except that:

(1) In the case of domestic vintage wine bottled or packed and labeled in accordance with the provisions of § 4.39 (b) (1), (2), the year of vintage may be stated but only if there is likewise stated, in direct conjunction with the class, type, or distinctive designation of the wine, in lettering substantially as conspicuous as such designation and in the same manner and form as such statements appear on the brand label of the container, the name of the viticultural area in which the grapes were grown and the wine fermented.

(2) In the case of imported vintage wine bottled and labeled in accordance with the provisions of § 4.39 (b) (3) the year of vintage may be stated.

(3) Truthful references of a general and informative nature relating to methods of wine production involving storage or aging, such as "This wine has been mellowed in oak casks." "Stored in small barrels" or "Matured at regulated temperatures in our cellars" may be made.

(d) *Statement of bottling dates.* The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears without undue emphasis in the following form: "Bottled in -----" (inserting the year in which the wine was bottled).

(e) *Use of the word "old."* The use of the word "old" or other word denoting age, as part of the brand name, shall not be deemed to be a representation relative to age, if the word "brand" appears in direct conjunction with such brand name, in letters of equally conspicuous color and at least one-half the size of the lettering in which such brand name appears.

(f) *Statement of miscellaneous dates.* No date, except as provided in paragraphs (c) and (d) of this section, with respect to statement of vintage year and bottling date, shall be stated unless, in addition thereto, and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date: *Provided*, That if any date refers to the date of establishment of any business, such date shall be stated without undue emphasis and in direct conjunction with the name of the person to whom it refers.

(g) *Flags, seals, coats of arms, crests, and other insignia.* No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to, the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of,

or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crests, or insignia is associated.

(h) *Statements indicative of origin.* No statement, design, device, or representation which tends to create the impression that the wine originated in a particular place or region, shall appear in any advertisement unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement in direct conjunction with the class and type designation.

(i) *Use of the word "importer" or similar words.* The word "importer" or similar words shall not appear in advertisements of domestic wine except as part of the bona fide name of the permittee by or for whom, or of a retailer for whom, such wine is bottled or packed: *Provided*, That in all cases where such words are used as part of such name, there shall be stated the words "Product of the United States" or similar words to negate any impression that the product is imported, and such negating statements shall appear in the same size and kind of printing as such name.

(j) *Curative and therapeutic effects.* The advertisement shall not contain any statement, design, or device representing that the use of any wine has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(k) *Confusion of brands.* Two or more different brands or lots of wine shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of §§ 4.60-4.64 or are in any respect untrue.

[Regs. No. 4, 1 F. R. 103, as amended by Amdt. 1, 1 F. R. 110, Amdt. 2, 3 F. R. 2096, Treasury Order 30, 5 F. R. 2212, T. D. 5051, 6 F. R. 2874, T. D. 5150, 7 F. R. 3659, T. D. 5618, 13 F. R. 3021]

#### STANDARDS OF FILL FOR WINE

§ 4.70 *Application.* (a) Except as provided in paragraph (b) of this section, no person engaged in business as

a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any wine unless such wine is bottled or packed in the standard wine containers herein prescribed.

(b) Sections 4.70–4.72 shall not apply (1) to sake, or (2) to wine packed in containers of 5 gallons or more, or (3) to imported wine in the original containers in which entered in customs custody, or (4) to wine domestically bottled or packed, either in or out of customs custody, prior to the effective date of this article, if the container, or the label on the container, bears a conspicuous statement of the net contents thereof, and if the actual capacity of the container is not substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use. [T. D. 5093, 6 F. R. 5465]

§ 4.71 *Standard wine containers.* (a) A standard wine container shall be made, formed and filled to meet the following specifications:

(1) *Design.* It shall be so made and formed as not to mislead the purchaser. Wine containers shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser if the actual capacity is substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use; and

(2) *Fill.* It shall be so filled as to contain the quantity of wine specified in one of the standards of fill prescribed in § 4.72; and

(3) *Headspace.* It shall be so made and filled as to have a headspace not in excess of 6 percent of its total capacity after closure if the net contents of the container is  $\frac{1}{2}$  pint or more, and a headspace not in excess of 10 percent of such capacity in the case of all other containers. [T. D. 5093, 6 F. R. 5465]

§ 4.72 *Standards of fill.* (a) The standards of fill for wine shall be the following, subject to the tolerances hereinafter allowed:

(1) For all wines:

4.9 gallons.	1 pint.
3 gallons.	$\frac{1}{2}$ pint.
1 gallon.	$\frac{3}{8}$ pint.
$\frac{1}{2}$ gallon.	4 ounces.
1 quart.	3 ounces.
$\frac{1}{2}$ quart.	2 ounces.

(2) In addition, for sparkling and carbonated wines only:  $\frac{2}{5}$  gallon.

(3) In addition, for aperitif wines only:  $\frac{15}{16}$  quart.

(b) The tolerances in fill shall be the same as are allowed by § 4.37 in respect to statement of net contents upon labels. [T. D. 5093, 6 F. R. 5465, as amended by T. D. 5618, 13 F. R. 3021]

GENERAL PROVISIONS

§ 4.80 *Exports.* The regulations in this part shall not apply to wine exported in bond. [T. D. 5093, 6 F. R. 5465]

Part 5—Labeling and Advertising of Distilled Spirits

Sec. 5.1 Definitions.

STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

- 5.20 Application of standards.
- 5.21 The standards of identity.
- 5.22 Alteration of class and type; harmless coloring, flavoring and blending materials.

LABELING REQUIREMENTS FOR DISTILLED SPIRITS

- 5.30 General.
- 5.31 Misbranding.
- 5.32 Mandatory label information.
- 5.33 Brand names.
- 5.34 Class and type.
- 5.35 Name and address.
- 5.36 Alcoholic content.
- 5.37 Net contents.
- 5.38 Presence of neutral spirits and coloring, flavoring, and blending materials.
- 5.39 Statements of age and percentage.
- 5.40 General requirements.
- 5.41 Prohibited practices.

REQUIREMENTS FOR WITHDRAWAL FROM CUSTOMS CUSTODY OF BOTTLED IMPORTED DISTILLED SPIRITS

- 5.45 Label approval and release.
- 5.46 Certificates of age and origin.

REQUIREMENTS FOR APPROVAL OF LABELS OF DOMESTICALLY BOTTLED DISTILLED SPIRITS

- 5.50 Certificates of label approval.
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**AUTHORITY:** §§ 5.1 to 5.81 issued under 53 Stat. 375; 26 U. S. C. 3176. Interpret or apply sec. 5, 49 Stat. 981, as amended; 27 U. S. C. 205.

**CROSS REFERENCES:** For regulations relating to the labeling and advertising of wine, see Part 4 of this chapter. For regulations relating to the labeling and advertising of malt beverages, see Part 7 of this chapter. For collection of internal revenue tax on intoxicating liquors, denatured alcohol, and articles containing denatured alcohol, coming into the United States from the Virgin Islands and Puerto Rico, see 26 CFR Part 180. For disposition of substances used in the manufacture of distilled spirits, denatured alcohol, denatured rum, and substances or preparations containing denatured rum, or denatured alcohol, see 26 CFR Parts 173, 174. For drawback on distilled spirits bottled especially for export, see 26 CFR Part 176. For traffic in containers of distilled spirits, see 26 CFR Part 175. For transfer of or succession to special tax stamps under the internal revenue laws pertaining to alcoholic liquors, see 26 CFR Part 179.

§ 5.1 *Definitions.* As used in this part: (a) The term "act" means the Federal Alcohol Administration Act.

(b) The term "Deputy Commissioner" means the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit.

(c) The term "district supervisor" means the district supervisor of the Alcohol Tax Unit for that district in which the permittee maintains its plant or premises.

(d) The term "permittee" means any person holding a basic permit under the Federal Alcohol Administration Act.

(e) The term "distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all

dilutions and mixtures thereof, for non-industrial use.

(f) The term "bottle" means any container, irrespective of the material from which made, used for the sale of distilled spirits at retail.

(g) The term "in bulk" means in containers having a capacity in excess of one wine gallon.

(h) The term "gallon" means United States gallon of 231 cubic inches of alcoholic beverage at 60° F. All other liquid measures used are subdivisions of the gallon as so defined.

(i) The term "brand label" means the label carrying, in the usual distinctive design, the brand name of the distilled spirits.

(j) The term "age" means the period during which, after distillation and before bottling, distilled spirits have been kept in oak containers, charred if for a whisky of American type other than corn whisky, straight corn whisky, blended corn whisky, or a blend of straight corn whiskies. In the case of American type whiskies produced on or after July 1, 1936, other than corn whisky, straight corn whiskies, blended corn whisky, and blends of straight corn whisky "age" means the period during which the whisky has been kept in charred new oak containers.

(k) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(l) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(m) The term "person" means any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(n) Any other term defined in the Federal Alcohol Administration Act and

used in this part shall have the same meaning assigned to it by such act.

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 2, 1 F. R. 887, Treasury Order 30, 5 F. R. 2212, T. D. 5617, 13 F. R. 3021]

STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

§ 5.20 *Application of standards.* The standards of identity for the several classes and types of distilled spirits set forth in this part shall be applicable only to distilled spirits for beverage or other non-industrial purposes. Nothing contained in these standards of identity shall be construed as authorizing the non-industrial use of any distilled spirits produced in an industrial alcohol plant, except that "alcohol" or "neutral spirits," as defined in this part, may be so used if produced pursuant to the basic permit requirements of the Federal Alcohol Administration Act.

[T. D. 5051, 6 F. R. 2874]

§ 5.21 *The standards of identity.* Standards of identity for the several classes and types of distilled spirits set forth in this part shall be as follows:

(a) *Class 1; Neutral spirits or alcohol.* "Neutral spirits" or "alcohol" are distilled spirits distilled from any material at or above 190° proof, whether or not such proof is subsequently reduced. During the period of the unlimited national emergency proclaimed by the President on May 27, 1941, the term "neutral spirits" shall also include any spirits distilled at less than 190° proof, which are so distilled, or so treated in the process of distillation, or so refined by other processes after distillation, as to lack the taste, aroma and other characteristics of whiskies, brandy, rum or other potable beverage spirits, but the containers of such product shall not be labeled as "alcohol."

(b) *Class 2; Whisky.* "Whisky" is an alcoholic distillate from a fermented mash of grain distilled at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whisky, and withdrawn from the cistern room of the distillery at not more than 110° and not less than 80° proof, whether or not such proof is further reduced prior to bottling to not less than 80° proof; and also includes mixtures of the foregoing distillates for which no specific standards of identity are prescribed in this part. Those types of whisky specified in

subparagraphs (1) to (10) of this paragraph shall be deemed "American type" whiskies.

(1) "Rye whisky", "bourbon whisky", "wheat whisky", "malt whisky", or "rye malt whisky" is whisky which has been distilled at not exceeding 160° proof from a fermented mash of not less than 51 percent rye grain, corn grain, wheat grain, malted barley grain or malted rye grain, respectively, and, if produced on or after March 1, 1938, stored in charred new oak containers, and also includes mixtures of such whiskies where the mixture consists exclusively of whiskies of the same type. "Corn whisky" is whisky which has been distilled at not exceeding 160° proof from a fermented mash of not less than 80 percent corn grain, stored in uncharred oak containers, or reused charred oak containers, and not subjected, in the process of distillation or otherwise, to treatment with charred wood, and also includes mixtures of such whisky.

(2) "Straight whisky" is an alcoholic distillate from a fermented mash of grain at not exceeding 160° proof and withdrawn from the cistern room at the distillery at not more than 110° and not less than 80° proof, whether or not such proof is further reduced prior to bottling to not less than 80° proof, and is:

(i) Aged for not less than 12 calendar months if bottled on or after July 1, 1936, and before July 1, 1937; or

(ii) Aged for not less than 18 calendar months if bottled on or after July 1, 1937, and before July 1, 1938; or

(iii) Aged for not less than 24 calendar months if bottled on or after July 1, 1938.

The term "straight whisky" also includes mixtures of straight whisky which, by reason of being homogeneous, are not subject to the rectification tax under the internal-revenue laws.

(3) "Straight rye whisky" is straight whisky distilled from a fermented mash of grain of which not less than 51 percent is rye grain.

(4) (i) "Straight bourbon whisky" is straight whisky distilled from a fermented mash of grain of which not less than 51 percent is corn grain.

(ii) "Straight corn whisky" is straight whisky distilled from a fermented mash of grain of which not less than 80 percent is corn grain, aged for the required period in uncharred oak containers or

reused charred oak containers, and not subjected, in the process of distillation, or otherwise, to treatment with charred wood.

(5) "Straight wheat whisky" is straight whisky distilled from a fermented mash of grain of which not less than 51 percent is wheat grain.

(6) "Straight malt whisky" and "straight rye malt whisky" are straight whisky distilled from a fermented mash of grain of which not less than 51 percent of the grain is malted barley or malted rye, respectively.

(7) "Blended whisky" (whisky—a blend) is a mixture which contains at least 20 percent by volume of 100° proof straight whisky and, separately or in combination, whisky or neutral spirits, if such mixture at the time of bottling is not less than 80° proof.

(8) "Blended rye whisky" (rye whisky—a blend), "blended bourbon whisky" (bourbon whisky—a blend), "blended corn whisky" (corn whisky—a blend), "blended wheat whisky" (wheat whisky—a blend), "blended malt whisky" (malt whisky—a blend) or "blended rye malt whisky" (rye malt whisky—a blend) is blended whisky which contains not less than 51 percent by volume of straight rye whisky, straight bourbon whisky, straight corn whisky, straight wheat whisky, straight malt whisky, or straight rye malt whisky, respectively.

