The President

REGISTRATION DAY

BY THE PRESIDENT OF THE UNITED STATES

A PROCLAMATION

WHEREAS the Congress has enacted and I have this day approved the Selective Training and Service Act of 1940, which declares that it is imperative to increase and train the personnel of the armed forces of the United States and that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service; and

WHEREAS the said Act contains, in part, the following provisions:

"Sec. 2. Except as otherwise provided in this Act, it shall be the duty of every male citizen of the United States, and of every male alien residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of twenty-one and thirty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner and in such age group or groups, as shall be determined by rules and regulations prescribed hereunder."

"Sec. 5. (a) Commissioned officers, warrant officers, pay clerks, and enlisted men of the Regular Army, the Navy, the Marine Corps, the Coast Guard, the Coast and Geodetic Survey, the Public Health Service, the federally recognized active National Guard, the Officers' Reserve Corps, the Regular Army Reserve, the Enlisted Reserve Corps, the Naval Reserve, and the Marine Corps Reserve; cadets, United States Military Academy; midshipmen, United States Naval Academy; cadets, United States Coast Guard Academy; men who have been accepted for admittance (commencing with the academic year next succeeding such acceptance) to the United States Military Academy as cadets, to the United States Naval Academy as midshipmen, or to the United States Coast Guard Academy as cadets, but only during the continuance of such acceptance; cadets of the advanced course, senior division, Reserve Officers' Training Corps or Naval Reserve Officers' Training Corps; and diplomatic representatives, technical attaches of foreign embassies and legations, consuls general, consuls, vice consuls, and consular agents of foreign countries, residing in the United States, who are not citizens of the United States, and who have not declared their intention to become citizens of the United States, shall not be required to be registered under section 2 and shall be relieved from liability for training and service under section 3 (b)."

"Sec. 10 (a) The President is authorized—

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;"

"(4) to utilize the services of any or all departments and any and all officers or agents of the United States and to accept the services of all officers and agents of the several States, Territories, and the District of Columbia and subdivisions thereof in the execution of this Act;"

"Sec. 14 (a) Every person shall be deemed to have notice of the requirements of this Act upon publication by the President of a proclamation or other public notice fixing a time for any registration under section 2."

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, under and by virtue of the authority vested in me by the aforesaid Selective Training and Service Act of 1940, do proclaim the following:

1. The first registration under the Selective Training and Service Act of 1940 shall take place on Wednesday, the sixteenth day of October, 1940, between the hours of 7 A.M. and 9 P.M.
Published daily, except Sundays, Mondays, and days following legal holidays by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 25, 1935 (49 Stat. 603), under regulations prescribed by the Administrative Committee, approved by the President:

The Administrative Committee consists of the Archivist of the United States, the Attorney General, and the Public Printer or Acting Public Printer.

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2. Every male person (other than persons excepted by Section 5 (a) of the aforesaid Act) who is a citizen of the United States or an alien residing in the United States and who, on the registration date fixed herein, has attained the twenty-first anniversary of the day of his birth and has not attained the thirty-sixth anniversary of the day of his birth, is required to present himself for and submit to registration. Every such person who is within the continental United States on the registration date fixed herein shall on that date present himself for and submit to registration at the duly designated place of registration within the precinct, district, or registration area in which he has his permanent home or in which he may happen to be on that date. Every such person who is not within the continental United States on the registration date fixed herein shall within five days after his return to the continental United States present himself for and submit to registration.

Regulations will be prescribed hereafter providing for special registration of those who on account of sickness or other causes beyond their control are unable to present themselves for registration at the designated places of registration on the registration date fixed herein.

3. Every person subject to registration is required to familiarize himself with the rules and regulations governing registration and to comply therewith.

4. The times and places for registration in Alaska, Hawaii, and Puerto Rico will be fixed in subsequent proclamations.

5. I call upon the Governors of the several States and the Board of Commissioners of the District of Columbia to provide suitable and sufficient places of registration within their respective jurisdictions and to provide suitable and necessary registration boards to effect such registration.

6. I further call upon all officers and agents of the United States and all officers and agents of the several States and the District of Columbia and subdivisions thereof to do and perform all acts and services necessary to accomplish effective and complete registration; and I especially call upon all local election officials and other patriotic citizens to offer their services as members of the boards of registration.

7. In order that there may be full cooperation in carrying into effect the purposes of said Act, I urge all employers, and government agencies of all kinds—Federal, State and Local—to give those under their charge sufficient time off in which to fulfill the obligation of registration incumbent on them under the said Act.

America stands at the crossroads of its destiny. Time and distance have been shortened. A few weeks have seen great nations fall. We cannot remain indifferent to the philosophy of force now rampant in the world. The terrible fate of nations whose weakness invited attack is too well known to us all.

We must and will marshal our great potential strength to send off war from our shores. We must and will prevent our land from becoming a victim of aggression.

Our decision has been made: It is in that spirit that the people of our country are assuming the burdens of increased production. Our nation, as a whole, is an army of producers. The Congress has debated without partisanship and has now enacted a law establishing a selective method of augmenting our armed forces. The method is fair, it is just, and it is democratic—what the country needs.

After thoughtful deliberation, and as the first step, our young men will come from the factories and the fields, the cities and the towns, to enroll their names on registration day. On that occasion every man will say: "I will do my part." And so we shall.
Sec. 2. Subject to the conditions expressed in the above-mentioned acts, and to all existing rights, the land described in section 1 of this order is hereby withdrawn from settlement, location, sale, or entry, and reserved for use by the Department of Commerce as an air-navigation site.

Sec. 3. The reservation made by section 2 of this order shall remain in force until revoked by the President or by act of Congress.

FRANKLIN D. ROOSEVELT
The White House,
September 14, 1940.

[No. 8540]

[F. R. Doc. 40-8891; Filed, September 16, 1940, 4:12 p. m.]

Rules, Regulations, Orders

TITLE 7—AGRICULTURE

CHAPTER VII—AGRICULTURAL ADJUSTMENT ADMINISTRATION

[Cotton, 1941-42]

PART 722—COTTON

A PROCLAMATION BY THE SECRETARY OF AGRICULTURE RELATING TO COTTON MARKETING QUOTAS, 1941-42 MARKETING YEAR

Whereas the Agricultural Adjustment Act of 1933, as amended, provides:

Sec. 342. Not later than November 15 of each year the Secretary of Agriculture shall find and proclaim (a) the total supply, the normal supply, and the carry-over of cotton as of August 1 of each year, (b) the probable domestic consumption of American cotton during the marketing year commencing August 1 of such year, (c) the probable exports of American cotton during such marketing year, and (d) the estimated carry-over of cotton as of the next succeeding August 1.

Sec. 345. Whenever the Secretary determines that the total supply of cotton for any marketing year is less than 7 per centum the normal supply thereof for such marketing year, the Secretary shall proclaim such shortage and the normal supply as of the first day of the succeeding calendar year.

Sec. 343. Not later than November 15 of each year the Secretary shall find and proclaim (a) the total supply, the normal supply, and the carry-over of cotton as of August 1 of each year, (b) the probable domestic consumption of American cotton during the marketing year commencing August 1 of such year, and (c) the probable exports of American cotton during such marketing year.

"Marketing year" means, in the case of the following commodities, the period beginning with the first day of the calendar year in which such marketing year begins:

Cotton, August 1-July 31.

"Normal supply" in the case of cotton shall be a normal year's domestic consumption and exports of the commodity plus any allowance for a normal carry-over.

In the case of cotton, any year's domestic consumption and exports, and the allowance for a normal carry-over, shall be the yearly average quantity of cotton produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

"Normal year's domestic consumption" in the case of cotton shall be the yearly average quantity of cotton produced in the United States during the ten marketing years immediately preceding the marketing year in which such production is determined, adjusted for current trends in such production.

"Total supply" of cotton for any marketing year shall be the carry-over of the commodity for such marketing year plus the estimated production of the commodity in the United States during the calendar year in which such marketing year begins.

