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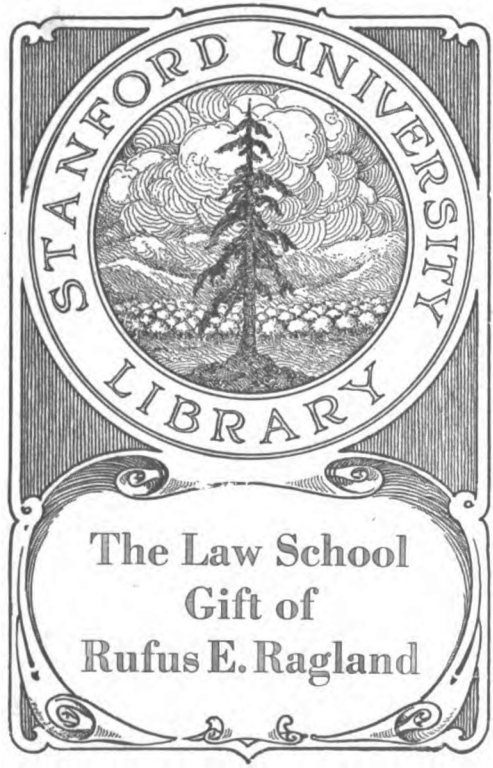

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A TREATISE

ON THE LAW OF

INCOME TAXATION

UNDER FEDERAL AND STATE LAWS

BY

HENRY CAMPBELL BLACK

AUTHOR OF BLACK'S LAW DICTIONARY AND OF TREATISES ON JUDGMENTS, BANKRUPTCY, CONSTITUTIONAL LAW, INTERPRETATION OF LAWS, JUDICIAL PRECEDENTS, ETC.

SECOND EDITION

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PREFACE TO THE FIRST EDITION

INCOME taxation as a source of public revenue has been in successful operation in Great Britain for more than a century, and today constitutes an important feature of the economic policy of most of the countries of continental Europe. In the United States it has been resorted to, experimentally or to meet special public needs, at various times in our history. But of late years it has so grown in favor with publicists and legislative bodies that it appears likely to become a permanent institution in many jurisdictions, and eventually to supersede all forms of taxation of personal property, as witness the Oklahoma statute of 1908, the elaborate and comprehensive enactment in Wisconsin in 1911, and, most important of all, the act of Congress of 1913. The economic phases of the subject have received much attention, but hitherto no American writer has discussed in detail its legal aspects or the application of the rules of law to the solution of the problems which inevitably arise in the administration of an income tax, and the few English text-books afford little or no assistance to the American lawyer. It has therefore seemed opportune to the present writer to prepare a systematic and comprehensive treatise on the law of Income Taxation, under both the federal statute and the laws of the various states, and the volume now offered to the public is the fruit of his endeavors in that behalf. The applicable authorities have been diligently collected, and it will be found that the text is supported by an exhaustive citation of the extant decisions, both of the federal and state courts, as well as by references to many English, Scotch, Canadian, and other decisions, with numerous rulings and decisions of the officers of the Treasury Department of the United States, opinions of Attorneys General, and other authorities, now for the first time collected in one volume. An appendix contains the full text of the act of Congress of 1913 and of the present income

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tax laws of Wisconsin, Virginia, North Carolina, South Carolina, Oklahoma, and Hawaii, as well as the text of the federal income tax acts of 1862 to 1870, that of 1894, and the corporation excise tax law of 1909. These statutes are of the greatest importance for purposes of comparison and construction, being all in a sense in pari materia, and it has been thought well to give the reader an opportunity of studying them at large and in detail.

The following pages include a detailed discussion of the nature of income taxes in general, the constitutional and statutory provisions applicable thereto, the various constitutional objections to their validity and the decisions of the courts thereon, the rules for the construction of income tax laws, the various questions which arise in the practical determination of what constitutes taxable income, and concerning the persons and corporations subject to the tax, also the matter of exemptions and exceptions, deductions and allowances, the depreciation of property and equipment, and the amortization of bonds, and further, as to the time, form, and manner of making income tax returns, publicity of returns, penalties for delinquency, the assessment of the tax and appeals therefrom, the rate of taxation and its amount, the manner and process of collecting the income tax, including the new and important feature of collection "at the source," and the refunding and recovery of taxes illegally exacted.

It is hoped that the book will be found valuable not only to individual taxpayers and their legal advisers, but also to the financial officers of corporations, to local representatives of foreign companies and business houses, to American companies and firms doing business abroad, and to banks, bankers, and trust companies collecting foreign interest or dividends, all of whom have a direct interest in the taxation of incomes, and who, at least under the present federal statute, are in some measure charged with details in the administration of the law itself.

HENRY CAMPBELL BLACK.

WASHINGTON, D. C., 1913.

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PREFACE TO THE SECOND EDITION

In view of the great development of the law of income taxation since the first edition of this book was published, and in view also of the extraordinary and most gratifying degree of favor with which that volume was received by the public, it has seemed necessary to the author to subject the work to a thorough revision and to issue it again in a form much enlarged and, it is hoped, materially improved. In this task, the author has kept before his mind two main objects. The first was, of course, to search out and to make available for the reader all that is new in the law of the subject, including departmental rulings and regulations as well as decisions of the courts. The second was to devise some way in which it might be made easy for the reader to lay his finger on any particular clause or provision of the income tax act of Congress, and to be led thence, without confusion or uncertainty, and by an easy system of references, to the regulations or rulings of the Treasury Department on the same subject, to the general discussion of it in the text of the book, and to the applicable official Forms, if any. It is the experience of all those who have had much to do with the subject that the act of Congress is not only singularly infelicitous in its language, but singularly confused in its arrangement. To begin with, the whole of the statute, in so far as it relates to income taxes, constitutes one single section of the tariff act of 1913. In the next place, it is not otherwise divided than into a small number of lettered paragraphs, some of which are of inordinate length and embrace a considerable number of more or less unrelated provisions. Next, it is impossible to proceed safely in the study of any provision of the statute without constantly referring to the great mass of rulings and regulations of the Bureau of Internal Revenue, to discover how the provision is interpreted by the Bureau, or what provision has been made for carrying it into effect. To lessen the formidable labor of such a search through the act and the regulations, the author has in

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this book adopted the device of breaking up the statute into seventy sections, numbered consecutively, and each introduced by a black-letter headline descriptive of its contents. This has been done without altering a jot or tittle of the statute, the reprint of which is textually correct, or even disturbing the original arrangement of its parts. But it is thought that the plan will materially facilitate reference to the various clauses of the act. These seventy sections now constitute the first chapter of the book. In the second chapter, the Treasury regulations and decisions have been treated according to the same plan. These have been arranged in one hundred and six numbered sections (sections 71 to 176 inclusive), with descriptive headlines. Further, a system of cross-references has been provided, linking together the text of the statute, the departmental regulations, and the detailed treatment of the subject in the body of the book, so that there should be no difficulty in discovering all that Congress, the department, and the courts have had to say on any given point or problem. And further to promote the convenience of the reader, the general index to the volume has been made as copious and complete as the author's industry and experience could make it.

A renewed and more extended search for authorities has brought to light a considerable number of decisions of interest and importance, not previously cited, and these have been duly mentioned in their proper places, as have also the decisions of the federal and state courts rendered since the publication of the first edition. Several chapters have been entirely rewritten and very greatly enlarged, particularly those relating to collection at the source, returns of income and the collection of the tax, and the refunding and recovery of taxes illegally exacted. All the Forms officially prescribed by the Treasury Department have been brought together and printed in full in the Appendix, which now also includes those provisions of the Revised Statutes of the United States which relate to the assessment and collection of internal revenue taxes in general.

HENRY CAMPBELL BLACK.

WASHINGTON, D. C., January, 1915.

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INCOME TAXATION.

SECOND EDITION

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§ 1. Normal Tax How Levied; Rate; Persons Liable [1]

A. Subdivision 1. That there shall be levied, assessed, collected, and paid annually upon the entire net income arising or accruing from all sources in the preceding calendar year to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, a tax of 1 per centum per annum upon such income, except as hereinafter provided; and a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere.[2]

[1] This chapter consists of a verbatim reprint of the United States Income Tax Law of October 3, 1913. But the division of it into consecutively numbered sections is an arrangement devised by the author of this book, not a part of the act itself. The arrangement is adopted for the sake of the greater convenience of the reader in referring from any given part of the statute to that part of the text of the book where its subject-matter is discussed, and vice versa, and for the sake of a complete system of cross-references between the statute, the Treasury Regulations, and the body of the book. The original division of the statute into a small number of very long lettered paragraphs, each containing provisions of various kinds, is here also preserved. The law is also found in the U. S. Comp. Stat. 1913, §§ 6319–6336.

[2] As to imposition and collection of the income tax in the case of non-resident aliens, see Treasury regulations, infra, §§ 168, 171, and discussion of the subject, infra, § 257. What constitutes net income, infra, § 5.

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§ 2. Additional Tax or Surtax; Incomes Liable; Rate

Subdivision 2. In addition to the income tax provided under this section (herein referred to as the normal income tax) there shall be levied, assessed, and collected upon the net income of every individual an additional income tax (herein referred to as the additional tax) of 1 per centum per annum upon the amount by which the total net income exceeds $20,000 and does not exceed $50,000, and 2 per centum per annum upon the amount by which the total net income exceeds $50,000 and does not exceed $75,000, 3 per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, 4 per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, 5 per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and 6 per centum per annum upon the amount by which the total net income exceeds $500,000. All the provisions of this section relating to individuals who are chargeable with the normal income tax, so far as they are applicable and are not inconsistent with this subdivision of paragraph A, shall apply to the levy, assessment, and collection of the additional tax imposed under this section.[3]

§ 3. Returns for Purpose of Additional Tax

Every person subject to this additional tax shall, for the purpose of its assessment and collection, make a personal return of his total net income from all sources, corporate or otherwise, for the preceding calendar year, under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.[4]

[3] Additional tax or surtax, constitutional validity of, see § 211; provision for "collection at the source" not applicable to, § 30; corporations not subject to, § 32; returns for purposes of, § 3; fraudulent organization of corporation to escape, § 4; dividends from corporations returnable for purposes of, §§ 140, 311; non-resident aliens subject to, §§ 168, 257.

[4] Personal returns of income for taxation, see §§ 12, 315. Dividends from corporations to be included in returns for purpose of ad-

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§ 4. Taxation of Undivided Profits in Corporations Fraudulently Formed to Escape Additional Tax

For the purpose of this additional tax the taxable income of any individual shall embrace the share to which he would be entitled of the gains and profits, if divided or distributed, whether divided or distributed or not, of all corporations, joint-stock companies, or associations however created or organized, formed or fraudulently availed of for the purpose of preventing the imposition of such tax through the medium of permitting such gains and profits to accumulate instead of being divided or distributed; and the fact that any such corporation, joint-stock company, or association, is a mere holding company, or that the gains and profits are permitted to accumulate beyond the reasonable needs of the business shall be prima facie evidence of a fraudulent purpose to escape such tax; but the fact that the gains and profits are in any case permitted to accumulate and become surplus shall not be construed as evidence of a purpose to escape the said tax in such case unless the Secretary of the Treasury shall certify that in his opinion such accumulation is unreasonable for the purposes of the business. When requested by the Commissioner of Internal Revenue, or any district collector of internal revenue, such corporation, joint-stock company, or association shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same if distributed.[5]

§ 5. Net Income, Sources of, and Items Constituting

B. That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include 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, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from in-

ditional tax, §§ 140, 311. Provision for "collection at the source" not applicable to additional tax, § 30.

[5] On this subject, see, infra, § 247.

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terest, rent, dividends, securities, or the transaction of any lawful business carried on for gain or profit, or gains or profits and income derived from any source whatever, including the income from but not the value of property acquired by gift, bequest, devise, or descent: [6]

§ 6. Exception as to Proceeds of Life Insurance Policies

Provided, That the proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of contract, shall not be included as income.[7]

§ 7. Deductions Allowed for Normal Tax

That in computing net income for the purpose of the normal tax there shall be allowed as deductions: First, the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses; second, all interest paid within the year by a taxable person on indebtedness; third, all national, State, county, school, and municipal taxes paid within the year, not including those assessed against local benefits; fourth, losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise; fifth, debts due to the taxpayer actually ascertained to be worthless and charged off within the year; sixth, a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per centum of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of re-

[6] For Treasury regulation on this subject, see, infra, § 177, arts. 3 and 4. Statutory and official definitions of net income, infra, § 222. As to profits from dealings in real estate, infra, § 237. Income from "any source whatever," infra, § 225. Taxability of income from, but not value of, property acquired by gift, bequest, etc., infra, §§ 230, 231.

[7] See, infra, § 97 (Treasury regulations) and § 289.

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storing property or making good the exhaustion thereof for which an allowance is or has been made: *Provided,* that no deduction shall be allowed for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate; seventh, the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association, or insurance company which is taxable upon its net income as hereinafter provided; eighth, the amount of income, the tax upon which has been paid or withheld for payment at the source of the income, under the provisions of this section, provided that whenever the tax upon the income of a person is required to be withheld and paid at the source as hereinafter required, if such annual income does not exceed the sum of $3,000 or is not fixed or certain, or is indefinite, or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person.[8]

§ 8. Net Income of Non-Residents from Property and Business in United States.

The net income from property owned and business carried on in the United States by persons residing elsewhere shall be computed upon the basis prescribed in this paragraph and that part of paragraph G of this section relating to the computation of the net income of corporations, joint-stock and insurance companies, organized, created, or existing under the laws of foreign countries, in so far as applicable.[9]

[8] Deduction for expenses of business, see, infra, § 293; for interest paid, infra, §§ 147, 158 (Treasury regulations) and § 302; for taxes paid, infra, § 303; for losses sustained, infra, §§ 156, 165 (Treasury regulations) and § 304; for debts written off as worthless, infra, § 305; for depreciation, infra, § 165 (Treasury regulation) and § 306. General discussion of subject of deductions, infra, §§ 288–313. Deductions allowable to corporations, infra, §§ 35, 41. How deductions are claimable when tax is collected at source, infra, §§ 23, 103, 104; 370.

[9] Treasury regulations, see infra, §§ 168, 171. Discussion of subject, infra, § 257. Basis of computation of income of non-residents and foreign corporations, infra, § 41. Non-residents subject to additional tax or surtax, infra, §§ 168, 257.

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§ 9. Exemption of Interest on Public Obligations and of Salaries of Certain Federal and State Officers

That in computing net income under this section there shall be excluded the interest upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof except when such compensation is paid by the United States Government.[10]

§ 10. Specific Exemption of $3000 or $4000; Husband and Wife

C. That there shall be deducted from the amount of the net income of each of said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: *Provided,* That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together.[11]

§ 11. Period for Computation of Tax

D. The said tax shall be computed upon the remainder of said net income of each person subject thereto, accruing during each preceding calendar year ending December thirty-first: *Provided, however,* that for the year ending December thirty-first, nineteen hundred and thirteen, said tax

[10] See, infra, § 141 (Treasury regulation) and § 277, discussion. Construction of terms "State" and "United States," as including the territories, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, infra, § 57.

[11] Exemption allowed in case of husband and wife, see Treasury regulation, infra, § 129, and discussion, infra, §§ 291, 319.

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shall be computed on the net income accruing from March first to December thirty-first, nineteen hundred and thirteen, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for.[12]

§ 12. Returns to be made; Time, Place, Form, and Contents

On or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made by each person of lawful age, except as hereinafter provided, subject to the tax imposed by this section, and having a net income of $3,000 or over for the taxable year, to the collector of internal revenue for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources and from the total thereof, deducting the aggregate items or expenses and allowance herein authorized.[13]

§ 13. Returns by Guardians, Trustees, Executors, etc.

Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management, and be subject to all the provisions of this section which apply to individuals: *Provided,* That a return

[12] Treasury regulation, see, infra, § 101. And see also, infra, § 292, in text.

[13] Treasury regulations as to annual returns, see, infra, § 178. General discussion of taxpayers' returns, infra, §§ 315–334. Time for filing returns, see, infra, § 142 (Treasury regulation) and § 321. Joint and several returns by husband and wife, infra, §§ 129, 291, 319. Guardians making returns for minors, infra, §§ 24, 106, 371. Principal place of business, meaning of phrase, infra, § 320.

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made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph.[14]

§ 14. Returns by Persons Having Control of Determinable Income Payable to Others

And also all persons, firms, companies, copartnerships, corporations, joint-stock companies or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal income tax upon the same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld, and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: *Provided,* That the provision requiring the normal tax of individuals to be withheld at the source of the income shall not be construed to require any of such tax to be withheld prior to the first day of November, nineteen hundred and thirteen: *Provided further,* that in either case above mentioned no return of income not exceeding $3,000 shall be required:[15]

[14] For regulations of Treasury Department governing returns by the classes of fiduciaries mentioned in this section, see, infra, §§ 118, 139. Note that the authority to make regulations concerning returns by "one of two or more joint guardians," etc., is apparently intrusted only to the Secretary of the Treasury, not, as in other cases, to the Commissioner of Internal Revenue.

[15] Compare this section with § 22, infra. Both relate to the same classes of persons, firms, companies, etc., and to the same classes

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§ 15. Taxation of Partnership Profits; Returns by Firms

Provided further, That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed: [16]

§ 16. Dividends on Stock Not Returnable for Purpose of Normal Tax

Provided further, That persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint-stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided.[17]

of income payable to another person, but the present section relates to the return required to be made by such persons, and § 22 to their duties in respect to deducting and withholding the tax. The latter section also gives a fuller definition of the persons intended (as including lessees, mortgagors, trustees, executors, etc.), and also a fuller definition of what is meant by "fixed or determinable gains, profits, and income," as including interest, rent, salaries, etc. As to the monthly and annual returns required from these withholding agents, see, infra, §§ 123, 334. Time for paying over the tax deducted by them, infra, § 150. Exempt corporations and organizations not included in the scope of this section, infra, § 151. Liabilities and penalties for disobedience to this section, infra, § 373.

[16] Provisions of the act relating to taxation of income of corporations do not apply to partnerships, as such, see, infra, §§ 117, 145 (Treasury regulations) and see § 263 for discussion of subject. Limited partnerships treated as corporations for purposes of income tax, infra, § 264. Profits of firm taxable as income of individual partners, see, infra, § 177, art. 11 (Treasury regulation) and § 236, discussion of subject.

[17] Treasury regulations on this subject, see, infra, § 140; discussion of subject, infra, § 245. Deduction of dividends from income

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§ 17. Persons For Whom Returns Have Been Made by Others

Any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income, but only one deduction of $3,000 shall be made in the case of any such person.[18]

§ 18. Returns to be Verified; Increasing Amount Returned; Appeal

The collector or deputy collector shall require every list to be verified by the oath or affirmation of the party rendering it. If the collector or deputy collector have reason to believe that the amount of any income return is understated, he shall give due notice to the person making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts.[19]

§ 19. Assessment, Notice, and Payment of Tax

E. That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said

tax return, infra, § 311. Tax on dividends of domestic corporations not deductible at source, infra, § 97. Dividends from domestic corporations to non-resident alien stockholders not subject to income tax, infra, §§ 171, 257. Dividends of foreign corporations when subject to tax, method of collecting, infra, §§ 85–88, 120.

[18] See, infra, § 315.

[19] Verification of income tax returns of individuals, see, infra, § 317; of corporation, infra, §§ 44, 320; of monthly and annual list returns, infra, §§ 161, 334. False affidavit punishable as a misdemeanor, infra, §§ 107, 332. Increasing amount of taxable income understated in return, infra, § 336. Suit for recovery back of taxes paid on such increased assessment, see, infra, § 377.

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assessments shall be paid on or before the thirtieth day of June,[20]

§ 20. Assessment Within Three Years After Discovery of Neglect to Make Return or Making of False Return

—except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment;[21]

§ 21. Penalty and Interest on Non-Payment

—and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.[22]

§ 22. Deduction and Payment of Normal Tax at Source

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in

[20] General discussion of assessment of income taxes, see, infra, §§ 335–350. Synopsis of Treasury regulations concerning assessment, infra, § 186. As to time of payment of tax, see, infra, § 341. Notice of assessment to be given to corporations, infra, § 53. Notice of assessment in general, infra, § 340. Necessity of notice to create liability for penalties, infra, § 159. Notice of proceedings for assessment in case of fraud or delinquency, infra, § 337.

[21] See, infra, § 337.

[22] Penalty for delinquency in payment of income taxes, see, infra, § 344. In case of corporations, infra, § 54. Notice and demand necessary to create liability for penalty, infra, § 159.

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any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax.[23]

§ 23. Same; How Deductions and Exemptions to be Claimed

In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, as aforesaid, such person shall not receive the benefit of

[23] Deduction and withholding of tax on interest on corporate bonds, see, infra, § 25; on interest and dividends from foreign investments, infra, § 26. This provision applicable to normal tax only, infra, §§ 30, 353. Time for paying over tax deducted at source, infra, § 150. General discussion of collection at the source, infra, §§ 352–374. Deduction of income tax from rents, mortgage interest, salaries, etc., infra, § 361. Note given for interest payment; effect of discounting, infra, §§ 108, 362. Meaning of "fixed or determinable gains, profits, and income," infra, § 361. Indeterminate, non-periodical, or fluctuating income, infra, § 367. Income of partnerships and corporations not subject to deduction at the source, infra, §§ 145, 368. How to claim benefit of specific exemption and of deductions under this provision, infra, §§ 99–104 (Treasury regulations) and § 370, discussion. Deducting source collections from personal returns, infra, § 372. Personal liability of those required to deduct and withhold tax under this provision, infra, § 373. Deduction of tax from "annuities" under this clause, infra, § 243.

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the deduction and exemption allowed in paragraph C of this section except by an application for refund of the tax unless he shall, not less than thirty days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a signed notice in writing claiming the benefit of such exemption and thereupon no tax shall be withheld upon the amount of such exemption: *Provided*, That if any person for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of $300; nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B of this section unless he shall, not less than thirty days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax, or likewise make application for deductions to the collector of the district in which return is made or to be made for him.[24]

§ 24. Same; Making Return and Claim for Minor, Insane, Sick, or Absent Person

Provided further, That if such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath under the penalties of this Act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or

[24] For Treasury regulations on this subject, see, infra, §§ 99, 103, 104. Discussion of subject, infra, § 370.

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her, and that the return and application made by him are full and complete.[25]

§ 25. Deduction and Withholding of Normal Tax from Interest On Corporate Bonds and Mortgages

Provided further, That the amount of the normal tax hereinbefore imposed shall be deducted and withheld from fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages, or deeds of trust or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000, subject to the provisions of this section requiring the tax to be withheld at the source and deducted from annual income and paid to the Government.[26]

§ 26. Deduction and Withholding of Tax from Interest on Foreign Bonds and from Foreign Dividends

And likewise the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the

[25] See, infra, § 106 (Treasury regulation) and §§ 315, 371.

[26] Treasury regulations relating to this clause, see, infra, § 73. Deduction and withholding of tax from interest and dividends on foreign investments, infra, §§ 26, 85–90. This provision applicable to normal tax only, infra, §§ 30, 353. This provision not applicable to securities owned by corporations, infra, §§ 81, 368; nor to interest due and payable before March 1, 1913, infra, § 84; nor to interest due to non-resident aliens, infra, §§ 93, 168; nor to interest on state and municipal bonds, infra, § 128. Time for paying over tax deducted at source, infra, § 150. Deduction of tax on payments of registered interest, infra, § 153. General discussion of subject of collection at the source, infra, §§ 352–374. Certificates of ownership to be filed with coupons or interest orders presented for collection by bank or other collecting agent, infra, §§ 356–358. Interest on tax-free bonds, infra, §§ 138, 360. Deducting source collections from personal returns, infra, § 372. Liabilities and penalties imposed on debtors and withholding agents, infra, § 373.

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stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or other compensation does not exceed $3,000, by any banker or person who shall sell or otherwise realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States), and any person who shall obtain payment (not in the United States), in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any such dividends or interest (not payable in the United States), otherwise than from a banker or another dealer in such coupons; but in each case the benefit of the exemption and the deduction allowable under this section may be had by complying with the foregoing provisions of this paragraph.[27]

§ 27. License for Collection of Foreign Items

All persons, firms, or corporations 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 shall obtain a license from the Commissioner of Internal Revenue, and shall be subject to such regulations enabling the Government to ascertain and verify the due withholding and payment of the income tax required to be withheld and paid as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe; and any person who shall knowingly undertake to collect such payments as aforesaid without hav-

[27] Treasury regulations governing this subject, see, infra, §§ 85–90. General discussion of subject, infra, § 363. License required for foreign collections, infra, § 120 (Treasury regulations) and § 364. Taxation of income from property or investments in foreign countries, infra, § 252. Taxation of domestic corporations with branches or agencies in foreign countries, infra, § 253. Application of this provision to interest on bonds of foreign governments, infra, § 166.

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ing obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor and for each offense be fined in a sum not exceeding $5,000, or imprisoned for a term not exceeding one year, or both, in the discretion of the court.[28]

§ 28. Liability for Tax Not Affected by Contract

Nothing in this section shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after this Act takes effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.[29]

§ 29. Assessment on Personal Returns

The tax herein imposed upon annual gains, profits, and income not falling under the foregoing and not returned and paid by virtue of the foregoing shall be assessed by personal return under rules and regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.[30]

§ 30. Collection at Source Applicable to Normal Tax Only

The provisions of this section relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

[28] Treasury regulations on this subject, see, infra, § 120. Discussion of subject, infra, § 364.

[29] Tax-free bonds; covenants in bonds to pay full interest without deduction for taxes, see, infra, §§ 39, 360. Rulings of Treasury department on this point, infra, § 138. Interest on tax-free bonds, paid by corporation, not deductible by it, infra, § 303.

[30] The "foregoing" probably refers to cases in which returns are to be made for other persons by fiduciaries and by persons paying fixed interest, rent, salaries, etc. General provision for personal returns to be made by "each person of lawful age," see, supra, § 12. Provision for assessment of tax within three years after discovery of taxpayer's neglect to make return, supra, § 20. Requirement of annual returns by persons liable to pay tax, infra, § 61. Returns made up by collector from information furnished by taxpayer, infra, § 62. Demand for list or return, infra, § 63. Collector making up return in case of delinquency or fraud, infra, § 65.

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§ 31. Penalties for Neglect or Refusal to Make Return and for False and Fraudulent Returns

F. That if any person, corporation, joint-stock company, association, or insurance company liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000. Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.[31]

§ 32. Corporations Subject to Normal Income Tax

G. (a) That the normal tax hereinbefore imposed upon individuals likewise shall be levied, assessed, and paid annually upon the entire net income arising or accruing from all sources during the preceding calendar year to every corporation, joint-stock company or association, and every insurance company, organized in the United States, no matter how created or organized, not including partnerships; but if organized, authorized, or existing under the laws of any foreign country, then upon the amount of net income accruing from business transacted and capital invested within the United States during such year.[32]

[31] See, infra, § 142 (Treasury regulation) and §§ 331, 332. Penalty on fiduciary failing to make return, infra, § 316. Penalties in case of corporations, infra, § 56.

[32] What classes of corporations exempt, see, infra, § 33. Taxable income and deductions of foreign corporations, infra, § 41. Repeal of 1909 excise tax on corporations, infra, § 70. Synopsis of Treasury regulations concerning corporations, infra, § 185. Definitions of income of corporations, § 223. Application of statute to inactive, controlled, or leased companies, infra, § 320. Application of statute to foreign corporations, infra, §§ 125, 166 (Treasury regulations) and § 266. Meaning of "foreign corporations" as used

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§ 33. What Corporations and Organizations Exempt

Provided, however, That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members, nor to domestic building and loan associations, nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, nor to business leagues, nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare.[33]

§ 34. Exemption of Income from Public Utilities Accruing to States and Municipalities

Provided further, That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any politi-

in Treasury regulations, infra, § 166. Income tax law not applicable to partnerships as such, infra, §§ 117, 145 (Treasury regulations) and § 263.

[33] For Treasury rulings and regulations, see, infra, §§ 134, 151, 160. Discussion of the subject, see, infra, § 279. Exempt corporations not required to act as withholding agents, infra, §§ 151, 374. Corporations claiming exemption must prove their right thereto, infra, § 279. Such corporations not required to make returns, infra, § 320. Form of certificate for corporations claiming exemption from deduction of tax at source, infra, § 162.

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cal subdivision of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: *Provided,* That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.[34]

§ 35. Deductions Allowed to Corporations; Expenses

(b) Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint-stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property;[35]

§ 36. Same; Losses and Depreciation

—(second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable

[34] Discussion of this subject, see, infra, § 278.

[35] Deductions allowed to corporations under the description of "expenses," see, infra, § 185, art. 96 (Treasury regulations) and § 293, discussion of subject. Deductions allowable for rental payments, infra, § 298. In case of foreign corporations, infra, § 41. Corresponding provision as to individuals, supra, § 7.

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allowance for depreciation by use, wear and tear of property, if any; and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts:[36]

§ 37. Same; Proviso as to Mutual Fire Insurance Companies

Provided, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves.[37]

§ 38. Same; Proviso as to Mutual Marine and Life Insurance Companies

Provided further, That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon

[36] Treasury regulations as to deduction for losses sustained, see, infra, §§ 156, 165. General consideration of deductible losses, infra, § 304. Treasury regulations as to deduction for depreciation, infra, § 165; general discussion of subject, infra, §§ 306, 307, 308. Allowance for depletion of ores, infra, § 308. Meaning of "gross value at the mine," infra, § 308. Corresponding provisions for deductions in the case of individuals, supra, § 7; in the case of foreign corporations, infra, § 41. Special rules as to deductions allowable to insurance companies, infra, § 312.

[37] Deductions allowed to insurance companies, see, infra, § 312.

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such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;[38]

§ 39. Same; Interest on Indebtedness

—(third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: *Provided,* That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: *Provided further,* That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company;[39]

§ 40. Same; Taxes Paid

—(fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State

[38] Deductions allowed to insurance companies, see, infra, § 312.
[39] Deduction of interest on indebtedness, see infra, § 147 (Treasury regulation) and § 302, discussion of subject.

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or Territory thereof, or imposed by the Government of any foreign country: [40]

§ 41. Taxable Income and Deductions Allowed to Foreign Corporations

Provided, That in the case of a corporation, joint-stock company or association, or insurance company, organized, authorized, or existing under the laws of any foreign country, such net income shall be ascertained by deducting from the gross amount of its income accrued within the year from business transacted and capital invested within the United States, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States, including rentals or other payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines a reasonable allowance for depletion of ores and all other natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts: *Provided further,* That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are re-

[40] Taxes paid as allowable deduction in case of individuals, see, supra, § 7; in case of foreign corporations, infra, § 41. Amount of deduction claimed for taxes paid to be shown by returns, infra, § 51. Discussion of deductions allowable under the head of taxes, infra, § 303.

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tained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year; (third) the amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding the proportion of one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the capital employed in the business at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States: *Provided,* That in the case of bonds or other indebtedness which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any State or Territory thereof or the District of Columbia. In the case of assessment insurance companies, whether domestic or foreign, the actual deposit of sums with State or Territorial officers, pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.[41]

[41] Deduction for expenses of business, see, infra, § 293; for interest paid, infra, §§ 147, 158 (Treasury regulations) and § 302;

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§ 42. Period for Computation of Tax on Corporations

(c) The tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending December thirty-first: *Provided, however,* That for the year ending December thirty-first, nineteen hundred and thirteen, said tax shall be imposed upon its entire net income accrued within that portion of said year from March first to December thirty-first, both dates inclusive, to be ascertained by taking five-sixths of its entire net income for said calendar year:[42]

§ 43. Privilege of Designating Fiscal Year

Provided further, That any corporation, joint-stock company or association, or insurance company subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment instead of upon the basis of the net income for the calendar year preceding the date of assessment; and it shall give notice of the day it has thus designated as the closing of its fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed.[43]

for taxes paid, infra, § 303; for losses sustained, infra, §§ 156, 165 (Treasury regulations) and § 304; for depreciation, infra, § 165 (Treasury regulations) and § 306. General discussion of subject of claimable deductions, infra, §§ 288–314. Corresponding provisions in case of individuals, supra, § 7; in case of domestic corporations, supra, § 35. How deductions are claimable when tax is collected at source, infra, §§ 23, 103, 104, 370.

[42] Exception as to corporations designating fiscal year differing from calendar year, infra, § 43.

[43] Privilege to corporations to designate fiscal year, see, infra, § 112 (Treasury regulation) and §§ 163, 175, discussion of subject. Time for payment of tax when fiscal year is designated, infra, § 53.

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§ 44. Time and Place for Rendering Returns

All corporations, joint-stock companies or associations, and insurance companies subject to the tax herein imposed, computing taxes upon the income of the calendar year, shall, on or before the first day of March, nineteen hundred and fourteen, and the first day of March in each year thereafter, and all corporations, joint-stock companies or associations, and insurance companies, computing taxes upon the income of a fiscal year which it may designate in the manner hereinbefore provided, shall render a like return within sixty days after the close of its said fiscal year, and within sixty days after the close of its fiscal year in each year thereafter, or in the case of a corporation, joint-stock company or association, or insurance company, organized or existing under the laws of a foreign country, in the place where its principal business is located within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, shall render a true and accurate return under oath or affirmation of its president, vice president, or other principal officer, and its treasurer or assistant treasurer, to the collector of internal revenue for the district in which it has its principal place of business,[44]

§ 45. Contents of Returns; Capital, Indebtedness, Gross Income, and Expenses

—setting forth (first) the total amount of its paid-up capital stock outstanding, or if no capital stock, its capital employed in business, at the close of the year; (second) the total amount of its bonded and other indebtedness at the close of the year;

[44] Returns by corporations, see further as to time and place for rendering, infra, § 320; contents and specifications of, infra, §§ 45–52; corporate returns how and when open to inspection, infra, §§ 55, 170, 323; penalty for neglect or refusal to make, infra, §§ 56, 331; penalty for false or fraudulent return, infra, §§ 56, 332; time for filing, statute is mandatory as to, infra, §§ 142, 321; privilege of designating fiscal year different from calendar year, supra, § 43. Meaning of principal place of business, infra, § 320. What officers of corporation to join in verification, infra, § 320.

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(third) the gross amount of its income, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital invested within the United States; (fourth) the total amount of all its ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint-stock company or association, or insurance company within the year, stating separately all rentals or other payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States;[45]

§ 46. Same; Losses Sustained

—(fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts:[46]

§ 47. Same; Proviso as to Insurance Companies

Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and

[45] Deduction from gross income of amount of interest paid on indebtedness, see, supra, § 39, and infra, § 147. Allowance of deduction for expenses, supra, § 35.

[46] Allowance of deduction for losses sustained, supra, § 36. What losses deductible, rules for computation of, infra, §§ 156, 165, 304. Depreciation of property, supra, § 36, and infra, § 306.

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reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;[47]

§ 48. Same; Foreign Corporations; Losses and Depreciation

—and in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in case of insurance companies the net addition, if any, required by law to be made within the year to reserve funds and the sums other than dividends paid within the year on policy and annuity contracts:[48]

§ 49. Same; Proviso as to Foreign Insurance Companies

Provided further, That mutual fire insurance companies requiring their members to make premium deposits to provide for losses and expenses shall not return as income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the

[47] Special rules as to deductions and allowances in case of insurance companies, see §§ 36, 312.

[48] Allowance of deductions in case of foreign corporations, see, supra, § 41.

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premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves: *Provided further,* That mutual marine insurance companies shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof and life insurance companies shall not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder, within such year;[49]

§ 50. Same; Interest Accrued and Paid

—(sixth) the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest bearing indebtedness and its paid-up capital stock, outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint-stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within

[49] Special rules as to allowances and deductions in case of insurance companies, see §§ 36, 312.

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the United States bears to the gross amount of its income derived from all sources within and without the United States;[50]

§ 51. Same; Taxes Paid

—(seventh) the amount paid by it within the year for taxes imposed under the authority of the United States and separately the amount so paid by it for taxes imposed by the Government of any foreign country;[51]

§ 52. Same; Amount of Net Income

—(eighth) the net income of such corporation, joint-stock company or association, or insurance company, after making the deductions in this subsection authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.[52]

§ 53. Assessment, Notice, and Payment of Tax

All assessments shall be made and the several corporations, joint-stock companies or associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessment shall be paid on or before the thirtieth day of June: *Provided,* That every corporation, joint-stock company or association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessment within one hundred and twenty days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon informa-

[50] Allowance of deduction for interest paid on indebtedness, see §§ 39, 302.

[51] Allowance of deduction for taxes paid, see §§ 40, 303.

[52] Statutory and official definitions of "gross" and "net" income, see, §§ 222, 223.

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tion obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment;[53]

§ 54. Penalty and Interest for Delinquency

—and to any sum or sums due and unpaid after the thirtieth day of June in any year, or after one hundred and twenty days from the date on which the return of income is required to be made by the taxpayer, and after ten days notice and demand thereof by the collector, there shall be added the sum of 5 per centum on the amount of tax unpaid and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due.[54]

§ 55. Corporation Returns to be Public Records; Privilege of Inspection

(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: *Provided,* That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further,* That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint stock company, association or insurance

[53] General discussion of assessment of income taxes, see, infra, §§ 335–350. Synopsis of Treasury regulations concerning assessment, infra, § 186. As to time of payment of tax, see, infra, § 341.

[54] Penalty for delinquency in payment of income taxes, see, infra, § 344. In case of individuals, supra, § 21. Notice and demand necessary to create liability for penalty, infra, § 159.

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company, at such times and in such manner as the Secretary of the Treasury may prescribe.[55]

§ 56. Penalty for Refusal or Neglect to Make Return or Making False Return

If any of the corporations, joint-stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint-stock company or association, or insurance company shall be liable to a penalty of not exceeding $10,000.[56]

§ 57. Construction of Words "State" and "United States"

H. That the word "State" or "United States" when used in this section shall be construed to include any Territory, Alaska, the District of Columbia, Porto Rico, and the Philippine Islands, when such construction is necessary to carry out its provisions.[57]

§ 58. Amendment and Re-Enactment of Certain Sections of Revised Statutes

I. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:[58]

[55] Executive order and regulations governing inspection of income tax returns, see, infra, § 170. General discussion of the subject, infra, § 323.

[56] See, infra, §§ 107, 142 (Treasury regulations) and § 331. Penalty in case of individuals, supra, § 31. Penalty on fiduciaries failing to make return, infra, § 316.

[57] See, supra, § 9, where reference is made to "obligations of a State or any political subdivision thereof" and "obligations of the United States or its possessions."

[58] These sections of the Revised Statutes, together with others relating to the assessment and collection of internal revenue taxes, may be seen printed in full in the Appendix to this volume.

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§ 59. Penalty for Divulging Particulars of Income Tax Returns

"Sec. 3167. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.[59]

§ 60. Canvass of Districts for Objects of Taxation

"Sec. 3172. Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

[59] Treasury regulation, see, infra, § 148. Discussion of subject, infra, § 324.

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§ 61. Annual Returns of Persons Liable to Tax

"Sec. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable:[60]

§ 62. Return Made Up by Collector from Information Furnished by Taxpayer

Provided, That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles, or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person:[61]

[60] Compare §§ 12, 29, supra.

[61] General provisions of the act as to returns of income, see, supra, §§ 12–18. Authority to increase understated returns, supra,

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§ 63. Demand for List or Return

Provided further, That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation.[62]

§ 64. Authority of Collector to Take Testimony and Require Production of Books

And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear

§ 18. Penalties for neglect or refusal to make returns, supra, §§ 31, 54. General discussion of subject of income tax returns, infra, §§ 315–334. As to topic of this section, see, also, § 325, infra.

[62] Provisions of the act requiring rendition of returns, and prescribing time and place, supra, § 12. Assessments authorized to be made within three years after the time when return should have been filed, on discovery of neglect or refusal to make return, supra, § 20. Penalty for neglect or refusal to make return, supra, § 31. None of the foregoing sections impose upon collectors the duty of calling for returns and demanding rendition thereof. Quære, is the effect of the present section to require a demand for rendition of a return before penalty will attach?

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before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.[62]

§ 65. Collector Making Up Return in Case of Delinquency or Fraud; Addition of Penalties; Sickness or Absence as Excuse; Collection of Tax

"Sec. 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify

[62] Proceedings in case of refusal or neglect to make return, see, infra, § 325. Examination of books, papers, and witnesses, infra, § 326. Increasing amount of taxable income understated in return, supra, § 18, and infra, § 336. Penalties for false and fraudulent returns, supra, §§ 31, 56, and infra, § 331.

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the same as aforesaid, he shall add 50 per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes." [64]

§ 66. Collectors' Receipts for Taxes; Effect as Evidence

J. That it shall be the duty of every collector of internal revenue, to whom any payment of any taxes other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this section, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever

[64] Proceedings in case of refusal or neglect to make return, see infra, § 325. Collector's examination of books, papers, and witnesses, see, supra, § 64, and infra, § 326. Penalties for false and fraudulent returns, supra, §§ 31, 56, and infra, § 331. Increasing amount of taxable income understated in return, see, supra, § 18, and infra, § 336.

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sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.[65]

§ 67. Jurisdiction of District Courts to Compel Attendance of Witnesses

K. That jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process.[66]

§ 68. General Provisions of Internal Revenue Laws Made Applicable to Income Tax

L. That all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed.[67]

§ 69. Provisions Extended to Porto Rico and Philippine Islands

M. That the provisions of this section shall extend to Porto Rico and the Philippine Islands: *Provided,* That the administration of the law and the collection of the taxes imposed in Porto Rico and the Philippine Islands shall be by the appropriate internal-revenue officers of those governments, and all revenues collected in Porto Rico and the Philippine Islands thereunder shall accrue intact to the general

[65] See also § 343, infra.

[66] For provision authorizing collectors to summon persons as witnesses and to require the production of books and papers, see, supra, § 64. Scope and character of examination had thereon, infra, §§ 326–330.

[67] The provisions of the Revised Statutes relating to the assessment, remission, collection, and refund of internal revenue taxes are printed in full in the Appendix to this volume.

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governments, thereof, respectively: *And provided further,* That the jurisdiction in this section conferred upon the district courts of the United States shall, so far as the Philippine Islands are concerned, be vested in the courts of the first instance of said islands: *And provided further,* That nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico and the Philippine Islands or the political subdivisions thereof. * * *

§ 70. Repeal of Corporation Excise Tax Law of 1909; Saving of Taxes Accrued

T. That, except as hereinafter provided, sections one to forty-two, both inclusive, of an Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August fifth, nineteen hundred and nine, and all Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed: *Provided* * * * that all excise taxes upon corporations imposed by section thirty-eight [of the Act of August 5, 1909] that have accrued or have been imposed for the year ending December thirty-first, nineteen hundred and twelve, shall be returned, assessed, and collected in the same manner, and under the same provisions, liens, and penalties as if section thirty-eight continued in full force and effect: *And provided further,* That a special excise tax with respect to the carrying on or doing of business, equivalent to 1 per centum upon their entire net income, shall be levied, assessed, and collected upon corporations, joint stock companies or associations, and insurance companies, of the character described in section thirty-eight of the Act of August fifth, nineteen hundred and nine, for the period from January first to February twenty-eighth, nineteen hundred and thirteen, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations, joint stock companies or associations, and insurance companies, for

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said year, said net income to be ascertained in accordance with the provisions of subsection G of section two of this Act: *Provided further,* That the provisions of said section thirty-eight of the Act of August fifth, nineteen hundred and nine, relative to the collection of the tax therein imposed shall remain in force for the collection of the excise tax herein provided, but for the year nineteen hundred and thirteen it shall not be necessary to make more than one return and assessment for all the taxes imposed herein upon said corporations, joint stock companies or associations, and insurance companies, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in this Act; but the repeal of existing laws or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil case before the said repeal or modification; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed and all penalties or forfeitures or liabilities incurred prior to the passage of this Act under any statute embraced in or changed, modified, or repealed by this Act may be prosecuted or punished in the same manner and with the same effect as if this Act had not been passed. No Acts of limitation now in force, whether applicable to civil causes or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this Act shall be affected thereby, so far as they affect any suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this Act, which may be commenced and prosecuted within the same time and with the same effect as if this Act had not been passed.

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CHAPTER II

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§ 71. History of Treasury Regulations

The first set of regulations for the collection of the federal income tax were prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, in pursuance of the authority given to those officers by the Act of Congress, on October 25th, 1913. These were published in pamphlet form and were entitled: "Regulations regarding the deduction of the income tax at the source on interest maturing on bonds, notes, and other similar obligations of corporations, joint stock companies or associations, and insurance companies, under the provisions of Section 2 of the Act of October 3, 1913." A second set of regulations were similarly prescribed, approved, and issued on October 31st, 1913, and were entitled: "Regulations regarding the deduction of the income tax at the source on income other than interest maturing on bonds, notes, and other similar obligations of corporations, joint stock companies or associations, and insurance companies." Since the date last mentioned, numerous single regulations have been issued, dealing with various administrative details, and in some cases making rulings or decisions as to the incidence of the tax and other substantive matters. In addition, the Treasury Department, on January 5th, 1914, issued a pamphlet entitled: "Law and regulations relative to the tax on income of individuals, corporations, joint stock companies, associations, and insurance companies." This is officially to be cited as "United States Internal Revenue Regulations No. 33," and contains, together with the text of the Act of Congress, a synopsis or summary of the regulations and rulings previously issued, arranged

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in somewhat methodical order, and divided into "articles" which are numbered consecutively from 1 to 199.

§ 72. Arrangement in This Volume

The various regulations and rulings of the Treasury Department are reprinted textually in the following sections of this chapter; first the regulations referred to above as the "first set," promulgated October 25, 1913, occupying sections 73 to 94 infra, then the regulations described as the "second set," issued October 31, 1913, occupying sections 95 to 107, infra, and then the miscellaneous regulations and rulings, occupying the remainder of the chapter. The Regulations described as "No. 33" will occupy the next succeeding chapter. In regard to the miscellaneous regulations and rulings, it should be observed that, as here printed, each bears the date of its issuance and also its number in the consecutive series of "Treasury Decisions." It is the custom of the Department thus to number each of the regulations, rulings, or decisions which it issues, and they are published (bearing these consecutive numbers) in the weekly publication issued by the Government under the name of "Treasury Decisions." It is further to be remarked that the various forms prescribed for use in connection with the income tax have been collected together and printed in one body, numbered consecutively, in the appendix to this volume. While the regulations and rulings of the officers of the Treasury Department are here reprinted verbatim, the division of the same into consecutively numbered sections is merely a device adopted by the author of this book, for the greater convenience of the reader in referring from a given regulation or ruling to the text of the statute or to that part of the text of the book where its subject-matter is treated in detail, or vice versa. The words and phrases used for the section headings are for the most part those employed by the Treasury Department itself, but in some few cases have been supplied by the author.

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REGULATIONS

§ 73. Tax to Be Deducted at Source

Under the income-tax law enacted October 3, 1913, a tax of 1 per cent, designated in the law as the normal tax, shall be deducted at "the source," beginning November 1, 1913, from all income accruing and payable to—

(*a*) Every citizen of the United States, whether residing at home or abroad; and to

(*b*) Every person residing in the United States, though not a citizen thereof,

which may be derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations, including equipment trust agreements and receivers' certificates of corporations, joint-stock companies or associations, and insurance companies, although such interest does not amount to $3,000, excepting only the interest upon the obligations of the United States or its possessions, or a State or any political subdivision thereof.[1]

§ 74. Definition of "Debtor"

The term "debtor," as hereinafter used, shall be construed to cover all corporations, joint-stock companies or associations, and insurance companies.[2]

§ 75. When Tax Shall Be Withheld by Debtor

For the purpose of collecting this tax on all coupons and registered interest originating or payable in the United States the source shall be the debtor (or its paying agent in the

[1] Provision of the statute applying principle of "collection at the source" to interest on corporate obligations, see, supra, § 25. For provisions as to collection of tax on interest and dividends on foreign investments, see, supra, § 26, and infra, §§ 85–90. Collection at the source applicable to normal tax only, not to additional tax or surtax, supra, § 30, infra, § 353. Not applicable to interest due to non-resident aliens, infra, §§ 93, 168; nor to foreign corporations doing business in the United States, infra, § 125. Exception as to interest on obligations of the United States, states, and municipalities, supra, § 9.

[2] Definitions to "debtor," "source," and "withholding agent," infra, §§ 95, 334.

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United States), which shall deduct the tax when same is to be withheld, and no other bank, trust company, banking firm, or individual taking coupons or interest orders for collection, or otherwise, shall withhold the tax thereon: *Provided,* That all such coupons or orders for registered interest are accompanied by certificates of ownership signed by the owners of the bonds upon which the interest matured. These certificates shall be in the forms hereinafter prescribed, and a separate certificate shall be made out by each owner of bonds for the coupons or interest orders for each separate issue of bonds or obligations, of each debtor.

§ 76. When Tax Shall Be Withheld by First Collecting Agency

If, however, the coupons or interest orders are not accompanied by certificates as prescribed above, the first bank, trust company, banking firm, or individual, or collecting agency receiving the coupons or interest orders for collection, or otherwise, shall deduct and withhold the tax and shall attach to such coupons or interest orders its own certificate, giving the name and address of the owner of, or the person presenting such coupons or interest orders if the owner is not known, with a description of the coupons or interest orders; also setting forth the fact that they are withholding the tax upon them; whereupon the debtor shall not again withhold the tax on said coupons or interest orders, but in lieu thereof shall deliver to the Government the certificate of such bank, trust company, etc., which is withholding such tax money.

Any corporation, collecting agency, or person first receiving from the owner any interest coupons or orders for the collection of registered interest, and to whom the certificates above provided for are delivered, should require the persons tendering such coupons or orders for registered interest to satisfactorily establish their identity.

§ 77. Payment of Registered Interest by Debtors

A debtor whose bonds may be registered, both as to principal and interest, shall deduct the normal tax of 1 per cent from

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the accruing interest on all bonds before sending out checks for said interest to registered owners or before paying such interest upon interest orders signed by the registered holders of said bonds until there shall be filed with said debtor or its fiscal agent (and not later than thirty (30) days prior to March 1), through whom said interest is customarily paid, the proper certificates claiming exemption from liability for said tax as herein provided, executed as follows:

By a citizen or resident of the United States, the bona fide owner of the registered obligations, who may claim exemption under paragraph C, section 2, of the Federal income-tax law, or

By corporations, joint-stock companies, associations, or insurance companies organized in the United States, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation, as provided in paragraph G; subdivision A, of the act, or

By a bona fide resident and citizen of a foreign country, claiming exemption as such.

§ 78. Designation of Fiscal Agencies

The "debtor" may appoint paying or fiscal agents to act for it in matters pertaining to the collection of this tax upon filing with the collector of internal revenue for its district a proper notice of the appointment of such agent or agents.

§ 79. Certificates Claiming Exemption

If the owners of the bonds are individuals who are citizens or residents of the United States, the aforesaid certificates shall accompany the coupons, or, with respect to the interest on registered bonds, shall be filed with payer of said interest, and such certificates shall describe the bonds and show the amount of coupons attached or the amount of interest due such owners on registered bonds and the full name and address of the owners, and shall also state whether they claim or do not then claim exemption from taxation at the source provided for by paragraph C of Section II of the Federal

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income-tax law ($3,000, and under certain conditions $4,000) as to the income represented by such coupons or interest.

The certificates shall also show the amount, if any, of exemption claimed and the date of signature.

The form of certificate to be used for this purpose shall be substantially as follows: [Form No. 1000. See Appendix, p. 697.]

Whenever interest coupons, accompanied by a certificate of an individual who is a citizen or resident of the United States, as aforesaid, are presented to a debtor or its fiscal agent for payment, or whenever interest is payable to such individual on a bond registered as to both principal and interest, the debtor or its fiscal agents shall deduct and withhold the amount of the normal tax, except to the extent that exemption is claimed in the certificate of ownership in the form herein prescribed.

Where the interest to be paid is registered, the same form of certificate shall be used where exemptions are claimed, except that it shall be filed with the debtor at least five (5) days before the due date of such interest.

§ 80. By Whom Signed

These certificates must be signed by the claimants with their full name, and contain their post-office and street address, also the date when signed.[3]

Duly authorized agents, trustees acting in a trust capacity, etc., may sign such certificates for the persons for whom they act.

§ 81. Organizations Whose Interest Coupons are Not Taxed at Source

If the owners of the bonds are corporations, joint-stock companies, associations, or insurance companies organized in the United States, no matter how created or organized, or

[3] A later regulation permits certificates of ownership to be signed with the owner's ordinary or business signature, infra, § 127. How certificates are to be signed on behalf of non-resident aliens, see, infra, § 111.

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organizations, associations, fraternities, etc., which are either taxable or exempt from taxation as provided in paragraph G, subdivision A of the act, the debtor is not required to withhold or deduct the tax upon income derived from interest on such bonds, provided coupons or orders for interest from such bonds shall be accompanied by a certificate of the owners thereof certifying to such ownership, which certificates shall be filed with the debtor when such coupons or interest orders are presented for payment.[4]

Such certificate shall be substantially in the following form: [Form No. 1001. See Appendix, p. 702.]

§ 82. How Collected When Not Accompanied by the Certificate of Owner

Where coupons or interest orders are not accompanied by the ownership certificates, the form to be executed by the first bank, trust company, banking firm, individual, or collection agency receiving the same for collection or otherwise, which must accompany the coupons or interest orders, shall be substantially as follows: [Form No. 1002. See Appendix, p. 705.]

This certificate shall be dated and signed by and shall state the address of the corporation, organization, collecting agency, or person withholding the tax, with full name and address.

§ 83. Final Disposition of Certificates

The debtor or paying agents shall deliver all certificates, with the list of names and addresses of those for whom the tax has been withheld, showing amounts, as required by law, to the collector of internal revenue for their district on or before the 20th day of the month succeeding that in which said certificates were received by them.

[4] The provisions of the statute relating to collection at the source are not applicable to the income of any corporations whatever, no matter whether they are exempt from the tax or subject to it, as it is provided (supra, § 30) that this feature of the law shall apply only to the normal income tax "imposed upon individuals." And see also, infra, §§ 125, 368.

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§ 84. Interest Due Before March 1, 1913

The tax shall not be withheld on coupons or registered interest maturing and payable before March 1, 1913, although presented for payment at a later date.

§ 85. License Required for Collection of Income From Foreign Countries

All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or collection) the collection of coupons, checks, bills of exchange, etc., for or in payment of interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations, and for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, are required by law to obtain a license from the Commissioner of Internal Revenue and may be required to give bond in such amount and under such conditions as the Commissioner of Internal Revenue may prescribe.[5]

§ 86. By Whom Tax is Withheld

The licensed person, firm, or corporation first receiving any such foreign items for collection or otherwise shall withhold therefrom the normal tax of 1 per cent, and will be held responsible therefor. He (the licensee) shall thereupon indorse or stamp thereon the words "Income tax withheld by" (giving his or their name, address, and date), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the income tax.

If the size or nature of such coupons, checks, etc., makes it impracticable to make said indorsement as above, a statement identifying the item on which tax is withheld and bearing said indorsement may be attached thereto with the same effect as if the indorsement was made directly thereon.[6]

[5] Text of the statute requiring license for collection of interest and dividends on foreign investments, supra, § 27. Complete Treasury regulations in regard to issue of licenses and duties of licensees, infra, § 120.

[6] See amendment of this regulation, infra, § 172.

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§ 87. List of Tax Collections on Foreign Items

Such licensee shall obtain the names and addresses of the persons from whom such items are received, and shall prepare a list of same and file it with the collector of internal revenue for his district not later than the 20th of the month next succeeding the receipt of such items. The list shall be dated, and shall contain the names and addresses of the taxable persons and the amount of tax deducted, and from what source collected.

§ 88. Certificates to Secure Tax Exemption on Foreign Items

In the event such coupons, checks, or bills of exchange above mentioned are presented for collection by an individual claiming the benefit of the deductions allowable under paragraph C, section II, of the Federal income-tax law, such individual shall be permitted to avail himself of the deduction claimed, upon signing on the form heretofore prescribed for coupons payable in the United States, and no tax shall be deducted for the amount of the exemption so claimed; or if such items are presented by corporations, joint-stock companies, or associations and insurance companies, organized in the United States, the form of certificate heretofore prescribed for such organizations shall be used, and in such instances no tax shall be deducted.

In both instances the licensee first receiving such items shall retain such certificates for delivery with the lists aforesaid to the collector of internal revenue for his district not later than the 20th of the month next succeeding that in which said items were received, and with respect to said coupons, checks, or bills of exchange, said licensee shall attach thereto (identifying the items) or indorse, or stamp thereon the words "Income tax exemption claimed through" (giving name and address of licensee), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the tax thereon.

The provisions for collection of the tax on foreign obligations set forth in this section of the regulations includes the

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interest upon all foreign bonds, even though the coupons may be at the option of the holder, payable in the United States as well as in some foreign country.[7]

§ 89. Accurate Record to be Kept by Licensees

All persons licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal-revenue officers.

§ 90. Penalty for Omission to Obtain License

Failure to obtain license or to comply with regulations is punishable by a fine not exceeding $5,000, or imprisonment not exceeding one year, or both, in the discretion of the court. Such licenses shall continue in force until revoked.

Application for such licenses should be made to the collectors of internal revenue for the district in which they are engaged in business, and may be issued without cost to such persons as the commissioner may approve, upon their filing with the collector the bond herein provided for.

All persons in making application to the collector of internal revenue for such licenses shall register their names and addresses and state the nature of the business in which they are engaged. Such application for the license, accompanied by a proper surety bond, when both have been approved by the collector, will be considered a sufficient compliance with the law to enable the persons making application to do business until February 1, 1914, without incurring the penalties provided by law for failure to procure the required license.[8]

[7] The last clause of this regulation has been amended (infra, § 157) so that the collection of interest on bonds of a foreign corporation will be treated as a domestic transaction where the interest is payable within the United States at the option of the holder and the corporation maintains a fiscal agency within the United States for such purposes, provided certificates of ownership are filed; if they are not, it is treated as a foreign collection.

[8] Penalty for failure to procure license, see, supra, § 27. Application for license and issuance thereof, and requirements as to bonds of licensees, see, infra, § 120.

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§ 91. Penalty for False Statements

If any person, for the purpose of obtaining any allowance or reduction by virtue of a claim for exemption, either for himself or for any other, knowingly makes a false statement or false or fraudulent representation, he is liable under the act to severe penalties.[9]

§ 92. Partnerships

Where coupons or interest orders, presented for payment, represent the interest on bonds, or other similar obligations, owned by a partnership, they shall be accompanied by a certificate of ownership, which shall be signed either in the firm's name by one member of the firm or by each individual member of the partnership, and the normal tax shall be withheld by the debtor with respect to the income represented by said interest.[10]

Said certificate of ownership shall be in substantially the following form: [Form No. 1003. See Appendix, p. 707.]

Any member of a partnership, who is entitled to a deduction (under Paragraph C, Section II, of the Income Tax Law) of his pro rata share of the tax which may be withheld at the source on interest on bonds owned by his copartnership, as above, may claim such deduction or allowance when he shall make his individual income tax return for the year in which said deduction at the source was made.

§ 93. Nonresident Foreigners Owning Interest-Bearing Bonds Not Subject to Taxation on Income from Such Bonds if Proper Certificate Furnished

This tax will not be deducted from the income which may be derived from interest on bonds, mortgages, equipment trusts, receivers' certificates, or other similar obligations of which the bona fide owners are citizens of foreign countries

[9] The penalty prescribed by the act is $300. See, supra, § 23.

[10] Partnerships, as such, are not subject to the income tax. See, supra, §§ 15, 32. For further Treasury regulations as to partnerships, see, infra, §§ 117, 145, 162. Certificates of ownership in case of partnerships, infra, § 356.

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residing in foreign countries: *Provided,* That such interest coupons, or in case of wholly registered bonds, the orders for the payment of such interest, shall be accompanied by duly certified certificates hereinafter provided for to cover the cases of foreign and nonresident owners of bonds and other securities.

Unless such proof of foreign ownership is duly furnished, the normal tax of 1 per cent shall be deducted as herein provided.

Such certificate shall be in substantially the following form: [Form No. 1004. See Appendix, p. 709.]

§ 94. Temporary Provision

In view of the fact that the time required for the interpretation of the law and preparation and issuance of these regulations brings the date so near November 1, and that many coupons payable upon that date are already in transit without the prescribed certificates attached, with a desire to cause as small an amount of inconvenience as possible to bondholders and general business as may be compatible with the provisions of the law and of these regulations, the following temporary provision is made:

On November 1, 1913, and for 15 days thereafter, coupons presented to a debtor need not be accompanied by certificates in any of the forms hereinbefore described, provided that such coupons are accompanied by a certificate substantially in the following form: [Form No. 1005. See Appendix, p. 711. Extension of time for use of this Form, to January 15, 1914, see infra, § 114.]

On or before February 1, 1914, certificates of the ownership of any of the bonds upon which was collected the interest referred to in such temporary certificates, in any of the forms above set forth, may be delivered to the debtor; and said debtor may thereupon return any sum withheld to which the owner of such bonds may be entitled under the law and regulations upon the facts disclosed by such ownership certificates. Any temporary certificates relating to bonds, for which certificates

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of ownership shall not have been substituted with the debtor, shall, on or before March 1, 1914, be delivered to the collector of internal revenue.

All forms of certificates herein provided for shall be 8 inches wide and 3½ inches from top to bottom, and printed on paper corresponding in weight and texture to glazed bond paper 17 by 28, about 26 pounds to the ream of 500 sheets, or white writing paper 21 by 32, about 32 pounds to the ream of 500 sheets, and the person or corporation first receiving coupons or interest orders for collection shall write or stamp his or its name and address and date on the back of said certificates.

§ 95. Definition of "Source"

The "source" in these regulations shall be construed as referring to the place where the income originates.

§ 96. By Whom the Normal Tax Shall be Deducted and Withheld

All persons, firms, etc., mentioned in paragraph E of this law, hereinafter referred to either as "debtors" or "withholding agents," namely: copartnerships, companies, corporations, joint stock companies, or associations, insurance companies, in whatever capacity acting, including lessees, mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers and all officers and employees of the United States having the control, receipt, custody, disposal or payment of interest (except income derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, upon which the normal tax of one per cent has otherwise been withheld at the source, as provided by these regulations), rents, salaries, wages, royalties, taxable annuities, emoluments, or other fixed or determinable gains, profits and income of another person, exceeding $3,000 for any taxable year, except as hereinafter provided, shall deduct and withhold from such annual gains, profits and income such sum as will be sufficient to pay the normal tax of one per cent im-

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posed thereon by Section 2 of this Act, and shall make lawful return and pay the taxes so withheld to the Collector of Internal Revenue for the district in which said withholding agent resides, or has his, her or its principal place of business.[11]

The normal tax of one per cent shall be thus withheld from all income derived from fixed annual periodical rent of realty or personalty, interest (except as herein otherwise provided), salaries, royalties, taxable annuities, and other fixed annual periodical income exceeding $3,000.

§ 97. Items Upon Which Tax is Not to be Withheld at the Source

(1) Dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations and insurance companies subject to like tax, when said withholding agents are required to make and render a return in behalf of another, as provided herein, to the collector of his, her or its district.

(2) Proceeds of life insurance policies paid upon the death of the person insured or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon the surrender of contract—all of which shall not be included as income under this law—but this shall not be construed to exempt said insurance companies from withholding and paying the normal tax of one per cent on interest income paid by insurance companies to beneficiaries of policies when said interest exceeds $3,000.

(3) Income of an individual which is *not* fixed or certain, and payable at stated periods, or is indefinite or irregular as to amount or time of accrual, shall not be withheld at the source but shall be returned and the tax shall be paid thereon by the individual.

[11] Text of statute on this point, supra, § 22. General discussion of kinds of income taxable at the source under these provisions, infra, §§ 354–369.

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Income derived from the following professions and vocations come under this head:

Farmers, merchants, agents compensated on the commission basis, lawyers, doctors, authors, inventors, and other professional persons.

Such persons shall make personal return of all their income, provided their total income from all sources exceeds $3,000.

For example: When a lawyer receives a retainer of $5,000 as a special fee, a deduction therefrom shall not be made by the payer, but when a lawyer receives a retainer of $5,000 per annum, and the exemption claimed is $3,000, $2,000 of such income would be taxed, and the tax retained at the source, or if his exemption claimed should be $4,000, $1,000 of such income would be taxed, and the tax thereon withheld at the source.

(4) The value of property acquired by gift, bequest, devise, or descent.

(5) Interest upon the obligations of a State, or any political subdivision thereof, and upon the obligations of the United States or its possessions; also the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State or any political subdivision thereof paid by a State or any political subdivision thereof, except when such compensation is paid by the United States Government.[12]

This exempts from the income tax all salaries paid to an individual by a State or any political subdivision thereof, including the salaries of State, county and municipal officers, the salaries of public school teachers, and special compensation paid by States or subdivisions thereof for professional services, whether in the shape of salaries or special fees.

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[12] Dividends of domestic corporations, see, supra, § 16 (provision of the statute.) Proceeds of life insurance policies, supra, § 6, (statutory provisions) and infra, § 289, discussion of subject. Indeterminate, non-periodical, or fluctuating income, infra, § 367. Earnings from professions and salaries, infra, § 229. Property acquired by gift, etc., exempt by statute, supra, § 5. Interest on United States, state, and municipal bonds, not taxable, supra, § 9.

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§ 98. Normal Tax on the Same Income is to be Withheld but Once

The normal tax of one per cent shall be deducted and withheld at the source, and payment made to the Collector of Internal Revenue as provided in the law, by the debtor or his, her, or its duly appointed agent authorized to make such deduction and payment.

No other person, firm or organization, in whatever capacity acting, having the receipt, custody, or disposal of any income, as herein provided, shall be required to again deduct and withhold the normal tax of one per cent thereon, *provided* that any person, firm or organization, in whatever capacity acting, other than the debtor, who has withheld said tax, shall file with the Collector of Internal Revenue for his, her, or its district, a certificate in substantially the following form: [Form No. 1006. See Appendix, p. 712.]

§ 99. Exemptions Which May be Claimed by Individuals [18]

Any person, subject to the normal tax of one per cent, the amount of which is withheld or is to be withheld at the source, wishing to avail himself or herself of the exemption provided in paragraph C, Section 2 of this Act ($3000, or $4000, as the case may be) must file with the withholding agent, not later than thirty days prior to the day on which the return on his income is due, a notice in the following form: [Form No. 1007. See Appendix, p. 713.]

§ 100. By Whom Exemptions under Paragraph C, Section 2, of this Act, May Be Claimed

Every single person, or every married person not living with wife or husband, who is liable for the normal income tax under this law, may claim a total deduction of $3000.00 from net income, on which deduction he or she is exempt from said normal tax of one per cent.

[18] Text of statute as to how exemptions and deductions may be claimed by person whose income tax is deducted and withheld at the source of payment, see, supra, § 23. Discussion of subject, infra, § 370.