(9) "A blend of straight whiskies" (blended straight whiskies), "A blend of straight rye whiskies" (blended straight rye whiskies), "A blend of straight bourbon whiskies" (blended straight bourbon whiskies), "A blend of straight corn whiskies" (blended straight corn whiskies), "A blend of straight wheat whiskies" (blended straight wheat whiskies), "A blend of straight malt whiskies" (blended straight malt whiskies), and "A blend of straight rye malt whiskies" (blended straight rye malt whiskies) are mixtures of only straight whiskies, straight rye whiskies, straight bourbon whiskies, straight corn whiskies, straight wheat whiskies, straight malt whiskies, or straight rye malt whiskies, respectively.

(10) "Spirit whisky" is a mixture (i) of neutral spirits and not less than 5 percent by volume of whisky, or (ii) of neutral spirits and less than 20 percent by volume of straight whisky, but not less than 5 percent by volume of straight

whisky, or of straight whisky and whisky, if the resulting product at the time of bottling be not less than 80° proof.

(11) "Scotch whisky" is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of Great Britain regulating the manufacture of Scotch whisky for consumption in Great Britain, and containing no distilled spirits less than 3 years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such mixture is "blended Scotch whisky" (Scotch whisky—a blend). "Scotch whisky" shall not be designated as "straight."

(12) "Irish whisky" is a distinctive product of Ireland, manufactured either in the Irish Free State or in Northern Ireland, in compliance with the laws of those respective territories regulating the manufacture of Irish whisky for consumption in such territories, and containing no distilled spirits less than 3 years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such whisky is "blended Irish whisky" (Irish whisky—a blend). "Irish whisky" shall not be designated as "straight."

(13) "Canadian whisky" is a distinctive product of Canada, manufactured in Canada in compliance with the laws of the Dominion of Canada regulating the manufacture of whisky for consumption in Canada, and containing no distilled spirits less than 2 years old: *Provided*, That if in fact such product as so manufactured is a mixture of distilled spirits, such whisky is "blended Canadian whisky" (Canadian whisky—a blend). "Canadian whisky" shall not be designated as "straight."

(14) "Blended Scotch type whisky" (Scotch type whisky—a blend) is a mixture made outside Great Britain and composed of:

(i) Not less than 20 percent by volume of 100° proof malt whisky or whiskeys distilled in pot stills at not more than 160° proof, from a fermented mash of malted barley dried over peat fire, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof, and

(ii) Not more than 80 percent by volume of neutral spirits, or whisky distilled at more than 180° proof, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof.

(15) "Blended Irish type whisky" (Irish type whisky—a blend) is a product made outside Great Britain or the Irish Free State and composed of:

(i) A mixture of distilled spirits distilled in pot stills at not more than 171° proof, from a fermented mash of small cereal grains of which not less than 50 percent is dried malted barley, and unmalted barley, wheat, oats, or rye grains, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof; or

(ii) A mixture consisting of not less than 20 percent by volume of 100° proof malt whisky or whiskies distilled in pot stills at approximately 171° proof, from a fermented mash of dried malted barley, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof; and

(iii) Not more than 80 percent by volume of neutral spirits, or whisky distilled at more than 180° proof, whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof.

(c) *Class 3, gins.* (1) "Distilled gin" is a distillate obtained by original distillation from mash, or by the redistillation of distilled spirits, over or with juniper berries and other aromatics customarily used in the production of gin, and deriving its main characteristic flavor from juniper berries and reduced at time of bottling to not less than 80° proof; and includes mixtures solely of such distillates.

(2) "Compound gin" is the product obtained by mixing neutral spirits with distilled gin or gin essence or other flavoring materials customarily used in the production of gin, and deriving its main characteristic flavor from juniper berries and reduced at time of bottling to not less than 80° proof; and includes mixtures of such products.

(3) "Dry gin", "London dry gin", "Hollands gin", "Geneva gin", "Old Tom gin", "Tom gin", and "Buchu gin" are the types of gin known under such designations, and shall be further designated as "distilled" or "compound", as the case may be.

(d) *Class 4; brandies.* "Brandy" is a distillate, or a mixture of distillates, obtained solely from the fermented juice, mash or wine of fruit, or from the residue thereof, distilled at less than 190° proof in such manner as to possess the taste, aroma and characteristics generally at-

tributed to the product, and bottled at not less than 80° proof; and shall also include such distillates, aged for a period of not less than 50 years, and bottled at not less than 72° proof, in cases where the reduction in proof below 80° is due solely to losses resulting from natural causes during the period of aging. Brandy, or mixtures thereof, not conforming to any of the following standards shall be designated as "brandy," and such designation shall be qualified by a truthful and adequate statement of composition in direct conjunction therewith.

(1) "Fruit brandy" is brandy distilled solely from the juice or mash of whole, sound, ripe fruit, or from standard grape, citrus, or other fruit wine, having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, not in excess of 0.20 gram per 100 cubic centimeters (20° C.), with or without the addition of not more than 20 percent by weight of the pomace of such juice or wine, or 30 percent by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation), and shall include mixtures of such brandy with not more than 30 percent (calculated on a proof basis) of lees brandy. Fruit brandy, derived exclusively from grapes, shall be designated as "grape brandy" or "brandy." Fruit brandy, other than grape brandy, derived exclusively from one variety of fruit, shall be designated by the word "brandy" qualified by the name of such fruit (e. g., "peach brandy," "apple brandy," "orange brandy"), except that "apple brandy" may be designated "applejack." Fruit brandy derived from more than one variety of fruit shall be designated as "fruit brandy," qualified by a truthful and adequate statement of composition (e. g., "fruit brandy—a blend of 90 percent grape brandy and 10 percent blackberry brandy").

(2) "Cognac" or "Cognac (grape) brandy," is grape brandy distilled in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French government.

(3) "Dried fruit brandy," is brandy that conforms to the standard for fruit brandy except that it has been derived from sound, dried fruit, or from the standard wine of such fruit. Brandy derived from raisins, or from raisin wine,

shall be designated as "raisin brandy." Other brandies defined in this paragraph shall be designated in the same manner as fruit brandy from the corresponding variety or varieties of fruit except that the name of the fruit shall be qualified by the word "dried."

(4) "Lees brandy" is brandy distilled from the lees of standard grape, citrus, or other fruit wine, and shall be designated as "lees brandy," qualified by the name of the fruit from which such lees are derived.

(5) "Pomace brandy," or "marc brandy," is brandy distilled from the skin and pulp of sound, ripe grapes, citrus or other fruit, after the withdrawal of the juice or wine therefrom, and shall be designated as "pomace brandy," or "marc brandy," qualified by the name of the fruit from which derived. Grape pomace brandy may be designated as "grappa" or "grappa brandy."

(6) "Residue brandy" is brandy distilled wholly or in part from the residue of fruit or wine, and shall be designated as "residue brandy" qualified by the name of the fruit from which derived. Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in subparagraphs (1), (3), (4) and (5) of this paragraph, may, regardless of such fact, be designated "residue brandy" by the distiller thereof; but the use of this designation shall be conclusive, precluding any later change of designation.

(7) "Neutral brandy" is any brandy distilled on or after July 1, 1941 at more than 170° proof. Brandy so distilled shall be designated in the same manner as if distilled at a lower proof, except that the designation shall be qualified by the word "neutral" in the same size and kind of type, e. g., "neutral brandy," "neutral grape lees brandy," or "neutral grape pomace brandy."

(8) "Substandard" brandy shall bear as a part of its designation the word "substandard," and shall include:

(i) Any brandy distilled from juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20° C.); measurements of volatile acidity under this paragraph shall be calculated exclusive of water added to facilitate distillation.

(ii) Any brandy which has been distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material.

(e) *Class 5; rum.* (1) "Rum" is any alcoholic distillate from the fermented juice of sugarcane, sugarcane sirup, sugarcane molasses, or other sugarcane byproducts distilled at less than 190° proof (whether or not such proof is further reduced prior to bottling to not less than 80° proof) in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to rum; and includes mixtures solely of such distillates.

(2) "New England rum" is rum as above defined, except that it is produced in the United States, is distilled at less than 160° proof, and is a straight rum and not a mixture of rums.

(3) Puerto Rico, Cuba, Demerara, Barbados, St. Croix, St. Thomas, Virgin Islands, Jamaica, Martinique, Trinidad, Haiti, and San Domingo rum are not distinctive types of rum. Such names are not generic but retain their geographic significance. They may not be applied to rum produced in any other place than the particular region indicated in the name, and may not be used as a designation of a product as rum, unless such product is rum as defined in subparagraph (1) of this paragraph.

(f) *Class 6; cordials and liqueurs.* (1) Cordials and liqueurs are products obtained by mixing or redistilling neutral spirits, brandy, gin, or other distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials, and to which sugar or dextrose or both have been added in the amount not less than 2½ percent by weight of the finished product. Synthetic or imitation flavoring materials shall not be included.

(2) "Sloe gin" is a cordial or liqueur with the main characteristic flavoring derived from sloe berries.

(3) Cordials and liqueurs shall not be designated as "distilled" or "compound."

(4) The designation of a cordial or liqueur may include the word "dry" if the added sugar and dextrose are less than 10 percent by weight of the finished product.

(g) *Class 7; imitations.* Imitations shall bear, as a part of the designation thereof, the word "imitation" and shall include the following:

(1) Any class or type of distilled spirits to which has been added coloring or flavoring material of such nature as to cause the resultant product to simulate any other class or type of distilled spirits;

(2) Any class or type of distilled spirits (other than distilled spirits required under § 5.34 to bear a distinctive or fanciful name and a truthful and adequate statement of composition) to which has been added synthetic flavoring material;

(3) Any class or type of distilled spirits (other than distilled spirits required under § 5.34 to bear a distinctive or fanciful name and a truthful and adequate statement of composition) to which has been added a natural flavoring material which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any other flavoring material, if the labeling of such distilled spirits creates the impression that such other flavoring material has been employed in the manufacture of the product;

(4) Any class or type of distilled spirits (except cordials, liqueurs and specialties marketed under labels which do not indicate, or infer, that a particular class or type of distilled spirits was used in the manufacture thereof) to which has been added any whisky essence, brandy essence, rum essence or similar essence or extract which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any class or type of distilled spirits;

(5) Any type of rum to which neutral spirits or other distilled spirits than rum have been added;

(6) Any type of brandy to which neutral spirits or other distilled spirits than brandy have been added; and

(7) Any brandy to the distilling material for which has been added any amount of sugar other than the kind and amount of sugar expressly authorized for the amelioration of standard wine.

(h) *Class 8, geographical designations.* (1) Geographical names for distinctive types of distilled spirits (other than names found by the Deputy Commis-

sioner under subparagraph (2) of this paragraph to have become generic) shall not be applied to distilled spirits produced in any other place than the particular region indicated by the name, unless (i) in direct conjunction with the name there appears the word "type" or the word "American" or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name, and (ii) the distilled spirits to which the name is applied conform to the distilled spirits of that particular region. The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Eau de Vie de Dantzig (Danziger Goldwasser), Ojen, Swedish punch, blended Scotch whisky, blended Irish whisky, blended Canadian whisky. Geographical names for distinctive types of distilled spirits shall be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in §§ 5.20-5.21, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type. Such geographical names for distinctive types of distilled spirits shall not be used as the name or a part of the name for distilled spirits not of that distinctive type.

(2) Only such geographical names for distilled spirits as the Deputy Commissioner finds have by usage and common knowledge lost their geographical significance to such extent that they have become generic, shall be deemed to have become generic. The following are examples of distinctive types of distilled spirits with geographical names that have become generic: London dry gin, Geneva gin, Hollands gin, Tequila.

(3) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. The following are examples of geographical names for distilled spirits that are not generic and are not names for distinctive types of distilled spirits: Cognac, Armagnac, Greek brandy, Pisco brandy, Jamaica rum, Kentucky straight bourbon whisky, Maryland straight rye whisky.

(i) *Class 9; products without geographical designations but distinctive of a particular place.* (1) The whiskies of

the types specified in paragraph (b) (1)–(10) of this section are distinctive products of the United States, and if produced in a foreign country, shall be designated by the applicable designation prescribed in such paragraph, together with the words “American type” or the words “produced (distilled, blended) in \_\_\_\_\_”, the blank to be filled in with the name of the foreign country.

(2) The name for other distilled spirits which are distinctive products of a particular place or country shall not be given to the product of any other place or country unless the designation for such product includes the word “type” or an adjective such as “American” or the like, clearly indicating the true place of production. This paragraph shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that they have become generic, provided the approval of the Deputy Commissioner is obtained prior to using such designation. An example of a product which is a distinctive product of a particular place or country and which has not become generic is the following: Habanero. Examples of products which have lost their geographical significance to such an extent that they are no longer distinctive products of a particular place or country, but have become generic, are the following: Vodka, Slivovitz, Zubrovka, Aquavit, Arrack, and Kirschwasser.

[Reg. No. 5, 1 F. R. 113, as amended by Amdt. 2, 1 F. R. 887, Amdt. 3, 1 F. R. 1009, Amdt. 5, 3 F. R. 561, Amdt. 6, 3 F. R. 1394, Treasury Order 30, 5 F. R. 2212, T. D. 5050, 6 F. R. 2787, T. D. 5134, 7 F. R. 2577, T. D. 5617, 13 F. R. 3021]

CROSS REFERENCE: For rectification tax under the Internal Revenue regulations, see 26 CFR 176.12–176.14.