Whereas said Act provides, in section 301 (e), that "The latest available statistics of the Federal Government shall be used by the Secretary (of Agriculture) in making the determinations required to be made by the Secretary under this Act;" and

Whereas said Act provides, in section 350, that the provisions of Part IV (Marketing Quotas—Cotton) of subtitle B of Title III thereof "shall not apply to cotton, the staple of which is 1 1/2 inches or more in length;"

§722.301 Findings and determinations. Now, therefore, be it known that I, Paul H. Appleby, Acting Secretary of Agriculture of the United States of America, acting under and pursuant to, and by virtue of the authority vested in me by the Act of Congress known as the Agricultural Adjustment Act of 1933, as amended, upon the basis of the latest available statistics of the Federal Government, do hereby find, determine, and establish under section 343 and 345 of said Act (52 Stat. 55, 58, 203; 7 U.S.C. Sup., 1243, 1345):

(a) That the "total supply" of American cotton as of August 1, 1940, was 24,900,000 running bales;
(b) That the "normal supply" of American cotton as of August 1, 1940, was 18,200,000 running bales;
(c) That the "carry-over" of American cotton as of August 1, 1940, was 12,517,000 running bales;
(d) That the "probable domestic consumption of American cotton" during the marketing year commencing August 1, 1940, was 8,000,000 running bales;
(e) That the "probable exports of American cotton" during the marketing year commencing August 1, 1940, is 2,500,000 running bales;
(f) That the estimated "carry-over" of American cotton as of August 1, 1941, is 13,417,000 running bales;
(g) That the "total supply" of American cotton for the marketing year beginning August 1, 1940, exceeds by more
than 7 per centum the "normal supply" of cotton for such marketing year; and

(b) That the national allotment of cotton for the calendar year, beginning

on January 1, 1941, shall be 10,000,000 standard bales of five hundred pounds

gross weight, increased by that number of standard bales of five hundred pounds

gross weight equal to the production in the calendar year 1941 of that number

of acres required to be allotted for 1941, under the terms of section 344 (e) of said

Act.

Pursuant to the foregoing provision of law, sections 302a (a), 2972, 2873, 2883,

2904, 3031 (a), as amended, 3037, and 3176 of the Internal Revenue Code, and

sections 5 (e) and 6 of the Federal Alco-

hol Administration Act, as amended, the

distilled spirits, and if other than an

agency, procure from the district

supervisor under the Federal Alcohol

Administration Act an amended basic

permit authorizing the warehousing and

bottling of distilled spirits under the

name.

(b) Amended application, Form 27-D. Submit to the district supervisor an

amended application on Form 27-D, in

triplicate, covering the new name, which

application must be approved before

operations may be commenced under the

new name.

§ 185.103 Examination of qualifying documents. Upon receipt of application,

plat, plans, transportation and warehousing

bond, export storage bond, if any, and

other documents required by these regu-

lations of persons desiring the establish-

ment of Internal revenue bonded ware-

houses, the district supervisor will exami-

ne the same to determine whether they

have been properly executed and whether

they reflect compliance with the require-

ments of the law and regulations. Where

any required document has been, or

where errors or discrepancies are found

in those filed, or where the documents

filed do not reflect compliance with these

regulations, action thereon will be held in

abeyance until the omission, or error or
discrepancy, has been rectified, and there

has been full compliance with all require-

ments.

§ 185.109 Other causes for disapproval. The district supervisor will not

recommend approval of any application for the establishment of an internal revenue

bonded warehouse unless (1) the capacity of the warehouse is commensurate with

the prospective needs of the area or locali-

ity in which it is situated and in any

event not less than 10,000 barrels, or the

equivalent thereof in tank or case stor-

age, (2) the location is suitable, (3) the

transportation facilities adequate, (4) the

design and construction of the warehouse

are such as to insure economical super-

vision by Government officers, and (5) the

prospective volume of spirits that will

be received, stored, withdrawn, and bot-

tled at the warehouse is sufficient to war-
rant the establishment of the warehouse

and the expense of Government super-

vision: Provided, That these provisions

shall not be applicable where the ware-

house is an original warehouse to be op-

erated by the distiller (not including

lessee distillers) or contiguous to the

distillery premises, or is a second ware-

house which the distiller desires to opera-

te on premises contiguous to or near

such original warehouse on account of

lack of storage space in the original ware-
house or the improper facilities for

holding such warehouse. In any case where

the warehouse has a bottling-in-bond de-
partment and the applicant is not entitled
to a permit, the district supervisor will,

upon disapproval of the permit applica-
tion, return all copies of the qualifying

documents to the applicant without ac-

tion thereon or reference to the Com-

missioner. * (Sec. 2873, I.R.C.)
§ 185.110 Approval of qualifying documents. If the district supervisor finds, upon examination of the inspection report and qualifying documents, that the person seeking the establishment of the internal revenue bonded warehouse has complied in all respects with the requirements of the law and these regulations, and that the application and other qualifying documents may properly be approved under §§ 185.108 and 185.109, he will note his recommendation for approval on all copies of the application, transportation and warehousing bond, and the export storage bond, if any, and his approval on all copies of the plat and plans, and will forward all copies of the application, transportation and warehousing and export storage bonds, and the original copy of the plat and plans and other qualifying documents, together with a copy of all inspection reports, to the Commissioner for final action. If the warehouse has a bottling-in-bond department, the issuance of a permit should be withheld pending approval by the Commissioner of the application, bond, and other qualifying documents required under the internal revenue laws.*

§ 185.112 Disposition of qualifying documents. Where the application, Form 27-D, transportation and warehousing bond, Form 1571, and the export storage bond, Form 654, if any, are approved by the Commissioner, the district supervisor will, upon receipt of approved copies of such documents from the Commissioner, as provided in Article XVI, forward one copy of the application, bonds, plat, plans, and other qualifying documents to the proprietor, and will retain one copy of such qualifying documents on file. If the application, transportation and warehousing bond and export storage bond, if any, are disapproved by the Commissioner, the district supervisor will, upon receipt from the Commissioner of disapproved copies of such documents, and all qualifying documents submitted therewith, return all copies of the qualifying documents to the proprietor, with advice to the reasons for disapproval.*

§ 185.125 Transportation and warehousing bonds. Transportation and warehousing bonds, Form 1571, may be terminated as to liability (1) for spirits consigned to the internal revenue bonded warehouse after a specified future date, pursuant to application by the surety as provided in § 185.131, (2) for transactions subsequent to the effective date of an approved superseding bond, or (3) for future transactions upon discontinuance of business by the principal after withdrawal of all spirits from the warehouse. (Sec. 2072, I.R.C.)

§ 185.151 Application of the surety for relief from bond. A surety on any bond required by these regulations may at any time in writing notify the principal and the district-supervisor in whose office the bond is on file that he desires, after a date named, which shall be at least 60 days after the date of notification, to be relieved of liability under said bond. The notice shall be executed in triplicate by the surety, who shall deliver one copy to the principal and the other two to the district supervisor, who will retain one copy and transmit the remaining copy to the Commissioner. If such notice is to be effective, and the Commissioner does not thereafter in writing withdraw the same, the bond shall be terminated on the date named in the notice, and the surety shall not thereafter be liable for any loss or injury sustained by the principal on account of the default of the surety, or not thereafter in writing withdrawn the same.* (Sec. 2057, 26 U.S.C.)*

§ 185.231 Rate of tax. The law imposes a tax on distilled spirits produced in or imported into the United States at the rate of $2.75 per proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon. (Sec. 2800 (a), I.R.C.)

§ 185.234 Number and size. Samples of branded or fruit spirits for laboratory analysis must be taken from packages designated as sample packages. Such samples may not exceed one-half pint from any container at any one time, unless it is shown that such is an insufficient quantity for the purpose for which the sample is desired, and the Commissioner authorizes the taking of a larger sample, not to exceed one pint. The total number of samples from all containers must be restricted to the minimum necessary to determine the quality of the spirits. As a rule, not more than one or two samples should be required from a given lot of spirits of the same distillation, kind of cooperage, storage, etc. When the warehouseman desires to procure samples from a given lot of spirits in warehouse, he will limit the number of packages from which it is desired to take samples to the minimum necessary to procure representative samples of such spirits. Thereafter, if it is desired to procure additional samples from the same lot of spirits, the samples should be taken from the same packages.*

§ 185.276 Issuance of tax-paid stamps. Each tax-paid stamp shall bear the signature of the collector, who shall write or stamp thereon the date of payment of the tax, by whom paid, the number of gallons and tenths of gallons of proof spirits, and the serial number of the tax. Imprint size of samples or labels may be affixed by the use of hand stamps to the tax-paid stamps, care being taken to use only such ink as will neither fade nor blur. The collector will enter the serial numbers of the stamps in the appropriate spaces on all copies of Forms 179 and 1520, sign the certificate of tax-payment on all copies of Form 179, retain one copy each of Form 179 and Form 1520, and return the remaining three copies of Form 179 and two copies of Form 1520 to the warehouseman with the stamps. (Sec. 2302 (a), I.R.C.)