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Where a husband and wife live together and only one of them has an annual income liable for the normal tax of one per cent, then the husband or wife who has the income, shall make the return and pay the said tax and may claim and deduct an exemption of $4,000.

But if a husband and wife live together, and each has an annual income liable for the normal tax of one per cent, then in that event they shall make a separate return and the $4,000 exemption allowed to a husband and a wife when living together, may be claimed and deducted by either the husband or wife as they may mutually agree (but not by both separately), or the said exemption shall be prorated between them in proportion to their net income.[14]

§ 101. Amount of Exemption Allowable for 1913

For the present year of 1913 (from March 1st to December 31st) exemptions allowed under paragraph C of this law will be five-sixths of those of the calendar year, as specified in paragraph D, namely, $2500 if the exemption is $3,000, or $3,333.33 if the exemption is $4,000, as the case may be.[15]

§ 102. When and on What Amount the Normal Tax Shall be Withheld

A withholding agent who pays monthly or periodically during the year interest (except income derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, etc., upon which the normal tax of one per cent has been withheld at the source, as provided by regulations), rents, salaries, wages, etc., shall not withhold the said tax until such time as the rents, salaries, wages, etc., shall have reached an aggregate amount in excess of $3,000. When such amount has

[14] Text of the statute on this point, supra, § 10. Rules for returns by husband and wife, and claim and allowance of exemptions, infra, § 129. General considerations as to rights and liabilities of husband and wife under income tax law, infra, §§ 291, 319.

[15] Provision of the statute on this point, see, supra, § 11. And see, infra, § 292.

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been reached, he, she, or it shall withhold the tax on the whole $3,000, and excess thereof, unless the person to whom the income is due files with him, her, or it, the notice above provided, claiming exemption under paragraph C of Section 2 of this Act, in which case the withholding agent shall withhold only the tax on the income in excess of said exemption of $3,000 or $4,000 (as the case may be), and the tax so withheld shall be returned and paid as required by law.[16]

§ 103. Deductions to be Made in Computing Net Income [17]

Any person subject to the normal income tax of one per cent, a part of whose income is withheld or is to be withheld at the source, who may wish to avail himself of the deductions authorized in subsection B, Section 2 of this Act, may file either with the Collector of Internal Revenue for the district in which return is made for him, or with the withholding agent, not later than 30 days prior to March 1, a return and notice in substantially the following form: [Form No. 1008. See Appendix, p. 714.]

Money or other things of value, disposed of by gift, donation or endowment, shall not be deducted or be made the basis for a deduction from the income of persons or corporations in their tax returns under the Income Tax Law.[18]

§ 104. Amount of Deduction Allowable for 1913

For the present year of 1913 (from March 1 to December 31) the deductions allowed under paragraph B shall be five-sixths of the deductions allowable for a calendar year, as specified in paragraph D of this law.[19]

[16] General discussion of collection of income tax at the source, as applied to rents, mortgage interest, salaries, etc., infra, § 361. As applied to note given for interest, and rights and liabilities of parties thereto when discounted before maturity, infra, §§ 108, 362.

[17] Provision of the statute as to allowable deductions, supra, § 7.

[18] Deduction of sums expended in gifts, charities, pensions to employés, etc., see, infra, § 295.

[19] Deductions allowed under "paragraph B," see, supra, § 7. "As specified in paragraph D of this law," see, supra, § 11.

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§ 105. Amount of Tax to be Withheld for 1913 and When Withheld

The withholding agent is not required to deduct and withhold prior to November 1, 1913, the normal tax of one per cent for which an individual is liable.

Whenever the total amount of income paid to any person by a withholding agent, after October 31, 1913, shall be in excess of $3,000, then, in that event, the withholding agent shall be liable for and shall deduct and withhold the tax on such amount, unless such person shall file a claim for an exemption as allowed in paragraph D of this act, the amount of exemption allowable being $2,500, if the annual exemption is $3,000, or $3,333.33, if the annual exemption is $4,000, as the case may be.

§ 106. Persons Physically Unable to Make Returns

If a person subject to said tax, part of whose income is withheld, or is to be withheld, is a minor or insane person, or is absent from the United States, or unable to make the application or return because of serious illness,[20] the application or return may be made by the withholding agent who shall make the following oath under the penalties of this act: [Form No. 1009. See Appendix, p. 716.]

§ 107. Penalties

Subsection F of Section 2 of the Income Tax Law provides *inter alia* as follows:

Any person or any officer of any corporation required by law to make, render, sign or verify any return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required to be made, shall be guilty of a misdemeanor and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, in the discretion of the court, with the costs of prosecution.[21]

[20] Provision of statute as to making return and claim for minor, sick, insane, and absent persons, supra, § 24. Discussion of subject, infra, §§ 315, 371.

[21] Penalties for failure to make and render income tax return, see §§ 31, 56, 142, 331; for non-payment of tax, §§ 21, 54, 344; for false

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§ 108. Income Tax on Notes Given for Interest, Rents, etc.

When a note shall have been given in payment of interest, rents, or other income accruing after March 1, 1913, and said note matures on or after November 1, 1913, the maker of the note, as the "debtor" and as the "source" where the income originates, is required, in paying such note, to withhold the normal tax of 1 per cent on the entire amount of the note, if said note is in excess of $3,000, unless a claim shall be made for exemption of $3,000 or $4,000 (as the case may be) under the provisions of paragraph C, section 2, of the act; and if such claim for exemption shall be made (as provided for on Form 1007), then the said tax shall be withheld only on the amount of said note in excess of the exemption claimed in said certificate.

If any person who has purchased or discounted any of said notes may have omitted, in acquiring them from previous holder, to make a deduction or allowance for said tax, such purchaser can only look for relief to the person from whom he shall have gotten the notes, and the "debtor," the maker of said notes, will be held liable for and be required to deduct, withhold, and pay to the collector of internal revenue the amount of the normal tax of 1 per cent which may be due thereon under the law and these regulations.

To illustrate: A (unmarried, and who does not claim the $3,000 exemption provided in paragraph C of section 2 of the income-tax law) borrows on May 1, 1912, $120,000 from B at 6 per cent per annum interest on two years' time, and gives B his bond for $120,000 for the principal and four $3,600 notes, each representing six months' interest, for the maturing interest, payable May 1 and November 1 each year. On October 1, 1913, B takes A's interest note for $3,600, due November 1, 1913 (which bears no mark to indicate that it represents interest), to the Richmond National Bank; the bank is not informed that the note represents interest, but being satisfied that A, the maker of the note, is good without additional

or fraudulent return, §§ 31, 56, 107, 331. Increasing amount of return understated, see, supra, § 18, and infra, §§ 336, 339.

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indorsement, discounts the note for B at the rate of 6 per cent per annum and pays to B the proceeds—$3,582.

On November 1, 1913, the note matures and the bank calls on A, the maker, to pay the note. A offers the bank $3,564, which is equal to $3,600 less the 1 per cent tax of $36, informing the bank that the note represents interest which he owes and that, under the Federal income-tax law, he is required to deduct this tax from the face of the note in making payment.

The bank claims that it was not informed that the note represented interest and, therefore, subject to this tax; but A is, nevertheless, required under the law to withhold the tax.

If A under his contract with B had agreed to pay the interest without deduction for any income tax which might be imposed by the government he would, of course, after deducting the 1 per cent tax for the government, pay the bank as holder of the note the full amount of $3,600. But if the contract between A and B did not provide that A would pay the full interest without deducting such income tax as the government might impose, and if the bank should, therefore, desire to reimburse itself for the amount of the tax thus deducted by A, the bank can look only to B, for whom it discounted the note, and the question as to whether this $36 deduction should be borne by B or by the bank is a question which must be settled mutually between the bank and B. (T. D. No. 1891, November 3, 1913, addressed to Collectors of Internal Revenue.)

§ 109. Exemption from Income Tax of Interest on Obligations of United States, States, Municipalities, etc.

It has been called to the attention of this office that banks in certain sections are refusing to pay coupons for interest on bonds of states, counties, cities, or other political subdivisions of the United States, when such coupons are not accompanied by certificates of ownership, without deducting the normal income tax of one per cent, which the law and the regulations of this Department require shall be deducted at

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the source in paying the interest on bonds of corporations, joint stock companies, or associations and insurance companies.

Please inform all parties interested, giving the information wide publicity, that the income derived from the interest upon the obligations of a State, county, city, or any other political subdivision thereof, and upon the obligations of the United States or its possessions, is not subject to the income tax, and a certificate of ownership in connection with the coupons or registered interest orders for such interest will not be required.

The interest coupons should clearly show on their face whether they are issued by the United States or any political subdivision thereof. If, however, they do not clearly show this, then of course, an ownership certificate should be required.[22] (T. D. No. 1892, November 6, 1913, addressed to Collectors of Internal Revenue.)

§ 110. Tax on Interest on Bank Deposits and Certificates of Deposit Not Withheld at Source

Banks, bankers, trust companies, and other banking institutions receiving deposits of money, are not required under the Treasury Regulations (part 2), approved October 31, 1913, to withhold at the source the normal income tax of one per cent on the interest paid, or accrued or accruing to depositors, whether on open accounts or on certificates of deposit; but all such interest, whether paid, or accrued and not paid, must be included in his tax return by the person or persons entitled to receive such interest, whether on open account or on the certificate of deposit.[23] (T. D. No. 1893, November 6, 1913, addressed to Collectors of Internal Revenue.)

[22] Provision of the statute on this point, supra, § 9. As to what are "political subdivisions" of a state, see, infra, §§ 141, 277. Construction of the terms "State" and "United States" as including the territories, Alaska, the District of Columbia, Porto Rico, and the Philippines, see, supra, § 57.

[23] And see, infra, § 369.

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§ 111. Signature of Ownership Certificates Accompanying Coupons, etc., Owned by Nonresident Aliens

Coupons (or orders for registered interest) payable in the United States, representing the interest on bonds owned by non-resident aliens, must be accompanied by the prescribed Certificate—Form 1004, as per Treasury Regulations of October 25, 1913—but this certificate may be signed either by the owner himself (herself or themselves) or in behalf of the owner by a reputable bank or bankers, or other responsible collecting agency, certifying to the ownership of the bonds and giving the name and address of the bona fide non-resident and alien owners, and when such certificate is thus attached the normal tax of one per cent on such coupons or interest orders need not be withheld at the source by the debtor or collecting agency.[24] (T. D. No. 1894, November 12, 1913, addressed to Collectors of Internal Revenue.)

§ 112. Instructions to Collectors Relative to Corporations Making Returns for Their Fiscal Years Instead of Calendar Year

The Federal income-tax law (sec. 2, subsec. D, act of Oct. 3, 1913, Comp. St. 1913, § 6324) authorizes corporations, joint-stock companies, etc., under certain conditions to make their returns on the basis of an established "fiscal year," or consecutive 12-months' period, which may be other than the calendar year.[25]

Pursuant to this provision, the following instructions are issued for the guidance of collectors and other interested parties:

Any corporation, joint-stock company or association, or any insurance company, subject to the tax imposed by this act, may, at its option, have the tax payable by it computed upon the basis of the net income received (accrued) from all sources

[24] Requirement that coupons, etc., owned by non-resident aliens shall be accompanied by ownership certificates, supra, § 93.

[25] Provision of the statute authorizing corporations to designate fiscal year, supra, § 43. Additional and supplementary regulations on this point, infra, §§ 163, 175.

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during its fiscal year, provided that it shall designate the last day of the month selected as the month in which its fiscal year shall close as the day of the closing of its fiscal year, and shall, not less than thirty days prior to the date upon which its annual return is to be filed, give notice, in writing, to the collector of internal revenue of the district in which its principal place of business is located, of the day it has thus designated as the closing of such fiscal year.

In pursuance of this provision, a corporation or like organization subject to this tax may, for example, designate the 30th day of September as the day for the closing of its fiscal year, whereupon its return of annual net income shall be filed with the collector of internal revenue of the district in which its principal place of business is located not later than 60 days after the close of its said proposed fiscal year; that is to say, on or before the 29th day of November next succeeding.

The date of the closing of the fiscal year having been designated, notice thereof must be given to the collector not less than thirty days prior to the last day of such sixty-day period. In the case just instanced, the notice must be given not later than October 31.

If such designation (Sept. 30, 1913), had been made and notice given, as hereinbefore indicated, as to the closing of the fiscal year 1913, the corporation would be authorized to make its return and have the tax payable by it computed upon the basis of the net income received (accrued) by it during the period from January 1 to September 30, 1913, both dates inclusive.

In the absence of such designation and notice of the closing of the fiscal year corporations and like organizations subject to this tax will be required to make their returns and have the tax computed upon the basis of the net income for the calendar year.

Collectors of internal revenue receiving notices of the selection and designation of the "fiscal years," as above indicated, will make record of the same, recording (*a*) the name of the corporation or like organization, (*b*) the date when the notice

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was given, (*c*) the day designated for the closing of the fiscal year, and (*d*) the date when the return under such designation must be filed, which must be, as above stated, not later than the last day of the 60-day period next following the day designated as the close of the fiscal year.

If it shall appear that for the current year the notice was given within the prescribed time—that is, within 30 days of the last day of the 60-day period—the 1913 return may be made as of the fiscal year so established; otherwise it will be made on the basis of the calendar year until such time as the designation shall be duly made and notice thereof properly given.

The designation and notice can not be retroactive; that is to say, if a corporation now designates April 30, 1914, as the date of the closing of its fiscal year and gives notice of such designation, it would not be authorized to make a return for the 4 months ended April 30, 1913, and then for the fiscal year ended April 30, 1914, nor would it be authorized to make one return covering the entire 16 months ended April 30, 1914. In the case of such corporation the return for the current year must be made for the calendar year ended December 31, 1913, and then, assuming that designation and notice had been properly made and given, it may make a return for the 4 months ended April 30, 1914, and thereafter the return will be made on the basis of the fiscal year so established.

In all cases where a fiscal year is not established as above prescribed returns must be made on the basis of the calendar year, in which case such returns must be filed on or before the 1st day of March next succeeding such calendar year.

Such returns, for the period covered, must be true and accurate, definite and complete, and, in as far as consistent with the provisions of the law, must conform to the showing made by the books of the company, and must be verified under oath or affirmation of its president or other principal officer, and its treasurer or assistant treasurer; that is to say, by two different persons acting in the official capacity indicated.

If it shall appear in any case that returns have been made to the collector on the basis of a fiscal year not designated as

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above indicated, the corporations making such returns will be advised that such returns can not be accepted, but must be made to cover the business of the calendar year.

Returns made under this act and pursuant to these instructions must be made on the new forms prescribed by this department.

The forms heretofore in use, under the special excise-tax law, can not be used for making returns for either the fiscal or calendar year 1913.

If returns of such corporations as have properly established a fiscal year are due to be made before the new forms are available, the collector will be authorized to grant an extension of time to such corporations, not exceeding 30 days, for the filing of such returns, by which time the new forms prescribed will be available for distribution. (T. D. No. 1897, November 14, 1913, addressed to Collectors of Internal Revenue.)

§ 113. Temporary Waiver of Requirement as to Filling in Serial Numbers of Bonds, on Ownership Certificates

Notice is hereby given that the Treasury Regulations heretofore issued, which require that the numbers of the bonds, or other like obligations of corporations, etc., from which interest coupons are detached, or upon which registered interest is to be paid, shall be filled in on the certificates, are hereby waived, so far as the filling in of the numbers of the bonds or other such obligations on the certificate is concerned, until March 31, 1914.[26]

In all other respects, the certificates referred to must be filled in in accordance with the Treasury Regulations, before the coupons or orders for registered interest to which they may be attached shall be paid. (T. D. No. 1901, November 28, 1913. And see also T. D. 1955, March 10, 1914, by which the

[26] The requirement as to filling in the serial numbers of bonds on ownership certificates was not prescribed by a distinct regulation, but the form originally provided (No. 1000) contained a blank line for this purpose. This is omitted from the forms of certificates now in use, viz., No. 1000 A, revised, and No. 1000 B, revised.

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provisions of the foregoing regulation were further extended to June 30, 1914, and T. D. No. 1985, May 28, 1914, by which the same provisions were further extended to October 31, 1914, and T. D. No. 2022, October 3, 1914, by which the requirement as to filling in the serial numbers of bonds, in ownership certificates, was waived "until further notice.")

§ 114. Extension of Time for Use of Temporary Form No. 1005

The time for the use of temporary certificate (Form 1005) shall be extended from November 16, 1913, to January 15, 1914, when signed by a person, firm, or corporation licensed under paragraph E of the income-tax law, provided such form shall only be used in cases where the coupons to which it shall relate shall have been received by such licensed person, firm, or corporation from a foreign country. (T. D. No. 1902, November 28, 1913.)

§ 115. Permissible Substitution of Certificates of Banks and Collecting Agents for Owners' Certificates Attached to Coupons

Treasury Regulations of October 25, 1913, and those supplementary thereto, require that, under the conditions therein prescribed, there shall be attached to interest coupons, maturing on bonds and other similar obligations of corporations, etc., which may be presented for collection, certain certificates of ownership signed by the owners of the bonds from which the coupons were detached or by their duly authorized agents.[27]

Notice is hereby given that responsible banks, bankers, and collecting agents receiving coupons for collection with the aforesaid certificates of ownership attached may either present the coupons with the attached certificates to the debtor or withholding agent for collection, or, at the option of the collecting

[27] Requirement that ownership certificates shall be signed by the owner or his agent, supra, §§ 79, 80. Particular directions as to signature by duly authorized agent, infra, § 116. Regulation authorizing use of certain forms for substituted certificates by collecting agents, infra, § 124.

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agent, the certificates above referred to may be detached from such coupons and forwarded direct to the Commissioner of Internal Revenue at Washington, D. C., as hereinafter set forth, *provided* such bank, banker, or collecting agent shall thereupon substitute for said owners' certificate and attach to said coupons, in lieu of said certificate of owner, a certificate signed by said bank, banker, or collecting agent, to whom said coupons may have been first presented for collection, in substantially the following form: [Form No. 1000a. See Appendix, p. 700.]

The certificate of the owner, for which the foregoing certificate of the collecting agent may be thus substituted by the collecting agent first receiving said coupons for collection, must be given the following indorsement by the collecting agents and should be made preferably with a rubber stamp:

Owner's certificate No. .....

.....
(Name of collecting agency.)

....., 191–.
(Give date of certificate.)

The counterpart of the within certificate bearing like number was attached to the coupons within mentioned for delivery to the debtor or withholding agent, by whom the coupons are payable.

Certificates of owners for which collecting agents' certificates are substituted must be forwarded to the Commissioner of Internal Revenue at Washington, D. C., by the collecting agency receiving them not later than the 20th day of the month succeeding that in which said coupons were thus received for collection.

All banks, bankers, or other collecting agents who may substitute their certificates for the certificates of owners under the foregoing plan will be required to keep a complete record of all such transactions and substitutions of certificates, showing all certificates for which the collecting agents' certificates have been issued in lieu of the owners' certificates.

This record should be kept by months and should give the following information:

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Serial number of item received.
Date received.
Name of person from whom received.
Address.
Name of debtor corporation.
Class of bond from which coupons were cut.
Face amount of coupons collected.
Deductions from tax claimed by owners under paragraph C of Federal income-tax law.
Amount of interest collected.

Until the further ruling by this department, the banks, bankers, and other collecting agents who may substitute their certificates for the certificates of owners under the foregoing plan will not be required to secure a license from the Treasury Department for being permitted to make such substitutions of their own certificates for those of the owners, provided these regulations are strictly complied with.

The permission to banks, bankers, and collecting agents to substitute their own certificates under the above regulations for those of the owners of the bonds, etc., will extend to responsible banks, bankers, and collecting agents in foreign countries, as well as to those in the United States. (T. D. No. 1903, November 28, 1913.)

§ 116. Signature of Ownership Certificates by Duly Authorized Agents

Certificates of ownership which are required to accompany all coupons or registered interest orders under regulations made in pursuance of section 2, subsec. D, act of October 3, 1913 (Comp. St. 1913, § 6324) may be signed in the name of the owner of the bonds, by his duly authorized agent, and the said certificates shall give the full name and address of both the owner and his authorized agent.[28]

If the person, firm, or organization to whom the certificate

[28] Requirement that ownership certificates shall be signed by the owner or his duly authorized agent, supra, §§ 79, 80. For regulation authorizing the use of certain forms for substituted certificates by collecting agents, see, infra, § 124.

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thus signed is presented for collection is reasonably satisfied as to the identity and responsibility of the person signing as duly authorized agent, he or it shall stamp or write on the face of said certificate, "Satisfied as to identity and responsibility of agent," giving name and address of person thus certifying, and said certificate may then be accepted by persons, firms, or organizations to whom presented, without requiring further evidence as to authority of agent.

If the person, firm, or organization first receiving certificate of ownership signed by an agent is not satisfied or can not satisfy himself or itself as to the agent's identity and responsibility, then, in that event, the authorized agent shall furnish evidence of his authority so to act, which evidence will be retained by the person, firm, or organization receiving it, and the certificate of ownership shall then be indorsed as provided herein. (T. D. No. 1904, November 28, 1913.)

§ 117. Supplemental Regulations Relative to Partnerships

Inasmuch as individual members of a partnership are liable for income tax upon their respective interest in the net earnings of said partnership and are required to include said net earnings in their personal returns, the partnership may file with the debtor corporation, or with a withholding agent, a notice, signed in the name of the partnership, by a member thereof, claiming a deduction of a specific amount on account of the legitimate expenses (not including the personal or living expenses of the partners) incurred in conducting the business of said partnership, and, upon receipt of said notice, said withholding agent shall not withhold, and shall not be held liable for, the normal tax on the amount of income equal to the amount of deduction claimed in said notice, but in no event shall the total of the amounts claimed, as provided herein, be in excess of the total amount of the actual legitimate annual expenses incurred by said partnership in the conduct of its business. Application for such deduction shall be made in substantially the following form: [Form No. 1011. See Appendix, p. 717.]

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Partnerships are not subject as partnerships to the income tax and are required to make statements of their income and earnings as partnerships only when requested to do so by the Commissioner of Internal Revenue or the collector of internal revenue for the district in which said partnership has its principal place of business, and when such a statement is required, as aforesaid, the said statement shall give a complete and correct report of the gross income of the said partnership and also a complete account of the actual legitimate annual expenses of conducting the business of said partnership (not including living and personal expenses of the partners) and the net profits and the name and address of each of the members of said partnership and their respective interest in the net profits thus reported.

The net annual income of a partnership when apportioned and paid to the members thereof, shall be returned by each individual partner receiving same, in his annual return of net income, and the tax shall be paid thereon by said individual partner, as required by law.

When the annual income of a partnership is not distributed and paid to the members thereof, the respective interest of each member in said profits shall be ascertained, and the individuals entitled thereto shall include the said amount in their annual return as part of their gross income, the same as if said profits had been distributed and paid to them.

Undivided annual net income of partnerships thus returned by the individual members thereof, upon which the tax shall have been paid, shall not, when said profits are actually distributed and paid to the partners, be again included in their annual return as a part of their gross income.

Foreign partnerships or firms, all the members of which are both citizens or subjects and residents of a foreign country, which are the owners of bonds and mortgages or deeds of trust or other similar obligations, including equipment trust agreements, receivers' certificates, and stocks, of corporations, joint-stock companies or associations, and insurance companies, organized or doing business in the United States, may

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file with the debtor or withholding agent, with their coupons or orders for registered interest, or orders for other income derived from property or investments in the United States, certificate and notice of ownership, setting forth the facts as to nonresidence and alienship, and the debtor or withholding agent shall not withhold any part of their said income.

Where a foreign partnership or firm is composed of both nonresident foreigners and citizens of the United States, or foreigners resident in the United States or its possessions, the certificate of ownership shall show this fact, and the name and legal address of each member of said partnership, who is a citizen of the United States or who is a foreigner residing in the United States or its possessions, shall be given on the said certificate, and no part of said income shall be withheld by the paying agent.[29]

The said certificate and notice of ownership shall be in substantially the following form: [Form No. 1014. See Appendix, p. 723]. (T. D. No. 1905, November 28, 1913.)

§ 118. Duties of Guardians, Trustees, Executors, etc., as to Collecting Income Tax and Making Returns

Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity hereinafter referred to and known as the fiduciary, who hold in trust an estate of another person or persons shall be designated the "source" for the purpose of collecting the income tax, and by filing the following notice with other debtors or withholding agents, said fiduciary shall be exempt from having any income due to them as such, withheld for any income tax by any other debtor or withholding agent.[30]

[29] These regulations are supplementary to those set forth in § 92, supra. See, also, infra, §§ 145, 162. Provisions of the statute exempting partnerships as such from income taxation, supra, §§ 15, 32. Discussion of the subject, infra, § 263.

[30] Provision of the statute in reference to the duty of trustees, executors, and other fiduciaries, in making returns for their beneficiaries, and deducting and withholding the tax, supra, §§ 13, 22. Instructions and rulings as to returns to be made by fiduciaries, in-

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Other debtors or withholding agents, upon receipt of this notice, shall refrain from withholding any part of such income from said fiduciary and will not, in such case, be held liable for normal tax of 1 per cent due thereon. The form of notice to be filed with the debtor or withholding agent by the fiduciary shall be substantially as follows: [Form No. 1015. See Appendix, p. 725.]

RETURNS MADE BY FIDUCIARY AGENTS

Said fiduciaries shall, on or before March 1 of each year, when the annual interest of any beneficiary in said income is in excess of $3,000, make and render a return of the income of the person or persons for whom they act to the collector of internal revenue of the district in which the fiduciary resides.

This return shall give an itemized statement of the gross income and deductions claimed and shall be in the same form as prescribed for annual return made by individuals.

Said fiduciary acts for and in behalf of the beneficiaries of said trust, and the annual return required as above in behalf of said beneficiaries has reference only to the income accruing and payable through said fiduciary, and not the income of said beneficiaries from other sources, unless the said fiduciary is legally authorized to act for said beneficiaries in their individual capacity, in which case said fiduciary, acting as duly authorized agent of the individual, shall also make the personal annual return as provided by law.

There shall accompany the annual return of said fiduciary a list giving the name and full address of each beneficiary and the share of said income to which each may be entitled.

LIST RETURNS FILED BY FIDUCIARY AGENTS

Fiduciary agents, in addition to the annual return of income required by these regulations, shall make an annual list return, as provided by regulations for withholding agents, whenever

fra, § 139. Certificates of ownership filed by fiduciaries, infra, § 146. Form of certificate for use of fiduciaries claiming exemption from deduction of tax at source, infra, § 162.

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payments of income to any beneficiary is in excess of $3,000. Said list return shall be made on or before March 1 of each year to the collector of internal revenue for the district in which said fiduciary resides or has his principal place of business, giving name and address of each beneficiary of said trust, to whom annual income in excess of $3,000 is paid, the amount of income paid to each beneficiary, giving source of income, the amount of exemption claimed by each beneficiary, if any, and the amount of income withheld for tax, and the said list return shall be signed by the fiduciary making same, stating in what capacity acting, and give his name and full address.

Fiduciaries having an annual income that is not distributed or paid to the beneficiaries of the trust under which said fiduciary acts shall make an annual list return, as provided herein, and said list return shall show the name and address of each beneficiary having a distributive interest in said income in excess of $3,000, stating the distributive amount of each beneficiary, and shall give all information as required in said list returns, and shall withhold and pay to the collector, as provided by law, the normal tax of 1 per cent upon the distributive interest of each of said beneficiaries in excess of $3,000, the same as if said income was actually distributed and paid; exemption under paragraph C, however, may be claimed by the beneficiary or his legal representative by filing his claim for exemption with the fiduciary agent.

When the fiduciary agents deduct, withhold, and pay the normal tax on undivided annual net income as provided herein, they shall not be required to withhold and pay again the normal tax on said income when actually distributed and paid to said beneficiaries, nor shall the beneficiaries be required again to pay the normal tax on the amounts on which the tax has been paid when such amounts are distributed.

Where the normal tax is withheld and paid by fiduciary agents on undivided annual income, beneficiaries (or their legal representatives) in whose behalf said tax is paid may file notice with said fiduciary and claim the benefit of any annual

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exemption they may be entitled to under paragraph C of the act of October 3, 1913, as provided by regulations, the same as if their distributive interest in said income was actually paid. (T. D. No. 1906, November 28, 1913.)

§ 119. Regulation as to Acceptance of Original and Amended Forms of Ownership Certificates

Certificates of ownership, Form 1000, as originally prescribed in regulations of October 25, 1913, shall be accepted by debtors or withholding agents when properly filled in and signed by the owner of the bonds or his duly authorized agent until December 10, 1913, and after that date only the amended Form 1000, as prescribed by regulations, shall be accepted.[31]

Form 1000, original and amended, as it has been adapted to the use of guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in a fiduciary capacity, when properly filled in and signed and giving the information required by the regulations, shall be accepted by debtors or withholding agents until regulations giving a prescribed form of certificate of ownership for fiduciary agents are issued, and for 30 days thereafter.

Forms 1001, 1003, and 1004, as they have been adapted to the use of foreign organizations and foreign partnerships, when properly filled in and signed and giving the information required by regulations, shall be accepted by debtors or withholding agents until regulations giving a prescribed form of certificate of ownership for foreign organizations and foreign partnerships are issued, and for thirty days thereafter. (T. D. No. 1907, November 26, 1913.)

[31] Form No. 1000, as originally prescribed, did not contain a statement of the total amount of specific exemption to which the taxpayer was entitled ($3,000 or $4,000, as the case might be.) This was added in the amended Form No. 1000. Both these forms are now superseded by revised Form 1000 A and revised Form 1000 B. All these forms may be seen printed in full in the Appendix to this volume.

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§ 120. Licenses for Collection of Income Received from Foreign Countries[32]

All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or collection) the collection of coupons, checks, bills of exchange, etc.,

(*a*) for or in payment of interest upon bonds issued in foreign countries, and

(*b*) upon foreign mortgages or like obligations, and

(*c*) for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries,

who are required by law to obtain a license from the Commissioner of Internal Revenue, shall make application to the collector of internal revenue for the district in which they do business, for such license in the following form: [Form No. 1017. See Appendix, p. 730.]

The collector of internal revenue, upon receipt of such application, shall satisfy himself that the person, firm, or corporation making application is considered to be of good character and business standing and may require that he or they shall be able to show a financial rating in one or more of the recognized mercantile agencies of the United States, equal to at least one-tenth of the estimated amount of annual collections of foreign income as stated in the application.

The collector of internal revenue having thus satisfied himself of the business and financial reliability of the person, firm, or corporation making application for license, may issue the license without requiring a bond for the faithful performance of duty and compliance with the law and regulations.

In cases where the person, firm, or corporation shall fail to satisfy the collector of internal revenue of his or their business or financial reliability, the collector may refuse to issue license

[32] Provision of statute requiring licenses for collection of foreign items, supra, § 27. Preliminary regulation on this subject, supra, § 85. Penalty for failure to take out license, supra, §§ 27, 90.

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or may issue a license upon the applicant filing a surety bond satisfactory to the Commissioner of Internal Revenue for a penal sum equal to 2 per cent of the estimated amount of collections stated in the application, the minimum penal sum, however, to be $1,000, and the maximum not in excess of $100,000.

The bond, when required, shall be executed in duplicate, one of which shall be retained in the office of the collector of internal revenue with whom the bond is filed, and the other shall be forwarded by the collector to the Commissioner of Internal Revenue at Washington, D. C.

The form of license to be issued shall be as follows: [See Form No. 1010, Appendix, p. 716.]

This license, made up in the form of bound books containing 50 each, with appropriate stubs, will be furnished in blank to the collectors of internal revenue, with the facsimile signature of the Commissioner of Internal Revenue thereon, and shall not be valid until countersigned by the collector of internal revenue by whom issued.

This license may be issued without cost to the persons to whom issued and shall continue in full force until revoked. Failure to give or renew the bond in cases where a bond is required will automatically revoke the license.

In cases where licenses are issued without bond, the collector shall, at stated yearly periods, inquire into and satisfy himself of the financial responsibility of all licensees.

When any person, firm, or corporation has branch offices and desires to collect said foreign interest or dividend income through said branch offices, the application for license or licenses shall be made (and bond furnished, when a bond is required) by the person, firm, or corporation through its principal office for its branch office or offices.

The bond in such cases shall be based on the total amount of such foreign business transacted by both the home office and its branch office or offices.

This application for licenses shall be made (and bond furnished when bond is required) to the collector of internal revenue for the district in which the principal or home office is lo-

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cated. The names and addresses of the branch offices shall be furnished to the collector in the application of the said principal, and if the requirements of the Bureau of Internal Revenue are complied with to the satisfaction of the said collector, then said collector shall certify this fact to the collector of internal revenue for the district in which the branch office for which the license is desired is located, and the collector to whom this certification is made shall thereupon issue a license as provided herein to such branch office.

No bond will be required in any case for the month of December, 1913, but the required license may be issued by collectors of internal revenue immediately upon receipt of the blank licenses in all cases where the applications for licenses which may have been filed shall have been duly approved.

The bond, if required, must be filed for the calendar year 1914 and for each calendar year thereafter.

All bonds must be renewed or new bonds furnished on or before January 1 of each successive year.

The applications for these licenses and the stubs of the licenses issued shall be retained and preserved in the offices of the collectors of internal revenue. (T. D. No. 1909, November 28, 1913.)

§ 121. Form of Certificate for Fiduciaries Not Claiming Exemption From Deduction of Income Tax at the Source

Fiduciary agents may, if they so desire, use instead of Form 1015 prescribed in supplemental regulations (T. D. 1906) of November 28, 1913, a certificate in substantially the following form: [Form No. 1019. See Appendix, p. 733.]

When the fiduciary uses the above form of certificate the debtor organization shall be the *source* for the deduction and withholding of the normal tax of 1 per cent, as required by regulations, and fiduciaries receiving the income described in the said certificate from which the 1 per cent normal tax has thus been withheld, shall not be required to again deduct and withhold the normal tax of 1 per cent upon the said income. (T. D. No. 1911, December 8, 1913.)

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§ 122. Extension of Time for Use of Certain Forms

The time in which Forms 1000 (original and amended), 1001, 1003, and 1004, as provided in T. D. 1907, issued November 26, 1913, may be used shall be extended to January 15, 1914. (T. D. No. 1912, December 8, 1913. See supra, § 119.)

§ 123. Monthly and Annual List Returns of Debtors and Withholding Agents

Debtors or withholding agents are required by regulations made in pursuance to section 2, subsec. D, act of October 3, 1913 (Comp. St. 1913, § 6324) to make both a monthly and an annual list return.[88]

The required monthly list return shall give a list of all coupon or interest payments made, on which the normal tax of 1 per cent was deducted and withheld and shall show the name and address in full of the owners of the bonds, amount of the income, amount of exemption claimed, amount of income on which withholding agent is liable for tax, and the amount of tax withheld, and shall be made in substantially the following form: [Form No. 1012. See Appendix, p. 718.]

The annual list return to be made by debtors or withholding agents of the normal tax of 1 per cent withheld from interest payments made upon bonds or other similar obligations shall be made on or before March 1 of each calendar year and in substantially the following form:* [Form No. 1013. See Appendix, p. 722.]

The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by debtors or withholding agents, and the debtor or withholding agent will not be required in making an annual list return of the tax withheld from income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint stock companies, or associations and insurance companies, to again make an itemized list of the amount of

[88] Extension of time for filing list returns, infra, § 131. Revised form for list returns prescribed, infra, § 152. When list returns required to be verified, infra, § 161.

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tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made.

All substitute certificates of collecting agents authorized by regulations that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns, debtors or withholding agents will enter the name and address of the collecting agent and the number of the substitute certificate issued in lieu of the original certificate containing the name and address of the owner of the bonds.

Until the further ruling on this subject by this department no list return is required to be made of certificates of ownership accompanying coupons or registered interest orders filed with a debtor or withholding agent, when the owners of the bonds are not subject to having the normal tax withheld at the source, but all such certificates of ownership shall be forwarded by the debtor or withholding agent to the collector of internal revenue for his or its district, on or before the 20th day of the month succeeding that in which said certificates of ownership were received by him or it.

All forms of monthly and annual list returns herein provided for shall be 10½ inches wide and 16 inches from top to bottom. (T. D. No. 1914, December 9, 1913.)

§ 124. Forms of Certificates of Collecting Agents, Substituted for Owners' Certificates

Subject to the provisions of the regulations in T. D. 1903, dated November 28, 1913, collecting agents may substitute Form 1000a, properly filled in and numbered, for the certificate of the owner on Form 1000.[84]

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1001, said substitute certificate shall be in substantially the following form: [Form No. 1001a. Provision is also made in this regulation for the

[84] Regulation permitting use of substitute certificates by collecting agents for owners' certificates, supra, § 115.

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use of Forms 1003a, 1004a, 1011a, 1014a, 1015a, 1016a, and 1018a, as substitutes to be filed by collecting agents for the corresponding owners' certificates. All these forms may be seen in the Appendix to this volume, infra, pp. 708 to 732.]

All of the forms prescribed herein to be used by collecting agents for substitution in lieu of the owner's certificate, accompanying coupons to be presented for collection, shall be subject to all of the provisions of the regulations as published in T. D. 1903 of November 28, 1913, the same as the said regulations are made to apply to Form 1000a, as given therein. (T. D. No. 1915, December 5, 1913.)

§ 125. Form of Certificate for Foreign Organizations Engaged in Business in the United States and Subject to Income Tax, Claiming Exemption from Collection of Tax at the Source

Foreign organizations engaged in business within the United States are subject to the normal tax of 1 per cent per annum upon the amount of net income accruing from business transacted and capital invested within the United States; but said organizations shall be exempt from having any part of their income withheld by a debtor or withholding agent.[85]

The certificate to be furnished by foreign organizations engaged in business in the United States shall be in substantially the following form: [Form No. 1018. See Appendix, p. 731]. (T. D. No. 1916, December 5, 1913.)

§ 126. Extension of Time for Filing Monthly List Returns

The time for filing itemized monthly list returns of coupon and registered interest payments for the month of November, 1913, which are required by regulations to be filed on or before December 20, 1913, is extended to January 5, 1914. (T. D. No. 1917, December 16, 1913.)

[85] When foreign corporations subject to income tax, see, supra, § 32. Collection of interest on bonds of foreign corporations payable within the United States, infra, § 157. Meaning of "foreign corporations" and "fiscal agents" in Treasury regulations, infra, § 166. General discussion of income taxation on foreign corporations, infra, § 266.

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§ 127. Form of Signature to Ownership Certificates

Certificates of ownership, heretofore executed by the owners of bonds, etc., or their duly authorized agents, in compliance with the income-tax regulations, and signed either with the Christian name or the ordinary or usual business signature, and giving the full address of the owner, shall be accepted by debtor organizations or their duly authorized withholding agents.[36]

Hereafter it will not be required that ownership certificates be signed with the full Christian names of the owners by the owners or their duly authorized agents, but the said owners or agents may use their ordinary or usual business signatures, provided it identifies them and is accompanied by their complete address. (T. D. No. 1920, December 20, 1913.)

§ 128. Interest on State and Municipal Securities Not Taxable at the Source

Until January 15, 1914, and thereafter until further instructions are issued, the income derived in the shape of interest from the obligations, general or special, of any State, or of any county, municipality, or taxing district therein, shall be exempt from the collection of the income tax at the source, whether the payment of such obligation is provided for by general or local taxation or out of a general, special, or separate fund.[37]

[36] The original requirement of the Department was that ownership certificates "must be signed by the claimants with their full name." Supra, § 80. Signature of ownership certificates when made by partnerships, infra, § 368; on behalf of non-resident aliens, supra, § 111; in case of joint owners, infra, § 357.

[37] The act of Congress exempts from the income tax interest upon "the obligations of a state or any political subdivision thereof." Supra, § 9. The Treasury department was at first disposed to hold that special assessment districts (such, for instance, as irrigation districts) were not political subdivisions of a state. The opinion of the Attorney General having been requested on this point, the foregoing temporary regulation was issued. Afterwards, the Attorney General having ruled that all such special assessment districts were within the intent of Congress in making the exemption, a general regulation conforming to that opinion was issued. See, infra, § 141. For general discussion of this subject, see, infra, § 277.

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Any regulation or ruling of the Bureau of Internal Revenue in conflict herewith is hereby suspended as above provided. (T. D. No. 1922, December 24, 1913.)

§ 129. Specific Exemption in Case of Husband and Wife

Every single person and every married person not living with husband or wife in the sense below defined who has a net income exceeding $3,000 per annum is liable to pay the normal income tax under this law, but in making return for such tax may claim an exemption of $3,000 from their total net income.

Husband and wife living together are entitled to an exemption of $4,000 only from the aggregate net income of both, which may be deducted in making the return of such aggregate income for taxation. However, when the husband and wife are separated and living permanently apart from each other each shall be entitled to the exemption of $3,000.

If the husband and wife not living apart have separate estates, the income from both may be made on one return, but the amount of income of each and the full name and address of both must be shown in such return.

The husband, as the head and legal representative of the household and general custodian of its income, should make and render the return of the aggregate income of himself and wife, and for the purpose of levying the income tax it is assumed that he can ascertain the total amount of said income.

If a wife has a separate estate managed by herself as her own separate property and receives an income of more than $3,000, she may make return of her own income, and if the husband has other net income, making the aggregate of both incomes more than $4,000, the wife's return should be attached to the return of her husband, or his income should be included in her return, in order that a deduction of $4,000 may be made from the aggregate of both incomes. The tax in such case, however, will be imposed only upon so much of the aggregate income of both as shall exceed $4,000.

If either husband or wife separately has an income equal to or in excess of $3,000, a return of annual net income is required under the law, and such return must include the income

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of both, and in such case the return must be made even though the combined income of both be less than $4,000.

If the aggregate net income of both exceeds $4,000, an annual return of their combined incomes must be made in the manner stated, although neither one separately has an income of $3,000 per annum. They are jointly and separately liable for such return and for the payment of the tax.

The single or married status of the person claiming the specific exemption shall be determined as of the time of claiming such exemption if such claim be made within the year for which return is made otherwise the status at the close of the year.[38]

These regulations hereby supersede the regulations relative to paragraph C of the income-tax law, as prescribed on page 4 of Regulations, part 2, issued under date of October 31, 1913. (T. D. No. 1923, December 27, 1913.)

§ 130. Use of Bi-Lingual Texts in Ownership Certificates of Aliens and Foreign Corporations

Certificates of ownership required to be filed with interest coupons or orders for registered interest by nonresident foreigners on Form 1004, by foreign partnerships on Form 1014, and by foreign organizations on Form 1016 shall be printed, as prescribed by regulations, in the English language, and directly under each line of the English text on each of the above-mentioned certificates there may be printed the text of said certificate in a foreign language.

In executing these certificates, however, all blanks to be filled in, with amounts, shall be filled in, using United States dollar values.

These certificates shall be of the same size as prescribed by regulations for all certificates of ownership. (T. D. No. 1926, December 30, 1913.)

[38] Provision of the statute on this subject, see, supra, § 10. General discussion of subject, infra, §§ 291, 319.

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§ 131. Extension of Time for Filing Monthly List Returns

The time for filing the (*a*) monthly list return [39] required of the first bank or collection agency accepting coupons or interest orders for collections, when not accompanied by a certificate of ownership, and the (*b*) monthly list return required of licensed banks or collection agencies collecting incomes from bonds, etc., issued in a foreign country, as provided in T. D. 1887 (pp. 5 and 6), which are required to be filed on the 20th day of the month next succeeding that in which said items were received, is hereby extended to January 20, 1914. (T. D. No. 1927, January 2, 1914.)

§ 132. Prescribing Additional Forms on Which to Make Returns of Annual Net Income for the Income Tax

The forms numbered and described below, in addition to those previously approved, are prescribed by this department for the purposes indicated in connection with the administration of the federal income-tax law (sec. 2 of the act of Oct. 3, 1913):

Forms 1030, 1031, 1032, 1033, 1034, and 1035 are to be used by corporations in making their returns of annual net income, as follows: No. 1030 by insurance companies; No. 1031 by banks and other financial institutions (class A); No. 1032 by public service corporations (class B); No. 1033 by manufacturing corporations (class C); No. 1034 by mercantile corporations (class D); No. 1035 by miscellaneous corporations (class E).

Form 1040 is to be used by individuals, or their duly authorized agents, in making the personal return of annual net income.

Form 1041 is to be used by fiduciaries in making returns of annual net income in behalf of their beneficiaries and as withholding agents.

[39] General regulations as to monthly and annual list returns, see, supra, § 123.

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Form 1042 is the annual list return of withholding agents of taxes withheld by them on income other than that derived from corporate obligations.

Form 1043 is a monthly list return of taxes withheld on foreign income by licensed banks or collecting agents.

Form 1043*a* is the annual list return to be made by licensed banks and collecting agents of taxes withheld by them during the year on foreign items.

Form 1044 is a monthly list return of taxes withheld by the first bank or collecting agency receiving coupons or interest orders not accompanied by certificates of owners.

Form 1044*a* is the annual list return of taxes withheld during the year by the first bank or collecting agency receiving coupons or interest orders not accompanied by certificates of owners.

Form 23*a* will be used by collectors in listing, for assessment, the corporations showing net income upon which the tax is to be computed, this form to be prepared in duplicate.

Form 23*b* will be used by collectors in listing, for assessment, withholding agents, fiduciaries, etc., and individuals who return a taxable income. (T. D. No. 1928, January 2, 1914. Forms 1030–1035, 1040–1044a, here mentioned are printed in the Appendix to this volume, infra, pp. 736–794.)

§ 133. Form of Ownership Certificate in Case of Fiduciaries Not Claiming Exemption at Source

Subject to the provisions of the regulations in T. D. 1903, dated November 28, 1913, collecting agents may substitute Form 1019*a*, properly filled in and numbered, for the certificate of the owner on Form 1019.

When collecting agents substitute their own certificate in lieu of owner's certificate on Form 1019, said substitute certificate shall be in substantially the following form: [Form No. 1019a. See Appendix, p. 735.] (T. D. No. 1929, January 3, 1914.)

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§ 134. Taxability of Mutual Telephone Companies

SIR: This office is in receipt of your letter of the 31st ultimo, asking advice as to whether or not mutual telephone companies will be required to file returns of annual net income under the provisions of section 2, act of October 3, 1913.

In reply you are informed that under the provisions of the act above cited, every corporation, joint-stock company, and every insurance company, no matter how created or organized, is subject to the income tax and will be required to make returns of annual net income, except such as are specifically enumerated in the act as exempt from its provisions. In the list of those so enumerated as exempt do not appear mutual telephone companies or similar organizations.[40]

Since under this act no exemption is provided, either express or implied, for mutual telephone and like companies, and liability is not dependent upon whether or not the corporation is organized for profit, it is held that all corporations not specifically enumerated as exempt will be required to make returns of annual net income and to pay any tax that may be assessed upon the net income returned.

This ruling will comprehend all telephone companies, local insurance companies, and like corporations whether or not they are organized primarily for the mutual benefit of their members. (T. D. No. 1933, January 12, 1914.)

§ 135. Minimum Income Returnable for 1913

Section 2, subsec. D, act of October 3, 1913 (Comp. St. 1913, § 6324), provides that on or before the 1st day of March, 1914, and the 1st day of March in each year thereafter, a true and accurate return, under oath or affirmation, shall be made to the collector of internal revenue by each person of lawful age who may be subject to the tax imposed by this

[40] What corporations and organizations exempt from income tax, see, supra, § 33. Cooperative dairies and other like organizations not exempt, infra, § 160. Exempt organizations not required to act as withholding agents, infra, § 151. General discussion as to exempt corporations, infra, § 279 et seq.

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section who has a net income of $3,000 or over for the taxable year.

It is further provided that for the year ending December 31, 1913, the tax shall be computed on the net income accruing from March 1 to December 31, 1913, both dates inclusive, after deducting five-sixths only of the specific exemption and deductions allowable for an entire taxable year.[41]

Since the return of annual net income for the year 1913, as applied to individuals, is for but five-sixths of the calendar year, and as the law provides that returns shall be made on the basis of five-sixths of the year, it is held that individuals whose net income is $2,500 or more for the 10 months constituting the taxable period of 1913 shall make returns of annual net income in accordance with the general provisions of the law covering the 1913 taxable period. (T. D. No. 1934, January 16, 1914.)

§ 136. Extension of Time for Use of Certain Forms

Notice is hereby given that Forms 1001, 1003, and 1004, as adapted to the use of foreign organizations, foreign partnerships, and foreign fiduciaries, when properly filled in and signed, and giving the information required by regulations, may be accepted by debtors or withholding agents until March 31, 1914. (T. D. No. 1938, January 29, 1914.)

§ 137. Blank Forms to be Furnished; Authorization to Private Parties to Print Their Own Forms

Collectors of internal revenue are instructed that the department will furnish blank forms of certificates and other forms to be used in connection with the collection of the income tax and the making of their returns by taxpayers to such parties as may make application for the same. Private corporations and others desiring to have these forms printed for themselves may do so if they will strictly observe the requirements of the department as to size, print, and contents of the forms and certifi-

[41] Text of the statute on this point, supra, § 11.

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cates as prescribed by the regulations. (T. D. No. 1939, January 28, 1914.)

§ 138. Effect of Tax-Exemption Clause in Bonds

This office is in receipt of numerous letters asking whether income, tax on which is paid or to be paid at the source, although not withheld at the source, can be placed in column A, page 2, of Form 1040, and in reply to this inquiry you [collectors of internal revenue] will advise as follows:

The stipulation in bonds whereby the tax which may be assessed against them or the income therefrom is guaranteed, is a contract wholly between the corporation and the bondholder, and in so far as the income-tax law applies, the Government will not differentiate between coupons from bonds of this character and those from bonds carrying no such guaranty. The debtor corporation, or its duly authorized withholding agent, will be held responsible for the normal tax due in such cases when no tax has been withheld and no exemption claimed.

Income paid by "debtors" from March 1 to November 1, 1913, shall be included in the return of the individual (under column B, page 2, of Form 1040) as income upon which the normal tax of 1 per cent has not been withheld and paid at the source. Income received by individuals between November 1 and December 31, 1913, upon which the normal tax has been withheld at the source shall be included in their annual return (under column A, page 2, of Form 1040) as income upon which the tax has been withheld.[42] (T. D. No. 1942, February 3, 1914, as amended by T. D. No. 1948, February 12, 1914.)

§ 139. Fiduciaries and Their Returns on Form 1041

T. D. 1908 provides that all fiduciaries shall on or before March 1 of each year, when the annual interest of any beneficiary in the income of the estate or trust is in excess of $3,000

[42] Contracts or covenants for payment of interest on bonds "free of taxes," see, supra, § 39 (provision of the statute) and infra, § 360, discussion of subject. Interest on tax-free bonds, paid by corporation, not deductible by it in making annual return for purposes of income tax, infra, § 303.

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($2,500 for the year 1913), make and render a return of the income of the person or persons (the beneficiaries) for whom they act to the collector of internal revenue of the district in which the fiduciary resides.

Where a decedent died after March 1 in the year 1913, and from March 1 up to the date of his death had a net income of $2,500 or more, the fiduciary (i. e., the executor or administrator) should make a return for the decedent on Form 1040, and the income tax, both normal and additional, shown to be due thereon will be a debt against the estate of the decedent. The same principle will apply to subsequent years if the net income of the decedent from January 1 to the date of his death amounts to $3,000 or more. No other return is required to be made by the fiduciary until the settlement of the estate has reached the stage when the beneficiaries thereof and their respective interests in the income derived from the estate are determinable, and then the fiduciary is required to file a return on or before March 1 of each year, as prescribed by the regulations.

The fiduciary will enter on page 2 of Form 1041, under the appropriate heads, all income accruing to the beneficiaries of the trust or estate from March 1 to December 31, 1913, inclusive; but the interest derived from the obligations of a State or any political subdivision thereof and the obligations of the United States or its possessions, is not to be included.

The fiduciary will enter on page 3 of Form 1041 for the year 1913 five-sixths of the deductions allowable under paragraph B of the law, and on line 1 it will be proper for the fiduciary to enter all legitimate expenses incurred in administering the estate or trust. If the fiduciary holds and rents business or residential property and pays insurance, water rents, commissions for the collection of rents, or any other necessary expenses in managing the estate or trust, it will be proper to enter same on line 1 as an allowable deduction.

The amount to be shown on page 1, line 3, will represent the total amount of income accruing through the fiduciary to the

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beneficiaries of the estate or trust which is subject to the normal tax, and when the interest of any one beneficiary in this amount from November 1 to December 31, 1913, inclusive, was in excess of $3,000, whether distributed or not, the fiduciary was required to withhold and pay the normal tax on the whole $3,000 and excess thereof, unless the beneficiary filed with the fiduciary Form 1007, as prescribed by the regulations claiming exemption under paragraph C, and in that event the fiduciary was only required to withhold and pay the normal tax on the amount in excess of the exemption claimed.

T. D. 1906 prescribes that when fiduciaries make their annual return they shall give the name and full address of each beneficiary and the share of income to which each may be entitled, which information shall be given on page 1 of Form 1041. In the column "Amount of income paid or accrued to beneficiaries" should be entered the respective interest of the beneficiary in the amount of income as shown on page 1, line 3.

When the interest of any beneficiary in the amount of income subject to the normal tax, as shown on Form 1041, page 1, line 3, is in excess of $3,000, and the same was paid to the beneficiary within the period from November 1 to December 31, 1913, both dates inclusive, the fiduciary was required to withhold and pay the normal tax as prescribed by the regulations, and the information required should be given on Form 1041, page 1, giving the name and full address of each beneficiary, the amount of income paid or payable to each beneficiary (this amount would be the beneficiary's interest in the amount of income subject to the normal tax as shown on line 3), the amount of exemption claimed under paragraph C (if any), and the amount of tax withheld, all to be given in the respective columns in the order named.

A fiduciary acting for a minor or insane person who had a net income of $2,500 or more for the year 1913 will make the return for his ward on Form 1040 and will not be required to file a return on Form 1041, unless he has more than one ward

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by reason of the same estate or trust; then in that event a return will be required on Form 1041, and a separate return on Form 1040 for each ward having a net income of $2,500 or more for the year 1913.

The income accruing or paid to a beneficiary through a fiduciary may be composed in part of dividends, or income upon which the normal tax has been withheld and paid or to be paid at the source, or income derived from the obligations of a State or any political subdivision thereof or from the obligations of the United States or its possessions (income from the obligations of a State or any political subdivision thereof and from obligations of the United States or its possessions is not subject to the tax and should not be included.) If a beneficiary has other income which, added to the income accruing to him through his fiduciary, gives him a net income of $2,500 or more for the period from March 1 to December 31, 1913, inclusive, he should make a return of his gross income on Form 1040, as required by the regulations.

To illustrate: If a fiduciary's gross income was $10,000, derived from the following sources:

1. Interest upon the obligations of the United States.....	$ 1,000
2. Dividends on stock or net earnings of corporations.....	2,000
3. Interest from bonds containing "tax-free covenant clause," upon which the fiduciary did not claim any exemption at source and which he entered on Form 1041, on page 2, Column A, as income on which normal tax was withheld	2,000
4. Income from rents, etc.....	5,000
	10,000

The fiduciary's return on Form 1041 would show as follows:

Page 2.	Line 3, Column B, amount of rents.....	$5,000
	Line 5, interest from bonds, "tax-free clause," Column A.....	2,000
	Line 10, dividends, ...	2,000
	Aggregate total of gross income.....	9,000

(No entry of interest on United States bonds, $1,000.)

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Page 3.	Line 1, necessary expenses actually paid in carrying on business, including compensation of fiduciary, water rents, insurance, etc	450
	Line 3, taxes paid	400
	Line 6, actual repairs made on building, or amount allowed for wear and tear	150
	Line 7, dividends not subject to normal tax	2,000
	Line 8, amount of income on which normal tax has been deducted and withheld at source, bonds with "tax-free clause"	2,000
	Total deductions	5,000
Page 1.	Line 1, gross income	9,000
	Line 2, total deductions	5,000
	Line 3, amount of income due beneficiary, which is subject to normal tax	4,000

The beneficiary has filed with the fiduciary as a withholding agent a claim for exemption under paragraph C for $2,500 (exemption of single person for 1913), and the return on Form 1041 would show on page 1, in addition to the foregoing entries, the following:

John Doe, 76 B. Street, New York City.

In third column, amount of income paid or accrued to beneficiary	$4,000
In fourth column, amount of exemption claimed	2,500
In fifth column, amount of income on which fiduciary is liable to tax	1,500
In sixth column, amount of normal tax withheld	15

In the foregoing illustration the beneficiary, in his return on Form 1040, would make no return of item 1, interest on United States bonds. Item 2, dividends, would be entered on page 2, line 11, and for the purpose of calculating the normal tax would be an allowable deduction on page 1, line 4. Item 3, interest on bonds, would be entered on page 2, line 7, column A, and for the purpose of calculating the normal tax would be an allowable deduction on page 1, line 5. Item 4, rents, would be entered on page 2, line 7; $1,500 in column A, and $2,500 in

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column B (exemption of $2,500 claimed and no tax withheld on this amount). This would show—

Income received from fiduciary subject to be returned on Form 1040..... $8,000
Deductions and exemption allowable in calculating normal tax 8,000
No normal tax due, it having been paid at the source by the fiduciary as shown by his return on Form 1041.

In making the foregoing entry on Form 1040, on line 11, there should be written just above the printed heading "Amount received from fiduciary," and the amount should be entered in the appropriate column.[43]

No illustration is given of income accruing to the beneficiary from other sources, an illustration of this sort not being deemed necessary, as such income is entered in the usual way. (T. D. No. 1943, February 4, 1914.)

§ 140. Persons Subject to Normal Tax Only Not Required to Return Income Derived from Dividends

Referring to that provision of the income-tax law which reads as follows: "Provided further, that persons liable for the normal income tax only, on their own account or in behalf of another, shall not be required to make return of the income derived from dividends on the capital stock or from the net earnings of corporations, joint stock companies or associations, and insurance companies taxable upon their net income as hereinafter provided," you [collectors of internal revenue] are informed that returns of individuals, when such individuals are subject to the normal tax only, need not include the income derived from the dividends or net earnings referred to above. When individuals are subject to the ad-

[43] Provision of the statute in reference to the duty of trustees, executors, and other fiduciaries, in making returns for their beneficiaries, and deducting and withholding the income tax, supra, §§ 13, 22. Regulation regarding duties of guardians, trustees, executors, etc., as to collecting income tax and making returns, supra, § 118. Certificates of ownership filed by fiduciaries, infra, § 146. Form of certificate for use of fiduciaries claiming exemption from deduction of tax at source, infra, § 162.

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ditional tax, such income derived from said dividends or net earnings must be shown on the return.

Persons having an annual net income of $3,000 or more, including the income derived from dividends or net earnings of corporations, etc., but whose total net income is less than $20,000, and whose net income, exclusive of the income derived from dividends or net earnings of such corporations, etc., is less than $3,000 for the taxable year ($2,500 for the year 1913), shall not be required to make a return of annual net income.

Returns which have been or may be received from persons subject to the normal tax only, in which such dividends are included and deducted, need not be changed to meet the provisions of this regulation.[44] All previous rulings of the department, including the general regulations No. 33, are amended accordingly. (T. D. No. 1945, February 7, 1914. By a subsequent regulation, T. D. No. 1947, February 12, 1914, the provisions of the foregoing regulation were specifically extended so as to include and apply to returns made by fiduciaries as such.)

§ 141. Special Assessment Districts Under State Laws for Public Purposes are Political Subdivisions of a State

Referring to paragraph B, section 2, of the income-tax law, which reads as follows: "That in computing net income there shall be excluded interest upon the obligations of a State or any political subdivision thereof," you [collectors of internal revenue] are informed that under date of January 30, 1914, the honorable the Attorney General held that special assessment districts created under the laws of the several states for public purposes, such as the improvement of streets and public highways, the provision for sewerage, gas, and light, and the reclamation, drainage, or irrigation of bodies of land

[44] Provision of the statute on this subject, see supra, § 16. Discussion of subject, infra, § 245.

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within such special assessment districts, when such districts are for public use, are political subdivisions of the State within the meaning of the above proviso.

It is held that the term "political subdivision" includes special assessment districts or divisions of a State created by the proper authority of the State acting within its constitutional powers and under its general laws, for the purpose of carrying out a portion of those functions of the State which by long usage and inherent necessities of government have always been regarded as public.

Levee and school districts when lawfully created under the authority of the State and which are authorized by the laws of the State to levy a tax to meet the obligations of such districts are also held to be political subdivisions of a State within the meaning of the income-tax law.

The income derived from interest upon the obligations of all such public districts shall therefore be excluded in computing net income for the income tax.[45] This decision supersedes T. D. 1910. (T. D. No. 1946, February 10, 1914.)

§ 142. Time for Filing Returns and Penalties in Connection Therewith

To collectors of internal revenue: You are advised, and will so announce from your respective offices, that the law and regulations require returns of income for the taxable period, March 1 to December 31, 1913, to be made and filed on or before March 1, 1914. The law is mandatory and allows no discretion to be exercised by any officer. Section 3176, Revised Statutes of the United States, (Comp. St. 1913, § 5899) as amended and made part of the income-tax law, gives to collectors of internal revenue (they being satisfied as to the merits of the claim, and in the reasonable exercise of their judgment and discretion) authority to grant extension of time not to exceed 30 days from the time prescribed by

[45] Provision of the statute with reference to exemption of interest on obligations of political subdivisions of states, see, supra, § 9. Discussion of subject, infra, § 277.

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law in which to file a return of net income, and then only in cases where such failure, neglect, or refusal is the result of "sickness or absence."

You are also advised, and will so announce, that there will be no change in income-tax regulations as they now exist prior to March 1, 1914, and that all persons and corporations required to make a return which have not as yet done so should make and file their returns at the earliest opportunity and on or before March 1.

Collectors will forward to this office immediately a report showing the number of returns filed in their respective offices as of February 20, 1914.

Penalties and additional tax, in connection with refusal or neglect to file return of income within the prescribed time

As to corporations.—For neglect or refusal to make a return within the prescribed time, corporations are liable to a penalty not to exceed $10,000; and in case of neglect or refusal to make, or for a false or fraudulent return made, 100 per cent is to be added to the tax; and in the case of neglect or refusal to make and verify a return within the prescribed time (except in case of sickness or absence) 50 per cent is to be added to the tax; and in case of an officer of a corporation or like institution charged with the duty and responsibility of making and verifying a return who makes a false or fraudulent return with the intent to defeat or evade any assessment or tax, he shall be guilty of a misdemeanor, and be subject to a fine not to exceed $2,000, or to imprisonment not to exceed one year, or both, at the discretion of the court, together with costs.

As to individuals.—For neglect or refusal to make a return within the prescribed time, the penalty is not less than $20 nor more than $1,000; and in case of intentional neglect or refusal to make, or for a false or fraudulent return made, there shall be added 100 per cent to the tax; and in case of neglect or refusal to make a return within the prescribed

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time (except in case of sickness or absence) there shall be added 50 per cent to the tax.[46] (T. D. No. 1950, February 19, 1914. Note, however, that the statute itself—Rev. Stat. § 3176 [Comp. St. 1913, § 5899] as amended and made a part of the income-tax law—authorizes the addition of 100 per cent of the tax as a penalty only in case of a "false or fraudulent list intentionally" returned, not in case of "intentional neglect or refusal" to make a return, as specified in the foregoing regulation. For the "refusal or neglect, except in case of sickness or absence, to make a list or return, or to verify the same as aforesaid," the statute authorizes the addition of 50 per cent to the tax as a penalty. And see General Income Tax Regulations No. 33, art. 164.)

§ 143. Extension of Time for Filing Returns by American Citizens Living Abroad

To collectors of internal revenue: Referring to that portion of section 3176, of the Revised Statutes (Comp. St. 1913, § 5899) as incorporated in the income-tax law, which provides that—

> In case of neglect occasioned by sickness or absence as aforesaid, the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days—

you are informed as follows:

Various citizens of the United States living abroad were unable through such absence from this country to inform themselves as to the requirements of the law, and were also unable to obtain the necessary blank forms on which to make their returns of annual net income for the income tax. You are therefore authorized to mark the returns received from foreign countries after March 2 and up to and including March 31 as having the time extended to cover the period of filing such return.

[46] As to time for filing income tax returns, see, supra, § 12 (text of statute), and infra, § 321. Penalties for neglect or refusal to make return and for false and fraudulent returns, supra, § 31 (text of statute) and infra, §§ 331, 332, discussion of subject.

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The State Department has cabled the consular service and others residing in foreign countries that they shall forward a letter, in which their income shall be stated, and that such letter will be received in lieu of the return so far as the date of filing is concerned.

Such letters are now coming to this office, and they are being forwarded to the various collection districts to be held as tentative returns until the returns on Form 1040 shall be received. The regular returns on Form 1040 when received should be attached to the tentative returns and both should be forwarded to this office with the assessment lists on which the same shall be listed. The date of filing the returns should be considered that on which such tentative returns were filed.[47] (T. D. No. 1953, March 2, 1914.)

§ 144. Collectors to Furnish Information Concerning Income Tax Regulations and Rulings

A large part of the volume of correspondence coming to this office, asking for information relative to making return and ascertainment of net income, etc., for the income tax, is sufficiently covered by regulations, and should be answered in the offices of collectors. Collectors have been furnished with copies of Regulations No. 33,[48] and will be advised from time to time of additional rulings in income-tax matters. Collectors are therefore advised that letters coming to this office asking for information which should be supplied by collectors in accordance with instructions and regulations furnished them, will be referred to collectors for reply and writers of the letters advised of the reference. Collectors, upon receipt of letter referred to them by this office, will give immediate attention to the subject-matter of the inquiry, in accordance with the regulations and instructions bearing upon the same. (T. D. No. 1956, February 14, 1914.)

[47] Time for payment of tax by American citizens living abroad, infra, § 174. Taxation of incomes of non-resident citizens, infra, § 255.

[48] Internal Revenue Regulations No. 33, printed in full in the next (third) chapter of this volume.

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§ 145. Partnerships Not Subject to Income Tax, But Required to File Certificates of Ownership of Bonds, etc.

Referring to the following provision in paragraph D of the income-tax law (Comp. St. 1913, § 6324)—

> That any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed—

it is held that the income of partnerships per se is not subject to the income tax. The provisions of the law "relating to the deduction and payment of the tax at the source of income" do not apply to the income of partnerships as such. Taxable members of partnerships will be required to account, in their individual returns, for their respective shares or interest in the partnership profits, whether the same are divided and distributed or not.