§ 5.22 *Alteration of class and type; harmless coloring, flavoring and blending materials.* (a) Except as otherwise provided in this section, the addition of any coloring, flavoring or blending materials whatsoever, to any class or type of distilled spirits shall be deemed to alter the class and type thereof. If the class or type of any distilled spirits shall be so altered, and if there is no class or type designation for the product as so altered, either specified in §§ 5.20 and 5.21 or in accordance with trade understanding, such distilled spirits shall be designated

with a distinctive or fanciful name together with a truthful and adequate statement of composition in accordance with § 5.34. There may be added to any class or type of distilled spirits, without changing the class or type thereof, (1) such harmless coloring, flavoring or blending materials as are an essential component part of the particular class or type of distilled spirits to which added, and (2) harmless coloring, flavoring or blending materials such as caramel, straight malt or straight rye malt whiskeys, fruit juices, sugar or wine, which are not an essential component part of the particular distilled spirits to which added, but which are customarily employed therein in accordance with established trade usage, if such coloring, flavoring or blending materials do not total more than 2½ percent by volume of the finished product.

(b) “Harmless coloring, flavoring and blending materials” shall not include (1) any material which would render the product to which it is added an imitation, or (2) any material whatsoever in the case of straight whisky or in the case of neutral spirits, or (3) any material, other than caramel and sugar, in the case of cognac brandy.

(c) Nothing in this section shall be construed as in any manner modifying the standards of identity for cordials and liqueurs, or as authorizing any product which is defined in Class 7 as an imitation to be otherwise designated.

[Regs. No. 5, Amdt. 6; 3 F. R. 1394]

CROSS REFERENCES: For standards of identity for cordials and liqueurs, see § 5.21 (f). For products classified in Class 7 as imitations, see § 5.21 (g).

#### LABELING REQUIREMENTS FOR DISTILLED SPIRITS

§ 5.30 *General*—(a) *Application.* No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any distilled spirits in bottles, unless such distilled spirits are packaged, and such packages are marked, branded, or labeled in conformity with §§ 5.30–5.41. Distilled spirits domestically bottled prior to August 15, 1936, and imported distilled spirits entered in customs bond in bottles prior

to that date shall be regarded as being packaged, marked, branded, and labeled in accordance with §§ 5.30-5.41, if the labels on such distilled spirits (1) bear all the mandatory label information required by § 5.32, even though such information is not set forth in the manner and form as required by such section and the other sections referred to therein, and (2) bear no statements, designs, or devices which are false or misleading.

(b) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label upon distilled spirits held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law, or except as provided in subparagraph (2) of this paragraph: *Provided*, That the district supervisors of the Alcohol Tax Unit may upon written application, permit additional labeling or relabeling of bottled distilled spirits for purposes of compliance with the requirements of §§ 5.30-5.41 or of State law.

(2) No application for permission to relabel bottled distilled spirits need be made in any case where there is added to the bottle, after removal from customs custody or from the bottling premises, a label identifying the wholesale or retail distributor thereof, and containing no references whatever to the characteristics of the product.<sup>1</sup>

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 1, 1 F. R. 124, T. D. 5009, 5 F. R. 3811]

§ 5.31 *Misbranding.* Distilled spirits in bottles shall be deemed to be misbranded:

<sup>1</sup> No forms of application for permission to relabel distilled spirits have been prescribed. The former Federal Alcohol Administrator ruled that such applications need not be filed to cover the relabeling on bottler's premises, under supervision of Government officers, of distilled spirits which have never left the bottler's premises, providing that the new labels are covered by certificates of label approval (FA 69); that bottled distilled spirits may be rebottled in containers bearing approved labels without securing permission to relabel (FA 91); and that bottled distilled spirits may be removed from the bottling plant under approved back labels conforming in all respects to the requirements of this part and the brand label may later be applied at the bottling plant at the point of destination if covered by certificate of label approval covering the complete set of labels (FA-123).

(a) If the bottle fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by §§ 5.30-5.41 and conforming to the general requirements specified herein.

(b) If the bottle or any label on the bottle, or any individual covering, carton, or other container of the bottle used for sale at retail, other than a shipping container, or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 5.30-5.41.

(c) If the bottle is in an individual covering, carton, or other container used for sale at retail, other than a shipping container, displaying thereon any written, printed, graphic, or other matter, other than the name and address of the manufacturer, importer, or person by whom bottled (and in addition the name and address of the person for whom bottled), and such individual covering, carton, or other container obscures the mandatory label information required to be stated and such individual covering, carton, or other container fails to reproduce on it, in the same manner, all information so obscured; or if any statement required by §§ 5.30-5.41 to appear upon the label, or upon such individual covering, carton, or other container of the bottle, is obscured in any other manner or is modified in any manner.

[Regs. No. 5, 1 F. R. 113]

§ 5.32 *Mandatory label information.* There shall be stated:

(a) On the brand label:

(1) Brand name, in accordance with § 5.33.

(2) Class and type, in accordance with § 5.34.

(3) Name and address, in accordance with § 5.35, except as provided in paragraph (b) of this section.

(b) On the brand label or on a separate label (back or front):

(1) In case of imported distilled spirits, name and address of importer, in accordance with § 5.35.

(2) In the case of distilled spirits bottled for the holder of a permit or a retailer, the name and address of the distiller, blender, or bottler, in accordance with § 5.35.

(c) On a separate label (for the purpose of this part to be known as the Government label), in such manner and form as shall be prescribed by the Deputy Commissioner:

(1) Alcoholic content, in accordance with § 5.36.

(2) Net contents, in accordance with § 5.37.

(3) Artificial or excessive coloring or flavoring, in accordance with § 5.38.

(4) Percentage of neutral spirits and name of commodity from which distilled, or in case of continuously distilled neutral spirits or gin the name of the commodity only, in accordance with § 5.38.

(5) Age of whisky and straight whisky, respective percentages of whisky, straight whisky and neutral spirits, and type of cooperage, in accordance with § 5.39: *Provided*, That no label shall bear any statement relative to age or period of storage for any American whisky (other than corn whisky, straight corn whisky, blended corn whisky, and blends of straight corn whisky) produced on and after July 1, 1936, and prior to March 1, 1938, unless such whisky has been stored in a charred new oak container.

(6) State of distillation of domestic types of whisky and straight whisky, except blends, in accordance with § 5.35.

The mandatory information required by any of the subparagraphs of paragraph (c) of this section to be stated on a separate label may, if desired, reappear or be restated on the brand label, in which event there shall also reappear or be restated all information required to be stated in conjunction therewith by such separate subparagraph and the section to which such subparagraph refers. If it is desired, all of the mandatory information required by paragraph (c) of this section may appear on the brand label in lieu of a separate label.

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 5, 3 F. R. 561, Treasury Order 30, 5 F. R. 2212]

NOTE: A circular letter prescribing the form of Government label for distilled spirits was issued Feb. 11, 1939, and appeared at 4 F. R. 880.

§ 5.33 *Brand names*—(a) *General*. The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names*. No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the Deputy Commissioner finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin*. This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935; *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

[T. D. 5051, 6 F. R. 2874]

§ 5.34 *Class and type*. (a) The class and the type of the distilled spirits shall be stated in conformity with §§ 5.20–5.22 if defined in those sections. If the class is not so defined, then the class shall be stated in conformity with the trade understanding thereof, and if the type is not so defined, any reference to type shall be similarly stated, but no product shall be regarded as having a designation in conformity with trade understanding unless through established usage such product has become known to the trade and to the public under such designation. If the class is not defined in §§ 5.20–5.22, and there is no trade understanding as to the designation of the product, a distinctive or fanciful name, which shall be deemed the class designation for the purpose of these regulations, shall be stated on the brand label of the product. Notwithstanding the foregoing provisions of this section, the word "cordial" or "liqueur" need not be stated to indicate the class of distilled spirits which in fact are cordials or liqueurs, unless the Deputy Commissioner finds that, without a designation of the class, the type designation is one which

does not clearly indicate to the consumer that the product is a cordial or liqueur.

(b) Except as otherwise provided in this part a truthful and adequate statement of composition shall appear upon the brand label of any product which, in conformity with paragraph (a) of this section, bears a distinctive or fanciful name or a designation in accordance with trade understanding. In the case of products such as highballs, cocktails, and similar prepared specialties, bearing, in conformity with paragraph (a) of this section, trade designations which adequately indicate to the consumer the general character of the product, a statement of the classes and types of distilled spirits used in the manufacture thereof shall be deemed a sufficient statement of composition. No statement of composition is required to appear upon products bearing designations in accordance with trade understanding if such designation, through general and established usage, in itself adequately indicates to the consumer the composition of the product.

(c) On labels of cordials and liqueurs, the type of distilled spirits used for mixing or redistillation, and the percentage of each type thereof, may, but need not, be stated. Any such statement shall be substantially in accordance with the following examples: apricot liqueur, the distilled spirits used are all apricot brandy; cherry cordial, the distilled spirits used are all grape brandy; pineapple liqueur, the distilled spirits used are 30 percent distilled London dry gin, 70 percent neutral spirits.

(d) In the case of whisky (as defined in § 5.21 (b)) and American type whisky produced on or after March 1, 1938, and in the case of brandy produced on or after July 1, 1941, which, in whole or in part, is treated with wood chips through percolation or otherwise, during distillation, rectification, or storage, there shall be stated in direct conjunction with the class and type designation the phrase "colored and flavored with wood chips": *Provided*, That this paragraph shall not be construed as authorizing the treatment of any of the types of corn whisky with charred wood chips.

(e) In the case of whisky (as defined in § 5.21, Class 2) produced in the United States on or after March 1, 1938, and stored in reused cooperage, which has been distilled at not exceeding 160° proof from a fermented mash of not less than 51 percent rye grain, corn grain, wheat

grain, malted barley grain, or malted rye grain, respectively, there shall be stated in direct conjunction with the class and type designation, in uniform lettering not greater than one-half the size of such designation, "Distilled from rye (or bourbon, wheat, malt or rye malt) mash", as the case may be: *Provided, however*, That any product conforming to the standard of identity prescribed for one of the types of corn whisky (§ 5.21 (b) (1), (4) (ii), (8), (9)) shall, notwithstanding the provisions of this paragraph, be designated in accordance with such standard.

(f) All distillates (other than neutral spirits) produced in a foreign country from a fermented mash of grain, and possessing the taste, aroma and characteristics generally attributed to whisky, and all mixtures thereof, bottled at not less than 80° proof, which are not of a type defined in Class 2, § 5.21 shall be deemed to be "whisky" and shall be so designated. In the case of mixtures of whisky, the component parts of which were distilled in more than one country, there shall be stated in direct conjunction with the class designation "whisky" a truthful and adequate statement of the composition of the product. All whisky (other than American type whiskies, blended Scotch type whisky, and blended Irish type whisky) manufactured in Scotland, Ireland or Canada, shall be deemed to be Scotch, Irish or Canadian whisky, and shall be so designated, in conformity with § 5.21 (b) (11), (12) and (13), unless the application of such designation to the particular product will result in consumer deception, or unless such product is not entitled to such designation under the laws of the country in which manufactured.

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 5, 3 F. R. 561, Amdt. 6, 3 F. R. 1394, T. D. 5050, 6 F. R. 2787, T. D. 5617, 13 F. R. 3022]

§ 5.35 *Name and address*—(a) "*Distilled by.*" On labels of domestic distilled spirits bottled by or for the actual distiller thereof, there shall be stated the words "distilled by," and immediately thereafter the name of such distiller and the place where distilled. If the distiller is the actual bona fide operator of more than one distillery distilling the same brand of whisky or spirits, there may be stated immediately following the name of such distiller, the addresses of the distilleries at which such brand is distilled:

*Provided*, That the State of distillation or State where distilled is specifically set forth upon the package, as provided by paragraph (g) of this section.

(b) *"Blended by," "Made by," "Prepared by," "Manufactured by," or "Produced by."* On labels of domestic distilled spirits bottled by or for the actual rectifier thereof, there shall be stated the words "blended by," "made by," "prepared by," "manufactured by," or "produced by," whichever may be applicable, and immediately thereafter the name of the rectifier and the place where blended, made, or prepared. If the rectifier is the actual bona fide operator of more than one rectifying plant blending, making, preparing, manufacturing, or producing the same brand of whisky or spirits, there may be stated immediately following the name of such rectifier the addresses of the rectifying plants so processing such brand: *Provided*, That there is stated upon a separate label on the front or back of the package the words "blended by," "made by," "prepared by," "manufactured by," or "produced by" and immediately thereafter the name of the rectifier and the place where blended, made, or prepared.

(c) *"Imported by."* (1) On labels of imported distilled spirits, bottled prior to importation, there shall be stated the words "imported by", "imported exclusively by", or a similar appropriate phrase, and immediately thereafter the name of the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person.

(2) On labels of imported distilled spirits bottled after importation by a person other than the person responsible for the importation, there shall be stated, in the manner and form prescribed above, the name and address of the person responsible for the importation, and in addition thereto the words "bottled by", and immediately thereafter, the name of the bottler and the place where bottled.

(3) On labels of imported distilled spirits bottled after importation by the person responsible for the importation, there shall be stated the words "imported and bottled by," "imported and bottled exclusively by," or a similar appropriate phrase, and immediately thereafter the name of such person and the address of

the place where bottled or the address of such person's principal place of business.