§ 185.359 Records. When the spirits have been removed from the export storage warehouse the storekeeper-gauger shall make appropriate entries on Form 1516 in the statement "Export Storage
Warehouse Transactions," and the proprietor shall report the removal on Form 552.* (Sec. 2004, I.R.C.) §185.461 Bulk containers. Under the regulations issued under the Federal Alcohol Administration Act (27 CFR, Part 3), the regulations issued under the Federal Alcohol Administration Act, for distilled spirits in bonded warehouses (imported spirits only); operating tax-paid bottling houses; (2) bonded warehouses, including those of industrial alcohol plants and industrial alcohol bonded warehouses, including those operating tax-paid bottling houses; (2) to proprietors of class 8 custom bonded warehouses (imported spirits only); (3) to rectifiers; (4) to winemakers (brandy or alcohol) for fortification of wine; (5) to any agency of the United States, or of any State or political subdivision thereof; (6) for export; (7) on warehouse receipts, conforming to the regulations issued under the Federal Alcohol Administration Act, for distilled spirits In internal revenue bonded warehouses; and (8) for industrial use in accordance with the regulations issued under the Federal Alcohol Administration Act (27 CFR, Part 3), as follows: For experimental purposes, and for use in the manufacture (a) of medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (b) of toilet products; (c) of flavoring extracts, sirups, or food products; or (d) of scientific, chemical, or industrial products; provided such products are unfit for beverage use. Distilled spirits produced at a proof in excess of 159 degrees and reduced in the receiving cisterns to not more than 159 and not less than 100 degrees of proof may, however, upon tax-payment, be transported for beverage purposes only; and under the regulations issued pursuant to the Federal Alcohol Administration Act (27 CFR, Part 3) warehouses may not sell in bulk for industrial use other distilled spirits (except brandy—fruit or alcohol) unless such spirits are shipped or delivered directly to the industrial user thereof. (Sec. 6, 49 Stat. 985; 27 U.S.C. Sup. 206.)

[Regulations 107]

PART 403—EXCISE TAX ON EMPLOYERS UNDER THE FEDERAL UNEMPLOYMENT TAX ACT

INTRODUCTION

Sec. 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.

(b) Federal Unemployment Tax Act and regulations thereunder; calendar year 1939 and subsequent years.

SUBPART A

Scope of Regulations

403.101 Scope of regulations.

(a) Tax with respect to wages paid after 1939.

(b) Employment.

SUBPART B

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403.201 General definitions and use of terms.

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(f) Act.

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403.216 Railroad industry—employees and employers.

403.217 Organizations exempt from income tax.

(a) In general.

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(c) Collection of dues or premiums for fraternal benefit societies, and ritualistic services in connection with such societies.

(d) Students employed by organizations exempt from income tax.

403.218 Agricultural and horticultural organizations exempt from income tax.

403.219 Voluntary employees' beneficiary associations.

403.220 Federal employees' beneficiary associations.
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 (Part 400, Title 26, Code of Federal Regulations), 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 (§ 400.307 of such Title 26).)

(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 (Part 458, Subpart A, Title 26, Code of Federal Regulations, 1938 Sup.J., and Treasury Decision 4878, approved January 4, 1939 (Part 458, Subpart G, of such Title 26 Sup.), 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 (Part 458, Subpart A, of such Title 26), and Treasury Decision 4786, approved March 25, 1938 (Part 458, Subpart G, of such Title 26 Sup.), 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.)

(For amendments to Regulations 90, see Treasury Decision 4812, approved June 16, 1938 (Part 400 of such Title 26, 1938 Sup.); Treasury Decision 4933, approved November 30, 1938 (Part 400 of such Title 26, 1938 Sup.); Treasury Decision 4933, approved September 6, 1939 (Part 400 of such Title 26, 1939 Sup.); Treasury Decision 4937, approved September 3, 1939 (Part 400 of such Title 26, 1939 Sup.); and Treasury Decision 4949, approved September 20, 1939 (Part 400 of such Title 26, 1939 Sup.).

(b) Federal Unemployment Tax Act and regulations thereunder; calendar year 1939 and subsequent years—(1) Statutes. The provisions of Title IX of the Social Security Act were repealed in the Internal Revenue Code, approved February 10, 1939, as subchapter C of chapter 9 thereof (§ 183). Under the authority contained in section 1611 of subchapter C of chapter 9 of the Code, as added by section 616 of the Social Security Amendments of 1939 (53 Stat. 1396), such subchapter may be cited as the "Federal Unemployment Tax Act." Section 1602 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, 1939.

Sections 608 to 613, inclusive, and 615 of the Social Security Act Amendments of 1939 (53 Stat. 1376, 1395) 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. 1332) 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 23, 1937 (52 Stat. 1110); by section 902 (c) and (f) of the Social Security Act Amendments of 1939 (53 Stat. 1410); and by section 614 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 informal revenue laws of particular importance, have been inserted in the appropriate places in, and are to be read in connection with, these regulations.

(2) Regulations. Regulations relating to the tax under the Federal Unemployment Tax Act are set forth in:

(i) Regulations, as amended, as made applicable to the Federal Unemployment Tax Act and other provisions of the Internal Revenue Code by Treasury Decision 4855, approved February 11, 1939 (Part 465, Subpart B, Title 26, Code of Federal Regulations, 1939 Sup.); and Treasury Decision 4855, approved February 11, 1939 (Part 465, Subpart B, Title 26, Code of Federal Regulations, 1939 Sup.), as so made applicable to the Federal Unemployment Tax Act, relate only to the tax for the calendar year 1939.

(ii) Treasury Decision 4949, approved August 22, 1939 (Part 458, Subpart B, Title 26, Code of Federal Regulations, 1939 Sup.), and Treasury Decision 4945, approved September 29, 1939 (Part 458, Subpart H, of such Title 26, 1939 Sup.), both relating to the inspection of returns, including returns made under the Federal Unemployment Tax Act.

(For amendments to Regulations 93, see Treasury Decision 4931, approved August 29, 1939 (Part 400 of such Title 26, 1939 Sup.); Treasury Decision 4933, approved September 6, 1939 (Part 400 of such Title 26, 1939 Sup.); Treasury Decision 4949, approved September 29, 1939 (Part 400 of such Title 26, 1939 Sup.).)
to the tax for the calendar year 1940 and subsequent calendar years.)*

**SUBPART A—SCOPE OF REGULATIONS**

§ 403.101 Scope of regulations—(a) Tax with respect to wages paid after 1939. These regulations 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. (See § 403.1(b) for a complete description of the pertinent statutes.)

(b) Employment. In addition to employment in the case of remuneration therefor paid on or after January 1, 1940, these regulations also relate to employment performed on or after such date in the case of remuneration therefor paid prior to such date.*

**SUBPART B—DEFINITIONS**

**SECTION 615 OF THE SOCIAL SECURITY ACT**

Subchapter C of chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

"Sec. 1611. This subchapter may be cited as the 'Federal Unemployment Tax Act.'"

**SECTION 2 OF THE ACT OF FEBRUARY 10, 1939**

**INTERNAL REVENUE CODE**

This act is the Internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as I.R.C.**.

**SECTION 1607 OF THE ACT**

**DEFINITIONS**

When used in this subchapter—

(a) Employer. The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time), was eight or more.

(b) Wage. The term "wages" means remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to $1,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year;

(2) 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 the employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (A) retirement, or (B) sickness or accident, which is an insurance or annuity contract which specifically provides that such insurance or annuity is available to an employee or his dependents.

*§§ 403.1 to 403.606, inclusive, are issued under the authority contained in section 1609 of the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Internal Revenue Code), 53 Stat. 188, and are generally preceded by the statutory provisions to which they respectively, refer.*
of such employee for such period shall be deemed to be employment. As used in this subsection the term "pay period" (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily paid by the person employing him. This subsection shall not be applicable with respect to services performed in a State by employees of Federal agencies in the employ of the person employing him, where any such service is excepted by subsection the term "pay period" means a period of not more than thirty-one consecutive days.

(8) SIGNED AGREEMENT. The term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(9) UNEMPLOYMENT FUND. The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 906 of the Social Security Act, as amended, shall be deemed to be a part of the unemployment fund if and only if such sums were paid into such fund by the employer without being expended or deducted or deductible from the remuneration of individuals in his employ.

(10) WAGES. The term "wages" includes an officer of a corporation.

(11) SMOKE. The term "smoke" includes Alaska, Hawaii, and the District of Columbia. The term "pensioner" means an individual, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization, through or by means of which the business, financial operation, or function of a business or a corporation is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation.