Partnerships owning "bonds and mortgages, or deeds of trust, and other similar obligations of corporations, joint stock companies or associations, and insurance companies," shall file certificates of ownership, in Form 1001 evidencing the fact of partnership ownership when presenting for collection or payment coupons or interest orders for interest upon said obligations; and when such certificates are filed, the tax on such interest payments to partnerships shall not be withheld.[49]

The last sentence in article 14, page 35, and article 47 of Income Tax Regulations No. 33, providing for claim by partnerships for deduction for legitimate expense incurred in

[49] For earlier regulations on this subject, see, supra, §§ 92, 117. See also, infra, § 162. Provisions of the statute exempting partnerships as such from income taxation, supra, §§ 15, 32. Discussion of the subject, infra, § 263. The provision in "paragraph D of the income-tax law," above referred to, may be seen in § 15, supra.

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conducting the business of a partnership, are hereby superseded and repealed. (T. D. No. 1957, March 12, 1914.)

§ 146. Certificates of Ownership Filed by Fiduciaries

Under income tax regulations No. 33, articles 39 and 70,[50] fiduciaries are required to file certificates on Form 1015 or Form 1019, according to the nature of the claim to be made by the fiduciary, for each issue of bonds and for each trust. It is therefore provided that where fiduciaries have the custody and control of more than one estate or trust, and said estates or trusts have as assets bonds of corporations, etc., of the same issue, said fiduciaries may adapt certificates [on] Form 1015 or Form 1019, by changing the words "estate or trust" in lines 2 and 3 of said forms to the plural, and inserting in the blank space provided in line 3 of said forms for the description of the estate or trust the words "as noted on the back hereof." In such cases the notation on the back of the certificate should show for each estate or trust (a) the name of the estate or trust, (b) the amount of the bond, (c) the amount of the interest. In all other respects the certificates should be filled out as indicated thereon (T. D. No. 1961, March 19, 1914.) [NOTE. The forms above referred to having been revised by T. D. No. 1976, dated May 2, 1914, it was considered necessary to provide, by a new regulation, that the foregoing provisions allowing the adaptation or modification of Forms 1015 and 1019 should be applicable to these Forms in their revised forms, as well as in their original forms. This was done by T. D. No. 1987, dated May 29, 1914.]

§ 147. Deduction by Corporations of Interest Actually Paid; Calculation of Amount

To collectors of internal revenue: Your attention is called to that provision of the income tax law designated as the third deduction, subdivision b, paragraph G (Comp. St. 1913, § 6328) reading as follows:

The amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-

[50] Infra, § 180, art. 39, and § 184, art. 70.

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half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, and if no paid-up capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year.

It is held that in the case of a corporation having capital stock this deductible interest is interest actually accrued and paid within the year on an amount of indebtedness not exceeding the paid-up capital stock outstanding at the close of the year, increased by the addition thereto of one-half the interest-bearing indebtedness outstanding at the close of the year.

The qualifying phrase, "outstanding at the close of the year," appearing in the foregoing quotation, is held to apply to both paid-up capital stock and indebtedness, and "one-half the sum of" qualifies only the indebtedness, which indebtedness, like the paid-up capital stock, is required by the law to be reported, in making return of annual net income, as outstanding at the close of the year.

If no indebtedness is outstanding at the close of the year, the maximum deduction allowable on account of interest paid will be the amount of interest actually accrued and paid on an amount of indebtedness not exceeding at any time within the year the entire paid-up capital stock outstanding at the close of the taxable year; that is, in such case, the paid-up capital stock outstanding at the close of the year measures the highest amount of indebtedness upon which deductible interest can be computed.

For the purpose of an allowable deduction, interest on the maximum amount of indebtedness, determined in the manner above indicated, can be computed upon such amount only for the time during which such amount of indebtedness is not in excess of the paid-up capital stock, increased by one-half the sum of the interest-bearing indebtedness outstanding at the close of the year.

In any event, the amount of interest, in order to constitute an allowable deduction, must not only be within the limit of the law as herein defined, but must have actually accrued and been paid within the year for which the return is made.

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In cases where no capital stock exists, the limitation as to deduction is confined to interest actually paid on an amount of indebtedness not exceeding at any time during the year the capital employed in the business at the close of the year.[51]

Any provision in the regulations heretofore issued inconsistent with the foregoing is hereby revoked. (T. D. No. 1960, March 18, 1914.)

§ 148. Income Tax Returns Inviolably Confidential

The attention of collectors of internal revenue, internal-revenue agents, and other officers concerned is invited to section 3167 of the United States Revenue Statutes (Comp. St. 1913, § 5887) which prohibits the disclosure of information contained in income and other returns of internal-revenue taxpayers.[52]

All internal-revenue officers will preserve as inviolably confidential all income-tax returns, as the slightest infraction of law upon this subject will be severely punished. (T. D. No. 1962, March 20, 1914.)

§ 149. Acceptance of Certified Checks in Payment of Tax

Sir: This office is in receipt of your letter of the 16th instant in reference to certified checks offered in payment of internal-revenue taxes and to the refusal of your depository to accept such checks where you indorse the same "without recourse."

In reply you are informed that such qualified indorsement is unnecessary, and that any instructions on Forms 17, 21, and 647 contrary to this view are hereby rescinded.

[51] Provisions of statute as to deduction of interest on indebtedness, in case of individuals, supra, § 7, in case of corporations, supra, § 39. Deduction of interest on indebtedness secured by collateral the subject of sale, see, infra, § 158. Interest paid as allowable deduction, see, in general, infra, § 302.

[52] Text of statute regarding publicity and inspection of income tax returns, supra, § 55. Penalty for unlawfully divulging contents of returns, supra, § 59. Executive order and Treasury regulations concerning inspection of returns, infra, § 170. Discussion of subject, infra, § 324.

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In this connection attention is called to the act of March 2, 1911 (Comp. St. 1913, § 5711), respecting such checks not duly paid by the bank certifying to the same. (T. D. No. 1963, March 18, 1914.)

In this connection, the Treasury Department has also published (as T. D. No. 1990, dated June 1, 1914) the following letter addressed by the Commissioner of Internal Revenue to the Collector of Internal Revenue in the Sixth District:

Your letter of the 28th ultimo has been received in which you quote a letter of the 27th idem, addressed to you by the president of the First National Bank of Abingdon, calling attention to the fact that you are receiving from taxpayers in payment of income tax certified checks from various points in your district. The bank requests you to require the income tax to be paid in New York, Washington, Baltimore, or Philadelphia funds which can be used in New York at par, for the reason that they are required to remit every day in New York funds.

You call attention to the instructions on Form 647, "Notice of assessment of special excise and income tax," which you state instruct taxpayers that they may remit by certified check and that most of them are doing so. You ask what steps shall be taken by you in case the bank declines to accept certified checks for deposit.

In reply to your request as to what action should be taken in case the bank declines to accept certified checks, your careful attention is invited to the regulations published as Department Circular No. 11, dated March 27, 1913, copy inclosed. You will note that you are required to accept in payment of all internal-revenue taxes certified checks drawn in your favor on national and State banks and trust companies located in the city of Abingdon, and in addition such "out of town" certified checks as you can cash without cost to the Government. In the event that the depositary will not accept for deposit "out of town" certified checks, you are not required by law or regulations to accept such checks in payment of internal-revenue taxes.

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The law does not specifically authorize the acceptance of any form of exchange in payment of internal-revenue taxes other than currency and such certified checks as are specifically described in Department Circular No. 11, reference to which is made above. If, however, the collector elects to accept drafts or other mediums of exchange not specifically authorized by law, he does so at his own risk, but it may be said that, if the depositary bank will accept such forms of exchange indorsed by the collector without recourse and issue therefor regular certificates of deposit, the monetary responsibility would appear to be shifted from the collector to the depositary, inasmuch as the collector would be entitled to credit in his accounts by reason of the issuance of such certificates of deposit (see sec. 3211, Rev. St. Comp. St. 1913, § 5934, and notation found on page 108 of Compilation of Internal Revenue Laws, 1911).[53]

§ 150. Time for Paying Over Tax Deducted by Withholding Agents

Attention is directed to note A appearing on the bottom of Forms 1012, 1012c, 1043, and 1044, providing that—

Withholding agents may, if they so desire, pay at the time this list is filed, to the collector of internal revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

And to note A, Form 1042, providing that—

The amount of the tax withheld during the year for which the list is made, may be paid to the collector at the time the list is filed.

In order that persons whose income tax is deducted and withheld and is to be paid at the source, may have an opportunity to file with the source which is required to withhold and pay tax for them certificates claiming the benefit of deductions and exemptions provided for in paragraph B and allowed in paragraph C of the law (Comp. St. 1913, §§ 6322, 6323)[54] withholding agents will not pay to collectors of internal rev-

[53] Medium of payment of income taxes, see, infra, § 343.

[54] Claims for deductions and exemptions made by persons whose income (or part of whose income) is taxed at the source, see, supra, §§ 99, 103, and infra, § 370.

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enue the tax withheld by them under the law until after the time for filing claims for deductions and exemptions has expired. See Regulations No. 33, art. 33, (a) and (b). (T. D. No. 1965, March 23, 1914.)

§ 151. Exempt Organizations Not Required to Act as Withholding Agents

This office is in receipt of several communications relative to the duty as withholding agents of religious corporations and other organizations which are specifically enumerated in the first proviso of paragraph G of section 2, subd. a, of the act of October 3, 1913 (Comp. St. 1913, § 6327).

The language of said proviso is as follows:

That nothing in this section shall apply to labor, agricultural, or horticultural organizations, or to mutual savings banks not having a capital stock represented by shares, or to fraternal beneficiary societies, orders, or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to domestic building and loan associations; nor to cemetery companies, organized and operated exclusively for the mutual benefit of their members; nor to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual; nor to business leagues; nor to chambers of commerce or boards of trade, not organized for profit or no part of the net income of which inures to the benefit of the private stockholder or individual; nor to any civic league or organization not organized for profit but operated exclusively for the promotion of social welfare.[55]

You are therefore advised that the words "this section" are held to refer to and mean the whole of section 2 of the act of October 3, 1913, which section comprises the income-tax law, and that the words "nothing in this section shall apply to" were

[55] Text of statute exempting certain classes of corporations and organizations, supra, § 33. General discussion of exempt corporations, infra, § 279. Taxability of mutual telephone companies, supra, § 134; of cooperative dairies and other like organizations, infra, § 160.

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intended to relieve such organizations, etc., as properly come within the classifications referred to in the proviso quoted, not only from the payment of an income tax but from every obligation or requirement imposed by any or all of the provisions of said section upon withholding agents. (T. D. No. 1967, March 25, 1914.)

§ 152. Revision of Form for Monthly List Return by Collecting Agencies

Collectors are hereby advised that Form 1044, for monthly list return of amount of normal tax withheld by first bank or collecting agency,[56] has been revised in the following particulars, so that the tax withheld from interest on bonds of different classes or of more than one organization can be reported thereon:

In the section of reading matter beginning, "To be made in duplicate," in the fourth line thereof, change "coupon" to "coupons," and strike out "and interest orders."

In the last line, next above the tabular list, strike out the blank lines and the words thereunder, "Describe the particular issue of bonds," and "State name and address of debtor organization."

Strike out the headings in the tabular list and substitute therefor, in separate columns, "Party presenting coupons," and immediately thereunder, in separate columns, "Name" and "Address," "Name of debtor corporation," "Name of particular issue of bonds," "Amount of income subject to tax," and "Amount of tax withheld."

Immediately after and under the line of totals of the tabular list there shall be a double rule line. Strike out the words now appearing below the total line of the tabular list on Form 1044, viz, "Amount of tax remitted herewith (if any) to collector," and strike out the dotted line following these words.

[56] Monthly and annual list returns by collecting agencies, supra, § 123; extension of time for filing, supra, § 131; when required to be verified, infra, § 161.

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and also the dollar mark on the same line, and strike out the double rule line appearing immediately thereunder.

Strike out all of Note A appearing at the bottom of the form. (T. D. No. 1973, April 21, 1914.)

§ 153. Change of Regulations as to Certificates of Ownership in Connection with Interest Orders or Checks for Interest on Registered Bonds

Articles 41 to 46 of the regulations [57] are hereby amended so as to require, in the case of interest payments on bonds registered as to both principal and interest, that debtors in such cases shall deduct the normal tax of 1 per cent. from accruing interest on all such bonds before sending out orders or checks for said interest to registered owners, unless there shall be filed with said debtors, at least five days before the due date of said interest, the prescribed certificates claiming exemption.

Where such certificates are so filed the said debtors shall stamp or write on the interest orders or checks, as the case may be, "Exemption claimed by certificate filed with debtor."

Where prescribed certificates are not so filed, said debtor shall deduct and withhold the normal tax of 1 per cent. from the amount of such payment, and shall stamp or write on the interest order or check, as the case may be, "Income tax withheld by debtor."

Responsible banks, bankers, or collecting agents receiving for collection interest orders or checks bearing the aforesaid indorsements may present said interest orders or checks for collection without requiring that certificates of ownership be filed therewith.

Certificates of ownership are not required to accompany interest orders or checks in payment of interest on fully registered bonds, as information as to ownership of bonds will be furnished by debtor organizations on monthly list returns, Form 1012; but claim for exemption must be filed with debtors, or the tax must be withheld; and the form of certificate

[57] The reference is to Internal Revenue Regulations No. 33, printed in full as the third (next) chapter of this book. The articles mentioned above may be seen in § 180, infra.

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provided for use of owners of coupon bonds may be used by owners of registered bonds for the purpose of claiming this exemption.

Where, because of failure to file certificates claiming exemption, in compliance with above regulations, a part of the income from interest on registered bonds has been withheld for the payment of the normal income tax, debtors may, upon the filing of the proper certificates as provided in article 42, Income Tax Regulations, to the extent of exemption claimed, release and pay to the persons entitled thereto the amount of such income so withheld. (T. D. No. 1974, April 21, 1914.)

§ 154. Banks and Bankers Authorized to Execute Ownership Certificates For Non-Resident Aliens

For the purpose of complying with income tax regulations requiring the filing of certificates of ownership of bonds when presenting coupons or interest orders for collection of interest on bonds of domestic corporations of the United States owned by non-resident aliens as to the United States, [58] a certificate in the form following is provided [Form 1060, see infra, p. 797] which may be executed by responsible banks or bankers in foreign countries for and in behalf of non-resident alien owners of bonds of United States corporations.

When foreign banks or bankers shall use the foregoing certificate, they may include in one certificate all the coupons from bonds of the same class and same issue, and may include in one certificate all the interest orders or checks for interest on registered bonds of the same class and same issue.

The above certificate shall be in size 8 by 3½ inches, and shall be printed to read from left to right along the 8-inch dimension.

The certificate shall be printed on yellow paper and such paper shall correspond in weight and texture to white writing paper 21 by 32, about 40 pounds to the ream of 500 sheets.

[58] Tax not to be deducted from interest due to non-resident aliens, see, supra, § 93; how certificates of ownership may be signed on behalf of, supra, § 111; claiming exemption from deduction of tax at source, form of certificate for use of, infra, § 162.

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The revised certificate hereby authorized will be printed by the Government and furnished without cost.

Individuals or organizations desiring to furnish their own certificates may do so, but certificates so printed must conform in size to that prescribed above and be printed in similar type upon the same color, shade, and weight of paper as used by the Government. (T. D. No. 1977, May 2, 1914.) Note: Whereas the foregoing regulation applied only to "banks or bankers in foreign countries," it was amended by T. D. No. 1988, June 2, 1914, so as to extend the same authority to "responsible banks or bankers in the United States."

§ 155. Directions for Execution of Substitute Certificates by Banks or Collecting Agents

To collectors of internal revenue: You are advised that as a convenience to banks and collecting agents who desire to substitute their certificates, Forms 1058 and 1059, for the owner's certificate accompanying the coupons deposited for collection, it is hereby provided that the name of the bank or collecting agent may be printed or stamped, and that a facsimile of the signature of the person authorized to sign the substitute certificate for the bank or collecting agent may also be printed or stamped on the certificate: *Provided,* That in all cases the bank shall first file with the Commissioner of Internal Revenue a certificate of its authorization in substantially the form following:

.....
(City.) (Date.)

The COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.

The undersigned hereby authorizes the use of the facsimile signatures shown below upon all substitute income tax certificates issued in its name until this authorization is revoked by written notice to you.

.....
(Name of bank or collecting agent.)

By.....
(Signature of person authorized to sign.)

....
(Facsimile signature of person authorized to sign.) (Official position.)

(T. D. No. 1986, May 29, 1914.)

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§ 156. What Deductions Allowable under the Head of "Losses"

Several letters have been received in which inquiry has been made as to whether losses resulting from the sale of real estate by individuals are properly deductible from gross income in the returns of annual net income of individuals for the income tax. Under paragraph B of the income tax law (Comp. St. 1913, § 6322) it is provided that among the deductions to be allowed shall be "losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise." Losses arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise, are easily ascertained, and there would not appear to be any chance of an erroneous construction as to these. Losses actually sustained during the year incurred in trade are limited by the language of the act itself. "In trade" is synonymous with "business." "Business" has been defined as "that which occupies and engages the time, attention, and labor of any one for the purpose of livelihood, profit, or improvement; that which is his personal concern or interest; employment; regular occupation; but it is not necessary that it should be his sole occupation or employment." The doing of a single act incidentally or of necessity not pertaining to the particular business of the person doing the same will not be considered engaging in or carrying on the business. It is therefore held that no losses are deductible in a return of income save only those losses permitted and provided for by the statute, viz., those actually sustained during the year which are "incurred in trade," or which arise from "fires, storms, or shipwreck, and not compensated for by insurance or otherwise." [59] (T. D. No. 1989, June 2, 1914.)

[59] Text of statute as to allowance of deductions for losses and for depreciation, in case of individuals, supra, § 7, in case of domestic corporations, supra, § 36, in case of foreign corporations, supra, § 41. Additional regulation on the subject of deduction for losses, infra, § 165. General discussion of deductions for losses and depreciation, infra, §§ 304, 306.

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§ 157. Collection of Interest on Bonds of Foreign Corporations Payable Within the United States

Where foreign corporations have an issue of bonds, the interest upon which is payable wholly within the United States, or within or without the United States, at the option of the owner of the bonds, in all cases where said foreign corporations have fiscal agents within the United States, and the said bonds are owned by citizens of the United States or aliens resident within the United States, the collection of interest on said bonds shall be considered to be and be treated as a domestic transaction upon the filing with said coupons certificates of ownership properly executed: *Provided*, That whenever coupons from foreign bonds not accompanied by certificates of ownership are presented for collection, they shall be treated as foreign items, and the first bank or collecting agency receiving or accepting the same for collection or otherwise shall deduct, withhold, and pay the tax as provided by income-tax regulations for the collection of foreign income. Where a foreign corporation has an issue of registered bonds, the interest on which is payable through a fiscal agent in the United States, certificates of exemption may be filed with said fiscal agent in manner and form as prescribed by T. D. No. 1974 [supra, § 153] and payment by said fiscal agent shall be made in accordance with the provisions of T. D. No. 1974.[60] (T. D. No. 1992, June 4, 1914.)

§ 158. Deduction of Interest on Indebtedness Secured by Collateral, the Subject of Sale

This office is in receipt of numerous letters asking a ruling of this office as to the application of the following proviso quoted from subdivision (b) of subsection G of section 2, act of Congress approved October 3, 1913 (Comp. St. 1913, § 6328) to wit:

Provided, That in the case of indebtedness wholly secured by collateral the subject of sale in the ordinary business of such corporation, joint-stock company or association, the total interest secured

[60] Tax on interest or dividends from foreign corporations, how collected when not payable in the United States, see, supra, §§ 85–88.

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and paid by such company, corporation, or association, within the year on any such indebtedness may be deducted as a part of its expense of doing business.

Many of these inquiries come from corporations engaged in buying and selling real estate, which real estate is pledged for the payment of indebtedness, and the question submitted is whether or not such real estate is "collateral" within the meaning of the proviso quoted and whether or not the corporations paying interest on indebtedness wholly secured by such collateral may deduct from gross income as "an expense of doing business" the amount of interest paid on such indebtedness.

Relative to this you are informed that "collateral," as used in this proviso, comprehends and includes real estate or any form of physical or tangible property bound for the performance of certain covenants, the payment of certain obligations, and if such real estate or other physical or tangible property is the "subject of sale in the ordinary business of the corporation" owning the same, that is, if such corporation is, as a matter of its ordinary business, engaged in buying and selling, or dealing in such property, the interest actually paid within the year on indebtedness wholly secured by such collateral (a mortgage on such property) may be allowably deducted from gross income under item 4 (a) of the return form as an expense of doing business, without regard to the limit of deductible interest as set out in subdivision "Third," paragraph (b), subsection G of the Federal income tax law hereinbefore cited.

This construction of the proviso quoted is not intended to and does not authorize the deduction as "an expense of doing business" of any interest paid or indebtedness secured by property, real or personal, which is not the "subject of sale in the ordinary business of the corporation," but which is held by it for the purpose of, or as an instrument in carrying on, its ordinary business—such as the rights of way and other property of public utility companies, permanent office buildings and property of like character held or occupied for their own particular use or purpose in the furtherance of the objects of the corporation, but which property is not the subject of sale in

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their ordinary business, and which is simply occupied or used as an instrument or means of, or essential to, the carrying on of the ordinary business for the transaction of which they are organized. The fact that such property may be subject to sale under extraordinary or peculiar conditions does not qualify, but rather disqualifies, it as "collateral" such as is contemplated by this provision of the act cited.

The only corporations, joint-stock companies, or associations which will be allowed under this proviso as herein interpreted to deduct as "an expense of doing business" interest paid on indebtedness wholly secured by mortgage on real estate, or other physical and tangible property, are those corporations, joint-stock companies, or associations which are organized and operated for the exclusive purpose of buying, selling, and dealing in the particular kind of property upon which the mortgage is given, and the particular property pledged for the debt upon which the interest is paid must be the "subject of sale in the ordinary business of the corporation."

Any corporation whose indebtedness is secured by a trust, mortgage, or by any form of indenture which covers and includes in the lien any property which is not the subject of sale in the ordinary business of such corporation, will be and is excluded from the benefit of this proviso, as hereinbefore construed, and its interest deduction will be limited to the amount authorized in subdivision "third" above referred to—that is, the interest actually paid within the year at the contract rate on an amount of bonded or other indebtedness at no time within the year in excess of a sum ascertained by adding to the paid-up capital stock outstanding at the close of the year one-half of the total amount of the interest-bearing indebtedness also then outstanding.

Corporations which under this ruling are entitled to deduct as "an expense of doing business" the total amount of interest paid within the year on "indebtedness wholly secured by collateral the subject of sale in the ordinary business of such corporations," are required to state separately in their returns the

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amount of indebtedness upon which such interest is paid, segregating it from the indebtedness not so secured and upon which the interest paid is taken credit for or deducted under item 6 (a) of the return form. The interest-bearing indebtedness stated under item 2 of the return form as one of the bases for determining the amount of interest which may be allowably deducted under item 6 (a) must not include any "indebtedness wholly secured by collateral the subject of sale in the ordinary business of the corporation." Failure to segregate the two forms of indebtedness will render the interest deduction under item 6, a, subject to suspension and disallowance.[61] (T. D. No. 1993, June 5, 1914.)

§ 159. Collector's Notice and Demand for Payment of Tax

It appears that certain collectors hold that notice of assessment and demand, Form 17, is not necessary to create a liability to 5 per cent penalty and interest at 1 per cent per month in the case of income tax remaining unpaid after June 30 or other due date. This view as to the requirements of the law is clearly wrong and contrary to the instructions (art. 197, Regs., 33) issued on the subject.

The necessity of issuing Form 17 is twofold—first, to determine the date when 5 per cent penalty accrues and interest at 1 per cent per month begins to run, and, second, to complete the Government's lien on property belonging to the taxpayer.

In special excise and income-tax assessments a notice on Form 647 is required to be given in all cases where the required return is filed in due time. This, however, is simply a preliminary notice of assessment, to be followed, in case of nonpayment, by a formal notice and demand which the law clearly contemplates and which the courts hold to be necessary before the delinquent taxpayer becomes chargeable with penalty and interest.

[61] Provisions of statute as to deduction of interest on indebtedness, in case of individuals, supra, § 7, in case of corporations, supra, § 39. Calculation of amount of interest deductible by corporations, supra, § 147. General considerations as to deduction for interest paid, infra, § 302.

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In all cases, therefore, where an assessed tax remains unpaid after it becomes due a notice on Form 17 should be at once issued, to be followed, when necessary, by Forms 21 and 69, in their order. The fact that a claim for abatement is pending or the tax is in litigation does not relieve the collector from issuing the notices, demands, etc., required by law.[62]

A misunderstanding on the part of certain collectors as to these requirements has occasioned a considerable loss to the Government of penalty and interest, especially where claims for abatement were pending. (T. D. No. 1995, June 12, 1914.)

§ 160. Cooperative Dairies and Like Organizations Not Exempt

Attention is called to article 92 of Regulations No. 33, approved January 5, 1914, in which it is provided that cooperative dairies not issuing stock and allowing patrons dividends based on the percentage of butter fat in milk furnished are not liable to the requirements of section 2, act of October 3, 1913 (Comp. St. 1913, § 6328).

This article is amended to the effect that cooperative dairy associations, whether issuing capital stock or not, are required to make returns of annual net income pursuant to the requirements of this act.

The only corporations, joint-stock companies or associations, or insurance companies, exempt from the requirements of this act are those which fall within one or another of the classes specifically enumerated in the first proviso of subsection G of the act cited as exempt.[63]

[62] Provision of the statute requiring notice of assessment of tax, supra, § 19; requiring demand of payment as condition to attaching of penalty for delinquency, supra, § 21. Further as to necessity and form of notice and demand, see, infra, §§ 164, 340, 342.

[63] Text of statute exempting certain classes of corporations and organizations, supra, § 33. General discussion as to exempt corporations, infra, § 279, et seq. Exempt corporations not required to act as withholding agents, supra, § 151. Exemption of mutual telephone companies, supra, § 134. The reference at the beginning of this section is to Internal Revenue Regulations No. 33, printed in full in the next (third) chapter of this book. Article 92 of such regulations may be seen in § 185, infra.

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Cooperative dairies, no matter how organized, do not appear to fall within any of these exempted classes, and will, therefore, be required to make returns.

In the preparation of their returns, cooperative dairies may include in their deductions from gross income the amount actually paid to members and patrons for milk, but any amount retained at the end of the year over and above expenditures will be returned as net income, upon which the tax will be computed and assessed.

In so far as article 92, hereinbefore referred to, is in conflict with this ruling, it is hereby revoked, and collectors will require all organizations of this character to make returns of annual net income and in other respects comply with the requirements of the Federal income tax law as it applies to corporations, joint-stock companies or associations, and insurance companies.

In so far as applicable, this ruling also applies to mutual or cooperative telephone companies, farmers' insurance companies, and like organizations. (T. D. No. 1996, June 15, 1914.)

§ 161. Monthly List Returns Not Required to be Under Oath

The requirement that monthly list returns be made under oath (as provided by articles 35, 50, 53, and 59, Income Tax Regulations No. 33, when filed by withholding agents on or before the 20th of the month following that in which withholding occurred) is hereby waived. In all cases the annual list return required of withholding agents (of which the monthly list returns will form a part as required by regulations) will be made, sworn to, and filed as now required by existing regulations, and the jurat for the annual list return will cover the entire return as thus made up.[64] (T. D. No. 1997, June 16, 1914.)

[64] Monthly and annual list returns by collecting agents, supra, § 123; extension of time for filing, supra, § 131; revised forms for, prescribed, supra, § 152.

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§ 162. Exemption Certificate for Firms, Organizations, and Fiduciaries

The following certificate is hereby provided for use of firms,[65] organizations, and fiduciaries for the purpose of establishing their identity and nonliability to withholding at the source of income (other than interest on bonds) payable to them. Said certificates shall be of the size and be printed on yellow paper of the weight and texture all as provided by T. D. 1976, the requirements of which are hereby made applicable to the certificate hereby provided.

(Form 1063.)

EXEMPTION CERTIFICATE—FIRMS, ORGANIZATIONS, OR FIDUCIARIES.

(For use of firms, organizations, or fiduciaries entitled to receive income *other than from interest on bonds*, to establish their identity and nonliability to withholding at the source.)

.....

(Give name of debtor.)

.....

(Character of income, other than interest on bonds, as rent, dividends from foreign corporations, etc.)

I do solemnly declare that the firm, organization, or person named below is entitled to receive the above-described income and that under the provisions of the income tax law and regulations said income is exempt from having the tax withheld at the source, and that all the information given herein is true and correct.

Date, ..., 191.. .....

(Name of firm, organization, or fiduciary.)

By.....

(Signature of person duly authorized to sign for firm or organization and his official position or name of trust.)

Address.....

(Give full post-office address of firm or organization or fiduciary.)

The exemption certificate provided for the use of individuals is Form 1007, which will be used by individuals in all cases except for interest on bonds, for which forms 1000 and 1000B are provided. (T. D. No. 1998, June 16, 1914.) This exemption certificate was extended to and made applicable to the use of persons who are non-resident aliens in claiming exemption

[65] Partnerships, as such, not subject to income taxation, see, supra, §§ 15, 32. Departmental regulations as to partnerships under the income tax, supra, §§ 92, 117, 145.

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from income tax on dividends payable in the United States on stocks of foreign corporations, by T. D. No. 2012, July 30, 1914.

§ 163. Designation of Fiscal Year by Corporations

To collectors of internal revenue: Your attention is called to the following provision quoted from paragraph C, subsec. G of section 2, act of October 3, 1913 (Comp. St. 1913, § 6329): "The tax herein imposed shall be computed upon its entire net income accrued within each preceding calendar year ending December thirty-first; *Provided,* That any corporation, etc., subject to this tax may designate the last day of any month in the year as the day of the closing of its fiscal year, and shall be entitled to have the tax payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated * * * and it shall give notice of the day it has thus designated as the closing of the fiscal year to the collector of the district in which its principal business office is located at any time not less than thirty days prior to the date upon which its annual return shall be filed." Except as provided in the act, all corporations are required to make their returns of annual net income upon the basis of the calendar year and to file such returns on or before the first day of March next following. March 1, is, therefore, the primary due date for the returns of all corporations. This due date can be postponed only in accordance with some legal or authorized action. Unless such action is taken within the prescribed time, or the returns filed on or before March 1, all corporations in existence at the preceding December 31 and failing to take such action, or so file their returns for the period ended December 31, will be held to be delinquent, and will be subject to 50 per cent additional tax and the penalty of the law.

The filing of returns at any date other than on or before March 1 and on a basis other than the calendar year can be authorized only in cases wherein corporations, not less than 30 days prior to March 1, give notice in writing to the collector of the district in which are located their principal places of business, designating in such notice the last day of some month as

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the close of their fiscal year. In this case the corporations will make their returns for the year so established, and will file their returns on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.

For the purpose of the income tax law, a fiscal year, when designated, must be so designated that the return made on this basis will not comprehend a period greater than 12 consecutive months. If the required notice is delayed until it can not be given at least 30 days prior to March 1, or if the date designated as the close of the fiscal year comprehends a period greater than 12 months from the close of the period for which the last prior return was made, the returns must be made as of the calendar year and must be filed on or before March 1 until such time as a fiscal year for this purpose can be legally established.

If a corporation which shall have filed, on or before March 1, its return for the preceding period ended December 31, desires to establish, as a basis for making future returns, a fiscal year ended at some date prior to the next December 31, it may do so by filing, at least 30 days prior to the date when its returns, on a fiscal year basis, will be due, a notice with the collector designating the last day of some month as the close of its fiscal year. It will then, on or before the last day of the 60-day period next following the date so designated, file a return covering the period from January 1 to the date so designated in the same year, and thereafter its returns will be made for each 12-month period next following such date.

The above rulings will apply to corporations which began business within the year, as well as to those which were in existence and transacted business throughout the year.

Any ruling or Treasury decision hereto issued and in conflict with this decision is hereby recalled and revoked.[66] (T. D. No. 2001, June 22, 1914.)

[66] Statutory provision as to designation of fiscal year by corporations, supra, § 43. Treasury regulations on this subject, supra, § 112. Time for payment of tax in such cases, supra, § 53.

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§ 164. Demand and Notice to Taxpayer

To the collector of the Second District, New York, Sir: This office is in receipt of your letter of the 16th instant, relative to the collection of the 5 per cent penalty against the ——— Co. for failure to pay the income tax and 50 per cent penalty within 10 days after the service of demand and notice on Form 17.

You were advised under date of June 12 that the 5 per cent penalty does not attach until 10 days after the service of the demand and notice and in no event until 10 days after June 30, and you call attention to Mim. 991, under date of January 22, 1914, in which collectors are directed to issue promptly Form 17 in cases of assessments for special excise and income taxes where the tax assessed is for overdue or additional taxes or where the required return is not filed within the time specified in the statute, as in such cases the right to 30 days' notice (Form 627) has been forfeited.

You are advised that this office is of the opinion that the cases referred to in the law where the assessments should be made by the Commissioner of Internal Revenue and paid immediately upon notification of the amount of such assessment relate to delinquent corporations who have failed to file returns until after the final day on which taxes should be paid in the regular course, viz, June 30. Under this construction, therefore, it will be seen that in cases of individuals and corporations whose delinquency was disclosed prior to July 1 or prior to the termination of the 120-day period following the day when the return was due to be filed, the demand and notice on Form 17 should not be served until July 1 or on the day following the termination of the 120-day period after the return was due and the 5 per cent penalty should not be demanded until the expiration of the 10-day period following the serving of such demand and notice. Where, however, such demand and notice has been served and payment of the 5 per cent penalty made before the termination of the 10-day period following June 30, the corporations by whom such payments have been made

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should be advised of their privilege to file claim for refund.[67] (T. D. No. 2003, June 26, 1914.)

§ 165. Deductions for Losses and Allowance for Depreciation

To collectors of internal revenue and revenue agents: For the purpose of checking up returns and ascertaining the amount of taxable income of individuals and corporations, you are given the following instructions and rules for use in determining the amount of deductible loss allowable to individuals and corporations under the fourth deduction (paragraph B)[68] and second deduction for domestic corporations (paragraph G)[69] and second deduction for foreign corporations (paragraph G.)[70]

The loss considered here has in it no element of "depreciation," or "allowance for wear and tear," or "compensation from insurance or otherwise." It is to be such loss as is absolute and complete and which has been actually sustained.

Depreciation as an allowable deduction in ascertaining annual net income for the income tax is separately provided for and is not to be confused with loss. The depreciation provided to be taken as a deduction in a return of income is the value assigned to the deterioration of physical improvements or assets, such as are susceptible of having their value lessened through wear and tear, use or obsolescence.

The depreciation referred to in the income-tax law does not relate to evidence of a right or interest in property, and hence any shrinkage in the value of bonds, stocks, and like securities due to fluctuations in their market value is not deductible in a return of income as depreciation or loss.

Losses may be sustained by individuals or corporations on personal or real property. Only those losses are deductible which are sustained during the tax year "in trade"—that is,

[67] Provision of the statute requiring notice of assessment of tax, supra, § 19; requiring demand of payment as condition to attaching of penalty for delinquency, supra, § 21. Further as to necessity and form of notice and demand, see, supra, § 159, and infra, §§ 340, 342.

[68] Supra, § 7. [69] Supra, § 36. [70] Supra, § 41.

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the business which engages the time, attention, and labor of anyone for the purpose of livelihood, profit, or improvement. Loss to be deductible must be an absolute loss, not a speculative or fluctuating valuation of continuing investment, but must be an actual loss, actually sustained and ascertained during the tax year for which the deduction is sought to be made; it must be incurred in trade and be determined and ascertained upon an actual, a completed, a closed transaction.

Losses sustained by individuals or corporations from the sale of or dealings in personal or real property growing out of ownership or use of or interest in such property will not be deductible at all unless they are an incident of, connected with, and grow out of the business of the individual or corporation sustaining the loss, and are ascertained, determined, and fixed as absolute in the above sense within the taxable year in which the deduction is sought to be made. When loss under this heading is ascertained to be deductible, the entire amount of the loss will be deductible except where the property in connection with which the loss occurred was acquired prior to March 1, 1913, in the case of individuals, and prior to January 1, 1909, in the case of corporations, and then and in such event the loss ascertained will be prorated over the whole time the property was held, and that part of the whole loss apportioned to the taxable period will be taken into account in annual returns of income. In prorating, fractional parts of years will not be considered.

Loss is the difference between selling price and cost where the selling price is less than cost.

Cost of property purchased prior to the incidence of the special excise tax (Jan. 1, 1909), or the incidence of the income tax (Mar. 1, 1913), will be the actual price paid for the property, including the expense incident to the procurement of the property in the first instance and its sale thereafter, together with carrying charges of interest, insurance, and taxes actually paid prior to the incidence of tax (special assessments, if any, "actually paid" as "local benefits" in connection with real estate); provided that where, up to the incidence of the tax, the expense

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of carrying property has exceeded the income from it, the difference between the expense of carrying and the income from the property shall be added to the purchase price and the sum thus ascertained shall be the cost of the property; and provided further, that in the case of property purchased prior to the incidence of the tax and sale thereof subsequent to the incidence of the tax there shall be excluded from consideration in ascertaining cost any items of income, expense, interest, and taxes previously taken into account in preparing a return of annual net income.

The cost of property acquired subsequent to the incidence of the tax will be the actual price paid for it, together with the expense incident to the procurement of the property in the first instance and its sale thereafter and the cost of improvement or development, if any.[71]

All existing rulings and regulations in conflict herewith are hereby annulled and superseded. (T. D. No. 2005, July 8, 1914.)

§ 166. Meaning of "Foreign Corporations" and "Fiscal Agents"

To collectors of internal revenue: Doubt having arisen as to the comprehensiveness of the term "foreign corporation," and the duties under the income-tax law of "fiscal agents," as provided in T. D. 1992, you are advised that "foreign corporations" as used in said decision was intended to include municipal and private corporations holding charters under laws of countries foreign to the United States, and "fiscal agents" refers to financial agents in the ordinary sense, upon whom the law casts the same duties with reference to withholding and paying the tax as are imposed upon withholding and paying agents of domestic corporations by appointment.

[71] Text of statute as to allowance of deductions for losses and for depreciation, in case of individuals, supra, § 7, in case of domestic corporations, supra, § 36, in case of foreign corporations, supra, § 41. For additional regulations on this subject, see, supra, § 156. General discussion of deductions for losses and depreciation, infra, §§ 304, 306.

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Where a foreign government has a fiscal agent in the United States for the purpose of paying the interest on its obligations, such fiscal agent will be charged with the duty of withholding and paying the tax on such interest payments, except to the extent of exemption claimed.

Where such foreign countries or corporations have an issue of bonds payable wholly within the United States or within or without the United States, at the option of the owner of the bonds, and where the coupons from such bonds are presented for payment to the fiscal agent in the United States of such foreign countries or corporations, or for collection to a bank or collecting agency whether licensed or not, with ownership certificate attached, then and in all such cases said coupons shall be treated as domestic items and the aforesaid fiscal agents will be charged with the duties and responsibilities of withholding and paying agents, and will make return on Form 1012, as provided by income tax regulations. Where, however, such coupons are not presented with such ownership certificates attached, they shall be received only by a licensed bank or collecting agency, and when so received shall be considered to be and be treated as foreign items, in accordance with the regulations for the collection of foreign income. This ruling is made in explanation and amendment of T. D. No. 1992 and other applicable regulations.[72] (T. D. No. 2006, July 16, 1914.)

§ 167. Taxability of Commissions on Renewal Premiums on Insurance

Commissions on renewal premiums for insurance are income when received and income for the period in which received. Therefore, commissions on renewal premiums received between March 1 and December 31, 1913, are taxable income for

[72] When foreign corporations are subject to income tax, see, supra, § 32. General discussion of subject, infra, § 266. Certificates by foreign organizations engaged in business in the United States and subject to income tax, claiming exemption from collection of tax at the source, supra, § 125. Collection of interest on bonds of foreign corporations payable within the United States, supra, § 157.

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that period and should be included in returns of income for 1913.

Where commissions on renewal premiums received by individuals between March 1 and December 31, 1913 (including commissions on renewal premiums on business written prior to March 1, 1913, and payable and paid subsequent to that date) were not included in returns of income of such individuals for 1913, they should file amended returns and include in such amended returns the amount of said commissions on renewal premiums.

Where returns of annual net income were not made by individuals in receipt of commissions on renewal premiums because of insufficient income to require a return of income, and such showing of insufficient income was caused by the exclusion from the return of said commissions on renewal premiums, such individuals should make and file returns of income and include therein the commissions received by them on renewal premiums within the period from March 1 to December 31, 1913. (T. D. No. 2011, July 28, 1914.)

§ 168. Non-Resident Aliens; Taxable Income; Deductions; Withholding Tax at Source

Article 8, Income Tax Regulations 33, is hereby amended by adding thereto the following:

The person, firm, company, copartnership, corporation, joint-stock company or association, and insurance company in the United States —citizen or resident alien—in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income, of whatever kind, to a nonresident alien, under any contract or otherwise, and which payment shall represent income of a nonresident alien from the exercise of any trade or profession within the United States, shall make return for such nonresident alien on Form 1040 and shall pay any and all tax—normal and additional tax—chargeable upon the said income of such nonresident alien.

So that article 8 as amended shall read:

ART. 8. The income of nonresident aliens subject to the normal tax of 1 per cent shall consist of the total gains, profits, and income derived from all property owned and from every business, trade, or profession carried on within the United States (to be designated

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as gross income), less deductions (1 to 8, inclusive) specifically enumerated in paragraph B of the act (see art. 6), in so far as said deductions relate to said gains, profits, etc.

The specific exemption in paragraph C of the act can not be allowed as a deduction in computing the normal tax of nonresident aliens.

Nonresident aliens are subject to additional or surtax the same as prescribed in the case of citizens of the United States or persons residing in the United States.

The responsible heads, agents, or representatives of said nonresident aliens who are in charge of the property owned or business carried on shall make full and complete return of said income and shall pay the tax as provided herein.

The person, firm, company, copartnership, corporation, joint-stock company or association, and insurance company in the United States —citizen or resident alien—in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income, of whatever kind, to a nonresident alien, under any contract or otherwise, and which payment shall represent income of a nonresident alien from the exercise of any trade or profession within the United States, shall make return for such nonresident alien on Form 1040 and shall pay any and all tax—normal and additional tax—chargeable upon the said income of such nonresident alien.[73] (T. D. No. 2013, August 12, 1914.)

§ 169. Compromise of Penalties for Failure to Make Returns

The fact has been developed that a great number of individuals and corporations failed to make returns of annual net income for the income tax, either through ignorance of the requirements of the law or through a misunderstanding of its requirements, and it has been determined by the Treasury Department to accept offers in compromise of the specific penalty for failure to file returns within the period prescribed by law in a minimum sum, as follows: $5 from individuals, $10 from corporations which are organized for profit.[74]

In the cases of all corporations not organized for profit, the specific penalty will not be asserted this year, provided the

[73] Provisions of the statute as to non-resident aliens, see, supra, §§ 1, 8. Discussion of taxability of income of non-resident aliens, infra, § 257. Interest or dividends from domestic corporations payable to non-resident aliens not taxable, infra, § 171.

[74] Authority of Commissioner of Internal Revenue as to remission or compromise of penalties, see, infra, § 387.

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required return has been or shall be filed before December 31, 1914. The United States district attorney should be requested not to institute proceedings in such cases.

The foregoing applies only to those cases where there was no intent to evade the law or escape taxation.

In all cases, however, wherein a return is not made until the liability to make a return is discovered by investigation of collectors of internal revenue or revenue agents, the above schedule will not necessarily apply, but each individual case will be decided upon its own merits and the amount of the offer in compromise which may be favorably considered will be determined accordingly. (T. D. No. 2015, August 13, 1914.)

§ 170. Inspection of Income-Tax Returns; Executive Order; Regulations

EXECUTIVE ORDER.

Pursuant to the provisions of Section 2 of the Tariff Act of October 3, 1913, said section providing for an income tax, and which contains in paragraph G, sub-paragraph d (Comp. St. 1913, § 6330)[75] the following provision: "When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: Provided, that any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: Provided further, that the proper officers of any state imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to any abstract thereof, showing the name and income of each such corporation, joint stock company, association or insurance company, at such

[75] Text of statute, supra, § 55. Publicity and inspection of returns, see, infra, § 323. Penalty for unlawfully divulging contents of income tax returns, supra, § 59.

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times and in such manner as the Secretary of the Treasury may prescribe," it is hereby ordered, that all such returns shall be subject to inspection in accordance and upon compliance with rules and regulations prescribed by the Secretary of the Treasury and approved by the President, bearing even date herewith. WOODROW WILSON.

The White House, July 28, 1914.

REGULATIONS GOVERNING THE INSPECTION OF RETURNS OF CORPORATIONS, JOINT-STOCK COMPANIES, ASSOCIATIONS, OR INSURANCE COMPANIES, MADE IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 2 OF THE ACT OF OCTOBER 3, 1913. RETURNS OF INDIVIDUALS ARE NOT OPEN TO THE INSPECTION OF ANYONE EXCEPT THE PROPER OFFICERS AND EMPLOYEES OF THE TREASURY DEPARTMENT.

TREASURY DEPARTMENT,
Washington, D. C., July 28, 1914.

Inspection of returns.

By section 2 of the act of October 3, 1913, Congress imposed a tax upon the entire net income arising or accruing from all sources to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States, though not a citizen thereof, and upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere, and upon every corporation, joint-stock company or association, and every insurance company, with certain exceptions, engaged in business in the United States, and prescribed the method of handling the returns of annual net income filed in compliance with said law, as follows:

(d) When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such: Provided, That any and all such returns shall be open to inspection only upon the order

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of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President: *Provided further*, That the proper officers of any State imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint stock company or association or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe.

For the purpose of making effective the legislative intent thus expressed, the President has ordered that such returns shall be open to inspection under the following rules and regulations. The word "corporation," when used alone herein, shall be construed to refer to corporations, joint stock companies or associations, and insurance companies.

1. The return of every individual, and of every corporation, joint stock company or association, and every insurance company, whether foreign or domestic, shall be open to the inspection of the proper officers and employees of the Treasury Department. Returns of individuals shall not be subject to inspection by anyone except the proper officers and employees of the Treasury Department.

2. Where access to any return of any corporation is desired by an officer or employee of any other department of the Government, an application for permission to inspect such return, setting out the reasons therefor, shall be made in writing, signed by the head of the executive department or other Government establishment in which such officer or employee is employed, and transmitted to the Secretary of the Treasury. If the return of a corporation is desired to be used in any legal proceedings other than those to which the United States is a party, or to be used in any manner by which any information contained in the return could be made public, the application for permission to inspect such return or to furnish a certified copy thereof shall be referred to the Attorney General, and if recommended by him transmitted to the Secretary of the Treasury.

3. All returns, whether of persons or of corporations, joint stock companies or associations, or insurance companies, may be furnished, upon approval of the Secretary of the Treasury,

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for use, either in the original or by certified copies thereof, in any legal proceedings before any United States grand jury or in the trial of any cause to which both the United States and the person or corporation or association rendering the return are parties either as plaintiff or defendant, and in the prosecution or defense or trial of which action, or proceeding before a grand jury, such return would constitute material evidence, but in any case arising in the collection of the income tax, the Commissioner of Internal Revenue may furnish for use to the proper officer either the original or certified copies of returns without the approval of the Secretary of the Treasury. In all cases where the use of the original return is necessary, it shall be placed in evidence by the Commissioner of Internal Revenue or by some officer of the Bureau of Internal Revenue designated by him for that purpose, and after such original return has been placed in evidence it shall be returned to the files in the office of the Commissioner of Internal Revenue at Washington, D. C.

4. The Secretary of the Treasury, at his discretion, upon application to him made, setting forth what constitutes a proper showing of cause, may permit inspection of the return of any corporation, by any bona fide stockholder in such corporation. The person desiring to inspect such return shall make application, in writing, to the Secretary of the Treasury, setting forth the reasons why he should be permitted to make such inspection, and shall attach to his application a certificate, signed by the president, or other principal officer, of such corporation, countersigned by the secretary, under the corporate seal of the company, that he is a bona fide stockholder in said company. (Where this certificate can not be secured, other evidence will be considered by the Secretary of the Treasury to determine the fact whether or not the applicant is a bona fide stockholder and, therefore, entitled to inspect the return made by such company.) Upon receipt of such application the corporation whose return it is desired to inspect shall be notified of the facts and shall be given opportunity to state whether

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any legitimate reason exists for refusing permission to inspect its returns of annual net income by the stockholder applying for permission to make such inspection. The privilege of inspecting the return of any corporation is personal to the stockholders, and the permission granted by the Secretary to a stockholder to make such inspection can not be delegated to any other person.

5. The returns of the following corporations shall be open to the inspection of any person upon written application to the Secretary of the Treasury, which application shall set forth briefly and succinctly all facts necessary to enable the Secretary to act upon the request:

(a) The returns of all companies whose stock is listed upon any duly organized and recognized stock exchange within the United States, for the purpose of having its shares dealt in by the public generally.

(b) All corporations whose stock is advertised in the press or offered to the public by the corporation itself for sale. In case of doubt as to whether any company falls within the classification above, the person desiring to see such return should make application, supported by advertisements, prospectus, or such other evidence as he may deem proper to establish the fact that the stock of such corporation is offered for general public sale.

Returns can be inspected only in the office of the Commissioner of Internal Revenue, in Washington, D. C. In no case shall any collector, or any other internal revenue officer outside of the Treasury Department in Washington, permit to be inspected any return or furnish any information whatsoever relative to any return or any information secured by him in his official capacity relating to such return, except in answer to a proper subpœna, in a case to which the United States is a party.

6. Returns of individuals shall not be open to the inspection of any person other than the proper officers and employees of the Treasury Department or person rendering the same, and are under no conditions to be made public, except where such publicity shall result through the use of such returns in any legal proceedings in which the United States is a party.

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7. Upon request of the governor of a State imposing a general income tax, the proper officer of such State, to be designated by name and official position by the governor of such State in his application to the Secretary of the Treasury, may have access to the returns or to abstracts thereof showing the name and income of each corporation, joint stock company or association, or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe. Such application shall be made in writing, addressed to the Secretary of the Treasury, and shall show (first) that the State whose governor makes the request imposes a general income tax; (second) the name and address of each corporation, etc., to which access is desired; (third) why permission to inspect the returns of the corporations, etc., named in the request is desired, and (fourth) what officer or officers are designated to make the desired inspection, giving their names and official designations. Such request must be signed by the governor of the State and sealed with the seal thereof, and shall be transmitted to the Secretary of the Treasury for his consideration and action thereon. No provision is made in the law for furnishing a copy of any return to any person or corporation, and no copy of any return will be furnished to any other than the person or corporation making the return, or their duly constituted attorney, except as hereinbefore authorized. The provisions herein contained shall be effective on and after the 1st day of September, 1914.

W. G. McADOO,
Secretary of the Treasury.

Approved:
WOODROW WILSON,
The White House, July 28, 1914.

(The foregoing order and regulations are embodied in T. D. No. 2016, dated August 18, 1914.)

§ 171. Interest or Dividends from Domestic Corporations Payable to Non-Resident Aliens Not Taxable

Interest on bonds of domestic corporations and dividends on stock of domestic corporations owned by nonresident

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aliens,[76] and whether such bonds and stock be physically located within or without the United States, are not subject to the income tax. (T. D. No. 2017, August 25, 1914.)

§ 172. Indorsement or Stamp on Foreign Coupons, Checks, etc.

Article 58, Income Tax Regulations 33, is hereby amended to read as follows:

ARTICLE 58. The licensed person, firm, or corporation first receiving such foreign items for collection, or otherwise, shall withhold therefrom the normal tax of 1 per cent, and will be held responsible therefor. If the foreign item is in the form of a check or bill of exchange, the words "Income tax withheld by ———" (giving name, address, and date) shall be indorsed or stamped thereon by such licensee; but if the item is represented by a coupon or coupons from bonds, the licensee shall attach thereto a statement identifying the same, and the indorsement or stamp showing the tax withheld shall be placed on the statement instead of the coupon or coupons.

Said indorsement or stamp shall be sufficient evidence of tax withheld to relieve subsequent holders or purchasers from the obligations of withholding. (T. D. No. 2023, October 12, 1914.)

§ 173. Collectors Not to Retain Copies of Returns

To collectors of internal revenue: Referring to article 192 of Regulations No. 33, wherein it is provided that—

Where in any case the collector has reason to believe that any return rendered is false or fraudulent, he will prepare and retain in his office a copy of such return, and will note on the original and under the head of "Remarks" of his assessment list the words "Investigation pending." He will in all such cases make his investigation in the manner prescribed in section 3173, Revised Statutes, and paragraph D of said act of October 3, 1913; and he will report the results of his investigation to the Commissioner of Internal Revenue, referring to the list, folio, and line on which the assessment was reported,

you are informed that inasmuch as these investigations are to be made by the revenue agents' force, the portion of the article of Regulations No. 33 quoted above is hereby annulled.

[76] Provisions of the statute as to non-resident aliens, see supra, §§ 1, 8. Discussion of taxability of income of non-resident aliens, infra, § 257. Regulation with reference to deductions and withholding tax at source, in case of non-resident aliens, supra, § 168.

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Collectors should not under any conditions retain copies of returns in their offices, but when information relative to any return of annual net income filed by any taxpayer is necessary in connection with the assessment and collection of the income tax the same may be secured from the Commissioner of Internal Revenue at Washington. (T. D. No. 2024, October 15, 1914.)

§ 174. Time for Payment of Tax by Persons Absent Abroad

To collectors of internal revenue: In the last sentence of paragraph E of section 2 of the act of October 3, 1913, it is provided:

*** * * And to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector there shall be added the sum of 5 per centum on the amount of tax unpaid, and interest at the rate of 1 per centum per month upon said tax from the time the same becomes due, except from the estates of insane, deceased, or insolvent persons.**

By reason of absence in foreign countries or on account of traveling abroad, it is impossible for many individuals to receive notice and demand on Form 17 and make payment of the taxes assessed thereon so the same can be received by the collector within the 10-day period following June 30 or within the 10-day period following the service of the notice. You are requested, therefore, to enter on Form 17, as the date on which such assessed tax becomes due and payable, as near as possible, a date 10 days subsequent to the time that said notice should be received in the ordinary course of the mails by the taxpayer, and where it appears that the full amount of tax assessed was placed in the mails within the 10-day period after the receipt of Form 17, or in case notice so sent is not delivered in due time by reason of delay in the mail and satisfactory evidence of that fact is furnished, the penalty and interest in such cases will not be collected. In the latter cases, the envelope inclosing the notice and bearing the postmark of the receiving office should be forwarded to the collector and by him transmitted

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to this office with Form 325 as evidence of delay in the delivery of the notice so sent. This ruling applies solely to the collection of income tax from individuals and includes government officers. T. D. 1659 is modified accordingly. (T. D. No. 2028, October 24, 1914.)

§ 175. Designation of Fiscal Year by Corporations

Reference is made to T. D. 2001, relative to the designation by corporations of a fiscal year other than a calendar year as a basis for making returns of annual net income.

You are informed that every corporation amenable to the income-tax law in existence at the close of a calendar year is required to file a return covering all or any part of the preceding calendar year during which it may have been in existence on or before March 1, provided such corporation has not established or does not establish a fiscal year.

In order to establish a fiscal year it is necessary for the corporation to give notice to you in writing designating the last day of some month as the close of its fiscal year. This notice must be filed not less than 30 days prior to March 1 of the year in which the fiscal-year period of 12 months closes. A return for that portion of the calendar year preceding the commencement of the fiscal period of 12 months is required to be filed on or before March 1 of the year next following the calendar year of which it is a part, and the return for the first full fiscal year is required to be filed on or before the last day of the 60-day period following the close of the fiscal year.

Example: A corporation desiring to establish its fiscal year as ending on June 30, 1915, must file notice not less than thirty (30) days prior to March 1, 1915, on or before January 29, 1915. A return for the period January 1 to June 30, 1914, must then be filed on or before March 1, 1915, and a return for the first fiscal year period (July 1, 1914, to June 30, 1915) must be filed on or before August 29, 1915.

That portion of the year preceding the beginning of an established fiscal year is held to be a fractional part of the calendar year, and as the return of a calendar year is not

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required to be filed until on or before the first day of March next following, there is no provision of law whereby the return covering a fraction of a calendar year is required to be filed earlier than "on or before" the next March 1st, though it is preferred that the return for this fraction shall be filed as early as possible after the close of the period.

The above instructions are supplemental to T. D. 2001,[77] and rulings or decisions heretofore issued in conflict with the foregoing are hereby revoked. (T. D. No. 2029, October 24, 1914.)

§ 176. Taxable Status of Dividends Declared by Corporations

Dividends from the net earnings or established surplus created from the net earnings of any corporation, joint-stock company or association, and insurance company are vested in the stockholder on the date on which such dividends are declared, whether distributed or not, and regardless of the time when the surplus or undivided profits from which such dividends are declared were earned and entered on the books of the corporation as such. Dividends so declared should be accounted for in full in the returns of income of individuals for the year in which they became due and payable, whenever the amount of income is sufficient to require the inclusion of dividends, as provided in paragraph D of the income-tax law and T. D. 1945, and should be included in the gross income of corporations, etc., regardless of the amount of income.

All decisions and regulations which are in conflict herewith are hereby revoked. (T. D. No. 2048, November 12, 1914.)

[77] T. D. 2001, above referred to, may be seen at large in § 163, supra. For the text of the statutory provision as to designation of fiscal year, see, supra, § 43. General Treasury regulations on this subject, supra, §§ 112, 163. Time for payment of the tax in such cases, supra, § 53.

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CHAPTER III

UNITED STATES INTERNAL REVENUE REGULATIONS NO. 33 [1]

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[1] These regulations were prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, January 5, 1914, and published in pamphlet form under the general title "Regulations No. 33, United States Internal Revenue." They contain no substantive enactments in addition to those already prescribed, but are intended as a synopsis or digest of the existing regulations, in some cases expressed in simplified language, with a view to giving a complete and easily intelligible view of the administrative features of the law, as so far settled. As officially stated, they "are designed to assist both the taxpayer and the officers charged with its enforcement in complying with the requirements of this law."

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§ 177. Individual Income Returns and Collections

Article 1. Section 2 of the above-named act [Act of Congress of October 3, 1913] imposes a tax of 1 per centum (designated as the normal tax) on net incomes arising or accruing from all sources during the preceding calendar year to—

(a) Every citizen of the United States, whether residing at home or abroad; and

(b) Every person residing in the United States, though not a citizen thereof; and

(c) From all property owned and from every business, trade, or profession carried on in the United States, by a person residing elsewhere.

Art. 2. Said section also imposes an additional tax on all net incomes of individuals exceeding $20,000, as follows:

1 per cent on incomes exceeding $20,000 and not exceeding $50,000.
2 per cent on incomes exceeding $50,000 and not exceeding $75,000.
3 per cent on incomes exceeding $75,000 and not exceeding $100,000.
4 per cent on incomes exceeding $100,000 and not exceeding $250,000.
5 per cent on incomes exceeding $250,000 and not exceeding $500,000.
6 per cent on incomes exceeding $500,000.

Art. 3. The net income shall consist of the total gains, profits, and income derived from all sources (designated as gross income) less deductions numbered first to sixth, inclusive, specifically enumerated in paragraph B of the act. (See article 6.)

In computing the taxable income for the purposes of the normal tax there shall be deducted from the net income as above ascertained:

(a) The amount included in the gross income received as dividends upon the stock or from the net earnings of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income;

(b) The amount of income the tax upon which has been paid or withheld for payment at the source; and

(c) The specific exemption of $3,000 or $4,000, as the case may be, except in the case of nonresident aliens.

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Art. 4. Gross income includes all gains, profits, and income derived from—

(a) Salaries, wages, or compensation for personal service of whatever kind and in whatever form paid.

(b) Professions, vocations, business (including income from copartnerships), trade, commerce, or sales or dealings in property, growing out of the ownership or use of or interest in, real or personal property.

(c) Interest, rent, dividends, securities, or transaction of any lawful business carried on for gain or profit. (See art. 67 as to interest on deposits and certificates of deposit.)

(d) Gains or profits and income derived from any source whatever, including the income from, but not the value of, property acquired by gift, bequest, devise or descent.

The foregoing is held to include all income, gains, and profits arising or accruing from all sources whatever in the calendar year for which the return is made, except as hereinafter specifically stated.

Art. 5. The following items should not be included as gross income:

(a) Value of property acquired by gift, bequest, devise, or descent during the year.

(b) Proceeds of life insurance policies paid upon the death of the person insured to beneficiaries, or payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, but this shall not be construed to mean that interest payments to beneficiaries from insurance companies shall not be included as income.

(c) Income derived from interest upon the obligations of a State or any political subdivision thereof and upon the obligations of the United States or its possessions;

(d) The compensation of the President of the United States in office at the time of the passage of the act of October 3, 1913, during the term for which he was elected, and the judges of the Supreme and inferior courts of the

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United States in office at the time of the passage of the act of October 3, 1913;

(e) The compensation of all officers and employees of a State or any political subdivision thereof, including public-school teachers, etc. When such State officers or employees are compensated by the United States, they must include such income as taxable.

Art. 6. *Deductions and exemptions allowed in computing taxable income for the purposes of the normal tax.*

Under paragraph B the followiug items are to be deducted from the gross income:

1. The amount of necessary expenses actually paid for carrying on business, but not including business expenses of partnerships and not including personal, living, or family expenses.

2. All interest paid within the year on personal indebtedness of the taxpayer incurred in the conduct of business.

3. All National, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits).

4. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck and not compensated for by insurance or otherwise.

5. Debts due to the taxpayer which have been actually ascertained to be worthless and charged off within the year.

6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per cent of the gross value at the mine of the output for the year for which the computation is made, but not including the expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made, nor for any amount paid for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate.

The term "gross value at the mine," as used in paragraphs B and G of section 2 of the act of October 3, 1913, prescribing a limit to the amount which may be deducted in the return of individuals

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and corporations as depreciation in the case of mines, is held to mean the bona fide market value of ore, coal, crude oil, and gas at the mine or well, where such value is established by actual sales at the mine or well; and in case the market value of the product of the mine or well is established at some other place than at the mine or well, or on the basis of the bullion or metallic value of the ore, then the gross value at the mine is held to be the value of the ore, coal, oil, or gas sold, or of the metal produced, less transportation, reduction, and smelting charges.

7. The amount included in gross income received as dividends upon the stock, or upon the net earnings, of any corporation, joint-stock company, association, or insurance company which is taxable upon its net income.

8. The amount of income, the normal tax upon which has been paid or withheld for payment at the source of income.

None of the above items of deduction shall include money or other items of value disposed of by gift, donation, or endowment.

Under paragraph C the personal exemption of $3,000 or $4,000, as the case may be, is to be deducted from the net income except in the cases of nonresident aliens. (See arts. 7, 9, and 10.)

Art. 7. The act provides that the said normal tax shall be computed on the remainder of said net income accruing during each preceding calendar year, and that for the year ended December 31, 1913, said tax shall be computed on the net income accruing from March 1 to December 31, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions authorized. A specific exemption, therefore, of $2,500 or $3,333.33, as the case may be, will be allowed for the year 1913.

Art. 8. The income of nonresident aliens subject to the normal tax of 1 per cent shall consist of the total gains, profits, and income derived from all property owned, and from every business, trade, or profession carried on and capital invested within the United States (to be designated as gross income), less deductions (1 to 8, inclusive) specifically enumerated in paragraph B of the act (see Art. 6), in so far as said deductions relate to said gains, profits, etc.

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The specific exemption in paragraph C of the act can not be allowed as a deduction in computing the normal tax of nonresident aliens.

Nonresident aliens are subject to additional or surtax the same as prescribed in the case of citizens of the United States or persons residing in the United States.

The responsible heads, agents, or representatives of said nonresident aliens who are in charge of the property owned or business carried on or capital invested shall make full and complete return of said income and shall pay the tax as provided herein.

Art. 9. Under paragraph C, every single person and every married person not living with husband or wife in the sense below defined, who has a net income exceeding $3,000 per annum, is liable to pay the normal tax under this law, but in making return for such tax such person may claim an exemption of $3,000 from his or her total net income.

Art. 10. Husband and wife living together are entitled to an exemption of $4,000 only from the aggregate net income of both, which may be deducted in making the return of such income for taxation. However, when the husband and wife are separated and living permanently apart from each other each shall be entitled to an exemption of $3,000.

If the husband and wife not living apart have separate estates, the income from both may be made on one return, but the amount of income of each, and the full name and address of both, must be shown in such return.

The husband, as the head and legal representative of the household and general custodian of its income, should make and render the return of the aggregate income of himself and wife, and for the purpose of levying the income tax it is assumed that he can ascertain the total amount of said income.

If a wife has a separate estate managed by herself as her own separate property and receives an income of $3,-

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000 or over, she may make return of her own income, and if the husband has other net income, making the aggregate of both incomes more than $4,000, the wife's return should be attached to the return of her husband, or his income should be included in her return, in order that a deduction of $4,000 may be made from the aggregate of both incomes. The tax in such case, however, will be imposed only upon so much of the aggregate income of both as shall exceed $4,000.

If either husband or wife separately has an income equal to or in excess of $3,000, a return of annual net income is required under the law, and such return must include the income of both, and in such case the return must be made even though the combined income of both be less than $4,000.

If the aggregate net income of both exceeds $4,000, an annual return of their combined incomes must be made in the manner stated, although neither one separately may have an income of $3,000 per annum. They are jointly and separately liable for such return and for the payment of the tax.

The single or married status of the person claiming the specific exemption shall be determined as of the time of claiming such exemption if such claim be made within the year for which return is made, otherwise the status at the close of the year.

Art. 11. His or her prorata share of the net profits derived from a partnership business, whether or not divided and paid out shall be included in the personal return of each partner.

Art. 12. Partnerships, as such, are not subject to the income tax, and are only required to make return when requested to do so by the Commissioner of Internal Revenue or the collector of internal revenue for the district in which said partnership has its principal place of business; and when a return is required it shall give a complete and correct statement of the gross income of the said partner-

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ship and also a complete statement of the actual expenses of conducting the business of said partnership, and the net profits and the name and address of each member of said partnership, and their respective interest in the net profit thus reported.

Art. 13. The net annual profits of a partnership when divided and paid to the members thereof shall be included by each individual partner receiving same in his annual return of net income, and the tax shall be paid thereon as required by law. When the annual profits of a partnership are not distributed and paid to the members thereof the respective interest of each member in said profits shall be ascertained, and the individuals entitled thereto shall include the said amount in their annual return as a part of their gross income, the same as if said profits had been distributed and paid to them.

Art. 14. Undivided annual net profits of partnerships thus returned by the individual members thereof, and tax paid thereon, shall not, when said profits are actually distributed and paid to such members, be again included in their annual return as a part of their gross income.

Partnerships owning interest coupons or registered interest orders may claim deduction for legitimate expenses incurred in business by filing the proper certificate with the withholding agent. (See article 47.)

§ 178. Returns

Art. 15. Each person of lawful age whose net income is $3,000 or over shall, on or before the 1st day of March, 1914, and on or before the 1st day of March each year thereafter, file an accurate return of income under oath or affirmation, except as herein provided. (See article 8.)