(4) The statements provided for domestic distilled spirits by paragraphs (a) and (b) of this section, if applicable, may, but need not, appear on labels of imported bottled distilled spirits, unless required by State or foreign law or regulation. If required by State or foreign law or regulation, they shall appear in accordance with the requirements thereof.

(d) *"Bottled by."* On labels of domestic distilled spirits bottled without taxable rectification by the holder of a warehousing and bottling permit, or by any State or political subdivision thereof, who is not the actual distiller or rectifier of such distilled spirits, there shall be stated the words "bottled by," and immediately thereafter the name of the bottler and the place where bottled. If such bottler is the actual bona fide operator of more than one bottling plant engaged in bottling the same brand of whisky or spirits, there may be stated immediately following the name of such bottler the addresses of the bottling plants at which such brand is bottled: *Provided*, That the State of distillation or State where the product is distilled is specifically set forth upon the package, as provided by paragraph (g) of this section.

(e) *"Bottled for."* In addition to the requirements of paragraphs (a), (b), (c), and (d) of this section, on labels of distilled spirits bottled for the holder of a permit, or a retailer, who is not the actual distiller or rectifier of such distilled spirits, there may be stated the name and address of the permittee or retailer for whom such distilled spirits are so bottled, immediately preceded by the words "bottled for", or "distributed by", or other similar statement.

(f) *Post-office address.* The "place" stated shall be the post-office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, firm, or corporation, unless (1) such person or retailer is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(g) *State of distillation.* On labels of whisky and straight whisky there shall be stated the State of distillation of such whisky, if such whisky is not distilled in the State given in the address on the brand label. Notwithstanding the provisions of § 5.32 (c), the statement of the State of distillation shall appear on the brand label in all cases where the Deputy Commissioner finds that without such statement the label is misleading as to the State of actual distillation.

(h) *Trade names.* The trade name of any permittee appearing upon any label shall be identical with the name in which his basic permit is issued by the Deputy Commissioner.

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 2, 1 F. R. 887, Amdt. 8, 3 F. R. 1395, Treasury Order 30, 5 F. R. 2212, T. D. 5617, 13 F. R. 3022]

§ 5.36 *Alcoholic content.* (a) The alcoholic content by proof shall be stated for distilled spirits except as provided in paragraph (b) of this section.

(b) The alcoholic content in percentage by volume or by proof shall be stated for cordials and liqueurs, and gin fizzes, cocktails, highballs, bitters, and such other specialties as may be specified by the Deputy Commissioner from time to time.

[Regs. No. 5, 1 F. R. 113, as amended by Treasury Order 30, 5 F. R. 2212]

§ 5.37 *Net contents.* (a) The net contents shall be stated as follows:

(1) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

(2) If less than a pint, the net contents shall be stated in fractions of a pint.

(3) If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart.

(4) If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon.

(b) All fractions shall be expressed in their lowest denomination.

(c) The net contents need not be stated on any label if the net contents are displayed by having the same blown in the bottle on the same side of the bottle as the brand label, in letters and figures in such manner as to be plainly legible under ordinary circumstances, and such statement is not obscured in any manner in whole or in part. The letters and figures shall be not less than

one-quarter inch in height, except in case of bottles having a capacity of less than one-half pint, in which case the letters and figures shall be of such size as to be readily legible under ordinary conditions.

[Regs. No. 5, 1 F. R. 113]

§ 5.38 *Presence of neutral spirits and coloring, flavoring, and blending materials.* (a) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "----% neutral spirits distilled from grain"; or "----% neutral spirits distilled from cane products"; or "----% neutral spirits distilled from fruit"; or "----% grain (cane products), (fruit) neutral spirits."

(b) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "Distilled from grain", or "Distilled from cane products", or "Distilled from fruit."

(c) If the aggregate amount of coloring, blending, smoothing, or flavoring materials in any distilled spirits other than cordials, liqueurs, gin, gin fizzes, highballs, bitters, and such other specialties as may be specified by the Deputy Commissioner from time to time, is in excess of 2½ percent by volume of the distilled spirits contained in the bottle, then the name and amount in percent by volume of each of such materials shall be stated.

(d) There shall be stated the words "artificially colored" on the label of any distilled spirits containing synthetic coloring materials, or natural materials, other than caramel, the primary contribution of which is color, as well as upon the label of any distilled spirits, the labeling of which is such as to convey the impression that the color of the product is derived from a given source, if such color is, in whole or in part, not so derived. In the case of distilled spirits to which no coloring material other than caramel has been added the words

“colored with caramel” or a substantially similar statement may appear in lieu of the words “artificially colored”: *Provided*, That no such statement shall be required by reason of the use of caramel in any brandy or rum or in any type of whisky other than straight whisky: *And provided further*, That where such statement would be required by reason of the use of natural flavoring materials solely, there may be stated in lieu of “artificially colored” a truthful and adequate statement of the source of the color, such as “color derived from (name of fruit, plant, etc., the name of which the product bears) and other fruits (plants, herbs, etc., or the name of such other fruits, plants, or herbs).”

(e) The presence of beading oil in any type of whisky shall be stated.

[Regs. No. 5, 1 F. R. 113, as amended by Treasury Order 30, 5 F. R. 2212, T. D. 5617, 13 F. R. 3022]

§ 5.39 *Statements of age and percentage—*(a) *Statements of age and percentage for whisky.* Except in the case of straight whisky bottled under the Bottling in Bond Act of the United States and foreign or domestic whisky (whether or not mixed or blended but containing no neutral spirits) all of which is four years or more old, there shall be stated the following:

(1) In the case of whisky defined in § 5.21 (b) (1), (11), (12), (13), if not mixed, the age of the whisky; if mixed, the age of the youngest whisky. The statement of age in both cases under this paragraph shall be substantially as follows: “This whisky is ----- (years and/or months) old.”

(2) In the case of any of the types of straight whisky the age of the straight whisky. The statement of age in cases under this paragraph shall be substantially as follows: “This whisky is -- (years and/or months) old.”

(3) (i) In case of any of the types of blended whisky as defined in § 5.21 (b) (7), (8), the age of the straight whisky (or if there be two or more straight whiskies, then of the youngest thereof) and the age of the other whisky (or if there be two or more other whiskies, then of the youngest of such other whiskies) together with the percentage by volume of straight whisky, other whisky, and neutral spirits therein.

(ii) The statement of age in cases under this paragraph shall be as follows,

in accordance with the ingredients used. If only one straight whisky and one other whisky is in the blend, the statement of the age shall read “The straight whisky in this product is ----- (years and/or months) old; -----% straight whisky, -----% other whisky ----- (years and/or months) old.” The age blanks shall be filled in with the respective ages of the straight whisky and the other whisky. If more than one straight whisky and more than one other whisky is in the blend, the statement of age shall read “The straight whiskies in this product are ---- (years and/or months) or more old; -----% straight whisky, -----% other whisky ----- (years and/or months) or more old.” The age blanks shall be filled in with the ages of the youngest straight whisky and the youngest of the other whiskies. If neutral spirits have been used in the blend, the statement thereof shall appear in immediate conjunction with the statement of age and percentage amounts of straight whisky and other whisky (if any) and shall be in the form required by § 5.38 (a).

(iii) In addition (but not as a substitute for the foregoing required statements) a statement may be made of the ages and percentages of all of the straight whiskies in the blend. Such statements, if made, shall read “-----% straight whisky, ----- years old, -----% straight whisky, ----- years old, and -----% straight whisky, ----- years old.” The age and percentage blanks shall be filled in with the respective ages and percentages of all of the straight whiskies in the blend.

(4) If the product is a blend of straight whiskies, the age of the youngest straight whisky. The statement of age under this paragraph shall be as follows: “The straight whiskies in this product are ----- (years and/or months) or more old.” The blank shall be filled in with the age of the youngest straight whisky in the blend. In addition (but not as a substitute for the foregoing required statement) a statement may be made of the ages and percentages of all of the straight whiskies in the blend. Such statements, if made, shall read: “-----% straight whisky, ----- years old, -----% straight whisky, ----- years old, and -----% straight whisky, ----- years old.” The age and percentage blanks shall be filled in with the respective ages and

percentages of all of the straight whiskies in the blend.

(5) In the case of spirit whisky, the age of the whisky or straight whisky (or, if there be two or more whiskies or straight whiskies, then the age of the youngest whisky or straight whisky, or, if there be both whisky and straight whisky, then the age of the youngest whisky) together with the percentage by volume of the whisky or straight whisky and the percentage by volume of neutral spirits. Such statements shall be as follows: "The whisky (straight whisky) in this product is -- (years and/or months) old; ---- percent whisky (or ---- percent straight whisky and, if there be other whisky or whiskies, ---- percent whisky) and ---- percent neutral spirits" (continuing in accordance with the requirements of § 5.38 (a) to state the commodity from which the neutral spirits is derived). If there be more than one whisky or (if there be no whisky) more than one straight whisky in the product, the statement of age shall read: "The whiskies (straight whiskies) in this product are ---- (years and/or months) or more old" followed by the statement of percentages and of the commodity from which the neutral spirits is derived. In addition (but not as a substitute for the foregoing required statements) a statement may be made of the ages and percentages of all of the whiskies and straight whiskies in the product. Such statement, if made, shall be in the following form: "---- percent straight whisky, ---- years old, ---- percent straight whisky, ---- years old, ---- percent whisky, ---- years old and ---- percent whisky, ---- years old." The age and percentage blanks shall be filled with the respective ages and percentages of each of the straight whiskies and whiskies in the product.

(6) In the case of imported American type whiskies (as defined in § 5.21, Class 9) the labels shall state the ages and percentages in the same manner and form as is required for the same type of whisky produced in the United States.

(7) In the case of straight whisky bottled under the Bottling in Bond Act of the United States and foreign or domestic whisky (whether or not mixed or blended but containing no neutral spirits) all of which is four years or more old, statements of age shall be optional but, if made, shall appear in the form

specified for the appropriate class and type.

Notwithstanding the foregoing provisions of this paragraph, in the case of whisky (as defined in § 5.21 (b), Class 2), produced in the United States on and after March 1, 1938, and stored in reused cooperage, there shall be stated in lieu of the words "\* \* \* is ---- (years and/or months) old", the words "\* \* \* stored ---- (years and/or months) in reused cooperage", and in lieu of the words "\* \* \* ---- (years and/or months) or more old", the words "\* \* \* stored ---- (years and/or months) or more in reused cooperage".

(b) *Statements of age for rum and brandy.* (1) Age may, but need not, be stated on labels of rums and brandies: *Provided*, That an appropriate statement with respect to age shall appear on the brand label in the case of any brandy not aged for a period of at least 2 years.

(2) If age is stated, it shall be substantially as follows: "This rum is ---- years old;" "This brandy is ---- years old;" the blanks to be filled in with the age of the youngest distilled spirits in the product.

(c) *Statements of age and percentage for blended Scotch type whisky and blended Irish type whisky.* (1) In the case of blended Scotch type of whisky, there shall be stated the age of the youngest malt whisky and the age of the youngest other whisky, together with the percentages by volume of the malt whisky and of the other whisky therein. The statement of age and percentage shall be in the following form: "The malt whisky in this product is ---- (years and/or months) old; ----% malt whisky, ----% other whisky, ---- (years and/or months) old." If the product is composed of malt whisky and neutral spirits, there shall be stated the age of the youngest malt whisky, together with the percentage by volume of malt whisky and the percentage by volume of neutral spirits. Such statement shall be in the following form: "The malt whisky in this product is ---- (years and/or months) old; ----% malt whisky, ----% neutral spirits (continuing in accordance with the requirements of § 5.38 (a) to state the commodity from which the neutral spirits is derived)."

(2) In the case of blended Irish type whisky, as defined in § 5.21 (b) (15) (i), there shall be stated the age of the young-

est whisky. The statement of age shall be as follows: "This whisky is ----- (years and/or months) old."

(3) In the case of blended Irish type whisky, as defined in § 5.21 (b) (15) (ii), there shall be stated the age of the youngest malt whisky and the age of the youngest other whisky, together with the percentages by volume of the malt whisky and of the other whisky therein. The statement of age and percentage shall be in the following form: "The malt whisky in this product is ----- (years and/or months) old; -----% malt whisky, -----% other whisky, ----- (years and/or months) old." If the product is composed of malt whisky and neutral spirits, there shall be stated the age of the youngest malt whisky, together with the percentage by volume of malt whisky and the percentage by volume of neutral spirits. Such statement shall be in the following form: "The malt whisky in this product is ----- (years and/or months) old; -----% malt whisky, -----% neutral spirits (continuing in accordance with the requirements of § 5.38 (a) to state the commodity from which the neutral spirits is derived)."

(d) *Other distilled spirits.* Age, maturity, or similar statements or representations as to neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, bitters, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.* (1) If the age of any product for which age is required to be stated is in excess of 1 year, months in excess of a year may be omitted, and if the age is less than 1 month, the age shall be stated as "Less than one month" in lieu of "---- (years and/or months)."

(2) Age may be understated but may not be overstated.

(3) Any permissive additional statements as to age shall appear on the same labels as the required statements and only in direct conjunction therewith and in substantially the same size and kind of print. Any such additional permissive statements as to age not in direct conjunction with the required statements are prohibited, and all statements as to age other than the required statements, the additional permissive statements, and the optional statements for distilled spirits are prohibited. Additional permissive age and percentage statements shall not be given prominence, either by

position or color over required age and percentage statements.

