

# REVENUE ACT OF 1936

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## REVENUE ACT OF 1936

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## AN ACT TO PROVIDE REVENUE, EQUALIZE TAXATION, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and section according to the following Table of Contents, may be cited as the "Revenue Act of 1936";

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**TITLE I—INCOME TAX****SUBTITLE A—INTRODUCTORY PROVISIONS****Sec. 1. Application of Title**

The provisions of this title shall apply only to taxable years beginning after Dec. 31, 1935. Income, war-profits, and excess-profits taxes for taxable years beginning prior to Jan. 1, 1936, shall not be affected by the provisions of this title, but shall remain subject to the applicable provisions of prior revenue Acts, except as such provisions are modified by legislation enacted subsequent to this Act.

**Sec. 2. Cross References**

The cross references in this title to other portions of the title, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

**Sec. 3. Classification of Provisions**

The provisions of this title are herein classified and designated as—

Subtitle A—Introductory provisions,  
 Subtitle B—General provisions, divided into Parts and sections,  
 Subtitle C—Supplemental provisions, divided into Supplements and sections.

**Sec. 4. Special Classes of Taxpayers**

The application of the General Provisions and of Supplements A to D, inclusive, to each of the following special classes of taxpayers, shall be subject to the exceptions and additional provisions found in the Supplement applicable to such class, as follows:

- (a) Estates and trusts and the beneficiaries thereof,—Supplement E.
- (b) Members of partnerships,—Supplement F.
- (c) Insurance companies,—Supplement G.
- (d) Nonresident alien individuals,—Supplement H.
- (e) Foreign corporations,—Supplement I.
- (f) Individual citizens of any possession of the United States who are not otherwise citizens of the United States and who are not residents of the United States,—Supplement J.
- (g) Individual citizens of the United States or domestic corporations, satisfying the conditions of section 251 by reason of deriving a large portion of their gross income from sources within a possession of the United States,—Supplement J.
- (h) China Trade Act corporations,—Supplement K.

**SUBTITLE B—GENERAL PROVISIONS****PART I—RATES OF TAX****Sec. 11. Normal Tax on Individuals**

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 4 per centum of the amount of the net income in excess of the credits against net income provided in Section 25.



**Sec. 12. Surtax on Individuals**

(a) Definition of "Surtax Net Income."—As used in this section the term "surtax net income" means the amount of the net income in excess of the credits against net income provided in Section 25 (b).

(b) Rates of Surtax—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

Upon a surtax net income of \$4,000 there shall be no surtax; upon surtax net incomes in excess of \$4,000 and not in excess of \$6,000, 4 per centum of such excess.

\$80 upon surtax net incomes of \$6,000; and upon surtax net incomes in excess of \$6,000 and not in excess of \$8,000, 5 per centum in addition of such excess.

\$180 upon surtax net incomes of \$8,000; and upon surtax net incomes in excess of \$8,000 and not in excess of \$10,000, 6 per centum in addition of such excess.

\$300 upon surtax net incomes of \$10,000; and upon surtax net incomes in excess of \$10,000 and not in excess of \$12,000, 7 per centum in addition of such excess.

\$440 upon surtax net incomes of \$12,000; and upon surtax net incomes in excess of \$12,000 and not in excess of \$14,000, 8 per centum in addition of such excess.

\$600 upon surtax net incomes of \$14,000; and upon surtax net incomes in excess of \$14,000 and not in excess of \$16,000, 9 per centum in addition of such excess.

\$780 upon surtax net incomes of \$16,000; and upon surtax net incomes in excess of \$16,000 and not in excess of \$18,000, 11 per centum in addition of such excess.

\$1,000 upon surtax net incomes of \$18,000; and upon surtax net incomes in excess of \$18,000 and not in excess of \$20,000, 13 per centum in addition of such excess.

\$1,260 upon surtax net incomes of \$20,000; and upon surtax net incomes in excess of \$20,000 and not in excess of \$22,000, 15 per centum in addition of such excess.

\$1,560 upon surtax net incomes of \$22,000; and upon surtax net incomes in excess of \$22,000 and not in excess of \$26,000, 17 per centum in addition of such excess.

\$2,240 upon surtax net incomes of \$26,000; and upon surtax net incomes in excess of \$26,000 and not in excess of \$32,000, 19 per centum in addition of such excess.

\$3,380 upon surtax net incomes of \$32,000; and upon surtax net incomes in excess of \$32,000 and not in excess of \$38,000, 21 per centum in addition of such excess.

\$4,640 upon surtax net incomes of \$38,000; and upon surtax net incomes in excess of \$38,000 and not in excess of \$44,000, 24 per centum in addition of such excess.

\$6,080 upon surtax net incomes of \$44,000; and upon surtax net incomes in excess of \$44,000 and not in excess of \$50,000, 27 per centum in addition of such excess.

\$7,700 upon surtax net incomes of \$50,000; and upon surtax net incomes in excess of \$50,000 and not in excess of \$56,000, 31 per centum in addition of such excess.

\$9,560 upon surtax net incomes of \$56,000; and upon surtax net incomes in excess of \$56,000 and not in excess of \$62,000, 35 per centum in addition of such excess.

\$11,660 upon surtax net incomes of \$62,000; and upon surtax net incomes in excess of \$62,000 and not in excess of \$68,000, 39 per centum in addition of such excess.

\$14,000 upon surtax net incomes of \$68,000; and upon surtax net incomes in excess of \$68,000 and not in excess of \$74,000, 43 per centum in addition of such excess.

\$16,580 upon surtax net incomes of \$74,000; and upon surtax net incomes in excess of \$74,000 and not in excess of \$80,000, 47 per centum in addition of such excess.

\$19,400 upon surtax net incomes of \$80,000; and upon surtax net incomes in excess of \$80,000 and not in excess of \$90,000, 51 per centum in addition of such excess.

\$24,500 upon surtax net incomes of \$90,000; and upon surtax net incomes in excess of \$90,000 and not in excess of \$100,000, 55 per centum in addition of such excess.

\$30,000 upon surtax net incomes of \$100,000; and upon surtax net incomes in excess of \$100,000 and not in excess of \$150,000, 58 per centum in addition of such excess.

\$59,000 upon surtax net incomes of \$150,000; and upon surtax net incomes in excess of \$150,000 and not in excess of \$200,000, 60 per centum in addition of such excess.

\$89,000 upon surtax net incomes of \$200,000; and upon surtax net incomes in excess of \$200,000 and not in excess of \$250,000, 62 per centum in addition of such excess.

\$120,000 upon surtax net incomes of \$250,000; and upon surtax net incomes in excess of \$250,000 and not in excess of \$300,000, 64 per centum in addition of such excess.

\$152,000 upon surtax net incomes of \$300,000; and upon surtax net incomes in excess of \$300,000 and not in excess of \$400,000, 66 per centum in addition of such excess.

\$218,000 upon surtax net incomes of \$400,000; and upon surtax net incomes in excess of \$400,000 and not in excess of \$500,000, 68 per centum in addition of such excess.

\$286,000 upon surtax net incomes of \$500,000; and upon surtax net incomes in excess of \$500,000 and not in excess of \$750,000, 70 per centum in addition of such excess.

\$461,000 upon surtax net incomes of \$750,000; and upon surtax net incomes in excess of \$750,000 and not in excess of \$1,000,000, 72 per centum in addition of such excess.

\$641,000 upon surtax net incomes of \$1,000,000; and upon surtax net incomes in excess of \$1,000,000 and not in excess of \$2,000,000, 73 per centum in addition to such excess.

\$1,371,000 upon surtax net incomes of \$2,000,000; and upon surtax net incomes in excess of \$2,000,000 and not in excess of \$5,000,000, 74 per centum in addition of such excess.

\$3,591,000 upon surtax net incomes of \$5,000,000; and upon surtax net incomes in excess of \$5,000,000, 75 per centum in addition of such excess.

(c) Tax on Personal Holding Companies—For surtax on personal holding companies, see Section 351.

(d) Avoidance of Surtaxes by Incorporation—For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see Section 102.

**Sec. 13. Normal Tax on Corporations**

(a) Definition—As used in this title the term "normal-tax net income" means the net income minus the sum of—

(1) Interest on Obligations of the United States and its Instrumentalities—The credit provided in Section 26 (a).

(2) Dividends Received—The credit provided in Section 26 (b). Such credit shall not be allowed in the case of a mutual investment company, as defined in Section 48.

(3) Dividends Paid—In the case of a mutual investment company the credit provided in Section 27, computed without the benefit of subsection (b) thereof (relating to dividend carry-over).

(b) Imposition of Tax—There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation, a normal tax as follows:

Upon normal-tax net incomes not in excess of \$2,000, 8 per centum.

\$160 upon normal-tax net incomes of \$2,000; and upon normal-tax net incomes in excess of \$2,000 and not in excess of \$15,000, 11 per centum in addition of such excess.

\$1,590 upon normal-tax net incomes of \$15,000; and upon normal-tax net incomes in excess of \$15,000 and not in excess of \$40,000, 13 per centum in addition of such excess.

\$4,840 upon normal-tax net incomes of \$40,000; and upon normal-tax net incomes in excess of \$40,000, 15 per centum in addition of such excess.

(c) Exempt Corporations—For corporations exempt from taxation under this title, see Section 101.

(d) Banks and Trust Companies—For rate of tax on certain banks and trust companies, see Section 104.

**Sec. 14. Surtax on Undistributed Profits**

(a) Definitions—As used in this title—

(1) The term "adjusted net income" means the net income minus the sum of—

(A) The normal tax imposed by Section 13.

(B) The credit provided in Section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

(C) In the case of a holding company affiliate (as defined in Section 2 of the Banking Act of 1933), the amount allowed as a credit under Section 26 (d).

(D) In the case of a national mortgage association created under Title III of the National Housing Act, the amount allowed as a credit under Section 26 (e).

(2) The term "undistributed net income" means the adjusted net income minus the sum of the dividends paid credit provided in Section 27 and the credit provided in Section 26 (c), relating to contracts restricting dividends.

(b) Imposition of Tax—There shall be levied, collected, and paid for each taxable year upon the net income of every corporation a surtax equal to the sum of the following, subject to the application of the specific credit as provided in subsection (c):

7 per centum of the portion of the undistributed net income which is not in excess of 10 per centum of the adjusted net income.

12 per centum of the portion of the undistributed net income which is in excess of 10 per centum and not in excess of 20 per centum of the adjusted net income.

17 per centum of the portion of the undistributed net income which is in excess of 20 per centum and not in excess of 40 per centum of the adjusted net income.

22 per centum of the portion of the undistributed net income which is in excess of 40 per centum and not in excess of 60 per centum of the adjusted net income.

27 per centum of the portion of the undistributed net income which is in excess of 60 per centum of the adjusted net income.

(c) Adjusted Net Income Less Than \$50,000—

(1) Specific Credit—If the adjusted net income is less than \$50,000, there shall be allowed a specific credit equal to the portion of the undistributed net income which is in excess of 10 per centum of the adjusted net income and not in excess of \$5,000, such credit to be applied as provided in paragraph (2).

(2) Application of Specific Credit—If the corporation is entitled to a specific credit, the tax shall be equal to the sum of the following:

(A) A tax computed under subsection (b) upon the amount of the undistributed net income reduced by the amount of the specific credit, plus—

(B) 7 per centum of the amount of the specific credit.

(d) Exemption from Surtax—The following corporations shall not be subject to the surtax imposed by this section:

(1) Banks as defined in Section 104.

(2) Domestic corporations which for any portion of the taxable year are in bankruptcy under the laws of the United States, or are insolvent and in receivership in any court of the United States or of any State, Territory, or the District of Columbia.

(3) Insurance companies subject to the tax imposed under Section 201, 204, or 207.

(4) Foreign corporations.

(5) Corporations which, by reason of deriving a large portion of their gross income from sources within a possession of the United States, are entitled to the benefits of Section 251.

(6) Corporations organized under the China Trade Act, 1922.

(7) Joint Stock Land Banks organized under the Federal Farm Loan Act, as amended.

(e) Exempt Corporations—For corporations exempt from taxation under this title, see Section 101.

(f) Tax on Personal Holding Companies—For surtax on personal holding companies, see Section 351.

(g) Improper Accumulation of Surplus—For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see Section 102.

**PART II—COMPUTATION OF NET INCOME****Sec. 21. Net Income**

"Net income" means the gross income computed under Section 22, less the deductions allowed by Section 23.

**Sec. 22. Gross Income**

(a) General Definition—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly.

(b) Exclusions from Gross Income—The following items shall not be included in gross income and shall be exempt from taxation under this title:

(1) Life Insurance—Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to

pay interest thereon, the interest payments shall be included in gross income):

(2) **Annuities, &c.**—Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the taxable year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this title or prior income tax laws in respect of such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) or this paragraph;

(3) **Gifts, Requests, and Devises**—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

(4) **Tax-Free Interest**—Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations enumerated in clause (A), (B), or (C) shall, in the return required by this title, submit a statement showing the number and amount of such obligations owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after Sept. 1, 1917 (other than postal savings certificates of deposit) and in the case of obligations of a corporation organized under Act of Congress, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from the taxes imposed by the title;

(5) **Compensation for Injuries or Sickness**—Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

(6) **Ministers**—The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation;

(7) **Income Exempt Under Treaty**—Income of any kind, to the extent required by any treaty obligation of the United States;

(8) **Miscellaneous Items**—The following items, to the extent provided in Section 116:

Earned income from sources without the United States;

Salaries of certain Territorial employees;

The income of foreign governments;

Income of States, municipalities, and other political subdivisions;

Receipts of shipowners' mutual protection and indemnity associations;

Dividends from China Trade Act corporations;

Compensation of employees of foreign governments.

(c) **Inventories**—Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(d) **Distributions by Corporations**—Distributions by corporations shall be taxable to the shareholders as provided in Section 115.

(e) **Determination of Gain or Loss**—In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in Section 111.

(f) **Gross Income from Sources Within and Without United States**—For computation of gross income from sources within and without the United States, see Section 119.

### Sec. 23. Deductions from Gross Income

In computing net income there shall be allowed as deductions:

(a) **Expenses**—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(b) **Interest**—All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after Sept. 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from the taxes imposed by this title.

(c) **Taxes Generally**—Taxes paid or accrued within the taxable year, except—

(1) Federal income, war-profits, and excess-profits taxes (other than the excess-profits tax imposed by Section 106 of the Revenue Act of 1935);

(2) Income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of Section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

(3) Estate, inheritance, legacy, succession, and gift taxes; and

(4) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(d) **Taxes of Shareholder Paid by Corporation**—The deduction for taxes allowed by subsection (c) shall be allowed to a corporation in the case of taxes imposed upon a shareholder of the corporation upon his interest as shareholder which are paid by the corporation without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes.

(e) **Losses by Individuals**—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) If incurred in trade or business; or

(2) If incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) Of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. No loss shall be allowed as a deduction under this paragraph if at the time of the filing of the return such loss has been claimed as a deduction for estate tax purposes in the estate tax return.

(f) **Losses by Corporations**—In the case of a corporation, losses sustained during the taxable year and not compensated for by insurance or otherwise.

(g) **Wagering Losses**—Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(h) **Basis for Determining Loss**—The basis for determining the amount of deduction for losses sustained, to be allowed under subsection (e) or (f), shall be the adjusted basis provided in Section 113 (b) for determining the loss from the sale or other disposition of property.

(i) **Loss on Wash Sales of Stock or Securities**—For disallowance of loss deduction in the case of sales of stock or securities where within 30 days before or after the date of the sale the taxpayer has acquired substantially identical property, see Section 118.

(j) **Capital Losses**—Losses from sales or exchanges of capital assets shall be allowed only to the extent provided in Section 117 (d).

(k) **Bad Debts**—Debts ascertained to be worthless and charged off within the taxable year (or, in the discretion of the Commissioner, a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part, the Commissioner may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(l) **Depreciation**—A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(m) **Depletion**—In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation for improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary. In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this subsection for subsequent taxable years shall be based upon such revised estimate. In the case of leases the deductions shall be equitably apportioned between the lessor and lessee. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. (For percentage depletion allowable under this subsection, see Section 114 (b), (3) and (4).)

(n) **Basis for Depreciation and Depletion**—The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in Section 114.

(o) **Charitable and Other Contributions**—In the case of an individual, contributions or gifts made within the taxable year to or for the use of:

(1) The United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) A corporation, or trust, or 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 earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) The special fund for vocational rehabilitation authorized by Section 12 of the World War Veterans' Act, 1924;

(4) Posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual; or

(5) A fraternal society, order, or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals; to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. (For unlimited deduction if contributions and gifts exceed 90 per centum of the net income, see Section 120.)

(p) **Pension Trusts**—An employer establishing or maintaining a pension trust to provide for the payment of reasonable pensions to his employees (if such trust is exempt from tax under Section 165, relating to trusts created for the exclusive benefit of employees) shall be allowed as a deduction (in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under subsection (a) of this section) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount (1) has not theretofore been allowable as a deduction, and (2) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer or payment is made. Any deduction allowable under Section 23 (q) of the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934 which under such section was apportioned to any taxable year beginning after Dec. 31, 1935, shall be allowed as a deduction in the years to which so apportioned to the extent allowable under such section if it had remained in force with respect to such year.

(q) **Charitable and Other Contributions by Corporations**—In the case of a corporation, contributions or gifts made within the taxable year to or for the use of a domestic corporation, or domestic trust, or domestic community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or the prevention of cruelty to children (but in the case of contributions or gifts to a trust, chest, fund, or foundation, only if such contributions or gifts are to be used within the United States exclusively for such purposes), no part of the net earnings of which inures to the benefit of any private shareholder



or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; to an amount which does not exceed 5 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary.

(r) For deduction of dividends paid by certain banking corporations, see Section 121.

#### Sec. 24. Items not Deductible

(a) General Rule.—In computing net income no deduction shall in any case be allowed in respect of—

- (1) Personal, living, or family expenses;
- (2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;
- (3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;
- (4) Premiums paid on any life insurance policy covering the life of any office or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy;
- (5) Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this title; or
- (6) Loss from sales or exchanges of property, directly or indirectly, (A) between members of a family, or (B) except in the case of distributions in liquidation, between an individual and a corporation in which such individual owns, directly or indirectly, more than 50 per centum in value of the outstanding stock. For the purpose of this paragraph—(C) an individual shall be considered as owning the stock owned, directly or indirectly, by his family; and (D) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(b) Holders of Life or Terminable Interest.—Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this Act (except the deductions provided for in subsections (1) and (m) of Section 23) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled.

(c) Tax Withheld on Tax-Free Covenant Bonds.—For nondeductibility of tax withheld on tax-free covenant bonds, see Section 143 (a) (3).

#### Sec. 25. Credits of Individual Against Net Income

(a) Credits for Normal Tax Only.—There shall be allowed for the purpose of the normal tax, but not for the surtax, the following credits against the net income:

(1) Interest on United States Obligations.—The amount received as interest upon obligations of the United States which is included in gross income under Section 22.

(2) Interest on Obligations of Instrumentalities of the United States.—The amount received as interest on obligations of a corporation organized under the Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under Section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(3) Earned Income Credit.—10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(4) Earned Income Definitions.—For the purposes of this section—

(A) "Earned income" means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered, but does not include any amount not included in gross income, nor that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer, not in excess of 20 per centum of his share of the net profits of such trade or business, shall be considered as earned income.

(B) "Earned income deductions" means such deductions as are allowed by Section 23 for the purpose of computing net income, and are properly allocable to or chargeable against earned income.

(C) "Earned net income" means the excess of the amount of the earned income over the sum of the earned income deductions. If the taxpayer's net income is not more than \$3,000, his entire net income shall be considered to be earned net income, and if his net income is more than \$3,000, his earned net income shall not be considered to be less than \$3,000. In no case shall the earned net income be considered to be more than \$14,000.

(b) Credits for Both Normal Tax and Surtax.—There shall be allowed for the purposes of the normal tax and the surtax the following credits against net income:

(1) Personal Exemption.—In the case of a single person, a personal exemption of \$1,000; or in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,500. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be \$2,500. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them.

(2) Credit for Dependents.—\$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(3) Change of Status.—If the status of the taxpayer, insofar as it affects the personal exemption or credit for dependents, changes during the taxable year, the personal exemption and credit shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

#### Sec. 26. Credits of Corporations

In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

(a) Interest on Obligations of the United States and its Instrumentalities.—The amount received as interest upon obligations of the United States or

of corporations organized under Act of Congress which is allowed to an individual as a credit for purposes of normal tax by Section 25 (a) (1) or (2).

(b) Dividends Received.—85 per centum of the amount received as dividends from a domestic corporation which is subject to taxation under this title. The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organized under the China Trade Act, 1922, or from a corporation which under Section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large percentage of its gross income from sources within a possession of the United States.

(c) Contracts Restricting Payment of Dividends—

(1) Prohibition on Payment of Dividends.—An amount equal to the excess of the adjusted net income over the aggregate of the amounts which can be distributed within the taxable year as dividends without violating a provision of a written contract executed by the corporation prior to May 1, 1936, which provision expressly deals with the payment of dividends. If a corporation would be entitled to a credit under this paragraph because of a contract provision and also to one or more credits because of other contract provisions, only the largest of such credits shall be allowed, and for such purpose if two or more credits are equal in amount only one shall be taken into account.

(2) Disposition of Profits of Taxable Year.—An amount equal to the portion of the earnings and profits of the taxable year which is required (by a provision of a written contract executed by the corporation prior to May 1, 1936, which provision expressly deals with the disposition of earnings and profits of the taxable year) to be paid within the taxable year in discharge of a debt, or to be irrevocably set aside within the taxable year for the discharge of a debt; to the extent that such amount has been so paid or set aside. For the purposes of this paragraph, a requirement to pay or set aside an amount equal to a percentage of earnings and profits shall be considered a requirement to pay or set aside such percentage of earnings and profits. As used in this paragraph, the word "debt" does not include a debt incurred after April 30, 1936.