If the person making the return of income has his place of business in the collection district in which he resides, the return shall be filed with the collector of that district. If his principal place of business is elsewhere, the return shall be filed in the district in which that business is located.

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In the case of an individual residing in a foreign country return shall be made to the collector of internal revenue for the district where his principal business is carried on within the United States.

Art. 16. The required return will be made on Form 1040 in accordance with the instructions printed thereon, and will specifically set forth—

1. All income received from each specific source and the total thereof.

2. All the separate items of deduction claimed under paragraph B of this law.

3. The amount of specific exemption claimed under paragraph C.

4. All amounts of income upon which tax has been withheld at source by withholding agent or agents.

Art. 17. When by reason of minority, insanity, absence, sickness, or other disability, the individual is unable to make his own return, the same shall be made by his guardian or duly authorized agent.

In the case of the death of a person whose net income for the part of the year during which he lived was $3,000 or over, return of net income shall be made by the executor or administrator of the estate of the deceased, and in computing the taxable income of such estate there shall be allowed the specific exemption provided by law.

Art. 18. When the required return has not been made by a person acting as guardian, agent of a nonresident alien, or by one acting in any other capacity in which the law makes it a duty for him to represent the individual, notice of failure to make such return will be served upon such guardian or agent.

The person upon whom such notice is served may, however, when the facts warrant, file evidence with the collector showing that the individual for whom he acts did not receive an income subject to tax during the year, or that the said guardian or agent had filed the return with some other collector.

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Art. 19. Any individual whose net income is less than $20,000, for whom full return has been made by others as withholding agents, shall not be required to make a return.

Art. 20. If any person liable to pay an income tax for himself or others shall fail to make and deliver the return required by law, but shall consent to disclose the particulars of any business or occupation liable to pay such tax, it shall be the duty of the collector or deputy collector to make such list or return, which being distinctly read and consented to, signed, and verified by oath or affirmation by the person liable to make such return, the same may be received as the list or return of such person.

Art. 21. In case any person liable to make return shall neglect or refuse to make or render a list or return, or shall render a willfully false or fraudulent return, it shall be the duty of the collector, after due notice has been given, to make such list, according to the best information he can obtain by the examination of such person, or any other evidence.

When duly certified by the collector, the said list thus prepared shall be the return of said person and the tax so ascertained to be due, together with the 50 per cent or 100 per cent penalty incurred, shall be assessed and collected.

Art. 22. The annual return must be verified by oath or affirmation of the person making the same. Collectors are directed by law to require every return to be so verified by the person rendering it. The affidavit may be made before the collector for the district or before any officer authorized by law to administer oaths.

Art. 23. When the return is not filed within the required time by reason of sickness or absence of the individual, an extension of time, not exceeding 30 days from March 1, within which to file such return may be granted by the collector, provided a written application therefor is made by the individual within the period for which such extension is desired.

Art. 24. The annual returns will be forwarded by collectors by registered mail to the Commissioner of Internal Revenue

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with the list for the month in which the returns are filed. Collectors must provide that said returns and all forms relating thereto are securely sealed in envelopes or packages before forwarding the same.

Art. 25. All assessments shall be made by the Commissioner of Internal Revenue, and all persons shall be notified of the amount for which they are respectively liable on or before the 1st day of June of each successive year, and said assessments shall be paid on or before the 30th day of June, except in cases of refusal or neglect to make such return and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained, as provided by the law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment.

To any sum or sums due and unpaid after the 30th day of June in any year, and for 10 days after notice and demand thereof by the collector, there shall be added the sum of 5 per cent on the amount of tax unpaid, and interest at the rate of 1 per cent per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

Art. 26. If any person, corporation, joint-stock company, association, or insurance company liable to make returns or pay tax shall refuse or neglect to make returns at the time or times specified in each year, such person shall be liable to a penalty of not less than $20 nor more than $1,000.

Any person or any officer of any corporation required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by law to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

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Art. 27. Nothing in the law or these regulations shall be construed to release a taxable person from liability for income tax, nor shall any contract entered into after the act of October 3, 1913, took effect be valid in regard to any Federal income tax imposed upon a person liable to such payment.

Art. 28. For regulations relative to the claiming of exemptions and deductions on income, the tax on which is to be deducted and withheld at the source, see article 33.

§ 179. Collections at the Source

Art. 29. The deductions and payment of the tax at the source of income applies only to the normal tax imposed upon individuals and shall not be construed to require any of such tax to be withheld prior to the 1st day of November, 1913.

Art. 30. Paragraph E of section 2 of the act provides that—

All persons, firms, copartnerships, companies, corporations, joint-stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employees of the United States having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock, or from the net earnings of corporations and joint-stock companies or associations subject to like tax, who are required to make and render a return in behalf of another, as provided herein, to the collector of his, her, or its district, are hereby authorized and required to deduct and withhold from such annual gains, profits, and income such sum as will be sufficient to pay the normal tax imposed thereon by this section, and shall pay to the officer of the United States Government authorized to receive the same; and they are each hereby made personally liable for such tax.

Art. 31. All persons, firms, etc., mentioned in the above-quoted paragraph are referred to in these regulations as "debtors" or "withholding agents," and the word "source" is to apply to the place where the income originated and is payable.

Art. 32. The income from which the normal tax of 1 per cent is to be withheld by withholding agents includes all items

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of income exceeding in the aggregate $3,000 and payable to any one person during the year, except:

(a) Dividends on capital stock or from the net earnings of corporations and joint-stock companies or associations and insurance companies subject to like tax.

(b) Income of an individual which is not fixed or certain and not payable at stated periods, or is indefinite or irregular as to amount or time of accrual, shall not be withheld at the source, but shall be listed in the annual return of the individual, and the tax shall be paid thereon by him.

Incomes derived from the following professions and vocations come under this head: Agents compensated on the commission basis, lawyers, doctors, authors, inventors, and other professional persons whose income is irregular and indefinite.

Such persons shall make personal return of all their income, provided their total net income from all sources is $3,000 or over. For example: When a lawyer receives a retainer of $5,000 as a special fee, a deduction therefrom shall not be made by the payer; but when a lawyer receives a retainer of $5,000 per annum, and the exemption claimed is $3,000, $2,000 of such income would be taxed and the tax retained at the source; or if his exemption claimed should be $4,000, $1,000 of such income would be taxed and the tax thereon withheld at the source.

(c) Items listed in article 5, which are wholly exempt from tax.

Art. 33. (a) In all cases where the income tax of a person is withheld and deducted and paid or to be paid at the source, such person shall not receive the benefit of the deduction and exemption allowed in paragraph C (see arts. 9 and 10) except by an application to the collector for refund of the tax unless he shall, not less than 30 days prior to the day on which the return of his income is due, file with the person who is required to withhold and pay tax for him, a certificate claiming the benefit of such exemption, and thereupon no tax shall be withheld upon the amount of such exemption. If any person for the purpose of obtaining any allowance or reduction by virtue of a

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claim for such exemption, either for himself or for any other person, knowingly makes any false statement or false or fraudulent representation, he shall be liable to a penalty of $300.

(b) Nor shall any person under the foregoing conditions be allowed the benefit of any deduction provided for in subsection B (see art. 6, 1 to 6) unless he shall, not less than 30 days prior to the day on which the return of his income is due, either file with the person who is required to withhold and pay tax for him a true and correct return (on Form 1008) of his annual gains, profits, and income from all other sources, and also the deductions asked for, and the showing thus made shall then become a part of the return to be made in his behalf by the person required to withhold and pay the tax and the debtor or withholding agent will only withhold the tax on the payments made in excess of the deductions claimed on said form. Or such person may likewise make application for deductions to the collector of the district in which return is made or to be made for him.

If such person is a minor or an insane person, or is absent from the United States, or is unable owing to serious illness to make the return and application above provided for, the return and application may be made for him or her by the person required to withhold and pay the tax, he making oath on certificate (Form 1009) under the penalties of this act that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him or her, and that the return and application made by him are full and complete.

(c) When, however, claims for exemption and deductions as above described are not filed within the prescribed time, the tax collected in excess can be remitted only on presentation of a claim for refund under the provisions of section 3220, Revised Statutes, said claims to be made either by the withholding agent against whom the assessment was made, or by the person on account of whom such taxes were withheld.

Claims for abatement of taxes erroneously assessed, or which are excessive in amount, may, prior to collection thereof,

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be filed under the provisions of said section 3220, Revised Statutes, either by the withholding agent against whom the assessment was made, or by the persons on account of whom such taxes were withheld.

In the monthly list returns as now prescribed a space is provided to show the amount of taxes which the withholding agent may remit to the collector when such returns are filed. The withholding agents will not, however, forward to the collector amounts withheld by him until notices of assessment are received from the collector.

Claims for exemption and deductions may be filed with the withholding agent and claims for deductions may be filed with the collector, not later than 30 days prior to March 1.

In cases where claims for deductions are filed with the collector within the time prescribed, the collector will immediately furnish the withholding agent (whose name and address must be shown on Form 1008) with a statement of the amount of deductions claimed, and said withholding agent shall not withhold and pay the normal tax to the extent of the deductions claimed as per said list.

Withholding agents should not file their annual returns until after the expiration of the time allowed persons to file claims for exemptions and deductions and if claims for deductions are filed with the collector in the required time, yet not in sufficient time to have the adjustment made by the withholding agent, the collector will make the adjustment on the withholding agent's return and in reporting such withholding agent for assessment will make allowance for the amount of such deductions claimed. Notice of such adjustment, however, must be furnished the withholding agent.

Art. 34. The normal tax of 1 per cent shall be deducted and withheld at the source, and payment made to the collector of internal revenue as provided in the law, by the debtor, or his, her, or its duly appointed agent authorized to make such deduction and payment.

No other person, firm, or organization, in whatever capacity acting, having the receipt, custody, or disposal of any income,

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as herein provided, shall be required to again deduct and withhold the normal tax of 1 per cent thereon, provided that any such person, firm, or organization other than the debtor who has withheld said tax, shall file with the collector of internal revenue for his, her, or its district, a certificate (Form 1006) showing from whom and in what amount the tax has been so withheld.

Art. 35. Withholding agents who are required to make monthly returns will, on or before the 20th day of each month, file with the collector for their respective districts such returns for the preceding month, accompanied by all certificates relating thereto, and there shall also accompany said returns all certificates claiming exemptions and deductions which are not required to be listed thereon; and on or before the 1st day of March in each year said withholding agents shall likewise file their annual returns for the preceding calendar year. Annual returns (Forms 1041 and 1042) must be accompanied by all certificates claiming exemptions and deductions relating thereto.

Art. 36. For regulations as to assessment and collection of taxes from withholding agents, see article 25 and "Assessments and collections," Part 4.

§ 180. Income Derived from Interest Upon Bonds and Mortgages or Deeds of Trust or Other Similar Obligations of Corporations

Art. 37. Under the law a tax of 1 per cent, designated as the normal tax, shall be deducted at "the source," beginning November 1, 1913, from all income accruing and payable to any person subject to such tax which may be derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations, including equipment trust agreements and receivers' certificates of corporations, joint-stock companies or associations, and insurance companies, although such interest does not amount to $3,000.

Income derived from the interest upon the obligations of a State, county, city, or any other political subdivision thereof, and upon the obligations of the United States or its possessions, is not subject to the income tax, and certificates of ownership

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in connection with coupons or registered interest orders for such interest will not be required.

Art. 38. The term "debtor," as hereinafter used, shall apply to all corporations, joint-stock companies or associations, and insurance companies; and such "debtor" may appoint withholding and paying agents to act for it in matters pertaining to the collection of this tax, upon filing with the collector of internal revenue for the district a proper notice of the appointment of such agent or agents. Where such withholding agent is so authorized by the debtor corporation, he may file with the collector of his district the required returns and accompanying certificates (arts. 50 and 51), in which case the assessment of the tax withheld by him will be made in that district. Unless such authority is given, such reports, etc., will be furnished by the debtor corporation to the collector of its district (i. e., the district in which its principal financial or business office is located), where, in such case, assessment will be made.

Art. 39. For the purpose of collecting the tax on all coupons and registered interest originating or payable in the United States, the source shall be the debtor (or its withholding and paying agent in the United States), who shall deduct the tax when same is to be withheld, and no other bank, trust company, banking firm, or individual taking coupons or interest orders for collection, or otherwise, shall withhold the tax thereon, where such coupons or orders for registered interest are accompanied by certificates of ownership signed by the owners of the bonds upon which the interest matured. These certificates shall be made on the prescribed forms and shall be made out by each owner of bonds for the coupons or interest orders for each separate issue of bonds or obligations of each debtor. (See, Arts. 43 and 46.)

Art. 40. Responsible banks, bankers, and collecting agents receiving coupons for collection with the aforesaid certificates of ownership attached, may present the coupons with the attached certificates to the debtor or withholding agent for collection, or such certificates may be detached and forwarded direct to the Commissioner of Internal Revenue, provided such bank,

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banker, or collecting agent shall substitute for such certificates its own certificate, and shall keep a complete record of each transaction, showing—

1. Serial number of item received.
2. Date received.
3. Name and address of person from whom received.
4. Name of debtor corporation.
5. Class of bonds from which coupons were cut.
6. Face amount of coupons.
7. Exemptions from tax claimed by owner under paragraph C.

For the purpose of identification, such substitute certificates should be numbered consecutively, and corresponding numbers given the original certificates of ownership.

The permission here granted will extend to responsible banks, bankers, and collecting agents in foreign countries, through whom collection of such interest coupons is made.

The various substitute certificates hereby authorized will correspond with the form numbers of the ownership certificates detached by the collecting agent, except that the substitute certificates' form numbers will be followed by the letter "a."

Art. 41. A debtor whose bonds may be registered, both as to principal and interest, shall deduct the normal tax of 1 per cent from the accruing interest on all bonds before sending out checks for said interest to registered owners or before paying such interest upon interest orders signed by the registered holders of said bonds unless there shall be filed with said debtor or its fiscal agent (not later than 30 days prior to March 1), through whom said interest is customarily paid, the proper certificates claiming exemption from liability for said tax as herein provided, executed—

By a citizen or resident of the United States, the bona fide owner of the registered obligations, who may claim exemption under paragraph C, section 2, of the income tax law, or

By corporations, joint-stock companies, associations, or insurance companies organized in the United States, or organi-

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zations, associations, fraternities, etc., which are either taxable or exempt from taxation, as provided in paragraph G, subdivision (a), of the act, or

By a bona fide resident and citizen of a foreign country, claiming exemption as such.

Art. 42. If the owners of the bonds are individuals who are citizens or residents of the United States, the aforesaid certificates shall accompany the coupons, or, with respect to the interest on registered bonds, shall be filed with payer of said interest, and such certificates shall describe the bonds and show the amount of coupons attached or the amount of interest due such owners on registered bonds and the name and address of the owners, and if registered in names other than the owners such names with addresses shall also be given. Such certificates shall also show whether the claimants do or do not then claim exemption from taxation at the source, under paragraph C, articles 9 and 10 ($3,000, and under certain conditions $4,000), as to the income represented by such coupons or interest. The certificates will be prepared on Form 1000 and must show the amount, if any, of exemption claimed, the total amount of exemption to which the claimant is entitled and must be signed by the claimants, who shall use their ordinary business signatures. The certificates shall also show the post-office and street address of the claimants, the internal-revenue district, and the date when signed.

Art. 43. Duly authorized agents may sign such certificates for the persons for whom they act, and withholding agents, banks, or others, with whom such certificates are filed, if satisfied as to the identity and responsibility of the persons so signing, shall stamp or write on the face of each such certificate "Satisfied as to identity and responsibility of agent," giving name and address of person thus certifying. Certificates so verified may be accepted by all other persons, firms, or organizations to whom presented, without question as to authority of such agent. If the person, firm, or organization first receiving such certificate is not satisfied as to the agent's identity and responsibility, then, in that event, the agent shall

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furnish evidence of his authority to so act, which will be retained by the person, firm, or organization receiving it, and the certificate of ownership shall be indorsed as above provided.

Art. 44. Whenever interest coupons, accompanied by a certificate of an individual who is a citizen or resident of the United States, are presented to a debtor or its withholding agent for payment, or whenever interest is payable to such individual on a bond registered as to both principal and interest, the debtor or its withholding agents shall deduct and withhold the amount of the normal tax, except to the extent that exemption is claimed in the certificate of ownership (Form 1000).

Where the interest to be paid is registered, the same form of certificate shall be used where exemptions are claimed, and it shall be filed with the debtor at least five days before the due date of such interest.

Art. 45. If the owners of the bonds are corporations, joint-stock companies, associations, or insurance companies organized in the United States, no matter how created or organized, or organizations, associations, fraternities, etc., which are either taxable or exempt from taxation as provided in paragraph G, subdivision (a) of the act, the debtor is not required to withhold or deduct the tax upon income derived from interest on such bonds, provided coupons or orders for interest from such bonds shall be accompanied by a certificate of the owners thereof certifying to such ownership, which certificates shall be filed with the debtor when such coupons or interest orders are presented for payment.

Such certificate will be made on Form 1001, and must be signed in the name of the organization (stating its place of business) by the president, secretary, or some other principal officer of the said corporation or organization duly authorized to sign same, and must be properly dated.

Art. 46. Coupons, or orders for registered interest, payable in the United States, representing the interest on bonds owned by nonresident aliens, must be accompanied by the prescribed certificate (Form 1004), but this certificate may be

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signed either by the owner or, in behalf of the owner, by a reputable bank or bankers or other responsible collecting agency, certifying to the ownership of the bonds and giving the name and address of the bona fide nonresident and alien owners, and when such certificate is thus attached the normal tax of 1 per cent on such coupons or interest orders need not be withheld at the source by the debtor or collecting agency. Unless such proof of foreign ownership is furnished, the normal tax of 1 per cent should be deducted.

Foreign organizations engaged in business within the United States are subject to the normal tax of 1 per cent per annum upon the amount of net income accruing from business transacted and capital invested within the United States; but said organizations shall be exempt from having any part of their income withheld by a debtor or withholding agent, and claim for such exemption will be made on Form 1018.

Art. 47. Inasmuch as individual members of a partnership are liable for income tax upon their respective interest in the net earnings of such partnership, the partnership may file with the withholding agent a notice signed in the name of the partnership, by a member thereof, claiming a deduction of a specific amount on account of the legitimate expense incurred in conducting the business of said partnership; and upon receipt of said notice said withholding agent shall not withhold, and shall not be held liable for, the normal tax on the amount of income equal to the amount of deduction claimed in said notice; but in no event shall the total of the amounts claimed, as provided herein, be in excess of the total amount of the actual legitimate annual expenses incurred by said partnership in the conduct of its business. Application for such deduction shall be made on Form 1011.

Art. 48. Foreign partnerships or firms, all the members of which are both citizens, or subjects, and residents of a foreign country, which are the owners of bonds and mortgages or deeds of trust or other similar obligations, including equipment trust agreements, receivers' certificates, and stocks of corporations, joint-stock companies or associations and insurance

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companies, organized or doing business in the United States, may file with the debtor or withholding agent, with their coupons or orders for registered interest, or orders for other income derived from property or investments in the United States; a certificate and notice of ownership (Form 1016) setting forth the above facts; and the debtor or withholding agent shall not withhold any part of said income.

Art. 49. Where a foreign partnership or firm is composed of both nonresident foreigners and citizens of the United States, or foreigners residing in the United States or its possessions, the certificate of ownership shall show this fact, and the name and legal address of each member of said partnership who is a citizen of the United States, or who is a foreigner residing in the United States or its possessions, shall be given on the back of said certificate, and no part of said income shall be withheld. The said certificate and notice of ownership in either case above provided shall be on Form 1014.

Art. 50. Withholding agents are required to file in duplicate a monthly list return (Form 1012) giving a list of all coupon or interest payments made on which the normal tax of 1 per cent was deducted and withheld from interest payments made upon bonds or other similar obligations, and shall show the name and address in full of the owners of the bonds, amount of the income, amount of exemption claimed, amount of income on which withholding agent is liable for tax, and the amount of tax withheld.

Forms 1012a, 1012b, and 1012c are to be used where Form 1012 does not afford sufficient space in which to enter all items.

Form 1012d, when necessary to be used, shall be made in duplicate and shall be a summary of the monthly list return, Form 1012, as made in detail by the withholding agent, and the said summary and lists thereto attached when properly filled in and the summary signed and sworn to shall constitute the complete monthly list return of the withholding agent making same as fully as if each list attached to the summary was signed and sworn to separately.

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An annual list return (Form 1013) in duplicate is also required to be made by debtors or withholding agents of the normal tax of 1 per cent withheld from interest payments made upon bonds or other similar obligations, and it shall be filed on or before March 1 of each calendar year.

Art. 51. The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by debtors or withholding agents, and the debtor or withholding agent will not be required, in making an annual list return of the tax withheld from income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint-stock companies, or associations and insurance companies, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made.

All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly list returns debtors or withholding agents will enter the name and address of the collecting agent and the number of the substitute certificate issued in lieu of the original certificate containing the name and address of the owner of the bonds. Until the further ruling on this subject by this department no list return is required to be made of certificates of ownership accompanying coupons or registered interest orders filed with a debtor or withholding agent when the owners of the bonds are not subject to having the normal tax withheld at the source, but all such certificates of ownership shall be forwarded by the debtor or withholding agent to the collector of internal revenue for the district, on or before the 20th day of the month succeeding that in which said certificates of ownership were received.

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§ 181. Income Derived From Interest upon Bonds, Mortgages, etc., Paid by First Bank or Collecting Agency when Certificates of Owners are Not Filed

Art. 52. Where the coupons or interest orders are not accompanied by certificates as heretofore prescribed, the first bank, trust company, banking firm, or individual, or collecting agency receiving the coupons or interest orders for collection, or otherwise, shall deduct and withhold the tax and shall attach to such coupons or interest orders its own certificate (Form 1002), giving the name and address of the owner of, or the person presenting such coupons or interest orders if the owner is not known, with a description of the coupons or interest orders; also setting forth the fact that they are withholding the tax upon them; whereupon the debtor shall not again withhold the tax on said coupons or interest orders, but in lieu thereof shall deliver to the Collector of Internal Revenue the certificate of such bank, trust company, etc., which is withholding such tax money.

Any corporation, collecting agency, or person first receiving from the owner any interest coupons or orders for the collection of registered interest should require the persons tendering such coupons or orders for registered interest to satisfactorily establish their identity.

Art. 53. Withholding agents receiving coupons or interest orders not accompanied by certificates of owners are required to file monthly and annual list returns in duplicate.

The required monthly list return (Form 1044) shall give a list of all coupon or interest payments made on which the normal tax of 1 per cent was deducted and withheld and shall show the name and address in full of the owner of, or the person presenting such coupons or interest orders, if the owner is not known, amount of the income subject to tax and the amount of tax withheld.

An annual list return (Form 1044a) is also required to be made by such withholding agents, showing the amount

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of tax withheld during the preceding year on income of this character. This return must be filed on or before the 1st day of March of each calendar year.

The monthly list returns in the form as required herein shall constitute a part of the annual list return to be made, and the withholding agent will not be required, in making an annual list return of the tax thus withheld, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list returns for the year for which annual list return is made.

§ 182. Income Derived From Coupons, Checks or Bills of Exchange on Foreign Bonds, Mortgages, Dividends, etc.

Art. 54. All persons, firms, or corporations undertaking for accommodation or profit (this includes handling either by way of purchase or collection) the collection of coupons, checks, bills of exchange, etc., for or in payment of interest upon bonds issued in foreign countries, and upon foreign mortgages or like obligations, and for any dividends upon stock or interest upon obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, are required by law to obtain a license from the Commissioner of Internal Revenue.

Art. 55. Applications for such license (Form 1017) will be made to the collector for the district in which such business is to be carried on. Upon the acceptance of such application the collector will issue to the applicant without cost a license (Form 1010) which will continue in force until revoked or canceled. Blank forms of such license, bearing the fac simile signature of the Commissioner of Internal Revenue, will be furnished collectors on requisition, who will in all cases countersign the same before issuing it to applicant. Failure to obtain a license or to comply with regulations is punishable by a fine not exceeding $5,000 or imprisonment not exceeding one year, or both, in the discretion of the court.

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Art. 56. Where the collector is not sufficiently informed as to the entire responsibility of the applicant, or where in any case he deems it advisable, the Commissioner of Internal Revenue may upon the recommendation of the collector require of the applicant a bond, in duplicate, with satisfactory sureties, in a penal sum at least equal to the estimated amount of tax to be withheld by such applicant during any one year. A form of bond to be given in such cases will be furnished collectors on application for the same. Where licenses are issued without bond, the collector will each year inquire into and satisfy himself of the financial responsibility of the licensee.

Art. 57. When any person, firm, or corporation shall have branch offices and desire to collect foreign interest or dividend income through said branch offices, the application for license or licenses shall be made by the person, firm, or corporation through its principal office for its branch office or offices. Application for licenses in such cases shall be made to the collector of internal revenue for the district in which the home office is located. The names and addresses of the branch offices shall be furnished to the collector in the application of the said principal, and if the requirements of the foregoing regulations have been complied with to the satisfaction of the collector, he shall certify this fact to the collector of internal revenue for the district in which the branch office is located, and the collector to whom this certification is made shall issue to such branch office a license, as in the case provided in article 55.

Art. 58. The licensed person, firm, or corporation first receiving any such foreign items for collection or otherwise, shall withhold therefrom the normal tax of 1 per cent, and will be held responsible therefor. Such licensee shall indorse or stamp on each such coupon, check, or bill of exchange, when practicable, the words "Income tax withheld by" (giving his or their name, address, and date), which shall be sufficient evidence to relieve subsequent

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holders or purchasers from the duty of also withholding the income tax.

If the size or nature of such coupons, checks, etc., makes it impracticable to make said indorsement thereon, a statement identifying the item on which tax is withheld and bearing said indorsement may be attached thereto with the same effect as if the indorsement was made directly thereon.

Art. 59. Such licensee shall obtain the names and addresses of the persons from whom such items are received and shall prepare a list of same in duplicate (on Form 1043) and file it with the collector of internal revenue for his district not later than the 20th day of the month next succeeding the month in which such items were paid. The list shall be dated, and shall contain the names and addresses of the taxable persons, the character and amount of income, amount of exemption claimed, amount of income on which withholding agent is liable for tax, and the amount of tax withheld. In addition to the monthly lists the licensee will, on or before the 1st day of March in each year, file with the collector in duplicate a return (Form 1043a), showing the amount of income paid and the amount of tax withheld by him during the preceding year and such other information as the form prescribes.

The monthly list return in the form as required herein shall constitute a part of the annual list return to be made by the licensee as withholding agent, and he will not be required, in making an annual list return of the tax withheld from income described in article 54, to again make an itemized list of the amount of tax withheld from each person, but will give in the annual list return the totals of the monthly list return for each month of the year for which annual list return is made.

Art. 60. In the event such coupons, checks, or bills of exchange above mentioned are presented for collection by an individual claiming the benefit of the exemptions allowable under paragraph C (arts. 9 and 10), such individual

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shall be permitted to avail himself of the exemption claimed, upon signing on the form heretofore prescribed for coupons payable in the United States, and no tax shall be deducted for the amount of the exemption so claimed; or if such items are presented by corporations, joint-stock companies, or associations and insurance companies, organized in the United States, the form of certificate heretofore prescribed for such organizations shall be used, and in such instances no tax shall be deducted.

Art. 61. In both instances the licensee first receiving such items shall retain such certificates for delivery with the lists aforesaid, and with respect to said coupons, checks, or bills of exchange, said licensee shall attach thereto (identifying the items) or indorse or stamp thereon the words "Income tax exemption claimed through" (giving name and address of licensee), which shall be sufficient evidence to relieve subsequent holders or purchasers from the duty of also withholding the tax thereon.

The provisions for collection of the tax on foreign obligations herein set forth includes the interest upon all foreign bonds, even though the coupons may, at the option of the holder, be payable in the United States as well as in some foreign country.

Art. 62. All persons licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal-revenue officers.

§ 183. Income Derived From Wages, Rent, Interest, or Other Fixed and Determinable Gains, Profits, and Income

Art. 63. The above title includes all income derived from salaries, wages, rents, royalties, interest, taxable annuities, emoluments, or other fixed and determinable annual gains, profits, and income of another person. ("Income derived from interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, etc.," and "Income derived from coupons, checks, or bills

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of exchange on foreign bonds, mortgages, dividends, etc.," which have been covered by regulations under such titles are not to be included here.)

Art. 64. Copartnerships, companies, corporations, joint-stock companies or associations, insurance companies, in whatever capacity acting, including lessees, mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers and all officers and employees of the United States, hereinafter referred to as "debtors" or withholding agents, having the control, receipt, custody, disposal, or payment of income as described in article 63, shall deduct and withhold from such annual gains, profit, and income, when the same shall have reached an aggregate amount in excess of $3,000, such sum as will be sufficient to pay the normal tax of 1 per cent imposed by law, and shall pay the taxes so withheld to the collector of internal revenue for the district in which the said withholding agent resides or has his, her, or its principal place of business.

Art. 65. A withholding agent who pays monthly, or periodically during the year, interest, rents, salaries, wages, etc., shall not withhold the said tax until such time as the interest, rents, salaries, wages, etc., shall have reached an aggregate amount in excess of $3,000. When such amount has been reached, such agent shall withhold the tax on the whole $3,000 and any excess thereof, unless the person to whom the income is due files a notice claiming exemption under paragraph C (as provided in art. 33 [a]), in which case the withholding agent shall withhold only the tax on the income in excess of said exemption of $3,000 or $4,000 (as the case may be), and the tax so withheld shall be paid as required by law.

Art. 66. In case the person to whom the income is due is entitled to any deductions under paragraph B, he may avail himself of such deductions by filing with the withholding agent Form 1008, as provided in article 33 (b), in which case the

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withholding agent will only withhold the tax on such income in excess of the deductions claimed on said form.

Art. 67. Banks, bankers, trust companies, and other banking institutions receiving deposits of money, are not required to withhold at the source the normal income tax of 1 per cent on interest paid, or accrued, or accruing to depositors, whether on open accounts or on certificates of deposit; but all such interest, whether paid or accrued and unpaid, must be included in the annual income return of the person entitled to receive such interest, whether on open account or on the certificate of deposit.

Art. 68. When a note shall have been given in payment of interest, rents, or other income accruing after March 1, 1913, the maker of the note, as the "debtor" and as the "source" where the income originates, is required, in paying such note, to withhold the normal tax of 1 per cent on the entire amount of the note, if in excess of $3,000, unless claim for exemption or deductions under article 33 (a) or 33 (b) is filed, in which case the said tax shall be withheld only on the amount of said note in excess of the exemption or deductions so claimed.

If any person who has purchased or discounted any such notes omitted, in acquiring them from previous holder, to make a deduction or allowance for said tax, he can look for relief only to the person from whom the notes were obtained, as the "debtor," the maker of said notes, is required to deduct, withhold, and pay to the collector of internal revenue the amount of the normal tax of 1 per cent which may be due thereon.

Art. 69. Withholding agents shall make an annual list return (Form 1042), in duplicate, to the collector of internal revenue for the district in which the withholding agent resides or has his principal place of business on or before the 1st day of March in each year, showing the names and addresses of persons who have received incomes in excess of $3,000, on which the normal tax of 1 per cent has been deducted and withheld during the preceding year. This return must be ac-

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companied by all forms presented claiming exemptions and deductions.

§ 184. Fiduciaries

Art. 70. Guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity hereinafter referred to as fiduciary agents, who hold in trust an estate of another person or persons, shall be designated the "source" for the purpose of collecting the income tax, and by filing notice with other debtors or withholding agents said fiduciary shall be exempt from having any income, due to them as such, withheld for any income tax by any other debtor or withholding agent. Other debtors or withholding agents upon receipt of such notice shall not withhold any part of such income from said fiduciary and will not in such case be held liable for normal tax of 1 per cent due thereon. The form of notice to be filed with the debtor or withholding agent by fiduciary will be on Form 1015. Where such exemption is not claimed, notice thereof on Form 1019 should be filed with the withholding agent.

Art. 71. Fiduciaries shall, on or before March 1, of each year, make and render a return of the income coming into their custody or control and management from each trust or estate when the annual interest of any beneficiary in said trust or estate is in excess of $3,000. This return (Form 1041) must be filed with the collector for the district in which the fiduciary resides or has his principal place of business, and shall contain an itemized statement of the gross income and deductions claimed.

Notice of failure to file return as required shall be served upon the fiduciary. (See art. 18.)

The entries on the first page of Form 1041 in column headed "Amount of income paid or accrued to beneficiaries" should not include their respective shares of income derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, etc., subject to like tax or the income on which the normal tax of 1 per cent has been deducted

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and withheld at the source by the debtor or the prior withholding agent, as these two items of income are treated as deductions in determining the amount of income subject to tax for which the fiduciary as withholding agent has to account.

When the share of any beneficiary, therefore, in the amount stated on line 3 of the first page of said return is in excess of $3,000, return must be made.

Art. 72. As each such fiduciary acts solely in behalf of the beneficiaries of the trust, the annual return required in such cases has reference only to the income accruing and payable through said fiduciary, and not to the income of the beneficiary derived from other sources. If, however, such fiduciary is legally authorized to act for such beneficiary as agent or attorney in fact, he may in such case also make for the beneficiary the personal annual return (Form 1040) required by law.

Art. 73. The annual return of the fiduciary shall contain a list of the name and full address of each beneficiary and the share of said income to which each may be entitled. There must also be entered opposite the name of each beneficiary the amount of exemption, if any, claimed by him, the amount of income on which the fiduciary is liable for tax, and the amount of tax withheld, and the said return shall be signed and sworn to by the fiduciary, if an individual, making same, and his full address must be stated. If the fiduciary is an organization, the return shall be signed and sworn to by the president, secretary, or treasurer of said organization.

Art. 74. Fiduciaries having control of any portion of an annual income accruing during the year, but not distributed or paid to the beneficiaries during the year, shall, in rendering their annual return (Form 1041), give the name and address of each of said beneficiaries having a distributive interest in said income, and shall furnish all information called for in such returns. The fiduciary shall in all such cases withhold and pay to the collector, as provided by law, the normal tax of 1 per cent upon the distributive interest of each of said

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beneficiaries when in excess of $3,000, the same as if said income was actually distributed and paid. Exemption under paragraph C, however, may be claimed by the beneficiary or his legal representative by filing his claim for exemption with the fiduciary agent.

Art. 75. When the normal tax on undivided annual net income has been so withheld, such tax shall not be again withheld when such portion of the income is actually distributed and paid to said beneficiary.

§ 185. Relating to the Income Tax on Corporations, Joint-Stock Companies or Associations, and Insurance Companies

Art. 76. Under the provisions of sections 2 and 4 of the act of October 3, 1913, every corporation, joint-stock company or association, and every insurance company organized in the United States, no matter how created or organized, except those specifically exempted, shall be subject to pay annually an income tax of 1 per centum per annum upon the entire net income arising or accruing from all sources during the preceding calendar or fiscal year, as the case may be. Certain exceptions as to taxability will be noted specifically hereinafter.

Art. 77. A similar tax shall be levied, assessed against, and paid annually by corporations, joint-stock companies or associations, and insurance companies organized, authorized, or existing under the laws of any foreign country upon the amount of net income accruing from business transacted and capital invested within the United States during such year.

Art. 78. "Corporation" or "corporations," as used in these regulations, shall be construed to include all corporations, joint-stock companies or associations, and all insurance companies coming within the terms of the law, and such organizations will hereinafter be referred to as "corporations."

Art. 79. It is immaterial how such corporations are created or organized. The terms "joint-stock companies" or "associations" shall include associates, real estate trusts, or by whatever name known, which carry on or do business in an

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organized capacity, whether organized under and pursuant to State laws, trust agreements, declarations of trusts, or otherwise, the net income of which, if any, is distributed, or distributable, among the members or share owners on the basis of the capital stock which each holds, or, where there is no capital stock, on the basis of the proportionate share of capital which each has invested in the business or property of the organization, all of which joint-stock companies or associations shall, in their organized capacity, be subject to the tax imposed by this act.

Art. 80. Every corporation not specifically enumerated as exempt shall make the return of annual net income required by law whether or not it may have any income liable to tax, or whether or not it shall be subordinate to or controlled by another corporation. Mutual telephone companies, mutual insurance companies, and like organizations, although local in character, and whose income consists largely from assessments, dues, and fees paid by members, do not come within the class of corporations specifically enumerated as exempt. Their status under the law is not dependent upon whether they are or are not organized for profit. Not coming within the statutory exemption, all organizations of this character will be required to make returns of annual net income, and pay any income tax thereby shown to be due. For this purpose the surplus of receipts of the year over expenses will constitute the net income upon which the tax will be assessed.

A railroad or other corporation which has leased its properties in consideration of a rental equivalent to a certain rate of dividends on its outstanding capital stock and the interest on the bonded indebtedness, and such rental is paid by the lessee directly to the stock and bond holders, should, nevertheless, make a return of annual net income showing the rental so paid as having been received by the corporation.

Art. 81. A railroad company operating leased or purchased lines shall include all receipts derived therefrom, and, if bonded indebtedness of such lines has been assumed, such operating company may deduct the interest paid thereon to

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an amount not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year.

Art. 82. Corporations operating leased lines should not include the capital stock of the lessor corporations in their own statement of capital stock outstanding at the close of the year. The indebtedness of such lessor corporations should not be included in the statement of the indebtedness of the lessee unless the lessee has assumed the same. Each leased or subsidiary company will make its own separate return, accounting for therein all income which it may have received by way of dividends, rentals, interest, or from any other source.

Art. 83. A foreign corporation having several branch offices in the United States should designate one of such branches as its principal office and should also designate the proper officers to make the required return.

Art. 84. A corporation organized during the year should render a sworn return on the prescribed form, covering that portion of the year (calendar or fiscal) during which it was engaged in business or had an income accruing to it.

Art. 85. Corporations going into liquidation during any tax period may, at the time of such liquidation, prepare a "final return" covering the income received or accrued to them during the fractional part of the year during which they were engaged in business, and immediately file the same with the collector of the district in which the corporations have their principal places of business.

Art. 86. Limited partnerships are held to be corporations within the meaning of this act and these regulations, and in their organized capacity are subject to the income tax as corporations.

Art. 87. The act specifically enumerates and exempts from its provisions and requirements labor, agricultural, or horticultural organizations, mutual savings banks not having a capital stock represented by shares, fraternal beneficiary societies, orders, or associations operating under the lodge system, or for the exclusive benefit of the members of a fraternity

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itself operating under the lodge system, and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations, and dependents of such members, domestic building and loan associations, cemetery companies organized and operated exclusively for the mutual benefit of their members, any and all corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of whose net income inures to the benefit of any private stockholder or individual, business leagues, chambers of commerce, or boards of trade not organized for profit, no part of the net income of which inures to the benefit of the private stockholder or individual, and civic leagues or similar organizations not organized for profit, but operated exclusively for the promotion of social welfare.

Domestic building and loan associations are among those enumerated as exempt from the requirements of the law. A domestic building and loan association is held to be one organized under and pursuant to the laws of the United States, or of a State or Territory thereof, or under the laws applicable to Alaska or the District of Columbia. Mutuality in operation and in the distribution of profits and benefits is essential to exemption. Therefore, in order to come within the exempted class such associations must not only be "Domestic," as defined, but they must be organized and operated exclusively for the mutual benefit of the members; that is, all the profits and benefits provided for in the articles of association and by-laws must be ratably distributed among all members regardless of the kind of stock held, according to the amount of money they have on deposit. An association issuing different classes of stock upon which different rates of interest or dividends are guaranteed or paid, does not come within the exempted class.

Art. 88. All corporations and all beneficiary societies enumerated above shall by affidavit, or otherwise, at the request of the collector or Commissioner of Internal Revenue, establish their right to the exemption provided, in which case it

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will not be sufficient to merely declare that they are exempt, but they must show the character and purpose of the organization, the manner of distributing the net income, if any, or that none of the net income inures to the benefit of any private stockholder or individual. In the absence of such a showing, such organizations may, at any time, be required to make returns of annual net income or disclose their books of account to a revenue officer for examination in order that the status of the company may be determined.

Art. 89. A society or association "operating under the lodge system" is considered to be one organized under a charter, with properly appointed or elected officers, with an adopted ritual or ceremonial, holding meetings at stated intervals, and supported by fees, dues, or assessments.

Art. 90. Cemetery companies organized and operated exclusively for the mutual benefit of their members are exempt. The provisions of the law clearly indicate that companies which operate cemeteries for profit are liable to the tax. The status of cemetery associations under the law will, therefore, depend upon the character and purpose of the organization and what disposition is made of the income.

Art. 91. Any corporation, concerning whose status under the law there is any doubt, or which does not clearly come within one or another of the classes of those specifically enumerated as exempt, should file a return (in blank if desired) and attach thereto a statement setting out fully the nature and purpose of the organization, the source of its income, and what disposition is made of it, and particularly of any surplus.

Art. 92. Cooperative dairies not issuing stock and allowing patrons dividends based on butter fat in milk furnished are not liable. In such case the "dividends" are the purchase price of the raw material furnished.

Art. 93. The income derived from any public utility or from the exercise of any essential governmental function, which income accrues to any State, Territory, the District of Columbia, or any political subdivision of a State, Territory, or the District of Columbia, and any income accruing to the gov-

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ernment of the Philippine Islands, or to Porto Rico, shall not be subject to the tax imposed by this act. In cases wherein any State, Territory, or the District of Columbia, or any political subdivision of a State, or Territory, shall have, prior to the passage of this act, contracted in good faith with any person or corporation to acquire, construct, operate, or maintain a public utility, no income tax pursuant to this act shall be levied upon the income derived from the operation of such public utility, so far as the assessment and payment of such tax will impose a loss or burden upon such State, Territory, District of Columbia, or political subdivision. But the person or corporation is not relieved from the payment of the tax upon that portion of the income accruing to him, or it, under such contract.

Art. 94. Ordinary copartnerships are not, as such, subject to the tax imposed by this act, but the individual members of any such partnership are liable for income tax only in their individual capacity on their respective shares of the earnings of such partnership, whether such earnings be distributed or not.

Art. 95. Full amount of stock, as represented by the par value of the shares issued, is to be regarded as the paid-up capital stock, except when such stock is assessable on account of deferred payments, or payable in installments, in which case the amount actually paid on such shares will constitute the actual paid-up capital stock of the corporation.

Art. 96. The following definitions and rules are given for determining the gross income of various classes of corporations:

Gross income of banks and other financial institutions consists of the total revenue derived from the operation of the business, including income, gains, or profits from all other sources, as shown by the entries on the books of account, within the calendar or fiscal year for which the return is made.

Art. 97. Gross income of insurance companies consists of the total revenue derived from the operation of the

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business, including income, gains, or profits from all other sources, as shown by the entries on the books of account within the calendar or fiscal year for which the return is made, except as modified by the express exemptions of the articles which apply to mutual fire, mutual marine, and life insurance companies.

Art. 98. Mutual fire insurance companies, which require their members to make premium deposits to provide for losses and expenses, shall not return as gross income any portion of the premium deposits returned to their policyholders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves.

Art. 99. Mutual marine insurance companies may include in their deductions from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof, such amounts and interest having been included in gross income.

Art. 100. Life insurance companies are authorized to omit from gross income such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to the policyholder or treated as an abatement of his premium. In so far as "deferred dividends" payable at a stated period represent "a portion of any actual premium received," such deferred dividends may be included in the amounts to be omitted from gross income for the year in which they were actually paid back, credited to the policyholder, or applied as an abatement of premium. In the case of dividends credited or apportioned annually to the policyholder, only the aggregate amount so actually credited or apportioned during the premium-paying period, and not any accretions thereto, can be excluded from gross income. In the case of whole-life or five-year

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distribution policies, deferred dividends may be excluded from gross income to the extent that they are paid back, or credited to the insured, or used as an abatement of his annual premiums.

Art. 101. Gross income of insurance companies, as defined above, will include net premium income as reported to the State insurance departments, except the foregoing items specifically exempted in the act, and, in the case of life insurance companies, surrender values applied in any manner, consideration for supplementary contracts involving and not involving life contingencies, and all other income, gains, or profit as shown by the books of account.

Art. 102. Applied surrender values and consideration for supplementary contracts not involving life contingencies included in income will, of course, be deducted as payments under policy contracts, but for convenience in verifying the returns, these items should appear in the return in both gross income and deductions.

Art. 103. All insurance companies should include and attach to their returns a supplementary statement showing, for life companies, the aggregate of items "of such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder within such year;" in the case of mutual fire insurance companies a statement showing "any portion of the premium deposits returned to their policyholders;" and in the case of mutual marine companies "amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment thereof and the payment thereof," which are, or may be, omitted from gross income. (For authorized deductions, on account of losses, etc., see Arts. 113 and 147.)

Art. 104. Gross income of manufacturing companies shall consist of the total sales of manufactured goods during the year covered by the return, increased or decreased

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by the gain or loss as shown by the inventories of finished and unfinished products, raw material, etc., at the beginning and end of the year. To this amount should be added the income, gains, or profits from all other sources as shown by the books of account.

Art. 105. Gross income of mercantile companies shall include the total merchandise sales during the year, increased or decreased by the gain or loss as shown by the inventories of merchandise at the beginning and end of the year for which the return is made; to this amount should be added the income, gains, or profits derived from all other sources as shown by the books of account.

Art. 106. Gross income of miscellaneous corporations consists of the total revenue derived from the operation and management of the business and property of the corporation making the return, together with all amounts of income, including the income, gains, or profits from all other sources as shown by the books of account.

Art. 107. It will be noted from these definitions that the gross income embraces not only the operating revenues, but also income, gains, or profits from all other sources, such as rentals, royalties, interest, and dividends from stock owned in other corporations, and appreciation in values of assets, if taken up on the books of account as gain; also profits made from the sale of assets, investments, etc.

Art. 108. For the purpose of determining the income resulting from the sale of capital assets and the amount to be accounted for as income under this act, there shall be included any and all profit resulting from such sale and which may be apportioned to the period during which the corporation tax law (sec. 38, act of Aug. 5, 1909) was in force and effect, which was not returned as income during that period.

Art. 109. In ascertaining net income derived from the sale of capital assets, if such assets were acquired subsequent to January 1, 1909, the difference between the

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selling price and the buying price shall constitute an item to be added to or subtracted from gross income according to whether the selling price was greater or less than the buying price. If the capital assets were acquired prior to January 1, 1909, the amount of profit or loss representing the difference between the selling and buying price is to be prorated to determine the proportion of the gain or loss arising subsequent to January 1, 1909, and the proportionate part belonging to the years subsequent to January 1, 1909, shall be added to or deducted from the gross income for the year in which the sale was made.

Art. 110. For the purpose of determining the profit or loss arising from the sale of such assets, there shall be added to the price actually realized from the sale any amount which has heretofore been set aside and deducted from gross income by way of depreciation since January 1, 1909, which has not been paid out in making good such depreciation on the property sold.

Art. 111. In the case of changes in book values of capital assets resulting from a reappraisal of property, the consequent gains or losses shall be computed for the return in the manner prescribed above in the case of the sale of capital assets.

In cases wherein there is an annual adjustment of book values of securities, real estate and like assets, and the increases and decreases in values, thus indicated, are taken up on the books and reflected in the profit and loss account, such readjusted values will be taken into account in making the return of annual net income and no prorating will be required. If such adjustment had been made annually prior to March 1, 1913, the book value of the assets at that date will be taken as the basis for determining gain or loss resulting from subsequent sale, maturity, or adjustment. The adjustment referred to will comprehend assets which have increased in value as well as those which have decreased.

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Art. 112. Where a corporation is engaged in carrying on more than one class of business, gross income derived from the different classes of business shall be ascertained according to the definitions above, and which are applicable thereto.

Art. 113. The net income shall be ascertained by deducting from the gross amount of the income of such corporation received within the year from all sources:

First. All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property.

Second. All losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation by use, wear and tear of property, if any, and in the case of mines, a reasonable allowance for depletion of ores and all natural deposits, not to exceed 5 per centum of the gross value at the mine of the output for the year for which the computation is made; and in the case of insurance companies, the net addition, if any, required by law to be made within the year to reserve funds, and the sums other than dividends paid within the year on policy and annuity contracts, except as provided in the cases of mutual fire, mutual marine, and life insurance companies.

Third. The amount of interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, on the amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year: *Provided,* That in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint-stock company, or association,

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the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business: *Provided further,* That in the case of bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed; and in the case of a bank, banking association, loan, or trust company, interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan, or trust company.

Fourth. All sums paid within the year for taxes imposed under the authority of the United States, or any State or Territory thereof, or imposed by the government of any foreign country.

Art. 114. Expenses of operation and maintenance shall include all expenditures for material, labor, fuel, and other items entering into the cost of the goods sold or inventoried at the end of the year, and all other expenses incurred in the operation of the business except such as are required by the act to be segregated in the return.

Art. 115. The cost of erecting permanent buildings on ground leased by a company is a proper deduction as a rental charge, provided such buildings are left on the ground at the expiration of the lease as a part of the rental payment. In such case the cost will be prorated according to the number of years constituting the term of the lease and the annual deduction will be made accordingly.

Art. 116. General expenses, such as coal, ship stores, etc., of foreign steamship companies, shall be prorated as provided in the act for interest deductions in the case of foreign corporations.

Art. 117. Commissions allowed salesmen, paid in stock, may be deducted as expense if so charged on books at the actual value of such stock.

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Art. 118. Amounts expended in additions and betterments which constitute an increase in capital investment are not a proper deduction.

Art. 119. Amounts paid as compensation or additional compensation to officers or employees, which amounts are based upon the stockholdings of such officers or employees, are held to be dividends, and although paid in lieu of salaries or wages, are not allowable deductions from gross income, for the reason that dividends are not deductible.

Art. 120. Amounts paid for pensions to retired employees, or to their families, or others dependent upon them, or on account of injuries received by employees, are proper deductions as "ordinary and necessary expenses"; gifts or gratuities to employees in the service of a corporation are not properly deductible in ascertaining net income.

Art. 121. Donations made for purposes connected with the operation of the property when limited to charitable institutions, hospitals, or educational institutions, conducted for the benefit of its employees, or their dependents, shall be a proper deduction for ordinary and necessary expenses.

Art. 122. Funds set aside by a corporation for insuring its own property are not a proper deduction, but any loss actually sustained and charged to such fund may be deducted.

Art. 123. In ascertaining expenses proper to be included in the deductions to be made under the item of "Expenses," corporations carrying materials and supplies on hand for use should include in such expenses the charges for materials and supplies only to the amount that the same are actually disbursed and used in operation and maintenance during the year for which the return is made.

Art. 124. The deduction for losses must be losses actually sustained during the year and not compensated by insurance or otherwise. It must be based upon the difference between the cost value and salvage value of property or assets, including in the latter value such amount, if any, as has, in the current or previous years, been set aside and deducted from gross

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income by way of depreciation, as elsewhere defined, and has not been paid out in making good such depreciation.

Art. 125. Bad debts, if so charged off the company's books, during the year, are proper deductions. But such debts, if subsequently collected, must be treated as income.

Art. 126. Reserves to take care of anticipated or probable losses are not a proper deduction from gross income.

Art. 127. Loss due to voluntary removal of buildings, etc., incident to improvements is either a proper charge to the cost of new additions or to depreciation already provided, as the facts may indicate, but in no case is it a proper deduction in determining net income, except as it may be reflected in the reasonable amount allowable as a deduction for depreciation of the new building. Any loss claimed because of the voluntary removal of a building is presumed to have been covered by previous depreciation charges; otherwise the amount of such loss will constitute a part of the cost of the new building.

Art. 128. All losses claimed arising from sale of capital assets should be arrived at in the manner prescribed in article 109, defining gains arising from sale of capital assets.

Art. 129. The deduction for depreciation should be the estimated amount of the loss, accrued during the year to which the return relates, in the value of the property in respect of which such deduction is claimed, that arises from exhaustion, wear and tear, or obsolescence out of the uses to which the property is put, and which loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation. This estimate should be formed upon the assumed life of the property, its cost, and its use. Expenses paid in any one year in making good exhaustion, wear and tear, or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expense of maintenance and operation of the property, but must be made out of accumulated allowances, deducted for depreciation in current and previous years.

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Art. 130. The depreciation allowance, to be deductible, must be, as nearly as possible, the measure of the loss due to wear and tear, exhaustion, and obsolescence, and should be so entered on the books as to constitute a liability against the assets of the company, and must be reflected in the annual balance sheet of the company. The annual allowance deductible on this account should be such an amount as that the aggregate of the annual allowances deducted during the life of the property, with respect to which it is claimed, will not, when the property is worn out, exhausted, or obsolete, exceed its original cost.

Art. 131. Incidental repairs which neither add to the value of the property nor appreciably prolong its life, but keep it in an operating condition, may be deducted as expenses.

Art. 132. Depreciation set up on the books and deducted from gross income can not be used for any purpose other than making good the loss sustained by reason of the wear and tear, exhaustion, or obsolescence of the property with respect to which it was claimed. If it develops that an amount has been reserved or deducted in excess of the loss by depreciation, the excess shall be restored to income and so accounted for.

Art. 133. If any portion of the depreciation set up is diverted to any purpose other than making good the loss sustained by reason of depreciation, the income account for the year in which such diversion takes place must be correspondingly increased.

Art. 134. Depreciation in book values of capital assets shall be treated in the return in the manner prescribed in the case of loss from the sale of capital assets (art. 109), but amounts arbitrarily charged off will not be allowed as deductions except so far as they represent an actual shrinkage in values which may be determined to have taken place during the year for which the return is made.

Art. 135. Where a corporation holds bonds which were purchased at a rate above par and said corporation shall proportionately reduce the value of those bonds on its books each year so that the book value shall be the redemption value of

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the bonds when such bonds become due and payable, the return of annual net income of the corporation holding such bonds may show the depreciation on account of amortization of such bonds. The requirement is, however, that the amount carried to the amortization account each year shall be equitably proportioned with respect to the difference between the purchase price and the maturing value and the number of years to elapse until the bonds become due and payable. With respect to bond issues where such bonds are disposed of for a price less than par and are redeemable at par, it is also held that because of the fact that such bonds must be redeemed at their face value, the loss sustained by reason of their sale for less than their face value may be prorated by the issuing corporation in accordance with the life of the bond.

Art. 136. "Good will" represents the value attached to a business over and above the value of the physical property, and is such an entirely intangible asset that no claim for depreciation in connection therewith can be allowed.

Art. 137. An allowance for depreciation of patents will be made on the following basis:

The deduction claimed for exhaustion of the capital assets as represented by patents to be made in the return of annual net income of a corporation for any given year shall be one-seventeenth of the actual cost of such patents reduced to a cash basis. Where the patent has been secured from the Government by a corporation itself, its cost would be represented by the various Government fees, cost of drawings, experimental models, attorneys' fees, etc. Where the patent has been purchased by the corporation for a cash consideration, the amount would represent the cost. Where the corporation has purchased a patent and made payment therefor in stocks or other securities, the actual cash value of such stocks or other securities at the time of the purchase will represent the cost of the patent to the corporation.

Art. 138. With respect to the depreciation of patents, one-seventeenth of the cost is allowable as a proper deduction each year until the cost of the patent has been returned to the cor-

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poration. Where the value of a patent has disappeared through obsolescence or any other cause and the fact has been established that the patent is valueless, the unreturned cash investment remaining in the patent may be claimed as a total loss and be deducted from gross income in the return of annual net income for the year during which the facts as to obsolescence or loss shall be established, such unreturned cash value to be fixed in accordance with the proportion that the number of years which the patent still has to run bears to the full patent period of 17 years.

Art. 139. Corporations owning tracts of timber lands and removing therefrom and selling, or otherwise disposing of the timber will be permitted to deduct from their gross income on account of depreciation or depletion an amount representing the original cost of such timber, plus any carrying charges that may have been capitalized or not deducted from income. The purpose of the depreciation or depletion deduction is to secure to the corporation, when the timber has been exhausted, an aggregate amount which, plus the salvage value of the land, will equal the capital actually invested in such timber and land.

Art. 140. When an amount sufficient to return this capital has been secured through annual depreciation deductions no further deduction on this account shall be allowed. For the purpose of increasing the deduction on this account no arbitrary increase in values shall be made, unless such increase in value shall be returned as income for the year in which the increase in value was taken up on the books.

Art. 141. The depreciation of coal, iron, oil, gas, and all other natural deposits must be based upon the actual cost of the properties containing such deposits. In no case shall the annual deduction on this account exceed 5 per cent. of the gross value at the mine (well, etc.) of the output for the year for which the computation is made.

Art. 142. The term "gross value at the mine," as used in paragraphs B and G of section 2 of the act of October 3, 1913, prescribing a limit to the amount which may be deducted in

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the return of individuals and corporations as depreciation in the case of mines, is held to mean the market value of ore, coal, crude oil, and gas at the mine or well, where such value is established by actual sales at the mine or well; and in case the market value of the product of the mine or well is established at some place other than at the mine or well, or on the basis of the bullion or metallic value of the ore, then the gross value at the mine is held to be the value of the ore, coal, oil, or gas sold, or of the metal produced, less transportation, reduction, and smelting charges.

If the rate of 5 per cent per annum shall return to the corporation its capital investment prior to the exhaustion of the deposits, the rate on which the annual deduction for depletion of deposits is based must be lowered in accordance with the estimated number of years it will take to exhaust the estimated reserves.

In case the reserves shall be in excess of the estimates, no further deduction on account of depletion shall be made where the capital investment has been returned to the corporation.

Art. 143. In addition to the deduction to measure the loss due to depletion, the corporation will be allowed the usual depreciation of its machinery, equipment, etc., such depreciation to be determined on the basis of the cost and estimated life of the property with respect to which the depreciation is claimed.

Art. 144. Corporations leasing oil or gas territory shall base their depletion deduction upon the cost of the lease, and not upon the estimated value, in place, of the oil or gas.

Art. 145. Corporations operating mines (including oil or gas wells) upon a royalty basis only can not claim depreciation because of the exhaustion of the deposits.

Art. 146. Unearned increment will not be considered in fixing the value on which depreciation shall be based.

Art. 147. (a) Under item 5 (a) of the return form, the insurance company may take credit for all losses actually sustained during the year and not compensated by insurance or otherwise, including losses resulting from the sale or maturity

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of securities or other assets, as well as decreases by adjustment of book values of securities, in so far as such decreases represent actual declines in values which have taken place during the year for which the return is made; also losses from agency balances, or other accounts, charged off as worthless; losses by defalcation; premium notes voided by lapse, when such notes shall have been included in gross income. This item will not, however, include payments on policy contracts.

(b) In this item may be deducted actual losses sustained within the year by reason of the depreciation of property, which shall have been so entered on the books of the company as to constitute a liability against its assets. An arbitrary depreciation deduction claimed in the return, but not evidenced by book entry, cannot be allowed.

(c) In this item credit will be taken for all death, disability, or other policy claims, including fire, accident, and liability losses, matured endowments, annuities, payments on installment policies, surrender values, and all claims actually paid under the terms of policy contracts. Salvage need not be included in gross income if deducted in ascertaining the net amount paid for losses under policy contracts. Reserves covering liabilities for losses incurred, reported, resisted, adjusted or unadjusted but not paid, cannot be deducted from gross income under this or any other item of the return.

(d) The reserve funds of insurance companies to be considered in computing the deductible net addition to reserve funds are held to include only the reinsurance reserve and the reserve for supplementary contracts required by law in the case of life insurance companies, the unearned premium reserves required by law in the case of fire, marine, accident, liability, and other insurance companies, and only such other reserves as are specifically required by the statutes of a State within which the company making the return is doing business. The reserves used in computing the net addition must not include the reserve on any policies the premiums on which have not been accounted for in gross income. For the purpose of this deduction, the net addition is the excess of the reserve

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at the end of the year over that at the beginning of the year and may be based upon the highest authorized reserve required by any State in which the company making the return does business.

In the case of assessment insurance companies, the actual deposits of sums with the State or Territorial officers pursuant to law, as additions to guaranty or reserve funds, shall be treated as payments required by law to reserve funds.

Mutual marine insurance companies will deduct under item 5 (e) amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof.

Art. 148. The amount of interest accrued and paid within the year by a corporation on an amount of bonded or other indebtedness not in excess of one-half of the sum of the interest-bearing indebtedness and the paid-up capital stock outstanding at the close of the year, or, if no capital stock, on the amount of interest-bearing indebtedness not exceeding the amount of capital employed in the business at the close of the year, constitutes an allowable deduction; that is, the maximum principal, upon which interest for the purpose of this deduction, can be computed must not exceed, in the one case, one-half of the sum of the interest-bearing indebtedness and the capital stock outstanding at the close of the year, or, in the other case, must not exceed the amount of capital employed in the business at the close of the year. The interest to be deductible must have been computed on the proper principal at the contract rate and must have been actually paid within the year.

Interest paid pursuant to contract on an indebtedness secured by mortgage on real estate occupied and used by a corporation, in which real estate the corporation has no equity or to which it is not taking title is an allowable deduction from gross income as a rental charge, payment of which is required to be made as a condition to the continued use and possession of the property. If, however, the corporation has an equity in or is purchasing for its own use the real estate upon which such

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mortgage is a prior lien, the indebtedness will be held to be indebtedness of the corporation within the meaning of the law and the interest paid on such mortgage will be deductible only to the extent that it, with interest on other obligations of the corporation, is within the limit fixed by the act.

Art. 149. In the case of banks and banking associations, loan or trust companies, interest paid within the year on deposits, or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company, may be allowably deducted from the gross income of such corporations.

Art. 150. Interest paid on indebtedness, wholly secured by collateral the subject of sale in ordinary business of such corporations, is also deductible to the full amount of such interest paid. This contemplates that the entire interest received on the collateral securing such indebtedness shall be included in the gross income returned.

Art. 151. Interest on bonded or other indebtedness bearing different rates of interest may be deducted from gross income during the year, provided the aggregate amount of such indebtedness on which the interest is paid does not exceed the limit prescribed by law, and in case the indebtedness is in excess of the amount on which interest may be legally deducted the indebtedness bearing the highest rate may be first considered in computing the interest deduction and the balance, if any, will be computed upon the indebtedness bearing the next lower rate actually paid, and so on until interest on the maximum principal allowed has been computed.

Art. 152. All sums paid within the year for taxes imposed under the authority of the United States or of any State or Territory thereof, or imposed by the government of any foreign country, are deductible from gross income.

Art. 153. Taxes paid for local benefits are not deductible. Taxes paid by a corporation pursuant to a contract guaranteeing that the interest payable on its bonds or other indebtedness shall be free from taxation are not deductible.

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Art. 154. Banks paying taxes assessed against their stockholders because of their ownership of the shares of stock issued by such banks cannot deduct the amount of taxes so paid in making their return for the income tax imposed by this act unless specially authorized to do so by the laws of the State in which they do business. The shares of stock are the property of the stockholders, and such holders are primarily liable for the tax.

Art. 155. Import duties or taxes are not deductible under the item of taxes paid during the year, but should be included in arriving at the cost of goods under item No. 4 (expenses).

Art. 156. Reserves for taxes cannot be allowed, as the law specifically provides that only such sums as are paid within the year for taxes shall be deducted.

Art. 157. Foreign corporations shall be subject to the normal tax of 1 per cent computed upon the net income received by or accruing to such corporations from business transacted and capital invested in this country. For the purpose of the tax the net income of such foreign organizations shall be ascertained by deducting from the gross income arising, received, or accruing from business done and capital invested in this country the deductions enumerated in the act, which deductions shall be limited to expenditures or charges actually incurred in the maintenance and operation of the business transacted and capital invested in the United States or, as to certain charges, such proportion of the aggregate charges as the gross income from business done and capital invested in the United States bears to the aggregate income within and without the United States. In other words, the deductions from the gross income of a foreign corporation doing business in this country should, as nearly as possible, represent the actual expenses and authorized charges incident to the business done and capital invested in this country and must not comprehend, either directly or indirectly, any expenditures or charges incurred in the transaction of business or the investment of capital without the United States.

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Art. 158. It is immaterial whether the deductions except for taxes and losses are evidenced by actual disbursements in cash, or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books of the corporation as to constitute a liability against the assets of the corporation making the return. Deductions for taxes, however, should be the aggregate of the amounts actually paid, as shown on the cash book of the corporation. Deductions for losses should be confined to losses actually sustained and charged off during the year and not compensated by insurance or otherwise. Except as the same may be modified by the provisions of the act, limiting certain deductions and authorizing others, the net income as returned for the purpose of the tax should be the same as that shown by the books or the annual balance sheet.

Art. 159. The tax imposed upon the income of corporations, whether domestic or foreign, shall be computed upon the net income, ascertained in the manner hereinbefore indicated, except that for the year ending December 31, 1913, the income tax will be imposed upon the net income accrued from March 1 to December 31, both dates inclusive, and such amount of net income is ascertained by taking five-sixths of the entire net income for said calendar year.

Art. 160. The special excise tax on corporations provided for in the act of August 5, 1909, is reaffirmed and made operative and effective as to the period from January 1 to February 28, 1913, both dates inclusive, which said tax shall be computed upon one-sixth of the entire net income of said corporations for said year, and the net income shall be ascertained in accordance with the provisions of the income-tax law.

For the year 1913 it shall be necessary to make but one return and assessment for all taxes imposed in the income-tax law upon corporations, either by way of income or excise, which return and assessment shall be made at the times and in the manner provided in section 2 of the act of October 3, 1913.

Under the present law, no specific exemption is allowable, as was the case under the corporation-tax law; hence the

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assessment will be based upon the entire net income of the corporation arising or accruing to it from all sources during the entire year for which the return is made.

Art. 161. In order that certain classes of corporations may arrive at their correct income, it is necessary that an inventory, or its equivalent, of materials, supplies, and merchandise on hand for use or sale at the close of each calendar year shall be made in order to determine the gross income or to determine the expense of operation.

A physical inventory is at all times preferred, but where a physical inventory is impossible and an equivalent inventory is equally accurate, the latter will be acceptable.

An equivalent inventory is an inventory of materials, supplies, and merchandise on hand taken from the books of the corporation.

Art. 162. For the purpose of this tax, corporations are divided into five classes, as follows:

Class A. *Financial and commercial,* including banks, banking associations, trust companies, guaranty and surety companies, title insurance companies, building associations (if for profit), and insurance companies, not specifically exempt.

Class B. *Public service,* such as railroad, steamboat, ferryboat, and stage-line companies; street-railway companies; pipe-line, gas-light, and electric-light companies; express companies, telegraph and telephone companies.

Class C. *Industrial and manufacturing,* such as mining, oil and gas producing companies, lumber and coke companies; rolling mills; foundry and machine shops; sawmills; flour, woolen, cotton, and other mills; manufacturers of cars, automobiles, elevators, agricultural implements, etc.; manufacturers or refiners of sugar, molasses, sirups, or other products; ice and refrigerating companies; slaughterhouse, tannery, packing, or canning companies; printing and publishing companies, etc.