(12) CORPORATION. The term "corporation" includes an individual, a joint-stock company, a partnership, an association, or an unincorporated organization, through or by means of which the business, financial operation, or function of a business or a corporation is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation.

(13) COLLECTOR. The term "collector" means collector of internal revenue.

(14) TAXPAYER. The term "taxpayer" means any person subject to a tax imposed by this title.

(15) INCLUDES AND INCLUDES. The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of such definition.

§ 403.201 General definitions and use of terms. As used hereinafter in these regulations—

(a) The terms defined in the above provisions of law shall have the meanings so assigned to them.


(e) Federal Unemployment Tax Act means chapter 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) Railroad Unemployment Insurance Act means the Act approved June 25, 1938 (52 Stat. 1073), as amended.

(h) Regulations 90 Relating to the Erection Time of Employers under Title IX of the Social Security Act, as amended, shall be deemed to be applicable with respect to such regulations to employers under Title IX of the Internal Revenue Code, as amended.

(i) Social Security Board means the board established pursuant to Title VII of the Social Security Act.

(m) The cross references in these regulations to other portions of the regulations, when the word "see" is used, are made only for convenience, and shall have no legal effect.
age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States, in the furnishing of a place to work, and the furnishing of tools or other personal property to any person, under or in connection with any Federal or State employment, as defined in such Act.

(6) Service performed in the employ of a State, a political subdivision thereof, an instrumentality of one or more States or political subdivisions;

(7) Services performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private shareholder or individual.

Section 13 (a) of the Railroad Unemployment Insurance Act.

Effective July 1, 1939, section 907 (c) of the Social Security Act (codified as section 1607 (c) of the Federal Unemployment Tax Act) is hereby amended by substituting a semi-colon for the period at the end thereof, and by adding: "(6) Service performed in the employ of an employer as defined in the Railroad Unemployment Insurance Act and service performed as an employee representative as defined in such Act." Section 902 (f) of the Social Security Act Amendments of 1939

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 subparagraphs (11) and (12) of sections 1607 (c) of the Internal Revenue Code, as amended.

Section 2 of the Act of August 11, 1939 (53 Stat. 1420)

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.

§ 403.202 Employment prior to January 1, 1940. Under the provisions of section 1607 (c) of the Federal Unemployment Tax Act, effective as amended by the Act of January 1, 1940, by section 614 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 1607 (c) 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 Unemployment Tax Act in force on and after such date, unless the services are excepted by section 1607 (c) of the Federal Unemployment Tax Act in force prior to such date.

The term "employment" means any service, of whatever nature, performed within the United States by an employee for the employer employing him, irrespective of the citizenship or residence of either, except:

(1) Services performed prior to January 1, 1940, 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.

(2) Services performed prior to January 1, 1940, under the Federal Unemployment Tax Act, with respect to services rendered prior to January 1, 1940, in the employ of an employer as defined in such Act, and service performed as an employee representative as defined in such Act.

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 only, not withstanding the provisions of such section 902 (f) or such section 2.

The tax to which these regulations 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.)

Whether services performed prior to January 1, 1940, constitute employment within the meaning of these regulations shall be determined in accordance with the applicable provisions of Regulations.

Section 1607 (c) of the Act

The term "employment" means any service, of whatever nature, performed within the United States by an employee for the employer employing him, irrespective of the citizenship or residence of either, except:

(1) Services performed prior to January 1, 1940, 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.

(2) Services performed outside the United States, that is, outside the several States, the District of Columbia, and the Territories of Alaska and Hawaii, do not constitute employment.

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 is immaterial. Thus, the employee and the person employing him, 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.

§ 403.204 Who are employees. 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, not withstanding the provisions of § 403.201, includes a person who employs one or more employees.)

Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs such 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 materials, 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.

Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who work and independently engage in business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Whether the relationship of employer and employee exists will in doubtful cases be determined by reference to the particular facts of each case.

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.

The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee is material.

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.

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).* 

SECTION 1607 (a) of the ACT 

EMPLOYER

The term "employer" does not include any person under some twenty days during the taxable year, each such day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was eight or more. (Sec. 1607 (a), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.205 Who are employers. 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.

The several weeks in each of which occurs a day when 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.

In determining whether a person employs a sufficient number of employees during a taxable year an employer is with respect to such year an employer if each employee is counted with respect to services which constitute employment as defined in section 1607 (c) of the Act (see § 403.203 of these regulations). No employee is counted, however, with respect to services which do not constitute employment as so defined.

The provisions of the preceding paragraph 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 to the provisions relating to services which constitute employment but which are deemed not to be employment (see § 403.207 of these regulations).

For example, if the services of an employee during a pay period are deemed to be employment under section 1607 (d) of the Act, and no part of such pay period is excluded from 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, though a portion thereof constitutes employment, the employee is not counted with respect to any services during the pay period.* 

SECTION 1607 (d) of the ACT

EMPLOYMENT

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

*(Sec. 1607 (c), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.206 Excepted services in general. 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.

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 § 403.203). 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.

This section, and the sections which follow it relating to included and excluded services and the several classes of excepted services, apply with respect only to services rendered on or after January 1, 1940 (see § 403.203). (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.)* 

SECTION 1607 (d) of the ACT

INCLUDED AND EXCLUDED SERVICES

If the services performed during one-half or more of any pay period by an employee for the person employing him are employment, all the services of such employee for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an employee for the person employing him are employment, none of the services of such employee for such period shall be deemed to be employment.

As used in this section, the term "pay period" means a period of not more than thirty-one consecutive days for which a payment of remuneration is customarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of the services performed 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.

If one-half or more of an employee's services during a particular pay period are employment, then all the services of that employee for that person in that pay period shall be deemed to be employment.

If less than one-half of an employee's services during a particular pay period are employment, then none of the services of that employee for that person in that pay period shall be deemed to be employment.

Example. 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 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.

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 three weeks' services, the "pay period" is still the calendar week.

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.

The rules set forth in this section do not apply (1) with respect to any services performed by 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 period 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 services performed by the employee for the period employing him during a pay period if any of such service is excepted by section 1607 (c) (9) of the Act (see § 403.216 of these regulations).

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 described 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 of these regulations).

Section 1607 (c) (1) of the Act includes all services performed—

(1) On a farm, in the employ of any person, the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of live-stock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its buildings and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in section 16 (g) of the Agricultural Marketing Act as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the handling of pecan nuts in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this subparagraph should not be applicable with respect to service performed in connection with commercial canning or other processing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, orchards, greenhouses and other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. (Sec. 1607 (1), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

Section 15 (g) of the Agricultural Marketing Act, as Amended

As used in this Act, the term "agricultural commodity" includes * * * crude gum (elocresin) from a living tree, and the following commodities produced in the United States by an employee from crude gum (elocresin) from which derived: Gum spirits of turpentine, gum rosin, and colophony. (See (g).) Am. Act of June 15, 1929, 46 Stat. 18, as added by sec. 42, Act of May 24, 1931, 46 Stat. 1607, 12 U.S.C. 1141 (g) (6)).

Section 2 (c) and (h) of the Naval Stores Act

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (elocresin) from a living tree.

(b) "Gum rosin" means resin remaining after the distillation of gum spirits of turpentine. (See (c), (h), Act of Mar. 5, 1923, 42 Stat. 1435, 7 U.S.C. 2 (b), (h)).
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. 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:

(1) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or
(2) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

The services described in (1) above may include, for example, services performed by employees of a farmer or farmers' 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."

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.

(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 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 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."

(1) 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 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."

In general, the services described in subpar-}

(c) Services described in section 1607
(1) (4) of the Act. (1) 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, 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), below), 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.

The services described in subparagraph (1) above do not include services performed in connection with the production or harvesting of maple sap or the processing of maple sap into maple syrup or maple sugar (but not the subsequent blending or other processing of such syrup or sugar with other products) or the production or harvesting of gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such gum spirits or gum rosin.

(e) Services described in section 1607
(1) (4) of the Act. (1) Services performed by an employee in the employ of a farmer or farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, 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, 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. The services described in subparagraph (1) above do not include services performed in connection with the production or harvesting of maple sap or the processing of maple sap into maple syrup or maple sugar (but not the subsequent blending or other processing of such syrup or sugar with other products) or the production or harvesting of gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such gum spirits or gum rosin.

(e) Services described in section 1607
(1) (4) of the Act. (1) Services performed by an employee in the employ of a farmer or farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, 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, 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.

In general, the services described in subpar-
which is occasional, incidental, or irregular.

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.