(3) Double Credit not Allowed.—If both paragraph (1) and paragraph (2) apply, the one of such paragraphs which allows the greater credit shall be applied; and, if the credit allowable under each paragraph is the same, only one of such paragraphs shall be applied.

(d) Bank Affiliates.—In the case of a holding company affiliate (as defined in Section 2 of the Banking Act of 1933), the amount of the earnings or profits which the Board of Governors of the Federal Reserve System certifies to the Commissioner has been devoted by such affiliate during the taxable year to the acquisition of readily marketable assets other than bank stock in compliance with Section 5144 of the Revised Statutes. The aggregate of the credits allowable under this subsection for all taxable years shall not exceed the amount required to be devoted under such Section 5144 to such purposes.

(e) National Mortgage Associations.—In the case of a national mortgage association created under Title III of the National Housing Act, the amount of the earnings or profits which the Federal Housing Administrator certifies to the Commissioner has been devoted by such association during the taxable year to the acquisition of such reserves as the Administrator may require under the provisions of Section 303 of that Act.

#### Sec. 27. Corporation Credit for Dividends Paid

(a) Dividends Paid Credit in General.—For the purposes of this title, the dividends paid credit shall be the amount of dividends paid during the taxable year.

(b) Dividend Carry-Over.—In computing the dividends paid credit for any taxable year, if the dividends paid during the taxable year are less than the adjusted net income, there shall be allowed as part of the dividends paid credit, and in the following order:

(1) Dividends paid during the second preceding taxable year in excess of the adjusted net income for such year, to the extent not needed as a dividends paid credit for the taxable year preceding the taxable year the tax for which is being computed; and

(2) Dividends paid during the first preceding taxable year in excess of the adjusted net income for such year. no credit shall be allowed for dividends paid by a corporation prior to its first taxable year under this title.

(c) Dividends in Kind.—If a dividend is paid in property other than money (including stock of the corporation if held by the corporation as an investment) the dividends paid credit with respect thereto shall be the adjusted basis of the property in the hands of the corporation at the time of the payment, or the fair market value of the property at the time of the payment, whichever is the lower.

(d) Dividends in Obligations of the Corporation.—If a dividend is paid in obligations of the corporation, the amount of the dividends paid credit with respect thereto shall be the face value of the obligations, or their fair market value at the time of the payment, whichever is the lower. If the fair market value is lower than the face value, then when the obligation is redeemed by the corporation, the excess of the amount for which redeemed over the fair market value at the time of the dividend payment (to the extent not allowable as a deduction in computing net income for any taxable year) shall be treated as a dividend paid in the taxable year in which the redemption occurs.

(e) Taxable Stock Dividends.—In case of a stock dividend or stock right which is a taxable dividend in the hands of shareholders under Section 115 (f), the dividends paid credit with respect thereto shall be the fair market value of the stock or the stock right at the time of the payment.

(f) Distributions in Liquidation.—In the case of amounts distributed in liquidation the part of such distribution which is properly chargeable to the earnings or profits accumulated after Feb. 28, 1913, shall, for the purposes of computing the dividends paid credit under this section, be treated as a taxable dividend paid.

(g) Preferential Dividends.—No dividends paid credit shall be allowed with respect to any distribution unless the distribution is pro rata, equal in amount, and with no preference to any share of stock as compared with other shares of the same class.

(h) Nontaxable Distributions.—If any part of a distribution (including stock dividends and stock rights) is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under this title for the period in which the distribution is made, no dividends paid credit shall be allowed with respect to such part.

### PART III—CREDITS AGAINST TAX

#### Sec. 31. Taxes of Foreign Countries and Possessions of United States

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax, to the extent provided in Section 131.

#### Sec. 32. Taxes Withheld at Source

The amount of tax withheld at the source under Section 143 or 144 shall be allowed as a credit against the tax.

**Sec. 33. Credit for Over-Payments**

For credit against the tax of overpayments of taxes imposed by this title or other taxable years, see Section 322.

**PART IV—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING****Sec. 41. General Rule**

The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in Section 48 or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year. (For use of inventories, see Section 22 (c).)

**Sec. 42. Period in Which Items of Gross Income Included**

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under Section 41, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period.

**Sec. 43. Period for Which Deductions and Credits Taken**

The deductions and credits (other than the dividends paid credit provided in Section 27) provided for in this title shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period.

**Sec. 44. Installment Basis**

(a) Dealers in Personal Property—Under regulations prescribed by the Commissioner with the approval of the Secretary, a person who regularly sells or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when payment is completed, bears to the total contract price.

(b) Sales of Realty and Casual Sales of Personality—In the case (1) of a casual sale or other casual disposition of personal property (other than property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year), for a price exceeding \$1,000, or (2) of a sale or other disposition of real property, if in either case the initial payments do not exceed 30 per centum of the selling price (or, in case the sale or other disposition was in a taxable year beginning prior to Jan. 1, 1934, the percentage of the selling price prescribed in the law applicable to such year), the income may, under regulations prescribed by the Commissioner with the approval of the Secretary, be returned on the basis and in the manner above prescribed in this section. As used in this section the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

(c) Change from Accrual to Installment Basis—If a taxpayer entitled to the benefits of subsection (a) elects for any taxable year to report his net income on the installment basis, then in computing his income for the year of change or any subsequent year, amounts actually received during any such year on account of sales or other dispositions of property made in any prior year shall not be excluded.

(d) Gain or Loss Upon Disposition of Installment Obligations—If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and (1) in the case of satisfaction at other than face value or a sale or exchange—the amount realized, or (2) in case of a distribution, transmission, or disposition otherwise than by sale or exchange—the fair market value of the obligation at the time of such distribution, transmission, or disposition. Any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received. The basis of the obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full. This subsection shall not apply to the transmission at death of installment obligations if there is filed with the Commissioner, at such time as he may by regulation prescribe, a bond in such amount and with such sureties as he may deem necessary, conditioned upon the return as income, by the person receiving any payment on such obligations, of the same proportion of such payment as would be returnable as income by the decedent if he had lived and had received such payment.

**Sec. 45. Allocation of Income and Deductions**

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Commissioner is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses.

**Sec. 46. Change of Accounting Period**

If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of Section 47.

**Sec. 47. Returns for a Period of Less than Twelve Months**

(a) Returns for Short Period Resulting from Change of Accounting Period—If a taxpayer, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for the period between the close of the last fiscal year

for which return was made and the following Dec. 31. If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year.

(b) Income Computed on Basis of Short Period—Where a separate return is made under subsection (a) on account of a change in the accounting period, and in all other cases where a separate return is required or permitted, by regulations prescribed by the Commissioner with the approval of the Secretary, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made.

(c) Income Placed on Annual Basis—If a separate return is made (except returns of the income of a corporation) under subsection (a) on account of a change in the accounting period, the net income, computed on the basis of the period for which separate return is made, shall be placed on an annual basis by multiplying the amount thereof by twelve and dividing by the number of months included in the period for which the separate return is made. The tax shall be such part of the tax computed on such annual basis as the number of months in such period is of twelve months.

(d) Earned Income—The Commissioner with the approval of the Secretary shall by regulations prescribe the method of applying the provisions of subsections (b) and (c) (relating to computing income on the basis of a short period, and placing such income on an annual basis) to cases where the taxpayer makes a separate return under subsection (a) on account of a change in the accounting period, and it appears that for the period for which the return is so made he has received earned income.

(e) Reduction of Credits Against Net Income—In the case of a return made for a fractional part of a year, except a return made under subsection (a), on account of a change in the accounting period, the personal exemption and credit for dependent shall be reduced respectively to amounts which bear the same ratio to the full credits provided as the number of months in the period for which return is made bears to twelve months.

(f) Closing of Taxable Year in Case of Jeopardy—For closing of taxable year in case of jeopardy, see Section 146.

**Sec. 48. Definitions**

When used in this title—

(a) Taxable Year—"Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this Part. "Taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this title or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

(b) Fiscal year—"Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(c) Paid, Incurred, Accrued—The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this Part.

(d) Trade or Business—The term "trade or business" includes the performance of the functions of a public office.

(e) Mutual Investment Companies—

(1) General Definition—The term "mutual investment company" means any corporation (whether chartered or created as an investment trust, or otherwise), other than a personal holding company as defined in Section 351, if—

(A) It is organized for the purpose of, and substantially all its business consists of, holding, investing, or reinvesting in stock or securities; and

(B) At least 95 per centum of its gross income is derived from dividends, interest, and gains from sales or other disposition of stock or securities; and

(C) Less than 30 per centum of its gross income is derived from the sale or other disposition of stock or securities held for less than six months; and

(D) An amount not less than 90 per centum of its net income is distributed to its shareholders as taxable dividends during the taxable year; and

(E) Its shareholders are, upon reasonable notice, entitled to redemption of their stock for their proportionate interests in the corporation's properties, or the cash equivalent thereof less a discount not in excess of 3 per centum thereof.

(2) Limitations—Despite the provisions of paragraph (1) a corporation shall not be considered as a mutual investment company if, subsequent to a date thirty days after the date of the enactment of this Act, at any time during the taxable year—

(A) More than 5 per centum of the gross assets of the corporation, taken at cost, was invested in stock or securities, or both, of any one corporation, government, or political subdivision thereof, but this limitation shall not apply to investments in obligations of the United States or in obligations of any corporation organized under general Act of Congress if such corporation is an instrumentality of the United States; or

(B) It owned more than 10 per centum of the outstanding stock or securities, or both, of any one corporation; or

(C) It had any outstanding bonds or indebtedness in excess of 10 per centum of its gross assets taken at cost; or

(D) It fails to comply with any rule or regulation prescribed by the Commissioner, with the approval of the Secretary, for the purpose of ascertaining the actual ownership of its outstanding stock.

**PART V—RETURNS AND PAYMENT OF TAX****Sec. 51. Individual Returns**

(a) Requirement—The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this title and such other information for the purpose of carrying out the provisions of this title as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife; and

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income.

(b) Husband and Wife—If a husband and wife living together have an aggregate net income for the taxable year of \$2,500 or over, or an aggregate gross income for such year of \$5,000 or over—

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

(c) Persons Under Disability—If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(d) Fiduciaries—For returns to be made by fiduciaries, see Section 142.



**Sec. 52. Corporation Returns**

Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title and such other information for the purpose of carrying out the provisions of this title as the Commissioner with the approval of the Secretary may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer and by the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control.

**Sec. 53. Time and Place for Filing Returns****(a) Time for Filing—**

(1) General Rule—Returns made on the basis of the calendar year shall be made on or before the 15th day of March following the close of the calendar year. Returns made on the basis of a fiscal year shall be made on or before the 15th day of the third month following the close of the fiscal year.

(2) Extension of Time—The Commissioner may grant a reasonable extension of time for filing returns, under such rules and regulations as he shall prescribe with the approval of the Secretary. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

**(b) To Whom Return Made—**

(1) Individuals—Returns (other than corporation returns) shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland.

(2) Corporations—Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland.

**Sec. 54. Records and Special Returns**

(a) By Taxpayer—Every person liable to any tax imposed by this title or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

(b) To Determine Liability to Tax—Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Commissioner deems sufficient to show whether or not such person is liable to tax under this title.

(c) Information at the Source—For requirement of statements and returns by one person to assist in determining the tax liability of another person, see Sections 147 to 150.

(d) Copies of Returns—If any person, required by law or regulations made pursuant to law to file a copy of any income return for any taxable year, fails to file such copy at the time required, there shall be due and assessed against such person \$5 in the case of an individual return or \$10 in the case of a fiduciary, partnership, or corporation return, and the collector with whom the return is filed shall prepare such copy. Such amount shall be collected and paid, without interest, in the same manner as the amount of tax due in excess of that shown by the taxpayer upon a return in the case of a mathematical error appearing on the face of the return. Copies of returns filed or prepared pursuant to this subsection shall remain on file for a period of not less than two years from the date they are required to be filed, and may be destroyed at any time thereafter under the direction of the Commissioner.

**Sec. 55. Publicity of Returns**

(a) Returns made under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926; and all returns made under this Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(b) (1) All income returns filed under this title (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in paragraph (2). The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Commissioner with the approval of the Secretary.

(2) Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the Governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws. Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in this subsection, or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party) any information acquired by him through an inspection permitted him or another under this subsection shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both.

**Sec. 56. Payment of Tax**

(a) Time of Payment—The total amount of tax imposed by this title shall be paid on the fifteenth day of March following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the third month following the close of the fiscal year.

(b) Instalment Payments—The taxpayer may elect to pay the tax in four equal instalments, in which case the first instalment shall be paid on the date prescribed for the payment of the tax by the taxpayer, the second instalment shall be paid on the fifteenth day of the third month, the third

instalment on the fifteenth day of the sixth month, and the fourth instalment on the fifteenth day of the ninth month, after such date. If any instalment is not paid on or before the date fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(c) Extension of Time for Payment—At the request of the taxpayer, the Commissioner may extend the time for payment of the amount, determined as the tax by the taxpayer, or any instalment thereof, for a period not to exceed six months from the date prescribed for the payment of the tax or an instalment thereof. In such case the amount in respect of which the extension is granted shall be paid on or before the date of the expiration of the period of the extension.

(d) Voluntary Advance Payment—A tax imposed by this title, or any instalment thereof, may be paid, at the election of the taxpayer, prior to the date prescribed for its payment.

(e) Advance Payment in Case of Jeopardy—For advance payment in case of jeopardy, see Section 146.

(f) Tax Withheld at Source—For requirement of withholding tax at the source in the case of nonresident aliens and foreign corporations, and in the case of so-called "tax-free covenant bonds," see Sections 143 and 144.

(g) Fractional Parts of Cent—In the payment of any tax under this title 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.

(h) Receipts—Every collector to whom any payment of any income tax is made shall upon request give to the person making such payment a full written or printed receipt therefor.

**Sec. 57. Examination of Return and Determination of Tax**

As soon as practicable after the return is filed the Commissioner shall examine it and shall determine the correct amount of the tax.

**Sec. 58. Additions to Tax and Penalties**

(a) For additions to the tax in case of negligence or fraud in the nonpayment of tax or failure to file return therefor, see Supplement M.

(b) For criminal penalties for nonpayment of tax or failure to file return therefor, see Section 145.

**Sec. 59. Administrative Proceedings**

For administrative proceedings in respect of the nonpayment or overpayment of a tax imposed by this title, see as follows:

(a) Supplement L, relating to assessment and collection of deficiencies.

(b) Supplement M, relating to interest and additions to tax.

(c) Supplement N, relating to claims against transferees and fiduciaries.

(d) Supplement O, relating to overpayments.

**PART VI—MISCELLANEOUS PROVISIONS****Sec. 61. Laws Made Applicable**

All administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this title.

**Sec. 62. Rules and Regulations**

The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title.

**Sec. 63. Taxes in Lieu of Taxes Under 1934 Act**

The taxes imposed by this title and Title IA shall be in lieu of the taxes imposed by Titles I and IA of the Revenue Act of 1934, as amended.

**Sec. 64. Short Title**

This title may be cited as the "Income Tax Act of 1936."

**SUBTITLE C—SUPPLEMENTAL PROVISIONS  
SUPPLEMENT A—RATES OF TAX**

[Supplementary to Subtitle B, Part I]

**Sec. 101. Exemptions from Tax on Corporations**

The following organizations shall be exempt from taxation under this title—

(1) Labor, agricultural, or horticultural organizations;

(2) Mutual savings banks not having a capital stock represented by shares;

(3) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;

(4) 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;

(5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(6) Corporations, and any 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 earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(7) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

(9) Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder;

(10) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 per centum or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses;

(11) Farmers' or other mutual hall, cyclone, casualty, or fire insurance companies or associations (including interinsurers and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses;

(12) Farmers', fruit growers', or like associations organized and operated on a cooperative basis (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done for the United States or any of its agencies shall be disregarded in determining the right to exemption under this paragraph;

(13) Corporations organized by an association exempt under the provisions of paragraph (12), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose;

(14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(15) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes;

(16) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if (A) no part of their net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) 85 per centum or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

(17) Teachers' retirement fund associations of a purely local character, if (A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and (B) the income consists solely of amounts received from public taxation, amounts received from assessments upon the teaching salaries of members, and income in respect of investments.

(18) Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro-rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

#### Sec. 102. Surtax on Corporations Improperly Accumulating Surplus

(a) Imposition of Tax—There shall be levied, collected, and paid for each taxable year (in addition to other taxes imposed by this title) upon the net income of every corporation (other than a personal holding company as defined in Section 351) if such corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders or the shareholders of any other corporation, through the medium of permitting earnings or profits to accumulate instead of being divided or distributed—

(1) In the case of corporations not subject to the surtax on undistributed profits imposed by Section 14, a surtax equal to the sum of the following:

25 per centum of the amount of the retained net income not in excess of \$100,000, plus  
35 per centum of the amount of the retained net income in excess of \$100,000.

(2) In the case of corporations subject to the surtax on undistributed profits imposed by Section 14, a surtax equal to the sum of the following:

15 per centum of the amount of the retained net income not in excess of \$100,000, plus  
25 per centum of the amount of the retained net income in excess of \$100,000.

(b) Prima Facie Evidence—The fact that any corporation is a mere holding or investment company, or that the earnings or profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a purpose to avoid surtax upon shareholders.

(c) Definitions—As used in this title—

(1) Special Adjusted Net Income—The term "special adjusted net income" means the net income minus the sum of—

(A) Taxes—Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year, to the extent not allowed as a deduction by Section 23, but not including the tax imposed by this section or a corresponding section of a prior income-tax law.

(B) Disallowed Charitable, &c., Contributions—Contributions or gifts, not otherwise allowed as a deduction, to or for the use of donees described in Section 23 (c), for the purposes therein specified.

(C) Disallowed Losses—Losses from sales or exchanges of capital assets which are disallowed as a deduction by Section 117 (d).

(D) Bank Affiliates—In the case of a holding company affiliate (as defined in Section 2 of the Banking Act of 1933), the amount allowed as a credit under Section 26 (d).

(E) National Mortgage Associations—In the case of a national mortgage association created under Title III of the National Housing Act, the amount allowed as a credit under Section 26 (e).

(2) Retained Net Income—The term "retained net income" means the special adjusted net income minus the sum of the dividends paid credit provided in Section 27 and the credit provided in Section 26 (c), relating to contracts restricting dividends. For the purposes of this subsection, such credits shall be computed by substituting in Section 26 (c) and in Section 27 for the words "adjusted net income" wherever appearing in such sections the words "special adjusted net income".

(d) Payment of Surtax on Pro Rata Shares—The tax imposed by this section shall not apply if (1) all the shareholders of the corporation include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the retained net income of the corporation for such year, and (2) 90 per centum or more of such retained net income is so included in the gross income of shareholders other than corporations. Any amount so included in the gross income of a shareholder shall be treated as a dividend received. Any subsequent distribution made by the corporation out of earnings or profits for such taxable year shall, if distributed to any shareholder who has so included in his gross income his pro rata share, be exempt from tax in the amount of the share so included.

(e) Tax on Personal Holding Companies—For surtax on personal holding companies, see Section 351.

#### Sec. 103. Rates of Tax on Citizens and Corporations of Certain Foreign Countries

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by Sections 11, 12, 13, 201 (b), 204 (a), 211 (a), and 231 (a) shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by Sections 11, 12, 13, 201 (b), 204 (a), 211 (a), or 231 (a), as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 per centum of the net income of the taxpayer. Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made.

#### Sec. 104. Banks and Trust Companies

(a) Definition—As used in this section the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia) of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under Section 11 (k) of the Federal Reserve Act, as amended, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions.

(b) Rate of Tax—Banks shall be taxable in the same manner as other corporations, except that they shall not be subject to the surtax imposed by Section 14, and except that the normal tax imposed by Section 13 shall be at the rate of 15 per centum instead of at the rates provided in such section.

#### Sec. 105. Sale of Oil or Gas Properties

In the case of a bona fide sale of any oil or gas property, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration or discovery work done by the taxpayer, the portion of the tax imposed by Section 12 attributable to such sale shall not exceed 30 per centum of the selling price of such property or interest.

### SUPPLEMENT B—COMPUTATION OF NET INCOME

[Supplementary to Subtitle B, Part II]

#### Sec. 111. Determination of Amount of, and Recognition of, Gain or Loss

(a) Computation of Gain or Loss—The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in Section 113 (b) for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

(b) Amount Realized—The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

(c) Recognition of Gain or Loss—In the case of a sale or exchange, the extent to which the gain or loss determined under this section shall be recognized for the purposes of this title, shall be determined under the provisions of Section 112.

(d) Installment Sales—Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

#### Sec. 112. Recognition of Gain or Loss

(a) General Rule—Upon the sale or exchange of property the entire amount of the gain or loss, determined under Section 111, shall be recognized, except as hereinafter provided in this section.

(b) Exchanges Solely in Kind—

(1) Property Held for Productive Use or Investment—No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment.

(2) Stock for Stock of Same Corporation—No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(3) Stock for Stock on Reorganization—No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) Same—Gain of Corporation—No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance



of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(5) **Transfer to Corporation Controlled by Transferor**—No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(6) **Property Received by Corporation on Complete Liquidation of Another**—No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation. For the purposes of this paragraph a distribution shall be considered to be in complete liquidation only if—

(A) The corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per centum of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and

(B) No distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after Dec. 31, 1935; and either:

(C) The distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the stockholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(D) Such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year the Commissioner may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, the assessment and collection of all income, war-profits, and excess-profits taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (i) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in paragraph (4) of this subsection, and (ii) the complete cancellation or redemption under the plan, as a result of exchanges described in paragraph (3) of this subsection, of the shares not owned by the taxpayer.

(c) **Gains from Exchanges not Solely in Kind**—

(1) If an exchange would be within the provisions of subsection (b) (1), (2), (3), or (5) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) of this subsection but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after Feb. 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property.