Class D. *Mercantile,* including all dealers (not otherwise classed as producers or manufacturers) in coal, lumber, grain, produce, and all goods, wares, and merchandise.

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Class E. *Miscellaneous,* such as architects, contractors, hotel, theater, or other companies or associations not otherwise classified.

Art. 163. Under the authority conferred by this act, forms of return have been prescribed, in which the various items specified in the law are to be stated. Blank forms of this return will be forwarded to collectors and should be furnished to every corporation, not expressly exempted, on or before January 1 of each year, in the case of corporations making their returns for the calendar year, or on or before the first day of the next fiscal year in the case of corporations making returns for their fiscal year. Failure on the part of any corporation, joint-stock company, association, or insurance company liable to this tax to receive a prescribed blank form will not excuse it from making the return required by law, or relieve it from any penalties for failure to make the return in the prescribed time. Corporations not supplied with the proper forms for making the return should make application therefor to the collector of internal revenue in whose district is located its principal place of business in ample time to have its return prepared, verified, and filed with the collector on or before the last due date as hereinafter defined. Failure in this respect subjects it not only to 50 per cent additional tax, but to the specific penalty imposed for delinquency. Each corporation should carefully prepare its return so as to fully and clearly set forth the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the law.

Art. 164. To any sum or sums due and unpaid after the date for payment stated in the notice and demand issued by the collector there shall be added the sum of 5 per cent of the amount so unpaid, and interest at the rate of 1 per cent per month. To the amount assessable on the basis of the net income there shall be added 50 per cent in case of refusal or neglect of a corporation to make a return or 100 per cent in case of a false or fraudulent return. For refusal or neg-

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lect to make a return within the prescribed time, or for a false or fraudulent return, the corporation so offending shall be liable to a specific penalty not exceeding $10,000. Any person divulging unlawfully any information whatever disclosed by a return shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

Any person or any officer of any corporation required by law to make, render, sign, or verify any return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by section 2, act of October 3, 1913, shall be guilty of a misdemeanor and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

Art. 165. The Federal income-tax law authorizes corporations, joint-stock companies, etc., under certain conditions to make their returns on the basis of an established "fiscal year" or consecutive 12-months period, which may be other than the calendar year.

Pursuant to this provision the following instructions are issued for the guidance of collectors and other interested parties:

Any corporation, joint-stock company, or association, or any insurance company subject to the tax imposed by this act may, at its option, have the tax payable by it computed upon the basis of the net income arising or accruing from all sources during its fiscal year, provided that it shall designate the last day of the month selected as the month in which its fiscal year shall close as the day of the closing of its fiscal year, and shall, not less than 30 days prior to the date upon which its annual return is to be filed give notice, in writing, to the collector of internal revenue of the district in which its principal place of business is located, of the day it has thus designated as the closing of such fiscal year.

Art. 166. In pursuance of this provision, a corporation or like organization subject to this tax may, for example,

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designate the 30th day of September as the day for the closing of its fiscal year, whereupon its return of annual net income shall be filed with the collector of internal revenue of the district in which its principal place of business is located not later than 60 days after the close of its said proposed fiscal year; that is to say, on or before the 29th day of November next succeeding.

The date of the closing of the fiscal year having been designated, notice thereof must be given to the collector not less than 30 days prior to the last day of such 60-day period. In the case just instanced the notice must be given not later than October 29.

If such designation (September 30, 1913) had been made and notice given, as hereinbefore indicated, as to the closing of the fiscal year 1913, the corporation would be authorized to make its return and have the tax payable by it computed upon the basis of the net income arising or accruing to it during the period from January 1 to September 30, 1913, both dates inclusive.

Art. 167. Collectors of internal revenue receiving notices of the selection and designation of the "fiscal years," as above indicated, will make record of the same, recording, (a) the name of the corporation or like organization, (b) the date when notice was given, (c) the day designated for the closing of the fiscal year, and (d) the date when the return under such designation must be filed, which must be, as above stated, not later than the last day of the 60-day period next following the day designated as the close of the fiscal year.

Art. 168. If it shall appear that for the year 1913 the notice was given within the prescribed time—that is, within 30 days of the last day of the 60-day period—the 1913 return may be made as of the fiscal year so established; otherwise it will be made on the basis of the calendar year until such time as the designation shall be duly made and notice thereof properly given.

Art. 169. The designation and notice can not be retroactive; that is to say, if a corporation now designates April 30,

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1914, as the date of the closing of its fiscal year and gives notice of such designation, it would not be authorized to make a return for the four months ended April 30, 1913, and then for the fiscal year ended April 30, 1914, nor would it be authorized to make one return covering the entire 16 months ended April 30, 1914. In the case of such corporation the return for the year must be made for the calendar year ended December 31, 1913, and then, assuming that designation and notice had been properly made and given, it may make a return for the four months ended April 30, 1914, and thereafter the return will be made on the basis of the fiscal year so established.

Art. 170. In all cases where a fiscal year is not established as above prescribed returns must be made on the basis of the calendar year, in which case such returns must be filed on or before the 1st day of March next succeeding such calendar year. Such returns in either case provided must be verified under oath or affirmation of its president or other principal officer, and its treasurer or assistant treasurer; that is to say, by two different persons acting in the official capacity indicated.

Art. 171. If it shall appear in any case that returns have been made to the collector on the basis of a fiscal year not designated as above indicated, the corporations making such returns will be advised that such returns can not be accepted, but must be made to cover the business of the calendar year.

Art. 172. Returns made under this act and pursuant to these instructions must be made on the new forms prescribed by this department.

The forms heretofore in use, under the special excise tax law, can not be used for making returns for either the fiscal or calendar year 1913.

Art. 173. An extension of time within which a return may be filed can in no case exceed 30 days from the date on which the return is due and can be granted only upon written application to the collector, and in case of sickness or absence of an officer whose signature to the return is required, such appli-

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cation to be made prior to the expiration of the period for which the extension is desired.

Art. 174. If a return is made and placed in the United States mails, properly addressed, and postage paid, in ample time, in due course of mails, to reach the office of the collector or deputy collector on or before the last due date, no penalty will be held to attach should the return not be actually received by such officer until subsequent to that date.

Art. 175. "Last due date," as hereinbefore used, is construed to mean the last day upon which a return is required to be filed in accordance with the provisions of the law, or the last day of the period not exceeding 30 days covered by an extension of time granted by the collector.

Art. 176. When the due date as above defined falls on Sunday or on a legal holiday, the last due date will be held to be the day next following such Sunday or legal holiday and the return should be made to the collector not later than such following day, or, if placed in the mails, it should be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the date on which the return is thus made due in the office of the collector.

Art. 177. All assessments against corporations, etc., making returns for the calendar year are required to be made and the several corporations, joint-stock companies, etc., notified of the amount for which they are liable on or before the 1st of June of each successive year, and said assessments shall be paid on or before the 30th day of June of such year. In the case of corporations making returns for the fiscal year, the assessments shall be made and notice given on or before the expiration of 90 days from the date when the returns were required to be filed, and the taxes assessed against such corporations, etc., shall be paid within 120 days after the date upon which the returns were required to be filed. In case of refusal or neglect by a corporation, etc., to make a return, and in case of false or fraudulent return, the commissioner, upon the discovery thereof within three years after such returns are due, shall make a

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return upon information obtained in the manner provided in the act, and the assessment made on the basis of such return shall be paid immediately upon notice and demand given by the collector.

Upon failure to pay the tax when due and for 10 days after notice and demand, a penalty of 5 per cent of the amount of the tax unpaid and interest at the rate of 1 per cent per month until paid shall be added to the amount of such tax.

Art. 178. When the assessments shall have been made, the returns shall be filed in the office of the commissioner and shall constitute public records, subject to inspection upon the order of the President, under rules and regulations prescribed by the Secretary of the Treasury and approved by the President. Copies of returns on file in the Commissioner's office are not permitted to be sent to any person, except to the corporation itself or to its duly authorized attorney.

Art. 179. Upon request of the governor of a State which imposes a general income tax, the proper officers of such State may have access to the returns filed by corporations doing business in such States, or to an abstract thereof showing the name and income of such corporations, etc., at such times and in such manner as the Secretary may prescribe. In no case are the original returns to be removed from the office of the commissioner, except upon order and by direction of the Secretary of the Treasury or the President.

Art. 180. At the request of the Attorney General, or by direction of the Secretary of the Treasury, certified copies of returns may be made and delivered to the United States district attorneys for their use as evidence in the prosecution or defense of suits in which the collection or legality of the tax assessed on the basis of such returns is involved, or in any suit to which the United States Government and the corporation, etc., making the return are parties and in

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which suit such certified copies would constitute material evidence.

Art. 181. The disclosure by any collector, deputy collector, agent, clerk, or other officer or employee of the United States to any person of any information whatever contained in or set forth by any return of annual net income made pursuant to this act is, by the act, made a misdemeanor, and is punishable by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both, at the discretion of the court, and if the offender is an officer or employee of the United States he shall be dismissed and be incapable thereafter of holding any office under the United States Government.

Art. 182. No particular system of bookkeeping or accounting will be required by the department. However, the business transacted by corporations must be so recorded that each and every item set forth in the return of annual net income may be readily verified by an examination of the books of account.

Art. 183. The books of a corporation are assumed to reflect the facts as to its earnings, income, etc. Hence they will be taken as the best guide in determining the net income upon which the tax imposed by this act is calculated. Except as the same may be modified by the provisions of the law, wherein certain deductions are limited, the net income disclosed by the books and verified by the annual balance sheet, or the annual report to stockholders, should be the same as that returned for taxation.

Art. 184. In cases wherein corporations have neglected or refused to make returns, and in cases wherein returns made are found, upon investigation or otherwise, to be false or fraudulent, the commissioner may, upon discovery thereof, at any time within three years after said return is due, make return upon the information obtained in the manner provided in the act, and the tax so discovered to be due, together with the additional tax prescribed, shall be

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assessed, and the amount thereof shall be paid immediately upon notice and demand.

Art. 185. Corporations coming within the terms of this law are subject to the normal tax only; that is, a tax computed at a level rate of 1 per cent of their entire net income regardless of the amount of such net income.

Art. 186. For the purpose of verifying any return, made pursuant to this act, the Commissioner of Internal Revenue may, by any duly authorized revenue agent or deputy collector, cause the books of such corporation to be examined, and if such examination discloses that the corporation is liable to tax in addition to that previously assessed, or assessable, the same shall be assessed and shall be payable immediately upon notice and demand. For the purpose of such examination, the books of corporations shall be open to the examining officer, or shall be produced for this purpose upon summons issued by any properly authorized officer.

§ 186. Assessment and Collection

Art. 187. All income taxes found to be due will be reported by collectors on their assessment lists, Form 23–A in the case of corporations, and on Form 23–B in the case of individuals and withholding agents.

Art. 188. The names of corporations subject to tax will be listed on Form 23–A, according to their designated class, and in alphabetical order as to each class. Names of individuals subject to tax will be listed on Form 23–B, alphabetically, without reference to class or rate of tax. Following such names there will be listed, alphabetically, the names of all withholding or licensed collecting agents, and the aggregate amount of tax withheld by each, as shown by the annual returns rendered by them. An assessment against each person, firm or company, from whose income the tax has been so withheld, will be unnecessary in such cases.

Art. 189. To avoid, as far as possible, the assessment of taxes as to which claims for exemption or deduction may be

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filed under article 33, collectors will delay reporting for assessment taxes remaining in the hands of withholding agents, until the annual reports of such agents, which must be filed not later than March 1 in each year, are received.

Art. 190. Returns of withholding agents (including those of licensed collecting agents) as to interest payments shall be made monthly and returns containing summaries of said monthly returns shall be made annually. (See Part 2, A, B, and C.) Returns of individuals (see Part 1), corporations (see Part 3), and withholding agents, withholding tax on wages, salaries, rents, etc. (see Part 2, D), and fiduciaries acting as withholding agents (see Part 2, E) shall be made annually. All monthly returns are required to be made on or before the 20th day of each month for the preceding month. All annual returns are required to be made on or before the 1st day of March in each year, except in the case of corporations which have given due notice of the termination of their fiscal year, in which cases the prescribed return is to be filed within 60 days after the termination of such fiscal year.

Art. 191. Corporations which are subject to the special excise tax on income received during the months of January and February, 1913, may, under the provisions of section 4, paragraph S, of the act of October 3, 1913, include such income, as also the income taxable under said act, in one return for the year 1913. In each such case one assessment only will be made.

Art. 192. All returns of income, whether of individuals or corporations, should be forwarded with the assessment list rendered. Where in any case the collector has reason to believe that any return rendered is false or fraudulent, he will prepare and retain in his office a copy of such return, and will note on the original and under the head of "Remarks" of his assessment list the words "Investigation pending." He will in all such cases make his investigation in the manner prescribed in section 3173, Revised Statutes and paragraph D of said act of October 3, 1913; and he will report the results of his investigation to the Commissioner of Internal Revenue, referring to the list, folio, and line on which the assessment was reported.

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Art. 193. Monthly and annual returns of withholding agents (including those of licensed agents) as to interest payments and the annual returns of withholding agents withholding tax on wages, salaries, etc., will be made in duplicate, one copy of which will be retained by the collector in his office and one copy transmitted to the Commissioner of Internal Revenue. Annual returns of withholding agents (including those of licensed agents) as to interest payments, and returns of withholding agents as to wages, salaries, etc., and of fiduciaries will be forwarded by the collector with his list, Form 23–B, on which the tax withheld is reported for assessment.

Art. 194. All certificates of exemption or deductions, filed by or on behalf of persons subject to tax, will be forwarded by the collector as soon as received; and all such certificates, reports, and returns, before being transmitted to the commissioner, will have stamped thereon the name and number of the district; will be arranged (unfolded) in alphabetical order and, in the case of corporations, according to the designated class to which they belong. Care should be taken to have all such papers, when so arranged, carefully secured by cord or other fastening, so as to insure their receipt in like order. This is especially necessary in view of the large number of like papers which will be forwarded from the various districts.

Art. 195. In order that assessment lists may be promptly prepared and forwarded, collectors will see that all reports and returns to be listed are examined as received, and that no delay occurs in this branch of the work. Special diligence in this matter is necessary, as sufficient time must be given for the reexamination of such returns in the commissioner's office before assessment is made. The forwarding of assessment lists, however, should in no case be delayed, beyond the time allowed, on account of unexamined returns, as such returns can be examined and reported on a subsequent list. As the law limits the time in which these assessments are to be made and notice of assessment given, collectors will assign to this work all available force in their respective offices.

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Art. 196. Where the required returns are not filed within the prescribed time, either by individuals or corporations, notice on Form 1045, should in each case be sent to the delinquent. (For authorized extension of time, see articles 23 and 173.)

Art. 197. When assessment has been made, collectors will, on receipt of their returned lists, at once issue preliminary notices of assessment (Form 647), and where in any case the tax assessed is not paid on or before the 30th day of June, or in case of corporations designating their own fiscal year, within 120 days following the date on which the return should have been filed, notice and demand (Form 17) should be at once issued, and unless the tax in such case is paid within 10 days after the service of such notice, general demand for tax, penalty, and interest (Form 21) should at once be issued. Immediate notice and demand (Form 17) will, however, be served in case of failure to file the required return within the statutory period.

Art. 198. Pending assessment on returns forwarded to the commissioner, collectors will have prepared the necessary notices of assessment, with properly addressed envelopes, to be used immediately on return of their assessment lists.

Art. 199. Statements of payment, abatement, and outstanding balances of such assessed taxes will be rendered monthly by collectors on special Form 325. Such statements will be prepared in the same manner as required in the case of assessments on the regular Form 23, except that in Statement III the outstanding balances on the various lists will be reported in aggregate only. Items constituting such balances, however, will be carded by collectors, but only as to such as were assessed during the month for which the return is rendered, thus avoiding detailed statements each month of outstanding balances previously reported. A separate card (Form 1020) will be used for each such item; and all cards so prepared each month should be arranged alphabetically, and so forwarded by the collector with his report on special Form 325.

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CHAPTER IV

NATURE OF INCOME TAXES

§ 187. Definitions and General Considerations.
188. Property Taxes Distinguished.
189. Excise, Franchise, License, and Occupation Taxes Distinguished.
190. Tax on Gross Receipts.
191. Income Tax as Direct Tax.

§ 187. Definitions and General Considerations

An income tax is distinguished from other forms of taxation in this respect, that it is not levied upon property, nor upon the operations of trade and business or the subjects employed therein, nor upon the practice of a profession or the pursuit of a trade or calling, but upon the acquisitions of the taxpayer arising from one or more of these sources or from all combined, annually or at other stated intervals, and generally, but not necessarily, only upon the excess of such acquisitions over a certain minimum sum. It is not a tax upon accumulated wealth, but upon its periodical accretions. It is not a tax upon personal exertion for gain, whether combined with the employment of capital or not, but upon the fruits thereof. An income tax is in effect a tax upon earnings, taking that term in its broadest sense, and irrespective of the question whether the person whose income is taxed has actively earned it or has merely profited by loaning his capital for active employment by another.[1] The definition of

[1] "There is no tax which, in its essence, is more just and equitable than an income tax, if the statute imposing it allows only such exemptions as are demanded by public considerations and are consistent with the recognized principles of the equality of all persons before the law, and, while providing for its collection in ways that do not unnecessarily irritate and annoy the taxpayer, reaches the earnings of the entire property of the country, except governmental property and agencies, and compels those, whether individuals or corporations, who receive such earnings, to contribute therefrom a reasonable amount for the support of the common government of all."

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an income tax as one which relates to the product or income from property or from business pursuits,[2] is sufficient for the purposes of a practical description, but is not scientifically accurate, since the term "income" may include acquisitions from other sources than those mentioned. For instance, money coming to one by gift or bequest is undoubtedly "income," though it is in the discretion of the taxing power to include it within the incidence of the tax or to exempt it. In the sense that it is imposed upon a limited and selected subject of taxation, an income tax may also be regarded as a special tax, rather than a general tax. Thus, in South Carolina, a general taxing act enacted in 1905 required the county auditors and treasurers to collect the taxes levied under its provisions, and forbade them to collect any other tax except such "special tax" as might be authorized under an act or joint resolution of the legislature. It was contended that this operated as a repeal of the income tax law of 1897. But the courts held otherwise, declaring that the income tax was a "special tax" within the meaning of the general statute.[3]

§ 188. Property Taxes Distinguished

A tax on incomes is not a tax on property, and a tax on property does not embrace incomes. Hence a municipal corporation which has authority by its charter to levy taxes for its own purposes on all "taxable property" does not possess the authority to lay a tax on incomes.[4] For the same reason a tax laid on income is different from a tax laid on the property out of which the income arises, and although a statute may tax land at a different rate from that imposed on incomes, it is not therefore in conflict with a constitutional provision requiring that taxation on all species of property shall be uni-

Dissenting opinion of Harlan, J., in Pollock v. Farmers' Loan & Trust Co., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed. 1108.

[2] Levi v. City of Louisville, 97 Ky. 394, 30 S. W. 973, 28 L. R. A. 480.

[3] Alderman v. Wells, 85 S. C. 507, 67 S. E. 781, 21 Am. & Eng. Ann. Cas. 193, 27 L. R. A. (N. S.) 864.

[4] City of Dubuque v. Northwestern Life Ins. Co., 29 Iowa, 9.

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form. As remarked by the Supreme Court of Georgia: "Gross earnings and interest coming in from any source, labor, capital, investment of any sort, or money loaned, are not property in the sense of the constitution, but are merely income. Certainly the gross earnings of a laboring man are nothing but his income. So it would seem the earnings of a salaried officer are income, and so the income from capital employed in a bank or railroad or manufacture would seem to be income only. The net income after the expenses are paid becomes property, when invested, or if it be money lying in a bank or locked up at home. The fact is, property is a tree, income is the fruit; labor is a tree, income the fruit; capital a tree, income the fruit. The fruit, if not consumed as fast as it ripens, will germinate from the seed which it incloses, and will produce other trees, and grow into more property; but so long as it is fruit merely, and plucked to eat and consumed in the eating, it is no tree and will produce itself no fruit." [5]

§ 189. Excise, Franchise, License and Occupation Taxes Distinguished

License and occupation taxes, which are payable in respect to the privilege of engaging in or carrying on a particular business or vocation, are not income taxes, notwithstanding the fact that the amount of tax payable by any individual may be measured by the amount of business which he transacts or his earnings therefrom. And conversely, although a person's entire income may be derived from a particular pursuit or trade, a tax on the income as such is not a license or privilege tax. Thus, a tax on sales of a particular commodity, or a tax on the dealer measured by the amount of his sales, is not an income tax.[6] So, in Virginia, it appeared that a city ordinance provided that lawyers and others should be divided into six classes, and that those in each class should pay a certain sum as a tax. The

[5] Waring v. City of Savannah, 60 Ga. 93.

[6] Commonwealth v. Brown, 91 Va. 762, 21 S. E. 357, 28 L. R. A. 110.

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committee on finance was to place each attorney in the class to which he properly belonged, looking to all the circumstances. After the committee had completed their classification, public notice was to be given, and any lawyer dissatisfied with his classification was to appear before the committee and have it corrected if erroneous. It was held that this was not an income tax, and the ordinance was valid.[7] Hence it appears that a person carrying on a certain business, as, for instance, a dealer in intoxicating liquors, may be subjected to a license tax for the privilege of pursuing that avocation, to a state or municipal tax for general purposes upon his stock in trade, and to a tax upon the income derived from his business, and yet, as all these taxes relate to different subjects and do not overlap or conflict, their imposition affords no legal ground for complaint.

Excise taxes include license fees and also some other forms of taxation, and these also are theoretically distinguishable from income taxes, although the practical difference is very slight in cases where the excise is measured by the income. And indeed it has sometimes been thought that an income tax should be classed as an excise tax, within the meaning of the federal Constitution. In the decision which overthrew the federal income tax law of 1894, one of the judges remarked: "Excises are a species of tax consisting generally of duties laid upon the manufacture, sale, or consumption of commodities within the country, or upon certain callings or occupations, often taking the form of exactions for licenses to pursue them. The taxes created by the law under consideration, as applied to savings banks, insurance companies, whether of fire, life, or marine, to building or other associations, or to the conduct of any other kind of business, are excise taxes, and fall within the requirement, so far as they are laid by Congress, that they must be uniform throughout the United States."[8]

[7] Ould v. City of Richmond, 23 Gratt. (Va.) 464, 14 Am. Rep. 139.
[8] Per Field, J., concurring, in Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759.

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But a franchise tax upon corporations is not an income tax, though it may be called an excise tax. And this is so whether the tax is laid by the state under whose laws the corporation is organized, and is exacted annually for the privilege of continuing its corporate existence, or is imposed by a different state for the privilege of doing business within its limits, or is imposed by an outside power, such as the United States, upon the franchise of transacting business in a corporate capacity. For this reason the tax on corporations imposed by the act of Congress of August 5, 1909, being laid specifically upon the carrying on or doing of business in a corporate or quasi corporate capacity, was adjudged not to be an income tax, although the amount of the tax in each instance was measured by the net annual income of the corporation, but an excise tax, and therefore not a direct tax, and therefore not invalid because not apportioned among the several states according to population.[9] Practically it makes but little difference to a corporation whether it is taxed upon its income or upon the value of its corporate privileges as measured by its income. But the theoretical distinction is valid, and its actual importance is shown by the fact that it was this distinction alone which ultimately saved the act of Congress of 1909 from the fate which befell that of 1894.

§ 190. Tax on Gross Receipts

In numerous states at the present time, various kinds of corporations and particularly railroad companies are not taxed directly upon their real and personal property, but upon their gross receipts. Whether or not a tax of this kind is to be regarded as an income tax is an unsettled question. It has been held in Louisiana that the term "income tax" includes a tax upon the gross receipts of a corporation or business.[10] But there is a contrary decision in Texas.[11]

[9] Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389.

[10] Parker v. North British Ins. Co., 42 La. Ann. 428, 7 South. 599.

[11] Galveston, H. & S. A. Ry. Co. v. Davidson (Tex. Civ. App.) 93 S. W. 436.

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Certainly such a tax is not a general income tax, being restricted to corporations as distinguished from individuals, or even to certain classes of corporations. And it may clearly be regarded in the light of an excise tax, the subject of taxation being the transaction of business in a corporate capacity, and the receipts of the company serving only to measure the tax. Or perhaps, having regard to the use of this form of taxation as the sole means of assessing corporations, it may be considerd as in reality a tax on their property holdings, rather than an income tax, the amount being measured not so much by the market value of the property as by its profitableness, and its degree of profitableness being ascertained from the amount of the gross earnings.

§ 191. Income Tax as Direct Tax

In general usage, and according to the terminology of political economy, a direct tax is one demanded of the person who is expected to pay it and bear the expense of it without recoupment, while an indirect tax is demanded from one person in the expectation that he will indemnify himself at the expense of others.[12] When the question of the difference between direct and indirect taxes first came before the Supreme Court of the United States, in connection with the constitutional provision that "representatives and direct taxes shall be apportioned among the several states," it was held that the term "direct," as here used, was to be taken in a narrower sense than that above indicated; and it was ruled that only two classes of taxes could be considered as coming under this designation, namely, taxes on land and capitation taxes.[13] But these decisions have been overruled, and it is now held that income taxes, whether levied on the issues and profits of real estate or on the gains and interest

[12] Brewers' Ass'n v. Attorney General [1897] App. Cas. 231; Black, Constitutional Law (3d edn.) p. 209.

[13] Springer v. United States, 102 U. S. 586, 26 L. Ed. 253; Pacific Ins. Co. v. Soule, 7 Wall. 433, 19 L. Ed. 95; Hylton v. United States, 3 Dall. 171, 1 L. Ed. 556.

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from personal property, are also direct taxes within the meaning of the constitution.[14] The celebrated case in which this decision was made was twice before the Supreme Court, and in the course of the opinion filed on the second hearing it was said: "Our previous decision was confined to the consideration of the validity of the tax on the income from real estate, and on the income from municipal bonds. The question thus limited was whether such taxation was direct or not in the meaning of the Constitution; and the court went no further, as to the tax on the income from real estate, than to hold that it fell within the same class as the source whence the income was derived,—that is, that a tax upon the realty and a tax upon the receipts therefrom were alike direct; while, as to the income from municipal bonds, that could not be taxed because of want of power to tax the source, and no reference was made to the nature of the tax, as being direct or indirect. We are now permitted to broaden the field of inquiry, and to determine to which of the two great classes a tax upon a person's entire income—whether derived from rents or products, or otherwise, of real estate, or from bonds, stocks, or other forms of personal property—belongs, and we are unable to conclude that the enforced subtraction from the yield of all the owner's real or personal property, in the manner prescribed, is so different from a tax upon the property itself that it is not a direct, but an indirect, tax in the meaning of the Constitution." [15] For this reason, and by this decision, the income tax law of 1894 was pronounced unconstitutional. Since that time the Sixteenth Amendment to the Constitution has been adopted. But that amendment does not purport to declare that an income tax shall not be a direct tax. It only

[14] Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759. And see Emery, Bird, Thayer Realty Co. v. United States, 198 Fed. 242.

[15] Pollock v. Farmers' Loan & Trust Co., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed. 1108.

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dispenses with the necessity of apportionment among the several states, so far as concerns a tax on incomes from whatever source derived. The decision of the Supreme Court above referred to has never been overruled, and it remains an authoritative declaration that a tax upon incomes is as much a direct tax as one laid upon land or personal property.

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CHAPTER V

CONSTITUTIONAL AND STATUTORY PROVISIONS

§ 192. Provisions of United States Constitution.
193. Provisions of State Constitutions.
194. History of Income Tax Laws.
195. Income Tax Laws in Force.
196. Departmental Regulations.
197. Economic Aspects of Income Taxation.

§ 192. Provisions of United States Constitution

As originally adopted the Constitution of the United States contained the following provisions with reference to national taxation: "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers" (Art. 1, § 2.) "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States" (Art. 1, § 8.) "No capitation or other direct tax shall be laid unless in proportion to the census or enumeration herein before directed to be taken." (Art. 1, § 9.) During the period of the Civil War and for some time thereafter, that is, between the years 1861 and 1870, successive acts of Congress imposed general taxation upon incomes derived from all sources, for the support of the federal government, without any attempt at apportionment among the states. But it was held by the courts that an income tax is not a direct tax and therefore does not require such apportionment, while the question of the "uniformity" of such acts under the constitutional provision above quoted does not appear to have been raised. But a similar statute enacted in 1894 was adjudged unconstitutional, in so far as it applied to incomes derived from the renting of real property or from the investment of personal property, for lack of apportionment, the court now holding it to be a direct tax, and invalid so far as

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it applied to income derived from state or municipal bonds, on the ground that Congress had no rightful power to tax those subjects.[1] In so deciding, the Supreme Court advanced the suggestion that if the "ultimate sovereignty" desired to intrust to Congress a general power to tax incomes, it could be done by an amendment to the Constitution. Thereafter a constitutional amendment was proposed by act of Congress, submitted to the legislatures of the several states, ratified by the necessary majority, and proclaimed in 1913 as the Sixteenth Amendment. It is as follows: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

Is this amendment a grant of power or only the removal of a constitutional restriction? From the use of the words "from whatever source derived" it might be argued that it was the intention to bring within the taxing power of Congress certain subjects not previously included, such as income derived from the bonded debt of states or municipalities and the salaries of state officers. But this would appear to be a strained construction, because the lack of authority in the federal government to tax the subjects mentioned does not arise from any explicit provision of the Constitution, but from the relation between the states and the Union and the necessity of giving to each an entire immunity from possibly destructive taxation on the part of the other. That this was also the understanding of Congress in enacting the law of 1913 is shown by the fact that it expressly excludes "interest upon the obligations of a state or any political subdivision thereof," and also "the compensation of all officers and employees of a state or any political subdivision thereof."

On the other hand, the decision of the court in the Pollock case was confined to the question of the constitutionality of the tax in so far as it bore upon income derived from real estate and from invested personal property. It was not decided

[1] Pollock v. Farmers' Loan & Trust Co., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed. 1108.

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that a tax upon income derived from business operations or from the practice of a trade or profession or the receipt of a salary was a direct tax, and this was explained by Mr. Justice Harlan, in his dissenting opinion, as equivalent to a declaration that no apportionment among the states would be necessary in so far as a tax upon incomes might be laid upon those subjects alone. It never was doubted that Congress possessed the power to tax incomes in so far as it could be done without infringing upon the rightful sovereignty of the states. The only question was as to the necessity of apportionment. On this question, the Supreme Court ruled that a tax on income derived from certain specified sources would require apportionment, while a tax on income derived from certain other sources would not. Now the Sixteenth Amendment, which was prompted by the decision in the Pollock case, and which need not have been proposed and adopted if it had not been for that decision, declares that there shall be no necessity of apportionment among the several states, nor any regard to the census or enumeration, for the purposes of a federal tax on incomes "from whatever source derived." It does not, therefore, enlarge the power of taxation previously possessed by Congress, but merely repeals certain parts of the existing Constitution which imposed a limitation upon the levying of one form of direct taxation, namely, an income tax.

§ 193. Provisions of State Constitutions

While it is probable that an express grant of authority in the constitution is not necessary to empower the legislature of a state to enact a general system of income taxation,[2] yet the imposition of an income tax is expressly authorized by the constitutions of several of the states.[3] But in some cases the power of the legislature is carefully restricted in this regard, especially with a view to avoiding double taxation or a burdensome accumulation of taxes, as in North Carolina,

[2] See Glasgow v. Rowse, 43 Mo. 479.

[3] See, for instance, Const. Cal., art. 13, § 11; Const. Tenn., art. 2, § 28; Const. Texas, art. 8, § 1; Const. Wis., art. 8, § 1.

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where the constitution provides that "the general assembly may tax trades, professions, franchises, and incomes, provided that no income shall be taxed when the property from which the income is derived is taxed." [4] In Wisconsin, the state which now possesses the most complete and detailed system of income taxation, it was at first doubted whether the original provision of the constitution was sufficiently broad to permit the levying of this kind of a tax. It was merely expressed as follows: "The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe." This had been held as not expressly forbidding excise taxation, and therefore as admitting of a collateral inheritance tax,[5] but when a tax on incomes was proposed, the legislature (in 1905 and 1907) passed a resolution recommending an amendment to the section of the constitution above quoted by the addition of the following words: "Taxes may also be imposed on incomes, privileges, and occupations, which taxes may be graduated, and progressive and reasonable exemptions may be provided." This change was ratified by the people of the state at a general election held in 1908, and three years later (1911) the legislature enacted a statute laying a tax upon incomes and intended eventually to supersede all forms of personal property taxation.[6]

§ 194. History of Income Tax Laws

In England, the first income tax law was proposed by Pitt, and was enacted by act of Parliament, January 9, 1799 [7] since which time, with occasional short lapses, income taxation has always formed a chief source of revenue in the United Kingdom. But the acts which have remained in force, with some modifications and minor changes, to the present time, and which have had a most important influence, by way of sug-

[4] Const. N. Car., art. 5, § 3.

[5] Nunnemacher v. State, 129 Wis. 190, 108 N. W. 627, 9 L. R. A. (N. S.) 121.

[6] Const. Wis., art. 8, § 1. And see State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

[7] Stat. 39 Geo. III, c. 13, 18 Stat. at L., p. 29.

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on and precedent, upon the frame-work of all income tax in the United States, are the statutes of 1842 and 1853.[8] America, many states have at different times experied with taxes of this kind, enacting, repealing, and some- s re-enacting them, but few have continuously availed nselves of this source of revenue until comparatively re- times. Even as early as the colonial period statutes were and there in force which did practically and substantially certain classes of incomes, though not by that name. n, in the years between 1840 and 1850, laws of this char- were sporadically enacted, as also in the following dec- when income tax laws were put in force in Alabama, siana, and Missouri (among others), which are not now orce. But for all practical purposes the interest of the ent of law and economics will center upon two foci, ely, the period of the Civil War and what may be called period of present-day activity in income tax legislation, latter beginning about 1894.

ne first attempt of Congress to levy a tax of this kind was e in 1861, when it was sorely pressed with the burden of iding revenue to carry on the pending war. This act d a tax upon practically all sources and kinds of income, at varying rates, viz., three per cent upon incomes gen- y, one and one-half per cent upon interest on treasury s and United States bonds, and five per cent on the in- es of American citizens residing abroad. Annual incomes w $800 were exempted. The tax was to be levied and cted for only one year, that is, on the income of 1861, and laborate system for its collection was provided, adminis- ve details being left to the regulation of the officers of reasury department. In the following year, 1862, this act re-enacted, but with very important changes. The ex- tion was now fixed at $600, and the tax was at the rate hree per cent on incomes between that minimum and the of $10,000, and five per cent on all incomes exceeding latter amount, as also upon the incomes (irrespective of

[8] Stat. 5 & 6 Vict., c. 35; Stat. 16 & 17 Vict., c. 34.

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amount) of American citizens living abroad, except those in the service of the government. Salaries of persons in the employ of the United States, including senators and representatives in Congress, were exempted, and provision was also made for the deduction from taxable income of other taxes paid by the subject and also dividends received from corporations subject to tax. The statute was to be in force until and including the year 1866 and no longer, and taxable persons were required to make returns of their income. In the next year (1863) this act was amended by permitting the taxpayer to deduct from his taxable income rent paid for the dwelling house in which he resided. The income tax law of 1864, as amended in 1865, materially increased the burden of taxation, the exemption remaining as before, but the duty being now fixed at five per cent on incomes up to $5,000, and ten per cent on the excess over that sum. Several new features were now introduced, as, for instance, a partial attempt at "collection at the source" by taxing dividends declared by certain kinds of corporations and then permitting the stockholder to deduct the same from his estimate of income, and a like provision as to persons paid by the government. Now for the first time also we meet the provision that only one deduction of $600 shall be allowed from the aggregate incomes of the members of a family. Salaries paid to persons in the employment of the United States, including the members of Congress, were now subjected to the tax, as also premiums on gold. But the rental value of a homestead owned and occupied by the taxpayer was not to be included. Special provisions were made for estimating the income and the allowable deductions of farmers and stock-raisers. The life of the act was limited to the year 1870. It was amended in details in 1866 and 1867. Again in 1870 a statute was passed, to be in force only for that year and the one following, which imposed a flat tax of two and one-half per cent on income from all sources. These sources were elaborately defined and described, and it may be remarked that they were made to include interest accrued within the year but unpaid, if collect-

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ible, a stockholder's proportionate share of the undivided profits of the corporation, interest on United States securities and premiums on gold, the salaries of federal officers including members of Congress, and profits realized within the year from sales of real estate purchased within two years previous. The exemptions or deductions included the sum of $2,000 of income and also pensions under the laws of the United States, taxes paid, losses sustained and bad debts written off within the year, "but excluding all estimated depreciation of values," interest paid, and rent and the expenses of business. Consuls of foreign countries were exempted from the payment of the tax, so far as concerned their official emoluments and income from their property in foreign countries, but only in case their governments reciprocated. It is a significant fact that, during all this period, there was no attempt to tax corporations as such, except that the acts of 1862, 1864, and 1870 laid a tax on the dividends declared, and interest paid, by banks, trust companies, savings institutions, insurance companies, and railroads and other transportation companies.

The period of modern activity in income tax legislation was inaugurated by the enactment of the federal income tax act of 1894. This statute was intended to expire by its own limitation in 1900, but in the year following its passage it was adjudged unconstitutional and therefore was not enforced. Allowing an exemption of $4,000, it imposed a tax of two per cent on all income above that amount, from whatever source derived, and a like tax upon the net earnings of all corporations doing business within the United States (not including partnerships), except corporations for charitable, religious, or educational purposes, fraternal benefit societies, mutual insurance companies, and certain kinds of building and loan associations and savings banks. It made some provision for collection of the tax at the source, and covered carefully the administrative features of such a tax, in regard to returns, the method of collection, the imposition and recovery of penalties, and conditions upon the publicity

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of the returns. But in other respects it did not differ very materially from the last and most elaborate of the earlier acts, that of 1870. The corporation excise tax law of 1909 imposed a tax of one per cent upon the entire net income (over and above $5,000) received in each year by "every corporation, joint stock company or association organized for profit and having a capital stock represented by shares, and every insurance company," whether organized under state or territorial or federal laws, or organized under the laws of a foreign country and engaged in business in any state and territory of the United States. In its main features, this statute very closely resembled that act of 1894, in so far as the latter was applicable to corporations. But the tax laid by the act of 1909 was specifically denominated a "special excise tax," and was declared to be imposed "with respect to the carrying on or doing business by such corporation." This was in reality an income tax very thinly disguised, and restricted to corporations. But the theoretical distinction between a tax on income and a tax on the privilege of doing business in a corporate capacity, as measured by income, afforded sufficient ground for the courts to hold that it was not a direct tax and therefore not in conflict with the constitution.[9] Finally, as concerns the activity in this direction of the United States government, the tariff act of 1913 contained a section imposing a tax upon the incomes of both individuals and corporations. This statute will not now be discussed in detail, as its provisions will form a principal subject for consideration in the following pages.

The act of 1913, it should be remarked, supersedes and repeals the corporation excise tax law of 1909. But in order that corporations may not escape taxation for any part of the year 1913, that year is divided into two portions, as to one of which the excise tax is to be assessed and collected, and as to the other the income tax. The act provides that "an excise tax upon the doing of business, equivalent to one

[9] Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389.

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entum upon their entire net income, shall be levied, as-
d, and collected upon corporations, joint stock companies
ssociations, and insurance companies, of the character
ibed in section 38 of the act of August 5, 1909, for the
d from January first to February twenty-eighth, 1913,
dates inclusive, which said tax shall be computed upon
ixth of the entire net income of said corporations, joint
companies or associations, and insurance companies, for
ear." And the provisions of the act of 1909, "relative to
ollection of the tax therein imposed, shall remain in force
he collection of the excise tax herein provided." As to
emainder of the year, the imposition of the income tax
any corporation subject to its terms is effected by a
rement that "said tax shall be imposed upon its entire
ncome accruing during that portion of said year (1913)
March first to December thirty-first, both dates inclu-
to be ascertained by taking five-sixths of its entire net
ne for said calendar year." But for the year 1913 "it
not be necessary to make more than one return and
sment for all the taxes imposed herein upon said cor-
ions, joint stock companies or associations, and insurance
anies, either by way of income or excise, which return
assessment shall be made at the times and in the manner
ded in this act. But the repeal of existing laws or mod-
ions thereof embraced in this act shall not affect any
one, or any right accruing or accrued, or any suit or pro-
ng had or commenced in any civil case before the said
l or modification; but all rights and liabilities under said
shall continue and may be enforced in the same manner
said repeal or modifications had not been made. Any
ses committed and all penalties or forfeitures or liabil-
incurred prior to the passage of this act under any stat-
embraced in or changed, modified, or repealed by this
nay be prosecuted or punished in the same manner and
the same effect as if this act had not been passed."

regards the legislation of the states in the more recent
d, it may be mentioned that an income tax law, not very

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complete or detailed, was enacted in North Carolina in 1907, a somewhat similar act by South Carolina in 1902, an act closely resembling that of North Carolina by Oklahoma in 1907, a short statute, but intended to include all kinds of income, by Virginia in 1903 and amended in 1908, a comprehensive statute, modeled on the various acts of Congress, by the territory of Hawaii in 1901, and a very long and detailed income tax law by Wisconsin in 1911. In addition to these, there are special and restricted income tax provisions in force in Massachusetts and Tennessee, brought down from earlier legislation in those states and included in their later codes or revisions.

§ 195. Income Tax Laws in Force

From the foregoing historical review it will be seen that income tax laws are now in force not only for the United States generally, by the legislation of Congress, but also in and for the following states and territories: Wisconsin, Virginia, North Carolina, South Carolina, Massachusetts, Tennessee, Oklahoma, and Hawaii. The text of all these statutes, including the acts of Congress passed between 1861 and 1870 and the act of 1894 and the corporation tax law of 1909, as well as the federal income tax law of 1913, will be found printed in full in the appendix to this volume.

But it is not alone in America that taxation of incomes has been resorted to as a rich source of governmental revenue. On the contrary,—in some cases only from recent times, but in others for more than a century—the income tax has been, and is still, employed in England and several of her colonies, in Norway, Sweden, and Denmark, in Prussia, Austria, and Italy, in France, and in fact in practically all the great civilized nations of the world. As observed by the court in Wisconsin, in considering the validity of the statute of that state: "It may be well to note that income taxation is no new and untried experiment in the field of taxation. It has been in use in various forms, and generally with the progressive feature, by many of the civilized governments of the world for decades, which in some instances run into cen-

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turies. It has been used at various times by nearly or quite twenty of our own states, and is now in use in several of them. It was used for a brief period by the government of the United States, and is now in successful operation in practically all of the great nations of the civilized world, except the United States." [10] As to the last sentence, it should be remembered that this was written in 1912, and the exception then noted has now ceased to exist.

§ 196. Departmental Regulations

All the federal income tax statutes, not excepting the one now in force, have confided to the administrative officers of the government a large measure of authority and discretion in the matter of prescribing rules and regulations for the assessment and collection of the tax, particularly to the Commissioner of Internal Revenue, whose bureau is specially charged with the collection of this tax, as of all other internal revenue taxes. In most instances, however, his regulations must have the approval of the Secretary of the Treasury. This is not considered as an unlawful delegation to these officers of the legislative power of Congress itself, and no objection to the constitutional validity of such a grant of authority has been successfully maintained.[11] But of course it is not within the lawful power of these officers to go a step beyond the limits of the act of Congress under which their authority is exercised. They could neither bring within the purview of the law or of their regulations anything not definitely within the words of the act, nor except from its operation anything not clearly meant to be excluded, nor add to the burden of the taxpayer anything which Congress did not intend to impose upon him. But within the limits of their rightful authority, regulations prescribed by the Commissioner of Internal Revenue, pursuant to statutory authority, with the approval of the Secretary of the Treasury where necessary, in respect to the assessment and collection of internal revenue taxes, or for the government of the officers of

[10] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

[11] See, infra, § 214.

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the revenue department, have all the force and effect of law, and are as binding as if incorporated in the statute law of the United States; and the acts of the Commissioner are presumed to be the acts of the Secretary.[12] But the construction given to an act of Congress imposing internal revenue taxes by the Commissioner of Internal Revenue, though officially published, is not a construction of so much dignity that a re-enactment of the statute subsequent to the construction is to be regarded as a legislative adoption of that construction, and especially when the construction would make a proviso to the act repugnant to the body of the act.[13]

All the regulations and rulings of the Treasury department relative to the federal income tax act of 1913, up to the date of going to press, are printed in full in the second and third chapters of this book.

§ 197. Economic Aspects of Income Taxation

Although we are here concerned rather with the legal aspects of the income tax laws than with their economic justification, it may be well to add what has been said on this subject by one or two authorities. As to this method of raising revenue, "the fundamental idea upon which its champions rest their argument in its favor is that taxation should logically be imposed according to ability to pay, rather than upon the mere possession of property, which for various reasons may produce no revenue to the owner. It is argued that there should be as nearly as practicable equality of sacrifice among the various taxpayers, and that a tax levied at an uniform or proportional rate can rarely, if ever, produce equality of sacrifice; that one per cent of a small income, which just suffices to support its owner, is a far larger relative contribution to the public treasury than one per cent of an income so large that it cannot be exhausted by the owner, except by means of lavish and extravagant expenditures." [14] "In theory

[12] Stegall v. Thurman, 175 Fed. 813; In re Huttman, 70 Fed. 699.
[13] Dollar Sav. Bank v. United States, 19 Wall. 227, 22 L. Ed. 80.
[14] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

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an income tax is an ideal one. Much property is necessarily carried by citizens of a state that is unproductive, and hence yields but little income out of which taxes may be paid; while, on the other hand, if the state only demands a part of the income actually earned, it works no hardship on its citizens. If each man paid taxes according to his income, those who have most would pay most, and those who have least would pay least." [15]

[15] Report of Minnesota State Tax Commission, 1910.

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CHAPTER VI

CONSTITUTIONAL VALIDITY OF INCOME TAX LAWS

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§ 198. Requirement of Due Process of Law

As applied to the levy, assessment, and collection of taxes, the constitutional requirement of due process of law does not mean that either the validity of the tax or the liability of the particular person or property should be adjudicated by a court of justice. Nor does it mean that personal notice should be given to the taxpayer of each or any step in the proceedings. It is enough if he is informed of the amount for which he is to be charged, and is afforded an opportunity to contest the legality of the tax, the question of his liability to it, or the amount of his assessment, before some board or tribunal empowered to give him all the relief which justice may demand, though it be a board of administrative officers in the first instance, with a final appeal to the courts.[1] As this

[1] Black, Const. Law (3d edn.) p. 580.

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d of procedure has commonly been prescribed by the e tax laws, their constitutional validity has been upheld inst the contention that they deprived the citizen of his rty without due process of law.[2] In one of the cases g with this question it was said: "The claim that the prives the plaintiff of his property without due process , and denies him the equal protection of the laws, raises ons under the federal constitution, upon which the de- s of the Supreme Court of the United States are au- ative and controlling. In solving these questions we therefore be guided by the decisions of that court. In entucky Railroad Tax Cases, 115 U. S. 321, 6 Sup. Ct. L. Ed. 414, the court considered a statute of the state ntucky, which involved both these constitutional guar- . Upon the question of what is due process of law, in atter of levying and collecting taxes, the court, by Mr. e Matthews, said: 'It has been repeatedly decided by ourt that the proceedings to raise the public revenue by g and collecting taxes are not necessarily judicial, and lue process of law, as applied to that subject, does not or require the right to such notice and hearing as are ered to be essential to the validity of the proceedings dgments of judicial tribunals. Notice by statute is gen- the only notice given, and that has been held sufficient. dging what is due process of law," said Mr. Justice ey in Davidson v. New Orleans, 96 U. S. 97, 24 L. Ed. 'respect must be had to the cause and object of the , whether under the taxing power, the power of eminent n, or the power of assessment for local improvements, or of these; and if found to be suitable or admissible in ecial case, it will be adjudged to be due process of law, found to be arbitrary, oppressive, and unjust, it may be ed to be not due process of law." In its application to edings for the levy and collection of taxes, it was said

nt v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. Alderman v. Wells, 85 S. C. 507, 67 S. E. 781, 21 Am. & Eng. Cas. 193, 27 L. R. A. (N. S.) 864.

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in McMillen v. Anderson, 95 U. S. 37, 42, 24 L. Ed. 335, that it "is not, and never has been, considered necessary to the validity of a tax that the party charged should have been present, or had an opportunity to be present, in some tribunal, when he was assessed." This language, it is true, was used in the decision of a case in reference to a license tax, where all the circumstances of its assessment were declared by statute, and nothing was intrusted to the discretion of public officers; but in the State Railroad Tax Cases, 92 U. S. 575, 610, 23 L. Ed. 663, where the ascertainment of the taxable value of railroads was the duty of a board, as in the present case, whose assessment was challenged for the reason that the proceedings were not due process of law, and for want of notice and a hearing, it was said by Mr. Justice Miller, delivering the opinion of the court: "This board has its time of sitting fixed by law. Its sessions are not secret. No obstruction exists to the appearance of any one before it to assert a right or redress a wrong, and, in the business of assessing taxes, this is all that can be reasonably asked." ' " [3]

§ 199. Requirement of Equality and Uniformity

"Property," as the term is used in reference to taxation, means the corpus of an estate or investment, as distinguished from the annual gain or revenue from it. Hence a man's income is not "property" within the meaning of a constitutional requirement that taxes shall be laid equally and uniformly upon all property within the state.[4] For this reason, no valid objection to an income tax on constitutional grounds can be based on the fact that it may exempt certain classes of persons or corporations while taxing others, or that it may be graduated or progressive, bearing with increasing severity upon the citizen in proportion as his income increases. Whatever force such objections might possess as applied to a general property tax, a tax on incomes

[3] Alderman v. Wells, 85 S. C. 507, 67 S. E. 781, 21 Am. & Eng. Ann. Cas. 193, 27 L. R. A. (N. S.) 864, citing also Cass Farm Co. v. Detroit, 181 U. S. 396, 21 Sup. Ct. 644, 45 L. Ed. 914.

[4] Waring v. Savannah, 60 Ga. 93; Glasgow v. Rowse, 43 Mo. 479.

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is not included in the constitutional requirement.[5] And where the provision of the constitution is broader,—as, that "taxation shall be equal and uniform,"—still it is said, in relation to income taxes, that this requirement is satisfied by such regulations as will secure an equal rate and just valuation, without reference to the method of valuation, and in order to be uniform a tax need not be imposed and assessed upon all property by the same agency or officers.[6] So, as regards the provision of the federal constitution that taxes imposed by act of Congress shall be "uniform throughout the United States," it is said that the uniformity here required is a geographical uniformity, which does not require the equal application of the tax to all persons or corporations who may come within its operation, and hence taxing a business when carried on by a corporation, and exempting a similar business when carried on by a partnership or by a private individual, as was done by the corporation excise tax law of 1909, does not invalidate the tax.[7]

§ 200. Equal Protection of the Laws

Income tax laws have commonly contained provisions classifying the subjects of taxation, discriminating between individuals and corporations, or between residents and nonresidents, exempting certain classes of companies or those engaged in certain pursuits, allowing deduction of some items and not of others, and altogether releasing from taxa-

[5] Alderman v. Wells, 85 S. C. 507, 67 S. E. 781, 21 Am. & Eng. Ann. Cas. 193, 27 L. R. A. (N. S.) 864.

[6] Commonwealth v. Brown, 91 Va. 762, 21 S. E. 357, 28 L. R. A. 110.

[7] Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389. And see Edye v. Robertson, 112 U. S. 580, 5 Sup. Ct. 247, 28 L. Ed. 798; Michigan Cent. R. Co. v. Slack, 22 Int. Rev. Rec. 337, Fed. Cas. No. 9,527a. "The uniform rule to be observed in the exercise of the taxing power seems to be so far applicable to the taxes imposed on trades, professions, franchises, and incomes as to require that no discriminating tax be imposed on persons pursuing the same vocation, while varying amounts may be assessed upon vocations or employments of different kinds." Worth v. Wilmington & W. R. Co., 89 N. C. 291, 45 Am. Rep. 679.

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tion incomes below a certain minimum and imposing a gradually increasing burden upon incomes above that sum. On account of these features they have always been urgently assailed as denying the "equal protection of the laws." But without avail. This provision, it is held, does not prevent such reasonable classifications and distinctions as those mentioned. Thus, in a decision sustaining the income tax law of the territory of Hawaii, it was said that the clause in the Fourteenth Amendment to which reference is made does not require taxes to be levied by a uniform method and at the same rate upon every class of property, but the manner of taxation with respect to each class is left to the legislative discretion.[8] Again: "The provision in the Fourteenth Amendment that no state shall deny to any person within its jurisdiction the equal protection of the laws was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only and not tax securities for payment of money; it may allow deductions for indebtedness or not allow them. All such regulations and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our government, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would include all cases. They must be decided as they arise. We think that we are

[8] Peacock v. Pratt, 121 Fed. 722, 58 C. C. A. 48.

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saying that the Fourteenth Amendment was not in- to compel the states to adopt an iron rule of equal n. If that were its proper construction, it would ly supersede all those constitutional provisions and some of the states whose object is to secure equality tion, and which are usually accompanied with qualifi- deemed material, but it would render nugatory those inations which the best interests of society require, are necessary for the encouragement of needed and industries, and the discouragement of intemperance ce, and which every state, in one form or another, it expedient to adopt." [9] And again, "there is no supervision on the part of the nation over state tax- and in respect to the latter the state has, speaking ly, the freedom of a sovereign both as to the objects thods. It was well said in the opinion of the circuit n this case that there can at this time be no question, ne frequent and uniform expressions of the federal ne Court, that it was not designed by the Fourteenth ment to the constitution to prevent a state from ng its system of taxation in all proper and reasonable nor to compel the states to adopt an ironclad rule of , to prevent the classification of property for purposes tion, or the imposition of different rates upon differ- sses. It is enough that there is no discrimination in f one as against another of the same class, and the for the assessment and collection of the tax is not stent with natural justice." [10] Particularly with ref- to the progressive or graduated features of a tax law n the statute in question was an inheritance tax law an income tax law) the Supreme Court of the United sustaining the validity of the law, said: "What satis- s equality has not been, and probably never can be,

s Gap R. R. Co. v. Pennsylvania, 134 U. S. 232, 10 Sup. Ct. L. Ed. 892.

higan Cent. R. Co. v. Powers, 201 U. S. 245, 26 Sup. Ct. 459, l. 744.

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precisely defined. Generally it has been said that it only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances." [11] And the court in South Carolina remarks: "The right of the legislature of the state to make reasonable classifications of persons and property for public purposes has been so often affirmed by the courts that it can no longer be questioned. If the classification is not arbitrary,—that is, if it bears reasonable relation to the purposes to be effected,—and if the constituents of each class are all treated alike, under similar circumstances and conditions, the rule of equality is satisfied." [12] So the Supreme Court of Wisconsin declares: "The sum and substance of it is that the Fourteenth Amendment never was intended to lay upon the states an unbending rule of equal taxation. The states may make exemptions, levy different rates upon different classes, tax such property as they choose, and make such deductions as they choose, and so long as they obey their own constitutions and proceed within reasonable limits and general usage, there is no power to say them nay." [13]

The same principles apply to the validity of any income tax law enacted by Congress. Although the provision against laws denying the equal protection of the law applies only to the legislation of the states, it is probable that other clauses of the Constitution could be found which would stand in the way of any act of Congress containing arbi-

[11] Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 18 Sup. Ct. 594, 42 L. Ed. 1037.

[12] Alderman v. Wells, 85 S. C. 507, 67 S. E. 781, 21 Am. & Eng. Ann. Cas. 193, 27 L. R. A. (N. S.) 864. So, in Pennsylvania, it is held that a municipal ordinance which classifies merchants into wholesale dealers and retail dealers for the purposes of a license tax, and imposes different rates of taxation on the different classes, is not unconstitutional. Commonwealth v. Clark, 195 Pa. St. 634, 46 Atl. 286, 57 L. R. A. 348, 86 Am. St. Rep. 694.

[13] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

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invidious, or unreasonable discriminations against in-
als or classes. But within reasonable limits, "we must
rget that the right to select the measure and objects of
on devolves upon the Congress, and not upon the
, and such selections are valid unless constitutional
ions are overstepped. It is no part of the function of
rt to inquire into the reasonableness of the excise, ei-
s respects the amount or the property upon which it
osed." [14]

Discrimination Between Corporations, Partnerships, and Individuals

substantial difference between the rights, privileges,
and business methods of corporations and those of in-
als engaged in business has been thought to afford a
able basis for placing them in different classes, for the
ses of taxation. Hence an income tax law cannot be
ged invalid, as making unjust or illegal discriminations,
e it imposes a different rate of taxation upon the income
porations from that imposed on the income of individu-
because it exempts the income of the individual be-
certain sum, but does not grant a similar exemption to
rations.[15] As to the latter point, in particular, the
is that an exemption of a minimum income is granted
individual in lieu of a deduction for personal and
expenses, and that no rule of justice requires a similar
nce to corporations, which have no such expenses, a de-
n of other necessary expenses being granted in both
[16] For similar reasons, there is a sufficient ground for
ication between individuals and partnerships in the im-
on of an income tax. And the Wisconsin statute was
ned by the Supreme Court of that state, against the con-

int v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L.
).

ate v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng.
as. 1147; Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct.
L. Ed. 389; Robertson v. Pratt, 13 Hawaii, 590.

obertson v. Pratt, 13 Hawaii, 590.

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tention that it made an unjust discrimination in allowing exemptions to individuals which were denied to partnerships. It was said: "A partnership ordinarily has certain distinct and well-known advantages in the transaction of business over the individual, arising from the fact that it allows a combination of capital, brains, and industry, and thus makes it possible to accomplish many things which an individual in the same business cannot accomplish. Further than this, however, there is another consideration. If the partner have individual income from other sources than the partnership business (as many do), his exemptions will be allowed to him out of the individual income, and thus, if he were also allowed exemptions from the partnership income, he would be allowed double exemptions. Altogether there seems to be ample reason for the classification." [17]

§ 202. Discrimination Between Residents and Non-Residents

Very serious objections have been urged against the various income tax laws, on account of the discriminations which they have ordinarily made as between residents and non-residents or citizens and aliens. It has been adjudged that the legislature may put foreign insurance companies in a class by themselves, and tax them at the rate of one per cent on their gross incomes, while other persons and corporations are taxed two per cent on their net incomes and one per cent on their property.[18] But has a state any lawful power to tax the income, or any part of the income, of a non-resident, or the United States to tax the income of a person residing abroad, whether a citizen or an alien? If so, is it an unlawful discrimination to grant exemptions to residents and deny them to non-residents? Or to tax the entire income of the resident citizen, and to tax only so much of the income of the non-resident as is derived from sources within the state? And in the latter case, how is the validity of the law affected by the

[17] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

[18] Robertson v. Pratt, 13 Hawaii, 590.

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fact that part of the non-resident's taxed income may be derived from business or operations in the nature of interstate commerce? Further, is it essential to the validity of the statute that its administrative features, in regard to the assessment and collection of the tax, should be the same in the case of residents and non-residents?

It cannot be said that these questions have, as yet, been authoritatively settled by the courts. They were strongly urged upon the Supreme Court of Wisconsin in the case which tested and sustained the constitutionality of the income tax law of that state. But as they were not necessarily implicated in the case, and as the court held that, even conceding the invalidity of the particular features of the law which were objected to, that would not be sufficient ground for pronouncing it unconstitutional as a whole, no positive decision was rendered.[19] But the opinion of the court contains so full a statement of the questions referred to, and of the considerations which might affect their decision, as to require quotation at some length. Among other things, it was said: "It is argued that the provisions which deny to non-residents the exemptions which are allowed to residents, and which allow the board of review to increase the assessment of a non-resident without notice, while requiring notice to be given to a resident, violate section 2 of article 4 of the federal Constitution, which provides that 'the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.' The question of the validity of the provision allowing exemptions to residents of the state and denying them to non-residents is raised, and receives some attention in the briefs, but was not mentioned in the oral arguments. We regard it as a question involved in considerable doubt, and one not necessary to be passed upon now. It cannot be imagined for a moment that the legislature would have failed to pass the act had it not contained this provision, and we prefer to wait until the question is presented in a concrete case, at which time

[19] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

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there will be opportunity to fully consider it after comprehensive briefs and arguments. It seems that the Supreme Court of the United States decided, in Ward v. Maryland, 12 Wall. 418, 20 L. Ed. 449, that one of the privileges and immunities protected by the section quoted is the right to be exempt from any higher taxes or excises than are imposed by the state upon its own citizens. Other decisions relied on upon the same side are In re Stanford's Estate, 126 Cal. 112, 54 Pac. 259, 45 L. R. A. 788, and Sprague v. Fletcher, 69 Vt. 69, 37 Atl. 239, 37 L. R. A. 840, and the cases cited in the latter case. On the other side reliance is placed on the analogy of the laws providing for exemptions from execution seizure, which confine their benefits to residents, and upon Travelers' Insurance Co. v. Connecticut, 185 U. S. 364, 22 Sup. Ct. 673, 46 L. Ed. 949."

Again, in the same opinion, referring to certain sections of the income tax law, it was said: "The first of these sections provides, in substance, that a resident shall be taxed upon all of his income arising from rentals, stocks, bonds, securities, or evidences of debt, whether the same be derived from sources within or without the state, but that the non-resident shall only be taxed upon income derived from sources within the state or within its jurisdiction, but that any person doing business both within and without the state shall, as respects that part of his income not derived from rentals, stock, bonds, and securities, be taxed only on that proportion thereof which is derived from business transacted and property located within the state, to be determined in the manner specified in subdivision 'e' of section 1770b, of the Statutes, as far as applicable. The general purpose of the section is quite evident, namely, to tax a resident upon his whole income, and a non-resident only upon his income plainly derived from sources within the territorial jurisdiction of the state, and to provide that, where either person is engaged in a business interstate in its character, he shall only be taxed on that portion of the income derived from business transacted and property located within the state, according to the rule prescribed in section 1770b for determining that

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rtion of capital stock of a foreign corporation doing ess in this state, which must be reported to the Secretary ate. The rule so imported into the statute is an arbitrary and need not be stated at length in the view we now take r duty with regard to this contention. Two fundamental ions are made to this section: First, that the state can- ax the incomes of non-residents, no matter from what e derived; and second, that the attempt to tax a part of rofits derived from an interstate business, under the rule ed, must necessarily result in a taxation of the receipts of tate commerce, and hence a regulation thereof, which is lation of that clause of the federal Constitution which to Congress the power to regulate commerce between the We shall decide neither of these questions now. If the n be open to either or both of these objections, or any , we cannot regard that fact as fatal to the act. The ature evidently intended to avoid both of the objections They had a difficult and delicate subject to deal with. they been authoritatively informed that they could not tutionally tax a non-resident's income at all, and could ivide the income derived partially from state and par- from interstate business, we have no idea that they would t account have abandoned their purpose to pass the law. , if they provided an improper rule for the division (con- g that a division can be made at all), there seems no rea- hy the rule may not be rejected and the proper rule, will carry out the fundamental purpose of the provi- e used. In any event, we are fully satisfied that the re- n of any or all of the provisions objected to in this sec- annot reasonably be held to invalidate the whole act."

d again, it was remarked: "A strong argument is made ing the validity of section 1087, m, 22, which provides stance that the income of a resident derived from differ- olitical subdivisions of the state shall be combined for the se of determining the exemptions and the rate, while the e of a non-resident is to be separately assessed and taxed ch of the municipalities from which it is derived. A

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table is submitted showing that under this rule if A., a resident, derived $1,000 from each of 13 different towns or cities, he will be required to pay a tax of $367, because his income is aggregated, and consequently becomes in large part subject to the higher rates, while if B., a non-resident, receives the same income from the same sources, he will only pay the smallest rate, i. e., one per cent of each $1,000, amounting to only $130. This, it is said, is unjust discrimination against the residents of the state, and deprives them of the privileges and immunities which are granted to the citizens of other states, in violation of the federal Constitution. This presents the question whether such a discrimination can be made between residents and non-residents, only this time the discrimination seems to be against the resident and in favor of the non-resident. This question, also, we deem one not necessary to be decided now, and we intimate no opinion upon it. It does not seem that the case will frequently arise, but if it does, it can be then treated. We do not regard it as in any respect important in considering the validity of the act as a whole."

§ 203. Federal Taxation of Corporations Created by States

When the constitutionality of the federal corporation tax law of 1909 was attacked before the Supreme Court of the United States, the objection was very strongly urged that, for the federal government to impose a tax on corporations which received their franchises from the states was beyond its rightful authority, inasmuch as it was imposing a burden upon the right of the several states to create corporations, which might be pushed to such an extreme as to destroy that right, and hence an invasion of their prerogatives, and the crippling of a power rightfully belonging to them as separate governments. The act of 1909 purported to lay a tax on the privilege of engaging in or carrying on business in a corporate capacity, the amount of the tax to be measured by the net income of the corporation. The act of 1913 taxes the income of corporations directly and by name. But the same argument, if it had prevailed against the one statute, would be equally potent as

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st the other. Hence it becomes important to consider the on of the Supreme Court in which this argument was and rejected.[20] The court said: "It is next contended he attempted taxation is void because it levies a tax upon xclusive right of a state to grant corporate franchises, se it taxes franchises which are the creation of the state sovereign right and authority. This proposition is rested the implied limitation upon the powers of national and governments to take action which encroaches upon or es the exercise of the exclusive power of sovereignty in her. It has been held in a number of cases that the state t tax franchises created by the United States or the ies or corporations which are created for the purpose of ing out governmental functions of the United States. xamination of these cases will show that in each case e the tax was held invalid, the decision rested upon the sition that the corporation was created to carry into ef- powers conferred upon the federal government in its eign capacity, and the attempted taxation was an inter- ce with the effectual exercise of such powers.[21] * * * nust therefore enter upon the inquiry as to implied limi- s upon the exercise of the federal authority to tax be- of the sovereignty of the states over matters within their sive jurisdiction, having in view the nature and extent of ower specifically conferred upon Congress by the Consti- n of the United States. We must remember, too, that the ues of the United States must be obtained in the same ory, from the same people, and excise taxes must be col- l from the same activities, as are also reached by the in order to support their local government. While the n this case, as we have construed the statute, is imposed

'lint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. 39.

iting McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579; Os- v. Bank of United States, 9 Wheat. 738, 6 L. Ed. 204; Union R. Co. v. Peniston, 18 Wall. 5, 21 L. Ed. 787; California v. al Pac. R. Co., 127 U. S. 1, 8 Sup. Ct. 1073, 32 L. Ed. 150.