Thus, labor which is occasional, incidental, or irregular, and every individual, subject to the types of aircraft. For commerce with foreign countries or territory of the United States does not come within this exception.

Example 2. 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 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.

Casual labor performed for a corporation does not come within this exception. * * *

Section 1607 (c) (4) of the Act

The term "employment" means • • • any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him. * * *

(6) Service performed in the employ of a person other than an individual (such as a corporation or a partnership) are not within the exception. * * *

Section 1607 (c) (5) of the Act

The term "employment" means • • • any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him. * * *

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother; (Sec. 1607 (c) (5), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.213 Family employment. 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:

(a) Services performed by an individual in the employ of his or her spouse;
(b) Services performed by a father or mother in the employ of his or her son or daughter; and
(c) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

Under (a) and (b), above, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under (c), in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21. The exception continues only during the time that such son or daughter is under the age of 21.

Services performed in the employ of a person other than an individual (such as a corporation or a partnership) are not within the exception. * * *

Section 1607 (c) (6) of the Act

The term "employment" means • • • any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him. * * *

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is wholly owned by the United States, or of any political subdivision thereof which is wholly owned by the United States or by an instrumentality of the United States, or (B) exempt from the tax imposed by section 1600 by virtue of any other provision of law; (Sec. 1607 (c) (6), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

§ 403.215 Religious, charitable, scientific, literary, and educational organizations and community organizations not for profit, any employee in the employ of an organization of the class specified in section 1607 (c) (8) of the Act are excepted.

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.

In all cases, in order to establish its status under the statutory classification,
the organization must meet the following three tests:

(a) It must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and which also maintains wholly or in part, citizens or residents thereof.

(b) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(c) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

Corporations or other institutions organized 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.

An educational organization within the meaning of section 1607 (c) (3) 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 primary purpose is to give lectures advocating a cause of common interest, to determine after hearing whether any service rendered by an employee as hereafter defined to the public for profit is not within the statute class. If an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendering service to it in the United States: Provided, further, That an individual who is so regularly and customarily employed by an employer outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof. (i) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employee" as defined in section 1 (a) when first used or after August 22, 1935, was in the service of an employer as defined in section 1 (a) of the Railway Labor Act, and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly and customarily employed by such officer or official representative in connection with the duties of his office.

(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, payable for services rendered as an employee to one or more employers, or as an employee representative or otherwise, when in the performance of the property or any part thereof, the individual is rendering service to an employer as hereafter defined to the public for profit and in any calendar month, no part of any compensation in excess of $300 shall be recognized.

(i) The term "Board" means the Railroad Retirement Board.

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

For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term "employer" means any carrier (as defined in subsection (a) of section 1 (a) of the Interstate Commerce Act), provided, however, that in computing the compensation payable to any employee under any service. of whatever nature, performed by such carrier for time lost but excluding tips, payable for services rendered by an employee as hereafter defined to the public for profit is not within the statute class. If an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendering service to it in the United States: Provided, further, That an individual who is so regularly and customarily employed by an employer outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof. (i) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employee" as defined in section 1 (a) when first used or after August 22, 1935, was in the service of an employer as defined in section 1 (a) of the Railway Labor Act, and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly and customarily employed by such officer or official representative in connection with the duties of his office.

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(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, payable for services rendered as an employee to one or more employers, or as an employee representative or otherwise, when in the performance of the property or any part thereof, the individual is rendering service to an employer as hereafter defined to the public for profit and in any calendar month, no part of any compensation in excess of $300 shall be recognized.

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For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term "employer" means any carrier (as defined in subsection (a) of section 1 (a) of the Interstate Commerce Act), provided, however, that in computing the compensation payable to any employee under any service. of whatever nature, performed by such carrier for time lost but excluding tips, payable for services rendered by an employee as hereafter defined to the public for profit is not within the statute class. If an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer not conducting the principal part of its business in the United States only when he is rendering service to it in the United States: Provided, further, That an individual who is so regularly and customarily employed by an employer outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof. (i) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employee" as defined in section 1 (a) when first used or after August 22, 1935, was in the service of an employer as defined in section 1 (a) of the Railway Labor Act, and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly and customarily employed by such officer or official representative in connection with the duties of his office.

(i) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, payable for services rendered as an employee to one or more employers, or as an employee representative or otherwise, when in the performance of the property or any part thereof, the individual is rendering service to an employer as hereafter defined to the public for profit and in any calendar month, no part of any compensation in excess of $300 shall be recognized.

(i) The term "Board" means the Railroad Retirement Board.

(i) The "United States," when used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.
Section 101 of the Internal Revenue Code

Exemptions from Tax on Corporations

The following organizations shall be exempt from taxation under this chapter [chapter 1—Income tax]—

(1) Labor or saving banks not having a capital stock represented by shares;
(2) Fraternal benefit societies, orders, or associations acting under a lodger, lodge system or for the exclusive benefit of the members of a fraternity itself operating under the laws of the State in which it is located, for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;
(3) Domestic building and loan associations substantially all the business of which is confined to making loans to members; and cooperative banks without capital stock organized and operated for mutual purposes and without profit;
(4) Cemetery companies owned and operated exclusively for the benefit of their members, and not operating for profit; and any corporation chartered solely for burial purposes as a cemetery corporation, and not operating for profit.
(5) Civic leagues or organizations not organized for profit but operated exclusively for the social improvement of communities, the membership of which is limited to the employees of a designated employer or employers; and such civic leagues or organization of the type described in section 403.219 for provisions relating to the employment 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 employment of Federal employees' beneficiary associations of the type described in section 101 (19) of the Code.

§ 403.217 Organizations exempt from income tax—(a) In general. This section describes the exempt status 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), such services are excepted.

(See also § 403.215 for provisions relating to the exception of services performed in the employ of religious, charitable, scientific, educational, or other nonprofit public or private organizations exempt from Federal income tax because there is a reasonable reserve for any necessary corporate purposes; and § 403.218 for provisions relating to the exception of services performed in the employ of voluntary employees' beneficiary associations of the type described in section 101 (6) of the Code; § 403.219 for provisions relating to the exception of services performed in the employ of any private shareholder or individual engaged in any business not necessarily incidental to that business, or in the interest of any private shareholder or individual; 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 (11) of the Code.)
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 computing the tax 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 $160 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 determining 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, 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 test is the character of the organization in whose employ 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 test is the character of the organization in whose employ the services are performed.

By order of the Board, Charles R. Fritz, Acting Commissioner of Internal Revenue, for the United States for the years 1940, and such amount is paid to

§ 403.219 Voluntary employees' beneficiary associations. 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.

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.

Section 1607 (c) (10) (D) of the Act

The term "employment" means • • • any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him " • • • except—

(10) (D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependants, if (1) admission to membership in such association is limited to the members of such association or their dependants; and (2) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual; (Sec. 1607 (c) (10) (D), I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.)

§ 403.220 Federal employees' beneficiary associations. Services performed by an employee in the employ of the organization of the character described in section 1607 (c) (10) (D) are excepted.

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.

Section 1607 (c) (10) (E) of the Act

The term "employment" means • • • any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him • • • except—

(10) (E) Service performed in any calendar quarter of the year 1940, by a student who is enrolled and is regularly attending classes at a school, college, or university, or exempt from income tax under section 101 of the Internal Revenue Code, I.R.C., as added by sec. 614, Social Security Act Amendments of 1939.

§ 403.221 Students employed by schools, colleges, or universities not excepted.

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empt from income tax. Services performed in a calendar quarter by a student who is enrolled and is regularly attending classes at such school, college, or university; and

(b) 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.

A calendar quarter is a period of three calendar months ending on March 31, June 30, September 30, or December 31.

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.

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 an employee in the employment of an organization except from income tax, see §302.217 (Q).)

Section 1607 (c) (11) of the Act

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(11) Service performed in the employ of a foreign government, an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in the employ of the United States Government by its employees or of an instrumentality thereof; and

(B) If the Secretary of State shall certify 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 similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof; and

(C) If 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 similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

For purposes of this exception, the citizenship or residence of the employee is immaterial.

Section 1607 (c) (13) of the Act

The term "employment" means * * * any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him * * * except—

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and regularly attending classes in such a hospital or a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law.

The term "wages" means all remuneration for employment, including the cash value of any remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid by such employer with respect to employment during such calendar year;
(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes available to its employees, either individually or for a class or classes of its 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 (a) retirement, or (b) sickness or accident disablement, or death, provided the employer (1) does not take the option of receiving, instead of provision for such death benefit, any part of such payment or, if such death benefit is paid, a part of any premium (or contributions to premiums) paid by the employer, (2) has not the right, under the provisions of the plan or system of policy or insurance providing for such death benefit, to assign such benefit, 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.