(d) **Same—Gain of Corporation**—If an exchange would be within the provisions of subsection (b) (4) of this section if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then—

(1) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(2) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(e) **Loss from Exchanges Not Solely in Kind**—If an exchange would be within the provisions of subsection (b) (1) to (5), inclusive, of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(f) **Involuntary Conversions**—If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commissioner with the approval of the Secretary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any

part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

(g) **Definition of Reorganization**—As used in this section and Section 113—

(1) The term "reorganization" means (A) a statutory merger or consolidation, or (B) the acquisition by one corporation in exchange solely for all or a part of its voting stock: of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation; or of substantially all the properties of another corporation, or (C) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (D) a recapitalization, or (E) a mere change in identity, form, or place of organization, however effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

(h) **Definition of Control**—As used in this section the term "control" means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

(i) **Foreign Corporations**—In determining the extent to which gain shall be recognized in the case of any of the exchanges (made after the date of the enactment of this Act) described in subsection (b) (3), (4), (5), or (6), or described in so much of subsection (c) as refers to subsection (b) (3) or (5), or described in subsection (d), a foreign corporation shall not be considered as a corporation unless, prior to such exchange, it has been established to the satisfaction of the Commissioner that such exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes.

### Sec. 113. Adjusted Basis for Determining Gain or Loss

(a) **Basis (Unadjusted) of Property**—The basis of property shall be the cost of such property; except that—

(1) **Inventory Value**—If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(2) **Gifts after Dec. 31, 1920**—If the property was acquired by gift after Dec. 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that for the purpose of determining loss the basis shall be the basis so determined or the fair market value of the property at the time of the gift, whichever is lower. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Commissioner shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Commissioner finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Commissioner as of the date or approximate date at which, according to the best information that the Commissioner is able to obtain, such property was acquired by such donor or last preceding owner.

(3) **Transfer in Trust after Dec. 31, 1920**—If the property was acquired after Dec. 31, 1920, by a transfer in trust (other than by a transfer in trust by a bequest or devise) the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer was made.

(4) **Gift or Transfer in Trust Before Jan. 1, 1921**—If the property was acquired by gift or transfer in trust on or before Dec. 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

(5) **Property Transmitted at Death**—If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, the basis shall be the fair market value of such property at the time of such acquisition. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death. For the purpose of this paragraph property passing without full and adequate consideration under a general power of appointment exercised by will shall be deemed to be property passing from the individual exercising such power by bequest or devise.

(6) **Tax-free Exchanges Generally**—If the property was acquired, after Feb. 28, 1913, upon an exchange described in Section 112 (b) to (e), inclusive the basis (except as provided in paragraph (15) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by Section 112 (b) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this paragraph shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. This paragraph shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(7) **Transfers to Corporation**—If the property was acquired after Dec. 31, 1917, by a corporation in connection with a reorganization, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. This paragraph shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(8) **Property Acquired by Issuance of Stock or as Paid-in Surplus**—If the property was acquired after Dec. 31, 1920, by a corporation—

(A) By the issuance of its stock or securities in connection with a transaction described in Section 112 (b) (5) (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(B) As paid-in surplus or as a contribution to capital, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(9) **Involuntary Conversion**—If the property was acquired, after Feb. 28, 1913, as the result of a compulsory or involuntary conversion described in



Section 112 (f), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

(10) Wash Sales of Stock—If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under Section 118 of this Act or corresponding provisions of prior income tax laws, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(11) Property Acquired During Affiliation—In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, without regard to inter-company transactions in respect of which gain or loss was not recognized. For the purposes of this paragraph, the term "period of affiliation" means the period during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after Jan. 1, 1922, unless a consolidated return was made, nor any taxable year after the taxable year 1928. The basis in case of property acquired by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under Section 141 of this Act or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934, shall be determined in accordance with regulations prescribed under Section 141 (b) of this Act or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934. The basis in the case of property held by a corporation during any period, in the taxable year 1929 or any subsequent taxable years, in respect of which a consolidated return is made by such corporation under Section 141 of this Act or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934, shall be adjusted in respect of any items relating to such period, in accordance with regulations prescribed under Section 141 (b) of this Act or the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934, applicable to such period.

(12) Basis Established by Revenue Act of 1932—If the property was acquired, after Feb. 28, 1913, in any taxable year beginning prior to Jan. 1, 1934, and the basis thereof, for the purposes of the Revenue Act of 1932 was prescribed by Section 113 (a) (6), (7), or (9) of such Act, then for the purposes of this Act the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

(13) Partnerships—If the property was acquired, after Feb. 28, 1913, by a partnership and the basis is not otherwise determined under any of the paragraphs (1) to (12), inclusive, of this subsection, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. If the property was distributed in kind by a partnership to any partner, the basis of such property in the hands of the partner shall be such part of the basis in his hands of his partnership interest as is properly allocable to such property.

(14) Property Acquired Before March 1, 1913—In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subsection, adjusted (for the period prior to March 1, 1913) as provided in subsection (b), is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(15) Property Received by a Corporation on Complete Liquidation of Another—If the property was received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of Section 112 (b) (6), then the basis shall be the same as it would be in the hands of the transferor.

(16) Basis Established by Revenue Act of 1934—If the property was acquired, after Feb. 28, 1913, in any taxable year beginning prior to Jan. 1, 1936, and the basis thereof, for the purposes of the Revenue Act of 1934 was prescribed by Section 113 (a) (6), (7), or (8) of such Act, then for the purposes of this Act the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

(b) Adjusted Basis—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

(1) General Rule—Proper adjustment in respect of the property shall in all cases be made—

(A) For expenditures, receipts, losses, or other items, properly chargeable to capital account, including taxes and other carrying charges on unimproved and unproductive real property, but no such adjustment shall be made for taxes or other carrying charges for which deductions have been taken by the taxpayer in determining net income for the taxable year or prior taxable years;

(B) In respect of any period since Feb. 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent allowed (but not less than the amount allowable) under this Act or prior income tax laws. Where for any taxable year prior to the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(C) In respect of any period prior to March 1, 1913, for exhaustion, wear and tear, obsolescence, amortization and depletion, to the extent sustained;

(D) In the case of stock (to the extent not provided for in the foregoing subparagraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Revenue Act of 1918 or 1921).

(2) Substituted Basis—The term "substituted basis" as used in this subsection means a basis determined under any provision of subsection (a) of this section or under any corresponding provision of a prior income tax law, providing that the basis shall be determined—

(A) By reference to the basis in the hands of a transferor, donor, or grantor, or

(B) By reference to other property held at any time by the person for whom the basis is to be determined. Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in paragraph (1) of such subsection shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

#### Sec. 114 Basis for Depreciation and Depletion

(a) Basis for Depreciation—The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in Section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property.

(b) Basis for Depletion—

(1) General Rule—The basis upon which depletion is to be allowed in respect of any property shall be the adjusted basis provided in Section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property, except as provided in paragraphs (2), (3) and (4) of this subsection.

(2) Discovery Value in Case of Mines—In the case of mines (other than metal, coal or sulphur mines) discovered by the taxpayer after Feb. 28, 1913, the basis for depletion shall be the fair market value of the property at the date of discovery or within 30 days thereafter, if such mines were not acquired as the result of purchase of a proven tract or lease, and if the fair market value of the property is materially disproportionate to the cost. The depletion allowance under Section 23 (m) based on discovery value provided in this paragraph shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance under Section 23 (m) be less than it would be if computed without reference to discovery value. Discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after Feb. 28, 1913, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

(3) Percentage Depletion for Oil and Gas Wells—In the case of oil and gas wells the allowance for depletion under Section 23 (m) shall be 27½ per centum of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under Section 23 (m) be less than it would be if computed without reference to this paragraph.

(4) Percentage Depletion for Coal and Metal Mines and Sulphur—The allowance for depletion under Section 23 (m) shall be, in the case of coal mines, 5 per centum, in the case of metal mines, 15 per centum, and, in the case of sulphur mines or deposits, 23 per centum, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property. A taxpayer making his first return under this title in respect of a property shall state whether he elects to have the depletion allowance for such property for the taxable year for which the return is made computed with or without regard to percentage depletion, and the depletion allowance in respect of such property for such year shall be computed according to the election thus made. If the taxpayer fails to make such statement in the return, the depletion allowance for such property for such year shall be computed without reference to percentage depletion. The method, determined as above, of computing the depletion allowance shall be applied in the case of the property for all taxable years in which it is in the hands of such taxpayer, or of any other person if the basis of the property (for determining gain) in his hands is, under Section 113, determined by reference to the basis in the hands of such taxpayer, either directly or through one or more substituted bases, as defined in that section. The above right of election shall be subject to the qualification that this paragraph shall, for the purpose of determining whether the method of computing the depletion allowance follows the property, be considered a continuation of Section 114 (b) (4) of the Revenue Act of 1934, and as giving no new election in cases where such section would, if applied, give no new election.

#### Sec. 115. Distributions by Corporations

(a) Definition of Dividend—The term "dividend" when used in this title (except in Section 203 (a) (3) and Section 207 (c) (1), relating to insurance companies) means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after Feb. 28, 1913, or (2) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

(b) Source of Distributions—For the purposes of this Act every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated or increase in value of property accrued, before March 1, 1913, may be distributed exempt from tax, after the earnings and profits accumulated after Feb. 28, 1913, have been distributed, but any such tax-free distribution shall be applied against and reduce the adjusted basis of the stock provided in Section 113.

(c) Distributions in Liquidation—Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under Section 111, but shall be recognized only to the extent provided in Section 112. Despite the provisions of Section 117 (a), 100 per centum of the gain so recognized shall be taken into account in computing net income, except in the case of amounts distributed in complete liquidation of a corporation. For the purpose of the preceding sentence, "complete liquidation" includes any one of a series of distributions made by a corporation in complete cancellation or redemption of all of its stock in accordance with a bona fide plan of liquidation and under which the transfer of the property under the liquidation is to be completed within a time specified in the plan, not exceeding two years from the close of the taxable year during which is made the first of the series of distributions under the plan. In the case of amounts distributed (whether before Jan. 1, 1934, or on or after such date) in partial liquidation (other than a distribution within the provisions of subsection (h) of this section of stock or securities in connection with a reorganization) the part of such distribution which is



properly chargeable to capital account shall not be considered a distribution of earnings or profits.

(d) Other Distributions from Capital—If any distribution (not in partial or complete liquidation) made by a corporation to its shareholders is not out of increase in value of property accrued before March 1, 1913, and is not a dividend, then the amount of such distribution shall be applied against and reduce the adjusted basis of the stock provided in Section 113, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property.

(e) Distributions by Personal Service Corporations—Any distribution made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or the Revenue Act of 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Revenue Act of 1918 or Section 218 of the Revenue Act of 1921, shall be exempt from tax to the distributees.

(f) Stock Dividends—

(1) General Rule—A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend to the extent that it does not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution.

(2) Election of Shareholders as to Medium of Payment—Whenever a distribution by a corporation is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either (A) in its stock or in rights to acquire its stock, of a class which if distributed without election would be exempt from tax under paragraph (1), or (B) in money or any other property (including its stock or in rights to acquire its stock, of a class which if distributed without election would not be exempt from tax under paragraph (1), then the distribution shall constitute a taxable dividend in the hands of all shareholders, regardless of the medium in which paid.

(g) Redemption of Stock—If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after Feb. 28, 1913, shall be treated as a taxable dividend.

(h) Effect on Earnings and Profits of Distributions of Stock—The distribution (whether before Jan. 1, 1936, or on or after such date) to a distributee by or on behalf of a corporation of its stock or securities or stock or securities in another corporation shall not be considered a distribution of earnings or profits of any corporation—

(1) If no gain to such distributee from the receipt of such stock or securities was recognized by law, or

(2) If the distribution was not subject to tax in the hands of such distributee because it did not constitute income to him within the meaning of the Sixteenth Amendment to the Constitution or because exempt to him under Section 115 (f) of the Revenue Act of 1934 or a corresponding provision of a prior Revenue Act.

As used in this subsection the term "stock or securities" includes rights to acquire stock or securities.

(i) Definition of Partial Liquidation—As used in this section the term "amounts distributed in partial liquidation" means a distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

(j) Valuation of Dividend—If the whole or any part of a dividend is paid to a shareholder in any medium other than money the property received other than money shall be included in gross income at its fair market value at the time as of which it becomes income to the shareholder.

#### Sec. 116. Exclusions from Gross Income

In addition to the items specified in Section 22 (b), the following items shall not be included in gross income and shall be exempt from taxation under this title:

(a) Earned Income from Sources Without United States—In the case of an individual citizen of the United States, a bona fide nonresident of the United States for more than six months during the taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts would constitute earned income as defined in Section 25 (a) if received from sources within the United States; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this subsection.

(b) Teachers in Alaska and Hawaii—In the case of an individual employed by Alaska or Hawaii or any political subdivision thereof as a teacher in any educational institution, the compensation received as such. This subsection shall not exempt compensation paid directly or indirectly by the Government of the United States.

(c) Income of Foreign Governments—The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States.

(d) Income of States, Municipalities, &c.—Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof.

Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to Sept. 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility—

(1) If by the terms of such contract the tax imposed by this title is to be paid out of the proceeds from the operation of such public utility, prior to any division of such proceeds between the person and the State, Territory, political subdivision, or the District of Columbia, and if, but for the imposition of the tax imposed by this title, a part of such proceeds for the taxable year would accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then a tax upon the net income from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this title, but there shall be refunded to such State, Territory, political subdivision, or the District of Columbia (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this title) would have accrued directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, bears to the amount of the net income from the operation of such public utility for such taxable year.

(2) If by the terms of such contract no part of the proceeds from the operation of the public utility for the taxable year would, irrespective of the tax imposed by this title, accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then the tax upon the net income of such person from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this title.

(e) Bridges to Be Acquired by State or Political Subdivision—Whenever any State or political subdivision thereof, in pursuance of a contract to which it is not a party entered into before the enactment of the Revenue Act of 1928, is to acquire a bridge—

(1) If by the terms of such contract the tax imposed by this title is to be paid out of the proceeds from the operation of such bridge prior to any division of such proceeds, and if, but for the imposition of the tax imposed by this title, a part of such proceeds for the taxable year would accrue directly to or for the use of or would be applied for the benefit of such State or political subdivision, then a tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this title, but there shall be refunded to such State or political subdivision (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this title) would have accrued directly to or for the use of or would be applied for the benefit of such State or political subdivision, bears to the amount of the net income from the operation of such bridge for such taxable year. No such refund shall be made unless the entire amount of the refund is to be applied in part payment for the acquisition of such bridge.

(2) If by the terms of such contract no part of the proceeds from the operation of the bridge for the taxable year would, irrespective of the tax imposed by this title, accrue directly to or for the use of or be applied for the benefit of such State or political subdivision, then the tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this title.

(f) Dividend from "China Trade Act" Corporation—In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organized under the China Trade Act, 1922, if, at the time of such distribution, he is a resident of China, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

(g) Shipowners' Protection and Indemnity Associations—The receipts of shipowners' mutual protection and indemnity associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax upon their net income from interest, dividends, and rents.

(h) Compensation of Employees of Foreign Governments—

(1) Rules for Exclusion—Wages, fees, or salary of an employee of a foreign government (including a consular or other officer, or a nondiplomatic representative) received as compensation for official services to such government—

(A) If such employee is not a citizen of the United States; and

(B) If the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(C) If the foreign government whose employee is claiming exemption grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

(2) Certificate by Secretary of State—The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries.

#### Sec. 117. Capital Gains and Losses

(a) General Rule—In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

100 per centum if the capital asset has been held for not more than 1 year  
80 per centum if the capital asset has been held for more than 1 year but not for more than 2 years;  
60 per centum if the capital asset has been held for more than 2 years but not for more than 5 years;  
40 per centum if the capital asset has been held for more than 5 years but not for more than 10 years;  
30 per centum if the capital asset has been held for more than 10 years.

(b) Definition of Capital Assets—For the purposes of this title, "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(c) Determination of Period for which Held—For the purpose of subsection (a)—

(1) In determining the period for which the taxpayer has held property received on an exchange there shall be included the period for which he held the property exchanged, if under the provisions of Section 113, the property received has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under the provisions of Section 113, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under the provisions of Section 112 (g) of the Revenue Act of 1928 or the Revenue Act of 1932, there shall be included the period for which he held the stock or securities in the distributing corporation prior to the receipt of the stock or securities upon such distribution.

(4) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under Section 118 of this Act or Section 118 of the Revenue Act of 1928 or the Revenue Act of 1932 or the Revenue Act of 1934, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(d) Limitation on Capital Losses—Losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000 plus the gains

from such sales or exchanges. If a bank or trust company incorporated under the laws of the United States or of any State or Territory, a substantial part of whose business is the receipt of deposits, sells any bond, debenture, note, or certificate or other evidence of indebtedness issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, any loss resulting from such sale (except such portion of the loss as does not exceed the amount, if any, by which the adjusted basis of such instrument exceeds the par or face value thereof) shall not be subject to the foregoing limitation and shall not be included in determining the applicability of such limitation to other losses.

(e) Gains and Losses from Short Sales, &c.—For the purpose of this title—

(1) Gains or losses from short sales of property shall be considered as gains or losses from sales or exchanges of capital assets; and

(2) Gains or losses attributable to the failure to exercise privileges or options to buy or sell property shall be considered as gains or losses from sales or exchanges of capital assets held for one year or less.

(f) Retirement of Bonds, &c.—For the purposes of this title, amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form, shall be considered as amounts received in exchange therefor.

#### Sec. 118. Loss from Wash Sales of Stock or Securities

(a) In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction for the loss shall be allowed under Section 23 (e) (2); nor shall such deduction be allowed under Section 23 (f) unless the claim is made by a corporation, a dealer in stocks or securities, and with respect to a transaction made in the ordinary course of its business.

(b) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(c) If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

#### Sec. 119. Income from Sources Within United States

(a) Gross Income from Sources in United States—The following items of gross income shall be treated as income from sources within the United States:

(1) Interest—Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including—

(A) Interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or

(B) Interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable, or

(C) Income derived by a foreign central bank of issue from bankers' acceptances;

(2) Dividends—The amount received as dividends—

(A) From a domestic corporation other than a corporation entitled to the benefits of Section 251, and other than a corporation less than 20 per centum of whose gross income is shown to the satisfaction of the Commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or

(B) From a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this section; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources; but dividends from a foreign corporation shall, for the purposes of Section 131 (relating to foreign tax credit), be treated as income from sources without the United States;

(3) Personal Services—Compensation for labor or personal services performed in the United States, but in the case of a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year, compensation received by such an individual (if such compensation does not exceed \$3,000 in the aggregate) for labor or services performed as an employee of or under a contract with a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, shall not be deemed to be income from sources within the United States;

(4) Rentals and Royalties—Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, goodwill, trade-marks, trade brands, franchises, and other like property; and

(5) Sale of Real Property—Gains, profits, and income from the sale of real property located in the United States.

(6) Sale of Personal Property—For gains, profits, and income from the sale of personal property, see subsection (e).

(b) Net Income from Sources in United States—From the items of gross income specified in subsection (a) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions

which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States.

(c) Gross Income from Sources Without United States—The following items of gross income shall be treated as income from sources without the United States:

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

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

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

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

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

(d) Net Income from Sources Without United States—From the items of gross income specified in subsection (c) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as net income from sources without the United States.

(e) Income from Sources Partly Within and Partly Without United States—Items of gross income, expenses, losses and deductions, other than those specified in subsections (a) and (c) of this section, shall be allocated or apportioned to sources within or without the United States, under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits, and income from—

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

(2) From the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, except that gains, profits, and income derived from the purchase of personal property within the United States and its sale within a possession of the United States or from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States.

(f) Definitions—As used in this section the words "sale" or "sold" include "exchange" or "exchanged;" and the word "produced" includes "created", "fabricated", "manufactured", "extracted", "processed", "cured", or "aged."

#### Sec. 120. Unlimited Deduction for Charitable and Other Contributions

In the case of an individual if in the taxable year and in each of the 10 preceding taxable years the amount of the contributions or gifts described in Section 23 (c) plus the amount of income, war-profits, or excess-profits taxes paid during such year in respect of preceding taxable years, exceeds 90 per centum of the taxpayer's net income for each such year, as computed without the benefit of Section 23 (c), then the 15 per centum limit imposed by such section shall not be applicable.

#### Sec. 121. Deductions of Dividends Paid on Certain Preferred Stock of Certain Corporations

In computing the net income of any national banking association, or of any bank or trust company organized under the laws of any State, Territory, possession of the United States, or the Canal Zone, or of any other banking corporation engaged in the business of industrial banking and under the supervision of a State banking department or of the Comptroller of the Currency, or of any incorporated domestic insurance company, there shall be allowed as a deduction from gross income, in addition to deductions otherwise provided for in this title, any dividend (not including any distribution in liquidation) paid, within such taxable year, to the United States or to any instrumentality thereof exempt from Federal income taxes, on the preferred stock of the corporation owned by the United States or such instrumentality. The amount allowable as a deduction under this section shall be deducted from the dividends paid credit otherwise computed under Section 27.

### SUPPLEMENT C—CREDITS AGAINST TAX

[Supplementary to Subtitle B, Part III]

#### Sec. 131. Taxes of Foreign Countries and Possessions of United States

(a) Allowance of Credit—If the taxpayer signifies in his return his desire to have the benefits of this section, the tax imposed by this title shall be credited with:

(1) Citizen and Domestic Corporation—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war-profits and excess-profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) Resident of United States—In the case of a resident of the United States, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) Alien Resident of United States—In the case of an alien resident of the United States, the amount of any such taxes paid or accrued during



the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the United States residing in such country; and

(4) Partnerships and Estates—In the case of any such individual who is a member of a partnership or a beneficiary of an estate or trust, his proportionate share of such taxes of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be.

(b) Limit on Credit—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income for the same taxable year; and

(2) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources without the United States bears to his entire net income for the same taxable year.

(c) Adjustments on Payment of Accrued Taxes—If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Commissioner, who shall redetermine the amount of the tax for the year or years effected, and the amount of tax due upon such redetermination, if any, shall be paid by the taxpayer upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of Section 322. In the cases of such a tax accrued but not paid, the Commissioner as a condition precedent to the allowance of this credit may require the taxpayer to give a bond with sureties satisfactory to and to be approved by the Commissioner in such sum as the Commissioner may require, conditioned upon the payment by the taxpayer of any amount of tax found due upon any such redetermination; and the bond herein prescribed shall contain such further conditions as the Commissioner may require.