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upon the exercise of the privilege of doing business in a corporate capacity, as such business is done under the authority of state franchises, it becomes necessary to consider in this connection the right of the federal government to tax the activities of private corporations which arise from the exercise of franchises granted by the state in creating and conferring powers upon such corporations. We think it is the result of the cases heretofore decided in this court that such business activities, though exercised because of state-created franchises, are not beyond the taxing power of the United States. Taxes upon rights exercised under grants of state franchises were sustained by this court.[22] * * * The cases unite in exempting from federal taxation the means and instrumentalities employed in carrying on the governmental operations of the state. The exercise of such rights as the establishment of a judiciary, the employment of officers to execute and administer the laws, and similar governmental functions, cannot be taxed by the federal government.[23] But this limitation has never been extended to the exclusion of the activities of a merely private business from the federal taxing power, although the power to exercise them is derived from an act of incorporation by one of the states. We therefore reach the conclusion that the mere fact that the business taxed is done in pursuance of authority granted by a state in the creation of private corporations does not exempt it from the exercise of federal authority to levy excise taxes upon such privileges. * * * Nor is the special objection tenable, made in some of the cases, that the corporations act as trustees, guardians, etc., under the authority of the laws or courts of the state. Such trustees are not the agents of the state government in a

[22] Citing Michigan Cent. R. Co. v. Collector, 100 U. S. 595, 25 L. Ed. 647; United States v. Erie R. Co., 106 U. S. 327, 1 Sup. Ct. 223, 27 L. Ed. 151; Spreckels Sugar Ref. Co. v. McClain, 192 U. S. 397, 24 Sup. Ct. 376, 48 L. Ed. 496.

[23] Citing Collector v. Day, 11 Wall. 113, 20 L. Ed. 122; United States v. Baltimore & O. R. Co., 17 Wall. 322, 21 L. Ed. 597; Ambrosini v. United States, 187 U. S. 1, 23 Sup. Ct. 1, 47 L. Ed. 49.

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hich exempts them from taxation because executing
ssary governmental powers of the state. The trustees
their compensation from the interests served, and not
e public revenues of the state."

Taxation of Income from Non-Taxable Property

been broadly held that there is no constitutional objec-
mposing an excise or license tax on a business or occu-
although the property employed in the business is ex-
om taxation.[24] And on the same principle, a tax on in-
uld not be held invalid merely because the income was
from property not subject to be taxed. Also it has
cided that the rule that the power to tax depends upon
tion of the subject-matter of the tax has no applica-
taxation under the laws of the United States.[25] But
ng upon the constitutionality of the United States
ax law of 1894, the Supreme Court held that, in so far
ct levied a tax upon the income of persons or corpora-
rived from the bonds of municipal corporations, it was
because such a tax is a tax on the power of the states
r instrumentalities to borrow money, and consequently
nt to the constitution.[26] A similar question arose un-
corporation excise tax law of 1909, but it was held
same court that the latter statute was not invalid be-
ne income of a corporation subject to the tax might
n part, or even entirely, of interest on municipal bonds,
ınd of the distinction being that the act of 1909 did not
a tax on the income so derived, but on the franchise or
e of doing business in a corporate capacity, the income
erely used as the measure of the amount of the tax
articular case.[27] The act of 1913 has reverted to the

nemacher v. State, 129 Wis. 190, 108 N. W. 627, 9 L. R. A.
21, 9 Ann. Cas. 711.
ed States v. Bennett, 232 U. S. 299, 34 Sup. Ct. 433, 58 L.

ock v. Farmers' Loan & Trust Co., 157 U. S. 429, 15 Sup.
39 L. Ed. 759.
t v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L.
Ann. Cas. 1912B, 1312.

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principle of taxing incomes directly, but it meets the point in question by excluding from taxable income "interest upon the obligations of a state or any political subdivision thereof." It had also been held in an earlier case that the act of Congress of 1864, imposing an income tax, and containing a provision for taxing the interest paid by railroads and some other corporations on their bonded debt, requiring them to pay the tax and deduct the amount thereof from their periodical payments to the holders of the bonds, could not be applied in the case of a municipal corporation owning such bonds, since the municipalities created by the states are entirely beyond the taxing power of the federal government.[28] But whether a state may indirectly affect the borrowing power of another state or its municipalities, by taxing its own citizens upon so much of their income as is derived from the bonded or other debt of such other state or its municipalities, is a different question altogether. But at least it has been decided that there is nothing in the Constitution of the United States to prevent such taxation.[29] It seems clear, however, that a state cannot lawfully tax either its own citizens or non-residents upon their income derived from its own bonds, when such bonds were not taxable at the time of their issuance, for this would impair the obligation of the contract implied in the issue and sale of the bonds, and more especially would this be true where the legislature of the state had covenanted that the bonds should be free from taxation.[30] It must also follow from the principle of the necessary independence of the federal and state governments that the income tax law of any state cannot include interest on the bonds or other public securities of the United States. And state laws of this kind generally make an express exception as to income derived from United States

[28] United States v. Baltimore & O. R. Co., 17 Wall. 322, 21 L. Ed. 597.

[29] Bonaparte v. Tax Court, 104 U. S. 592, 26 L. Ed. 845.

[30] Houston & T. C. R. Co. v. Texas, 177 U. S. 66, 20 Sup. Ct. 545, 44 L. Ed. 673; State Tax on Foreign-Held Bonds, 15 Wall. 300, 21 L. Ed. 179; Antoni v. Greenhow, 107 U. S. 769, 2 Sup. Ct. 91, 27 L. Ed. 468.

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urities, at least where such securities are declared to be tax-mpt by act of Congress. But it has been held that the pos-e impairment of the borrowing power of the government, he remote effect of a state statute imposing a tax upon the nsfer of a decedent's property, when the statute is applied roperty consisting of United States bonds, is not sufficient ender the statute unconstitutional.[31] It should also be re-ked, in this connection, that a state tax upon the gross re-ts or the net income of corporations or individuals cannot dly be made to operate as a restraint upon or interference h interstate commerce, and hence, in the case of carriers other companies engaged in interstate as well as domestic iness, only the receipts from domestic commerce can be ed by the state.[32]

05. Taxing Salaries of Federal and State Officers

The federal income tax law of 1913 exempts "the compen-on of all officers and employees of a state or any political division thereof, except when such compensation is paid the United States Government." It would not be compe-t for Congress to lay a tax upon the salary of an officer of tate, and this by necessary implication from the constitution the mutual relation of the federal and state governments, ther being authorized to tax the means or agencies em-yed by the other in carrying out its governmental functions; hence it was held that a tax assessed, under the federal ome tax law of 1864, upon the salary of a state judge was ongfully imposed, and if paid under protest could be recov-d back.[33] And in a similar case it was held to be imma-al that the judge's salary was fixed by the authorities of a nty and payable out of the treasury of a city.[34] So, one's

[31] Plummer v. Cole, 178 U. S. 115, 20 Sup. Ct. 829, 44 L. Ed. 998.
[32] Philadelphia & S. S. S. Co. v. Pennsylvania, 122 U. S. 326, 7 . Ct. 1118, 30 L. Ed. 1200; Leloup v. Port of Mobile, 127 U. S. 8 Sup. Ct. 1380, 32 L. Ed. 311; State v. United States Fidelity Guaranty Co., 93 Md. 314, 48 Atl. 918.
[33] The Collector v. Day, 11 Wall. 113, 20 L. Ed. 122. And see Van cklin v. Tennessee, 117 U. S. 151, 6 Sup. Ct. 670, 29 L. Ed. 845.
[34] Freedman v. Sigel, 10 Blatchf. 327, Fed. Cas. No. 5,080.

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compensation as state's attorney is not liable to the federal income tax, nor can such compensation be applied to the satisfaction of the monetary exemption; it must be omitted altogether from the computation of his income, and the taxpayer must have his exemption out of his income from other sources.[35] And for similar reasons, it has been held that a stamp tax imposed by the United States upon a bond required by a state from an officer, as a prerequisite to the exercise of the duties of his office, is, in necessary legal effect, a tax upon the officer's right to qualify, and upon the exercise by the state of its governmental functions, and therefore invalid, and the fact that the tax is required to be paid before the officer has qualified is not material.[36] Conversely, a state income tax cannot be made to apply to the salary of any officer of the United States government.[37] "It is considered as settled that the state has no power to tax an officer of the United States, or vice versa, because the power to tax includes the power to destroy, and if a state were allowed to tax a United States officer one dollar, it might tax him to the full amount of his salary, and thus arrest all the measures of the government. And so the United States cannot tax a state officer for the same reason." [38] The only state income tax law now in force which explicitly recognizes this limitation is that of Wisconsin, which allows a deduction from taxable income of "salaries or other compensation received from the United States by officials thereof." [39] But a similar exception must be read by necessary implication into the laws of any other state where the question might arise. Therefore all federal officers, such as postmasters, internal revenue officers, district attorneys, officers of the land department, and United States judges resident within the state, must be understood to be exempt from the

[35] United States v. Ritchie, Fed. Cas. No. 16,168.

[36] Bettman v. Warwick, 108 Fed. 46, 47 C. C. A. 185.

[37] Purnell v. Page, 133 N. C. 125, 45 S. E. 534; Dobbins v. Com'rs of Erie County, 16 Pet. 435, 10 L. Ed. 1022.

[38] King v. Hunter, 65 N. C. 603, 613.

[39] Wisconsin Income Tax Law, 1911, § 1087m, 4, f. See this statute in full in the Appendix.

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state income tax, in so far as relates to their salary or compensation from the United States, though, if such officers have an income derived from other sources, it is subject to the tax, as there is nothing in their official character to exempt their private means from state taxation. And it should be observed that the licensing of a merchant under the United States revenue laws does not render him an "officer" of the federal government, nor withdraw him from the taxing power of the state.[40] And although the salary of an officer in the United States army cannot be taxed by a state or municipality, yet his personal property, such as household furniture, is not exempt from such taxation,[41] and of course the same principle would apply to his investments or the income derived therefrom. And it has been held in Massachusetts that money which one has on deposit in a bank is not exempt from taxation because it was derived from his salary as a federal officer, for it loses its identity as salary when it has been paid to him and come into his possession.[42]

As to the incidence of federal taxation upon federal officers, it should be observed that there are some whose salary, while it is to be fixed and appropriated by Congress, is safeguarded from change during their tenure of office by the constitution itself. As to the President, he is to "receive a compensation which shall neither be increased nor diminished during the period for which he shall have been elected." (Const. U. S., art. 2, § 1.) And as to the federal judges, they shall "receive a compensation which shall not be diminished during their continuance in office." (Const. U. S., art. 3, § 1.) The income tax laws enacted by Congress during the period of the Civil War contained no such exception. But the justices of the Supreme Court, through Chief Justice Taney, addressed a communication to the Secretary of the Treasury declaring their conviction that their salaries were not legally subject to the tax. Thereupon the Attorney General, to whom the com-

[40] State v. Bell, 61 N. C. 76.
[41] Finley v. City of Philadelphia, 32 Pa. St. 381.
[42] Dyer v. City of Melrose, 197 Mass. 99, 83 N. E. 6.

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munication had been referred, gave an elaborate opinion, advising the Secretary of the Treasury that the income tax could not lawfully be assessed upon and collected from the salaries of those judicial officers of the United States who were in office at the time of the enactment of the statute imposing the tax.[43] No attempt was made thereafter to assess the tax upon the salaries of the judges. But in the income tax law of 1894, Congress again failed to make an exception in this particular, and the statute was held unconstitutional and void in so far as it attempted to tax the salaries of the judges of the United State courts.[44] But the act of 1913 meets this point by providing that "in computing net income under this section there shall be excluded * * the compensation of the present President of the United States during the term for which he has been elected, and of the judges of the supreme and inferior courts of the United States now in office," * the evident intention being that the next President of the United States, and all federal judges appointed after the enactment of the statute, shall be subject to the income tax in respect to their salaries.[45]

[43] 13 Op. Atty. Gen. 161.

[44] Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759, per Field, J., concurring.

* The Treasury department rules that "the salary of judges of the Supreme and inferior courts of the United States appointed subsequent to October 3, 1913, and of judges who have been retired, is subject to the income tax and to the withholding provisions of the income tax law." Treasury Decision No. 2090, December 14, 1914.

[45] An interesting question might here be raised as to the effect of this provision on the power of Congress hereafter to repeal the income tax law or to change the rate of taxation under it. For if the imposition of the income tax upon the salary of the President would "diminish" it, within the meaning of the constitution (and that is the only possible legal reason for excepting the present incumbent), then the repeal of the act would as certainly "increase" the compensation of any future President to whose salary it had attached at the beginning of his term, which is equally forbidden by the constitution. And if a President shall be elected while the present statute is in force, any change in the rate of taxation, effected by amendment of the act, would either increase or diminish his compensation, as the case might be. And the same considerations apply to taxing the federal judges, except that their salaries may be increased, but not diminished, during their continuance in office. It would therefore appear to follow, as a perfectly logical conclusion, though an almost absurd result, that if a future Congress should de-

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as to all the other officers and employés of the United (including the members of Congress themselves) whose or compensation may be fixed and changed in the ab- discretion of Congress, there is no constitutional ob- n to the incidence of the income tax upon such salaries. was the decision made under the act of 1862 in regard to ing the income tax from the salary of an officer in the d States army,[46] and the rule is equally applicable to all save those mentioned in the preceding paragraph.

have next to consider the application of a state income w to the salaries of the state officers. Here also the ple applies that if the constitution of the state protects alaries from change during the incumbency of the par- officer, it prevents their being taxed as income. Thus rth Carolina, "it is provided in the constitution that the es of the most important officers shall not be altered dur- eir term of office, and this is understood to exempt their es from taxation, because to tax is to diminish, or it may destroy." [47] Hence if the local constitution provides ne salaries of the judges of the state shall not be dimin- during their continuance in office, such salaries are ex- from the income tax.[48] "It may be that the restriction article [of the constitution] upon the power of the leg- e refers principally to the diminution of the salaries judges by a law fixing it at a less amount than that es- ned at the epoch of their entrance into office. The ob- nowever, of this article was to secure the independence e judiciary. If the legislature can tax the salaries, it

increase the rate of income taxation, it would have to make licit exception as to the President and the federal judges, who then continue to be taxed at a different rate from other citi- and if it were desired to repeal the act, the President alone e required to continue paying the tax until the expiration of rm of office. Of course these complexities could have been d by the simple means of absolutely excepting these officers he operation of the statute.

lm v. United States, 39 Ct. Cl. 55.

ng v. Hunter, 65 N. C. 603; In re Taxation of Salaries of , 131 N. C. 692, 42 S. E. 970.

rnell v. Page, 133 N. C. 125, 45 S. E. 534; In re Taxation of s of Judges, 131 N. C. 692, 42 S. E. 970; Robertson v. Pratt, vall, 590.

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would be deprived of its plenary effect." [49] The only decision to the contrary was made in an early case in Pennsylvania, which, however much it may be respected at home, is not entitled to much persuasive effect elsewhere, in view of its opposition to the general current of authority.[50] But unless thus restrained by some explicit provision of the state constitution, it is within the lawful power of the state legislature to make an income tax law apply to the salaries of the various officers of the state and of its municipalities,[51] as is done in Wisconsin in all cases where such taxation would not be "repugnant to the constitution." It should be remembered that public office is not a "contract," within the sense of the constitutional prohibition against laws impairing the obligation of contracts. And hence no contract is violated by the imposition of an income tax upon the salary of an officer who was in office and whose compensation was fixed by law, at the time the income tax law came into effect; for his right to the compensation grows out of the rendition of services, and not

[49] City of New Orleans v. Lea, 14 La. Ann. 197.

[50] Northumberland v. Chapman, 2 Rawle (Pa.) 73. In this case it was said by Chief Justice Gibson: "As the constitution, like every other instrument, is to have a reasonable interpretation, the prohibition in question is to be restrained to laws which have such a reduction for their object, and not for their consequence. On any other principle of construction, a tax could not be constitutionally assessed on property purchased with money drawn from a judge's salary, which would, in reason, have as fair a claim to exemption as the salary itself. If we once get away from the plain inartificial import of the prohibition, it is not easy to tell at what stage of refinement we shall stop. The object of the legislature was to apportion the public burden according to the ratio of property, and to produce in detail a result approaching as near as possible to that of an income tax, a measure of assessment more equable in the abstract than any other that could be proposed. Now there is no reason to exempt a judge from contribution which is not just as applicable to any other officer who presents no tangible surface but his office to the revenue laws, nor was the object of the prohibition to place him in this respect on higher ground. The legislature could not constitutionally retrench a part of a judge's salary under the pretext of assessing a tax on it; but, for the bona fide purpose of contribution, a reasonable portion of it, like any other part of his property, may be applied to the public exigencies."

[51] In re Taxation of Salaries of Judges, 131 N. C. 692, 42 S. E. 970.

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any contract between the government and the officer
: services shall be rendered and the compensation paid.[52]
lly, an income tax law is not to be pronounced uncon-
nal and void in its entirety simply because it lays a tax
he salaries of certain officers who are constitutionally
from such taxation, or fails to make an explicit ex-
in their favor. The protection of the constitution be-
of such an illegal provision can be invoked only by one
whom it is sought to be enforced; and even in such a
the law in affirmative terms lays the tax on such an ex-
ıcome, that portion of it can be exscinded without de-
g the rest, while, if it merely omits to make the neces-
:ception, it can be construed as not applying in the par-
case.[53]

Exemption of Incomes Below a Fixed Sum

ıs been held by a great many authorities that a statute
ıg taxes on inheritances, legacies, and successions is
constitutional because it exempts from its operation
or inheritances below a certain minimum value,[54] pro-

Butler v. Pennsylvania, 10 How. 402, 13 L. Ed. 472; Smith
of New York, 37 N. Y. 518; Conner v. City of New York, 5
5.

te v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann.
47; Peacock v. Pratt, 121 Fed. 772, 58 C. C. A. 48; Robert-
Pratt, 13 Hawaii, 590.

owlton v. Moore, 178 U. S. 60, 20 Sup. Ct. 755, 44 L. Ed. 977;
v. Illinois Trust & Sav. Bank, 170 U. S. 283, 18 Sup. Ct. 594,
d. 1037; Colton v. Montpelier, 71 Vt. 413, 45 Atl. 1039; In
ok's Estate, 78 Vt. 259, 62 Atl. 724; In re Wilmerding's Es-
7 Cal. 281, 49 Pac. 181; State v. Vance, 97 Minn. 532, 106 N.
State v. Bazille, 97 Minn. 11, 106 N. W. 93; Black v. State,
. 205, 89 N. W. 522; State v. Guilbert, 70 Ohio St. 299, 71
36; Gelsthorpe v. Furnell, 20 Mont. 299, 51 Pac. 267; State
n, 94 Tenn. 674, 30 S. W. 750, 28 L. R. A. 78; In re Mixter's
10 Pa. Co. Ct. R. 409; Nunnemacher v. State, 129 Wis. 190,
W. 627, 9 L. R. A. (N. S.) 121, 9 Ann. Cas. 711. So, a state
imposing an ad valorem tax is not unconstitutional as deny-
equal protection of the laws because it exempts the property
hone companies whose gross receipts for the year do not ex-
00, at least where, under the classification made by the stat-
companies taxed are mainly those organized for profit, while
axed enterprises are mainly not profit-making, but mutual

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vided only that the exemption is not so excessive as to be entirely unreasonable.[55] On the same principle, an income tax law is not unconstitutional because it wholly exempts from taxation all incomes below a certain annual amount, and the question where the tax shall begin, or where the exemption shall end, is one exclusively for the decision of the legislature.[56] Such a tax law, making a reasonable exemption, is not in violation of a constitutional provision that taxes shall be equal and uniform.[57] And if it is at all within the power of a court to adjudge that the exemption granted is so excessive as to invalidate the statute, at least no such decision has ever yet been rendered. On the contrary, the decisions have sustained the income tax laws in this particular. That of Hawaii, exempting incomes to the amount of $1,000, was sustained as against the objection that the allowance was excessive.[58] That of Wisconsin was similarly held valid, although it exempts life insurance to the amount of $10,000, in favor of one legally dependent on the deceased. The court called this a "striking exemption," but said: "While this is somewhat large, we cannot say that it is unreasonable." [59] The income tax act of Congress of 1894 was sustained (by an inferior court) as against objection that the exemption allowed, $4,000, was unreasonably great.[60] The corporation excise tax law of 1909 was assailed on the ground that it exempted incomes of less than $5,000, but the Supreme Court of the

or co-operative. Citizens' Telephone Co. v. Fuller, 229 U. S. 322, 33 Sup. Ct. 833, 57 L. Ed. 1206.

[55] Minot v. Winthrop, 162 Mass. 113, 38 N. E. 512, 26 L. R. A. 259, in which case it was held that an excise tax on inheritances was not so clearly unreasonable, by reason of exempting estates under $10,000, as to render it unconstitutional. But see State v. Ferris, 9 Ohio Cir. Ct. R. 298, holding void an inheritance tax law which exempted property to the amount of $20,000.

[56] Moore v. Miller, 5 App. D. C. 413; New Orleans v. Fourchy, 30 La. Ann. 910.

[57] New Orleans v. Fourchy, 30 La. Ann. 910.

[58] Robertson v. Pratt, 13 Hawaii, 590.

[59] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

[60] Moore v. Miller, 5 App. D. C. 413.

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United States answered this objection with a mere reference to certain of its earlier decisions concerning similar exemptions in inheritance tax law.[61]

Though no decision on this precise point was rendered in the case before the United States Supreme Court involving the validity of the act of Congress of 1894, yet some of the separate opinions filed in that case contain valuable discussions both of the general question of exempting small incomes and of the limits of the authority of the courts in deciding upon the reasonableness of the exemption. Thus, in one of the opinions it was said: "A tax which is wanting in uniformity among members of the same class is or may be invalid. But this does not deprive the legislature of the power to make exemptions, provided such exemptions rest upon some principle, and are not purely arbitrary, or created solely for the purpose of favoring some person or body of persons. Thus in every civilized country there is an exemption of small incomes, which it would be manifest cruelty to tax, and, the power to make such exemptions once granted, the amount is within the discretion of the legislature, and so long as that power is not wantonly abused, the courts are bound to respect it. In this law there is an exemption of $4,000, which indicates a purpose on the part of Congress that the burden of this tax should fall on the wealthy, or at least upon the well-to-do. If men who have an income or property beyond their pressing needs are not the ones to pay taxes, it is difficult to say who are; in other words, enlightened taxation is imposed upon property and not upon persons. Poll taxes, formerly a considerable source of revenue, are now practically obsolete. The exemption of $4,000 is designed, undoubtedly, to cover the actual living expenses of the large majority of families, and the fact that it is not applied to corporations is explained by the fact that corporations have no corresponding expenses. The expenses of earning their profits are of course deducted in the same manner as the corresponding expenses of a private

[61] Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389.

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individual are deductible from the earnings of his busines
The moment the profits of a corporation are paid over to th
stockholders, the exemption of $4,000 attaches to them in th
hands of each stockholder." [62] And in another opinion i
the same case it was said: "In this connection, and as
ground for annulling the provisions taxing incomes, couns
for the appellant refers to the exemption of incomes that d
not exceed $4,000. It is said that such an exemption is to
large in amount. That may be conceded. But the court can
not for that reason alone declare the exemption to be invalid
Every one, I take it, will concede that Congress, in taxin
incomes, may rightfully allow an exemption to some amoun
This was done in the income tax laws of 1861 and in subse
quent laws and was never questioned. Such exemptions res
upon grounds of public policy, of which Congress must judge
and of which this court cannot rightfully judge; and tha
determination cannot be interfered with by the judicial branc
of the government, unless the exemption is of such a char
acter and is so unreasonably large as to authorize the cour
to say that Congress, under the pretence merely of legislatin
for the general good, has put upon a few persons burden
that, by every principle of justice and under every sound viev
of taxation, ought to have been placed upon all or upon th
great mass of the people. If the exemption had been place
at $1,500, or even $2,000, few, I think, would have contende
that Congress, in so doing, had exceeded its powers. In viev
of the increased cost of living at this day, as compared wit
other times, the difference between either of those amount
and $4,000 is not so great as to justify the courts in strikin
down all of the income tax provisions. The basis upon whic
such exemptions rest is that the general welfare requires tha
in taxing incomes, such exemptions should be made as wil
fairly cover the annual expenses of the average family, an
thus prevent the members of such families becoming a charg
upon the public. The statute allows corporations, when mak

[62] Dissenting opinion of Brown, J., in Pollock v. Farmers' Loan
Trust Co., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed. 1108.

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ing returns of their net profits or income, to deduct actual operating or business expenses. Upon like grounds, as I suppose, Congress exempted incomes under $4,000." [63] In another case, in construing a territorial income tax law, the court observed: "It is contended that the exemption of incomes to the extent of $1,000 is an illegal discrimination. The power of state legislatures to grant reasonable exemptions from taxation is undisputed. It has been upheld on grounds of enlightened public policy—a public policy which seeks to exclude from taxation the living expenses of the average family, and thus to enable the poor man to escape becoming a public burden. It rests upon the theory that the exemption results in ultimate benefit to the taxpayer, which compensates him for the additional burden of taxation which he is thereby called upon to bear. It does not apply to corporations, for the reason that they have no corresponding expense. But the exemption must be reasonable and impartial, and must be extended to all who are similarly situated. It is urged that the exemption in question is unreasonable. If the power to make exemptions be once conceded, the amount of the exemption is largely within the discretion of the legislature—a discretion which is not subject to review in the courts unless it be clearly shown to have been abused." [64]

§ 207. Exemption of Classes of Individuals or Corporations

It is a conceded principle of taxation, applicable to income taxes as well as to any others, that there is no constitutional objection to an exemption in favor of those corporations or institutions which serve important public purposes or confer benefits upon the public at large, such as religious, educational, and charitable organizations. Also it is clear that any corporation which bears its due share of the public burden, under a special form of taxation, may lawfully be exempted from the payment of any or all other taxes. Thus, the exemption

[63] Dissenting opinion of Harlan, J., in Pollock v. Farmers' Loan & Trust Co., supra.

[64] Peacock v. Pratt, 121 Fed. 772, 58 C. C. A. 48.

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of insurance companies from an income tax law does not render it invalid as to other corporations which are made subject to the law, where the exemption is made expressly on the ground that such companies are required by another law to pay a tax on the premiums received.[65] But beyond these elementary principles, the subject is not free from doubt. It would be obviously contrary to sound principles of constitutional law to push the power of exemption so far as to make the burden of the tax in reality fall upon a selected class of individuals or corporations. On this point the Supreme Court of Louisiana has said: "It is not necessary for us to decide whether or not, under the constitution, the legislature has power to levy an income tax. It suffices to say that, if the legislature has such power, it would be an indispensable condition of its exercise that the tax should embrace the incomes of all persons not exempted, and whatever power of classification the legislature might possess as to the subject-matter of taxation, that power could under no pretext be stretched so as to embrace the right to single out a particular class of taxpayers and to require them to pay such a tax, while exempting all others." [66] No such sweeping exemptions have been attempted in recent income tax laws. But they commonly contain exemptions in favor of labor organizations, agricultural societies, savings banks, mutual building and loan associations, mutual insurance companies, fraternal orders and benefit societies (or some of the foregoing), as well as charitable and educational institutions. The validity of such exemptions has been severely criticized. Thus, in one of the opinions filed in the Pollock case, it was said: "Exemptions from the operation of a tax always create inequalities. Those not exempted must, in the end, bear an additional burden or pay more than their share. A law containing arbitrary exemptions can in no just sense be termed uniform. In my judgment, Congress has rightfully no power, at the expense of

[65] Peacock v. Pratt, 121 Fed. 772, 58 C. C. A. 48.

[66] Parker v. North British & M. Ins. Co., 42 La. Ann. 428, 7 South. 599.

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others, owning property of the like character, to sustain private trading corporations, such as building and loan associations, savings banks, and mutual life, fire, marine, and accident insurance companies, formed under the laws of the various states, which advance no national purpose or public interest, and exist solely for the pecuniary profit of their members." [67] But in a more recent case the Supreme Court of the United States has apparently given its approval to the validity of just such exemptions as those mentioned. In refusing to hold unconstitutional the corporation tax law of 1909, on the ground that it taxed a business when carried on by a corporation, and exempted a similar business when carried on by a partnership or a private individual, it said: "In levying excise taxes the most ample authority has been recognized from the beginning to select some and omit other possible subjects of taxation, to select one calling and omit another, to tax one class of property and to forbear to tax another." And later in the same opinion it was said: "As to the objection that certain organizations,—labor, agricultural, and horticultural,—fraternal and benevolent societies, loan and building associations, and those for religious, charitable, or educational purposes, are excepted from the operation of the law, we find nothing in it to invalidate the tax. As we have had frequent occasion to say, the decisions of this court from an early date to the present time have emphasized the right of Congress to select the objects of excise taxation, and within this power to tax some and leave others untaxed must be included the right to make exemptions such as are found in this act." [68]

§ 208. Allowance of Deduction for Other Taxes Paid

The Wisconsin income tax law contains a provision that "any person who shall have paid a tax upon his personal prop-

[67] Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759, per Field, J., concurring.

[68] Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389. And see Mercantile Nat. Bank v. New York, 121 U. S. 138, 160, 7 Sup. Ct. 826, 30 L. Ed. 895. But compare Barbour v. Louisville Board of Trade, 82 Ky. 645.

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erty during any year shall be permitted to present the receipt therefor to, and have the same accepted by, the tax collector to its full amount in the payment of taxes due upon the income of such person during said year." [69] When the constitutionality of the statute was under consideration by the Supreme Court of the state, an objection against its validity was urged on the ground that this provision created an unjust and unlawful discrimination between taxpayers all equally subject to the law, since one taxpayer might be required to pay the whole of the income tax assessed against him, while another, having an exactly equal income, could have the tax thereon very materially reduced by taking advantage of this provision. But the court held that the objection was without force and overruled it.[70]

§ 209. Double Taxation

Vigorous objections to the validity of income tax laws have been based on the ground that they impose, or at least result in, double taxation. And it cannot be denied that this is usually the case. "It may safely be said that the payment of an income tax almost necessarily involves, in some indirect and limited sense, the payment of a double tax. For income, oftener than otherwise, in some way, either directly or indirectly, is derived from or grows out of property subject to taxation." [71] But though double taxation is vicious and unjust in principle, and no statute will be so construed as to impose double taxes if it can reasonably be avoided,[72] yet a statute which produces this result cannot be adjudged invalid on economic principles, nor unless it conflicts with some explicit provision of the constitution. This important point is discussed, in relation to income taxation, by the court in South Carolina, in the following terms: "The next objection to the act is that it results in double taxation. The contention is that plaintiff's income was

[69] Wisconsin Income Tax Law 1911, § 1087m, 26.

[70] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

[71] Lott v. Hubbard, 44 Ala. 593.

[72] Black, Const. Law (3d edn.) p. 464.

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from dividends received upon his stock in corpora-
hartered and doing business under the laws of the state,
these corporations had paid taxes on their property,
so on their franchises, a tax on plaintiff's income is
taxation. There is much room for discussion and dif-
of opinion as to what really amounts to double taxa-
But the weight of authority and reason sustains the
n of shares of stock in a corporation to the holder
, notwithstanding the corporation has paid taxes on its
y and also on its franchises. The rents and profits de-
rom real estate, and the products of the farm, may
ed, though the land from which they are derived has
een taxed. The profits of a business may be taxed
the property in the business, bought on credit, has been
o the owner, and the debt he owes therefor has been
o the creditor, and the property covered by mortgage
taxed to the owner, and the mortgage thereon to the
gee. These may be instances of double taxation in one
yet they are not within the rule of uniformity and
prescribed by the constitution, which forbids the tax-
wice of the same property for the same purpose, while
roperty, under similar circumstances and conditions, is
nly once. There is no constitutional inhibition against
axation; and in the absence of constitutional restric-
e power of the legislature to tax is limited only by its
scretion and its responsibility to its constituents. It has
id the power to tax is an inherent right of sovereignty,
ry to its existence, and limited only by its necessities.
ke out no conclusive case against a tax when we show
reaches twice the same property for the same purpose.
ay have been intended, and, in many cases, at least is
ble." [78] The general weight of authority undoubtedly
stain the principle that a tax may be levied on income
from property, in the shape of rent or otherwise,
h the property yielding the income is also subjected to

[78] erman v. Wells, 85 S. C. 507, 67 S. E. 781, 27 L. R. A. (N. S.) Am. & Eng. Ann. Cas. 193.

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taxation, and that this does not violate the rule against doub taxation, because the two interests or species of property a distinct and severable.[74] It must be admitted, however, th this doctrine does not pass entirely unchallenged.[75] And at least one state this very result has been guarded again by a clause in the constitution which provides that "the ge eral assembly may tax trades, professions, franchises, and i comes, provided that no income shall be taxed when t property from which the income is derived is taxed."[76] C the other hand the constitution of another state having a income tax law (Wisconsin) expressly makes a distinctio between "property" and "income" and authorizes the tax tion of both. And the Supreme Court of that state, in su taining the income tax, has remarked: "It is claimed wi much earnestness and ability that the act violates the pro sions of the fourteenth amendment to the federal Constit tion. One of the contentions under this head is that t progressive features of the act are discriminatory, if not abs lutely confiscatory. Another contention is that the act pr vides for double taxation, and for both reasons it is claim that it denies to citizens the equal protection of the laws. is said in support of this contention that the United Stat Supreme Court in the Pollock case[77] has held that taxatio of income derived from land is in fact taxation of the la itself, hence that the act provides for double taxation, fi of the land in specie, and next of the income therefrom.

[74] Comstock v. Grand Rapids, 54 Mich. 641, 20 N. W. 623; Woo ruff v. Oswego Starch Factory, 177 N. Y. 23, 22 N. E. 994; Chisho v. Shields, 21 Ohio Cir. Ct. R. 231; Memphis v. Ensley, 6 Ba (Tenn.) 553, 32 Am. Rep. 532.

[75] "We are of the opinion that it was not the intention of the le islature to tax real property under the name of land, slaves, et and then to tax under the term of incomes the profits realized fro such land, slaves, etc. It would be double taxation first to tax pro erty to the extent allowed by law, and then to tax the profits deriv from such property." City of New Orleans v. Fassman, 14 La. An 865. And see Kennard v. Manchester (N. H.) 36 Atl. 553.

[76] Const. N. Car., art. 5, § 3.

[77] Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 15 Sup. C 673, 39 L. Ed. 759.

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seems that this claim may be very easily met. The question in the Pollock case was whether the taxation of rentals of land was direct taxation within the meaning of that term as used in the Constitution of the United States, and it was held to be the same, in substance, as a tax on the land itself, and hence a direct tax. This may be admitted for the purposes of the case, but it does not appear to in any way decide the question here at issue, or even to be very persuasive. The question there was of the power of Congress, under that clause of the federal Constitution which forbids any direct federal tax except one levied in proportion to the population. The question here is primarily of the power of the legislature of Wisconsin, under its constitution, to levy an income tax in addition to a real estate tax, and secondarily whether such tax denies to anyone the equal protection of the laws. The inapplicability of the rule in the Pollock case to the case here presented seems so plain as to require little comment. There can be no doubt of the proposition that income taxation of a progressive character, in addition to taxation of property, is directly authorized by the constitution of Wisconsin as amended in 1908. Words could hardly be plainer to express that idea than the words used. From them it clearly appears that taxation of property and taxation of incomes are recognized as two separate and distinct things in the state constitution. Both may be levied, and lawfully levied, because the constitution says so. However philosophical the argument may be that taxation of rents received from property is in effect taxation of the property itself, the people of Wisconsin have said that 'property' means one thing and 'income' means another; in other words, that income taxation is not property taxation, as the words are used in the constitution of Wisconsin." [78]

On the same principle, a tax laid upon the receipts or income arising from the conduct of a particular business, such as that of a banker or broker, is not invalid because the law

[78] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

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of the state also requires persons engaging in such busine to take out a license and pay a fee therefor, nor is the in position of the tax on the income an unconstitutional inv sion of the right or privilege granted by the license.[79] A so a merchant's income from his business is taxable und the law, although he is taxed also on his stock in trade.[80]

Questions of a somewhat different order may arise wh it is considered that the income tax laws of two differe states, or of a state and the United States, may bear up the same person in respect to the same income. But it seer that no constitutional objection can be based on the fact th two or more independent sovereignties subject the same pro erty (subject to the jurisdiction of both or all) to taxation f their own separate purposes.[81] Thus, it is held that a sta is none the less entitled to tax the transfer of an estate will or inheritance because some part of the property m be in another state and be taxable there under the same ki of a statute, or because the estate has already paid an i heritance tax to the United States.[82] So, the tax imposed the federal income tax law of 1864, upon all dividends d clared to stockholders "as part of the earnings, income, gain of any bank," was held to be assessable against the ba for the whole amount of dividends so declared, notwithstan ing the fact that it had paid a sum to the state of New Yo under a statute of that state imposing a tax against the stoc holders upon the value of their shares, and requiring the ba to retain the amount thereof from the dividends due the until it was made to appear that their tax was paid.[83] A

[79] Drexel v. Commonwealth, 46 Pa. St. 31; Burch v. Savannah, Ga. 596.

[80] Wilcox v. County Com'rs of Middlesex, 103 Mass. 544.

[81] Both the federal and state governments have power to taxes on the same subjects or property; their powers of taxati are in this respect concurrent. Lane County v. Oregon, 7 Wall. 77, 19 L. Ed. 101.

[82] Appeal of Hopkins, 77 Conn. 644, 60 Atl. 657; Matter of Da 100 App. Div. 373, 91 N. Y. Supp. 858.

[83] Central Nat. Bank v. United States, 137 U. S. 355, 11 Sup. 126, 34 L. Ed. 703.

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that taxation of the same property by different governments is neither unlawful nor uncommon may further be shown by the following remarks of an English judge, made in an income tax case: "There could be double taxation if the legislature distinctly enacted it, but upon general words of taxation, and when you have to interpret a taxing act, you cannot so interpret it as to tax the subject twice over to the same tax. But it all depends upon its being the same tax, and as the Attorney General has said, there is nothing to prevent either one legislature, or two legislatures if they have jurisdiction over the subject-matter, imposing different taxes upon the same subject-matter. Double taxation in one sense is common enough in the case of these companies which have their head establishments in one country and their business in another, although no doubt there is always a sort of grievance felt in reference to it." [84] But although a cumulation of taxes in this way may be constitutionally defensible, undoubtedly it sometimes results in very heavy burdens. Under the laws as they stand at present, for example, a person engaging in a certain line of business (as, for instance, a tobacconist) might be required to pay, first, a license tax or fee to the United States, second, a license tax or fee to the municipality where he does business, third, a tax on the building in which his business is carried on, if he happens to own it, fourth, a tax on his stock in trade as personal property, fifth, an income tax to the United States, sixth, a tax on the same income to the state.

§ 210. Taxing Aggregate Income of Family

Modern income tax laws have commonly provided that only one deduction of the amount allowed by statute as exempt shall be made from the aggregate income of all the members of any family. And the practical construction has been that this required the head of the family, in making his return for taxation, to add the income of his wife and minor children, if any, to his own. This has been objected to on

[84] Stevens v. Durban-Roodepoort Gold Min. Co., 5 Tax. Cas. 402.

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constitutional grounds as making an unjust and unlawful discrimination. But the courts have not taken that view. Thus, in Wisconsin, it was said: "Objection is also made to the provision that the income of a wife living with her husband shall be added to the income of the husband, and the income of children under eighteen years of age living with their parent or parents shall be added to that of the parent or parents. This is another case of classification, and it is only justifiable in case there is some substantial difference of situation which suggests the advisability of difference of treatment. We think there clearly is such a difference, in this: That experience has demonstrated that otherwise there will be many opportunities for fraud and evasion of the law, which the close relationship of husband and wife or parent and child make possible, if not easy. The temptation to make colorable shifts and transfers of property in order to secure double or even triple exemptions, if there were not some provision of this kind in the law, would unquestionably be very great. There is no such temptation or opportunity in the case of the single man, or the man and wife who are living separately." [85]

§ 211. Validity of Graduated or Progressive Tax

The constitutions of both Wisconsin and South Carolina contain provisions authorizing the graduation or progressive increase of the income tax, and in both those states the validity of this feature of the law has been sustained.[86] In Wisconsin, it was also objected that such an arrangement of the tax was in conflict with the provision of the fourteenth amendment to the federal constitution securing to all citizens the equal protection of the laws; but the court ruled otherwise.[87] Moreover, in some of the states, the inherit-

[85] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

[86] Const. Wis., art. 8, § 1, as amended in 1908; Const. S. Car., art. 10, § 1; Alderman v. Wells, 85 S. C. 507, 67 S. E. 781, 27 L. R. A. (N. S.) 864. 21 Am. & Eng. Ann. Cas. 193.

[87] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

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ance tax laws are also progressive, and in at least one it has been decided that there is no constitutional objection to them on that ground,[88] thus furnishing at least an argument from analogy to support the similar feature of the income tax law. The only contrary decision was rendered in Hawaii, where the court decided against the constitutional validity of a graded income tax (enacted in 1896, and much resembling the federal income tax law of 1894) on the ground of its being in conflict with a provision of the constitution that each citizen "shall be obliged to contribute his proportion or share" of the expenses of government. The law in question exempted all incomes below $2,000, allowed an exemption of $2,000 on all incomes below $4,000, and taxed all incomes above $4,000 without exemption. It was held that this was not proportional taxation, but unjust discrimination.[89]

In regard to the United States law, where the ground of objection, if any there be, must be found in the federal constitution and not elsewhere, it may be remarked that the income tax laws of 1862 and 1864 were both graduated, in the sense that they imposed a heavier tax upon incomes above a certain figure than on incomes below it. But apparently their validity on this account was never drawn in question. The Supreme Court of the United States, however, has held that no constitutional objection to a graduated inheritance tax law can be drawn from the provision of the constitution that taxes shall be "uniform throughout the United States." For the uniformity in taxation required by this clause is not an intrinsic but a geographical uniformity, and the phrase is synonymous with the expression "to operate generally throughout the United States."[90] Probably, therefore, a similar decision may be expected in regard to the

[88] Drew v. Tifft, 79 Minn. 175, 81 N. W. 830, 47 L. R. A. 525, 79 Am. St. Rep. 446; State v. Bazille, 97 Minn. 11, 106 N. W. 93; Nunnemacher v. State, 129 Wis. 190, 108 N. W. 627, 9 L. R. A. (N. S.) 121, 9 Ann. Cas. 711.

[89] Campbell v. Shaw, 11 Hawaii, 112.

[90] Knowlton v. Moore, 178 U. S. 41, 20 Sup. Ct. 747, 44 L. Ed. 969.

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validity of the super-tax imposed by the present income tax law.[91]

§ 212. Retrospective Operation of Statute

On general principles and irrespective of explicit constitutional limitations, a statute imposing an income tax may subject to taxation the income of the citizen for the whole of the current year in which the statute is passed, that is, not only so much of the income as accrued from the date of the enactment of the law to the end of the year, but also that portion which accrued or was earned from the beginning of the year to the date of the law. For the year's income is treated and considered as one entire thing, not as made up of several portions or items. And hence, although the statute might be called retrospective in its operation upon a part of the first year's income, it is not retrospective in such a sense as to render it unconstitutional.[92] "It is clearly perfectly constitutional as well as expedient, in levying a tax upon profits or income, to take as the measure of taxation the profits or income of a preceding year. To tax is legal, and

[91] The constitutional validity of the federal income tax law of 1913 was sustained by a decision of the Supreme Court of the District of Columbia, in the case of Dodge v. Osborn, decided May 14, 1914, and reported in Treasury Decisions No. 1983, June 4, 1914, as against an objection that the provision imposing an "additional" tax or super-tax on incomes above a certain amount was not within the powers of Congress. The suit was for an injunction to restrain the defendant (Commissioner of Internal Revenue) from assessing the plaintiff in respect to the super-tax claimed to be due from him. Stafford, J., expressed distinctly his opinion that the act of Congress was not unconstitutional. But at the same time the bill was dismissed on the ground that the plaintiff had an adequate remedy at law, by paying the tax and then suing to recover it back as having been illegally exacted, and as it appeared that he was abundantly able to do this, it was impossible that he would suffer any irreparable injury in consequence of being obliged to take this course. The constitutional validity of this part of the statute was not necessarily involved in the determination of the case.

[92] State v. Bell, 61 N. C. 76; State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147. And see Billings v. United States, 232 U. S. 261, 34 Sup. Ct. 421, 58 L. Ed. 596; Locke v. New Orleans, 4 Wall. 172, 18 L. Ed. 334; People v. Spring Valley Hydraulic Gold Co., 92 N. Y. 383.

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to assume as a standard the transactions immediately prior is certainly not unreasonable, particularly when we find it always adopted in exactly similar cases." [93] "The right of Congress to have imposed this tax by a new statute, although the measure of it was governed by the income of the past year, cannot be doubted; much less can it be doubted that it can impose such a tax on the income of the current year, though part of that year had elapsed when the statute was passed." [94] So the Wisconsin statute was held not to be invalid because it included, as part of the income to be taxed in the year of its enactment, profits derived from the sale of property purchased at any time within three years previously.[95]

But the case is different in regard to the federal income tax. Until the adoption and promulgation of the Sixteenth Amendment, Congress had no rightful power to tax incomes, unless on condition that the tax should be apportioned among the several states. Hence if the present statute had attempted to tax the whole of the citizen's income for the year 1913, it would have included some gains and profits which, at the time they were acquired, and when alone they could be described as "income," were not subject to the taxing power of Congress, except on the condition mentioned. Hence it is provided that "for the year ending December thirty-first, 1913, said tax shall be computed on the net income accruing from March first to December thirty-first, 1913, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for."

[93] Drexel v. Commonwealth, 46 Pa. St. 31.

[94] Stockdale v. Insurance Companies, 20 Wall. 323, 22 L. Ed. 348; Schuylkill Nav. Co. v. Elliott, 21 Int. Rev. Rec. 342, Fed. Cas. No. 12,497. But see Merchants' Ins. Co. v. McCartney, 1 Lowell, 447, 12 Int. Rev. Rec. 122, Fed. Cas. No. 9,443, holding that so much of the aggregate of a year's profits or gains as was earned and acquired before the taking effect of an act of Congress imposing an income tax, passed in that year, is capital, and that which accrues after that date is income.

[95] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

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§ 213. Objections as to Title, Purpose, and Mode of Enactment of Statute

The constitution of South Carolina provides that no tax shall be levied except in pursuance of a law which shall distinctly state the object of the same, to which object the tax shall be applied. When the income tax law of that state was adopted, in 1897, its validity was assailed on the ground that it did not comply with this constitutional provision. But as the title of the statute was "An act to raise revenue for the support of the state government by the levy and collection of a tax on income," the court had no difficulty whatever in holding that it did distinctly state the object to which the tax was to be applied.[96] In the same case it was further held that this statute was not in violation of another provision of the state constitution to the effect that the General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the state for a year. It was argued that the income tax law attempted to provide for taxation for more than one year, regardless of the estimated expenses of the state for the years in which it should be collected. But the court held otherwise, saying that the tax is levied annually, and is applied to the expenses of the state in the year in which it is collected, and the courts are bound to assume that the legislature, in estimating the annual expenses of the state, takes into consideration all the sources of income to the state, including the income tax, and fixes the general levy accordingly.

In regard to the federal corporation tax law of 1909, it appeared that the bill, introduced in and passed by the House of Representatives, was a general bill for the collection of revenue, including, as one of its features, a plan of inheritance taxation, and that this part was stricken out by the Senate and the corporation tax substituted. And it was argued that this rendered the act invalid, since the Constitution provides that all bills for the raising of revenue shall originate in the

[96] Alderman v. Wells, 85 S. C. 507, 67 S. E. 781, 27 L. R. A. (N. S.) 864, 21 Am. & Eng. Ann. Cas. 193.

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House of Representatives. But the court held otherwise, in view of the further provision of the Constitution that the Senate may propose or concur with amendments to revenue bills, as well as other bills.[97]

§ 214. Objections to Administrative Provisions of Act

Statutes providing for the taxation of incomes have often been subjected to severe criticism on the ground that they confide too much authority and discretion to executive and administrative officers, in regard to the settlement of matters of detail, to the construction of the machinery necessary for the operation of the law, and to the making of rules and regulations for its enforcement. But it may now be regarded as a settled principle of constitutional law that, although a legislative body cannot delegate its power to make laws, yet, having enacted statutes, it may invest executive officers or boards or commissions created for the purpose with authority to make rules and regulations for the practical administration of such statutes in matters of detail and to enforce the same, and also to determine the existence of the facts or conditions on which the application of the law depends. And "there is a marked and increasing tendency to leave more and more of what may be called the detail of legislation to such officers and commissions, the legislature settling the general policy and outline of the laws on a given subject, and confiding to administrative agencies the work of erecting the machinery necessary for their practical operation and their application in particular cases."[98] For this reason it is thought that no valid objection to the federal income tax law can be based upon the authority which it intrusts to the

[97] Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389.

[98] Black, Const. Law (3d edn.) pp. 96, 97, and cases there cited. See, particularly, Union Bridge Co. v. United States, 204 U. S. 364, 27 Sup. Ct. 367, 51 L. Ed. 523; Field v. Clark, 143 U. S. 649, 12 Sup. Ct. 495, 36 L. Ed. 294; Coopersville Co-operative Creamery Co. v. Lemon, 163 Fed. 145, 89 C. C. A. 595; In re Huttman, 70 Fed. 699.

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Commissioner of Internal Revenue, with respect to prescribing forms and making rules and regulations on various matters of administration, more especially as it does not go nearly so far in this regard as some of the earlier acts of Congress on the same subject, which were never successfully challenged on this ground. For similar reasons, the Wisconsin statute was upheld against the objection that it unconstitutionally authorized the state tax commission to appoint the income tax assessors. The court held that this was not invalid either as a delegation of legislative power to the commission or as violating the constitutional guaranties of local self-government.[99]

Objection is also made to those provisions commonly found in income tax laws which require the citizen to disclose the sources and amount of his income in sworn returns, which, under certain conditions, are open to the inspection of the public, or which require him to open his books and papers to the examination of the revenue officers or submit to interrogation concerning his business affairs. Such provisions, it is argued, amount to authorizing "unreasonable searches and seizures," and moreover, in view of the possible use of information thus obtained, they may compel the individual to furnish evidence against himself in a criminal proceeding. But no decision sustaining such objections as these has been found. On the contrary the courts hold that such provisions cannot be brought within the reasonable intendment of the constitutional guaranties referred to, that similar provisions are already very common in the tax laws of various states and have always been acquiesced in, or at least, not successfully attacked, and that, as to the matter of self-crimination, even if such a result could follow from the enforcement of any provision of an income tax law, it would be no ground for adjudging the whole statute unconstitutional, but only a matter to be pleaded by the individual in his own behalf when a criminal proceeding shall actually be brought against

[99] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng. Ann. Cas. 1147.

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ıd an attempt actually made to use against him evidence ktorted.[100]

Apportionment of Federal Income Tax

United States income tax law of 1894 was adjudged stitutional on the ground that it was a "direct" tax with- meaning of the Constitution of the United States and as not "apportioned among the several states" as that ment requires.[101] The corporation tax law of 1909 was ot apportioned among the states, but its validity was ned by the Supreme Court, on the ground that it was not ct tax upon the income of corporations, but an excise on the conducting or carrying on of business in a cor- capacity, and that there is nothing in the Constitution ing excise taxes to be apportioned according to popula-[2] So far as regards the present income tax law, and any law of the same character, the necessity of apportion- is dispensed with by the Sixteenth Amendment to the tution, which provides that "the Congress shall have to lay and collect taxes on incomes, from whatever e derived, without apportionment among the several and without regard to any census or enumeration."

'lint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. 9; Peacock v. Pratt, 121 Fed. 772; Co-operative Building & Ass'n v. State, 156 Ind. 463, 60 N. E. 146. And see Interstate erce Commission v. Brimson, 154 U. S. 447, 14 Sup. Ct. 1125, 38 1047; In re Phillips, 10 Int. Rev. Rec. 107, Fed. Cas. No. Perry v. Newsome, 10 Int. Rev. Rec. 20, Fed. Cas. No. 11,- n re Lippman, 3 Ben. 95, Fed. Cas. No. 8,382; In re Strouse, v. 605, Fed. Cas. No. 13,548; Matter of Meador, 1 Abb. U. S. d. Cas. No. 9,375. But compare Boyd v. United States, 116 U. 6 Sup. Ct. 524, 29 L. Ed. 746; In re Pacific Railway Commis- 2 Fed. 241; People v. Reardon, 197 N. Y. 236, 90 N. E. 829, 27 A. (N. S.) 141, 134 Am. St. Rep. 871; Robson v. Doyle, 191 Ill. N. E. 435.

Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429, 15 Sup. , 39 L. Ed. 759; s. c., 158 U. S. 601, 15 Sup. Ct. 912, 39 L. Ed.

'lint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L.); Anderson v. Morris & E. R. Co., 216 Fed. 83.

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§ 216. Constitutional Objections to Penalties Imposed

Where the penalties imposed by any statute, to be visited upon those who may violate its provisions, are of such severity as to terrorize those coming within the terms of the law, and to deter them from bringing actions in the courts to test its validity, it is held to be unconstitutional, at least in this respect, both as depriving such persons of their property without due process of law and as denying them the equal protection of the laws. "It is unlawful to prevent or penalize the resistance of persons or corporations to laws which they may deem injurious or oppressive, by visiting them, on their attempt to do so, with such excessive and ruinous penalties or such a multiplicity of prosecutions or such danger of heavy fines and imprisonment as to intimidate them and prevent them from seeking relief in the courts; this amounts to denying the equal protection of the laws." [103] It may be gravely doubted whether these considerations are not applicable to the federal income tax law of 1913, since (to take a single illustration) a corporation which simply fails to make its return under that statute in due season is liable to a fine of as much as ten thousand dollars and also to have its assessment increased by fifty per cent. In so far, however, as the matter has yet been adjudicated, the statute has been upheld. In a case in the United States District Court for the Southern District of New York,[104] the constitutionality of the corporation excise tax law of 1909 was assailed on the ground that the penalty provided for failure to make a return (from $1,000 to $10,000) was so excessive as practically to prohibit any contest in the courts. But the court ruled otherwise. Hand, J., said: "As to the constitutionality of the act the only

[103] Black, Const. Law (3d edn.) p. 545; Ex parte Young, 209 U. S. 123, 28 Sup. Ct. 441, 52 L. Ed. 714, 13 L. R. A. (N. S.) 932, 14 Ann. Cas. 764; Mercantile Trust Co. v. Texas & P. Ry. Co., 216 Fed. 225; Central of Georgia R. Co. v. Railroad Commission of Alabama, 161 Fed. 925; Consolidated Gas Co. v. New York, 157 Fed. 849; Ex parte Wood, 155 Fed. 190; Bonnett v. Vallier, 136 Wis. 193, 116 N. W. 885, 17 L. R. A. (N. S.) 486, 128 Am. St. Rep. 1061.

[104] United States v. Surprise Five, Ten, and Nineteen Cent Store (June, 1913), Treasury Decisions No. 1864.

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stion is that it makes reasonable contest impossible be- of the penalties imposed for disobedience. Cases like arte Young, 209 U. S. 123, 28 Sup. Ct. 441 [52 L. Ed. 714, R. A. (N. S.) 932, 14 Ann. Cas. 764], must not be pressed ar. In that case the penalties were not less than $5,000 for passenger carried at more than two cents a mile. By the the cause could be finally determined, the aggregate of would have destroyed the carrier. The court thought the measures actually operated—and perhaps were de- d—to prevent any contest. The penalties here are not oportionate to an enforcement of the act, and the mini- not unreasonable for an honest contest if it involves sub- al interests." But it cannot be conceded that this single on is sufficient to set the question at rest.

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CHAPTER VII

CONSTRUCTION OF STATUTES IMPOSING INCOME TAXES

§ 217. Rule of Strict Construction.
218. Statutes in Pari Materia.
219. Associated Words and Phrases.
220. Departmental Construction.

§ 217. Rule of Strict Construction

It is a rule sanctioned by many authorities, and particularly with reference to the revenue laws of the United States, that a statute imposing taxes is to be construed strictly against the government and in favor of the taxpayer, and that no person and no property is to be included within its scope unless explicitly placed there by the clear language of the statute, and no heavier burdens imposed than the plain meaning of its terms will warrant.[1] Thus, it has been said: "It is an old and familiar rule of the English courts, applicable to all forms of taxation and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of exception confining the operation of duty. * * * We have ourselves had repeated occasion to hold that the customs revenue laws should be liberally interpreted in favor of the im-

[1] American Net & Twine Co. v. Worthington, 141 U. S. 468, 12 Sup. Ct. 55, 35 L. Ed. 821; Benziger v. United States, 192 U. S. 38, 24 Sup. Ct. 189, 48 L. Ed. 331; Spreckels Sugar Co. v. McClain, 192 U. S. 397, 24 Sup. Ct. 376, 48 L. Ed. 496; Eidman v. Martinez, 184 U. S. 578, 22 Sup. Ct. 515, 46 L. Ed. 697; Parkview Building & Loan Ass'n v. Herold, 203 Fed. 876; Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199; Missouri, K. & T. Ry. Co. v. Meyer, 204 Fed. 140; United States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,690; Rice v. United States, 53 Fed. 910, 4 C. C. A. 104; United States v. Watts, 1 Bond, 580, Fed. Cas. No. 16,653; Powers v. Barney, 5 Blatchf. 202, Fed. Cas. No. 11,361; Vicksburg & M. R. Co. v. State, 62 Miss. 105; Matter of Will of Vassar, 127 N. Y. 1, 12, 27 N. E. 394; Anderson v. Morris & E. R. Co., 216 Fed. 83; Forty-Two Broadway Co. v. Anderson, 209 Fed. 991; Lott v. Ross, 38 Ala. 156. Compare John J. Sesnon Co. v. United States, 182 Fed. 573, 105 C. C. A. 111.

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and that the intent of Congress to impose or increase a
n imports should be expressed in clear and unambiguous
e." [2] "It is a general rule, in the interpretation of all
levying taxes or duties upon subjects or citizens, not
id their provisions by implication beyond the clear im-
the language used, or to enlarge their operation so as
ace matters not specifically pointed out, although stand-
n a close analogy. In every case, therefore, of doubt,
tutes are construed most strongly against the govern-
d in favor of the subjects or citizens, because burdens
to be imposed, nor presumed to be imposed, beyond
e statute expressly and clearly imports." [3] "If the con-
on thus given to the case still leaves the matter in doubt,
ould be applied the well-settled rule that the citizen is
from taxation, unless the same is imposed by clear and
ocal language, and that, if there is a fair doubt as to
truction of an act imposing taxation, the doubt should
ved in favor of those upon whom the tax is sought to
" [4] And again, it is a "conceded principle that taxes
imposed by law, and that the law should be construed
y to the taxpayer and not extended by implication be-
clear intent." [5] And so, "at the outset it may be re-
that a statute providing for the imposition of taxes is
rictly construed, and all reasonable doubts in respect
resolved against the government and in favor of the
This principle is so well established that the citation
onsiderable number of authorities in its support is un-
y." [6]

ing these principles to the specific case of income tax-
ne rule may be deduced that only those persons and
ions are subject to the payment of the income tax who
ially described in the statute authorizing it or clearly

an v. Martinez, 184 U. S. 578, 22 Sup. Ct. 515, 46 L. Ed. 697.
d States v. Wigglesworth, 2 Story, 369, Fed. Cas. No. 16,-

view Building & Loan Ass'n v. Herold, 203 Fed. 876.
uri, K. & T. Ry. Co. v. Meyer, 204 Fed. 140.
al Benefit Life Ins. Co. v. Herold, 198 Fed. 199.

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within the meaning of the general terms which it employs, and that if any substantial and reasonable doubt arises as to whether any particular fund or kind or class of gain or acquisition constitutes taxable "income" within the meaning of the law, it is to be resolved in favor of the taxpayer and not in favor of the government. And so the authorities hold.[7] Thus, in regard to the federal corporation tax law of 1909, it was said that this statute, "levying as it does a tax upon the citizen, must be strictly construed; it cannot be enlarged by construction to cover matters not clearly within its import. The question is not what Congress might have done or should have done, but what it actually did do. When this is ascertained, the duty of the court is accomplished."[8] And this view is further strengthened by the consideration that the same rule has come to be accepted and applied in the case of the laws taxing inheritances and successions, which furnish the nearest analogy to an income tax law. Such a statute, it is held, must be construed strictly against the state or the government and in favor of the taxpayer, and a doubt as to the taxability of a particular fund should be resolved in favor of the citizen.[9]

§ 218. Statutes in Pari Materia

It is a fundamental rule in the interpretation of statutes that acts in pari materia are to be read and construed together. The reasons for this rule have been explained by the present writer in another volume, as follows: "All the enactments of the same legislature on the same general subject-matter are to be regarded as parts of one uniform system. Later statutes are considered as supplementary or complementary to the

[7] Forman v. Board of Assessors, 35 La. Ann. 825; Lining v. Charleston, 1 McCord (S. C.) 345; Robson v. Regina, 4 Terr. Law Rep. (Canada) 80.

[8] Pennsylvania Steel Co. v. New York City Ry. Co., 198 Fed. 774, 117 C. C. A. 556.

[9] Eidman v. Martinez, 184 U. S. 578, 22 Sup. Ct. 515, 46 L. Ed. 697; In re Harbeck's Will, 161 N. Y. 211, 55 N. E. 850; In re Kimberly's Estate, 27 App. Div. 470, 50 N. Y. Supp. 586; People v. Koenig, 37 Colo. 283, 85 Pac. 1129; State v. Bazille, 97 Minn. 11, 106 N. W. 93.

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earlier enactments. In the course of the entire legislative dealing with the subject we are to discover the progressive development of a uniform and consistent design, or else the continued modification and adaptation of the original design to apply it to changing conditions or circumstances. In the passage of each act, the legislative body must be supposed to have had in mind and in contemplation the existing legislation on the same subject and to have shaped its new enactment with reference thereto. Hence the same principle which requires us to study the context for the meaning of a particular phrase or provision, and which directs us to compare all the several parts of the same statute, only takes on a broader scope when it bids us read together, and with reference to each other, all statutes in pari materia. Whatever is ambiguous or obscure in a given statute will be best explained by a consideration of analogous provisions in other acts relating to the same subject, or by a study of the general policy which pervades the whole system of legislation. Secondly, the rule derives support from the principle which requires that the interpretation of a statute shall be such, if possible, as to avoid any repugnancy or inconsistency between enactments of the same legislature. To achieve this result it is necessary to consider all previous acts relating to the same matters, and to construe the act in hand so as to avoid, as far as it may be possible, any conflict between them. Hence, for example, where the legislature has used a word in a statute in one sense and with one meaning, and subsequently uses the same word in legislating on the same subject-matter, it will be understood as using the word in the same sense, unless there is something in the context or in the nature of things to indicate that it intended a different meaning thereby." [10] And it is said that the rule of construction by the aid of statutes in pari materia is especially applicable in the case of revenue laws, which, though made up of independent enactments, are regarded as one system, in which the construction of any separate act may be aided by the examination of other provisions which com-

[10] Black, Interpretation of Laws (2d edn.) pp. 332–334.

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pose the system.[11] And it is not necessary to the application of this rule that the earlier act should still continue in force. Although it may have expired by its own limitation, or though it may have been expressly or impliedly repealed, still it is to be considered and read as explanatory of the later enactment.[12] It has been held, however, in one case, that where a personal tax law imposes a tax on a certain occupation, without defining it, it is doubtful whether the court, in construing it, can look to old and repealed tax laws, which define such occupation, to ascertain the legislative meaning.[13]

Now it has been held that all the successive acts of Congress from 1861 to 1867, imposing income taxes, are in pari materia, and are to be construed as one continuous enactment.[14] And of course this doctrine may be expanded so as to include the acts of Congress of 1894, 1909, and 1913. (It is chiefly for this reason that all these various enactments have been printed in full in the appendix to this volume, where they may be studied and compared at length.) And it follows that it will be a legitimate method of construing the present income tax law, in cases where its language in relation to a particular point or subject is obscure, confusing, or unintelligible, to compare it with the corresponding provisions on the same point in the earlier acts, which may be more clear and precise, and to presume that Congress intended its words to be understood in the same sense as before, unless there is such a distinct change of language as to compel the inference that a change in legislation was certainly intended. So likewise, the income tax law of any given state is to be read and compared, not only with previous income tax laws, if any, but also with all the other revenue laws of the same state, each serving to illuminate and explain the others, in cases where their provisions touch or coincide, and where any substantial doubt arises from the ambiguity of the language employed.

[11] United States v. Collier, 3 Blatchf. 325, Fed. Cas. No. 14,833.

[12] King v. Loxdale, 1 Burr. 445; Southern Ry. Co. v. McNeill, 155 Fed. 756.

[13] Lockwood v. District of Columbia, 24 App. D. C. 569.

[14] United States v. Smith, 1 Sawy. 277, Fed. Cas. No. 16,341.

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§ 219. Associated Words and Phrases

It is another ancient and fundamental rule in the construction of statutes that the meaning of a doubtful word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated, and that, where several things are referred to, they are presumed to be of the same class, when connected by a copulative conjunction, unless a contrary intent plainly appears.[15] For example, all the acts of Congress on the subject of income taxation, from 1862 to the present time, have associated together the words "gains," "profits," and "income" as descriptive of the subject taxed, and the same is true of the income tax laws of some of the states. These words may be traced far back in the history of English taxation. The original income tax law of that country, enacted in 1799, imposed a tax on "income" by that name, but the acts of 1842 and 1853 introduced the associated terms "profits and gains," whence they were apparently borrowed by Congress in framing the act of 1862, and have since persisted in use. Applying the rule above stated, we are justified in asserting the following principles as applicable to the interpretation of the phrase in question: If it is doubtful whether or not a particular fund or acquisition is taxable as "income," under the statute, it is not taxable unless it is income in the nature of "gain" or "profit." If any item is clearly included in the description of "gains" yet it is not taxable unless it is a gain in the nature of "income" or "profit." And although the disputed item may be certainly a "profit," in one sense of the word, yet it is not taxable unless it be a profit accruing by way of "gain" or "income."

§ 220. Departmental Construction

The executive and administrative officers of the government are bound to give effect to the laws which regulate their duties and define the sphere of their activities, and in so doing, they must necessarily put their own construction upon such acts. Particularly when a new statute goes into effect, if it

[15] Black, Interpretation of Laws (2d edn.) p. 194.