(4) Variations in the form of the required statements or the additional permissive statements as to age and percentages are prohibited.

(5) If any age, maturity, or similar representation (including words or devices in any brand name or mark) is made relative to any distilled spirits (except neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, and bitters), the age shall also be stated on all labels where such representation appears, and in script, type, or printing substantially as conspicuous as such representation. Age, maturity, or similar representations as to neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, and bitters, are misleading, and shall not appear upon any label, except that the use of the word "old" or other word denoting age, appearing as part of the brand name, shall not be deemed to be an age representation in the case of such distilled spirits, or in the case of distilled spirits bottled in bond under the Bottling in Bond Act of the United States. As to all other distilled spirits the word "old" or other word denoting age, appearing as part of the brand name, shall be deemed to be an age representation unless the word "brand" appears in direct conjunction with such brand name in letters of equally conspicuous color and at least one-half the size of the type in which such brand name is printed.

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 3, 1 F. R. 1009, Amdt. 5, 38 F. R. 561, T. D. 5617, 13 F. R. 3022]

§ 5.40 *General requirements—(a) Contrasting background.* All labels shall be so designed that all the statements thereon required by §§ 5.30–5.41 are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.* All statements required on labels by §§ 5.30–5.41 shall be in readily legible script, type, or printing not smaller than 8-point gothic caps, except that if contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter: *Provided*, That in the case of labels on bottles having a capacity of less than one-half pint, such script,

type, or printing thereon need not be in 8-point gothic caps, but shall be readily legible under ordinary conditions. All statements of the type of distilled spirits shall be in script, type, or printing substantially as conspicuous as the statement of the class to which it refers, and in direct conjunction therewith.

(c) *English language.* All the requirements of §§ 5.30–5.41 shall be stated on all labels in the English language: *Provided*, That the brand name, the place of production, and the name of the producer appearing on labels need not be in the English language if the words “product of” immediately precede the name of the country in which the distilled spirits were produced in accordance with customs requirements. Additional statements in foreign languages may be made on labels, if no such statements conflict with, or are contradictory to, the requirements of §§ 5.30–5.41. Labels on bottles of distilled spirits bottled for consumption within Puerto Rico may, if desired, state the information required by §§ 5.30–5.41 solely in the Spanish language in lieu of the English language, except that the net contents, and, if an imitation, the word “imitation” shall also be stated in the English language.

(d) *Location of label.* No label other than stamps authorized or required by the United States Government or any other government, shall be affixed over the mouths of bottles of distilled spirits, and no label shall obscure any government stamp or be obscured thereby, or obscure any markings or information required to be blown in the bottle by regulations of the Secretary of the Treasury.

(e) *Labels firmly affixed.* All labels shall be affixed to bottles of distilled spirits in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.* Labels (other than the label to be known for the purposes of this part as the government label) may contain information other than the mandatory label information required by §§ 5.30–5.41, provided such information complies with the requirements of §§ 5.30–5.41, and does not conflict with, nor in any manner qualify, statements required by any regulations promulgated under the act.

(g) *Representations as to materials.* If any representation (other than representations or information required by §§ 5.30–5.41) is made as to the presence,

excellence, or other characteristic of any ingredient in any distilled spirits, or used in the production thereof, the label containing such representation shall state in print, type, or script, substantially as conspicuous as such representation, the name and amount in percent by volume of each such ingredient, except that percentages of whisky, where stated, shall be stated as provided in § 5.39: *Provided*, That no statement shall appear on any label with reference to the use of selected or choice grain, fruit, herbs, or other materials in the distilled spirits, or in the production thereof, unless such materials are of a higher grade than that customarily used in the industry, and then only if the Deputy Commissioner has previously found on the basis of evidence submitted to him, that such materials are of such higher grade. If only a portion of the materials used is of such higher grade, then the percentage thereof that is of such higher grade shall be stated in direct conjunction with such statement, in print, type, or script, substantially as conspicuous as that used in connection with such statement.

(h) *Contents of bottles.* Upon request of the Deputy Commissioner or district supervisor there shall be submitted to him a full and accurate statement of the contents of the bottles to which labels are to be or have been affixed.

[Regs. No. 5, 1 F. R. 113, Treasury Order 30, 5 F. R. 2212]

§ 5.41 *Prohibited practices*—(a) *Statements on labels.* Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression. Examples of such prohibited statements are:

(i) Reproductions of medals or facsimiles of awards, when no medals or awards have been given for the particular product.

(ii) The statement that the product is “100% straight whiskies,” when in fact the product is less than 100 proof.

(iii) The statement that "Fine flavored, genuine bourbon whisky is made only in Kentucky."

(iv) Domestic products containing the statement "Furnished to His Majesty, the King of -----"

(v) "Due to our method of storage, this product ages in half the time."

(vi) "This whisky is two months old. Due to our special aging process, however, it has the taste and characteristics of a much older whisky."

(vii) "This whisky is four months old. Due to our special manufacturing processes, this whisky has all the characteristics of a one year old whisky."

(viii) "Distilled from a scientifically controlled fermentation under laboratory control."

(2) Any statement that is disparaging of a competitor's products. Examples of such prohibited statements are:

(i) "Contains no neutral spirits or alcohol."

(ii) "Matured naturally—not heat treated."

(iii) "Not a compound, but a delicious distilled dry gin."

(iv) "Should not be confused with imitations that are made from neutral spirits."

(v) "Contains no headaches."

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer. Examples of such statements are:

(i) "From 20 to 30 scientific determinations are required for each bottle tested."

(ii) "Analyzed by State laboratories and found to be pure and free from deleterious ingredients."

(iii) "Chemical analysis shows this whisky to contain the flavoring, aroma, and other characteristics of four year old whisky," when in fact such whisky is less than 4 years old.

(iv) "Before bottling it is subjected to the most rigid tests for its taste, bouquet, and aroma, by our technical staff, signed -----, B. Ch. E."

(v) The statement that "The ----- Laboratories, recognized expert au-

thority, tests and judges ----- products."

(vi) The statement "Tested and approved," signed by The ----- Research Institute.

(vii) The statement "Tasted and tested to assure the highest quality flavoring and freedom from deleterious ingredients."

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer. Nothing in this part shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

-----"  
(Blank to be filled in with the name of the permittee making guaranty)

Examples of such statements are:

(i) "Guaranteed to consumer by -----"

(ii) "Warranted to be the best product in its price range."

(i) "Certified to be pure and free from deleterious matter."

(iv) "Guaranteed to be ten years old."

(v) "Guaranteed to be distilled in the State of -----"

(vi) "Attested to be made by modern, scientific manufacturing processes."

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this subparagraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand

name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Simulation of Government stamps, etc.* (1) No label shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign Government. No label, other than stamps authorized or required by this or any other Government, shall state or indicate that the distilled spirits contained in the labeled bottle are distilled, blended, made, bottled, or sold under, or in accordance with, any municipal, State, or Federal authorization, law, or regulations, unless such statement is required or specifically authorized by Federal, State, or municipal law or regulations, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State, or Federal government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.

(2) If imported distilled spirits are labeled Scotch whisky, blended Scotch whisky, Irish whisky, blended Irish whisky, Canadian whisky, blended Canadian whisky, rum, brandy, or Cognac, or are labeled as whisky of an American type, and such distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate or certification shall, in the case of Cognac, be substantially in the following form: "This product accompanied at the time of importation by an 'Acquit Regional Jaune d'Or' issued by the French Government, indicating that this grape brandy was distilled in the Cognac Region of France"; and in the case of the other distilled spirits, substantially in the following form: "This product accompanied at time of importation by a certificate issued by the \_\_\_\_\_ government (name of government) indicating that the product is \_\_\_\_\_ (class and type as required to be stated on the label), and (if label claims age) that none of the distilled spirits are of an age less than stated on this label."

(3) The words "bond," "bonded," "bottled in bond," "aged in bond," or phrases containing these or synonymous terms,

shall not be used on any label or as part of the brand name of domestic distilled spirits unless such distilled spirits were in fact bottled in bond under the Bottling in Bond Act of the United States.

(4) The words "bond," "bonded," "bottled in bond," "aged in bond," or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless such distilled spirits, as to proof and age, and in all other respects, meet the requirements applicable to distilled spirits bottled for domestic consumption, under the Bottling in Bond Act of the United States (26 U. S. C. 2903, 2904) and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or specifically authorize such distilled spirits to be so labeled. All spirits labeled as "bonded," "bottled in bond," or "aged in bond" pursuant to the provisions of this subparagraph shall bear in direct conjunction with such statement and in script, type or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(c) *Use of word "pure."* The word "pure" shall not be stated in any manner on any labels, except as part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled.

(d) *Use of "double distilled" or similar terms.* No gin or other distilled spirits shall be labeled as "double distilled" or "triple distilled," or any similar term.

(e) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the Deputy Commissioner finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or in-

dividual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(f) *Curative and therapeutic effects.* Labels shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(g) *Individual coverings and cartons.* Individual coverings, cartons, or other containers of bottled distilled spirits, or any written, printed, graphic, or other matter accompanying the bottle shall not contain any statement or any graphic, pictorial, or emblematic representation or other matter which is prohibited from appearing on any label or bottle of distilled spirits.

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 4, 1 F. R. 1222, Treasury Order 30, 5 F. R. 2212, T. D. 5051, 6 F. R. 2874]

#### REQUIREMENTS FOR WITHDRAWAL FROM CUSTOMS CUSTODY OF BOTTLED IMPORTED DISTILLED SPIRITS

##### § 5.45 *Label approval and release—*

(a) *Application.* On or after August 15, 1936, bottled distilled spirits shall not be released from customs custody for consumption, except pursuant to procedure and form prescribed by §§ 5.45, 5.46.

(b) *Affidavit.* No bottled distilled spirits shall be released from customs custody unless there shall have been deposited with the appropriate customs officer at the port of entry an "Affidavit for Release of Distilled Spirits, Wine and Malt Beverages under the Federal Alcohol Administration Act" (Form 1652), which document shall be properly filled out and sworn to by the importer or transferee in bond, covering the particular brand or lot of distilled spirits sought to be released and which document shall be accompanied by the original or a photostatic copy firmly attached thereto of a "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649). Such certificate shall be issued by the Deputy Commissioner upon application made on the form designated "Application for Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1647), properly filled out and certified to by the importer or transferee in bond.

(c) *Release.* If the "Affidavit for Release of Distilled Spirits, Wine and Malt Beverages under the Federal Alcohol Administration Act" (Form 1652) is accom-

panied by the original or a photostatic copy of the "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649) the certificate of which bears the signature of the officer designated by the Deputy Commissioner, then the brand or lot of bottled distilled spirits bearing labels identical with those shown on the original or a photostatic copy may be released from customs custody.

(d) *Relabeling.* Distilled spirits in customs custody which are not labeled in conformity with certificates of label approval issued by the Deputy Commissioner must be relabeled prior to release, under the supervision and direction of the customs officers of the port at which such distilled spirits are located.<sup>2</sup>

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 1, 1 F. R. 124, Treasury Order 30, 5 F. R. 2212]

##### § 5.46 *Certificates of age and origin.*

(a) Scotch, Irish, and Canadian whiskies, in bottles, whether blended or unblended, imported on or after August 15, 1936, shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian Governments, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of the whisky for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign government for spirits intended for home consumption.

(b) If the label of any Scotch, Irish, or Canadian whisky, whether blended or unblended, imported in bottles on or after August 15, 1936, contains any statement of age for Scotch or Irish whisky in excess of 3 years, or Canadian whisky in excess of 2 years, the whisky shall not be released from customs custody unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying that none of the distilled spirits in the bottle are of an age less than that stated on the label. The age certified shall be the

<sup>2</sup> Copies of Form 1647 may be secured from the district supervisors of the Alcohol Tax Unit on request. Copies of Form 1652 may be secured from the local Customs office.

period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers.

(c) If the label of any rum, brandy, or cognac, imported in bottles on or after August 15, 1936, contains any statement of age, the rum, brandy, or cognac shall not be released from customs custody unless accompanied by a certificate issued by a duly authorized official of the government of the foreign country in which the rum, brandy, or cognac was produced, certifying that none of the distilled spirits in the product are of an age less than that stated on the label. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers. Cognac in bottles, imported on or after August 15, 1936, shall not be released from customs custody unless the invoice is accompanied by a certificate issued by a duly authorized official of the appropriate foreign government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(d) Whisky (as defined in § 5.21 (b)) and American type whiskies, imported on or after August 15, 1936, shall not be released from customs custody in bottles unless there is presented at the time of entry or at the time of request for release, a certificate issued by a duly authorized official of the appropriate foreign government certifying:

(1) In case of straight whisky, (i) the class and type (such as straight whisky, straight rye whisky, straight bourbon whisky, etc.) thereof, (ii) the American proof at which distilled, (iii) that no neutral spirits or other whisky has been added as a part thereof or included therein, whether or not for the purpose of replacing outage, (iv) the age of the whisky, and (v) the type of container in which such age was acquired (whether new or re-used, also whether charred or uncharred);

(2) In case of whisky and the distinctive types of whisky, (i) the class and type (such as whisky, rye whisky, bourbon whisky, etc.), (ii) the American proof at which distilled, (iii) that no neutral spirits has been added as a part thereof or included therein, whether or not, for the purpose of replacing outage, (iv) the age of the whisky, and (v) the

type of container in which such age was acquired (whether new or re-used, also whether charred or uncharred);

(3) In case of blended whisky, (i) the class and type (such as blended whisky, blended rye whisky, blended bourbon whisky, etc.), (ii) the percentage of straight whisky, or any distinctive type thereof, used in the blend, (iii) the American proof at which the straight whisky was distilled, (iv) the percentage of other whisky, if any, in the blend, (v) the percentage of neutral spirits, if any, in the blend, and the name of the commodity from which distilled, (vi) the age of the straight whisky and the age of the other whisky, if any, in the blend, and (vii) the type of containers in which such age or ages were acquired (whether new or re-used, also whether charred or uncharred).