(d) Year in Which Credit Taken—The credits provided for in this section may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c) of this section. If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken upon the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(e) Proof of Credits—The credits provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Commissioner (1) the total amount of income derived from sources without the United States, determined as provided in Section 119 (2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this section, such amount to be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary, and (3) all other information necessary for the verification and computation of such credits.

(f) Taxes of Foreign Subsidiary—For the purposes of this section a domestic corporation which owns a majority of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of any income, war-profits, or excess-profits taxes paid by such foreign corporation to any foreign country, or to any possession of the United States, upon or with respect to the accumulated profits of such foreign corporation from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits: *Provided*, That the amount of tax deemed to have been paid under this subsection shall in no case exceed the same proportion of the tax against which credit is taken which the amount of such dividends bears to the amount of the entire net income of the domestic corporation in which such dividends are included. The term "accumulated profits" when used in this subsection in reference to a foreign corporation, means the amount of its gains, profits, or income in excess of the income, war-profits, and excess-profits taxes imposed upon or with respect to such profits or income; and the Commissioner with the approval of the Secretary shall have full power to determine from the accumulated profits of what year or years such dividends were paid; treating dividends paid in the first 60 days of any year as having been paid from the accumulated profits of the preceding year or years (unless to his satisfaction shown otherwise), and in other respects treating dividends as having been paid from the most recently accumulated gains, profits or earnings. In the case of a foreign corporation, the income, war-profits and excess-profits taxes of which are determined on the basis of an accounting period of less than one year, the word "year" as used in this subsection shall be construed to mean such accounting period.

(g) Corporations Treated as Foreign—For the purposes of this section the following corporations shall be treated as foreign corporations:

(1) A corporation entitled to the benefits of Section 251, by reason of receiving a large percentage of its gross income from sources within a possession of the United States;

(2) A corporation organized under the China Trade Act, 1922, and entitled to the credit provided for in Section 262.

## SUPPLEMENT D—RETURNS AND PAYMENT OF TAX

[Supplementary to Subtitle B, Part V]

### Sec. 141. Consolidated Returns of Railroad Corporations

(a) Privilege to File Consolidated Returns—An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to all the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under Section 141 (b) of the Revenue Act of 1934 insofar as not inconsistent with this Act) prescribed prior to the making of such return; and the making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) Regulations—The Commissioner, with the approval of the Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as clearly to reflect the income and to prevent avoidance of tax liability.

(c) Computation and Payment of Tax—In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under Section 141 (b) of the Revenue Act of 1934 insofar as not inconsistent with this Act) prescribed prior to the date on which such return is made.

(d) Definition of "Affiliated Group"—As used in this section an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 95 per centum of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 95 per centum of the stock or at least one of the other corporations; and

(3) Each of the corporations is either (A) a corporation whose principal business is that of a common carrier by railroad or (B) a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this paragraph, the term "railroad" includes a street, suburban, or interurban electric railway. As used in this subsection (except in paragraph (3) the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(e) Foreign Corporations—A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(f) China Trade Act Corporations—A corporation organized under the China Trade Act, 1922, shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(g) Corporations Deriving Income from Possessions of United States—For the purposes of this section a corporation entitled to the benefits of Section 251, by reason of receiving a large percentage of its income from possessions of the United States, shall be treated as a foreign corporation.

(h) Subsidiary Formed to Comply with Foreign Law—In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this title as a domestic corporation.

(i) Suspension of Running of Statute of Limitations—If a notice under Section 272 (a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in Section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

(j) Receivership Cases—If the common parent corporation of an affiliated group making a consolidated return would, if filing a separate return, be exempt under Section 14 (d) (2) from the surtax on undistributed profits imposed by Section 14, the affiliated group shall be exempt from such surtax imposed by Section 14. In all other cases the affiliated group making a consolidated return shall be subject to the surtax imposed by Section 14, regardless of the fact that one or more of the corporations in the group are in bankruptcy or in receivership.

(k) Allocation of Income and Deductions—For allocation of income and deductions of related trades or businesses, see Section 45.

### Sec. 142. Fiduciary Returns

(a) Requirement of Return—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title and such other information for the purpose of carrying out the provisions of this title as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife;

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income;

(4) Every estate or trust the net income of which for the taxable year is \$1,000 or over;

(5) Every estate or trust the gross income of which for the taxable year is \$5,000 or over, regardless of the amount of the net income; and

(6) Every estate or trust of which any beneficiary is a nonresident alien.

(b) Joint Fiduciaries—Under such regulations as the Commissioner with the approval of the Secretary may prescribe a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district which such fiduciary resides shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that he has sufficient knowledge of the affairs of the individual, estate, or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct.

(c) Law Applicable to Fiduciaries—Any fiduciary required to make a return under this title shall be subject to all the provisions of law which apply to individuals.

### Sec. 143. Withholding of Tax at Source

(a) Tax-Free Covenant Bonds—

(1) Requirement of Withholding—In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before Jan. 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this title upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to an individual, a partnership, or a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein: *Provided*, That if the liability assumed by the obligor does not exceed 2 per centum of the interest, then the deduction and withholding shall be at the following rates: (A) 10 per centum in the case of a nonresident alien individual (except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate, not less than 5 per centum, as may be provided by treaty with such country),



or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, (B) in the case of such a foreign corporation, 15 per centum, and (C) 2 per centum in the case of other individuals and partnerships: *Provided further*, That if the owners of such obligations are not known to the withholding agent the Commissioner may authorize such deduction and withholding to be at the rate of 2 per centum, or, if the liability assumed by the obligor does not exceed 2 per centum of the interest, then at the rate of 10 per centum.

(2) *Benefit of Credits Against Net Income*—Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before Feb. 1 a signed notice in writing claiming the benefit of the credits provided in Section 25 (b); nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under Section 215.

(3) *Income of Obligor and Oblige*—The obligor shall not be allowed a deduction for the payment of the tax imposed by this title, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.

(b) *Nonresident Aliens*—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States and not having an office or place of business therein), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, shall (except in the cases provided for in subsection (a) of this section and except as otherwise provided in regulations prescribed by the Commissioner under Section 215) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 10 per centum thereof, except that such rate shall be reduced in the case of a nonresident alien individual a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country; *Provided*, That no such deduction or withholding shall be required in the case of dividends paid by a foreign corporation unless (1) such corporation is engaged in trade or business within the United States or has an office or place of business therein, and (2) more than 85 per centum of the gross income of such corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of Section 119; *Provided further*, That the Commissioner may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent. Under regulations prescribed by the Commissioner, with the approval of the Secretary, there may be exempted from such deduction and withholding the compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals.

(c) *Return and Payment*—Every person required to deduct and withhold any tax under this section shall make return thereof on or before March 15 of each year and shall on or before June 15, in lieu of the time prescribed in Section 56, pay the tax to the official of the United States Government authorized to receive it. Every such person is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.

(d) *Income of Recipient*—Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(e) *Tax Paid by Recipient*—If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

(f) *Refunds and Credits*—Where there has been an overpayment of tax under this section any refund or credit made under the provisions of Section 322 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(g) *Withholding Before Enactment of Act*—Notwithstanding the provisions of subsections (a) and (b), the deduction and withholding for any period prior to the 10th day after the date of the enactment of this Act shall be upon the items of income and at the rates prescribed in Section 143 (a) and (b) of the Revenue Act of 1934, as amended, in lieu of the items and rates prescribed in such subsections.

#### Sec. 144 Payment of Corporation Income Tax at Source

(a) *General Rule*—In the case of foreign corporations subject to taxation under this title not engaged in trade or business within the United States and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in Section 143 a tax equal to 15 per centum thereof, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country; and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: *Provided*, That in the case of interest described in subsection (a) of that section (relating to tax-free covenant bonds) the deduction and withholding shall be at the rate specified in such subsection.

(b) *Withholding Before Enactment of Act*—Notwithstanding the provisions of subsection (a), the deduction and withholding for any period prior to the 10th day after the date of the enactment of this Act shall be upon the items of income and at the rates prescribed in Section 144 of the Revenue Act of 1934, as amended, in lieu of the items and rates prescribed in such subsection.

#### Sec. 145 Penalties

(a) Any person required under this title to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this title, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, 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.

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, 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 title 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.

(c) 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.

#### Sec. 146 Closing by Commissioner of Taxable Year

(a) *Tax in Jeopardy*—If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declarations to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design.

(b) *Security for Payment*—A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section, provided the taxpayer has paid in full all other income, war-profits, or excess-profits taxes due from him under any act of Congress.

(c) *Same—Exemption from Section*—If security is approved and accepted pursuant to the provisions of this section and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such respective taxes.

(d) *Citizens*—In the case of a citizen of the United States or of a possession of the United States about to depart from the United States the Commissioner may, at his discretion, waive any or all of the requirements placed on the taxpayer by this section.

(e) *Departure of Alien*—No alien shall depart from the United States unless he first procures from the collector or agent in charge a certificate that he has complied with all the obligations imposed upon him by the income, war-profits and excess-profits tax laws.

(f) *Addition to Tax*—If a taxpayer violates or attempts to violate this section there shall, in addition to all other penalties, be added as part of the tax 25 per centum of the total amount of the tax or deficiency in the tax, together with interest at the rate of 6 per centum per annum from the time the tax became due.

#### Sec. 147. Information at Source

(a) *Payments of \$1,000 or More*—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, and employers, making payment to another person, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits and income (other than payments described in Section 148 (a) or 149), of \$1,000 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him with the approval of the Secretary, setting forth the amount of such gains, profits and income, and the name and address of the recipient of such payment.

(b) *Returns Regardless of Amount of Payment*—Such returns may be required, regardless of amounts (1) in the case of payments of interest upon bonds, mortgages, deeds of trust, or other similar obligations of corporations, and (2) in the case of collections of items (not payable in the United States) of interest upon the bonds of foreign countries and interest upon the bonds of and dividends from foreign corporations by persons undertaking as a matter of business or for profit the collection of foreign payments of such interest or dividends by means of coupons, checks, or bills of exchange.

(c) *Recipient to Furnish Name and Address*—When necessary to make effective the provisions of this section the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) *Obligations of United States*—The provisions of this section shall not apply to the payment of interest on obligations of the United States.

#### Sec. 148. Information by Corporations

(a) *Dividend Payments*—Every corporation shall, when required by the Commissioner, render a correct return, duly verified under oath, of its payments of dividends, stating the name and address of each shareholder, the number of shares owned by him, and the amount of dividends paid to him.

(b) *Profits Declared as Dividends*—Every corporation shall, when required by the Commissioner, furnish him a statement of such facts as will enable him to determine the portion of the earnings or profits of the corporation (including gains, profits and income not taxed) accumulated during such periods as the Commissioner may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Commissioner may specify.

(c) *Accumulated Earnings and Profits*—When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed and of the amounts that would be payable to each.



(b) Compensation of Officers and Employees—Under regulations prescribed by the Commissioner with the approval of the Secretary, every corporation subject to taxation under this title shall, in its return, submit a list of the names of all officers and employees of such corporation and the respective amounts paid to them during the taxable year of the corporation by the corporation as salary, commission, bonus, or other compensation for personal services rendered, if the aggregate amount so paid to the individual is in excess of \$15,000. The Secretary of the Treasury shall submit an annual report to Congress compiled from the returns made containing the names of, and amounts paid to, each such officer and employee and the name of the paying corporation.

#### Sec. 149. Returns of Brokers

Every person doing business as a broker shall, when required by the Commissioner, render a correct return duly verified under oath, under such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, showing the names of customers for whom such person has transacted any business, with such details as to the profits, losses, or other information which the Commissioner may require, as to each of such customers, as will enable the Commissioner to determine whether all income tax due on profits or gains of such customers has been paid.

#### Sec. 150. Collection of Foreign Items

All persons undertaking as a matter of business or for profit the collection of foreign payments of interest or dividends by means of coupons, checks, or bills of exchange shall obtain a license from the Commissioner and shall be subject to such regulations enabling the Government to obtain the information required under this title as the Commissioner, with the approval of the Secretary, shall prescribe; and whoever knowingly undertakes to collect such payments without having obtained a license therefor, or without complying with such regulations, shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned for not more than one year, or both.

### SUPPLEMENT E—ESTATES AND TRUSTS

#### Sec. 161. Imposition of Tax

(a) Application of Tax—The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distributions under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) Computation and Payment—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in Section 166 (relating to revocable trusts) and Section 167 (relating to income for benefit of the grantor). For return made by beneficiary, see Section 142.

#### Sec. 162. Net Income

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

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

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

#### Sec. 163. Credits Against Net Income

(a) Credits of Estate or Trust—For the purpose of the normal tax and the surtax the estate or trust shall be allowed the same personal exemption as is allowed to a single person under Section 25 (b) (1), and, if no part of the income of the estate or trust is included in computing the net income of any legatee, heir, or beneficiary, then in addition the same credits against net income for interest as are allowed by Section 25 (a).

(b) Credits of Beneficiary—If any part of the income of an estate or trust is included in computing the net income of any legatee, heir, or beneficiary, such legatee, heir, or beneficiary shall, for the purpose of the normal tax, be allowed as credits against net income, in addition to the credits allowed to him under Section 25, his proportionate share of such amounts of interest specified in Section 25 (a) as are, under this Supplement, required to be included in computing his net income. Any remaining portion of such amounts specified in Section 25 (a) shall, for the purpose of the normal tax, be allowed as credits to the estate or trust.

#### Sec. 164. Different Taxable Years

If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under Section 162 (b), to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust (whether beginning on, before, or after Jan. 1, 1936) ending within his taxable year.

#### Sec. 165. Employees' Trusts

A trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer, or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under Section 161, but the amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amounts paid in by him. Such distributees shall for the purpose of the normal tax be allowed as credits against net income such part of the amount so distributed or made available as represents the items of interest specified in Section 25 (a).

#### Sec. 166. Revocable Trusts

Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) In the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(2) In any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, then the income of such part of the trust shall be included in computing the net income of the grantor.

#### Sec. 167. Income for Benefit of Grantor

(a) Where any part of the income of a trust—

(1) Is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) May, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

(3) Is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in Section 23 (c), relating to the so-called "charitable contribution" deduction); then such part of the income of the trust shall be included in computing the net income of the grantor.

(b) As used in this section, the term "in the discretion of the grantor" means "in the discretion of the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of the part of the income in question."

#### Sec. 168. Taxes of Foreign Countries and Possessions of United States

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as credit against the tax of the beneficiary of an estate or trust to the extent provided in Section 131.

#### Sec. 169. Common Trust Funds

(a) Definitions—The term "common trust fund" means a fund maintained by a bank (as defined in Section 104)—

(1) Exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator or guardian; and

(2) In conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks.

(b) Taxation of Common Trust Funds—A common trust fund shall not be subject to taxation under this title, Title IA, or Section 105 or 106 of the Revenue Act of 1935, and for the purposes of such titles and sections shall not be considered a corporation.

(c) Income of Participants in Fund—Each participant in the common trust fund shall include in computing its net income its proportionate share, whether or not distributed and whether or not distributable, of the net income of the common trust fund. The net income of the common trust fund shall be computed in the same manner and on the same basis as in the case of an individual. The proportionate share of each participant in the amount of interest specified in Section 25 (a) received by the common trust fund shall for the purposes of this Supplement be considered as having been received by such participant as such interest.

(d) Admission and Withdrawal—No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(e) Returns by Bank—Every bank (as defined in Section 104) maintaining a common trust fund shall make a return under oath for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by this title, and shall include in the return the names and addresses of the participants who would be entitled to share in the net income if distributed and the amount of the proportionate share of each participant. The return shall be sworn to as in the case of a return filed by the bank under Section 52.

(f) Different Taxable Years of Common Trust Fund and Participant—If the taxable year of the common trust fund is different from that of a participant, the proportionate share of the net income of the common trust fund to be included in computing the net income of the participant for its taxable year shall be based upon the net income of the common trust fund for any taxable year of the common trust fund (whether beginning on, before, or after Jan. 1, 1936) ending within the taxable year of the participant.

### SUPPLEMENT F—PARTNERSHIPS

#### Sec. 181. Partnership Not Taxable

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

#### Sec. 182. Tax of Partners

There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year.

#### Sec. 183. Computation of Partnership Income

The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual.

#### Sec. 184. Credits Against Net Income

The partner shall, for the purpose of the normal tax, be allowed as a credit against his net income, in addition to the credits allowed to him under Section 25, his proportionate share of such amounts (not in excess

of the net income of the partnership) of interest specified in Section 25 (a) as are received by the partnership.

#### Sec. 185. Earned Income

In the case of the members of a partnership the proper part of each share of the net income which consists of earned income shall be determined under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary and shall be separately shown in the return of the partnership.

#### Sec. 186. Taxes of Foreign Countries and Possessions of United States

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of the member of a partnership to the extent provided in Section 131.

#### Sec. 187. Partnership Returns

Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this title and such other information for the purpose of carrying out the provisions of this title as the Commissioner with the approval of the Secretary may by regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

#### Sec. 188. Different Taxable Years of Partner and Partnership

If the taxable year of a partner is different from that of the partnership, the distributive share of the net income of the partnership to be included in computing the net income of the partner for his taxable year shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after Jan. 1, 1936) ending within the taxable year of the partner.

### SUPPLEMENT G—INSURANCE COMPANIES

#### Sec. 201. Tax on Life Insurance Companies

(a) Definition—When used in this title the term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.

##### (b) Imposition of Tax—

(1) In General—In lieu of the tax imposed by Sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every life insurance company a tax of 15 per centum of the amount thereof.

(2) Normal-tax Net Income of Foreign Life Insurance Companies—In the case of a foreign life insurance company, the normal-tax net income shall be an amount which bears the same ratio to the normal-tax net income, computed without regard to this paragraph, as the reserve funds required by law and held by it at the end of the taxable year upon business transacted within the United States bear to the reserve funds held by it at the end of the taxable year upon all business transacted.

(3) No United States Insurance Business—Foreign life insurance companies not carrying on an insurance business within the United States and holding no reserve funds upon business transacted within the United States, shall not be taxable under this section but shall be taxable as other foreign corporations.

#### Sec. 202. Gross Income of Life Insurance Companies

(a) In the case of a life insurance company the term "gross income" means the gross amount of income received during the taxable year from interest, dividends, and rents.

(b) The term "reserve funds required by law" includes, in the case of assessment insurance, sums actually deposited by any company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and any funds maintained under the charter or articles of incorporation of the company or association exclusively for the payment of claims arising under certificates of membership or policies issued upon the assessment plan and not subject to any other use.

#### Sec. 203. Net Income of Life Insurance Companies

(a) General Rule—In the case of a life insurance company the term net income" means the gross income less—

(1) Tax-Free Interest—The amount of interest received during the taxable year which under Section 22 (b) (4) is excluded from gross income;

(2) Reserve Funds—An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3½ per centum shall be substituted for 4 per centum. Life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, shall be allowed, in addition to the above, a deduction of 3½ per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only;

(3) Reserve for Dividends—An amount equal to 2 per centum of any sums held at the end of the taxable year as a reserve for dividends (other than dividends payable during the year following the taxable year) the payment of which is deferred for a period of not less than five years from the date of the policy contract;

(4) Investment Expenses—Investment expenses paid during the taxable year: Provided, That if any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 per centum of the book value of the mean of the invested assets held at the beginning and end of the taxable year;

(5) Real Estate Expenses—Taxes and other expenses paid during the taxable year exclusively upon or with respect to the real estate owned by the company, not including taxes assessed against local benefits of a kind tending to increase the value of the property assessed, and not including any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. The deduction allowed by this paragraph shall be allowed in the case of taxes imposed upon a shareholder of a company upon his interest as shareholder, which are paid by the company without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes;

(6) Depreciation—A reasonable allowance, as provided in Section 23 (1), for the exhaustion, wear and tear of property, including a reasonable allowance for obsolescence; and

(7) Interest—All interest paid within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after Sept. 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this title.

(b) Rental Value of Real Estate—The deduction under subsection (a) (5) or (6) of this section on account of any real estate owned and occupied in whole or in part by a life insurance company, shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property.

#### Sec. 204. Insurance Companies Other than Life or Mutual

##### (a) Imposition of Tax—

(1) In General—In lieu of the tax imposed by Sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every insurance company (other than a life or mutual insurance company) a tax of 15 per centum of the amount thereof.

(2) Normal-Tax Net Income of Foreign Companies—In the case of a foreign insurance company (other than a life or mutual insurance company), the normal-tax net income shall be the net income from sources within the United States minus the sum of—

(A) Interest on Obligations of the United States and Its Instrumentalities—The credit provided in Section 26 (a).

(B) Dividends Received—The credit provided in Section 26 (b).

(3) No United States Insurance Business—Foreign insurance companies not carrying on an insurance business within the United States shall not be taxable under this section but shall be taxable as other foreign corporations.

(b) Definition of Income, &c.—In the case of an insurance company subject to the tax imposed by this section—

(1) Gross Income—"Gross income" means the sum of (A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners, and (B) gain during the taxable year from the sale or other disposition of property, and (C) all other items constituting gross income under Section 22;

(2) Net Income—"Net income" means the gross income as defined in paragraph (1) of this subsection less the deductions allowed by subsection (c) of this section;

(3) Investment Income—"Investment income" means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows:

To all interest, dividends, and rents received during the taxable year, add interest, dividends and rents due and accrued at the end of the taxable year, and deduct all interest, dividends and rents due and accrued at the end of the preceding taxable year;

(4) Underwriting Income—"Underwriting income" means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred;

(5) Premiums Earned—"Premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance. To the result so obtained add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable years.