(3) The payment by an employer (without deduction from the remuneration of the employee) of a part of the tax imposed upon an employee under section 1600 or (3) of any payment required from an employer under a State unemployment compensation law. 

(4) Dismissal payments which the employer is not legally required to make. (Sec. 1607 (b) (1) of the Social Security Act Amendments of 1939.)

§403.227 Wages—(a) In general. Whether remuneration paid on or after January 1, 1940, for employment performed after December 31, 1939, constitutes wages is determined under section 1607 (b) of the Act, that is, section 1607 (b), as amended, effective January 1, 1940, of the Social Security Act Amendments of 1939. This section of these regulations 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.

The term "wages" means all remuneration for employment unless specifically excepted under section 1607 (b) of the Act (see §403.228 of these regulations).

The name by which the remuneration for employment is designated is immaterial. Bonuses, commissions are wages within the meaning of the Act if paid as compensation for employment.

The basis upon which the remuneration is paid is 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 upon the basis of the fair value of such items at the time of payment.

Ordinary, 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 efficiency or serviceability 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.

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 within the meaning of the Act, and the tax is payable with respect thereto.

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 performance of his duties computed by the employer, and adding to the salary the amount of the excess, if any, of the expenses 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 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.

§403.228 Exclusions from wages—(a) $3,000 limitation. The term "wages" does not include that part of the remuneration paid on or after January 1, 1940, 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.

The $3,000 limitation applies only if the remuneration paid by an employer to an employee for employment during any one calendar year exceeds $3,000. The limitation 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 $5,500 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 to employee A by employer B without imposing a tax, with respect to employment during the calendar year 1941).

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 an employee constitutes wages and is subject to the tax.

Example 2. 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 $5,000, and only that part of the remuneration constitutes wages subject to the tax. The $300 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. 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. 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, and Z (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. 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:

(1) retirement;
(2) sickness or accident disability;
(3) medical and hospitalization expenses in connection with sickness or accident disability, or
(4) death, provided the employee (i) 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 have such payment made to him, 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.

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. It is immaterial for purposes of this exclusion whether the amount or possibility of any item of such payments was 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 to be made by 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.” Such payment 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), 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 employer to the employer.*

SUBPART D-CREDITS AGAINST TAX

SECTION 1601 OF THE ACT

CREDITS AGAINST TAX

(a) CONTRIBUTIONS TO STATE UNEMPLOYMENT FUNDS. (1) The taxpayer may, to the extent provided in this subsection and subsection (g) of the Act, credit against the tax imposed by section 1604 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under another unemployment compensation law of a State which is entitled to receive contributions paid under such law.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid within the State which is entitled to receive such contributions.

(b) Dismissal payments. (1) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 1604 to remit contributions for the next following such last day, but such credit shall not exceed 90 per centum of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(2) The preceding provisions of this subsection shall not apply to the credit against the tax of a taxpayer for any taxable year if such taxpayer is required under the unemployment compensation law of the State with respect to services subject to such other law, the payment into the proper unemployment fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 1604.

(c) LIMIT ON TOTAL CREDITS. The total credits allowed to a taxpayer under this subsection shall not exceed 90 per centum of the tax against which such credits are allowable. (Sec. 1601, I.R.C., as amended by sec. 609, Social Security Act Amendments of 1939.)

SECTION 1604 (f) AND (g) OF THE ACT

(1) UNEMPLOYMENT FUND. The term “unemployment fund” means a special fund,
established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the credit of the Unemployment Trust Fund established by section 804 of the Social Security Act, as amended, shall be considered as part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State shall be considered as part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation due to the credit of individuals in his employ, to the extent that such payments are made by him without being deductible from the gross earnings of such individuals in his employ. (Sec. 1607 (f), (g), I.R.C., as amended by sec. 614, Social Security Act Amendments of 1939.)

SECTION 902 (e) OF THE SOCIAL SECURITY ACT
AMENDMENTS OF 1939

Notwithstanding the provisions of section 1601 (a) and (2) of the Internal Revenue Code, as amended, permitted under the provisions of such section 1601, against the tax for the taxable year in which remuneration is paid for services rendered during a prior year, for contributions with respect to such remuneration which have not been credited against the tax for any prior taxable year. Credit shall be permitted under this subsection only against the tax for the years 1940, 1941, and 1942, and only for contributions with respect to remuneration for services rendered after December 31, 1938.

SECTION 902 (1) OF THE SOCIAL SECURITY ACT
AMENDMENTS OF 1939

No part of the tax imposed by the Federal Unemployment Tax Act, whether or not the taxpayer is entitled to a credit against the tax for such payment, shall be considered as income within the meaning of section 57 of the Act entitled "An Act to establish a national system of old-age,Unemployment, and health insurance" throughout the United States", approved July 1, 1935, as amended.

§ 403.401 Credit against tax for contributions paid.—(a) In general. Subject to the provisions of paragraphs (b), (c), (d), and (e), 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 of section 1601 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 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 amount of 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 of the total amount of such credit, however, may not 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 the time within which contributions may be paid in order to be allowable as credit.—(1) General rule. In order to be allowable as credit against the tax, contributions must have been actually paid into the State unemployment fund on or before the last day of the taxable year upon which the return for the taxable year is required to be filed, except that under the conditions described in subparagraph (2) of this paragraph, payments may be paid after that time. (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.)

(2) Exception when contributions are paid after July 1. Contributions for any taxable year which are paid into a State unemployment fund after the last day upon which the return for the taxable year is required to be filed but before July 1 next following such last day, and in such case 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 §§ 403.506 and 403.507.)

Example 2. The facts are the same as in example 1, except that the O Company for the calendar year 1941 discloses a total tax of $12,000. The company is entitled to a credit of $9,000 (90 percent of the amount of the contributions ($10,000), or $7,200, the net liability for Federal tax being $4,800 ($12,000 minus $7,200).

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, granted 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, but before July 1, 1941, the R Company is entitled to the 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).

(3) Exception when taxpayers’ assets are in custody or control of certain fiduciaries. Contributions of a taxpayer whose assets, at any time during the period from the last day upon which the return for the taxable year is required to be filed to June 30 next following such last day, are subject to being received by any person being, subject to the statutory period of limitations applicable to credits), and upon such payment, may be credited against the tax 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. (4) Exception 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 this section 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 payments 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 contribution to State X for the quarter ended December 31, 1940. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State X, and pays to State X contributions in 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 X 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).

(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), below.)

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 the employer 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.

Example 2. Under the unemployment compensation law of State X, 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), above, and to the extent of any limitations of paragraphs (a), (b), and (c), 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 which remuneration was 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 in such year of which 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 3.7 percent based on such remuneration. Since the contributions were paid to State Y on January 31, 1941, the contributions to State Y are, for purposes of the credit, deemed to have been paid on such date. Under the unemployment compensation law of State Y, contributions are allowable as credit against the total tax of $9,000 on which it is applied, the M Company may credit the contributions in the amount of $8,437.50 (2.7 percent of $300,000) against the tax for the calendar year 1940 for services performed during the years 1939 and 1940. M's employees are paid $300,000 for services rendered in the years 1939 and 1940. 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 tax paid, the $3,062.50 ($8,437.50 minus $5,375.00) which is applied to the remuneration paid in 1939 but not paid until 1940 is allowable as credit against the total tax of $9,000 on which it is applied, the M Company may credit the contributions in the amount of $9,000 (3 percent of $300,000) against the tax for the calendar year 1939.

§ 403.402 Additional credit against tax.—(a) In general. In addition to the credit allowed under law (a), a taxpayer may credit against the tax imposed by section 1600 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 1602 (below), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if the remuneration paid by him had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a rate of 2.7 percent, whichever rate is lower. (See 1601 (b) of the Social Security Act Amendments of 1939.)
for the taxable year as provided in section 1602 of the Act (or with respect to any provision of the Act 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 the taxable 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 (i) should then be subtracted from the amount computed under (ii), 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 applicable 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 State X 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 under section 1601 (b) of the Act, the amount of contributions required to be paid at the 1 percent rate ($250) is deducted in accordance with section 425. Thus, A is entitled to an additional credit under section 1601 (b) of the Act.

(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 to him with respect to each of such State laws shall be computed separately (in accordance with paragraph (b) of this section) and the total additional credit allowable to the taxpayer 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, 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 a credit is taken.