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 1, 1 F. R. 124, Amdt. 5, 3 F. R. 461]

#### REQUIREMENTS FOR APPROVAL OF LABELS OF DOMESTICALLY BOTTLED DISTILLED SPIRITS

##### § 5.50 *Certificates of label approval.*

(a) No person shall bottle distilled spirits, other than distilled spirits in customs custody, or remove such spirits from his bottling plant unless upon application to the Deputy Commissioner he has obtained, and has in his possession, a "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649), covering such distilled spirits. Such certificate of label approval shall be issued by the Deputy Commissioner upon application made on the form designated "Application for Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1647), properly filled out and certified to by the permittee.

(b) Any bottler of distilled spirits shall be exempt from the requirements of §§ 5.50-5.53 if upon application he shows to the satisfaction of the Deputy Commissioner that the distilled spirits to be bottled by him are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. A "Certificate of Exemption from Label Approval under the Federal Alcohol Administration Act" (Form 1650) shall be issued by the Deputy Commissioner upon application made on the form designated "Application for Certificate of Exemption from Label Approval under the Federal Alcohol Administration Act" (Form

1648), properly filled out and certified to by the permittee.<sup>3</sup>

[Regs. No. 5, 1 F. R. 113, as amended by Treasury Order 30, 5 F. R. 2212]

§ 5.51 *Certificates of age and origin.*

(a) Scotch, Irish, and Canadian whiskies, whether blended or unblended, imported in bulk on or after August 15, 1936, and bottled in the United States, shall not be labeled as Scotch, Irish, or Canadian whiskies respectively, unless the bottler possesses a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian governments, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of the whisky for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign government for spirits intended for home consumption.

(b) If any Scotch, Irish, or Canadian whisky, whether blended or unblended, is imported in bulk on or after August 15, 1936, and bottled in the United States, no statement shall appear on the label thereof representing the age of such Scotch or Irish whisky to be in excess of 3 years, or Canadian whisky in excess of 2 years, unless the permittee authorized to bottle such distilled spirits possesses a certificate for such distilled spirits issued by a duly authorized official of the appropriate foreign government certifying as to age of such whisky. The age certified shall be the period during which, after distillation and before bottling, the

distilled spirits have been kept in oak containers.

(c) If any rum or brandy is imported in bulk on or after August 15, 1936, and bottled in the United States, no statement of age shall appear on the labels of such rum or brandy, unless the permittee authorized to bottle such distilled spirits possesses a certificate issued by a duly authorized official of the government of the foreign country in which the rum or brandy was produced, certifying as to the age of such rum or brandy. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers. Brandy imported in bulk on or after August 15, 1936, and bottled in the United States, shall not be labeled as "Cognac" unless the permittee authorized to bottle such distilled spirits possesses a certificate issued by a duly authorized official of the appropriate foreign government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(d) Distilled spirits imported in bulk on or after August 15, 1936, and bottled in the United States with or without taxable rectification, shall not be labeled as whisky (as defined in § 5.21 (b)), or as any type of American whisky, unless the permittee authorized to bottle such distilled spirits possesses a certificate for such whisky issued by a duly authorized official of the appropriate foreign government certifying:

(1) In case of straight whisky: (i) the class and type (such as straight whisky, straight rye whisky, straight bourbon whisky, etc.) thereof; (ii) the American proof at which distilled; (iii) that no neutral spirits or other whisky has been added as a part thereof or included therein, whether or not for the purpose of replacing outage; (iv) the age of the whisky; and (v) the type of container in which such age was acquired (whether new or re-used, also whether charred or uncharred);

(2) In case of whisky and the distinctive types of whisky: (i) the class and type (such as whisky, rye whisky, bourbon whisky, etc.); (ii) the American proof at which distilled; (iii) that no neutral spirits has been added as a part thereof or included therein, whether or not for the purpose of replacing outage;

<sup>3</sup> Copies of Forms 1647 and 1648 may be secured from the district supervisors of the Alcohol Tax Unit on request. The former Federal Alcohol Administrator issued blanket approvals covering strip labels, containing only the mandatory age statement, for use in connection with approved brand labels (FA-102), and covering identification stamps required by State law to appear on distilled spirits sold at retail in that State, if such stamps contain no material prohibited by this part (FA-103). Forms 1648 and 1650 provide that products covered by Certificates of Exemption from Label Approval must bear the statement "For Sale in \_\_\_\_\_ only", the blank to contain the name of the state in which the bottler is located. See also AT Circular 772, July 7, 1944 with reference to attaching copy of approved formula on Form 27B-Supplemental to Forms 1647 and 1648 in case of rectified spirits.

(iv) the age of the whisky; and (v) the type of container in which such age was acquired (whether new or re-used, also whether charred or uncharred);

(3) In case of blended whisky: (i) the class and type (such as blended whisky, blended rye whisky, blended bourbon whisky, etc.); (ii) the percentage of straight whisky, or any distinctive type thereof, used in the blend; (iii) the American proof at which the straight whisky was distilled; (iv) the percentage of other whisky, if any, in the blend; (v) the percentage of neutral spirits, if any, in the blend, and the name of the commodity from which distilled; (vi) the age of the straight whisky and the age of the other whisky, if any, in the blend; and (vii) the type of containers in which such age or ages were acquired (whether new or re-used, also whether charred or uncharred); and unless the labels are in all particulars consistent with the facts stated in the certificate.

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 1, 1 F. R. 124, Amdt. 5, 3 F. R. 561]

§ 5.52 *Exhibiting certificates to Government officials.* Any bottler holding an original or duplicate original of a certificate of label approval or a certificate of exemption, shall, upon demand, exhibit such certificate to a duly authorized representative of the United States Government.

[Regs. No. 5, 1 F. R. 113]

§ 5.53 *Photoprints.* Photoprints or other reproductions of certificates of label approval or certificates of exemption are not acceptable, for the purposes of this article, as substitutes for an original or duplicate original of a certificate of label approval, or a certificate of exemption. The Deputy Commissioner will, upon request of the bottler, issue duplicate originals of certificates of label approval or certificates of exemption if distilled spirits under the same brand are bottled at more than one plant by the same permittee, and if the necessity for the duplicate original is shown and there is listed with the Deputy Commissioner the name and address of the additional bottling plant where the particular label is to be used.

[Regs. No. 5, 1 F. R. 113, as amended by Treasury Order 30, 5 F. R. 2212]

#### ADVERTISING OF DISTILLED SPIRITS

§ 5.60 *Application.* No person engaged in business as a distiller, rectifier,

importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 5.60–5.64: *Provided*, That such sections shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising: *And provided further*, That §§ 5.60–5.64 shall not apply to the publisher of any newspaper, periodical or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate.

[Regs. No. 5, 1 F. R. 113]

§ 5.61 *Definitions.* As used in §§ 5.60–5.64, the term “advertisement” includes any advertisement of distilled spirits through the medium of radio broadcast; or of newspapers, periodicals, or other publications; or of any sign or outdoor advertisement; or of any other printed or graphic matter, including trade booklets, menus, and wine cards, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail; except that such term shall not include:

(a) Any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle, or any written, printed, graphic, or other matter accompanying the bottle, which constitutes a part of the labeling under §§ 5.30–5.41.

(b) Any editorial or other reading matter in any periodical or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

[Regs. No. 5, 1 F. R. 113]

§ 5.62 *Mandatory statements—(a) Responsible advertiser.* The advertisement shall state the name and address of the permittee responsible for its publica-

tion or broadcast. Street number and name may be omitted in the address.

(b) *Class and type.* The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) *Alcoholic content.* (1) The alcoholic content by proof shall be stated for distilled spirits except as otherwise provided in subparagraph (2) of this paragraph.

(2) The alcoholic content in percentage by volume or by proof shall be stated for cordials and liqueurs, and gin fizzes, cocktails, highballs, bitters, and such other specialties as may be specified by the Deputy Commissioner from time to time.

(d) *Percentage of neutral spirits and name of commodity.* (1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "\_\_\_\_% neutral spirits distilled from grain"; or "\_\_\_\_% neutral spirits distilled from cane products"; or "\_\_\_\_% neutral spirits distilled from fruit"; or "\_\_\_\_% grain (cane products), (fruit), neutral spirits."

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "Distilled from grain", or "Distilled from cane products", or "Distilled from fruit."

[Regs. No. 5, 1 F. R. 113, as amended by Treasury Order 30, 5 F. R. 2212]

§ 5.63 *Lettering.* Statements required under §§ 5.60–5.64 to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

[Regs. No. 5, 1 F. R. 113]

**Note:** On June 5, 1939, the former Federal Alcohol Administrator issued a circular let-

ter, appearing at 4 F. R. 2305, which set forth certain guiding principles to be followed in determining whether information was so stated in advertisements as to be "both conspicuous and readily legible".

§ 5.64 *Prohibited statements—(a) Restrictions.* An advertisement of distilled spirits shall not contain:

(1) Any statement that is false or misleading in any material particular.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer. Nothing in this section shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

-----"  
(Blank to be filled in with name of the permittee making guaranty.)

(6) Any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, State or Federal authorization, law, or regulation; and if a municipal, State or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(7) The words "bond", "bonded", "bottled in bond", "aged in bond", or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to §§ 5.30–5.41 upon the labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are required to appear upon the label.

(8) The word "pure" except as part of the bona fide name of a permittee or a retailer for whom the distilled spirits are bottled.

(9) The terms "double distilled", "triple distilled", or any similar term.

(b) *Statements inconsistent with labeling.* The advertisement shall not

contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof. This requirement shall become effective August 15, 1936.

(c) *Statements of age.* The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of §§ 5.30-5.41.

(d) *Curative and therapeutic effects.* The advertisement shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(e) *Place of origin.* The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) *Confusion of brands.* Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of this article or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.* No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, device, de-

sign, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

[Regs. No. 5, 1 F. R. 113, as amended by Amdt. 1, 1 F. R. 124, Amdt. 4, 1 F. R. 1222, Treasury Order 30, 5 F. R. 2212, T. D. 5051, 6 F. R. 2874]

#### STANDARDS OF FILL FOR BOTTLED DISTILLED SPIRITS

§ 5.70 *Application.* No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled in conformity with §§ 5.70-5.74. Distilled spirits domestically bottled prior to January 1, 1935, and imported distilled spirits entered in customs bond in bottles prior to March 1, 1935, shall be regarded as being in conformity with §§ 5.70-5.74, (a) if the bottle, or the label on the bottle, contains a conspicuous statement of the net contents thereof, and (b) if the actual capacity of the bottle is not substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

[Regs. No. 5, 1 F. R. 113]

§ 5.71 *Misbranding.* Distilled spirits shall be deemed to be misbranded:

(a) If the bottle is not a standard liquor bottle as prescribed by § 5.72 for such distilled spirits.

(b) If the amount of the distilled spirits contained in the bottle does not conform to one of the standards of fill in effect therefor under § 5.73.

(c) If the bottle is in an individual carton or other container, and the carton or other container is so made or formed as to mislead purchasers as to the size of the bottle.

[Regs. No. 5, 1 F. R. 113]

§ 5.72 *Standard liquor bottles—(a) General.* A standard liquor bottle shall

be one so made, formed and filled as not to mislead the purchaser.

(b) *Size.* A liquor bottle shall be held to be so filled as to mislead the purchaser if the bottle holds distilled spirits in an amount other than one of the standards of fill in effect therefor under § 5.73.

(c) *Headspace.* A liquor bottle of a capacity of one-half pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

(d) *Design.* A liquor bottle shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

[Regs. No. 5, 1 F. R. 113]

§ 5.73 *Standards of fill.* (a) The standards of fill for distilled spirits in liquor bottles shall be the following, subject to the tolerances allowed in this section:

(1) For all distilled spirits, whether domestically manufactured, domestically bottled, or imported:

1 gallon	1 pint
½ gallon	½ pint
1 quart	¼ pint
¾ quart	⅜ pint

(2) In addition, for brandy, whether domestically manufactured, domestically bottled, or imported: ⅙ pint.

(3) In addition, for Scotch and Irish whisky and Scotch and Irish type whisky, and for brandy and rum: ⅔ pint.

(b) The following tolerances shall be allowed:

(1) Discrepancies due exclusively to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due exclusively to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles so as to be of uniform capacity: *Provided*, That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

[Regs. No. 5, 1 F. R. 113]

§ 5.74 *Vintage spirits.* Sections 5.70–5.74 shall not apply to:

(a) Distilled spirits imported as vintage spirits under permit issued by a district supervisor pursuant to 26 CFR Part 175.

(b) Cordials and liqueurs, and cocktails, highballs, gin fizzes, bitters, and such other specialties as are specified from time to time by the Deputy Commissioner.

[Regs. No. 5, 1 F. R. 113, as amended by Treasury Order 30, 5 F. R. 2212]

#### GENERAL PROVISIONS

§ 5.80 *Exports.* The regulations in this part shall not apply to distilled spirits for export.