(6) Losses Incurred—"Losses incurred" means losses incurred during the taxable year on insurance contracts, computed as follows:

To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year, and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year. To the result so obtained add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year;

(7) Expenses Incurred—"Expenses incurred" means all expenses shown on the annual statement approved by the National Convention of Insurance Commissioners, and shall be computed as follows:

To all expenses paid during the taxable year add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For the purpose of computing the net income subject to the tax imposed by this section there shall be deducted from expenses incurred as defined in this paragraph all expenses incurred which are not allowed as deductions by subsection (c) of this section.

(c) Deductions Allowed—In computing the net income of an insurance company subject to the tax imposed by this section there shall be allowed as deductions:

(1) All ordinary and necessary expenses incurred, as provided in Section 23 (a);

(2) All interest as provided in Section 23 (b);

(3) Taxes as provided in Section 23 (c);

(4) Losses incurred as defined in subsection (b) (6) of this section;

(5) Subject to the limitation contained in Section 117 (d), losses sustained during the taxable year from the sale or other disposition of property;

(6) Bad debts in the nature of agency balances and bills receivable ascertained to be worthless and charged off within the taxable year;

(7) The amount of interest earned during the taxable year which under Section 22 (b) (4) is excluded from gross income;

(8) A reasonable allowance for the exhaustion, wear and tear of property, as provided in Section 23 (1);

(9) Charitable, and so forth, contributions, as provided in Section 23 (q);

(10) Deductions (other than those specified in this subsection) as provided in Section 23, but not in excess of the amount of the gross income included under subsection (b) (1) (C) of this section.

(d) Deductions of Foreign Corporations—In the case of a foreign corporation the deductions allowed in this section shall be allowed to the extent provided in Supplement I in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein.

(e) Double Deductions—Nothing in this section shall be construed to permit the same item to be twice deducted.

#### Sec. 205. Taxes of Foreign Countries and Possessions of United States

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by Section 201 or 204 to the extent provided in the case of a domestic corporation in Section 131, and in such cases "net income" as used in that section means the net income as defined in this supplement.



**Sec. 206. Computation of Gross Income**

The gross income of insurance companies subject to the tax imposed by Section 201 or 204 shall not be determined in the manner provided in Section 119.

**Sec. 207. Mutual Insurance Companies Other Than Life**

(a) Application of Title—Mutual insurance companies, other than life insurance companies, shall be taxable in the same manner as other corporations, except as hereinafter provided in this section, and except that they shall not be subject to the surtax imposed by Section 14, and except that the normal tax imposed by Section 13 shall be at the rate of 15 per centum instead of at the rates provided in such section, and such normal tax shall be applicable to foreign corporations as well as domestic corporations; but foreign insurance companies not carrying on an insurance business within the United States shall be taxable as other foreign corporations.

(b) Gross Income—Mutual marine-insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.

(c) Deductions—In addition to the deductions allowed to corporations by Section 23 the following deductions to insurance companies shall also be allowed, unless otherwise allowed—

(1) Mutual Insurance Companies Other than Life Insurance—In the case of mutual insurance companies other than life insurance companies—

(A) The net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to law as additions to guarantee or reserve funds); and

(B) The sums other than dividends paid within the taxable year on policy and annuity contracts.

(2) Mutual Marine Insurance Companies—In the case of mutual marine insurance companies, in addition to the deductions allowed in paragraph (1) of this subsection, unless otherwise allowed, amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment and the payment thereof;

(3) Mutual Insurance Companies Other than Life and Marine—In the case of mutual insurance companies (including interinsurers and reciprocal underwriters, but not including mutual life or mutual marine insurance companies) requiring their members to make premium deposits to provide for losses and expenses, the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves.

**SUPPLEMENT H—NONRESIDENT ALIEN INDIVIDUALS****Sec. 211. Tax on Nonresident Alien Individuals**

(a) No United States Business or Office—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by Sections 11 and 12, upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 10 per centum of such amount, except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(b) United States Business or Office—A nonresident alien individual engaged in trade or business in the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a). As used in this section, Section 119, Section 143, Section 144, and Section 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period of periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian.

**Sec. 212. Gross Income**

(a) General Rule—In the case of a nonresident alien individual gross income includes only the gross income from sources within the United States.

(b) Ships Under Foreign Flag—The income of a nonresident alien individual which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States shall not be included in gross income and shall be exempt from taxation under this title.

**Sec. 213. Deductions**

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

(b) Losses—

(1) The deduction, for losses not connected with the trade of business if incurred in transactions entered into for profit, allowed by Section 23 (e) (2) shall be allowed whether or not connected with income from sources within the United States, but only if the profit, if such transaction had resulted in a profit, would be taxable under this title.

(2) The deduction for losses of property not connected with the trade or business if arising from certain casualties or theft, allowed by Section 23 (e) (3), shall be allowed whether or not connected with income from sources within the United States, but only if the loss is of property within the United States.

(c) Charitable, &c., Contributions—The so-called "charitable contribution" deduction allowed by Section 23 (o) shall be allowed whether or not connected with income from sources within the United States, but only as to contributions or gifts made to domestic corporations, or to community chests, funds, or foundations, created in the United States or to the vocational rehabilitation fund.

**Sec. 214. Credits Against Net Income**

In the case of a nonresident alien individual the personal exemption allowed by Section 25 (b) (1) of this title shall be only \$1,000. The credit for dependents allowed by Section 25 (b) (2) shall not be allowed in the case of a nonresident alien individual unless he is a resident of a contiguous country.

**Sec. 215. Allowance of Deductions and Credits**

(a) Return to Contain Information—A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this title only by filing or causing to be filed with the collector a true and accurate return of his total income received from all sources in the United States, in the manner prescribed in this title; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

(b) Tax Withheld at Source—The benefit of the personal exemption and credit for dependents may, in the discretion of the Commissioner and under regulations prescribed by him with the approval of the Secretary, be received by a nonresident alien individual entitled thereto, by filing a claim therefor with the withholding agent.

**Sec. 216. Credits Against Tax**

A nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by Section 131.

**Sec. 217. Returns**

(a) Requirement—In the case of a nonresident alien individual the return, in lieu of the time prescribed in Section 53 (a) (1), shall be made on or before the fifteenth day of the sixth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then on or before the fifteenth day of June.

(b) Exemption from Requirement—Subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, nonresident alien individuals subject to the tax imposed by Section 211 (a) may be exempted from the requirement of filing returns of such tax.

**Sec. 218. Payment of Tax**

(a) Time of Payment—In the case of a nonresident alien individual the total amount of tax imposed by this title shall be paid, in lieu of the time prescribed in Section 56 (a), on the fifteenth day of June following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the sixth month following the close of the fiscal year.

(b) Withholding at Source—For withholding at source of tax on income of nonresident aliens, see Section 143.

**Sec. 219. Partnerships**

For the purpose of this title, a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the partnership of which he is a member is so engaged and as having an office or place of business within the United States if the partnership of which he is a member has such an office or place of business.

**SUPPLEMENT I—FOREIGN CORPORATIONS****Sec. 231. Tax on Foreign Corporations**

(a) Nonresident Corporations—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by Sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(b) Resident Corporations—A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a), but the normal tax imposed by Section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

(c) Undistributed Profits Surtax—A foreign corporation shall not be subject to the surtax imposed by Section 14.

(d) Gross Income—In the case of a foreign corporation gross income includes only the gross income from sources within the United States.

(e) Ships Under Foreign Flag—The income of a foreign corporation, which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States, shall not be included in gross income and shall be exempt from taxation under this title.

**Sec. 232. Deductions**

(a) In General—In the case of a foreign corporation the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources within and without the United States shall be determined as provided in Section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(b) Charitable, &c., Contributions—The so-called "charitable contribution" deduction allowed by Section 23 (q) shall be allowed whether or not connected with income from sources within the United States.

**Sec. 233. Allowance of Deductions and Credits**

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this title only by filing or causing to be filed with the collector a true and accurate return of its total income received from all sources in the United States, in the manner prescribed in this title; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

**Sec. 234. Credits Against Tax**

Foreign corporations shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by Section 131.

**Sec. 235. Returns**

(a) Time of Filing—In the case of a foreign corporation not having any office or place of business in the United States the return, in lieu of the time prescribed in Section 53 (a) (1), shall be made on or before the 15th day of the 6th month following the close of the fiscal year, or, if the return is made on the basis of the calendar year then on or before the 15th day of June. If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return shall be made by the agent.

(b) Exemption from Requirement—Subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, corporations subject to the tax imposed by Section 231 (a) may be exempted from the requirement of filing returns of such tax.

**Sec. 236. Payment of Tax**

(a) Time of Payment—In the case of a foreign corporation not having any office or place of business in the United States the total amount of tax imposed by this title shall be paid, in lieu of the time prescribed in Section 56 (a), on the 15th day of June following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the 15th day of the 6th month following the close of the fiscal year.

(b) Withholding at Source—For withholding at source of tax on income of foreign corporations, see Section 144.

**Sec. 237. Foreign Insurance Companies**

For special provisions relating to foreign insurance companies, see Supplement G.

**Sec. 238. Affiliation**

A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of Section 141.

**SUPPLEMENT J—POSSESSIONS OF THE UNITED STATES****Sec. 251. Income from Sources Within Possessions of United States**

(a) General Rule—In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

(1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the three-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) If, in the case of such corporation, 50 per centum or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(3) If, in case of such citizen, 50 per centum or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

(b) Amounts Received in United States—Notwithstanding the provisions of subsection (a) there shall be included in gross income all amounts received by such citizens or corporations within the United States, whether derived from sources within or without the United States.

(c) Tax in Case of Corporations—In the case of a domestic corporation entitled to the benefits of this section the normal tax imposed by Section 13 shall be at the rate of 15 per centum instead of at the rates provided in such section, and such a corporation shall not be subject to the surtax imposed by Section 14.

(d) Definition—As used in this section the term "possession of the United States" does not include the Virgin Islands of the United States.

**(e) Deductions—**

(1) Citizens of the United States entitled to the benefits of this section shall have the same deductions as are allowed by Supplement H in the case of a nonresident alien individual engaged in trade or business within the United States or having an office or place of business therein.

(2) Domestic corporations entitled to the benefits of this section shall have the same deductions as are allowed by Supplement I in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein.

(f) Credits Against Net Income—A citizen of the United States entitled to the benefits of this section shall be allowed a personal exemption of only \$1,000 and shall not be allowed the credit for dependents provided in Section 25 (b) (2).

(g) Allowance of Deductions and Credits—Citizens of the United States and domestic corporations entitled to the benefits of this section shall receive the benefit of the deductions and credits allowed to them in this title only by filing or causing to be filed with the collector a true and accurate return of their total income received from all sources in the United States, in the manner prescribed in this title; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

(h) Credits Against Tax—Persons entitled to the benefits of this section shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by Section 131.

(i) Affiliation—A corporation entitled to the benefits of this section shall not be deemed to be affiliated with any other corporation within the meaning of Section 141.

**Sec. 252. Citizens of Possessions of United States**

(a) Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States, shall be subject to taxation under this title only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to income derived from such sources.

(b) Nothing in this section shall be construed to alter or amend the provisions of the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes," approved July 12, 1921, relating to the imposition of income taxes in the Virgin Islands of the United States.

**SUPPLEMENT K—CHINA TRADE ACT CORPORATIONS****Sec. 261. Taxation in General**

In the case of a corporation organized under the China Trade Act, 1922, the normal tax imposed by Section 13 shall be at the rate of 15 per centum instead of at the rates provided in such section, and such a corporation shall not be subject to the surtax imposed by Section 14.

**Sec. 262. Credit Against Net Income**

(a) Allowance of Credit—For the purpose only of the taxes imposed by Section 13 of this Act and Section 106 of the Revenue Act of 1935 there shall be allowed, in the case of a corporation organized under the China Trade Act, 1922, in addition to the credits against net income otherwise allowed such corporation, a credit against the net income of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in Section 119) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date: *Provided*, That in no case shall the diminution, by reason of such credit, of the tax imposed by such Section 13 (computed without regard to this section) exceed the amount of the special dividend certified under subsection (b) of this section; and in no case shall the diminution, by reason of such credit, of the tax imposed by such Section 106 (computed without regard to this section) exceed the amount by which such special dividend exceeds the diminution permitted by this section in the tax imposed by such Section 13.

(b) Special Dividend—Such credit shall not be allowed unless the Secretary of Commerce has certified to the Commissioner—

(1) The amount which, during the year ending on the date fixed by law for filing the return, the corporation has distributed as a special dividend to or for the benefit of such persons as on the last day of the taxable year were resident in China, the United States, or possessions of the United States, or were individual citizens of the United States or China, and owned shares of stock of the corporation;

(2) That such special dividend was in addition to all other amounts, payable or to be payable to such persons or for their benefit, by reason of their interest in the corporation; and

(3) That such distribution has been made to or for the benefit of such persons in proportion to the par value of the shares of stock of the corporation owned by each; except that if the corporation has more than one class of stock, the certificates shall contain a statement that the articles of incorporation provide a method for the apportionment of such special dividend among such persons, and that the amount certified has been distributed in accordance with the method so provided.

(c) Ownership of Stock—For the purposes of this section shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested.

(d) Definition of China—As used in this section, the term "China" shall have the same meaning as when used in the China Trade Act, 1922.

**Sec. 263. Credits Against the Tax**

A corporation organized under the China Trade Act, 1922, shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by Section 131.

**Sec. 264. Affiliation**

A corporation organized under the China Trade Act, 1922, shall not be deemed to be affiliated with any other corporation within the meaning of Section 141.

**Sec. 265. Income of Shareholders**

For exclusion of dividends from gross income, see Section 116.

**SUPPLEMENT L—ASSESSMENT AND COLLECTION OF DEFICIENCIES****Sec. 271. Definition of Deficiency**

As used in this title in respect of a tax imposed by this title "deficiency" means—

(a) The amount by which the tax imposed by this title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or

(b) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax.

**Sec. 272. Procedure in General**

(a) Petition to Board of Tax Appeals—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within 90 days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the 90th day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of Section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

For exceptions to the restrictions imposed by this subsection, see—

(1) Subsection (d) of this section, relating to waivers by the taxpayer; (2) Subsection (f) of this section, relating to notifications of mathematical errors, appearing upon the face of the return;

(3) Section 273, relating to jeopardy assessments;

(4) Section 274, relating to bankruptcy and receiverships; and

(5) Section 1001 of the Revenue Act of 1926, as amended, relating to assessment or collection of the amount of the deficiency determined by the Board pending court review.

(b) Collection of Deficiency Found by Board—If the taxpayer files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

(c) Failure to File Petition—If the taxpayer does not file a petition with the Board within the time prescribed in subsection (a) of this section, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the collector.



(d) **Waiver of Restrictions**—The taxpayer shall at any time have the right, by a signed notice in writing filed with the Commissioner, to waive the restrictions provided in subsection (a) of this section on the assessment and collection of the whole or any part of the deficiency.

(e) **Increase of Deficiency After Notice Mailed**—The Board shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so redetermined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any penalty, additional amount or addition to the tax should be assessed—if claim therefor is asserted by the Commissioner at or before the hearing or a rehearing.

(f) **Further Deficiency Letters Restricted**—If the Commissioner has mailed to the taxpayer notice of a deficiency as provided in subsection (a) of this section, and the taxpayer files a petition with the Board within the time prescribed in such subsection, the Commissioner shall have no right to determine any additional deficiency in respect of the same taxable year, except in the case of fraud, and except as provided in subsection (e) of this section, relating to assertion of greater deficiencies before the Board, or in Section 273 (c), relating to the making of jeopardy assessments. If the taxpayer is notified that, on account of a mathematical error appearing upon the face of the return, an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered (for the purposes of this subsection, or of subsection (a) of this section, prohibiting assessment and collection until notice of deficiency has been mailed, or of Section 322 (c), prohibiting credits or refunds after petition to the Board of Tax Appeals) as a notice of a deficiency, and the taxpayer shall have no right to file a petition with the Board based on such notice, nor shall such assessment or collection be prohibited by the provisions of subsection (a) of this section.

(g) **Jurisdiction Over Other Taxable Years**—The Board in redetermining a deficiency in respect of any taxable year shall consider such facts with relation to the taxes for other taxable years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid.

(h) **Final Decisions of Board**—For the purposes of this title the date on which a decision of the Board becomes final shall be determined according to the provisions of Section 1005 of the Revenue Act of 1926.

(i) **Prorating of Deficiency to Instalments**—If the taxpayer has elected to pay the tax in instalments and a deficiency has been assessed, the deficiency shall be prorated to the four instalments. Except as provided in Section 273 (relating to jeopardy assessments), that part of the deficiency so prorated to any instalment the date for payment of which has not arrived, shall be collected at the same time as and as part of such instalment. That part of the deficiency so prorated to any instalment the date for payment of which has arrived, shall be paid upon notice and demand from the collector.

(j) **Extension of Time for Payment of Deficiencies**—Where it is shown to the satisfaction of the Commissioner that the payment of a deficiency upon the date prescribed for the payment thereof will result in undue hardship to the taxpayer the Commissioner, with the approval of the Secretary (except where the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax), may grant an extension for the payment of such deficiency or any part thereof for a period not in excess of 18 months, and, in exceptional cases, for a further period not in excess of 12 months. If an extension is granted, the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount of the deficiency, and with such sureties, as the Commissioner deems necessary, conditioned upon the payment of the deficiency in accordance with the terms of the extension.

(k) **Address for Notice of Deficiency**—In the absence of notice to the Commissioner under Section 312 (a) of the existence of a fiduciary relationship, notice of a deficiency in respect of a tax imposed by this title, if mailed to the taxpayer at his last known address, shall be sufficient for the purposes of this title even if such taxpayer is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

#### Sec. 273. Jeopardy Assessments.

(a) **Authority for Making**—If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof.

(b) **Deficiency Letters**—If the jeopardy assessment is made before any notice in respect of the tax to which the jeopardy assessment relates has been mailed under Section 272 (a), then the Commissioner shall mail a notice under such subsection within 60 days after the making of the assessment.

(c) **Amount Assessable Before Decision of Board**—The jeopardy assessment may be made in respect of a deficiency greater or less than that notice of which has been mailed to the taxpayer, despite the provisions of Section 272 (f) prohibiting the determination of additional deficiencies, and whether or not the taxpayer has theretofore filed a petition with the Board of Tax Appeals. The Commissioner shall notify the Board of the amount of such assessment, if the petition is filed with the Board before the making of the assessment or is subsequently filed, and the Board shall have jurisdiction to redetermine the entire amount of the deficiency and of all amounts assessed at the same time in connection therewith.

(d) **Amount Assessable After Decision of Board**—If the jeopardy assessment is made after the decision of the Board is rendered such assessment may be made only in respect of the deficiency determined by the Board in its decision.

(e) **Expiration of Right to Assess**—A jeopardy assessment may not be made after the decision of the Board has become final or after the taxpayer has filed a petition for review of the decision of the Board.

(f) **Bond to Stay Collection**—When a jeopardy assessment has been made the taxpayer, within 10 days after notice and demand from the collector for the payment of the amount of the assessment, may obtain a stay of collection of the whole or any part of the amount of the assessment by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary conditioned upon the payment of so much of the amount, the collection of which is stayed by the bond, as is not abated by a decision of the Board which has become final, together with interest thereon as provided in Section 297.

(g) **Same—Further Conditions**—If the bond is given before the taxpayer has filed his petition with the Board under Section 272 (a), the bond shall contain a further condition that if a petition is not filed within the period provided in such subsection, then the amount the collection of which is stayed by the bond will be paid on notice and demand at any time after the expiration of such period, together with interest thereon at the rate of 6 per centum per annum from the date of the jeopardy notice and demand to the date of notice and demand under this subsection.

(h) **Waiver of Stay**—Upon the filing of the bond the collection of so much of the amount assessed as is covered by the bond shall be stayed. The tax-

payer shall have the right to waive such stay at any time in respect of the whole or any part of the amount covered by the bond, and if as a result of such waiver any part of the amount covered by the bond is paid, then the bond shall, at the request of the taxpayer, be proportionately reduced. If the Board determines that the amount assessed is greater than the amount which should have been assessed, then when the decision of the Board is rendered the bond shall, at the request of the taxpayer, be proportionately reduced.

(i) **Collection of Unpaid Amounts**—When the petition has been filed with the Board and when the amount which should have been assessed has been determined by a decision of the Board which has become final, then any unpaid portion, the collection of which has been stayed by the bond shall be collected as part of the tax upon notice and demand from the collector, and any remaining portion of the assessment shall be abated. If the amount already collected exceeds the amount determined as the amount which should have been assessed, such excess shall be credited or refunded to the taxpayer as provided in Section 322, without the filing of claim therefor. If the amount determined as the amount which should have been assessed is greater than the amount actually assessed, then the difference shall be assessed and shall be collected as part of the tax upon notice and demand from the collector.

(j) **Claims in Abatement**—No claim in abatement shall be filed in respect of any assessment in respect of any tax imposed by this title.

#### Sec. 274. Bankruptcy and Receiverships

(a) **Immediate Assessment**—Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or of any State or Territory or of the District of Columbia, any deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) determined by the Commissioner in respect of a tax imposed by this title upon such taxpayer shall, despite the restrictions imposed by Section 272 (a) upon assessments be immediately assessed if such deficiency has not theretofore been assessed in accordance with law. In such cases the trustee in bankruptcy or receiver shall give notice in writing to the Commissioner of the adjudication of bankruptcy or the appointment of the receiver, and the running of the statute of limitations on the making of assessments shall be suspended for the period from the date of adjudication in bankruptcy or the appointment of the receiver to a date 30 days after the date upon which the notice from the trustee or receiver is received by the Commissioner; but the suspension under this sentence shall in no case be for a period in excess of two years. Claims for the deficiency and such interest, additional amounts and additions to the tax may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of proceedings for the redetermination of the deficiency in pursuance of a petition to the Board; but no petition for any such redetermination shall be filed with the Board after the adjudication of bankruptcy or the appointment of the receiver.