§ 403.403 Proof of credit—(a) Credit under section 1601 (a) of the Act. 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 (with respect to the law of which the additional credit is claimed) 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 after the date of the Act and the information called for in (v).

(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.

(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 taxpayer 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, which is claimed as a credit against the tax for any calendar year unless there is submitted to the Commissioner:

(2) Such other or additional proof as the Commissioner may deem necessary to establish the right to the special credit provided for under section 1601 (b) of the Act.

SUBJECT E—RETURNS, PAYMENT OF TAX, AND RECORDS

SECTION 1604 OF THE ACT

RETURNS

(a) Returns. Not later than January 31, next following the close of the tax-
of, shall keep such records, render under oath such statements, make such returns, and comply with all regulations or requirements as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

SECTION 3303 of the Internal Revenue Code

NOTICE TO COLLECTOR, STATEMENTS, AND ACCOUNTS

Whensoever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, shall keep such books of account, or keep and preserve such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

SECTION 3302 of the Internal Revenue Code

AUTHORITY TO ADMINISTER OATHS, TAKE TESTIMONY, AND CERTIFY

(a) Internal Revenue Personnel. (1) Persons in Charge of Administration of Internal Revenue Laws Generally. Every collector, deputy collector, internal revenue agent, and internal revenue officer assigned to duty under an internal revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation administered by law.

(b) Persons in Charge of Exports and Drawbacks. Every collector of internal revenue and internal revenue officer assigned to duty under authority of law, or by regulation administered by law, to collect duties on imports and exports and on drawbacks is authorized to administer such oaths and to certify to such papers as may be prescribed under authority of law or regulation administered by law.

(c) Others. Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority of law may be administered under the authority of the internal revenue laws of the United States.

SECTION 3330 of the Internal Revenue Code

WITNESSING OF RETURNS IN LIEU OF OATH

The Commissioner, with the approval of the Secretary, may by regulation prescribe that in any case in which any person authorized to administer oaths under the internal revenue laws, or by any regulation administered by law, may be competent to administer such oaths, such oath or affirmation may be administered by some other person authorized to administer oaths under the internal revenue laws of the United States.

SECTION 3312 (a), (b), and (c) of the Internal Revenue Code

RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR

(a) Authority of Collector. If any person fails to make and file a return or list as required by law or regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise.

(b) Authority of Commissioner. In any case, such return or list may be made by the Commissioner or by any person permitted by the Commissioner to administer oaths.

(1) To make return. Make a return, or
(2) To amend collector's return. Amend any return made by a collector or deputy collector.

(c) Legal status of returns. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be good and sufficient for all legal purposes.

SECTION 3814 (a) of the Internal Revenue Code

EXAMINATION OF BOOKS AND WITNESSES

To determine liability of the taxpayer, the Commissioner or other duly designated officer, may, if he believes that the accuracy of any return or any part thereof is in question, or if the Commissioner believes that evidence is necessary for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, by notice in writing to the taxpayer, require the production of books, papers, and records, or any part thereof, and examine any books, papers, records, or accounts that may be material thereto, prescribed by law or regulation applicable thereto.

PARTS OF THE ACT

(b) Extension of Time of Filing. The Commissioner may extend the time for the return of the tax imposed by this subchapter, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than ninety days.

(c) Payability. Returns filed under this subchapter shall be open to inspection in the manner provided for by any revenue act, and subject to the same provisions of law, including penalties, as returns made under chapter 1, except that the provisions of section 1 of this act (a), (b), and (c) of section 58 shall not apply. (Sec. 1604, I.R.C., as amended by sec. 412, Social Security Act Amendments of 1939.)

SECTION 1609 of the ACT

PAYMENT OF TAXES

(a) Administration. The tax imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury as internal-revenue collections.

(b) Adult Debit. If any person to whom an internal revenue agent is to give a return or list under authority of law, without failing to pay such return or list to him, or to pay the tax thereon, the tax may be collected against such person, and any amount so collected shall be paid into the Treasury as internal-revenue collections. Provided, however, that where the amount of the tax due from any such person is less than $500, the tax may be collected by an internal revenue agent on the written authority of the Secretary, and any amount so collected shall be paid into the Treasury as internal-revenue collections.

(c) Collection of Tax. All such taxes shall be collected within the statutory period of limitation applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun—

(1) Within six years after the assessment.
(2) Prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

§ 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 construc-
tively 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 ceasing 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 effect. In the case of a 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. Except as provided in this section, each return shall be signed and verified under oath or affirmation 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. 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.

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.

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.* § 403.505 Use of prescribed forms. Copies of the prescribed return form will so far as practicable be prepared 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 prescribed application thereto to the collector in ample time to have their returns prepared, verified, and filed, and with the collector on or before the due date. (See § 403.505, relating to the place and time for filing returns; see also section 403.603, 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 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, such statement shall be made to relieve the employer from liability for the addition to tax imposed for the delinquency of filing the return by section 3612 of the Internal Revenue Code (see § 403.505 (a) of these regulations) provided that, without unnecessary delay, such tentative return is supplemented by a return made on the proper form.

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 (e) 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 and shall be accurately 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 for which the return is filed. If the employer has no principal place of business in the United States, the collector 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 on or before the prescribed time, see §§ 403.603, 403.604, and 403.605 of these regulations and 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 filing returns when the employer discloses in his return the reason therefor to the collector in ample time to have their returns prepared, verified, and 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 31st 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 September 30. 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 shall be paid upon notice and demand from the collector. For provisions relating to interest, additions to tax, and penalties, see §§ 403.602, 403.604, and 403.605 of the Internal Revenue Code relating to penalties.*
tax or any part or installment thereof upon the date or dates prescribed for the payment thereof, shall 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 six 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.

An application for an extension of time for the payment of such tax, tax 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 three 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, tax or installment if an extension 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.

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 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 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 1665 (d) of the Act.)

§ 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. 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—

1. 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;

2. The amount of such remuneration which constitutes wages subject to the tax (see §§ 403.227 and 403.228);

(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. All records required by these regulations shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to interested revenue officers. Records shall be available at all times for inspection by such officers. If the employer has a principal place of business in the United States, the records required by paragraphs (a) and (c) of this section shall be maintained for a period of at least four 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 four years after the date the tax for the calendar year to which they relate. Records required by paragraphs (d) of this section (including any record required by paragraph (a) or (c) which relates to a claim) shall be maintained for a period of at least four years after the date the claim is filed.
Jeopardy Assessments

Section 3690 of the Internal Revenue Code

(a) If the Commissioner believes that the collection of the amount of the tax (estate tax, gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with interest and penalties the assessment of which is provided for by law), by certification to the collector in the county in which the taxpayer may deposit with the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful without regard to the period prescribed in section 3690.

(b) The collection of the whole or any part of the amount of the tax would be delayed by distraint, shall be stayed by filing with the collector a bond in such amount, not exceeding double the amount which is to be immediately due and payable, and immediately notice and demand shall be made by the collector for the payment thereof. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, with such sureties, as the collector deems necessary. The collection of the whole or any part of the amount would be stayed by distraint, shall be delayed by the lien of any mortgage or other encumbrance, or by the staying of any suit or proceeding in any court to enforce collection of the amount, with such sureties, as the collector deems necessary, conditioned upon the payment of the amount, collection of which is stayed, the time at which, but for this section, such amount would be due.

§ 403.601 Jeopardy assessments. Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he shall 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, the date on which the tax was due, and the fact that the tax was not 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.

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 which is to be immediately due and payable, and immediately notice and demand shall be made by the collector for the payment thereof. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, with such sureties, as the collector deems necessary, conditioned upon the payment of the amount, collection of which is stayed, the time at which, but for this section, such amount would be due.

§ 403.602 Refund or credit of overpayments; abatement of overassessments—(a) Who may make claims. If the amount of the tax has been erroneously or illegally assessed or collected, or the amount has been paid in excess of the correct amount thereof, 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 or Form 4840 which he files. If more than the correct amount of tax, penalty, or interest is assessed or paid to the collector, the person against whom the assessment is made may file a claim for abatement of such overassessment.

(b) Filing of claims. Each claim for refund, credit, or abatement under the provisions of this section shall be made on Form 843 in accordance with these regulations and the instructions relating to such form. Copies of Form 843 may be obtained from any collector. A separate claim 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 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.

(d) Claims improperly presented. A claim which does not comply with the requirements of this section shall not be considered for any purpose as a claim for refund, credit, or abatement.

(e) Proof of representation 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 the return 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.