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shall be found to contain obscurities, ambiguities, or words phrases of doubtful meaning, the necessity of carrying it i practical operation will compel these officers to resolve dou and put an interpretation upon the statute, at least provision ly. When questions concerning the meaning or scope of law shall have been submitted to the courts and judicially cided, the officers of the executive department will of course bound to accept and abide by those decisions. And the offic of the United States Treasury Department feel themsel obliged to accept and defer to the opinions rendered by Attorney General, though this may involve the reversal of th own previous, rulings.[16] But in advance of such judicial c structions or official advice, the administrative officers m interpret the statutes for themselves and to the best of th own abilities.[17] Hence it may often happen, and in conn tion with revenue laws no less than other classes of statut that the courts, when called upon to decide cases involvi questions of construction, will have their attention directed a uniform practical construction put upon such acts by the ecutive officers for their own guidance, and under which o cial action has been regulated and rights fixed. This practi construction is in no case binding on the courts. But it come to be a well-settled rule that great weight should given to the construction placed upon a statute whose meani is doubtful by the department charged with its execution, a that if such construction has been made the basis of consta and uniform practice on the part of the administrative office especially for a considerable period of time, and has been g erally acquiesced in, not having been challenged by suit or o er legal proceedings, it ought not to be departed from by courts unless there are very strong reasons for so doing

[16] For an instance of the Commissioner of Internal Revenue rev ing one of his previous rulings, in deference to an opinion rende by the Attorney General, in regard to the taxability of interest bonds of irrigation districts or other "special assessment district under the present income tax law, see, supra, § 141.

[17] United States v. Lytle, 5 McLean, 9, Fed. Cas. No. 15,652.

[18] United States v. Cerecedo Hermanos y Compania, 209 U. S. 3 28 Sup. Ct. 532, 52 L. Ed. 821; Robertson v. Downing, 127 U. S. 60

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But the reasons for this rule do not rest upon any supposed authority on the part of officers to interpret the statute, but upon the practical considerations which should deter the courts from upsetting an established rule or custom. Hence, if the statute to be construed is a recent one, so that official action cannot be seriously deranged, nor private rights be very much affected, by a change in its interpretation, the mere fact that administrative officers have begun to read it in a certain way or to base their actions under it upon a certain interpretation, will have very little weight or influence with the courts.[19] And it has been held that the construction given to an internal revenue act by the Commissioner of Internal Revenue, though officially published, is not a construction of so much weight or dignity that a re-enactment of the statute subsequent to the construction is to be regarded as a legislative adoption of that construction, particularly where the result would be to raise a conflict between different parts of the statute or between a proviso and the body of the act.[20]

Sup. Ct. 1328, 32 L. Ed. 269; United States v. Healey, 160 U. S. 136, 16 Sup. Ct. 247, 40 L. Ed. 369; Stuart v. Laird, 1 Cranch, 299, 2 L. Ed. 115.

[19] Ewing v. Ainger, 97 Mich. 381, 56 N. W. 767; Employers' Liability Assur. Co. v. Commissioner of Insurance, 64 Mich. 614, 31 N. W. 542.

[20] Dollar Sav. Bank v. United States, 19 Wall. 227, 22 L. Ed. 80.

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CHAPTER VIII

WHAT CONSTITUTES TAXABLE INCOME

§ 221. General Definitions of "Income."
222. Statutory and Official Definitions of Gross and Net Inco
223. Official Definitions of Gross Income of Corporations.
224. "Profits" and "Gains" Compared and Distinguished.
225. Income Derived from "Any Source Whatever."
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245. Dividends on Corporate Stock.
246. Same; Stock Dividends.
247. Accumulated Earnings or Undivided Profits of Corporat
248. Right to Subscribe for New Stock of Corporation.
249. Sale and Distribution of Assets of Corporation.
250. Profit Accruing to Corporation from Sale of Capital As

§ 221. General Definitions of "Income"

"Income" is defined as that gain which proceeds from la
business, property, or capital of any kind, as, the produce
farm, the rent of houses, the proceeds of professional b
ness, the profits of commerce or of occupation, or the inte
of money or stock in funds, etc.; revenue; salary; especi
the annual receipts of a private person or a corporation f

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property.[1] It means that which comes into or is received from any business or investment of capital, without reference to the outgoing expenditures; when applied to the affairs of individuals, the term expresses the same idea that "revenue" does when applied to the affairs of a nation or state.[2] The term "income," as used in a statute providing that no income derived from property subject to taxation shall be taxed, "means the income for the year and is the result of the year's business. It is the net result of many combined influences—the use of the capital invested; the personal labor and services of the members of the firm, and the skill and ability with which they lay in, and from time to time renew, their stock; the carefulness and good judgment with which they sell and give credit; and the foresight and address with which they hold themselves prepared for the fluctuations and contingencies affecting the general commerce and business of the government. To express it in a more summary and comprehensive form, it is the creation of capital, industry, and skill." [3] Again, as this term is used in statutes relating to the nature and ownership of property, it includes the rents and profits of real estate, interest on money, dividends on stock, and other produce of personal property.[4] Particularly, when applied to a sum of money, or to money invested in public or corporate securities, income means interest.[5]

But an important distinction must be noted in the signification of this word, according as it is used in the ordinary business affairs of the community (or in statutes relating thereto) or in a tax statute. In the former case, it is understood to

[1] Mundy v. Van Hoose, 104 Ga. 625, 30 S. E. 782; Sowards v. Taylor, 42 Ill. App. 275; Remington v. Field, 16 R. I. 509, 17 Atl. 551; Thorn v. De Breteuil, 86 App. Div. 405, 83 N. Y. Supp. 849.

[2] Bates v. Porter, 74 Cal. 224, 15 Pac. 732; People v. Board of Sup'rs of Niagara County, 4 Hill (N. Y.) 20; Mundy v. Van Hoose, 104 Ga. 625, 30 S. E. 782.

[3] Wilcox v. Middlesex County Com'rs, 103 Mass. 544.

[4] Rev. Codes N. Dak. 1899, § 3322; Civ. Code S. Dak. 1903, § 238; Civ. Code Cal. 1903, § 748.

[5] Sims' Appeal, 44 Pa. St. 345; Pearson v. Chace, 10 R. I. 455.

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mean "net" income or profit; in the latter case, it is equivalent to "gross" income or "gross receipts," unless otherwise specified in the statute. Thus, it is said that the word "income," as used in commerce and trade, means the balance of gain over loss in the fiscal year or other period of computation, or it is the ultimate profit of a business or trade, ascertained by placing the sum total of gains over against the sum total of losses.[6] So, "the income of an estate means nothing more than the profit it will yield after deducting the charges of management, or the rent which may be obtained for the use of it. The rents and profits of an estate, the income, or the net income of it, are all equivalent expressions." [7] So, in a statute providing that a certain railroad company shall be required to make an annual payment from its income to the sinking fund, to aid in the construction of the road, the word "income" must be construed as meaning the amount of money remaining to the corporation on making up its annual account, after deducting from all its receipts the necessary expense of repairs and management, and also the amount of interest on the debt of the commonwealth which the corporation is bound to pay in behalf of the commonwealth.[8] So in a railroad mortgage providing that, until default, the mortgagor shall remain in possession and operate the road and take the tolls, rents, and income, and apply them to the payment of current expenses, the term "income" means what is left after paying the expenses of earning income.[9]

But on the other hand, in a statute imposing taxes, "income" means gross receipts, not net profits, unless it is so specified. Whenever the law means to tax the clear profits arising from the employment of capital or otherwise, the expression used is "net income" or "net annual income." [10] And espe-

[6] City of Kingston v. Canada Life Assur. Co., 19 Ontario, 453.
[7] Andrews v. Boyd, 5 Me. 199.
[8] Opinion of Justices, 5 Metc. (Mass.) 596.
[9] Poland v. Lamoille Valley R. Co., 52 Vt. 144, 177.
[10] People v. Supervisors of New York, 18 Wend. (N. Y.) 605; Wells v. Shook, Fed. Cas. No. 17,406.

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cially the phrase "whole income" means the aggregate of all receipts without any deduction for expenses or losses, that is, it means gross receipts and not net profits.[11] But, as stated in an earlier section,[12] if this word is associated with the term "profits," as in the phrase "gains, profits, and income," it may take color from the more restricted term and be limited by it. That is to say, in the phrase quoted, the word "income" should not be taken in its most extensive signification, but as meaning income which is in the nature of a profit, in other words, net income. But it must be admitted that there is some authority to the contrary.[13]

Unless limited by the context, however, the word "income" is one of very broad and comprehensive meaning. Thus, in a constitutional provision that no municipal corporation shall become indebted in any one year for a greater amount than its income, unless with the consent of two-thirds of the voters, the word income means income derived from any and all sources, and not that derived from taxation alone.[14] But it cannot be too strongly insisted upon that the word "income," when properly used, is applicable only to receipts in cash. When a bond which was purchased at a discount reaches par in the market, the owner cannot properly be said to have made a profit; he is in a position where he can realize a profit if he sells the bond, but not otherwise. If he sells, then the sum gained may constitute a part of his income, but it cannot be so described while he continues to hold the security. So, the farmer's crop is not his income; it is the source from which his income will be derived when it is converted into cash. So,

[11] Lawless v. Sullivan, 3 Can. Sup. Ct. 117.

[12] Supra, § 219.

[13] Morton's Ex'rs v. Morton's Ex'r, 112 Ky. 706, 66 S. W. 641, where it was held that, in a statute relating to dower in the "rents and profits" of a decedent's real estate, the phrase means gross rents, without deduction for taxes, insurance, or repairs, and that the use of the word "profits" cannot be deemed to be a limitation upon or qualification of the preceding word "rents" so as to restrict that word in meaning to "net rents."

[14] Lamar Water & Electric Light Co. v. City of Lamar, 128 Mo. 188, 26 S. W. 1025, 32 L. R. A. 157.

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a sum which is due as interest on a note, but which remains uncollected at the end of the year, may be reckoned as a part of the year's income, as a matter of bookkeeping, but it is not properly described as income until it is received, that is, it is "income" when it comes in, but not while it remains outstanding. This rule may perhaps be relaxed so far as to admit an exception in the case of certain items which are received as the equivalent of money and which are readily convertible into cash. And the Treasury department rules that the exchange of interest coupons for funding bonds is a payment of interest on the bonds and the income tax should be imposed and paid upon such interest as income for the year in which it matures and such payment is made. (Treasury Decision No. 2090, December 14, 1914.) But the principle is, as ruled in an English case, that nothing is to be considered as income except what represents value in money, that is, either money or something that is equivalent to money because it can be converted into money and the proceeds expended in any way the recipient may please. In this case, speaking of the income tax of that country, it was said: "It is a tax on income in the proper sense of the word. It is a tax on what comes in, on actual receipts, not on what saves his pocket, but on what goes into his pocket." [15] Of course it is entirely within the power of a legislature having jurisdiction to lay an income tax to make the word "income" include items which are not at all proper to be described under that name. But then those items are taxed, not because they constitute income, but because the legislature has said that they shall be taxed. And on the other hand, when the word "income" is clearly defined in the act imposing the tax, it cannot be taken to include anything which is not within that definition.[16]

We conclude therefore that, for the purpose of an income tax, a proper definition of the word "income" would be all that a man receives in cash during the year, except such sums as are merely capital or principal in a changed form, that is, excluding sums which are merely the proceeds of some other form of capital converted into cash. This last point is empha-

[15] Tenant v. Smith [1892] App. Cas. 150, 61 Law Jour. P. C. 11.

[16] City of New Orleans v. Hart, 14 La. Ann. 803; City of New Orleans v. Fassman, 14 La. Ann. 865.

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n a recent decision of one of the federal courts, in which said: "What does the word 'income' mean? In ordi- peech, people recognize a difference between capital and e. I believe that the ordinary meaning attached to in- when it is not derived from personal exertion, is that it ething produced by capital without impairing that capi- d which leaves the property intact, and that nothing can lled income, for the purpose of this act, which takes from the property itself. If it does, then it ceases to be e and amounts to a sale of capital assets."[17] Further, ler that money received by a particular person should tute part of his income, it is necessary that it should be- o him and be received by him for his own use and ben- But it is not a necessary part of the definition that he l have the right or power freely to dispose of it as he will. Thus, money received in annual payments, and otherwise would clearly be income, is not deprived at character by the fact that part of it is predestined, reement, to be put into a sinking fund to meet obliga- maturing in the future.[18] And where a traveling sales- is allowed a certain sum per month by his employers ver his expenses, the money is properly included by sessor as part of his taxable income.[19]

. Statutory and Official Definitions of Gross and Net Income

e regulations of the Treasury Department (closely fol- g the language of the statute) defined "gross" income as ing all gains, profits, and income derived from (1) sala- vages, or compensation for personal service of whatever and in whatever form paid; (2) professions, vocations, ess (including income from copartnerships), trade, com- , or sales or dealings in property, growing out of the rship or use of, or interest in, real or personal property; terest, rents, dividends, securities, or the transaction of wful business carried on for gain or profit; (4) gains or and income derived from any source whatever, includ-

rgent Land Co. v. Von Baumbach, 207 Fed. 423.
izam State Ry. Co. v. Wyatt, L. R. 24 Q. B. Div. 548.
re Assessment of Taxes, 16 Hawaii, 796.

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ing the income from, but not the value of, property acquired by gift, bequest, devise, or descent.[20] Then "net" income is described as consisting of gross income, as above defined, less the deductions allowed by the statute for expenses, interest paid, taxes, etc.[21] And it is further provided that, in computing a person's taxable income for the purposes of the normal tax only, there shall be deducted from the net income, as above ascertained, (1) the amount included in the gross income received as dividends upon the stock or from the net earnings of corporations subject to the tax; (2) the amount of income the tax upon which has been paid or withheld for payment at the source; and (3) the specific exemption of $3,000 or $4,000, as the case may be, except in the case of non-resident aliens.[22]

§ 223. Official Definitions of Gross Income of Corporations

The act of Congress imposes the income tax upon "the entire net income arising or accruing from all sources during the preceding calendar year to every corporation," etc., and provides that this net income shall "be ascertained by deducting from the gross amount of the income of such corporation," etc., certain specific items, such as expenses, losses, taxes paid, and the like.[23] The statute having made no definition of the "gross" income of corporations, the Treasury Department has done so, collecting the elements of the definition from the various provisions of the act. The regulations provide that the gross income of a corporation, for the purposes of making its return, "shall consist of the total revenues derived from the operation and management of its business and properties, together with all amounts of income from other sources, including dividends received on stock of other organizations, whether subject to this tax or not, and interest received upon

[20] Supra, § 177, art. 4. For the language of the act of Congress, see, supra, § 5.

[21] For the specification of these deductions, see, supra, § 7.

[22] See, supra, § 177, art. 3. Language of the statute with regard to the so-called specific exemption, see, supra, § 10.

[23] See, supra, §§ 32, 35.

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tions of a state or political subdivision thereof, or upon obligations of the United States or its possessions, as by entries upon its books during the year for which the is made." [24] Supplementary to this general definition, with reference to the various classes into which corporations have been divided for the purpose of assessing and collecting the income tax, the following particular definitions have been prescribed by regulations: "Gross income of banks and financial institutions consists of the total revenue derived from the operation of the business, including income, gains or profits from all other sources, as shown by the entries on the books of account, within the calendar or fiscal year for which the return is made." [25] Special rules are given for computing the gross income of various classes of insurance companies, this subject being carefully dealt with in the regulations itself.[26] "Gross income of manufacturing companies shall consist of the total sales of manufactured goods during the year covered by the return, increased or decreased by the gain or loss as shown by the inventories of finished and unfinished products, raw material, etc., at the beginning and end of the year. To this amount should be added the income, gains or profits from all other sources as shown by the books of account." [27] "Gross income of mercantile companies shall include the total merchandise sales during the year, increased or decreased by the gain or loss as shown by the inventories of merchandise at the beginning and end of the year for which the return is made; to this amount should be added the income, gains, or profits derived from all other sources as shown by the books of account." [28] "Gross income of miscellaneous operations consists of the total revenue derived from the

[24] Note A. on official Form No. 1031. See the Appendix. But interest received on obligations of the United States, a state, or a political subdivision thereof, is allowed as a deduction, and hence does not figure in the taxable net income.

[25] Supra, § 185, art. 96.

[26] See, supra, §§ 37, 38, 47, 49. And see § 185, art. 101.

[27] Supra, § 185, art. 104.

[28] Supra, § 185, art. 105.

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operation and management of the business and property of the corporation making the return, together with all amounts of income, including the income, gains, or profits from all other sources as shown by the books of account."[29] "It will be noted from these definitions that the gross income embraces not only the operating revenues, but also income, gains, or profits from all other sources, such as rentals, royalties, interest, and dividends from stock owned in other corporations, and appreciation in values of assets, if taken up on the books of account as gain; also profits made from the sale of assets, investments, etc."[30] But it should be observed that the net income of a corporation, for purposes of taxation, is not to be determined by bookkeeping facts, but by the real facts of actual gross income and actual payments therefrom for the purposes specified.[31]

§ 224. "Profits" and "Gains" Compared and Distinguished

"Profit" is the gain made on any business or investment when both the receipts and expenditures are taken into consideration.[32] It is the amount of acquisition beyond expenditure, the excess of value received for producing or selling over and above cost.[33] It represents the net gain made from an investment, or from the prosecution of any business, after the payment of all expenses incurred.[34] In the common acceptation

[29] Supra, § 185, art. 106.

[30] Supra, § 185, art. 107.

[31] Baldwin Locomotive Works v. McCoach, 215 Fed. 967.

[32] Providence Rubber Co. v. Goodyear, 9 Wall. 788, 19 L. Ed. 566; People v. San Francisco Sav. Union, 72 Cal. 199, 13 Pac. 498; Taylor v. Harwell, 65 Ala. 1; Mayer v. Nethersole, 71 App. Div. 383, 75 N. Y. Supp. 987.

[33] Mundy v. Van Hoose, 104 Ga. 292, 30 S. E. 783; Curry v. Charles Warner Co., 2 Marv. (Del.) 98, 42 Atl. 425; Bates v. Porter, 74 Cal. 224, 15 Pac. 732; People v. Niagara County Sup'rs, 4 Hill (N. Y.) 20.

[34] Goodhart v. Pennsylvania R. Co., 177 Pa. St. 1, 35 Atl. 191, 55 Am. St. Rep. 705. "Profits must be taken to mean that which the mine-owner in any given year puts into his pocket, or could, if he chose, put into his pocket, minus the expenditure. He cannot go back and take into account the profit and loss account for a series of previous years. Thus, if a man works his mine at a loss for ten

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term, "profit" is the benefit or advantage remaining
ll costs, charges, and expenses have been deducted, be-
until then, and while anything remains uncertain, it is
sible to say whether or not there has been a profit.[35] Or,
ling to a fuller description given by the Supreme Court
lifornia, the word "profits" signifies an excess of the
of returns over the value of advances; the excess of
ts over expenditures; that is, net earnings. In com-
it means the advance in the price of goods sold beyond
st of purchase. In distinction from the wages of labor,
ell understood to imply the net return to the capital or
employed after deducting all the expenses, including not
he wages of those employed by the capitalist, but the
of the capitalist himself for superintending the employ-
of his capital stock. Profits are divided by writers on
al economy into gross and net; the former being the
difference between the value of advances and the value
urns, and the latter so much of this difference as arises
ively from the capital employed. Profits cannot consist
nings never yet received.[36] So, the term "profits" as
n a statute imposing a tax of five per cent on all profits
lroad and canal companies, refers to the profits arising
the operation of the railroad or canal, but without deduc-
f interest paid to its bondholders or dividends paid to
ckholders, that is, the excess of receipts over expenses
ration.[37] But the surplus earnings of a corporation over
bove all expenses are taxable as "profits," notwithstand-

and in the eleventh year makes a profit over expenditures, he set off against that profit the antecedent expenses and losses the years in which he worked at a loss. It would be im-able to do so. Income taxes upon profits could not be assessed t going into an inquiry embracing the whole history of the lar undertaking from its inception." Broughton & Plas Power o. v. Kirkpatrick, L. R. 14 Q. B. Div. 491.

ackey v. Millar, 6 Phila. (Pa.) 527.

eople v. San Francisco Sav. Union, 72 Cal. 199, 13 Pac. 498.

oux City & P. R. Co. v. United States, 110 U. S. 205, 3 Sup. , 28 L. Ed. 120.

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ing that it is required by law to appropriate all such surplus to a particular purpose (as, to a sinking fund) and to no other.[38]

It is said, and with truth, that this term is often used as synonymous with "income" and as meaning the same thing, and particularly where the two words are coupled in the same phrase.[39] And one court has remarked that, when they are thus joined together, there is no difference in the meaning of the words, and the use of them both is only due to a lawyer-like fondness for using several words where one would be sufficient.[40] But this is scarcely correct. There is a substantial difference in the meaning of the two words. And it is more accurate to say that, when they are joined together in the same phrase, the word "profits" is used to particularize and point out one kind of income, or income derived from a particular source; and it will generally be found that their joinder is easily explained from their correlation with other descriptive words in the same sentence, as, for example, where "gains" may be correlated with "sales or dealings in property," "income" with such words as "salaries" and earnings from "professions and vocations," and "profits" with "business, trade, and commerce." Besides, "income" is clearly a word of larger import than "profits." The former term may very properly include such items as the rent of houses, interest on investments, the earnings of a professional man, or the salary of an officer of a corporation, but none of these could with any propriety be called "profits." In effect, the latter term is more appropriately confined to gains resulting from the operations of trade or commerce, and especially from mercantile or manufacturing business or transportation. Moreover, it is important not to lose sight of the distinction that, while "income" means that which comes in or is received from any business or investment of capital, without reference to the outgoing ex-

[38] Mersey Docks & Harbour Board v. Lucas, 51 Law J. Q. B. 114, 1 Tax Cas. 385, affirmed, L. R. 8 App. Cas. 891.

[39] Bates v. Porter, 74 Cal. 224, 15 Pac. 732; Burt v. Rattle, 31 Ohio St. 116, 130.

[40] In re Clark, 62 Hun (N. Y.) 275, 17 N. Y. Supp. 93.

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penditures, "profit" means the gain which is made upon any business or investment when both receipts and payments are taken into account.[41]

It is not quite so easy to account for the use of the word "gain" in conjunction with the two other terms which we have been considering. But it may probably be said that when a tax law employs the phrase "gains, profits, and income," to describe what is taxable, the term "gains" is inserted out of abundant caution, and intended to include an acquisition of the taxpayer which is not to be described as a "profit," and which might not be included in the term "income" if that word were taken in a narrow sense. Properly speaking, "gain" means that which is acquired or comes as a benefit,[42] and in a statute laying an income tax it may mean money received within the year which is not the fruit of a business transaction nor of the labor or exertion of the individual, but something arising from fortuitous circumstances or conditions which he does not control. In this signification, the term would include money received as a legacy or money won on a wager.

§ 225. Income Derived from "Any Source Whatever"

It should be noticed that the act of Congress directs that the net income of taxable persons shall include, besides several enumerated sources of revenue, "gains or profits and income derived from any source whatever." It is probable that the latter phrase is to be taken in a wide and general sense, and not as being in any way limited by the enumeration preceding it. This question arose recently in Virginia, where the classification under the schedule authorizing income taxes first provides for the taxation of incomes from certain specified sources, and then for the taxation of "all other gains and profits derived from any source whatever." In defense to an action by the state against a certain attorney at law, to recover a tax on his income derived from the practice of his profession, it was contended that the clause quoted came

[41] In re Murphy, 80 App. Div. 238, 80 N. Y. Supp. 530.
[42] Thorn v. De Breteuil, 86 App. Div. 405, 83 N. Y. Supp. 849.

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within the doctrine of "ejusdem generis," and therefore must be limited to incomes derived from sources of the same kind as those enumerated in the previous clauses of the schedule, and that it did not include incomes from licensed professions, trades, or businesses. But the Supreme Court of the state held that this broad language would be in a large measure nullified by limiting its operation to income derived not from "any source whatever," but only from sources similar to those embraced in the enumerated classes; and it was held to apply to the professional incomes of lawyers as well as to those specifically enumerated.[48]

§ 226. Change or Substitution of Capital Distinguished

Both in popular and legal parlance, "income" is distinguished from "capital" or "principal." Capital is the source of income. Income is the fruit of capital. Capital may be made very mobile and constantly changed from one form of investment to another. Each time that it returns to the owner it may or may not bring income with it. But it would be a misnomer to reckon the whole of each such return as "income" simply because it is so much money coming into the possession of the owner. Out of the fund so returning there must first be deducted, in case there has been no loss, a sum sufficient to replace the capital originally invested, and the balance, if any, will be income. Thus, when money is loaned on a promissory note for one year at interest, and the note is paid at maturity with the accumulated interest, the sum received must be apportioned between capital and interest. The receipt of so much of that sum as equals the face of the note is not a receipt of income; it is a replacement or substitution of capital; only the money received as interest constitutes income. So the income of a merchant does not include his gross receipts, but only so much thereof as represents the profits on his sales; the remainder is capital replaced. Again, a sum of money received from a railroad company in payment of damages for a part of a person's

[48] Commonwealth v. Werth (Va.) 82 S. E. 695.

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land taken by the railroad for its use, is not income; it is a substituted capital.[44] And where one sells real property on terms contemplating the payment of a certain sum at once, and the remainder in equal semiannual installments extending over a period of several years, the installments are not gains or profits, but the replacement of capital, and they are not subject to taxation under the income tax, nor is the debtor authorized to deduct from them for the tax.[45] So, where the purchase price of property is payable in a number of annual installments, each including not only a proportionate part of the actual price but also a sum as interest on the unpaid installments, the part which represents capital must be separated from that which represents interest, and only the latter is subject to the income tax.[46] And where, on foreclosure of a trust deed securing an issue of bonds, the property is disposed of piecemeal, and distribution made from time to time among the bondholders, and finally there remains in the hands of the trustees, for distribution as a final dividend, a sum not sufficient to pay off the bonds in full at their par value (allowing for previous dividends), while there also remains a sum due the bondholders for accrued and unpaid interest, the final distribution should be treated as a payment on account of principal, with no deduction for income tax, rather than as a payment in the first place of the accrued interest, which would require the deduction of the tax.[47] And the mere change or transfer of a fund held in trust, from the hands of one trustee into the hands of another or substituted trustee, does not make the whole fund in the hands of the last trustee "gains, profits, and income," within the meaning of the income tax law.[48] It is of course possible that the word "income" may be so stretched as to include even capital returned, if the context absolutely requires such a construction.

[44] Gibson v. Cooke, 1 Metc. (Mass.) 75.
[45] Foley v. Fletcher, 3 Hurl. & N. 769.
[46] East Indian Ry. Co. v. Secretary of State, 74 Law J. K. B. 779; Secretary of State v. Scoble, 72 Law J. K. B. 617.
[47] Smith v. Law Guarantee & Trust Soc. [1904] 2 Ch. 569.
[48] Reynolds v. Williams, 4 Biss. 108, Fed. Cas. No. 11,734.

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In one case, on the construction of a statute authorizing cer commissioners to deposit the "income" of a certain fund, it held that the word had the same meaning as "money" "receipts," and that it was to be interpreted as embra all receipts of money, whether of principal or interest, f the mortgages or other securities in which the fund been previously invested.[49] But this construction reached by reading the statute with reference to certain er statutes relating to the same subject-matter, and no necessity would ordinarily apply in the interpretation of come tax laws, where, on the contrary, the rule of s construction in favor of the taxpayer would require a c ful distinction to be observed between capital and incom

§ 227. Rent of Land and Royalties

Rent paid by a tenant for the use and occupation of estate is always considered as "income" of the lessor,[50] this has been specified as one of the varieties of taxable come in practically all of the income tax laws which h hitherto been enacted. It should be noted, however, the statute of Virginia excepts "ground rents or r charge," which is entirely proper, since the annual paym under a ground lease are not so much to be regarded rent, or a price paid for the use of the land, as in the na of periodical installments of purchase money. In a wil a deed, the expression "yearly income" of real estate mean the balance of what is received in the way of r after deducting taxes paid.[51] And the same result is fected under the income tax laws by the provisions allow a deduction from the total income of taxes paid within year and also an allowance either for depreciation of property from which income is derived or for its reasona repair. Where farming land is leased to be worked by a ant on shares, the income which the lessor derives from

[49] State v. McCarty, 1 Wils. (Ind.) 205, 219.

[50] Perotz's Appeal, 102 Pa. St. 235, 256; Sohier v. Eldredge, Mass. 345; Lindley's Appeal, 13 Wkly. Notes Cas. (Pa.) 65, 69.

[51] Inhabitants of Freeport v. Inhabitants of Sidney, 21 Me.

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are or proportion of the produce, or rather, the sum he realizes from the sale of his part of the produce.[52] s also held that rent reserved in a lease of land contain- al or other minerals, the mines to be worked by the is income of the lessor, although it is stipulated to d in the form of a royalty of so much for each ton of r other mineral extracted.[53] But this may depend on tention of the parties as to making a lease proper or and this in turn may be presumed from the form of ntract which they make. For if the transaction takes rm of a sale of the coal (or other mineral) in place, the ds received will be a part of the corpus of the estate, , capital or principal, but not income.[54] Thus, a de- f all the coal under the surface of a specified piece of a sale of the coal, not a lease, and the sums due and y the lessee to the lessor as royalties are not rents, herefore not income, but purchase money of real es-

Rental Value of Residence

Wisconsin income tax law of 1911 provides that the "income" shall include the estimated rental value of ce property occupied by the owner thereof, and hence payer who owns the house in which he lives must in- in his return of his income the annual rent which he

ompson's Appeal, 100 Pa. St. 478.
y's Appeal, 103 Pa. St. 300; Reynolds v. Hanna, 55 Fed. 783, Ventz's Appeal, 106 Pa. St. 301; Bedford's Appeal, 126 Pa. 17 Atl. 538; Shoemaker's Appeal, 106 Pa. St. 392; McClin- Dana, 106 Pa. St. 386; Hill v. Gregory [1912] 2 K. B. 61.
ynolds v. Hanna, 55 Fed. 783. Where numerous owners of land formed a corporation to hold the title thereto and man- property, taking as the capital stock a mere nominal capital- without reference to value, the difference between this capital- and the actual value of the land could not be said to rep- profits of the corporation, and hence royalties received under f such property were held not income taxable under the cor- n excise tax law on the theory that they were a part of such Sargent Land Co. v. Von Baumbach, 207 Fed. 423.
irchild v. Fairchild (Pa.) 9 Atl. 255.

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could or would receive for the property if he chose to
it and reside elsewhere. This provision is in accord
the principles of income taxation in England and some o
foreign countries, but was not known in American legi
tion until introduced by the Wisconsin statute. Indeed,
rental value of the taxpayer's residence, when owned by
was expressly directed to be excluded from the computa
of his income by the acts of Congress of 1864 and 1
The validity of this clause in the Wisconsin law was assa
on the ground that, as such rental value is not income in
proper sense of the word, it could not be made income
the mere declaration of the legislature that it should be s
But the Supreme Court of the state saw nothing in this
vision to invalidate the statute. "It is said," observed
court, "that this is not income, and that calling it inc
does not make it income. It may be conceded that thi
which are not in fact income cannot be made such by n
legislative fiat, yet it must also be conceded, we think,
income in its general sense need not necessarily be mo
Clearly it must be money or that which is convertible
money." [56] But this is by no means a satisfactory wa
meeting the objection. The court would have taken
much stronger ground if it had ruled that the rental v
of an owner's residence is not income at all, but yet th
is subject to the tax because it is so declared in the sta
and because it is a thing of value which the legislature
the power and authority to tax, whether or not it constit
income. On economic grounds such a provision is n
easily defensible. And on this point the court in Wisco
in the same connection, remarked: "The clause was do
less inserted in an effort to equalize the situation of two
each possessed of a house of equal rental value, one of wh
rents his house to a tenant, while the other occupies
house himself. Under the clause in question, the two
with like property are placed upon an equal footing, an

[56] State v. Frear, 148 Wis. 456, 134 N. W. 673, 26 Am. & Eng.
Cas. 1147.

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no other way apparently can that be done." [57] It is true the English and Scotch courts hold that the annual rental value of a house which a man owns and in which he lives, and which he could rent to another if he chose, is a part of his income for purposes of taxation.[58] But it is otherwise if the house is provided for him by others, to be occupied during his life, but without any power or authority on his part to let it to another.[59] And the advantage gained, or the saving effected, by having the right to occupy another person's house as a residence free of rent,—as in the case of a manager of a bank who has the right, so long as he continues in his office, to reside in the building owned by the bank and used for its banking purposes,—is not income in such sense as to be taxable.[60]

Under the income tax laws elsewhere than in Wisconsin, it is thought that this item could not be brought within the definition of "income" by any reasonable or permissible construction. Thus, it has been held (though not in connection with the subject of taxation) that neither the increased value which would accrue to lands of a charitable institution if they were used for other purposes than the charity, nor their use for the purposes of the charity without realizing an actual income, can be regarded as "annual income" within the meaning of a restriction in the charter of such an institution upon holding property which shall exceed a specified annual income. Annual income, it was said, means annual receipts, and is not the equivalent of annual value. And even if the value of the use could be regarded as annual income, it should be computed, not with reference to the market value, but to the annual value to the corporation for the special purpose to which the property was devoted.[61]

[57] State v. Frear, supra.

[58] Corke v. Fry, 32 Scotch Law Rep. 341.

[59] McDougall v. Sutherland, 31 Scotch Law Rep. 630.

[60] Tennant v. Smith [1892] App. Cas. 150. But see Treasury Decisions No. 2090, holding that, where an individual is furnished living quarters in addition to his salary, the rental value of such quarters must be considered taxable income as part of his "compensation."

[61] Betts v. Betts, 4 Abb. New Cas. (N. Y.) 317.

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§ 229. Salaries and Earnings from Professions and Trades

A salary accruing to the taxpayer, whether payable annually or at shorter intervals, is taxable as a part of his income, and it is immaterial (except in so far as the statute makes express exceptions) whether he earns it in the capacity of a public officer or as an employé of a private corporation, or a partnership, or an individual.[62] Thus, the pay of an army officer on the retired list is "income" and taxable as such.[63] Nor does it make any difference that the amount of the salary is uncertain or varies from time to time, or that it depends on the extent of services actually rendered or the amount of business transacted, or that it may include commissions on sales.[64] Whatever is received in the course of the year in the way of salary, wages, or compensation constitutes a part of that year's income. Thus, it is said in an English case that "income" includes all gains and profits derived from personal exertions, whether such gains and profits are fixed or fluctuating, certain or precarious, and whatever may be the principle or basis of calculation. Hence a locomotive engineer, who earns more than the statutory minimum, is taxable, although he is not paid a salary but so much for every mile he runs his engine.[65]

According to recent rulings of the Treasury department, a person receiving a salary in excess of $4,000, and, in addition, a percentage commission on all sales, the exact amount due on account of commissions not being determinable until a month or more after the close of the year in which the commissions were earned, at which time both his salary for the preceding year and his commissions are paid to him; should return as income, for the year in which payment was made, the aggregate amount received on account of salary and commissions. And where an employé is paid a sum equal to two years' salary on condition that he surrender his contract of

[62] White v. Koehler (N. J.) 57 Atl. 124.

[63] In re Ward [1897] 1 Q. B. 266.

[64] An agent's commissions on renewal premiums on insurance are income when received, and income for the period in which received. T. D. No. 2011. See, supra, § 167.

[65] Attorney General v. Ostrum [1904] App. Cas. 144.

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ment, such sum should be reported by him on his an-
eturn as income. And when profits distributed by a
ation to an employé, together with payments of his sal-
gregate more than $3,000, the normal income tax should
ucted and withheld therefrom. And where a service
yment period is divided by the end of a taxable year,
npensation for the period so divided at the end of the
ill be accounted for in the return for the year in which
nt is made and received. But where the service is of
ature as to be compensated by fee, or of such nature
o portion of the amount becomes due until the service
pleted, then the total amount of the compensation should
uded in the return for the year in which the compensa-
received. (Treasury Decision No. 2090, December 14,

ord should be added in regard to allowances made to a
d officer, in addition to his salary, to cover subsistence,
ng expenses, quarters, and the like. The Treasury de-
ent rules that, where an individual is furnished living
rs in addition to his salary, the rental value of such
rs is to be regarded as a part of his "compensation" and
ore taxable as income; that the difference between the
t received as mileage and the amount of actual neces-
xpenses incurred on a journey must be returned as in-
that the difference between the amount received as a
em allowance in lieu of subsistence while traveling un-
ders and the amount of actual necessary expense in-
is also returnable as income; and the same rule is ap-
o commutation of quarters and the money equivalent
rters furnished in kind; but that amounts paid by the
nment, in the nature of reimbursement for subsistence
her items of actual expense incurred while absent on
ss for the Government, are not required to be returned
ome. (Treasury Decision No. 2090, December 14, 1914.)
lly, in order to set at rest doubts which had arisen on
estion, it has been decided that, although a particular
ation may be of such a character as to be exempt from
come tax, yet the salaries which it pays to its officers or

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employés are not for that reason exempt, but are taxable to them as income. (Treasury Decision No. 2090, December 14, 1914.) For this reason, the salary received by the rector of a church or by a professor in a college is not exempt, though the corporation paying the salary is exempt.

So also the earnings of professional men, such as lawyers, physicians, surgeons, clergymen, engineers, architects, authors, actors, singers, and others, derived from their professional employment, constitute taxable income, if sufficient in amount to come within the terms of the statute, even though not specifically mentioned in it.[66] And it is immaterial by what name such earnings may be called, or whether they take the form of a fixed periodical compensation or accrue in each instance in consideration of particular services rendered. And the same is true of the wages or earnings of mechanics and artisans, if sufficient in annual amount to come within the purview of the statute, as may easily be the case under some of the state laws. And in all ordinary cases, whatever accrues to the taxpayer as compensation for his personal exertion or endeavor will be taxable as income, no matter what may be the nature of the employment or pursuit which he follows, since the terms of the statutes are broad enough to cover almost every conceivable kind of activity. In an English case it was held that betting on horse races, when carried on systematically and annually and as the person's chief or only way of gaining

[66] A lawyer's professional earnings are taxable as income; and it is not a case of double taxation though he is also compelled to pay a license fee for the privilege of practising his profession. Commonwealth v. Werth (Va.) 82 S. E. 695. The tax may not be deductible "at the source" of an attorney's professional earnings. It will be so deductible in the case of an annual retainer or other fixed and periodical payment, if large enough to come within the terms of the statute, but not as regards occasional fees. See, supra, § 97. But this is a different question, and does not affect the necessity of including all such fees and earnings in the lawyer's annual tax return. It would appear also that the income of a minister or clergyman must be held to include (for the purpose of this tax) his occasional fees received for weddings, funerals, and other professional services. And the Treasury department rules that Easter offerings and fees received by clergymen for funerals, masses, marriages, baptisms, etc., are considered income subject to the tax, but not Christmas gifts made to such persons. Treasury Decision No. 2090, December

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money, is a "vocation" within the income tax law, and he must pay the tax on his winnings, if any.[67]

§ 230. Pensions, Gifts, Prizes, and Awards

Under the English law it is held that the pension of a retired judge or other public officer, though voted annually by the legislative authority, is taxable as income.[68] But a pension not granted by the government, but by a private individual or society, as a purely voluntary gift, and without any legal claim upon the donor, in recognition of meritorious past services or for other such reasons, is not a "profit or gain arising from any kind of property" or from "any profession, trade, employment, or vocation," and is therefore not assessable as income of the recipient.[69] On the other hand, it was held that, where a corporation establishes a pension or benefit fund for its employés, requiring each of them to become a subscriber and to contribute a certain percentage of his salary, but contributions are returnable (except where forfeited for fraud or dishonesty) either by way of a superannuation benefit, or in a lump sum with interest in case of death or retirement, the full salaries of the employés accrue to them and are assessable for the income tax, and not merely the amount received after deducting such contributions.[70] On similar principles it is held that a gift of money, raised by voluntary subscriptions, and made annually to a minister of

14, 1914. And a professional actor or singer, playing a season's engagement, at a stated compensation per week or month, or for each performance, is expected to make a personal return of such income if it exceeds $3,000 in the tax year, and the person to whom he looks for compensation will be bound to withhold the amount due for income tax, as soon as the payments reach the figure named. But the "vaudeville artist," whose salary is paid weekly at different theaters by different managers, is not subject to have the income tax deducted "at the source," though he must include all his earnings in his personal return.

[67] Partridge v. Mallandaine, L. R. 18 Q. B. Div. 276.

[68] Ex parte Huggins, L. R. 21 Ch. Div. 85. The Treasury department rules that a pension received from the United States must be included in the individual's return of net income for taxation. Instruction No. 16, on Form No. 1040, for individual return of net income. See this Form in the Appendix to this volume.

[69] Turner v. Cuxon, L. R. 22 Q. B. Div. 150.

[70] Hudson v. Gribble [1903] 1 K. B. 517, 4 Tax Cas. 522.

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religion by his congregation, is assessable as income, because made to him as a minister and in respect to the discharge of his duties in that office, which is an "employment" within the meaning of the statute.[71] But where a curate receives from a religious society a grant in money, renewable annually at discretion and on certain conditions, and the grant is in recognition of faithful services as a clergyman, but not in respect of the particular curacy which he holds, it is held that it is not taxable as income.[72] So where a portion of a collection made in church was given by way of an "Easter offering" to the incumbent of the parish by reason of his office, but the gift would not have been made had not the recipient, besides being the incumbent, also been poor, it was held that the money was not given as an additional remuneration for services, but on account of personal poverty, and was therefore not taxable.[73]

Similar questions may arise in the administration of the income tax laws of this country. Suppose, for example, that one receives a subsidy from a government,[74] or gift of money from a relative, or draws a prize in a lottery or in any form of competition, or wins a bet on a race or at the gaming table, or (to take a worthier illustration) receives an award in money, not as payment for services but in recognition of meritorious conduct or achievement or discovery, —such as the Nobel prize—it is clear that he makes a "gain," though not a "profit," and that the sum received is "in-

[71] In re Strong, 15 Scotch Law Rep. 704, 1 Tax Cas. 207; Blakiston v. Cooper [1909] A. C. 104; Herbert v. McQuade [1902] 2 K. B. 621, 4 Tax Cas. 489; Cooper v. Blakiston [1909] A. C. 104, 5 Tax Cas. 347.

[72] Turner v. Cuxon, L. R. 22 Q. B. Div. 150.

[73] Turton v. Cooper, 5 Tax Cas. 138. But see Cooper v. Blakiston [1909] App. Cas. 104, 5 Tax Cas. 347.

[74] According to the doctrine of the English cases, a subsidy paid annually by a government is taxable as income of the recipient. This was ruled in a case where a company undertook to construct a railroad in Brazil under a government guaranty of seven per cent interest on the capital raised and devoted to the building of the road, and it was held taxable on the money received from the government. Blake v. Imperial Brazilian Ry., 2 Tax Cas. 58. And see Pretoria-Pietersburg R. Co. v. Elgood, 98 Law Times, 741.

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come" as distinguished from "principal" or "capital." The federal income tax law includes "the income from, but not the value of, property acquired by gift, bequest, devise, or descent." And under this provision it is ruled that, where the monthly salary of an officer or employé is paid for a limited period after his death to his widow, in recognition of the services rendered by her husband, but without the rendition of any services by the widow, such payment is a gratuity and exempt from the income tax. It is also ruled that if property acquired by gift, bequest, etc., is sold at a price greater than the appraised value at the time the property was acquired, the gain in value is income and is subject to the tax. (Treasury Decision No. 2090, December 14, 1914.) It should also be observed that this provision of the statute applies only to the case of individual taxpayers, not to corporations. Consequently, the value or amount of a gift, bequest, or devise to a corporation, is not exempt but is taxable as income of the corporation for the year in which it is received. (Idem.) But aside from this specific exception, and as the problem might arise under other taxing laws, the question whether an acquisition of the kind supposed would be taxable as income must depend upon the construction of the statutes. They contain terms broad enough to cover all such cases, as, where the act of Congress in force declares that the tax shall be laid on "the entire net income received from all sources," and upon "gains or profits and income derived from any source whatever," and the Wisconsin statute, after enumerating certain items, taxes "all other income of any kind derived from any source whatever." If these expressions are to be construed as effective to the full extent of the language employed, they would undoubtedly include gifts, winnings, and pecuniary awards or prizes. But if, following the usual rule of statutory construction, the generality of these expressions is to be restricted by a comparison with the more specific terms used in the context, then they would include only gains or income from sources similar to, or comparable with, those already enumerated, such as salaries, professional earnings, mercantile business, invested capital, and so on. In this case,

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following the analogy of the English cases above cited seems that such acquisitions as those we have instanced w not be regarded as income.

The same remarks may apply to a judgment for money, amount of which is paid to the creditor within the ta year. If the cause of action were an injury to property contract rights, it might be considered as, in some sens least, a replacement of capital. If it were for services dered, the amount of the judgment would clearly be "com sation," or even "salary" or "fees," though recovered by But a judgment in an action of tort, as, for example, defa tion of character or negligence causing personal inju would never be regarded as a part of one's income in the c mon acceptation of the term, and should not be brought wi even the most extensive terms of the statute, since a broad liberal construction in favor of the government is not the in such cases, but the reverse.

§ 231. Legacies and Inheritances

The income tax act of Congress of 1913 expressly excl from the taxpayer's income "the value of property acqu by bequest, devise, or descent." But it is ruled that "the eral policy of the law and rule of interpretation require legacies in all cases, unless clearly inconsistent with the tention of the testator, should be held to be vested rather contingent; and where there is a vested interest, the inc from such interest, whether distributed or not, is subjec the tax; and when in the hands of fiduciaries, they are quired to account for and pay the tax thereon." (Treasury cision No. 2090, December 14, 1914.) The former act, tha 1894, on the other hand, included "money and the value o personal property acquired by gift or inheritance." T was no exception as to legacies or property acquired descent on which an inheritance tax had already been p though probably such inheritance tax itself might be dedu under the description of "taxes actually paid." The

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consin statute of 1911 allows a deduction of "inheritances, devises, and bequests received during the year upon which an inheritance tax shall have been paid to this state." It appears, therefore, that a resident of Wisconsin receiving a legacy from a non-resident, on which the inheritance tax had been paid in the state of the decedent's domicile, must include the amount thereof in his income for the year. The income tax law of Hawaii includes "money and the value of all personal property acquired by gift or inheritance," but with a proviso that there shall not be included in the income of any person or corporation "any bequest or inheritance otherwise taxed as such." In jurisdictions where the matter is not thus provided for by statute, the question of taxing legacies or inheritances as income is not free from doubt, and the authorities cast but little light upon it. There is, however, an English case, in which it was ruled that a sum of money acquired as a legacy is not taxable under the denomination of "income." It was said by Chief Baron Kelly: "It would be something startling, and almost ludicrous, to contend that, when a fortune is left to an individual, if it happened to be in money, the whole fortune is to be taken as a year's income." [75] This was said arguendo, and is therefore strictly speaking obiter dictum, but the point was well brought out and elaborated, and the quotation clearly expresses the conviction of the court.

§ 232. Products of Agriculture or Stock-Raising

The profit derived by a farmer or stock-raiser from the sale of the products of the farm or ranch, that is, the amount received on such sales less the cost of production, constitutes income taxable under the statutes now in force.[76] In one state, Virginia, this is specially provided for by the statute, which declares that "income" shall include "the amount of

[75] Knowles v. McAdam, L. R. 3 Ex. Div. 23, 1 Tax Cas. 161.

[76] The taxable income arising from a sugar plantation is the difference between the gross amount of sales during the year and the amount expended in producing the property sold. In re Laupahoehoe Sugar Co., 18 Hawaii, 206.

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sales of live stock and meat of all kinds, less the value as
ed thereon the previous year by the commissioner o
revenue," and "the amount of sales of wood, butter, ch
hay, tobacco, grain, and other vegetable and agricultural
ductions during the preceding year, whether the same
grown during the preceding year or not, less all sums
for taxes and for labor, fences, fertilizers, clover and
seed purchased and used upon the land upon which the
table and agricultural productions were grown or prod
and the rent of said land paid by said person, if he be
the owner thereof." [77] Though the other state statute
not contain such explicit provisions as these, still their t
are broad enough to include the profits of agriculture
also to allow such offsets as those specified in the Vir
act, in computing the net return. Thus, the Wisconsin
after enumerating certain sources of income, lays the
on "all other income of any kind derived from any so
whatever," and allows the deduction of "the ordinary
necessary expenses actually paid within the year in carr
on the profession, occupation, or business from which th
come is derived." [78] As to the federal statutes, the in
tax law of 1894 contained a specific provision on this sul
following the example of the income tax laws of the
War period. It directed that taxable income should in
"the amount of sales of live stock, sugar, cotton, wool, bu
cheese, pork, beef, mutton, or other meats, hay, and g
or other vegetable or other productions, being the grow
produce of the estate of such person, less the amoun
pended in the purchase or production of said stock or
uce, and not including any part thereof consumed direct
the family." [79] The act of Congress now in force omits
particular provisions and reverts to the use of more ge

[77] Acts Virginia 1903, c. 148, p. 155, as amended by Acts 19
10, p. 20. See this statute in full in the appendix to this volun
[78] Wisconsin Income Tax Law 1911, § 1087m, par. 2, clause 2f
§ 1087m, par. 4a. See this statute in full in the appendix to
volume.
[79] Act Cong. Aug. 27, 1894, § 28, 28 Stat. 509.

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language. But it cannot be doubted that it applies to the subject under consideration, since it declares that "the net income of a taxable person shall include gains, profits, and income derived from * * * vocations, businesses, trade, commerce, or sales or dealings in property * * * or the transaction of any lawful business carried on for gain or profit." [80]

It is to be noted that so much of the produce of a farm as is directly used and consumed by the farmer and his family is not to be reckoned as a part of his income, even though it might have been sold, if not so used, and a profit derived from it.[81] Unsold and consumed in the use by the producer, it cannot possibly be brought within any definition of income, nor even regarded as the source of income. Nor need this rule be affected by the fact that the statute may expressly forbid the deduction of "personal, family, or living expenses," as this phrase obviously relates to money expended for such purposes.

In the next place, grain or other crops or live stock remaining in the producer's possession and unsold at the end of the year are not to be reckoned as a part of the year's income. This is to be inferred from the fact that those statutes which have dealt specifically with this matter have not directed that

[80] "The farmer, in computing the net income from his farm for his annual return, shall include all moneys received for produce and animals sold, and for the wool and hides of animals slaughtered, provided such wool and hides are sold, and he shall deduct therefrom the sums actually paid as purchase money for the animals sold or slaughtered during the year. When animals were raised by the owner and are sold or slaughtered, he shall not deduct their value as expense or loss. He may deduct the amount of money actually paid as expenses for producing any farm products, live stock, etc. In deducting expenses for repairs on farm property, the amount deducted must not exceed the amount actually expended for such repairs during the year for which the return is made. The cost of replacing tools or machinery is a deductible expense to the extent that the cost of the new articles does not exceed the value of the old." Instruction No. 11, on official Form No. 1040, for return of individual income for taxation.

[81] Robertson v. Pratt, 13 Hawaii, 590; People v. Purdy, 58 Hun (N. Y.) 386, 12 N. Y. Supp. 307.

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the term "income" should include the amount of crops raised, etc., or the value of such productions, but only the "amount of sales" thereof, after making the proper deductions. But aside from this consideration, the rule is deducible from the general principle that a law taxing income does not apply to any thing of value which, if sold, is capable of producing income, but which, remaining unsold, is to be regarded as principal or at most as a source of income. In other connections, it is true, the word has sometimes been stretched to this extent. Thus, on the construction of a statute providing that a guardian should improve the estate frugally, and apply the income to the maintenance of the ward, it was held that this use of the word "income" did not require the guardian to lease the real estate and so derive an income in cash from it, but that he might farm the land himself.[82] So, an early case in Maryland holds that, in a devise of real and personal estate and negroes in trust, the income to be applied for the benefit of a certain beneficiary, the word "income" is broad enough to include the increase of the slaves.[83] But the rule of construction in regard to a tax law is not the same as that which applies in the case of a testamentary or other trust. Whatever latitude may be allowed in the latter case, to carry out the purpose of the trust, the rule for a statute imposing taxes is that the construction is strictly in favor of the taxpayer and nothing is included as taxable unless plainly and distinctly made so by the words of the act.[84]

§ 233. Produce of Mines and Oil and Gas Wells

The owners of mines producing coal, gold, silver, or other minerals, or of nitrate beds or other similar natural deposits, or of oil or natural gas wells, are assessable for the income tax upon the net profits realized by the sale of their products in each year.[85] The argument has sometimes been advanced that,

[82] Remington v. Field, 16 R. I. 509, 17 Atl. 551.

[83] Holmes v. Mitchell, 4 Md. 532.

[84] Supra, § 217.

[85] Stratton's Independence v. Howbert, 231 U. S. 399, 34 Sup. Ct. 136, 58 L. Ed. 285; Allanza Co. v. Bell [1906] App. Cas. 18; Rhymney

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erals in place constitute a part of the realty, and as the tion of any given quantity leaves the investment of ner worth just so much the less, the sale of mineral ts should be regarded as a sale of capital assets, and income. Thus, in a case in Pennsylvania, an oil com- having all its capital invested in oil-producing property, aying dividends entirely out of the products of its oil resisted payment of an income tax assessed against it, g that it could have no taxable net income until the pro- of its business had repaid all the capital invested, since, of the depletion of its sources of revenue, its dividends cluded not only earnings but also a portion of its capital ed in this way to the stockholders. But the court re- o accept this view, holding that all the income received company from its works, after deducting the operating es, was net income and taxable as such.[86] Moreover, ctrine is well within the analogy and the reason of the own rule that in the case of mining companies, quarry nies, and the like, which have what is called a "wasting ty," the payment of dividends to the stockholders out of ount realized on the sale of their products is not regard- n impairment of capital, nor are such companies required ate a sinking fund, out of earnings, before declaring nds, to offset the gradual depletion of the property in the capital is invested.[87] So it has been held that the

. v. Fowler [1896] 2 Q. B. 79, 3 Tax Cas. 476; Knowles v. n, L. R. 3 Ex. Div. 23, 1 Tax Cas. 161; Arizona Copper Co. v. 29 Scotch Law Rep. 134, 3 Tax Cas. 149; Stevens v. Durban- ort Gold Min. Co., 5 Tax Cas. 402; United States v. Nipissing o., 202 Fed. 803; Commonwealth v. Ocean Oil Co., 59 Pa. St. , also, Treasury Decisions Nos. 1754 and 1755.

mmonwealth v. Ocean Oil Co., 59 Pa. St. 61. Compare Sargent o. v. Von Baumbach, 207 Fed. 423.

ople v. Roberts, 156 N. Y. 585; Excelsior Water & Mining Co. e, 90 Cal. 131, 27 Pac. 44; Lee v. Neuchatel Asphalte Co., L. h. Div. 1. In the case last cited it was said: "If a company ed to acquire and work a property of a wasting nature, for e, a mine, a quarry, or a patent, the capital expended in ac- the property may be regarded as sunk and gone, and if the y retains assets sufficient to pay its debts, it appears to me

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income of a decedent's estate, as distinguished from the principal, includes the proceeds of the sale of oil produced after the testator's death, accruing as royalty under an oil lease of his lands made by him before his death in consideration of a royalty of part of the oil.[88] Further, the taxability of profits derived from the sale of minerals is recognized in the federal income tax law by the provision allowing a deduction "in the case of mines," for "depletion of ores and all other natural deposits on the basis of their actual original cost in cash or the equivalent of cash." Naturally there must also be deducted the cost of production, that is, of mining or extracting the ore, and the taxable net income of the owner will be the price received on the sale of his products less these deductions.

But here, as in the case of agricultural products discussed in the preceding section, the measure of taxable net income is not the amount or value of the products of the year's operation, but the net proceeds of sales, and hence there should not be included any ores or other products remaining unsold at the close of the year. And conversely, the year's income is not measured by the year's production. For irrespective of the time when the particular ores were brought to the surface, their proceeds are taxable as income of the year in which they are sold. Nor should the estimate of income be made to include any part of the products of mines or wells which is used by the owner in the heating, lighting, or operation of his own plant, or otherwise consumed in aid of production. There is one decision which apparently contravenes this last statement. Under a state statute imposing a percentage tax on the "gross receipts from total production" of coal and other minerals, it was held

that there is nothing whatever in the act to prevent any excess of money obtained by working the property over the cost of working it from being divided amongst the shareholders; and this, in my opinion, is true although some portion of the property itself is sold, and in some sense the capital is thereby diminished. But it is, I think, a misapprehension to say that dividing the surplus after payment of expenses of the produce of your wasting property is a return of capital in any such sense as is forbidden by the act."

[88] In re Woodburn's Estate, 138 Pa. St. 606, 21 Atl. 16, 21 Am. St. Rep. 932.

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railroad company is subject to the tax on coal mined by its properties, though the coal is not sold but used in the tion of the road.[89] But the court felt compelled to adopt onclusion by a consideration of the context and the neces- f bringing the different provisions of the act into harmony ffective operation. It was said: "With respect to the con- rsy as to the application of the law to coal mined and used e railway company, no receipts being realized from sales, ıle of construction to be followed is that all the provisions ve to the matter should be harmonized and given effect, t may be done consistently with the evident legislative in- The tax purports to be laid upon a per centum of the receipts from the total production of coal,' and from words standing alone a meaning might be extracted that axation based upon sales was contemplated. But the tax vable by all persons engaged in the mining or production al, etc., and not in selling it. A sworn return is exacted ng the location of the mine or well, the kind, the gross ıction, actual cash value, and other information, and while ıditor is, under the same section, authorized to ascertain ross receipts and compute the tax, the next section em- rs him to ascertain the amount and value of production, ute the tax, etc. And section 7708, in providing for a re- of taxes when asphalt, ores, or petroleum, or other min- have been manufactured or refined, contemplates a tax pective of sale of the natural product and not dependent e sale after it has been manufactured or refined. The in- from the several provisions taken together, seems there- manifest to provide for the collection of a tax, whether ineral is put on the market or used by the producer, and e expression 'gross receipts from total production' to refer uivalents in either case, and accomplish the object of ob- g revenues from all production of mineral, regardless of This conclusion appears to be necessary, notwithstanding nceded principles that taxes must be imposed by law, and

[89] Missouri, K. & T. Ry. Co. v. Meyer, 204 Fed. 140.

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that the law should be construed favorably to the taxpayer not extended by implication beyond its clear intent."

§ 234. Profits of Mercantile Business

In so far as the income tax falls upon the profits of a m chant, the amount of it is not dependent on or estimated by amount of his gross sales or gross receipts, but the taxable come is that derived from sales of goods made in excess their cost, after deducting from the income or profits the penses and other items allowed by the statute.[90] The de tions ordinarily allowed include interest on borrowed cap taxes paid, losses incurred which are not compensated by surance or otherwise, bad debts written off, and depreciat of property. Besides, the statutes allow a deduction of "ne sary expenses actually paid in carrying on the business," a the federal statute, or "the ordinary and necessary expe actually paid within the year in carrying on the business f which the income is derived," as in the Wisconsin sta These expenses, in the case of ordinary mercantile busi will include such items as the prime cost of goods, salaries wages of employés, freight, advertising, insurance, and the But it must be observed that the income from a mercantile b ness, under the tax law, is not merely the profit arising f the sale of that particular stock of goods which the merc had on hand at the beginning of the tax year, but it is the profit arising from the whole year's commercial dealings in goods handled by the merchant, no matter how often, in course of the year, his stock may have been depleted, wh or in part, and renewed.[91]

§ 235. Profits from Unauthorized Business

It is held that where a state tax is laid upon the gross ceipts or the net income of corporations, or upon the vol of business transacted by them as measured by such rece or income, it may include and apply to receipts by the c pany derived from a business beyond its charter powers o

[90] Millar v. Douglass, 42 Tex. 288.
[91] Wilcox v. Middlesex County Com'rs, 103 Mass. 544.

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it had no authority to engage.[92] And so it was ruled
corporation cannot escape payment of United States
al revenue taxes on the ground that the business in
it is engaged, or from which its profits or income are
d, is unauthorized by its charter or by the laws of the
or is otherwise ultra vires.[93] It is undoubtedly proper
ly these rulings to the assessment of federal and state
e taxes. It is true the act of Congress refers to profits
d from the transaction of "lawful" business. But a busi-
ay be none the less lawful because it is beyond the lim-
owers of a particular corporation engaging in it. And
robable that the word quoted was meant only to exclude
occupations which are forbidden to all persons, as being
al or contrary to public policy, and the reason for ex-
g them was the apprehension that taxing them might
to legalize them.

Income from Partnership Business

profit accruing from one's share in the business con-
by a partnership is a part of his income.[94] The net
gs of the partnership constitute income of the firm so
s they remain in the possession or to the credit of the
s such. But when a proportionate part is drawn out
aid over to an individual partner, it becomes and con-
s a part of his private income. And although an in-
in the stock in trade of a partnership or in the business
it conducts may represent an investment of capital, and
ore be "principal" or "capital" of the partner, it does
llow that his share of the earnings is impressed with the
character. On the contrary, the dividends of a partner-
which a decedent was interested, and which was con-
after his death, have been held not to constitute a part

eople v. Roberts, 32 App. Div. 113, 52 N. Y. Supp. 859, affirmed Y. 677, 51 N. E. 1093.
lt Lake City v. Hollister, 118 U. S. 256, 6 Sup. Ct. 1055, 30 L. 3.
re Rogers, 37 Misc. Rep. (N. Y.) 54, 74 N. Y. Supp. 829; In re , 169 N. Y. 153, 62 N. E. 130.

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of the corpus of his estate, any more than interest on money constitutes a portion of the principal invested; but such dividends are income and go to the life tenant or beneficiary under a trust.[95] It is true, however, that it would be unjust and double taxation to assess a partnership upon its income derived from its business, and then to tax each partner for his share of the profits as constituting his individual income. But this matter has generally been provided for in the statutes. The act of Congress does not tax partnerships at all. The Wisconsin statute taxes partnerships as well as individuals and corporations, but the individual is allowed to deduct from his taxable income "dividends or income received" from an "interest in any firm or copartnership, the income of which shall have been assessed under the provisions of this act." If the other existing statutes leave the subject in doubt, still it is thought that no court would sustain the attempt to assess and collect the tax twice upon the same income.

As to the undivided earnings of a partnership, it is true, as above stated, that they properly constitute income of the firm but not of the individual partners. Nevertheless, the act of Congress subjects them to taxation in the names of the partners. The provision is as follows: "Any persons carrying on business in partnership shall be liable for income tax only in their individual capacity, and the share of the profits of a partnership to which any taxable partner would be entitled if the same were divided, whether divided or otherwise, shall be returned for taxation and the tax paid, under the provisions of this section, and any such firm, when requested by the Commissioner of Internal Revenue, or any district collector, shall forward to him a correct statement of such profits and the names of the individuals who would be entitled to the same, if distributed." [96] On this subject, the Treasury de-

[95] Heighe v. Littig, 63 Md. 301, 52 Am. Rep. 510.

[96] Supra, § 15. For the Treasury regulation on this point, see, supra, § 177, art. 11.

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partment rules as follows: "The character of partnership profits divisible between persons has no reference to any character which, as income accruing to the partnership, it may have borne prior to receipt by the partnership. It is therefore held that income received from a partnership cannot be traced to its source behind the partnership for the purpose of claiming individual exemption. It is held that the income from a partnership accrues to the individual partner at the time his distributive interest is determined and reducible to possession. In the returns of income made by individuals for the calendar year, therefore, there should be included such income accruing from the business of partnerships for their business years as may have been definitely ascertained by means of a book balance, whether distributed or not. In other words, members of partnerships are required to make returns of income like other individuals for the calendar year, and should include in their returns the net proceeds of their interest in partnership profits ascertained at the end of the business year falling within the calendar year for which the individual return is being rendered." (Treasury Decision No. 2090, December 14, 1914.)

§ 237. Profits on Sale of Real Estate

Where a parcel of real estate is sold for a price above its cost, the difference is not properly "income" of the vendor. It is more correctly described as an increase of capital assets. But it is certainly a "gain" or "profit," and falls within the meaning of either of those terms as used in the income tax laws. And it has always been the policy of such laws to assess the tax on a profit thus made, though it has been usual to set a limitation upon the time elapsing between the purchase and sale of the property, since land is often held for long periods and the increase in its value, in ordinary cases, may be supposed to have been gradually accruing during the entire time. The federal income tax law of 1864 provided that "net profits realized by sales of real estate purchased within the

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year for which income is estimated shall be chargeable
come." The act of 1870 included in the description of
able income "profits realized within the year from sales o
estate purchased within two years previous to the yea
which income is estimated." The act of 1894 taxed "p
realized within the year from sales of real estate purc
within two years previous to the close of the year for
income is estimated." As to the state statutes, that of
consin expressly includes as taxable income "all profit
rived from the purchase and sale of any property acq
within three years previous," and this is construed by the
tax commission as referring to capital assets and not t
dinary stocks of merchandise, and therefore it would b
plicable to real estate. The income tax law of Hawaii
merates in the classes of taxable income "profits re
within the year from sales of real estate, including leasel
purchased within two years." The statutes of the other
contain no specific provision as to the profits on sales of
but their general terms are broad enough to include this

The act of Congress of 1913 contains the following
ambiguous clause: "The net income of a taxable person
include gains, profits, and income derived from * * *
or dealings in property, whether real or personal, growin
of the ownership or use of or interest in real or personal
erty." [97] As to the latter part of this sentence, though it i
ficult to discern any precise meaning in it, one may hazar
guess that it was intended to apply to the purchase and
of leaseholds, life estates, undivided joint interests, and
estates less than a fee. Another possible construction
be suggested, and one which would give meaning and

[97] Supra, § 5. The Treasury department holds that "for in
tax purposes, where there is an actual sale and transfer, profi
be considered as realized even though payment is to be made

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whole sentence. This might be accomplished by read-
e word "or" into the clause between the words "per-
and "growing," as having been inadvertently omitted,
a slight transposition of some of the other terms. The
ce would then read: "The net income of a taxable per-
nall include gains, profits, and income derived from
* sales or dealings in property, whether real or personal,
wing out of the ownership or use of real or personal
ty or an interest therein." As thus reconstructed, the
ion would lay the tax on what is called the "unearned
ent" of land, that is, an increase in its market value,
ng within the year from any other cause than its im-
nent by the owner, or the corresponding profit or ad-
e to the owner, in view of the fact that he could now
and a higher price for it than formerly, although he
ot actually realize his profit by selling the property, but
ues to hold it. But since this would greatly enlarge the
of the statute, and subject to taxation various items
would be exempt under any other interpretation, it is
ul whether the courts would feel justified in taking this
with it.

term "dealings" has a definite meaning in law. It is
lent to "traffic." It does not apply to the operations of
ho buys to keep, though he may afterwards sell, but to
ying of any kind of property or commodity for the pur-
f selling again at a profit, and that, not merely on a
occasion, but as an occupation or pursuit; or in other
"dealing" in any article is making successive purchases

nts, as notes for deferred payments are secured by the title
property and presumably bear interest, and are held to be
in cash, their face value. In case of default on installment
ts, there may be charged off as bad debts the amount of such
installments, less the salvage value of the real estate repos-
Treasury Decision No. 2090, December 14, 1914.