(b) **Unpaid Claims**—Any portion of the claim allowed in such bankruptcy or receivership proceedings which is unpaid shall be paid by the taxpayer upon notice and demand from the collector after the termination of such proceeding, and may be collected by distraint or proceeding in court within six years after termination of such proceedings. Extensions of time for such payment may be had in the same manner and subject to the same provisions and limitations as are provided in Section 272 (j) and Section 296 in the case of a deficiency in a tax imposed by this title.

#### Sec. 275. Period of Limitation Upon Assessment and Collection

Except as provided in Section 276—

(a) **General Rule**—The amount of income taxes imposed by this title shall be assessed within three years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(b) **Request for Prompt Assessment**—In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request, therefor (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of three years after the return was filed. This subsection shall not apply in the case of a corporation unless—

(1) Such written request notifies the Commissioner that the corporation contemplates dissolution at or before the expiration of such 18 months' period; and

(2) The dissolution is in good faith begun before the expiration of such 18 months' period; and

(3) The dissolution is completed.

(c) **Omission from Gross Income**—If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed.

(d) For the purposes of subsections (a), (b), and (c), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

(e) **Corporation and Shareholder**—If a corporation makes no return of the tax imposed by this title, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed.

#### Sec. 276. Same—Exceptions

(a) **False Return or No Return**—In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(b) **Waiver**—Where before the expiration of the time prescribed in Section 275 for the assessment of the tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) **Collection After Assessment**—Where the assessment of any income tax imposed by this title has been made within the period of limitation properly 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 of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

**Sec. 277. Suspension of Running of Statute**

The running of the statute of limitations provided in Section 275 or 276 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under Section 272 (a)) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.

**SUPPLEMENT M—INTEREST AND ADDITIONS TO THE TAX****Sec. 291. Failure to File Return**

In case of any failure to make and file return required by this title, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax: 5 per centum if the failure is for not more than 30 days with an additional 5 per centum for each additional 30 days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. The amount so added to any tax 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, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in Section 3176 of the Revised Statutes, as amended.

**Sec. 292. Interest of Deficiencies**

Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the collector, and shall be collected as a part of the tax, at the rate of 6 per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in instalments, from the date prescribed for the payment of the first instalment) to the date the deficiency is assessed, or, in the case of a waiver under Section 272 (d), to the 30th day after the filing of such waiver or to the date the deficiency is assessed whichever is the earlier.

**Sec. 293. Additions to the Tax in Case of Deficiency**

(a) Negligence—If any part of any deficiency is due to negligence, or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of Section 272 (i), relating to the prorating of a deficiency, and of Section 292, relating to interest on deficiencies, shall not be applicable.

(b) Fraud—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in Section 3176 of the Revised Statutes, as amended.

**Sec. 294. Additions to the Tax in Case of Nonpayment****(a) Tax Shown on Return—**

(1) General Rule—Where the amount determined by the taxpayer as the tax imposed by this title, or any instalment thereof, or any part of such amount or instalment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the date prescribed for its payment until it is paid.

(2) If Extension Granted—Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any instalment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under Section 293, is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) Deficiency—Where a deficiency, or any interest or additional amounts assessed in connection therewith under Section 292, or under Section 293, or any addition to the tax in case of delinquency provided for in Section 291, is not paid in full within 10 days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. If any part of a deficiency prorated to any unpaid instalment under Section 272 (i) is not paid in full on or before the date prescribed for the payment of such instalment, there shall be collected as part of the tax interest upon the unpaid amount at the rate of 6 per centum per annum from such date until it is paid.

(c) Fiduciaries—For any period an estate is held by a fiduciary appointed by order of any court of competent jurisdiction or by will, there shall be collected interest at the rate of 6 per centum per annum in lieu of the interest provided in subsections (a) and (b) of this section.

(d) Filing of Jeopardy Bond—If a bond is filed, as provided in Section 273 the provisions of subsections (b) and (c) of this section shall not apply to the amount covered by the bond.

**Sec. 295. Time Extended for Payment of Tax Shown on Return**

If the time for payment of the amount determined as the tax by the taxpayer, or any instalment thereof, is extended under the authority of Section 56 (c), there shall be collected as a part of such amount, interest thereon at the rate of 6 per centum per annum from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension.

**Sec. 296. Time Extended for Payment of Deficiency**

If the time for the payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period.

**Sec. 297. Interest in Case of Jeopardy Assessments**

In the case of the amount collected under Section 273 (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from

the date of the jeopardy notice and demand to the date of notice and demand under Section 273 (i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in Section 292. If the amount included in the notice and demand from the collector under Section 273 (i) is not paid in full within ten days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum (or, for any period the estate of the taxpayer is held by a fiduciary appointed by any court of competent jurisdiction or by will, at the rate of 6 per centum per annum) from the date of such notice and demand until it is paid.

**Sec. 298. Bankruptcy and Receiverships**

If the unpaid portion of the claim allowed in a bankruptcy or receivership proceeding, as provided in Section 274, is not paid in full within ten days from the date of notice and demand from the collector, then there shall be collected as a part of such amount interest upon the unpaid portion thereof at the rate of 6 per centum per annum from the date of such notice and demand until payment.

**Sec. 299. Removal of Property or Departure from United States**

For additions to tax in case of leaving the United States or concealing property in such manner as to hinder collection of the tax, see Section 146.

**SUPPLEMENT N—CLAIMS AGAINST TRANSFEREES AND FIDUCIARIES****Sec. 311. Transferred Assets**

(a) Method of Collection—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) Transferees—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title.

(2) Fiduciaries—The liability of a fiduciary under Section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the taxpayer.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) Period of Limitation—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the taxpayer;

(2) In the case of the liability of a transferee or a transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three years after the expiration of the period of limitation for assessment against the taxpayer;—except that if before the expiration of the period of limitation for the assessment of the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively,—then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.

(3) In the case of the liability of a fiduciary,—not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

(c) Period for Assessment Against Taxpayer—For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had death or termination of existence not occurred.

(d) Suspension of Running of Statute of Limitations—The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in Section 272 (a), be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for sixty days thereafter.

(e) Address for Notice of Liability—In the absence of notice to the Commissioner under Section 312 (b) of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect of a tax imposed by this title, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this title even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

(f) Definition of "Transferee"—As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

**Sec. 312. Notice of Fiduciary Relationship**

(a) Fiduciary of Taxpayer—Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this title (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.

(b) Fiduciary of Transferee—Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in Section 311, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Manner of Notice—Notice under subsection (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

**SUPPLEMENT O—OVERPAYMENTS****Sec. 321. Overpayment of Instalment**

If the taxpayer has paid as an instalment of the tax more than the amount determined to be the correct amount of such instalment, the overpayment shall be credited against the unpaid instalments, if any. If the amount already paid, whether or not on the basis of instalments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in Section 322.



## Sec. 322. Refunds and Credits

(a) Authorization—Where there has been an overpayment of any tax imposed by this title, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or instalment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

(b) Limitation on Allowance—

(1) Period of Limitation—Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) Limit on Amount of Credit or Refund—The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or, if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

(c) Effect of Petition to Board—If the Commissioner has mailed to the taxpayer a notice of deficiency under Section 272 (a) and if the taxpayer files a petition with the Board of Tax Appeals within the time prescribed in such subsection, no credit or refund in respect of the tax for the taxable year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

(1) As to overpayments determined by a decision of the Board which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Board which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Board which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(d) Overpayment Found by Board—If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax unless the Board determines as part of its decision that it was paid within three years before the filing of the claim or the filing of the petition, whichever is earlier.

(e) Tax Withheld at Source—For refund or credit in case of excessive withholding at the source, see Section 143 (f).

## TITLE IA—ADDITIONAL INCOME TAXES

## Sec. 351. Surtax on Personal Holding Companies

(a) Imposition of Tax—There shall be levied, collected, and paid, for each taxable year (in addition to the taxes imposed by Title I), upon the undistributed adjusted net income of every personal holding company a surtax equal to the sum of the following:

- (1) 8 per centum of the amount thereof not in excess of \$2,000; plus
- (2) 18 per centum of the amount thereof in excess of \$2,000 and not in excess of \$100,000; plus
- (3) 28 per centum of the amount thereof in excess of \$100,000 and not in excess of \$500,000; plus
- (4) 38 per centum of the amount thereof in excess of \$500,000 and not in excess of \$1,000,000; plus
- (5) 48 per centum of the amount thereof in excess of \$1,000,000.

(b) Definitions—As used in this title—

(1) The term "personal holding company" means any corporation (other than a corporation exempt from taxation under Section 101, and other than a bank, as defined in Section 104, and other than a life-insurance company or surety company) if—(A) at least 80 per centum of its gross income for the taxable year is derived from royalties, dividends, interest, annuities, and (except in the case of regular dealers in stock or securities) gains from the sale of stock or securities, and (B) at any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals. For the purpose of determining the ownership of stock in a personal holding company—(C) stock owned, directly or indirectly, by a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries; (D) an individual shall be considered as owning, to the exclusion of any other individual, the stock owned, directly or indirectly, by his family, and this rule shall be applied in such manner as to produce the smallest possible number of individuals owning, directly or indirectly, more than 50 per centum in value of the outstanding stock; and (E) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(2) The term "undistributed adjusted net income" means the adjusted net income minus the sum of:

(A) 20 per centum of the excess of the adjusted net income over the amount of dividends received from personal holding companies which are allowable as a credit for the purposes of the tax imposed by Section 13 or 204;

(B) Amounts used or set aside to retire indebtedness incurred prior to Jan. 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness; and

(C) The amount of the dividends paid credit provided in Section 27, computed without the benefit of subsection (b) thereof (relating to the dividend carry-over).

(3) The term "adjusted net income" means the net income minus the sum of:

(A) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction by Section 23, but not including the tax imposed by this section or a corresponding section of a prior income-tax law;

(B) Contributions or gifts, not otherwise allowed as a deduction, to or for the use of donees described in Section 23 (c) for the purposes therein specified, including, in the case of a corporation organized prior to Jan. 1, 1936, to take over the assets and liabilities of the estate of a decedent, amounts paid in liquidation of any liability of the corporation based on the liability of the decedent to make any such contribution or gift, to the extent such liability of the decedent existed prior to Jan. 1, 1934; and

(C) Losses from sales or exchanges of capital assets which are disallowed as a deduction by Section 117 (d).

(4) The terms used in this section shall have the same meaning as when used in Title I.

(c) Administrative Provisions—All provisions of law (including penalties) applicable in respect of the taxes imposed by Title I of this Act, shall insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of Section 131 of that title shall not be applicable.

(d) Payment of Surtax on Pro Rata Shares—The tax imposed by this section shall not apply if (1) all the shareholders of the corporation include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the adjusted net income of the corporation for such year, and (2) 90 per centum or more of such adjusted net income is so included in the gross income of shareholders other than corporations. Any amount so included in the gross income of a shareholder shall be treated as a dividend received. Any subsequent distribution made by the corporation out of earnings or profits for such taxable year shall, if distributed to any shareholder who has so included in his gross income his pro rata share, be exempt from tax in the amount of the share so included.

(e) Improper Accumulation of Surplus—For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see Section 102.

## TITLE II—CAPITAL STOCK AND EXCESS-PROFITS TAX

## Sec. 401. Capital Stock Tax

(a) Section 105 of the Revenue Act of 1935 is amended by striking out "\$1.40" wherever appearing therein and inserting in lieu thereof "\$1".

(b) Subsection (c) of such section is amended by striking out "1934" and inserting in lieu thereof "1936", and by striking out "as amended" wherever appearing in such subsection.

(c) Subsection (f) (4) of such section is amended to read as follows: "(4) the excess of its income wholly exempt from the taxes imposed by the applicable income-tax law over the amount disallowed as a deduction by Section 24 (a) (5) of the Revenue Act of 1934 or a corresponding provision of a later Revenue Act, and".

## Sec. 402. Excess Profits Tax

(a) Section 106 (b) of the Revenue Act of 1935 is amended by striking out "except that there shall be deducted the amount of income tax imposed for such year by Section 13 of the Revenue Act of 1934, as amended" and inserting in lieu thereof "computed without the deduction of the tax imposed by this section, but with a credit against net income equal to the credit for dividends received provided in Section 26 (b) of the Revenue Act of 1936".

(b) The amendment made by subsection (a) shall not apply to an income-tax taxable year beginning before Jan. 1, 1936.

## TITLE III—TAX ON UNJUST ENRICHMENT

## Sec. 501. Tax on Net Income from Certain Sources

(a) The following taxes shall be levied, collected, and paid for each taxable year (in addition to any other tax on net income), upon the net income of every person which arises from the sources specified below:

(1) A tax equal to 80 per centum of that portion of the net income from the sale of articles with respect to which a Federal excise tax was imposed on such person but not paid which is attributable to shifting to others to any extent the burden of such Federal excise tax and which does not exceed such person's net income for the entire taxable year from the sale of articles with respect to which such Federal excise tax was imposed.

(2) A tax equal to 80 per centum of the net income from reimbursement received by such person from his vendors of amounts representing Federal excise-tax burdens included in prices paid by such person to such vendors, to the extent that such net income does not exceed the amount of such Federal excise-tax burden which such person in turn shifted to his vendees.

(3) A tax equal to 80 per centum of the net income from refunds or credits to such person from the United States of Federal excise taxes erroneously or illegally collected with respect to any articles, to the extent that such net income does not exceed the amount of the burden of such Federal excise taxes with respect to such articles which such person shifted to others.

(b) The net income (specified in subsection (a) (1) from the sale of articles with respect to which the Federal excise tax was not paid, and the net income specified in subsection (a) (2) or (3), shall not include the net income from the sale of any article, from reimbursement with respect to any article, or from refund or credit of Federal excise tax with respect to any article (1) if such article (or the articles processed therefrom) were not sold by the taxpayer on or before the date of the termination of the Federal excise tax; (2) if the taxpayer made a tax adjustment with respect to such article (or the articles processed therefrom) with his vendee; or (3) if under the terms of any statute the taxpayer would have been entitled to a refund from the United States of the Federal excise tax with respect to the article otherwise than as an erroneous or illegal collection (assuming, in case the tax was not paid, that it had been paid).

(c) The net income from the sales specified in subsection (a) (1) shall be computed as follows:

(1) From the gross income from such sales there shall be deducted the allocable portion of the deductions from gross income for the taxable year which are allowable under the applicable Revenue Act; or

(2) If the taxpayer so elects by filing his return on such basis, the total net income for the taxable year from the sale of all articles with respect to which each Federal excise tax was imposed (computed by deducting from the gross income from such sales the allocable portion of the deductions from gross income which are allowable under the applicable Revenue Act, but without deduction of the amount of such Federal excise tax which was paid or of the amount of reimbursement to purchasers with respect to such Federal excise tax) shall be divided by the total quantity of such articles sold during the taxable year and the quotient shall be multiplied by the quantity of such articles involved in the sales specified in subsection (a) (1). Such quantities shall be expressed in terms of the unit on the basis of which the Federal excise tax was imposed.

For the purposes of this section the proper apportionment and allocation of deductions with respect to gross income shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(d) The net income from reimbursement or refunds specified in subsection (a) (2) or (3) shall be computed as follows: From the total payment or accrual (1) of reimbursement to the taxpayer from vendors for amounts representing Federal excise tax burdens included in prices paid by the taxpayer to such vendors or (2) of refunds or credits to the taxpayer of Federal excise taxes erroneously or illegally collected, there shall be deducted the expenses and fees reasonably incurred in obtaining such reimbursement or refunds.

(e) For the purposes of subsection (a) (1), (2), and (3), the extent to which the taxpayer shifted to others the burden of a Federal excise tax shall be presumed to be an amount computed as follows:



(1) From the selling price of the articles there shall be deducted the sum of (A) the cost of such articles plus (B) the average margin with respect to the quantity involved; or

(2) If the taxpayer so elects by filing his return on such basis, from the aggregate selling price of all articles with respect to which such Federal excise tax was imposed and which were sold by him during the taxable year (computed without deduction of reimbursement to purchasers with respect to such Federal excise tax) there shall be deducted the aggregate cost of such articles, and the difference shall be reduced to a margin per unit in terms of the basis on which the Federal excise tax was imposed. The excess of such margin per unit over the average margin (computed for the same unit) shall be multiplied by the number of such units represented by the articles with respect to which the computation is being made; but

(3) In no case shall the extent to which the taxpayer shifted to others the burden of the Federal excise tax with respect to the articles be deemed to exceed the amount of such tax with respect to such articles minus (A) the portion of the amount of the Federal excise tax (or of the reimbursement specified in subsection (a) (2)) with respect to the articles which is paid or credited by the taxpayer to any purchasers as specified in subsection (f) (3) and minus (B) the amount of any increase in the tax under Section 602 of the Revenue Act of 1932 for which the taxpayer under this section became liable as the result of the nonpayment or refund of the Federal excise tax with respect to the articles.

(f) As used in this section—

(1) The term "margin" means the difference between the selling price of articles and the cost thereof, and the term "average margin" means the average difference between the selling price and the cost of similar articles sold by the taxpayer during his six taxable years preceding the initial imposition of the Federal excise tax in question, except that if during any part of such six-year period the taxpayer was not in business, or if his record for any part of such period are so inadequate as not to furnish satisfactory data, the average margin of the taxpayer for such part of such period shall, when necessary for a fair comparison, be deemed to be the average margin, as determined by the Commissioner, of representative concerns engaged in a similar business and similarly circumstanced.

(2) The term "cost" means, in the case of articles manufactured or produced by the taxpayer, the cost to the taxpayer of materials entering into the article; or, in the case of articles purchased by the taxpayer for resale, the price paid by him for such articles (reduced in both cases by the amount for which he is reimbursed by his vendor).

(3) The term "selling price" means selling price minus (A) amounts subsequently paid or credited to the purchaser on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered into on or before March 3, 1936, as reimbursement for the amount included in such price on account of a Federal excise tax; and minus (B) the allocable portion of any professional fees and expenses of litigation incurred in securing the refund or preventing the collection of the Federal excise tax, not to exceed 10 per centum of the amount of such tax.

(g) In determining costs, selling prices and net income, the taxpayer shall, unless otherwise shown, be deemed to have sold articles in the order in which they were manufactured, produced, or acquired. Where the taxpayer's records do not adequately establish the quantity of a commodity taxable under the Agricultural Adjustment Act, as amended, entering into articles sold by him, such quantities shall be computed by the use of the conversion factors prescribed in regulations under such Act, as amended.

(h) If the taxpayer made any purchase or sale otherwise than through an arm's-length transaction, and at a price other than the fair market price, the Commissioner may determine the purchase or sale price to be that for which such purchases or sales were at that time made in the ordinary course of trade.

(i) Either the taxpayer or the Commissioner may rebut the presumption established by subsection (e) by proof of the actual extent to which the taxpayer shifted to others the burden of the Federal excise tax. Such proof may include, but shall not be limited to:

(1) Proof that the change or lack of change in the margin was due to changes in factors other than the tax. Such factors shall include any clearly shown change (A) in the type or grade of article or materials, or (B) in costs of production. If the taxpayer asserts that the burden of the tax was borne by him while the burden of any other increased cost was shifted to others, the Commissioner shall determine, from the respective effective dates of the tax and of the other increase in cost as compared with the date of the change in margin, and from the general experience of the industry, whether the tax or the increase in other cost was shifted to others. If the Commissioner determines that the change in margin was due in part to the tax and in part to the increase in other cost, he shall apportion the change in margin between them.

(2) Proof that the taxpayer modified contracts of sale, or adopted a new contract of sale, to reflect the initiation, termination, or change in amount of the Federal excise tax, or at any such time changed the sale price of the article (including the effect of a change in size, package, discount terms, or any other merchandising practice) by substantially the amount of the tax or change therein, or at any time billed the tax as a separate item to any vendee or indicated by any writing that the sale price included the amount of the tax, or contracted to refund any part of the sale price in the event of recovery of the tax or decision of its invalidity; but the taxpayer may establish that such acts were caused by factors other than the tax, or that they do not represent his practice during the period in which the articles in question were sold.

(j) As used in this section—

(1) The term "Federal excise tax" means a tax or exaction with respect to the sale, lease, manufacture, production, processing, ginning, importation, transportation, refining, recovery, or holding for sale or other disposition, of commodities or articles, provided for by any Federal statute, whether valid or invalid, if denominated a "tax" by such statute. A Federal excise tax shall be deemed to have been imposed with respect to an article if it was imposed with respect to (or with respect to the processing of) any commodity or other article, from which such article was processed.

(2) The term "date of the termination of the Federal excise tax" means, in the case of a Federal excise tax held invalid by a decision of the Supreme Court, the date of such decision.

(3) The term "refund or credit" does not include a refund or credit made in accordance with the provisions and limitations set forth in Title VII of this Act, or in Section 621 (d) of the Revenue Act of 1932.

(4) The term "tax adjustment" means a repayment or credit by the taxpayer to his vendee of an amount equal to the Federal excise tax with respect to an article (less reasonable expense to the vendor in connection with the nonpayment or recovery by him of the amount of such tax and in connection with the making of such repayment or credit) if such repayment or credit is made on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered into on or before March 3, 1936.

(5) The term "taxpayer" means a person subject to a tax imposed by this section.

(k) All references in this section to the purchase or sale (or to parties to the sale) of articles with respect to which a Federal excise tax was imposed

shall be deemed to include the purchase or sale (or parties to the sale) of services with respect to which a Federal excise tax was imposed, and for the purposes of subsection (a) the extent to which the taxpayer shifted to others the burden of such Federal excise tax with respect to such services shall be presumed to be an amount computed as follows: From the selling price of the services there shall be deducted the average price received by the taxpayer for performing similar services during the six taxable years preceding the initial imposition of the Federal excise tax in question. The balance (to the extent that it does not exceed the amount of such Federal excise tax with respect to such services minus any payments or credits with respect to the services made to purchasers as specified in subsection (f) (3)) shall be the extent to which the taxpayer shifted the burden of such Federal excise tax to others. If during any part of such six-year period the taxpayer was not in business, or if his records for any part of such period are so inadequate as not to furnish satisfactory data, the average price of the taxpayer for such part of such period shall, when necessary for a fair comparison, be deemed to be the average price, as determined by the Commissioner, of representative concerns engaged in a similar business and similarly circumstanced. The presumption established by this subsection may be rebutted by proof of the character described in subsection (i).