[Regs. No. 5, Amdt. 5, 3 F. R. 486]

§ 5.81 *Applicability of other regulations.* Nothing contained in this part shall be construed as, in any manner, relieving any person from conforming with the requirements of 26 CFR Part 175.<sup>5</sup>

[Regs. No. 5, 1 F. R. 113]

## Part 6—Inducements Furnished to Retailers

Sec.

- 6.1 Definitions.
- 6.2 Application.
- 6.3 Exceptions.

**AUTHORITY:** §§ 6.1 to 6.3 issued under 53 Stat. 375; 26 U. S. C. 3176. Interpret or apply sec. 5, 49 Stat. 981, as amended; 27 U. S. C. 205.

**SOURCE:** §§ 6.1 to 6.3 contained in Regulations No. 6, Federal Alcohol Administration, Mar. 9, 1936.

<sup>5</sup> Bureau of Internal Revenue Regulations 13 "Traffic in Containers of Distilled Spirits" issued by the Secretary of the Treasury pursuant to Joint Resolution of June 18, 1934, 48 Stat. 1020; 26 U. S. C. 2871.

§ 6.1 *Definitions.* As used in this part:

(a) The term "retailer" means any person engaged in the sale of distilled spirits, wine or malt beverages to consumers.

(b) The term "retail establishment" means any premises where distilled spirits, wine or malt beverages are sold or offered for sale to consumers, whether for consumption on or off the premises where sold.

(c) The term "industry member" means any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, but shall not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

(d) The term "product" means distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

(e) Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by such act.

§ 6.2 *Application.* Except as provided in this part it is unlawful for any industry member to induce, by furnishing, giving, renting, lending, or selling any equipment, fixtures, signs, supplies, money, services, or other thing of value, directly or indirectly or through an affiliate, any retailer to purchase any products from such industry member to the exclusion in whole or in part of such products sold or offered for sale by other industry members in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such industry member engages in the practice of using such means to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other industry members from selling or offering for sale any such products to such retailer in interstate or foreign commerce: *Provided*, That in the case of malt beverages, this part shall apply to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages outside such State only to the extent that the law of such State imposes requirements similar to the requirements

of section 5 (b) of the Federal Alcohol Administration Act (49 Stat. 981; 27 U. S. C. 205 (b)) with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be: *Provided further*, That this part shall not operate to exempt any person from the requirements of any State law or regulation.

§ 6.3 *Exceptions.* An industry member may furnish to a retailer, under the conditions and within the limitations prescribed, the equipment, signs, supplies, services, or other things of value specified herein: *Provided*, That such furnishing is not conditioned directly or indirectly on the purchase of distilled spirits, wine, or malt beverages.

(a) *Equipment.* Tapping accessories, such as rods, vents, taps, hoses, washers, couplings, vent tongues, and check valves may be sold to a retailer and installed in his establishment if such tapping accessories are sold at a price not less than the cost thereof to the industry member selling the same, and if the price thereof is collected within 30 days of the date of sale.

(b) *Signs.* Signs, posters, placards, designs, devices, decorations or graphic displays, bearing advertising matter and for use inside a retail establishment, may be furnished, given, rented, loaned, or sold to a retailer if they have no value to the retailer except as advertisements and if the total value of all such materials furnished by any industry member and in use at any one time in any retail establishment does not exceed \$10: *Provided*, That the industry member shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation. The value of such materials shall include all expenses incurred directly or indirectly by any industry member in connection with the purchase, manufacture, transportation, assembly, and installation of such materials and of accessories thereto.

(c) *Supplies.* Carbonic acid gas or ice may be sold to a retailer, if sold in accordance with the reasonable open market price thereof in the locality where sold, and if the price thereof is collected within 30 days of the date of sale.

(d) *Services.* (1) Coil cleaning service may be furnished, given, or sold to a retailer of malt beverages.

(2) The names and address of retailers selling the products of any industry member may be listed in an advertisement of such industry member, if such listing is the only reference to any retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole.

(e) *Other things of value*—(1) *Consumer advertising specialties*. Consumer advertising specialties, such as ash trays, bottle or can openers, corkscrews, paper shopping bags, matches, printed recipes, wine lists, leaflets, blotters, post cards, and pencils, which bear advertising matter, may be furnished, given, or sold to a retailer for unconditional distribution by him to the general public, if the retailer is not paid or credited in any manner directly or indirectly for such distribution service.

(2) *Retailer advertising specialties*. Retailer advertising specialties, such as trays, coasters, beer mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, tap markers, thermometers, clocks, and calendars, which bear advertising matter, and which are primarily valuable to the retailer as point of sale advertising media, may be furnished, given, or sold to a retailer if the aggregate cost to any industry member of such retailer advertising specialties furnished, given, or sold in connection with any one retail establishment in any one calendar year does not exceed \$10.

(3) *Samples*. Not more than 2 gallons of any brand of malt beverages, and not more than 1 pint of any brand of distilled spirits or wine, may be furnished or given as a sample to a retailer who has not previously purchased that particular product: *Provided*, That 2 quarts of any brand of distilled spirits or wine, may be furnished or given as a sample to any agency of a State or political subdivision thereof which has not purchased that particular product.

(4) *Newspaper cuts*. Newspaper cuts, mats, or engraved blocks for use in retailers' advertisements, may be furnished, given, rented, loaned, or sold by an industry member to a retailer selling his products.

(5) *Merchandise*. Merchandise, such as groceries and drugs, may be sold to a retailer, without limit as to quantity or value, by an industry member who is also engaged in business as a bona fide vendor of such merchandise, if such merchandise is sold in accordance with the rea-

sonable open market price thereof in the locality where sold, and if such merchandise is not sold in combination with distilled spirits, wine, or malt beverages and is itemized separately on the industry members' invoices and other records: *Provided*, That equipment, fixtures, signs, supplies, and consumer and retailer advertising specialties may be furnished only as provided elsewhere in this part.

## Part 7—Labeling and Advertising of Malt Beverages

### Sec.

#### 7.1 Definitions.

#### LABELING REQUIREMENTS FOR MALT BEVERAGES

##### 7.20 General.

##### 7.21 Misbranding.

##### 7.22 Mandatory label information.

##### 7.23 Brand names.

##### 7.24 Class and type.

##### 7.25 Name and address.

##### 7.26 Alcoholic content.

##### 7.27 Net contents.

##### 7.28 General requirements.

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#### REQUIREMENTS FOR WITHDRAWAL OF IMPORTED MALT BEVERAGES FROM CUSTOMS CUSTODY

##### 7.30 Application.

##### 7.31 Label approval and release.

#### REQUIREMENTS FOR APPROVAL OF LABELS OF MALT BEVERAGES DOMESTICALLY BOTTLED OR PACKED

##### 7.40 Application.

##### 7.41 Certificates of label approval.

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#### ADVERTISING OF MALT BEVERAGES

##### 7.50 Application.

##### 7.51 Definitions.

##### 7.52 Mandatory statements.

##### 7.53 Legibility of requirements.

##### 7.54 Prohibited statements.

#### GENERAL PROVISIONS

##### 7.60 Exports.

**AUTHORITY:** §§ 7.1 to 7.60 issued under 53 Stat. 375; 26 U. S. C. 3176. Interpret or apply sec. 5, 49 Stat. 981, as amended; 20 U. S. C. 205.

**SOURCE:** §§ 7.1 to 7.60 contained in Regulations No. 7, 1 F. R. 2315, except as noted following sections affected.

**CROSS REFERENCES:** For regulations relating to the labeling and advertising of wine, see Part 4 of this chapter. For regulations relating to the labeling and advertising of distilled spirits, see Part 5 of this chapter.

§ 7.1 *Definitions*. As used in this part:

(a) The term "act" means the Federal Alcohol Administration Act.

(b) The term "Deputy Commissioner" means the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit.

(c) The term "district supervisor" means the district supervisor of the Alcohol Tax Unit for that district in which the plant or premises are located.

(d) The term "malt beverage" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

(e) The term "container" means any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. The term "bottler" means any person who places malt beverages in containers of a capacity of 1 gallon or less; and the term "packer" means any person who places malt beverages in containers of a capacity in excess of 1 gallon.

(f) The term "gallon" means United States gallon of 231 cubic inches of malt beverages at 39.2° F. (4° C.). All other liquid measures used are subdivisions of the gallon as so defined.

(g) The term "brand label" means the label carrying, in the usual distinctive design, the brand name of the malt beverage.

(h) The term "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Alaska, Hawaii, and Puerto Rico.

(i) The term "interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(j) The term "person" means any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enter-

prise, including a receiver, trustee, or liquidating agent, and including an officer or employee of any agency of a State or political subdivision thereof.

(k) Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by such act.

[Regs. No. 7, 1 F. R. 2315, as amended by Treasury Order 30, 5 F. R. 2212]

#### LABELING REQUIREMENTS FOR MALT BEVERAGES

§ 7.20 *General*—(a) *Application*. Sections 7.20-7.29 shall apply to malt beverages sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

(b) *Marking, branding, and labeling*. No person engaged in business as a brewer, wholesaler, or importer of malt beverages, directly or indirectly, or through an affiliate, shall sell or ship, or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody any malt beverages in containers unless such malt beverages are packaged, and such packages are marked, branded, and labeled in conformity with §§ 7.20-7.29. Malt beverages domestically bottled or packed prior to December 15, 1936, and imported malt beverages entered in customs bond in containers prior to that date shall be regarded as being packaged, marked, branded, and labeled in accordance with §§ 7.20-7.29, if the labels on such malt beverages (1) bear all the mandatory label information required by § 7.22, even though such information is not set forth in the manner and form as required by § 7.22 and other sections of this part referred to therein, and (2) bear no statements, designs, or devices which are false or misleading.

(c) *Alteration of labels*. (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law: *Provided*, That the district supervisor may,

upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of §§ 7.20-7.29 or of State law.

(2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.<sup>1</sup>

[Regs. No. 7, 1 F. R. 2315, as amended by Treasury Order 30, 5 F. R. 2212]

§ 7.21 *Misbranding.* Malt beverages in containers shall be deemed to be misbranded:

(a) If the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by §§ 7.20-7.29 and conforming to the general requirements specified in this part.

(b) If the container, cap, or any label on the container, or any carton, case, or other covering of the container used for sale at retail, or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 7.20-7.29.

(c) If the container has blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a brewer, wholesaler, bottler, or importer, of malt beverages, or of any other person, except the person whose name is required to appear on the brand label.

§ 7.22 *Mandatory label information.* There shall be stated:

(a) On the brand label:

(1) Brand name, in accordance with § 7.23.

(2) Class, in accordance with § 7.24.

(3) Name and address (except when branded or burned in the container) in accordance with § 7.25, except as provided in paragraph (b) of this section.

(4) In the case of domestic malt beverages containing one-half of 1 percent

<sup>1</sup> No forms of application for permission to relabel have been prescribed.

or more of alcohol by volume the statement "Tax paid at the rate prescribed by internal revenue law" or "Internal revenue tax paid" (except where the container bears a revenue stamp indicating tax payment).

(5) Net contents (except when blown, branded, or burned, in the container) in accordance with § 7.27.

(b) On the brand label or on a separate label (back or front):

(1) In the case of imported malt beverages, name and address of importer, in accordance with § 7.25.

(2) In the case of malt beverages bottled or packed for the holder of a permit or a retailer, the name and address of the bottler or packer, in accordance with § 7.25.

(3) Alcoholic content, when required by State law, in accordance with § 7.26.

§ 7.23 *Brand names*—(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the Deputy Commissioner finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: *Provided,* That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

[T. D. 5051, 6 F. R. 2874]

§ 7.24 *Class and type.* (a) The class of the malt beverage shall be stated and, if desired, the type thereof may be stated. Statements of class and type shall conform to the designation of the product as known to the trade. If the product is not known to the trade under a particular designation, a distinctive or fanciful name, together with an adequate and truthful statement of the composition of the product, shall be stated, and such statement shall be deemed to be a statement of class and type for the purposes of this part.

(b) No product shall be designated as "half and half" unless it is in fact composed of equal parts of two classes of malt beverages the names of which are conspicuously stated in conjunction with the designation "half and half".

(c) No product containing less than one-half of 1 percent of alcohol by volume shall bear the class designations "beer", "lager beer", "lager", "ale", "porter", or "stout", or any other class or type designation commonly applied to malt beverages containing one-half of 1 percent or more of alcohol by volume.

(d) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to "ale," "porter," or "stout" and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall bear any of these class designations.

(e) Geographical names for distinctive types of malt beverages (other than names found by the Deputy Commissioner under paragraph (f) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless (1) in direct conjunction with the name there appears the word "type" or the word "American," or some other statement indicating the true place of production in lettering substantially as conspicuous as such name, and (2) the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wurzburger, Pilsen (Pilsener and Pilsner): *Provided*, That notwithstanding the foregoing

provisions of this section, beer which is produced in the United States may be designated as "Pilsen," "Pilsener," or "Pilsner" without further modification, if it conforms to such type.

(f) Only such geographical names for distinctive types of malt beverages as the Deputy Commissioner finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic, e. g. India Pale Ale.

(g) Except as provided in § 7.23 (b), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

[Regs. No. 7, 1 F. R. 2815, as amended by Amdt. 1, 3 F. R. 1515, Treasury Order 30, 5 F. R. 2212]

§ 7.25 *Name and address*—(a) *Domestic malt beverages.* On labels of containers of domestic malt beverages there shall be stated the name of the bottler or packer and the place where bottled or packed. If such malt beverages are bottled or packed for a person other than the actual bottler or packer there may be stated in addition to the name and address of the bottler or packer (but not in lieu thereof), the name and address of such other person immediately preceded by the words "bottled for," "distributed by," or some other similar appropriate phrase.