(1) Refunds under section 1601 (a) (5) of the Act. The provisions of this section of these regulations shall apply in the case of claims for refund based upon credit allowable under section 1601 of the Act (see subpart D of these regulations).

Interest and Additions to Tax

**SECTION 1605 (b) of the Act**

**ADDITION TO TAX IN CASE OF DELINQUENCY**

If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the date the tax became due until paid.

**SECTION 3655 of the Internal Revenue Code**

**NOTICE AND DEMAND FOR TAX**

(a) **DELIVERY.** Where it is not otherwise provided, the collector shall in person or by deputy, within 10 days after receiving any list of taxes from the Commissioner, give notice to each person liable to pay any taxes stated therein that he has taken up such usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof.

(b) **ADDITION TO TAX FOR NONPAYMENT.** If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of 5 per centum additional upon the amount of taxes, and interest at the rate of 6 per centum per annum from the date of such notice to the date of payment.

§ 403.603 Interest. If the tax is not paid to the collector when due, interest accrues at the rate of 6 per centum 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 of 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.

**SECTION 3612 (d) and (e) of the Internal Revenue Code**

(d) **ADDITIONS TO TAX.—(1) FAILURE TO FILE RETURN.** In case of any failure to make and file a return or list within the time prescribed by law, or by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax, penalty, or interest, 5 percent per centum of the tax, penalty, or interest, which is not paid when due, there shall be added as part of the tax the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(b) Any person required under this subsection to pay any tax, penalty, or interest law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purpose of computing, assessment, collection, or collection of any tax imposed by this subchapter who wilfully fails to pay any tax, the collector, or deputy any false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 percent of the amount of the tax.

(e) **COLLECTION OF ADDITIONS TO TAX.** The amount added to any tax under paragraphs (a) and (b) shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

§ 403.605 Additions to tax for delinquent or false returns. (a) Delinquent or false returns. As a reasonable cause for failure to file the return within the prescribed time, a certain percent of the amount of the tax or the payment thereof, shall be the duty of the Commissioner shall add to the tax 50 percent of the amount of the tax.

(b) False returns. If a false or fraudulent return or list is willfully made, the addition to tax under section 3612 (d) of the Internal Revenue Code is 50 percent of the total tax due for the entire period involved including any tax previously paid.

**Penalties**

**SECTION 2707 of the Internal Revenue Code, Made Applicable by Section 1610 of this Act**

**PENALTIES**

(a) Any person who willfully fails to pay, collect, or truthfully account for and pay over the tax * * * or willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(b) Any person required under this subchapter to pay any tax, penalty, or interest law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purpose of computing, assessment, collection, or collection of any tax imposed by this subchapter who willfully fails to pay any tax, keep such records, or supply such information, at the time or times required by law or regulation, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person required under this subchapter to collect, account for and pay any tax imposed by this subchapter, who willfully fails to collect, or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, 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.

(d) The term "person" as used in this section includes an officer or employee of a corporation, or a 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.

**SECTION 3618 of the Internal Revenue Code**

**PENALTIES**

Whenever any person—

(a) **FALSE STATEMENTS.** Delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defraud or evade the valuation, assessment, or assessment intended to be made; or,

(b) **MISSTATE OR CEPT STATEMENTS.** Being duly summoned to appear to testify, or to appear and produce books as required under section 3618, neglects to appear or to produce said books—

* * *

Whenever any person shall make or cause to be made false or fictitious statements, representation or promise, with intent to defraud or evade the valuation, assessment, or assessment intended to be made; or,

* * *

**SECTION 55 (A) of the Criminal Code, as Amended**

Whoever shall make or cause to be made false or fictitious statements, representation or promise, with intent to defraud or evade the valuation, assessment, or assessment intended to be made; or, by any person or officer in the civil, military, or naval service of the United States, or any corporation in which the

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United States of America is a stockholder, any claim upon or against the Government of the United States or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or 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 statement or representation, or make or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing such to be false or in any manner within the jurisdiction of the United States or of any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States or any department or officer thereof, or any corporation in which the United States of America is a stockholder, as aforesaid, in order to obtain the payment or allowance of any false or fraudulent claim:

(1) Assistance in preparation or presentation. Any person who willfully aids or abets in the preparation or presentation, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall be deemed guilty of any such falsity or fraud and, with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or, where such falsity or fraud is with the knowledge of or consent of the person authorized or required to present such return, affidavit, claim, or document, shall be deemed guilty of any such falsity or fraud and, with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or, where such falsity or fraud is with the knowledge of or consent of the person authorized or required to present such return, affidavit, claim, or document, shall also be deemed guilty of any such falsity or fraud.

(2) Person defined. The term "person" as used in this subsection includes any officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member, or otherwise, aids or abets in the preparation or presentation of such return, affidavit, claim, or document, to defraud the United States or any department or officer thereof, or any corporation in which the United States of America is a stockholder, or any officer thereof, or any corporation in which the United States of America is a stockholder.

(3) In case of change in law. The Commissioner may make such regulations as may be necessary by reason of any alteration of law in relation to any tax imposed by this chapter. The Commissioner may prescribe and publish all needful rules and regulations for the enforcement of this title [Internal Revenue Code].

(4) Provisions of regulations. In pursuance of section 160 of the Act and other provisions of the internal revenue laws, the foregoing regulations are hereby prescribed.*


Approved: September 12, 1940.

John L. Sullivan, Acting Secretary of the Treasury.

[6. P. Doc. 45-3856; Filed, September 13, 1940; 4:02 p. m.]

TITLE 35—PENSIONS, BONUSES, AND VETERANS' RELIEF

CHAPTER I—VETERANS' ADMINISTRATION

REVISION OF REGULATIONS RELATING TO APPORTIONMENT OF DEATH PENSION OR COMPENSATION

§ 5.2591 (a) Laws under which apportionment may be made. For the purposes of Public No. 2, 73d Congress; sections 28, 30 and 31, Public No. 141, 73d Congress; Act of May 1, 1926, as reenacted by section 30, Public No. 141; the General Law as amended by section 314 of the Act of October 6, 1917, reenacted by section 30, Title III, Public No. 141; the General Law as amended by section 314 of the Act of October 6, 1917, reenacted by section 30, Title III, Public No. 141; Public No. 484, 73d Congress, as amended; Public No. 394, 73d Congress; Public No. 196, 73d Congress; Public No. 198, 76th Congress, death compensation or pension shall be apportioned where the child or children of a deceased person who served are not in the actual or constructive custody of the widow, except that no child in the amount of compensation or pension payable to the widow for herself and child or children will be made where the child or children are separated from the widow, due to her incompetency, and a fiduciary has been appointed for the widow who is providing property for the children from her estate pursuant to a decree of a court of competent jurisdiction.

(2) Effective dates of apportionment. The effective date of the apportionment will be the first day of the month next succeeding that in which notice was received in the Veterans' Administration that a child or children are not in the actual or constructive care and custody of the widow: Provided, That where prior to the initial award to the widow the lack of custody in the widow is shown, the compensation or pension will be apportioned in accordance with the facts found for all periods affected.

(c) Method of computing rates—(1) Compensation of rates for widows and children. The share for all children for whom claim is filed will be that amount to which they would be entitled if there were no widow. The widow's share will be that difference between the widow's share and the total amount payable on account of the widow and all children for whom claim is filed. In all instances, the amount payable to or for the children will be divided equally among the children, regardless of their ages. The share for any children in the widow's custody will be added to the widow's share. If, in the application of this rule, the widow's share would be reduced to an amount lower than 50 per cent of that to which she would be entitled if there were no children, then her share will be 50 per cent of the amount to which she would be entitled if there were no children, and the difference between the amount of such widow's share and the entire amount payable for the widow and children will be the children's share.

(2) Computation of rate for additional beneficiary. In any case wherein death compensation or pension is being currently paid and claim is filed by or for an additional dependent of the veteran, who is entitled to an apportioned share, no reduction will be made in the current amount of compensation or pension currently being paid and the total amount payable by reason of including the additional dependent. On and after the first day of the month next succeeding that in which the changed award is approved, the amount payable during such period and for the additional dependent will be the difference between the amount of compensation or pension currently being paid and the total amount payable by reason of including the additional dependent. On and after the first day of the month next succeeding that in which the changed award is approved the total amount of compensation or pension will be apportioned as provided in the preceding paragraph (c) (1).

(d) Special apportionments. In any case wherein it is clearly shown by competent evidence that the application of the foregoing provisions of these regulations will result in unjust hardship to the widow, children or dependent parents, and relief can be afforded without undo hardship to the other persons at