(l) The taxes imposed by subsection (a) shall be imposed on the net income from the sources specified therein, regardless of any loss arising from the other transactions of the taxpayer, and regardless of whether the taxpayer had a taxable net income (under the income tax provisions of the applicable Revenue Act) for the taxable year as a whole; except that if such application of the tax imposed by subsection (a) is held invalid, the tax under subsection (a) shall apply to that portion of the taxpayer's entire net income for the taxable year which is attributable to the net income from the sources specified in such subsection.

#### Sec. 502. Credit for Other Taxes on Income

There shall be credited against the total amount of the taxes imposed by this title an amount equivalent to the excess of—

(a) The amount of the other Federal income and excess-profits taxes payable by the taxpayer for the taxable year, over

(b) The amount of the other Federal income and excess-profits taxes which would have been payable by the taxpayer for the taxable year if his net income were decreased by the amount of net income taxable under this title.

#### Sec. 503. Administrative Provisions

(a) All provisions of law (including penalties) applicable with respect to taxes imposed by Title I of this Act, shall, insofar as not inconsistent with this title, be applicable with respect to the taxes imposed by this title, except that the provisions of Sections 101, 131, 251, and 252 shall not be applicable.

(b) Every person (1) upon whom a Federal excise tax was imposed but not paid, or (2) who received any reimbursement specified in subsection (a) (2), or (3) who received a refund or credit of Federal excise tax, shall make a return under this title, which return shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, shall prescribe. For any taxable year ended prior to the date of the enactment of this Act the return shall be filed, and the total amount of the taxes shall be paid, not later than the fifteenth day of the third month after the date of the enactment of this Act, in lieu of the time otherwise prescribed by law.

(c) If the Commissioner finds that the payment, on the date prescribed for the payment thereof, of any part of the amount determined by the taxpayer as the tax under this title, or of any deficiency with respect thereto, would impose undue hardship upon the taxpayer, the Commissioner may grant an extension for the payment of any such part for a period not in excess of three years. In such case the amount with respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount with respect to which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount with respect to which the extension is granted in accordance with the terms of the extension. There shall be collected, as a part of any amount with respect to which an extension is granted, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date thereof to the expiration of the period of the extension.

#### Sec. 504. Taxable Years to Which Title Is Applicable

The taxes imposed by this title shall apply only with respect to taxable years ending during the calendar year 1935 and to subsequent taxable years.

#### Sec. 505. Application of Title to Possessions

With respect to the following income, the tax under this title shall be in force in any possession of the United States (including the Philippine Islands); such tax shall (without regard to the residence or citizenship or place of organization of the taxpayer) be collected by the appropriate internal-revenue officers of such possession; and the proceeds thereof shall accrue to the general government of such possession: (a) Any income specified in subsection (a) (1) or (3) of Section 501 if the Federal excise tax with respect to the articles in question accrued in such possession; and (b) any income specified in subsection (a) (2) of Section 501 if the reimbursement specified therein relates to articles sold in such possession by the taxpayer under this title and if the geographical scope of the Federal excise tax in question extended to such possession. Income taxable as provided in this section shall not be otherwise taxable under this title. In applying Section 501 to such income, the gross income and deductions shall be determined in accordance with the Federal Revenue Act applicable to the taxable year. In applying Section 502 to such income, income taxes paid to such possession shall be deemed to be Federal income taxes.

#### Sec. 506. Closing Agreements

Any person who is liable for the tax imposed by this title and who has filed any claim or claims for refund of any amount paid or collected as tax under the Agricultural Adjustment Act, as amended, may apply to the Commissioner of Internal Revenue for an adjustment of such liability for tax in conjunction with such claim or claims for refund, and thereafter, the Commissioner, for such purposes, may, in his discretion, consider such liability and such claim or claims as one case and, in his discretion, may enter into a written agreement with such person for the settlement of such case by such payment by, or refund to, such person as may be specified in such agreement. Such agreement shall be a final settlement of the liability for tax and the claim or claims for refund covered by such agreement, except in case of fraud, malfeasance, or misrepresentation of a material fact. In the absence of fraud or mistake in mathematical calculation, any action taken or any consideration given by the Commissioner pursuant to this



section shall not be subject to review by any court, or any administrative, or accounting officer, employee, or agent of the United States.

#### TITLE IV—EXPORT, CHARITABLE, ETC., REFUNDS AND FLOOR STOCKS ADJUSTMENT UNDER AGRICULTURAL ADJUSTMENT ACT

##### Sec. 601. Refunds Under Agricultural Adjustment Act on Exports, Deliveries for Charitable Distribution or Use, &c

(a) The provisions of Sections 10 (d), 15 (a), 15 (c), 16 (e) (1), 16 (e) (3), and 17 (a) of the Agricultural Adjustment Act, as amended, are hereby reenacted but only for the purpose of allowing refunds in accordance therewith in cases where the delivery for charitable distribution or use, or the exportation, or the manufacture of large cotton bags, or the decrease in the rate of the processing tax (or its equivalent under Section 16 (e) (3)), took place prior to Jan. 6, 1936.

(b) Except for refunds under Section 15 (a) of the Agricultural Adjustment Act, as reenacted herein, no refund under this section shall be made to the processor or other person who paid or was liable for the tax with respect to the articles on which the claim is based. No refund under this section shall be allowable to any person with respect to any articles where such person prior to Jan. 6, 1936, paid an amount as tax under the Agricultural Adjustment Act, as amended, by taking as a credit against such amount an amount otherwise allowable as a refund with respect to such articles under Sections 15 (a), 15 (c), 16 (e) (1), 16 (e) (3), or 17 (a) of said Act. No refund under this section shall be allowed to any person except to the extent that he establishes that he has not received, and is not entitled to receive, reimbursement of such amount from the processor or other vendor with respect to the articles on which the claim is based. No claim under this section (except claims of processors under Section 15 (a)) shall be disallowed on the ground that the tax with respect to the article or the commodity from which processed has not been paid.

(c) No refund under this section shall be made unless the claimant files a claim therefor prior to Jan. 1, 1937, under rules and regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, and no claim shall be allowed in an amount less than \$10. Sections 16 (g) and 21 (f) of the Agricultural Adjustment Act, as amended, are repealed.

(d) In the absence of fraud, the findings of fact and the decision of the Commissioner of Internal Revenue upon the merits of any claim adjusted pursuant to this section and the mathematical calculation therein shall not be subject to review by any administrative or accounting officer, employee, or agent of the United States.

(e) The determination of the Commissioner of Internal Revenue, with respect to any refund under this section shall be final and no court shall have jurisdiction to review such determination.

(f) No interest shall be allowed in connection with any refund made under this section.

(g) Section 16 (e) (1) of the Agricultural Adjustment Act, as reenacted by subsection (a) of this section, is amended by striking out "subsequent to June 26, 1934" and by inserting in lieu thereof "on or after June 1, 1934."

##### Sec. 602. Floor Stocks as of Jan. 6, 1936

(a) There shall be paid to any person who, at the first moment of Jan. 6, 1936, held for sale or other disposition (including manufacturing or further processing) any article processed wholly or in chief value from a commodity subject to processing tax, an amount computed as provided in subsection (b), except that no such payment shall be made to the processor or other person who paid or was liable for the tax with respect to the articles on which the claim is based.

(b) The amount of the payment under subsection (a) shall be equal to the processing tax which would have been payable with respect to the commodity from which the article was processed, if it had been processed on Jan. 5, 1936, but not in excess of (1) the amount of the burden of the tax with respect to the article which was shifted to the claimant in the price he paid for the article (to the extent that the claimant has not received and is not entitled to receive reimbursement for such burden from the processor or other vendor) and not in excess of (2) the amount of that part of the burden of the tax applicable to the articles held on Jan. 6, 1936, which the claimant has not passed on to his vendees and has not included in the sale price of such articles. In lieu of a detailed schedule of articles, purchases, sale prices, and sales under clauses (1) and (2) of this subsection, the claimant may (subject to the approval of the Commissioner and such investigations as he may cause to be made) submit, as a part of his claim, an affidavit setting forth the total amount of tax burden passed on to him on the articles with respect to which claim is made; the total amount of such burden for which he has received or is entitled to receive reimbursement from the processor or other vendor; the total amount of such burden that he has passed on to his vendees or has included in the sale prices of such articles; and the total amount of such burden that he has borne himself.

(c) As used in this section—

(1) The term "commodity subject to a processing tax" means a commodity upon the processing of which a tax was provided for under the Agricultural Adjustment Act, as amended, as of Jan. 5, 1936.

(2) The term "tax with respect to the article" means any tax under the Agricultural Adjustment Act, as amended, with respect to the article (or with respect to any commodity or other article from which it was processed).

(3) The term "sale price" includes the price at which the claimant actually sold the article or articles prior to the date of the filing of his claim or, if the article or articles have not been sold, the price at which he is offering the same for sale on the date of the filing of his claim.

(d) No payment shall be made under this section unless the claimant files a claim therefor prior to Jan. 1, 1937, in conformity with regulations prescribed by the Commissioner with the approval of the Secretary, nor unless he establishes to the satisfaction of the Commissioner the facts on which such claim is based.

(e) No claim under this section shall be disallowed on the ground that the tax with respect to the article or the commodity from which processed has not been paid, but no claim shall be allowed in an amount less than \$10. No payment shall be made under this section in connection with any article with respect to which a refund has been allowed or credit has been taken under the Agricultural Adjustment Act, as amended, or a refund has been allowed or is allowable under Section 601 of this title.

(f) No payment shall be made under this section with respect to articles held in retail floor stocks except (1) flour, prepared flour, cereal preparations, and gluten, made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1, promulgated under the Agricultural Adjustment Act and the amendments thereto, (2) articles processed wholly or in chief value from cotton, and (3) direct-consumption sugar processed from sugar beets or sugarcane. No payment under this section shall be made with respect to articles processed from wheat, sugar beets, or sugarcane held in other than retail stocks except (1) flour, prepared flour, cereal preparations, and gluten, made chiefly from wheat, as classified in Wheat Regulations, Series 1, Supplement 1, and (2) direct-consumption sugar.

(g) In the case of articles which were agreed to be sold under a contract entered into prior to Jan. 6, 1936, whereby the vendee agreed to pay a price including the amount of the tax with respect to the articles, but which were not delivered prior to such date, the vendee shall be considered the holder of such articles.

(h) In the absence of fraud the findings of fact and the decision of the Commissioner upon the merits of any claim under this section, and the mathematical calculation therein shall not be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

(i) The determination of the Commissioner with respect to any payment under this section shall be final and no court shall have jurisdiction to review such determination.

(j) No interest shall be allowed in connection with any payment made under this section.

##### Sec. 603. Proclamations, &c., Made Applicable

The proclamations, certificates, and regulations prescribed by the Secretary of Agriculture under the Agricultural Adjustment Act, as amended, in effect on Jan. 5, 1936, insofar as not inconsistent with this Act, are hereby made applicable for the purpose of determining the amount of any refund or payment authorized under Sections 601 and 602.

#### TITLE V—AMENDMENTS TO TAXES ON CERTAIN OILS

##### Sec. 701. Tax on Certain Oils

The first sentence of Section 601 (c) (8) of the Revenue Act of 1932, as amended, is amended to read as follows:

"(8) Whale oil (except sperm oil), fish oil (except cod oil, cod-liver oil, and halibut-liver oil), marine-animal oil, tallow, inedible animal oils, inedible animal fats, inedible animal greases, fatty acids derived from any of the foregoing, and salts of any of the foregoing; all the foregoing, whether or not refined, sulphated, sulphated, hydrogenated, or otherwise processed, 3 cents per pound; sesame oil provided for in paragraph 1732 of the Tariff Act of 1930, sunflower oil, rapeseed oil, kapok oil, hempseed oil, perilla oil, fatty acids derived from any of the foregoing or from linseed oil, and salts of any of the foregoing; all the foregoing, whether or not refined, sulphated, sulphated, hydrogenated, or otherwise processed, 4½ cents per pound; any article, merchandise, or combination (except oils specified in section 602½ of the Revenue Act of 1934, as amended), 10 per centum or more of the quantity by weight of which consists of, or is derived directly or indirectly from, one or more of the products specified above in this paragraph or in Section 602½ of the Revenue Act of 1934, as amended, a tax at the rate or rates per pound equal to that proportion of the rate or rates prescribed in this paragraph or such Section 602½ in respect of such product or products which the quantity by weight of the imported article, merchandise, or combination, consisting of or derived from such product or products, bears to the total weight of the imported article, merchandise, or combination; hempseed, perilla seed, rapeseed, sesame seed, and kapok seed, 2 cents per pound."

##### Sec. 702. Processing Tax on Certain Oils

(a) The first sentence of Section 602½ of the Revenue Act of 1934 is amended to read as follows:

"(a) There is hereby imposed upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts of any of the foregoing (whether or not such oils, fatty acids, or salts have been refined, sulphated, sulphated, hydrogenated, or otherwise processed), or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids, or salts, a tax of 3 cents per pound to be paid by the processor, but the tax under this section shall not apply (1) with respect to any fatty acid or salt resulting from a previous first domestic processing taxed under this section or upon which an import tax has been paid under Section 601 (c) (8) of the Revenue Act of 1932, as amended, or (2) with respect to any combination or mixture by reason of its containing an oil, fatty acid, or salt with respect to which there has been a previous first domestic processing or upon which an import tax has been paid under such Section 601 (3) (8)."

(b) Notwithstanding the provisions of subsection (a) of this section, the first domestic processing of sunflower oil or sesame oil (or any combination or mixture containing a substantial quantity of sunflower oil or sesame oil); if such oil or such combination or mixture or such oil contained therein was imported prior to the effective date of this title, shall be taxed in accordance with the provisions of Section 602½ of the Revenue Act of 1934 in force on the date of the enactment of this Act.

##### Sec. 703. Miscellaneous Provisions

Nothing in Section 601 (c) (8) of the Revenue Act of 1932, as amended, shall be construed as imposing a tax in contravention of an obligation undertaken in any trade agreement heretofore entered into under the authority of Section 350 of the Tariff Act of 1930, as amended, or as imposing a tax on the importation of glycerin or stearine pitch or on the importation of any article by reason of any component of such article derived directly or indirectly from a waste not named in Section 601 (c) (8) of the Revenue Act of 1932, as amended. Section 402 of the Revenue Act of 1935 is hereby repealed. All taxes accrued or paid under Section 402 of the Revenue Act of 1935 on the importation of glycerin or stearine pitch shall be remitted or refunded under such regulations as the Secretary of the Treasury may prescribe.

##### Sec. 704. Effective Date

The provisions of this title shall be effective on and after the sixtieth day following the date of the enactment of this Act.

#### TITLE VI—MISCELLANEOUS PROVISIONS

##### Sec. 801. Exemption from Admissions Tax of Certain Concerts

Section 500 (b) (2) of the Revenue Act of 1926 is amended by striking out of the period at the end thereof and inserting in lieu thereof a comma and the following: "and any admissions to concerts conducted by a civic or community membership association if no part of the net earnings thereof inures to the benefit of any stockholders or members of such association."

##### Sec. 802. Suits to Enforce Liens for Taxes

(a) Section 3207 (a) of the Revised Statutes, as amended, is amended to read as follows:

"Sec. 3207. (a) In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner of Internal Revenue may direct a bill in

chancery to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. All persons having liens upon or claiming any interest in the property or rights to property sought to be subjected as aforesaid shall be made parties to such proceedings and be brought into court as provided in other suits in chancery therein. And the said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property and rights to property in question, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court in respect to the interests of the parties and of the United States. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner of Internal Revenue during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity."

(b) No suit brought by the United States to enforce any lien for tax on any property, or rights to property, whether real or personal, which is pending in any court of the United States on the date of the enactment of this Act, shall abate, but any such suit shall be continued in accordance with the provisions of subsection (a) of this section.

#### Sec. 803. Interest on Erroneous Refunds

(a) Section 610 of the Revenue Act of 1928, as amended, is amended by adding at the end thereof a new subsection to read as follows:

"(d) Erroneous refunds recoverable by suit under this section shall bear interest at the rate of 6 per centum per annum from the date of the payment of the refund."

#### Sec. 804. Interest on Overpayments

Section 614 (a) (2) of the Revenue Act of 1928 is amended by striking out the period at the end thereof and inserting in lieu thereof the following: "whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon."

#### Sec. 805. Estate Taxes—Revocable Transfers

(a) Section 302 (d) (1) of the Revenue Act of 1926, as amended, is amended to read as follows:

"(d) (1) To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death."

(b) Except in the case of transfers made after the date of the enactment of this Act, no interest of the decedent of which he has made a transfer shall be included in the gross estate under such Section 302 (d) (1) unless it was includible under such section before its amendment by this section.

#### Sec. 806. Registration Under the Narcotic Laws

(a) The fourth paragraph of Section 1 of the Act entitled "An Act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes", approved Dec. 17, 1914, as amended (38 Stat. 785), is amended to read as follows:

"Importers, manufacturers, producers, or compounders, lawfully entitled to import, manufacture, produce, or compound any of the aforesaid drugs, \$24 per annum; wholesale dealers, lawfully entitled to sell and deal in any of the aforesaid drugs, \$12 per annum; retail dealers, lawfully entitled to sell and deal in any of the aforesaid drugs, \$3 per annum; physicians, dentists, veterinary surgeons, and other practitioners, lawfully entitled to distribute, dispense, give away, or administer any of the aforesaid drugs to patients upon whom they in the course of their professional practice are in attendance, \$1 per annum or fraction thereof during which they engage in any of such activities; persons not registered as an importer, manufacturer, producer, or compounder and lawfully entitled to obtain and use in a laboratory any of the aforesaid drugs for the purpose of research, instruction, or analysis shall pay \$1 per annum, but such persons shall keep such special records relating to receipt, disposal, and stocks on hand of the aforesaid drugs as the Commissioner of Narcotics, with the approval of the Secretary of the Treasury, may by regulation require. Such special records shall be open at all times to the inspection of any duly authorized officer, employee, or agent of the Treasury Department."

(b) The second proviso of Section 6 of the said Act of Dec. 17, 1914, as amended, is amended by inserting after the words "mentioned in this section" the following: "lawfully entitled to manufacture, produce, compound, or vend such preparations and remedies."

(c) This section shall take effect on July 1, 1936.

#### Sec. 807. Reconsideration of Refund Claims

(a) Section 3226 of the Revised Statutes, as amended, is amended by adding at the end thereof the following new sentence: "Any reconsideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun."

(b) The amendment made by subsection (a) shall not operate (1) to bar a suit or proceeding in respect of a claim reopened prior to the date of the enactment of this Act, if such suit or proceeding was not barred under the law in effect prior to the date of the enactment of this Act, or (2) to prevent the suspension of the statute of limitations for filing suit under Section 608 (b) (2), as amended, of the Revenue Act of 1928.

#### Sec. 808. Interest on Judgments

Section 177 (b) of the Judicial Code, as amended, is amended to read as follows:

"(b) In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than 30 days, such date to be deter-

mined by the Commissioner of Internal Revenue. The Commissioner is hereby authorized to tender by check payment of any such judgment, with interest as herein provided, at any time after such judgment becomes final, whether or not a claim for such payment has been duly filed, and such tender shall stop the running of interest, whether or not such refund check is accepted by the judgment creditor."

#### Sec. 809. Termination of Jewelry Tax

The tax imposed by Section 605 of the Revenue Act of 1932 shall not apply to any article sold by the manufacturer, producer, or importer after the date of the enactment of this Act.

#### Sec. 810. Tax on Furs

(a) Effective after the date of the enactment of this Act, Section 604 of the Revenue Act of 1932 is amended by striking out "10 per centum" and inserting in lieu thereof "3 per centum".

(b) The exemption of articles sold for less than \$75, provided by Section 608 of the Revenue Act of 1934, shall not apply to articles sold after the date of the enactment of this Act.

#### Sec. 811. Importation of Shingles

Whenever any organization or association representing the producers of more than 75 per centum of the red cedar shingles produced in the United States during the previous half-year period shall request the President to limit the importation of red cedar shingles from Canada under paragraph 1760 of the reciprocal trade agreement entered into with the Dominion of Canada under date of Nov. 15, 1935, and the President finds from available statistics that the total quantity of red cedar shingles produced in the Dominion of Canada which is entered, or withdrawn from warehouse, for consumption in the United States, during any given half of any calendar year exceeds or will exceed 25 per centum of the combined total of the shipments of red cedar shingles by producers in the United States and the imports during the preceding half year, the President shall issue an order limiting for the six months immediately following the half of the calendar year in which said excess occurred, the quantity of red cedar shingles to be imported from Canada to 25 per centum of the combined total of the shipments and imports of red cedar shingles for such preceding half calendar year. The President shall issue a new order for each half of the calendar year thereafter during the continuation of the operation of the reciprocal trade agreement entered into with the Dominion of Canada, under date of Nov. 15, 1935, with the same limitations as hereinbefore set forth.

### TITLE VII—REFUNDS OF AMOUNTS COLLECTED UNDER THE AGRICULTURAL ADJUSTMENT ACT

#### Sec. 901. Repeals

Sections 21 (d), 21 (e), and 21 (g) of the Agricultural Adjustment Act, as amended, are hereby repealed.

#### Sec. 902. Conditions on Allowance of Refunds

No refund shall be made or allowed, in pursuance of court decisions or otherwise, of any amount paid by or collected from any claimant as tax under the Agricultural Adjustment Act, unless the claimant establishes to the satisfaction of the Commissioner in accordance with regulations prescribed by him, with the approval of the Secretary, or to the satisfaction of the trial court, or the Board of Review in cases provided for under Section 906, as the case may be—

(a) That he bore the burden of such amount and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, (1) through inclusion of such amount by the claimant, or by any person directly or indirectly under his control, or having control over him, or subject to the same common control, in the price of any article with respect to which a tax was imposed under the provisions of such Act, or in the price of any article processed from any commodity with respect to which a tax was imposed under such Act, or in any charge or fee for services or processing; (2) through reduction of the price paid for any such commodity; or (3) in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof; or (b) That he has repaid unconditionally such amount to his vendee (1) who bore the burden thereof, (2) who has not been relieved thereof nor reimbursed therefor, nor shifted such burden, directly or indirectly, and (3) who is not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever.