(b) *Imported malt beverages.* On labels of containers of imported malt beverages, there shall be stated the words "imported by," or a similar appropriate phrase, and immediately thereafter the name of the permittee who is the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person. In addition there may, but need not, be stated unless required by State or foreign law or regulation the name and principal place of business of the foreign manufacturer, bottler, packer, or shipper.

(c) *Post-office address.* The "place" stated shall be the post-office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, unless, (1) such person is actively engaged in the conduct of an additional

bona fide and actual malt beverage business at such additional place or address, and (2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular malt beverage.

§ 7.26 *Alcoholic content.* The alcoholic content and the percentage and quantity of the original extract shall not be stated unless required by State law. When alcoholic content is required to be stated, but the manner of statement is not specified in the State law, it shall be stated in percentage of alcohol by weight or by volume, and not by proof or by maximums or minimums. Otherwise the manner of statement shall be as specified in the State law.

§ 7.27 *Net contents.* (a) Net contents shall be stated as follows:

(1) If less than 1 pint, in fluid ounces, or fractions of a pint.

(2) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

(3) If more than 1 pint, but less than 1 quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than 1 quart, but less than 1 gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(5) If more than 1 gallon, the net contents shall be stated in gallons and fractions thereof.

(b) All fractions shall be expressed in their lowest denominations.

(c) The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

§ 7.28 *General requirements—(a) Contrasting background.* All labels shall be so designed that all statements thereon required by §§ 7.20–7.29 are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.* Except as to statements of alcoholic content, all statements required on labels by §§ 7.20–7.29 shall be in readily legible script, type, or printing not smaller than 8-point

gothic caps. If contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter. All portions of any statement of alcoholic content shall be of the same size and kind of lettering and of equally conspicuous color, and such lettering shall not be larger than 8-point gothic caps, except when otherwise required by State law.

(c) *English language.* All information, other than the brand name, required by §§ 7.20–7.29 to be stated on labels shall be in the English language. Additional statements in foreign languages may be made, if no such statements in any way conflict with, or are contradictory to, the requirements of §§ 7.20–7.29. Labels on containers of malt beverages packaged for consumption within Puerto Rico may, if desired, state the information required by §§ 7.20–7.29 solely in the Spanish language, in lieu of the English language, except that the net contents shall also be stated in the English language.

(d) *Labels firmly affixed.* All labels shall be affixed to containers of malt beverages in such manner that they cannot be removed without thorough application of water or other solvents.

(e) *Additional information.* Labels may contain information other than the mandatory label information required by §§ 7.20–7.29, provided such information complies with the requirements of §§ 7.20–7.29, and does not conflict with, nor in any manner qualify, statements required by any regulation promulgated under the act.

§ 7.29 *Prohibited practices—(a) Statements on labels.* Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic, or other matter accompanying such containers to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter tends to create a misleading impression.

NOTE: In circular dated Nov. 1, 1937, the former Federal Alcohol Administrator set forth the conditions under which trade marks of can manufacturers could be reproduced on cans used for the marketing of beer so as not to create a misleading impression (FA-126).

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer.<sup>2</sup>

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, packer, wholesaler, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Simulation of Government stamps.* No label shall be of such design as to resemble or simulate a stamp of the United States Government or of any State or foreign government. No label, other than stamps authorized or required by the United States Government

<sup>2</sup> Under (5) the Deputy Commissioner has permitted the use of statements in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

-----  
(Name of the permittee making statement)"

or any State or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, packed, labeled, or sold under, or in accordance with, any municipal, State, Federal, or foreign government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State, or municipal, law or regulation, or is required or specifically authorized by the laws or regulations of the foreign country in which such malt beverages were produced. If the municipal or State government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto, unless required by State law.

(c) *Use of word "bonded", etc.* The words "bonded", "bottled in bond", "aged in bond", "bonded age", "bottled under customs supervision", or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packing, shall not be used on any label for malt beverages.

(d) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the Deputy Commissioner finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(e) *Curative and therapeutic effects.* Labels shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression.

(f) *Use of words "strong", "full strength", and similar words.* Labels shall not contain the words "strong", "full strength", "extra strength", "high test", "high proof", "pre-war strength", "full

oldtime alcoholic strength", or similar words or statements, likely to be considered as statements of alcoholic content, except where required by State law.

(g) *Use of numerals.* Labels shall not contain any statements, designs, or devices whether in the form of numerals, letters, characters, figures, or otherwise, which are likely to be considered as statements of alcoholic content, unless required by State law.

(h) *Coverings, cartons, or cases.* Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement or any graphic pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverages.

[Regs. No. 7, 1 F. R. 2315, as amended by Treasury Order 30, 5 F. R. 2212, T. D. 5051, 6 F. R. 2874]

#### REQUIREMENTS FOR WITHDRAWAL OF IMPORTED MALT BEVERAGES FROM CUSTOMS CUSTODY

§ 7.30 *Application.* Sections 7.30 and 7.31 shall apply to withdrawals of malt beverages from customs custody only in the event that the laws or regulations of the State in which such malt beverages are withdrawn for consumption require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20–7.29.

#### § 7.31 *Label approval and release*—

(a) *Application.* On or after December 15, 1936, imported malt beverages shall not be released from customs custody for consumption, except pursuant to the procedure and forms prescribed by §§ 7.30 and 7.31.

(b) *Affidavit.* No imported malt beverages shall be released from customs custody unless there shall have been deposited with the appropriate customs officer at the port of entry an "Affidavit for Release of Distilled Spirits, Wine or Malt Beverages under the Federal Alcohol Administration Act" (Form 1652), which document shall be properly filled out and sworn to by the importer or transferee in bond, covering the particular brand or lot of malt beverages sought to be released, and which document shall be accompanied by the original or a photostatic copy firmly attached

thereto of a "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649). Such certificate shall be issued by the Deputy Commissioner upon application made on the form designated "Application for Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1647), properly filled out and certified to by the importer or transferee in bond.

(c) *Release.* If the "Affidavit for Release of Distilled Spirits, Wine or Malt Beverages under the Federal Alcohol Administration Act" (Form 1652) is accompanied by the original or a photostatic copy of the "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649), the certificate of which bears the signature of the Deputy Commissioner, then the brand or lot of malt beverages bearing labels identical with those shown on the original or a photostatic copy may be released from customs custody.

(d) *Relabeling.* Imported malt beverages in customs custody, which are not labeled in conformity with certificates of label approval issued by the Deputy Commissioner, must be relabeled, prior to release, under the supervision and direction of the customs officers of the port at which such malt beverages are located.<sup>3</sup>

[Regs. No. 7, 1 F. R. 2315, as amended by Treasury Order 30, 5 F. R. 2212]

#### REQUIREMENTS FOR APPROVAL OF LABELS OF MALT BEVERAGES DOMESTICALLY BOTTLED OR PACKED

§ 7.40 *Application.* Sections 7.40–7.42 shall apply only to persons bottling or packing malt beverages (other than malt beverages in customs custody) for shipment, or delivery for sale or shipment, into a State, the laws or regulations of which require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20–7.29.

§ 7.41 *Certificates of label approval.* No person shall bottle or pack malt beverages, or remove such malt beverages from the plant where bottled or packed, unless upon application to the Deputy Commissioner, he has obtained, and has

<sup>3</sup> Copies of Form 1647 may be secured from the district supervisors of the Alcohol Tax Unit on request. Copies of Form 1652 may be secured from the local Customs office.

in his possession, a "Certificate of Label Approval under the Federal Alcohol Act" (Form 1649) covering such malt beverages. Such certificate of label approval shall be issued by the Deputy Commissioner upon application made on the form designated "Application for Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1647), properly filled out and certified to by the applicant.<sup>4</sup>

[Regs. No. 7, 1 F. R. 2315, as amended by Treasury Order 30, 5 F. R. 2212]

§ 7.42 *Exhibiting certificates to Government officials.* Any bottler or packer holding an original or duplicate original of a certificate of label approval shall, upon demand, exhibit such certificate to a duly authorized representative of the United States Government or any duly authorized representative of a State or political subdivision thereof.

#### ADVERTISING OF MALT BEVERAGES

§ 7.50 *Application.* No person engaged in business as a brewer, wholesaler, or importer, of malt beverages, directly or indirectly, or through an affiliate, shall publish or disseminate, or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter any advertisement of malt beverages if such advertisement is in, or is calculated to induce sales in interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 7.50-7.54: *Provided*, That §§ 7.50-7.54 shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising: *And provided further*, That §§ 7.50-7.54 shall apply to advertisements of malt beverages intended to be sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the laws of such State impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in such State: *And provided further*, That §§ 7.50-7.54 shall not apply to the publisher of any newspaper, periodical, or

other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a brewer, wholesaler, bottler, or importer, of malt beverages, directly or indirectly, or through an affiliate.

§ 7.51 *Definitions.* As used in §§ 7.50-7.54 the term "advertisement" includes any advertisement of malt beverages through the medium of radio broadcast; or of newspapers, periodicals, or other publications; or of any sign or outdoor advertisement; or of any other printed or graphic matter, including trade booklets, menus, and wine cards, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce; or is disseminated by mail; except that such term shall not include:

(a) Any label affixed to any container of malt beverages; or any coverings, cartons or cases of containers of malt beverages used for sale at retail, or any written, printed, graphic, or other matter accompanying the container which constitutes a part of the labeling under §§ 7.20-7.29.

(b) Any editorial or other reading matter in any periodical or publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person engaged in business as a brewer, wholesaler, or importer, of malt beverages.

§ 7.52 *Mandatory statements—(a) Responsible advertiser.* The advertisement shall state the name and address of the brewer, bottler, packer, wholesaler, or importer responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class.* The advertisement shall contain a conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required to appear on the label of the product.

§ 7.53 *Legibility of requirements.* Statements required under §§ 7.50-7.54 to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

NOTE: On June 5, 1939, the former Federal Alcohol Administrator issued a circular letter, appearing at 4 F. R. 2305, which set forth certain guiding principles to be followed in

<sup>4</sup>Copies of Form 1647 may be obtained from the district supervisors of the Alcohol Tax Unit.

determining whether information was so stated in advertisements as to be "both conspicuous and readily legible."

§ 7.54 *Prohibited statements*—(a) *General prohibition.* An advertisement of malt beverages shall not contain:

(1) Any statement that is false or misleading in any material particular.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Deputy Commissioner finds to be likely to mislead the consumer.

(6) Any statement that the malt beverages are brewed, made, bottled, packed, labeled, or sold under, or in accordance with, any municipal, State, or Federal authorization, law, or regulation; and if a municipal or State permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto.

(7) The words "bonded", "bottled in bond", "aged in bond", "bonded age", "bottled under customs supervision", or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packing.

(b) *Statements inconsistent with labeling.* The advertisement shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.

(c) *Alcoholic content.* The advertisement shall not contain any statement of alcoholic content, or any statement of the percentage and quantity of the original extract, or any numerals, letters, characters, or figures, likely to be considered as designations of alcoholic content.

(d) *Class.* (1) No product containing less than one-half of 1 per centum of alcohol by volume shall be designated in any advertisement as "beer", "lager beer", "lager", "ale", "porter", or "stout", or by any other class or type designation

commonly applied to fermented malt beverages containing one-half of 1 per centum or more of alcohol by volume.

(2) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to "ale," "porter," or "stout" and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall be designated in any advertisement by any of these class designations.

(e) *Curative and therapeutic effects.* The advertisement shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(f) *Confusion of brands.* Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or a newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of §§ 7.50–7.54 or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.* No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

[Regs. No. 7, 1 F. R. 2315, as amended by Amdt. 1, 3 F. R. 1515, Treasury Order 30, 5 F. R. 2212, T. D. 5051, 6 F. R. 2874]

## GENERAL PROVISIONS

§ 7.60 *Exports.* This part shall not apply to malt beverages exported in bond.

## Part 8—Credit Period To Be Extended to Retailers of Alcoholic Beverages

Sec.

8.1 Statutory provision.

8.2 Circumstances in which extension prohibited.

8.3 Calculation of period.

**AUTHORITY:** §§ 8.1 to 8.3 issued under 53 Stat. 375; 26 U. S. C. 3178. Interpret or apply sec. 5, 49 Stat. 981, as amended; 27 U. S. C. 205.

**SOURCE:** §§ 8.1 to 8.3 contained in Regulations No. 8, 3 F. R. 2809.

**NOTE:** The former Federal Alcohol Administrator issued a digest of interpretations of the regulations in this part, May 5, 1939, 4 F. R. 1950.

§ 8.1 *Statutory provision.* Pursuant to clause 6, subsection (b), section 5, Federal Alcohol Administration Act, the credit period usual and customary to the industry is hereby ascertained to be thirty days from date of delivery in the case of all sales of distilled spirits, wine, and malt beverages.

§ 8.2 *Circumstances in which extension prohibited.* The extension of credit to a retailer, by any person engaged in

business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, for a period of time in excess of thirty days from date of delivery, is prohibited when the extension of such credit induces any retailer engaged in the sale of distilled spirits, wine, or malt beverages to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means to such an extent as to substantially restrict or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

§ 8.3 *Calculation of period.* For the purpose of the regulations in this part, the period of credit shall be calculated as the time elapsing between the date of delivery of the merchandise and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

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