#### Sec. 903. Filing of Claims

No refund shall be made or allowed of any amount paid by or collected from any person as tax under the Agricultural Adjustment Act unless, after the enactment of this Act, and prior to July 1, 1937, a claim for refund has been filed by such person in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. All evidence relied upon in support of such claims shall be clearly set forth under oath. The Commissioner is authorized to prescribe by regulations, with the approval of the Secretary, the number of claims which may be filed by any person with respect to the total amount paid by or collected from such person as tax under the Agricultural Adjustment Act, and such regulations may require that claims for refund of processing taxes with respect to any commodity or group of commodities shall cover the entire period during which such person paid such processing taxes.

#### Sec. 904. Statute of Limitations

Notwithstanding any other provision of law, no suit or proceeding, whether brought before or after the date of enactment of this Act, shall be brought or maintained in any court for the recovery, recoupment, set-off, refund, or credit of, or counterclaim for, any amount paid by or collected from any person as tax (except processing tax, as defined herein) under the Agricultural Adjustment Act (a) before the expiration of eighteen months from the date of filing a claim therefor under this title, unless the Commissioner renders a decision thereon within that time, or (b) after the expiration of two years from the date of mailing by registered mail by the Commissioner to the claimant a notice of disallowance of that part of the claim to which such suit or proceeding relates. Any consideration or any action by the Commissioner with respect to such claim following the mailing of notice of disallowance shall not operate to extend the period within which any suit or proceeding may be brought.

#### Sec. 905. Jurisdiction of Courts

Concurrent with the Court of Claims, the District Courts of the United States (except as provided in Section 906 of this title) shall have jurisdiction of cases to which this title applies, regardless of the amount in controversy, if such district courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy. The United States Customs Court shall not have jurisdiction of any such cases.



**Sec. 906. Procedure on Claims for Refunds of Processing Taxes**

(a) Notwithstanding any other provision of law, no suit or proceeding, whether brought before or after the date of the enactment of this Act, shall be brought or maintained in any court for the refund of any amount paid or collected as processing tax, as defined herein, under the Agricultural Adjustment Act, except as provided in this section. The Commissioner shall allow or disallow, in whole or in part, any claim for refund of any such amount within three years after such claim was filed, unless such time has been extended by written consent of the claimant.

(b) There is hereby established in the Treasury Department a Board of Review (hereinafter referred to as "the Board"). The Board shall be composed of nine members who shall be officers or employees of the Treasury Department designated by the Secretary of the Treasury. One of such members shall be designated by the Secretary to act as chairman of the Board. The chairman may from time to time divide the Board into divisions of one or more members, assign the members of the Board thereto, and in case of a division of more than one member designate the chief thereof. A majority of the members of the Board or of any division thereof shall constitute a quorum for the transaction of the business of the Board or of the division respectively. A vacancy in the Board or in any division thereof shall not impair the powers nor affect the duties of the Board or division nor of the remaining members of the Board or division respectively. The Secretary of the Treasury shall assign to the Board such personnel in the Treasury Department as may be necessary to perform its functions. The Board shall have jurisdiction in proceedings under this section to review the allowance or disallowance of the Commissioner of a claim for refund, and to determine the amount of refund due any claimant with respect to such claim. The Commissioner shall make refund of any such amount determined by a decision of the Board which has become final. The proceedings of the Board and its divisions shall be conducted in accordance with such rules and regulations as the Board may prescribe, with the approval of the Secretary.

(c) The allowance or disallowance of the Commissioner of a claim for refund under this section shall be final, unless within three months after the date of mailing by registered mail by the Commissioner of notice that a claim for refund of any such amount has been disallowed, in whole or in part, the claimant files a petition with the Board requesting a hearing on the merits of his claim, in whole or in part. Upon the filing of any such petition, the claimant shall be entitled to a hearing as provided herein, and within three months after the date of such filing the Board shall set a date for such hearing which shall be not more than two years from the date of filing of the petition. Such hearing shall be held in Washington, District of Columbia, or in the collection district in which is located the principal place of business of the claimant, as the claimant may designate in his petition, or in any place which may be designated by the Commissioner and the claimant by stipulation in writing, and may be continued from day to day. The Board shall notify the claimant and the Commissioner of the time and place set for such hearing by registered mail.

(d) Each such hearing shall be conducted by a presiding officer who shall be a member of the Board or an officer or employee of the Treasury Department designated a presiding officer by the Secretary of the Treasury, and assigned by the Board to preside at such hearing, and shall be open to the public. The proceedings in such hearings shall be conducted in accordance with such rules of practice and procedure (other than rules of evidence) as the Board may prescribe with the approval of the Secretary of the Treasury, and in accordance with the rules of evidence applicable in courts of equity of the District of Columbia. The claimant and the Commissioner shall be entitled to be represented by counsel, to have witnesses subpoenaed, and to examine and cross-examine witnesses. The presiding officer shall have authority to administer oaths, examine witnesses, rule on questions of procedure and the admissibility of evidence, and to require by subpoena, signed by any member of the Board, the attendance and testimony of witnesses, and the production of all necessary returns, books, papers, records, correspondence, memoranda, and other evidence, from any place in the United States at any designated place of hearing, and to require the taking of a deposition by any designated individual competent to administer oaths. Any witness summoned or whose deposition is taken pursuant to this section shall receive the same fees and mileage as witnesses in the courts of the United States.

(e) The presiding officers shall recommend findings of fact and a decision to the Board or the proper division thereof within six months after the conclusion of the hearing. Briefs with respect to such recommendations may be submitted to the Board or such division on behalf of the Commissioner and the claimant within thirty days after such recommendations have been made, unless such time is extended by the Board or such division. Except upon specific order of the chairman of the Board, no oral argument may be presented to the Board or such division after the conclusion of the hearing. The Board or a division shall make its findings of fact and decision in writing as quickly as practicable. The findings of fact and the decision of a division shall become the findings of fact and decision of the Board within thirty days after they have been made by the division, unless within such period, the chairman has directed that such findings and decision shall be reviewed by the Board. The findings and decision of a division shall not be a part of the record in any case in which the chairman directs that such findings and decision shall be reviewed by the Board. Copies of the findings of fact and decision of the Board shall be mailed to the claimant and the Commissioner by registered mail.

(f) The Board, with the approval of the Secretary of the Treasury, is authorized to draw up a table of costs and fees relating to such hearings, and the preparation of transcripts of record thereof, not to exceed with respect to any one item those charged in the Supreme Court of the United States. Such costs and fees shall be paid by the claimant and be collected in accordance with such rules and regulations as may be prescribed by the Board, with the approval of the Secretary. If the hearing provided herein results in a modification of the allowance or disallowance of the Commissioner, such costs shall be returned to the claimant.

(g) A review of the decision of the Board, made after the hearing provided in this section, may be obtained by the claimant or Commissioner by filing a petition for review in the Circuit Court of Appeals of the United States within any circuit wherein such claimant resides, or has his principal place of business, or, if none, in the United States Court of Appeals for the District of Columbia, or any such court which may be designated by the Commissioner and the claimant by stipulation in writing, within three months after the date of the mailing to the claimant and the Commissioner of the copy of the findings and decision of the Board. A copy of such petition shall forthwith be served upon the Commissioner or upon any officer designated by him for that purpose, or upon the claimant, according to which party files such petition, and upon the Board. Thereupon the Board shall certify and file in the court, in which such petition has been filed, a transcript of the record upon which the findings and decision complained of were based. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm the decision of the Board, or to modify or reverse such decision, if it is not in accordance with law, with or without remanding the cause for a rehearing, as justice may require. No objection

shall be considered by the court unless such objection shall have been urged before the Board or division and the presiding officer, or unless there were reasonable grounds for failure so to do. If the claimant or the Commissioner shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for failure to adduce such evidence in the hearing before the presiding officer, the court may order such additional evidence to be taken before such officer, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings of fact and decision by reason of the additional evidence so taken and it shall file with the court such modified or new findings and decision. The judgment of the court shall be final, subject to review by the Supreme Court of the United States, upon certification or certiorari as provided in Sections 239 and 240 of the Judicial Code, as amended. Such courts are authorized to adopt rules for the filing of petitions for review, the preparation of the record for review, and the conduct of the proceedings on review. If the decision of the Board is affirmed, costs shall be awarded against the claimant, and if such decision is reversed, the judgment shall provide for a refund of any costs paid by the claimant. In case of modification of such decision costs shall be awarded or refused as justice may require. The decision of the Board made after the hearing provided herein shall become final in the same manner that decisions of the Board of Tax Appeals become final under Section 1005 of the Revenue Act of 1926, as amended.

**Sec. 907. Evidence and Presumptions**

(a) Where the refund claimed is for an amount paid or collected as processing tax, as defined herein, it shall be prima-facie evidence that the burden of such amount was borne by the claimant to the extent (not to exceed the amount of the tax) that the average margin per unit of the commodity processed was lower during the tax period than the average margin was during the period before and after the tax. If the average margin during the tax period was not lower, it shall be prima-facie evidence that none of the burden of such amount was borne by the claimant but that it was shifted to others.

(b) The average margin for the tax period and the average margin for the period before and after the tax shall each be determined as follows:

(1) **Tax Period**—The average margin for the tax period shall be the average of the margins for all months (or portions of months) within the tax period. The margin for each such month shall be computed as follows: From the gross sales value of all articles processed by the claimant from the commodity during such month, deduct the cost of the commodity processed during the month and deduct the processing tax paid with respect thereto. The sum so ascertained shall be divided by the total number of units of the commodity processed during such month, and the resulting figure shall be the margin for the month.

(2) **Period Before and After the Tax**—The average margin for the period before and after the tax shall be the average of the margins for all months (or portions of months) within the period before and after the tax. The margin for each such month shall be computed as follows: From the gross sales value of all articles processed by the claimant from the commodity during such month, deduct the cost of the commodity processed during the month. The sum so ascertained shall be divided by the number of units of the commodity processed during such month, and the resulting figure shall be the margin for the month.

(3) **Average Margin**—The average margin for each period shall be ascertained in the same manner as monthly margins under subdivisions (1) and (2), using total gross sales value, total cost of commodity processed, total processing tax paid, and total units of commodity processed, during such period.

(4) **Combination of Commodities**—Where, as, for example, in the case of certain types of tobacco, the articles produced and sold by the claimant are the product of several commodities combined by him during processing, the average margins shall be established with respect to such commodities as a group, and not individually, in accordance with rules and regulations prescribed by the Commissioner, with the approval of the Secretary of the Treasury.

(5) **Cost of Commodity**—The cost of commodity processed during each month shall be (a) the actual cost of the commodity processed if the accounting procedure of the claimant is based thereon, or (b) the product computed by multiplying the quantity of the commodity processed by the current prices at the time of processing for commodities of like quality and grade in the markets where the claimant customarily makes his purchases.

(6) **Gross Sales Value of Articles**—The gross sales value of articles shall mean (a) the total of the quantity of each article derived from the commodity processed by the claimant during each month multiplied by (b) the claimant's sale prices current at the time of processing for articles of similar grade and quality.

(7) The quantity of each article derived from the commodity processed may be either (a) the actual quantity obtained, as shown by the records of the claimant, or (b) an estimated quantity computed by multiplying the quantity of commodity processed by appropriate conversion factors giving the quantity of articles customarily obtained from the processing of each unit of the commodity.

(c) The "tax period" shall mean the period with respect to which the claimant actually paid the processing tax to a collector of internal revenue and shall end on the date with respect to which the last payment was made. The "period before and after the tax" shall mean the twenty-four months (except that in the case of tobacco it shall be the twelve months) immediately preceding the effective date of the processing tax, and the six months, February to July, 1936, inclusive. If during any part of such period the claimant was not in business, or if his records for any part of such period are so inadequate as not to provide satisfactory data on prices paid for commodities purchased or prices received for articles sold, the average prices paid or received by representative concerns engaged in a similar business and similarly circumstanced may with the approval of the Commissioner, where necessary for a fair comparison, be substituted in making the necessary computations. If the claimant was not in business during the entire period before and after the tax, the average margin, during such period, of representative concerns engaged in a similar business and similarly circumstanced, as determined by the Commissioner, shall be used as his average margin for such period.

(d) If the claimant made any purchase or sale otherwise than through an arm's-length transaction, and at a price other than the fair market price, the Commissioner may determine the purchase or sale price to be that for which such purchases or sales were at that time made in the ordinary course of trade.

(e) Either the claimant or the Commissioner may rebut the presumption established by subsection (a) of this section by proof of the actual extent to which the claimant shifted to others the burden of the processing tax. Such proof may include, but shall not be limited to—

(1) Proof that the difference or lack of difference between the average margin for the tax period and the average margin for the period before and after the tax was due to changes in factors other than the tax. Such factors

shall include any clearly shown change (A) in the type or grade of article or commodity, or (B) in costs of production. If the claimant asserts that the burden of the tax was borne by him and the burden of any other increased costs was shifted to others, the Commissioner shall determine, from the effective dates of the imposition or termination of the tax and the effective date of other changes in costs as compared with the date of the changes in margin (when margins are computed for weeks, months, or other intervals between July 1, 1931, and August, 1936, in the manner specified in subsection (b)), and from the general experience of the industry, whether the tax or the increase in other costs was shifted to others. If the Commissioner determines that the difference in average margin was due in part to the tax and in part to the increase in other costs, he shall apportion the change in margin between them:

(2) Proof that the claimant modified existing contracts of sale, or adopted a new form of contract of sale, to reflect the initiation, termination, or change in amount of the processing tax, or at any such time changed the sale price of the article (including the effect of a change in size, package, discount terms, or any other merchandising practice) by substantially the amount of the tax or change therein, or at any time billed the tax as a separate item to any vendee, or indicated by any writing that the sale price included the amount of the tax, or contracted to refund any part of the sale price in the event of recovery of the tax or decision of its invalidity; but the claimant may establish that such acts were caused by factors other than the processing tax, or that they do not represent his practice at other times. If the claimant processed any product in addition to the commodity with respect to the processing of which there was paid or collected an amount as tax for which he claims a refund, and if the Commissioner has reason to believe that the burden of such amount was shifted in whole or in part by means of the transactions relating to such product, the average margin with respect to such product, and articles processed therefrom, shall also be considered, and shall be determined for the tax period applicable to the commodity and for the period before and after the tax in the manner prescribed in subsection (b) of this section. To the extent the Commissioner determines that the average margin with respect to such product was higher during the tax period than it was during the period before and after the tax, it shall be prima-facie evidence that such amount was not borne by the claimant but that it was shifted to others.

#### Sec. 908. Limitations on Allowance of Claims and Interest

- (a) No claim shall be allowed under this title in an amount less than \$10.  
(b) No interest shall be allowed by the Commissioner or by any court with respect to any amount paid or collected as tax under the Agricultural Adjustment Act, except with respect to amounts, refund of which is made or allowed under this title.

#### Sec. 909. Limitations on Review

In the absence of fraud or mistake in mathematical calculation, the findings of fact and conclusions of law of the Commissioner upon the merits of any claim presented under this title shall not be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

#### Sec. 910. Liability of Collectors

No collector of internal revenue or customs, or internal revenue or customs officer or employee, shall be in any way liable to any person for any act done by him in the assessment or collection of any amount as tax under the Agricultural Adjustment Act, or for the recovery of any money exacted by or paid to him and paid into the Treasury, in performance of his official duties under the provisions of such Act, or if such collector or officer acted under the direction of the Secretary or other proper officer of the Government.

#### Sec. 911. Inapplicability to Certain Refunds

The provisions of this title shall not apply to any refund authorized under the provisions of Sections 15, 16, or 17 of the Agricultural Adjustment Act, as amended and reenacted, or with respect to any articles exported under the provisions of Section 317 of the Tariff Act of 1930. No refund shall be made or allowed of any amount paid or collected as tax under the Agricultural Adjustment Act, as amended and reenacted, to the extent that refund or credit with respect to such amount has been made to any person.

#### Sec. 912. Period not Extended

Any suit or proceeding with respect to any amount paid or collected as tax under the Agricultural Adjustment Act which is barred on the date of enactment of this Act shall remain barred. No claim with respect to any such amount which is barred from allowance at the time of the enactment of this Act shall hereafter be allowed in any amount.

#### Sec. 913. Definitions

When used in this title—

- (a) The term "tax" means a tax or exaction denominated a "tax" under the Agricultural Adjustment Act, and shall include any penalty, addition to tax, additional tax, or interest applicable to such tax.  
(b) The term "processing tax" means any tax or exaction denominated a "processing tax" under the Agricultural Adjustment Act, but shall not include any amount paid or collected as tax with respect to the processing of a commodity for a customer for a charge or fee.  
(c) The term "commodity" means any commodity, prior to processing, of a type with respect to the processing of which a processing tax was imposed under the Agricultural Adjustment Act.  
(d) The term "article" means the product which is obtained by processing a commodity, and includes the product obtained by further manufacture or by combination with other materials.  
(e) The term "refund" includes any recovery, recoupment, set-off, credit, or counterclaim.  
(f) The term "Agricultural Adjustment Act" means the Agricultural Adjustment Act as originally enacted and the amendments thereto adopted prior to Jan. 6, 1936.

#### Sec. 914. Authority of Commissioner

In connection with the establishment of the facts required to be established under this title, the Commissioner of Internal Revenue is hereby authorized, by any officer or employee of the Treasury Department and of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda which are relevant and material in connection with any claim made pursuant to this title, to require the attendance of the claimant or of any officer or employee of the claimant, or the attendance of any other person having knowledge in the premises, and to take, or cause to be taken, his testimony with reference to any such matter, with power to administer oaths to such person or persons. It shall be lawful for the Commissioner, or any person designated by him, to summon witnesses to appear before the Commissioner, or before any person designated by him, at a time and

place named in the summons, and to produce such books, papers, correspondence, memoranda, or other records as the Commissioner may deem relevant or material, and to give testimony or answer interrogatories, under oath, relating to any claim made pursuant to this title. The provisions of 3174 and 3175 of the Revised Statutes, as amended, shall be applicable with respect to any summons issued pursuant to the provisions of this title. Any witness summoned under this title shall be paid the same fees and mileage as are paid witnesses in the courts of the United States. All information obtained by the Commissioner pursuant to this section shall be available to the Secretary of Agriculture upon written request therefor. Such information shall be kept confidential by all officers and employees of the Department of Agriculture, and any such officer or employee who violates this requirement shall, upon conviction, be subject to a fine of not more than \$1,000 or to imprisonment for not more than one year, or both, and shall be removed from office.

#### Sec. 915. Salaries and Administrative Expenses

Funds made available to the Secretary of Agriculture by the appropriation for the fiscal year 1936 in Section 32 of Public Numbered 320, 74th Congress, approved Aug. 24, 1935, to the extent of the unobligated balance thereof; and by the appropriation in Section 12 (a) of the Agricultural Adjustment Act, in an amount not in excess of \$15,000,000; shall be available until June 30, 1937, for transfer to the Treasury Department for salaries and administrative expenses in carrying out the provisions of this title and of Title IV, including necessary investigative work, and for refunds and payments under Title IV. Such funds shall be available for expenditure by the Secretary of the Treasury for personal services and rent in the District of Columbia and elsewhere, for law books, books of reference, press releases, trade journals, periodicals, and newspapers, for contracting reporting services, printing and paper in addition to allotments under the existing law, travel expenses, or mileage and per diem of witnesses, in lieu of subsistence, payment of which mileage and per diem may be made in advance upon certification of such officer as the Commissioner or the Secretary may designate, and such certification shall be conclusive. In addition to the foregoing, the administrative expenses provided for in this section shall include such miscellaneous expenses as may be authorized or approved by the Commissioner or the Secretary for carrying out the provisions of this title, including witness fees and mileage for experts, notarial fees, or like services, and stenographic work for taking depositions.

#### Sec. 916. Rules and Regulations

The Commissioner shall, with the approval of the Secretary, prescribe such rules and regulations as may be deemed necessary to carry out the provisions of this title.

#### Sec. 917. Personnel

- (a) The Secretary may appoint such officers, attorneys, economists, and other experts without regard to the Classification Act of 1923, as amended, and without regard to the civil-service laws or regulations, as are necessary to execute the functions vested in him and the Commissioner by this title. No compensation at a rate in excess of \$8,500 per annum shall be paid to any such appointee.  
(b) Officers and employees of the other executive departments and establishments of the Government may, at the request of the Secretary of the Treasury, and with the approval of the head of any such department or establishment, be detailed to the Treasury Department from time to time for such temporary duties as may be necessary in carrying out the provisions of this title. The proper appropriation of such executive department or establishment from which such officers or employees are so detailed shall be reimbursed by the Treasury Department to the extent of salaries and other compensation paid to such officers and employees during the time they shall be so detailed.

### TITLE VIII—GENERAL PROVISIONS

#### Sec. 1001. Definitions

- (a) When used in this Act—  
(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.  
(2) The term "corporation" includes associations, joint-stock companies, and insurance companies.  
(3) The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this Act, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.  
(4) The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.  
(5) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.  
(6) The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.  
(7) The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 143 or 144.  
(8) The term "stock" includes the share in an association, joint-stock company, or insurance company.  
(9) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.  
(10) The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.  
(11) The term "Secretary" means the Secretary of the Treasury.  
(12) The term "Commissioner" means the Commissioner of Internal Revenue.  
(13) The term "collector" means collector of internal revenue.  
(14) The term "taxpayer" means any person subject to a tax imposed by this Act.  
(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

#### Sec. 1002. Separability Clause

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

#### Sec. 1003. Effective Date of Act

Except as otherwise provided, this Act shall take effect upon its enactment.

Approved, June 22, 1936, 9 p. m.