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and sales of it as a business.[98] It appears therefore that where one purchases a piece of real estate for residence purposes or as an investment, and sells it for a higher price than he paid, the profit must be included in his taxable income for that year. It might be argued that the word "sales" should take color from the word "dealings" with which it is associated. But it seems more probable that the legislative intention was to tax not only profits arising from dealing in real estate as a business, but also the profit accruing on single or isolated sales, not frequent enough to constitute dealing in it, and that the words were placed in juxtaposition to mark this distinction. The term "dealings" may be applied to one who buys and sells land as a speculation, or who buys vacant land and builds houses on it for the purpose of selling the property as so improved, or buys, opens up, and sells suburban property, or otherwise derives his income or a considerable part of it from traffic in real estate.

The construction which the English courts have put upon the income tax law of that country excludes the profit arising from a single sale of land, while including profits derived from buying and selling realty as a business. In a leading case, it appeared that a company was formed to buy land in the Malay Peninsula and there plant and cultivate rubber trees. It bought two estates and planted a considerable acreage, but did not produce or sell any rubber. Then, its capital being exhausted, it sold the entire property to another company for a price exceeding the amount of capital expended. It was held that the profit arising from the sale was an appreciation of capital, and not taxable as income. In delivering judgment, Lord Salvesen said: "I am unable to distinguish the position of the appellants from that of a person who acquires a property by way of investment and who realizes it afterwards at

[98] See Clifford v. State, 29 Wis. 327; Saunders v. Russell, 10 Lea (Tenn.) 293; Bates v. Bank of Alabama, 2 Ala. 451; Buckley v. Briggs, 30 Mo. 452; Norris v. Commonwealth, 27 Pa. St. 494; Overall v. Bezeau, 37 Mich. 506; State v. Barnes, 126 N. C. 1063, 35 S. E. 605; Vernon v. Manhattan Co., 17 Wend. (N. Y.) 524; Goodwin v. Clark, 65 Me. 280.

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ofit. It is well settled that in such a case the profit is not of the person's annual income liable to be assessed for ne tax, but results from an appreciation of his capital. No t if it is a part of his business to deal in lands or invest-s, any profits which in the course of that business he zes form part of his income; but the mere fact that a per-or company has invested funds in the purchase of an es-which has subsequently appreciated, and so has realized a t on his purchase, does not make that profit liable to as-nent." [99]

3. Profits on Sales of Securities

the general law (apart from matters of taxation) an ion to one's wealth obtained by selling stocks, bonds, or other form of securities or investments at a price above cost is not "income" but an appreciation of capital. is it "profit" in the ordinary or commercial sense. Profit e acquisition of gain above expenditures arising from transaction or operation, and does not include premiums ved on the sale of securities.[100] A similar rule prevails e law of trusts and of wills. Thus, where a trustee in-money of the trust estate in bonds, and subsequently the bonds at an advance, and invests the proceeds in securities, the profit on the bonds is part of the prin-of the estate, and not income, as between the life tenant he remainderman.[101] So the words "dividends and in-" in a will devising property in trust, the dividends and ne thereof to be paid to the testator's daughter, with inder over after her death, do not include the increase e value of the corpus of the estate caused by the invest-of the funds and stocks and their sale and investment her stocks at a profit.[102] But it seems that the "profits

Tebrau Rubber Syndicate v. Farmer, 5 Tax Cas. 658.
Cross v. Long Island Loan & Trust Co., 75 Hun (N. Y.) 533, 27 Supp. 495.
In re Graham's Estate, 198 Pa. St. 216, 47 Atl. 1108.
Smith v. Hooper, 95 Md. 16, 51 Atl. 844; Eley's Appeal, 103 Pa. 0.

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and income" of an estate devised in trust for a named
ficiary will include the profits made on land purchased b
executor at a foreclosure sale of a mortgage to secure a
of the funds of the estate.[103]

In the English law of taxation, a profit realized fron
sale of securities is not reckoned as income, except in
where the person pursues the buying and selling of se
ties as a business or occupation. "It is quite a well-se
principle in dealing with questions of assessment of in
tax, that where the owner of an ordinary investment ch
to realize it, and obtains a greater price for it than he
inally obtained it at, the enhanced price is not profit i
sense of the income tax law. But it is equally well se
that enhanced values obtained from realization or conve
of securities may be so assessable, where what is done i
merely a realization or change of investment, but ar
done in what is truly the carrying on, or carrying out,
business. The simplest case is that of a person or ass
tion of persons buying and selling lands or securities
ulatively, in order to make gain, dealing in such investm
as a business, and thereby seeking to make profits. T
are many companies which in their very inception are fo
for such a purpose, and in these cases it is not doubtful
where they make a gain by a realization, the gain they
is liable to be assessed for income tax. What is the line
separates the two classes of cases may be difficult to d
and each case must be considered according to its facts
question to be determined being: Is the sum of gain
has been made a mere enhancement of value by realizi
security, or is it a gain made in the operation of bus
in carrying out a scheme for profit-making?"[104] So wh
person buys a doubtful debt and recovers a larger sum
he paid for it, the gain is not profit in the sense of th
come tax law, unless the purchaser is making a trade of

[103] In re Park's Estate, 173 Pa. St. 190, 33 Atl. 884.

[104] Californian Copper Syndicate v. Harris, 6 Fraser, 894, 5
Cas. 159; Tebrau Rubber Syndicate v. Farmer, 5 Tax Cas. 65

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ing such debts.[105] But on the other hand, where a company is empowered by its charter to vary its investments, and generally to sell or exchange any of its assets, the net gain by realizing investments at larger prices than were paid for them constitutes profit chargeable with income tax.[106]

In this country, however, under both the federal and state income tax laws, dealing as they do with income or profit from the "sale of property," it is difficult to see how the premium obtained on even a single sale of stock, or of a bond or other security, could escape assessment. Under the income tax laws of 1861 to 1870, it was held that a bona fide exchange of stocks for other property, however much to the apparent advantage of the owner of the stocks, was not a sale thereof from which a profit was derived liable to taxation as income. But a transfer of stocks for a promissory note, which is collectible, or an exchange thereof for land, followed by a sale of such land within the year, whether for cash or collectible promissory notes, was considered as equivalent to a sale of such stock for so much cash.[107] But in view of the limitation of time in those statutes, it was held that the profit made upon bonds bought in one year and sold several years later was not to be included in the estimate of the owner's income for the year in which the sale was made.[108] It will be noticed, however, that there is no limitation of time in the present federal income tax law, while that prescribed by the Wisconsin statute is three years.

§ 239. Increase in Value not Realized by Sale

In the law of trusts, an increase in the market value of securities of any kind held as investments is not accounted a

[105] Assets Co. v. Inland Revenue [1897] W. N. 144.

[106] Scottish Investment Trust Co. v. Forbes, 31 Scotch Law Rep. 219, 3 Tax Cas. 231.

[107] United States v. Smith, 1 Sawy. 277, Fed. Cas. No. 16,341.

[108] Gray v. Darlington, 15 Wall. 63, 21 L. Ed. 45. In Hawaii, it is held that one who bought stock in 1898, and sold it in the latter half of 1905 at a profit, is not liable to pay an income tax on such profit for the half-year taxation period immediately preceding January 1, 1906. In re Castle, 18 Hawaii, 129.

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part of the income of the same, nor is it to be added to the stated interest which they return in computing the income. Even if the securities are sold, and the increment of value thus converted into money, it is not properly speaking a "profit," as we have shown in the preceding section. For an even stronger reason, therefore, it cannot be either a "profit" or a "gain" so long as not realized by sale. It is merely an appreciation of capital. "The rule, as settled, may be stated to be that an increase from natural causes in the value of real and personal estate held as an investment does not constitute profits, to go to a life tenant, but becomes principal and goes to the remainderman." [109] Thus, a life tenant entitled to the income of a certain legacy, which was invested, was held not entitled to the gain over the original amount invested, arising from an increase in the value of the subject of the investment as it existed in the life-time of the testator.[110] But a more direct authority for the application of these principles to the subject of income taxation is found in a decision of the United States Supreme Court, construing the act of Congress of 1864 imposing taxes on "gains, profits, and income." It was held that a mere increase in the market value of securities does not come within the definition of any one of those terms, and specifically, that the word "gains," as used in the statute, means such gains or profits as may be realized from a business transaction begun and completed during the preceding year. The court said: "The mere fact that property has advanced in value between the date of its acquisition and sale does not authorize the imposition of the tax on the amount of the advance. Mere advance in value in no sense constitutes the gains, profits, or income specified by the statute. It constitutes and can be treated merely as increase of capital." [111] Notwithstanding this, the officers of

[109] In re Vedder, 2 Con. Sur. (N. Y.) 548, 15 N. Y. Supp. 798. And see In re Gerry, 103 N. Y. 445, 9 N. E. 235; Jennery v. Olmstead, 36 Hun (N. Y.) 536; In re Proctor, 85 Hun (N. Y.) 572, 33 N. Y. Supp. 196; Linsly v. Bogert, 87 Hun (N. Y.) 137, 33 N. Y. Supp. 975.

[110] Thomson's Estate, 11 Pa. Co. Ct. R. 198.

[111] Gray v. Darlington, 15 Wall. 63, 21 L. Ed. 45.

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the Treasury department are applying a different construction to the income tax law of 1913, being the same which they applied to the corporation excise tax law of 1909, which last-named act specified, as the measure of taxation, the "net income" of the corporation, above a certain amount, "received from all sources," a narrower expression, it will be noticed, than that of the income tax law. They rule that a corporation must return, in its estimate of net income, not only profits realized on the sale of real estate during the year, but also an increase in the value of unsold property, if taken up on the books of the corporation; and that any increase in the value of the capital assets, as determined by a physical revaluation and taken cognizance of by the corporation in book entries, is gain and must be accounted for as income for the year in which such increase is so recognized and recorded.[112] And it must further be remarked that, if the courts should eventually adopt such a construction of the act of Congress of 1913 as would permit the taxation of the "unearned increment" of land, as suggested above (supra, § 237), it is probable

[112] See Treasury Decision No. 1742, pars. 43, 48, and 85, as to the ruling under the act of 1909. As to the regulation of the department under the act of 1913, see, supra, § 185, art. 111. That this rule of the department is applicable to the case of an individual, as well as to the case of a corporation, is shown by Instruction No. 17, on Form No. 1040 (printed in the Appendix hereto), which reads: "Estimated advance in value of real estate is not required to be reported as income, unless the increased value is taken up on the books of the individual as an increase of assets." It will be perceived that in both cases the Bureau of Internal Revenue leaves the matter very much in the discretion of the individual or corporation, the implication from its rulings being that if the taxpayer does not choose to recognize an increase in value as income, that is, does not record or "take it up" on the books, or cause it to be reflected in the account of profit and loss, then the revenue officers cannot well detect the gain in value of assets, and cannot insist on its being returned as income. But before leaving this subject, it should be remarked that the general doctrine or view of the revenue officers on this point is squarely opposed by a decision of one of the federal courts, wherein it is held that an increase in the book value of the assets of a corporation by a revaluation of property does not constitute any part of the gross amount of its "income received within the year." Baldwin Locomotive Works v. McCoach, 215 Fed. 967.

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that the same principle would have to be applied to the crease in value of securities, since the statute, at this p carefully specifies both real and personal property as sou of gains, profits, or income.

§ 240. Uncollected Interest and Accounts

It is an unsettled question whether a person's income f given year should be held to include interest on secur accruing within the year but remaining uncollected at close, and promissory notes and due-bills taken in discha of a pre-existing indebtedness, but not paid within the in which they are given, and the price of goods sold wi the year, evidenced by book entries, but not received cash. Some of the statutes have expressly included s items; others have not mentioned them. Thus, the ac Congress of 1864 laid the tax, among other things, on terest received or accrued upon all notes, bonds, and m gages, or other forms of indebtedness bearing interest, wh er paid or not, if good and collectible." And the same guage was included in the act of 1870 and in that of 1 It will be noticed that this specified only "interest," and to notes and accounts, the courts did not agree. In case it was held that, within the meaning of the statute, word "income" must be taken to mean money, and not expectation of receiving it or the right to receive it at a ture time. And hence it was ruled that the amount promissory note taken in 1871 on the sale of a patent ri but not due until 1872, and paid in the latter year, was taxable as income of the former year.[118] But in another it was said that promissory notes, book accounts, and like, due during a given year, may or may not be incom that year. This depends on their value intrinsically or t convertibility into money, property, or available assets. they have only a nominal, and not a real value or conv ble quality, and a man has realized nothing from th

[118] United States v. Schillinger, 14 Blatchf. 71, Fed. Cas. 16,228.

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herefore does not return them as a part of his income, se he honestly believes that they are not real gains or s, he cannot be convicted of making a false return.[114] in construing the corporation excise tax law of 1909, s held that the word "income," as there used, meant that has "come in" or which has been already received, hat the net income so taxable should be determined on n basis, as distinguished from a revenue basis, and hence ne case of an insurance company) did not include un- ted and deferred premiums and interest, accrued and ut not actually received.[115]

e federal income tax law of 1913 makes no specific on of this point, and its intention in regard thereto is asy to discern. But the officers of the Treasury de- ent have construed it as including interest on notes, , and other evidences of debt accrued during the year, ot collected, that is, falling due within the year but re- ng unpaid at the end of the year, provided that the nt for such interest is considered good and collectible. in the same manner they rule that the year's income, ne purposes of the tax, includes fees, emoluments, charg- accounts for services rendered by lawyers, physicians, ther professional men, provided they were earned with- e year, although, at the close of the year, they remain e form of unpaid bills, so only that they are considered and collectible.[116] Yet it is a significant fact that, in erating the deductions which the taxpayer is allowed to from his return of income for taxation, aside from ess losses, bad debts, and depreciation of property, only items are included which represent an outlay in cash, as "interest paid within the year," "necessary expenses lly paid," and "taxes paid." Hence it may be argued

United States v. Frost, 9 Int. Rev. Rec. 41, Fed. Cas. No. .

Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199.

Instruction No. 19, on reverse of Form No. 1030; Instruction , on Form No. 1040. See these Forms printed in the Appendix s volume.

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that if Congress did not allow the deduction of items falling due within the year but not actually paid, it would not be equitable to require the taxpayer to include in his income interest and other items accrued and due within the year, though not actually collected. This same argument (as regards the propriety of looking to the one part of the statute to ascertain the meaning of Congress in the other part) was advanced by the court in deciding a leading case under the corporation tax law of 1909. Since that statute allowed as deductions only cash outlays, as, "expenses actually paid," "interest actually paid," and "sums paid for taxes," it was argued that "it would be strange indeed if, on the opposite side of the account, the company were charged with what it had not received during the current year." [117]

And it cannot be denied that it is shocking to the common sense of business men to call that "income" of the year which has not been received or "come in," but which has merely fallen due. And so the courts have ruled in several cases. In one, it was held that interest accrued but not payable, and interest accrued but not paid, secured by mortgages drawing interest, are not "surplus profits" of a corporation. "It is not easy to comprehend," said the court, "how profits or surplus profits can consist of earnings never yet received. The term imports an excess of receipts over expenditures, and without receipts there cannot properly be said to be profits. Money earned as interest, however well secured, or certain to be eventually paid, cannot, in fact, be distributed as dividends to stockholders and does not constitute surplus profits within the meaning of the statute." [118] In another case, it was held that a tax directed to be levied and collected for and during a certain year on the amount of all interest or coupons paid on the bonds of certain corporations, "whenever and wherever the same shall be payable," did not cover interest earned during the year, but payable after-

[117] Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199.
[118] People v. San Francisco Sav. Union, 72 Cal. 199, 13 Pac. 498.

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wards.[119] And in a third decision we find the court saying: "It seems almost to border upon absurdity to speak of income as including that which has not been received, and which in the ordinary uncertainties of business may never be received. How can it be affirmed of unpaid interest that it will ever be paid, or, if so, when? The same is true of uncollected and deferred premiums. It is manifestly impossible to tell when, if ever, they will be paid. They are neither receipts nor income until paid." [120]

Turning to the statutes of the various states, we find that the Wisconsin income tax law does not mention this specific point, but that it lays the tax on "income received," and makes the term "income" include "interest derived from money loaned or invested in bonds, mortgages, or other evidences of debt of any kind whatsoever." And the statute of South Carolina contains substantially the same language. Under these laws, it seems a fair inference that there was no intention to tax uncollected interest, since it could not be described as "income received." The statute of Virginia is most ambiguous on this point, inasmuch as it professes to tax "income in excess of one thousand dollars, whether received or due but not received, within the year," but at the same time makes the term "income" include "interest upon bonds, notes, or other evidences of debt collected or received during the year."

§ 241. Profit to Accrue on Uncompleted Contracts

In construing the corporation tax law of 1909, which laid a tax measured by the "entire net income received from all sources," the officers of the treasury department ruled that "net income on uncompleted contracts may be estimated on the basis of the percentage of the work completed as compared with the contract price of the whole work." [121]

[119] United States v. Indianapolis & St. L. R. Co., 113 U. S. 711, 5 Sup. Ct. 716, 28 L. Ed. 1140. And see United States v. Louisville & N. R. Co., 33 Fed. 829.

[120] Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199.

[121] Treasury Decisions, No. 1742, par. 88.

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But this ruling is believed to be wholly indefensible. First, because it fails to distinguish between earnings and income. The price to be paid for work done under a contract may be considered to have been earned when the work is completed, and it may be said to have been earned pro tanto as the work progresses. But in neither case can it be described as "income" until it has been actually paid over and received. That term does not mean the right to receive, or the expectation of receiving, a payment in the future. Secondly, no contractor can be absolutely certain of receiving the price when the work is done. His expectation of so doing may be more or less confident according to the circumstances, but even at the best he cannot be sure that he will not have to reckon with claims for offsets or deductions. And it would seem clear that money which may or may not be paid in the future, and, if paid, may be greater or less in amount, is in no sense income. Further, the ruling in question would be entirely inapplicable to those contracts which involve personal skill, personal confidence, professional services, or the like, where the stipulated compensation is not apportionable. But it is to be observed that a later ruling is that "where the service is of such a nature as to be compensated by fee, or of such a nature that no portion of the amount becomes due until the service is completed, then the total amount of the compensation should be included in the return for the year in which the compensation is received." (Treasury Decision No. 2090, December 14, 1914.)

§ 242. Profits from Sale or Lease of Patent Rights

The Commissioner of Internal Revenue ruled, under the corporation tax law of 1909, that receipts from the sale of patent rights are to be included in taxable income, and also that royalties received on patent rights (presumably either on the sale or lease of such rights or on the use of the patented article) are also to be reckoned and reported as income, though an allowance would be made for depreciation

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ents expiring during the year.[122] And the Wisconsin e tax law makes the term "income" include "all royal- erived from the possession or use of franchises or ed privileges of any kind," which is construed by the ommission of that state as including royalties received patents. As to royalties on sale or lease the case is but not so as to receipts from the sale of patents or rights. One who buys a patent or rights under a , and then sells it at an advanced price, may be said to nade a "profit" which should be taxable as a part of his e. But where the patentee sells (for example) his under the patent in foreign countries, it would rather to be a conversion of capital assets into the form of than the receipt of income.

Annuities

revenue law in Massachusetts provides that "personal for the purpose of taxation, shall include * * * the e from an annuity." [123] And the act of Congress of 1913 es that "all persons, firms, copartnerships, companies, ations, * * * and insurance companies, * * * the control, receipt, custody, disposal, or payment, di- or indirectly, of * * * annuities * * * or other or determinable annual gains, profits, and income of an- person," exceeding the statutory minimum, shall not nake the necessary return thereof, but also deduct and old the income tax and pay it over to the United [124] From this it may plainly be seen that, at least un-

reasury Decisions, No. 1742, pars. 46 and 61.
ev. Laws Mass. 1902, p. 206; Gen. Stat. Mass. c. 11, § 4.
upra, § 22. And see Treasury Decision No. 2090 (December 4), where it is ruled that the amount paid under a life insur- ndowment, or annuity contract is not income when returned person making the contract, either upon the maturity or sur- of the contract; but the amount by which the sum received the sum paid and coming into the hands of the person mak- contract and payment is income. When the settlement un-

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der the two statutes mentioned, an annuity is regarded and treated as taxable income, whether it be created by grant, by testamentary trust, or by the contract of an insurance company. Under the income tax law in Hawaii, it is held that the tax on an annuity paid out of income derived from property held in trust is assessable against the annuitant, and not against the trustee, but that surplus income arising from property held in trust, and accumulating in the hands of the trustee, pursuant to the terms of a will, is not taxable until the time arrives for its distribution.[125] In a Scotch case, where a husband and wife separated, and the husband by deed bound himself to make a payment of a free yearly allowance of a thousand pounds to the wife, it was held that he was bound to deduct the income tax from the payments so made, which implies, of course, that the annuity or allowance so paid to the wife was taxable to her as income.[126] On the analogy of this decision, it would appear that a divorced wife, receiving alimony, would be required to account for it in her personal return as income received, provided the amount was sufficient to come within the statute. For it can make no difference in principle whether the periodical payments are made to her pursuant to a voluntary deed of settlement or under a decree of court.*

der such a contract is made in more than one payment, each payment will be considered as being composed of interest and a proportionate part of the principal. Where the entire annuity is composed of an interest return upon the principal sum paid therefor, the entire annuity is income.

[125] Wilder v. Hawaiian Trust Co., 20 Hawaii, 589.

[126] Dalrymple v. Dalrymple, 4 Fraser, 545.

* "Alimony is regarded as fixed and determinable income, and in cases where it is in excess of $3,000, the person paying such alimony is required to withhold the normal tax on the same unless exemption is claimed under paragraph C (supra, § 10), in which case the normal tax will be withheld only on the amount paid in excess of the exemption claimed. It must be accounted for as income if, together with other income, the recipient is in receipt of a net income of $3,000 or more. It is regarded as a personal expense to the person pay-

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Interest on Government Bonds

federal statute now in force provides that, in computing
income of a taxpayer, for the purpose of the income
ere shall be excluded "interest upon the obligations of
ited States or its possessions." In former statutes of
ne kind Congress did not hesitate to include the obliga-
f the federal government. In the act of 1861, the tax
posed, among other things, upon "interest upon treasury
or other securities of the United States." The act of
axed "interest upon notes, bonds, or other securities of
ited States," as did also the act of 1864 and that of
In the act of 1894, the provision was that "there shall
uded all income derived from interest upon notes, bonds,
her securities, except such bonds of the United States
incipal and interest of which are by the law of their
e exempt from all federal taxation." Under the cor-
n excise tax law of 1909, it was ruled that interest on
States bonds must be included in estimating the net
of corporations, because this statute imposed a tax,
the property of the corporation nor directly upon its
, but upon the privilege of carrying on business in a
ate capacity, the net income being used only as a meas-
the tax in each particular case.[127]

not competent for the several states to tax income
l from the bonds or other obligations of the federal
ment. This limitation might be inferred from general
les of constitutional law.[128] But it is also expressly
ed by act of Congress that "all stocks, bonds, treasury
and other obligations of the United States shall be
t from taxation by or under state or municipal or local
ity."[129] Some of the states having income tax laws

and is therefore not an allowable deduction in his return."
y Decisions No. 2090, December 14, 1914.
3 Op. Att. Gen. 138; Treasury Decisions, No. 1742, par. 37.
ee, supra, § 204.
ev. Stat. U. S., § 3701 (Comp. St. 1913, § 6816).

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expressly recognize this restriction. Thus, in Wisconsin, the taxpayer is allowed to deduct from his income as returned for taxation "interest received from bonds or other securities exempt from taxation under the laws of the United States." [130] In South Carolina, the provision is that, "in estimating the gains, profits, and income, there shall not be included interest upon such bonds or securities of this state, or of the United States, the principal and interest of which are, by the law of their issue, exempt from taxation." [131] In two other states, the law purports on its face specifically to tax income derived from United States bonds. But to that extent, these statutes must necessarily be held invalid in any case in which the attempt was made to enforce such a provision. The states intended are Virginia and Tennessee. In the former, the law provides that "income shall include * * * interest upon notes, bonds, or other evidences of debt, of whatever description, of the United States or any other state or country." [132] In Tennessee, the statute reads: "The amount of income derived from United States bonds, and all other stocks and bonds not taxed ad valorem, shall be taxable" at the rate of five per centum.[133]

§ 245. Dividends on Corporate Stock

Whatever the taxpayer may actually receive from a corporation, by way of dividends on the shares of its stock which he owns, constitutes a part of his income and will be taxable as such.[134] This rule, however, is subject to two limitations. First, a "dividend," properly so called, is a distribution to

130 Wisconsin Income Tax Law 1911, § 1087m, 4, e.

131 Civ. Code S. Car. 1902, § 325.

132 Acts Va. 1908, c. 10, p. 20, § 10.

133 Code Tenn., §§ 690, 710.

134 Van Dyke v. City of Milwaukee (Wis.) 146 N. W. 812; Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943. And a depreciation in the value of the stock, caused by the distribution of dividends, cannot be deducted from the dividends taxed as income. Van Dyke v. City of Milwaukee, supra.

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olders of the whole or a part of the current earnings fits of the corporation, and not a distribution of capital

When a portion of the capital is thus returned to olders, it is not income, from their point of view, but a ement of capital, except in the few exceptional cases it is permissible for a corporation to divide current ts among the stockholders, although the property in the capital is invested is correspondingly depleted, as in se of mining and quarry companies and some others.[135] dly, where a statute taxing incomes lays its burden both individuals and corporations, it is usual to provide he individual taxpayer may deduct from his return of e for taxation the amount of any dividends received by rom corporations which are subject to the tax, or which been assessed for the tax or have paid it.[136] This is a provision, introduced for the purpose of avoiding the e taxation which would result if the corporation were on its profits and the stockholders on the same profits divided among them.

ject to these provisions, the income tax laws quite com- enumerate "dividends" among the specific sources of e income. But on general principles of law, and even not so declared in the tax statute, revenue of this kind ays classed as "income." And it is immaterial whether

See, supra, § 233. And see Reed v. Head, 6 Allen (Mass.) 174; rd College v. Amory, 9 Pick. (Mass.) 446. In Van Dyke v. Milwaukee (Wis.) 146 N. W. 812, it is held that dividends de- by a going corporation, such as a mining company, will be sively presumed, for purposes of income taxation as against olders, to have been made and declared from net earnings or , so that it cannot be claimed, to avoid an income tax, that the nds were really declared from the capital.

Under the federal income tax law of 1913, so much of a person's e as is derived from dividends declared and paid by corpo- s which are themselves liable to the tax, need not be returned person is subject to the normal tax only; but if he is subject "additional" tax or super-tax, such dividends must be returned he additional tax will be assessed upon them. See, supra, §§

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a corporate dividend is declared and paid as a regular dividend (that is, regular in respect either to its periodicity or its amount) or as an extra dividend or a bonus in cash.[137] Thus, where a testator bequeathed to his wife for her life the "use, interest, and income" of his estate, part of which consisted in stock in an incorporated bank, and the bank afterwards reduced its capital, by returning to the stockholders one-half of it with a premium of 40 per cent to be paid out of the surplus, it was held that the word "income" included the 40 per cent premium returned to the testator's estate, and that it passed under the will to the widow.[138] And the rule is not restricted to dividends declared and paid by corporations truly so called, but extends also to any distribution of profits among the members of an unincorporated society, syndicate, pool, trust, or other joint enterprise. For instance, where an investment is made in an unincorporated association organized to deal in land as a commodity, and profits are realized from the business, which are divided among the members, with no impairment of the principal, such profits are personalty, representing income, and go to the life tenant under the will of one of the members.[139] And it has been ruled that, when a dividend has been declared and is immediately payable, so that the stockholder can have it on demand, it is to be reckoned as a part of his income for the year, though it has not actually come into his hands as yet in the form of cash. It was said: "If the plaintiff's counsel is correct in

16, 140. But dividends received from corporations which are not subject to the income tax (that is, corporations which are specifically exempted from it) do not come within this rule, and are not deductible from the taxpayers return of income. T. D. No. 1857. Dividends declared and paid by a foreign corporation which derives its entire income from business done wholly within the United States, and pays an income tax to the Federal Government, should be treated in the same manner as dividends from domestic corporations. Treasury Decisions No. 2090.

[137] Lord v. Brooks, 52 N. H. 72.

[138] In re Warren, 2 Con. Sur. (N. Y.) 411, 11 N. Y. Supp. 787.

[139] In re Thomson's Estate, 153 Pa. St. 333, 26 Atl. 652.

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his position that the profits of an incorporated company, itself an artificial person, are not, in the contemplation of the act of Congress, a portion of the gains, profits, or income of the stockholders, until they are distributed as dividends, or embraced in a dividend declared by the managers of the corporation, I think it quite clear that, when a dividend has been declared and has become payable, the mere omission of the stockholder to receive or obtain the dividend subject to his call would not excuse him from embracing the amount of such dividend in his statement of his taxable income for the year." [140]

§ 246. Same; Stock Dividends

It is a debatable and unsettled question whether a dividend declared by a corporation, but not payable in cash but in the form of new stock distributable among the present stockholders proportionally, the nominal capital being correspondingly increased, is to be accounted "income" or "capital" in the hands of the stockholder. And this is immediately pertinent to the subject in hand, because if the stockholder receives such a dividend as an accretion to his capital, it is not subject to the income tax, while, on the other hand, if it is income, he should include it in his return, and probably at its market value. Probably it may be stated that the rule as stated by the Court of Appeals of New York is sustained by a majority of the decisions. It is this: Where a dividend is declared by a corporation on its capital stock, payable in new stock certificates based on accumulated but undivided profits, it is received as "income" by the stockholders, and not as capital, since the substance and intent of such a transaction is the distribution of earnings, and it does not result in any actual addition to capital, for although the nominal amount of the corporation's capital stock is thereby increased, yet the corporation actually has neither more property nor more capital.[141]

[140] Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943.

[141] Lowry v. Farmers' Loan & Trust Co., 172 N. Y. 137, 64 N. E. 796. And see Soehlein v. Soehlein (Wis.) 131 N. W. 739; Earp's Ap-

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But in Massachusetts and some other states, a contrary rule prevails.[142] In Maryland, the court has ruled that, in determining whether a stock dividend declared on stock constituting the corpus of a trust estate is a part of the corpus, so as to pass to the remainderman, or income available for the life beneficiary, the court is not governed by the form in which the dividend has been declared, but the character of the fund out of which the dividend is paid controls; and where the dividend represents earnings, the dividend is income, while if it is in appropriation of capital, it is a part of the corpus.[143]

In Pennsylvania, it is ruled that a nominal or arithmetical increase of shares without transferring to the stockholders anything out of the treasury or property of the corporation is not a "dividend" or "profit." It was so held in a case where a railroad company leased its lines in perpetuity to another company for an annual rental equal to twelve per cent on its capital stock, and then increased the number of its shares seventy-one per cent (the par value remaining the same) on which the stockholders were to receive a seven per cent dividend, the amount being the same they would have received on the original shares at twelve per cent.[144] And a stock dividend representing the value of property acquired by the company under foreclosure of a mortgage which it held is not taxable as a dividend declared and paid by the company.[145]

peal, 28 Pa. St. 368; Hite's Devisees v. Hite's Ex'r, 93 Ky. 257, 20 S. W. 778; Pritchett v. Nashville Trust Co., 96 Tenn. 472, 36 S. W. 1064, 33 L. R. A. 856; Moss' Appeal, 83 Pa. St. 264.

142 Minot v. Paine, 99 Mass. 101, 96 Am. Dec. 705; Parker v. Mason, 8 R. I. 427; Chester v. Buffalo Car Mfg. Co., 70 App. Div. 443, 75 N. Y. Supp. 428.

143 Ex parte Humbird (Md.) 80 Atl. 209.

144 Commonwealth v. Pittsburgh, Ft. W. & C. Ry. Co., 74 Pa. St. 83.

145 Chicago, B. & Q. R. Co. v. Page, 1 Biss. 461, Fed. Cas. No. 2,668.

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. Accumulated Earnings or Undivided Profits of Corporations

ese are taxable under the act of Congress of 1913, as e of the stockholder, but only in cases where the tax- ncome, including such items, is large enough to be ct to the super-tax or additional tax, and only in cases the device of a corporation, accumulating its profits d of dividing them, is resorted to for the purpose of ng the tax. The provision is that "for the purpose of dditional tax, the taxable income of any individual shall ce the share to which he would be entitled of the gains profits, if divided or distributed, whether divided or outed or not, of all corporations, joint stock compan- r associations however created or organized, formed or ulently availed of for the purpose of preventing the im- on of such tax through the medium of permitting gains and profits to accumulate instead of being divided stributed; and the fact that any such corporation, joint company, or association is a mere holding company, at the gains and profits are permitted to accumulate be- the reasonable needs of the business shall be prima evidence of a fraudulent purpose to escape such tax; he fact that the gains and profits are in any case per- d to accumulate and become surplus shall not be con- d as evidence of a purpose to escape the said tax in cases unless the Secretary of the Treasury shall certify in his opinion such accumulation is unreasonable for urposes of the business. When requested by the Com- oner of Internal Revenue, or any district collector of al revenue, such corporation, joint stock company, sociation shall forward to him a correct statement of profits and the names of the individuals who would be ed to the same if distributed."[146] From the fact that pplies only "for the purpose of the additional tax" it may ferred that Congress did not regard a stockholder's in- in the undivided earnings or surplus of the corporation

[146] Supra, § 4.

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as taxable income in ordinary cases or under ordinary conditions. But the attempt has sometimes been made, under other statutes, to tax such interest as income. Thus, the United States income tax law of 1870 provided that, "in estimating the gains, profits, and income of any person, there shall be included * * * the share of any person of the gains and profits, whether divided or not, of all companies or partnerships." And there is a Canadian decision to the effect that the undivided profits of a corporation, or a portion of its profits derived from the employment of capital and annually carried into a reserve fund, may be "income" for the purposes of a testamentary trust, by which it was provided that the trustee might make advances to the beneficiaries "out of income." [147] But this is contrary to all the weight of authority.[148] In several of the cases on the subject, it is said that the word "income" is not broad enough to include things not separated in some way from the principal. It is not synonymous with "increase." The value of corporate stock may be increased by good management, prospects of business, and the like, but such increase is not income. It may also be increased by the accumulation of a surplus fund. But so long as that surplus is retained by the corporation, either as a surplus or as increased stock, it can in no proper sense be called income. It may become income-producing, but it is not income.[149] Thus, where the profits of a manufacturing or banking corporation have been accumulating for many years, until the market value of the stock is more than double its original price, and the owner dies, directing the "income" of his estate to be applied to particular objects, these extraordinary accumulations are as

[147] Worts v. Worts, 18 Ontario, 332.

[148] Van Dyke v. City of Milwaukee (Wis.) 146 N. W. 812; Board of Revenue of Montgomery County v. Montgomery Gas Light Co., 64 Ala. 269; Chicago, B. & Q. R. Co. v. Page, 1 Biss. 461, Fed. Cas. No. 2,668; Lauman v. Foster (Iowa) 135 N. W. 14, 50 L. R. A. (N. S.) 531; Tubb v. Fowler, 118 Tenn. 325, 99 S. W. 988.

[149] Spooner v. Phillips, 62 Conn. 62, 24 Atl. 524, 16 L. R. A. 461; Mills v. Britton, 64 Conn. 4, 29 Atl. 231, 24 L. R. A. 536; Smith v. Hooper, 95 Md. 16, 51 Atl. 844.

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much a part of his capital as any other portion of his estate, and must therefore be regarded, not as income, but as part of the principal from which the future income is to arise.[150] This subject has been fully and conclusively discussed by the United States Supreme Court in the following terms: "Money earned by a corporation remains the property of the corporation, and does not become the property of the stockholders, unless and until it is distributed among them by the corporation. The corporation may treat it and deal with it either as profits of its business or as an addition to its capital. Acting in good faith and for the best interests of all concerned, the corporation may distribute its earnings at once to the stockholders as income; or it may reserve a part of the earnings of a prosperous year to make up for a possible lack of profits in future years; or it may retain portions of its earnings, and allow them to accumulate, and then invest them in its own works and plant, so as to secure and increase the permanent value of its property. Which of these courses shall be pursued is to be determined by the directors, with due regard to the condition of the company's property as a whole; and, unless in case of fraud or bad faith on their part, their discretion in this respect cannot be controlled by the courts, even at the suit of owners of preferred stock, entitled by express agreement with the corporation to dividends at a certain yearly rate in preference to the payment of any dividend on the common stock, but dependent on the profits of each particular year, as declared by the board of directors. Reserved and accumulated earnings, so long as they are held and invested by the corporation, being part of its corporate property, it follows that the interest therein, represented by each share, is capital, and not income of that share, as between the tenant for life and remainderman, legal or equitable thereof." [151]

[150] Earp's Appeal, 28 Pa. St. 368.

[151] Gibbons v. Mahon, 136 U. S. 549, 10 Sup. Ct. 1057, 34 L. Ed. 525.

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But it is not only on general principles of law that this result is reached, but decisions to the same effect have been made under the earlier income tax laws. It was held that undivided earnings of a corporation are not taxable as income of the stockholders.[152] And the Supreme Court, construing the provisions of the income tax act of 1870, laying a tax on all undivided profits of corporations accrued and earned and added to a surplus, contingent, or other fund, held it to be plain that it was the intention of Congress not to subject to that tax profits of a railroad corporation during the year, which were not divided but used for construction.[153]

§ 248. Right to Subscribe for New Stock of Corporation

It is a familiar rule in the law of corporations that when a company issues new stock (or stock previously held in reserve in the treasury), it must first be allotted to the existing stockholders, each being entitled to take his proportionate share at a price fixed. This price is usually and properly the par value of the stock, and if its market value is greater, a considerable advantage may accrue to the shareholder, who may either take his new stock and sell it at a premium or sell his right of subscription for it, and indeed the sale of these "rights" is a common occurrence on the stock exchanges. The courts all hold that the gain realized by a stockholder, either from a sale of the privilege or from its exercise and the subsequent sale of the stock at a profit, is capital or principal in his hands and not a part of his income.[154] Thus, in a case in Pennsylvania, it appeared that a testator held stock in the B. railroad company, which, in order to extend its line, organized another company, with

[152] Ex parte Ives, Fed. Cas. No. 7,114.

[153] Marquette, H. & O. R. Co. v. United States, 123 U. S. 722, 8 Sup. Ct. 319, 31 L. Ed. 302.

[154] Lauman v. Foster (Iowa) 135 N. W. 14; Brinley v. Grou, 50 Conn. 66, 47 Am. Rep. 618; Moss' Appeal, 83 Pa. St. 264, 24 Am. Rep. 164; Biddle's Appeal, 99 Pa. St. 278; In re Thomson's Estate, 153 Pa. St. 333, 26 Atl. 652. But compare Wiltbank's Appeal, 64 Pa. St. 256, 3 Am. Rep. 585.

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ent capital stock to build it, and the unbuilt line was gaged for a sum sufficient to build it, and the B. com- issued bonds for the amount secured by the mortgage, such bonds the stockholders of the B. company were itted to take at par, in proportion to their holdings, he capital stock of the new company was thrown in as us to those who subscribed for the bonds. It was held the premium at which the option to subscribe to the of the new company was sold was principal, and not e from stock of the B. company.[155] But under the in- tax laws it might be argued that the premium ob- l by the sale of a stockholder's subscription rights, gh it is not income, may be described as "gain" or it," and so be taxable, especially where the statute, e act of Congress now in force, taxes gains and profits g from the sale of or dealing in personal property. n the absence of any decision on this point, the opinion be hazarded that such a transaction is not within the or the equity of a statute purporting to tax "incomes" principal feature, though it might come within the lit- meaning of the language employed.

. **Sale and Distribution of Assets of Corporation**

distribution among stockholders of the assets of a cor- ion, upon its dissolution or preparatory to dissolution, eturn of capital, at least to the extent of the original in- ent, and not in any sense income in their hands.[156] , a fund resulting from sales of materials, manufac- articles, products from the land, or the general per- property of a corporation, all indicating a final wind- p of its business, cannot be called income of the stock- rs when apportioned among them.[157] And where a oration sells part of its original franchise and property, istributes the proceeds of the same as a dividend among ockholders, such dividend is to be regarded, as between

[155] In re Thomson's Estate, 153 Pa. St. 333, 26 Atl. 652.
[156] In re Thomson's Estate, 153 Pa. St. 333, 26 Atl. 652.
[157] Gehr v. Mont Alto Iron Co., 174 Pa. St. 430, 34 Atl. 638.

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a life tenant and remainderman of part of the stock, as c
tal and not as income.[158] And so, where a company ow
large tracts of land, but not engaged in the business of bu
and selling land, from time to time disposes of part o
holdings, and divides the proceeds among its stockhol
the money so obtained is not income.[159]

§ 250. Profit Accruing to Corporation from Sale of C tal Assets

From the point of view of laying the income tax
corporation, while it is true that the conversion of any
tion of its capital assets into other forms of property, or
cash, may be regarded as a replacement of capital, r
than as income, yet if the sale of such assets result
an increase in the aggregate amount of capital, the
ference or profit may be regarded as income. Thus, w
a bridge belonging to a private corporation was dec
a county bridge (that is, taken under the power of
nent domain and made the property of the county),
the damages awarded, which were in excess of the c
stock, were divided among the shareholders in propo
to the number of their shares, it was held that the exce
the award so distributed over the amount of the capital
represented a profit which the company had made in its
ness, and was taxable as such for state purposes.[160]
rule on this subject, for the purpose of the federal incom
on corporations, has been prescribed by the Treasury de
ment in the following regulations: "For the purpose o
termining the income resulting from the sale of capita
sets and the amount to be accounted for as income under
act, there shall be included any and all profit resulting
such sale and which may be apportioned to the period d
which the corporation tax law (sec. 38, act of Aug. 5,
Comp. St. 1913, § 6301) was in force and effect, which

158 Vinton's Appeal, 99 Pa. St. 434, 44 Am. Rep. 116.
159 Stevens v. Hudson's Bay Co., 101 Law Times, 96.
160 Matson's Ford Bridge Co. v. Commonwealth, 117 Pa. St. 2
Atl. 813.

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not returned as income during that period. In ascertaining net income derived from the sale of capital assets, if such assets were acquired subsequent to January 1, 1909, the difference between the selling price and the buying price shall constitute an item to be added to or subtracted from gross income according to whether the selling price was greater or less than the buying price. If the capital assets were acquired prior to January 1, 1909, the amount of profit or loss representing the difference between the selling and buying price is to be prorated to determine the proportion of the gain or loss arising subsequent to January 1, 1909, and the proportionate part belonging to the years subsequent to January 1, 1909, shall be added to or deducted from the gross income for the year in which the sale was made. For the purpose of determining the profit or loss arising from the sale of such assets, there shall be added to the price actually realized from the sale any amount which has heretofore been set aside and deducted from gross income by way of depreciation since January 1, 1909, which has not been paid out in making good such depreciation on the property sold." [161]

[161] Supra, § 185, arts. 108–110.

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CHAPTER IX

PERSONS AND CORPORATIONS SUBJECT TO TAX

§ 251. Residents.
252. Residents Deriving Income From Abroad.
253. Domestic Corporations With Foreign Branches or Agencies.
254. Domestic Corporations Operating Exclusively Abroad.
255. American Citizens Residing Abroad.
256. Resident Aliens.
257. Non-Resident Aliens.
258. Carrying on of Business or Trade.
259. Carrying on Several Lines of Business.
260. Salaried Officers.
261. Bankrupt and Insolvent Persons and Companies.
262. Estates of Decedents and Dissolved Corporations.
263. Partnerships.
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265. Corporations.
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268. Unincorporated Associations.
269. Incorporated Clubs.
270. Inactive Corporations and Holding Companies.
271. Lessor Corporations.
272. Corporations Fraudulently Formed to Evade Tax.
273. Corporations of Philippines and Porto Rico.
274. Insurance Companies.

§ 251. Residents

Every person residing within the United States, whether he is an American citizen or an alien, is subject to the federal income tax. And in the states where similar tax laws are in force, they are generally made applicable to "residents" of the state, without regard to whether such persons are citizens of the United States or of the taxing state, although in South Carolina the statute refers to "every citizen of this state." Disputed questions chiefly arise in the case of persons who maintain homes in two or more states (or in the United States and also abroad) or who spend a large part of their time in travelling. In such cases, the test of "residence" will be the location of that establishment which the

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person regards as his home, and to which he has the intention of returning whenever absent, however protracted may be his absence. Or, according to the circumstances, it will be determined by the proportion between the time which the person spends within the given jurisdiction and that which he spends elsewhere, "residence" implying a more or less fixed and permanent abode, as distinguished from a temporary sojourn for business or other purposes.

These rules, as specially applicable to matters of taxation, may be illustrated by the following cases: In a late case in Iowa, it was held that one who, after living continuously for many years in the same house, starts on a tour of the world, leaving the house in charge of a care-taker, remains a "resident" of the state and city where his house is, for purposes of taxation, during his absence from the country, even though he may intend, on his return, to remove to another state.[1] In England it is held that a master mariner, trading between an English port and various foreign ports, who maintains a home for his family in the English port, is liable for the income tax on his salary, notwithstanding the fact that he is abroad for much the greater part of the year, and that most of his salary is earned on the high seas and not in England.[2] In another English case it appeared that an American citizen had for the last twenty years lived on board his own yacht, which was anchored in tidal navigable waters in England, obtaining his provisions and necessaries from the nearest village. The yacht had always been kept fully manned and ready to go to sea at any moment. It was held that the owner was a person "residing in the United Kingdom" within the income tax act, and was assessable accordingly.[3] A similar decision was made in the case of an American citizen, having no place of business in Great Britain, but who rented a house and shooting rights in Scotland, where he spent about

[1] Barhydt v. Cross (Iowa) 136 N. W. 525.

[2] In re Young, 12 Scotch Law Rep. 602, 1 Tax Cas. 57; Rogers v. Inland Revenue, 16 Scotch Law Rep. 682, 1 Tax Cas. 225.

[3] Brown v. Burt, 81 Law J. K. B. 17.

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two months continuously in each year, accompanied by his valet, as he had no family. His house in New York was always kept in readiness for his return, but so was the house in Scotland, which was kept furnished and ready for his occupation at any time. It was held that he was a person "residing in the United Kingdom" for the purposes of the income tax.[4] So also, where a merchant carried on business in Italy, where he ordinarily resided, but also owned a place of residence in England, where he dwelt with his family for several months in the year, it was held that he was a resident of England, and was liable to taxation in respect to the profits of the business carried on abroad.[5]

§ 252. Residents Deriving Income from Abroad

Under the act of Congress, persons residing within the United States are required to pay the tax upon "the entire net income received from all sources," which includes foreign investments and business as well as domestic. This is further shown by the provision that the amount of the tax "shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations, not payable in the United States, and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries." [6] Under similar provisions in the corporation tax law of 1909, it was ruled that American corporations should include in their returns not only the income derived from the business carried on within

[4] Cooper v. Cadwalader, 5 Tax Cas. 101.

[5] Lloyd v. Sulley, 21 Scotch Law Rep. 482, 2 Tax Cas. 37.

[6] Supra, § 26. For the Treasury regulations regarding the collection of the income tax on foreign investments, see, supra, §§ 85–90. Note that the tax is payable on income consisting in interest on the bonds of foreign governments, no less than in respect to interest on the obligations of private persons or corporations. The act of Congress expressly mentions "bonds of foreign countries." Supra, § 26. And see the Treasury regulation, supra, § 166.

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the confines of the United States, but income received from business transacted in any foreign country as well.[7] It is undoubtedly within the competence of the government to tax its resident citizens upon their income derived from foreign investments, the domicile of the taxpayer giving jurisdiction for this purpose, although the situs of his investments may be in a foreign country.[8] This is also the law in England. Thus, a corporation organized in that country and maintaining a head office there, where its directors meet and administer its general affairs, and to which its revenues are remitted, is assessable for the income tax in England, though all its profits are derived from plantations, mines, or other enterprises conducted in foreign countries.[9] And so, dividends declared by a foreign corporation and payable at its agency in London, on shares owned by a British citizen and resident, are taxable as part of his income.[10]

It is also within the competence of the several states to tax their resident citizens upon intangible personal property, consisting, for example, of shares of stock in foreign corporations, and no constitutional provision is thereby violated.[11] Naturally, therefore, they also have the power to tax income derived from such sources, and this has generally been provided for in the income tax laws of the states. In Hawaii, it is true, the tax is levied on "income derived by every person residing in the territory of Hawaii from all property owned, and all business, trade, profession, employment, or

[7] Treasury Decisions, No. 1742, par. 9.

[8] Memphis & C. R. Co. v. United States, 108 U. S. 228, 2 Sup. Ct. 482, 27 L. Ed. 711; United States v. Bennett, 232 U. S. 299, 34 Sup. Ct. 433, 58 L. Ed. 612; Kirtland v. Hotchkiss, 100 U. S. 491, 25 L. Ed. 558; Liverpool & London & Globe Ins. Co. v. Bennett [1912] 2 K. B. 41.

[9] Cesena Sulphur Co. v. Nicholson, L. R. 1 Ex. Div. 428; Imperial Continental Gas Ass'n v. Nicholson, 37 Law T. 717, 1 Tax Cas. 138; Scottish Mortgage Co. v. McKelvie, 24 Scotch Law Rep. 87, 2 Tax Cas. 165.

[10] Gilbertson v. Fergusson, L. R. 7 Q. B. Div. 562, 1 Tax Cas. 501.

[11] Darnell v. Indiana, 226 U. S. 390, 33 Sup. Ct. 120, 57 L. Ed. 267.

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vocation carried on in the territory." [12] But this is e
tional. In South Carolina, the provision of the statu
somewhat ambiguous. It lays the tax upon "income rec
during the preceding calendar year by every citizen of
state, whether such gains, profits, or income be derived
any kind of property, rents, interests, dividends, or sal
or from any profession, trade, employment or vocation
ried on in this state, or from any other source whateve
On the ordinary principles of statutory construction, the
"carried on in this state" should be referred to the p
"profession, trade, employment or vocation," leaving the
vision as to "property, rents, interests, dividends, or sal
entirely unrestricted. And even if this argument should
the following clause, "from any other source whateve
broad enough to include income from foreign investme
business. In Wisconsin a distinction is made between in
from foreign investments and income from foreign bus
It is provided that "so much of the income of any p
residing within the state as is derived from rentals, s
bonds, securities or evidences of indebtedness shall be as
and taxed, whether such income is derived from so
within or without the state," which is explained by th
commission of that state as being "in analogy to the rul
intangible property follows the residence of the owner fo
poses of taxation." But the statute further provides that
person engaged in business within and without the state
with respect to income other than that derived from r
stocks, bonds, securities or evidences of indebtedness, be
only upon that proportion of such income as is derived
business transacted and property located within the sta
And a rule for determining the proportion is prescri

[12] Session Laws Hawaii 1901, p. 31.
[13] Civ. Code S. Car. 1902, § 325.
[14] Wisconsin Income Tax Law 1911, § 1087m, par. 2, cl. 3.
[15] The rule to be followed, as far as applicable, is that pre
for determining the proportion of a corporation's capital stock
is employed in business within the state, and is as follows:
termining the proportion of capital stock employed in the sta

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3. Domestic Corporations with Foreign Branches or Agencies

here a domestic corporation has established branch offi-
or agencies for the transaction of its business in foreign
tries, the profits accruing at such branches or agencies are
of the income of the corporation, and will be taxable at
omicile, if the law of that jurisdiction taxes income from
gn business as well as from foreign investments, as is
ase with the act of Congress now in force. But it is im-
nt to distinguish this case from the case where two com-
es, one domestic and the other foreign, are really inde-
ent of each other, though constituent members of a pool or
, or united in interest through one owning stock of the
, interlocking directorates, and so on. Thus, in an Eng-
case, it appeared that a company was formed in England
he purpose of bringing under a single control all the man-
turers of a particular kind of photographic camera. To
his, the company acquired 98 per cent. of the stock of an
rican company, and retained the services of the manager
ne American business. The remaining shareholders of
American company were independent of the English com-
. The English company by power of attorney appointed
American manager its proxy to vote for it at meetings of
American company. The two companies bought and sold
s to each other in the ordinary way. On this state of facts
as held that the business of the American company was
he business of the English company, so as to be assessable
ncome tax in England, the control exercised by the English

shall be computed by taking the gross business in dollars of the
oration in the state and adding the same to the full value in
rs of the property of the corporation located in the state. The
so obtained shall be the numerator of a fraction of which the
minator shall consist of the total gross business in dollars of the
oration, both within and without the state, added to the full
e in dollars of the entire property of the corporation both within
without the state. The fraction so obtained shall represent the
ortion of the capital stock represented within the state." Stat.
§ 1770b, subd. e.

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company being the control of the stockholders only.[16] But on the other hand, a contrary decision was made in the case of an English company formed for the purpose of acquiring breweries in the United States, because it was shown that the English directors exercised effective and constant control over the business. The operations connected with the manufacture and sale of the beer took place in the United States, and were carried on by an American committee of management appointed by the company. This committee were in constant correspondence with the board of directors in England, and the general meetings of the company were held in England, where the company's books were kept, except those relating to business carried on in the United States. The dividends were declared in England by the company in general meeting. Only a portion of the profits made was remitted to England, the amount needed for the dividends payable to American shareholders being retained in America for distribution. It was held that the business of the company was carried on in England, and that the company was there assessable to income tax upon the whole of the profits made, whether remitted to England or not.[17]

But in view of the fact that the income tax laws affect only "income received" by the person or corporation, it is important to inquire more closely whether profits earned at the foreign branches or agencies of a domestic corporation are taxable as a part of its income if they are not remitted in money to the home office, but retained abroad for payment of dividends, investment, or other purposes. On this question there are no American decisions. The English cases are numerous and instructive, but not entirely harmonious. At first, it was the disposition of those courts to regard the tax as falling only on profits actually received in cash. Thus, in a leading case it appeared that a company was formed in England to acquire certain brewing businesses in the state of New York,

[16] Kodak Limited v. Clark [1901] 2 K. B. 879, 4 Tax Cas. 549.

[17] Frank Jones Brewing Co. v. Apthorpe, 4 Tax Cas. 6; Apthorpe v. Peter Schoenhofen Brewing Co., 80 Law T. 395, 4 Tax Cas. 41.

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as the law of that state would not permit a foreign cor-
tion to own and carry on a brewery there, an American
pany was formed, the whole of the shares of which were
n by the English company, except seven shares which
e held by the directors of the American company. So
h of the profit was sent over to the English company in
don as was required for distribution in dividends to such
s shareholders as resided in England, but the shareholders
lent in America received their dividends there out of prof-
etained in America for that purpose. It was held that the
me tax was chargeable only on the profits received in
and by the English company.[18] Another case concerned
e insurance company established in Scotland and carrying
usiness abroad. The business was managed by directors,
had the power of accepting risks, but all investments
ad had to be sanctioned at the head office. Remittances
ash of interest received abroad were not made, and remit-
es out of the receipts abroad of interest and premiums
made only as required by the general policy of the com-
. At a quinquennial valuation, and in the yearly state-
s of accounts, the whole of the receipts abroad, includ-
he interest on investments abroad, was brought into ac-
t in the division of the profits of the company. It was
that the interest received abroad and invested or applied
ad was not "received" in Scotland, so as to be taxable
.[19]

ut other cases, including some of the later decisions, have
ved the rule that income may be "constructively received,"

Bartholomay Brewing Co. v. Wyatt [1893] 2 Q. B. 499, 3 Tax
213. And see Stanley v. The Gramophone & Typewriter Lim-
[1908] 2 K. B. 89, 5 Tax Cas. 358; Gresham Life Assur. Soc. v.
p [1902] App. Cas. 287, reversing [1901] 1 K. B. 153, 4 Tax Cas.
Nobel Dynamite Trust Co. v. Wyatt [1893] 2 Q. B. 499, 3 Tax
224; Goerz v. Bell [1904] 2 K. B. 136; Scottish Widows Fund
Assur. Soc. v. Farmer [1909] Sess. Cas. 1372; Pommery v.
orpe, 56 Law J. Q. B. 155; Crookston Bros. v. Furtado, 48
h Law Rep. 134, 5 Tax Cas. 602.
Standard Life Assur. Co. v. Allan, 38 Scotch Law Rep. 628, 4
Cas. 446.

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so as to be taxable, if it is entered on the books of the company as cash, or locally applied or invested by direction of the head office. Thus, an English insurance company with branches in India was in the receipt of certain interest moneys, paid in India, from investments there and in the colonies. This interest was applied in India towards the payment of the various obligations of the company arising for settlement in India, including losses under its policies, and was not remitted in money to England, but it was treated in the company's accounts as if it had been so remitted. It was held that the interest was constructively received in England and was therefore taxable.[20] In another case it appeared that an insurance company was organized in England, and had its head office and directorate there, but also carried on business in certain foreign countries, and by the laws of those countries it was required, as a condition to the right to do business there, to deposit certain sums of money with government officials and to invest the money in accordance with local laws. In addition to this, the company also voluntarily invested abroad certain other sums representing accumulated profits of its business. Both classes of investments yielded interest, which was received by the company abroad, but was not remitted to England. It was held that the company was taxable in England on the income consisting of such interest from both classes of investments.[21] Again, an English corporation had its head office in London, where meetings of the directors and shareholders were held, and from whence the affairs of the company were directed and managed. The company carried on the business of banking in London, Mexico, and Lima. At the branch offices it transacted all ordinary banking business, and in London it transacted the London business of the branch-

[20] Universal Life Assur. Soc. v. Bishop, 68 Law J. Q. B. 962, 4 Tax Cas. 139. And see Scottish Provident Inst. v. Allan, 38 Scotch Law Rep. 874, 4 Tax Cas. 409; San Paulo Ry. Co. v. Carter [1895] 1 Q. B. 580, 3 Tax Cas. 344, affirmed [1896] App. Cas. 31; Grove v. Elliots, 3 Tax Cas. 481.

[21] Liverpool, L. & G. Ins. Co. v. Bennett [1911] 2 K. B. 577. And see Norwich Union Fire Ins. Co. v. Magee, 3 Tax Cas. 457.

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es, but not the business of current banking accounts. It was held that the whole profits were chargeable for the income tax, whether remitted to England or not.[22] But this doctrine has not met with universal acceptance. In a case arising in Scotland, it was shown that a Scotch insurance company lent out sums of money at interest in Australia, and that the interest accruing was not remitted to Great Britain in forma specifica, but was retained abroad and invested there, but it was entered in the revenue account of the company as received. On this state of facts it was held that interest not received in Great Britain was not assessable for the income tax, and that the facts in the case did not show a constructive remittance.[23]

§ 254. Domestic Corporations Operating Exclusively Abroad

When the corporation excise tax law of 1909 was in force, a question arose as to the liability of a corporation organized under the laws of New Jersey, but which did business exclusively in Cuba. An assessment was made against this company, which it at first refused to pay, alleging, under the advice of counsel, that it was not liable to taxation under the act of 1909, because its business was transacted wholly in a foreign country and that it had no assets in America, its property being within the jurisdiction of the Republic of Cuba, its stockholders living there, and its income being spent and invested there. It was firmly maintained by the Internal Revenue bureau that the company was liable for the tax, notwithstanding these facts, but the question did not reach the courts, as the company finally receded from its contention and paid the amount assessed against it with the penalty and interest.[24]

§ 255. American Citizens Residing Abroad

The federal income tax law provides for the taxation of the income "received from all sources" of "every citizen of the

[22] London Bank of Mexico v. Apthorpe [1892] 2 Q. B. Div. 378, 3 Tax Cas. 143.

[23] Forbes v. Scottish Provident Inst., 33 Scotch Law Rep. 228, 3 Tax Cas. 443.

[24] T. D. No. 1863.

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United States, whether residing at home or abroad." I
American citizens who take up a residence abroad, wh
temporary or permanent, and whether from choice or for
ness purposes (including diplomatic and consular offi
remain liable for the income tax. Theoretically such pe
are taxable upon their entire net income (above the stat
exemption) no matter how or whence derived. But it
an extreme exercise of the taxing power to impose the in
tax upon citizens permanently domiciled abroad in resp
income or earnings wholly derived from sources located
foreign country. This has been authoritatively declared
the manifest purpose of Congress in the enactment o
statute now in force. "It may not be doubted," say
United States Supreme Court, "speaking in a general
that the taxing power, when exerted, is not usually a
to those, even albeit they are citizens, who have a perm
domicile or residence outside of the country levying th
Indeed, we think it must be conceded that the levy of s
tax is so beyond the normal and usual exercise of the t
power as to cause it to be, when exerted, of rare occur
and in the fullest sense exceptional. This being true we
approach the statute for the purpose of ascertaining wh
its provisions sanction such rare and exceptional tax
* * * As illustrative and throwing light on the real
tion for decision, action taken by Congress in exertin
taxing power is at least worthy of note. For instanc
provisions of the income tax law of 1864 expressly ext
that tax to those domiciled abroad, and a like purp
beyond doubt expressed in the income tax of 1913." [25]
language of the statute would therefore apply, for exa
to the case of an American residing abroad and derivi
income from investments made abroad, or receiving a
from a foreign government or from a foreign corpor
But it is not easy to see how payment of the tax cou

[25] United States v. Goelet, 232 U. S. 293, 34 Sup. Ct. 431,
Ed. 610.

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rced in such cases. Persons in this situation are expected e their income-tax returns in the United States, and provi- has been made for giving them some indulgence in respect e time for payment of the tax.[26] On so much of their ne as accrues and is payable within the United States, ollection of the tax is not a matter of difficulty, but other- it would appear that the generality of the language of statute must be restricted by the necessities of the case. gain, if the act of Congress should be enforced to its st extent in such cases, it would bear very heavily upon e of our citizens who may be living in a foreign country h also imposes a tax upon incomes. For instance, an rican citizen residing in Paris would be liable to be taxed he French government upon his entire income (in the acter of a resident alien) and by the United States govern- upon the same income, in the character of a citizen resid- broad. It has been suggested that matters of this kind l be regulated by treaty between the two countries.

s to Americans occupied and residing in the Canal Zone, status for purposes of taxation has not been officially ded. But it appears that they must be treated as citizens ent in a foreign country.

6. Resident Aliens

ne law also is made applicable to the case of an alien living in the United States. For it includes "every person resid- in the United States, though not a citizen thereof," and lent aliens are taxed on exactly the same basis as citizens. a provision is common in the income tax laws of other tries,[27] and the authority of any government to tax, not the property, but also the income, of foreigners residing in its territory cannot be doubted. Indeed it has been

[26] See, supra, §§ 143, 174.

[27] For instances of American citizens held subject to the English ne tax, because more or less permanently "resident" in Great in, see Brown v. Burt, 81 Law J. K. B. 17; Cooper v. Cad- der, 5 Tax Cas. 101.

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expressly decided that such a feature does not ren income tax law unconstitutional or in any way invalid.[28]

§ 257. Non-Resident Aliens

A further case is that of persons who are neither of the United States nor resident within its borders, bu of whose income is earned or gained in this country. this, the act of Congress provides for the levy of the tax upon "the entire net income from all property ow of every business, trade, or profession carried on in the States by persons residing elsewhere." [29] And the inc laws of the several states contain almost exactly simi visions, which of course are applicable not only to n dent aliens, but also to residents and citizens of othe owning property or doing business within the taxing st Wisconsin, however, the provision is expressed in terms, for the tax is made payable "by every non-res the state upon such income as is derived from source the state or within its jurisdiction." The earlier acts gress on the subject made no attempt to tax income acc America to non-resident aliens. That is to say, no suc sion was found in the acts of 1861, 1862, or 1864, thoug introduced in the statute of 1866 and continued in sub enactments. And it was held, under the act of 1864 non-resident alien was not subject to the income tax in to his investments in American securities; and thou act required corporations paying interest on their bond duct from the interest payments the amounts due as tax thereon from the several bondholders, this did n to a non-resident alien owning such bonds, and if the tion deducted such tax from the interest due him, h recover it by suit.[30]

[28] Moore v. Miller, 5 App. D. C. 413.

[29] Supra, § 1. For the Treasury regulations concerning able income of, and the deductions which may be claimed resident aliens, see, supra, § 168. An American woman who a foreigner takes the nationality of her husband, and there not claim the specific exemption allowed by the act. Trea cision No. 2090, December 14, 1914.

[30] Jackson v. Northern Cent. Ry., Chase, 268, Fed. Cas. N Railroad Co. v. Jackson, 7 Wall. 262, 19 L. Ed. 88. It w

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t in view of the fact that the present statute taxes non-
ent aliens upon income derived not only from a "business,
, or profession carried on in the United States," but also
"property owned" within the United States, grave doubts
at one time entertained as to whether the language
oyed would not include dividends from domestic corpora-
and interest on the bonds of domestic corporations, when
le to a non-resident alien. But it is a general principle of
hat corporate bonds and corporate stock and other like
ities have no separate situs for purposes of taxation, no
r where the paper evidencing them may be physically
ed, but they are taxable only at the situs of the owner's
cile. Hence, in contemplation of law, a bond or a share
ock of an American corporation is not "property owned
n the United States" where its owner is a citizen and
ent of a foreign country. In this view, the officers of
reasury department have definitely ruled that interest on
s of domestic corporations and dividends on stock of
stic corporations, owned by non-resident aliens, are not
ct to the income tax, whether such bonds or stock be
cally located within the United States or not, but that
ons, orders for registered interest, or the like, in such
, when presented for payment in this country, must be
npanied by certificates of ownership in a form prescribed,
der to establish the identity of the foreign owner and his
to exemption from the tax.[31] It is not likely that this
ion will be reversed by the courts. And it is sustained by
egislative history of the act, for an amendment to the bill
osed by the Senate, definitely providing for the taxation of
est in such cases, was stricken out by the conference

ver, that an excise tax on corporations laid on or measured
e amount paid out by them in the form of dividends or inter-
s not invalidated by a provision that the amount of such tax
oe withheld from the dividend or interest due or payable to a
nolder or bondholder who is a citizen or subject of a foreign
nment with no residence in this country. Railroad Company
llector (Michigan Cent. R. Co. v. Slack) 100 U. S. 595, 25 L. Ed.

See, supra, §§ 168, 171. Salary received by a foreign employé
domestic corporation for services rendered entirely in a foreign
is not subject to deduction and withholding of the tax at the
e. Treasury Decision No. 2090, December 14, 1914.

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committee in its report and not included in the act as finally passed.

As to a non-resident "doing business" within the jurisdiction imposing the tax, the state laws may apply to the ordinary case of a person residing in one state and conducting a business in another, as well as to corporations organized under the laws of one state, but having offices, branches, or agencies in many others, and to railroads or other transportation companies which traverse two or more states. Under the laws of the United States, the incidence of the income tax will chiefly affect corporations, whose business is of an international character, foreign insurance companies writing risks in the United States, and foreign corporations owning and operating mills, factories, or mines in this country. As concerns this subject, no American decisions have as yet been rendered. But upon the construction of the corporation tax law of 1909, an opinion was given by the Attorney General to the effect that foreign steamship companies engaged in the business of transporting passengers, goods, and merchandise between ports in this country and foreign ports, and maintaining freight and passenger agencies in this country, were subject to the tax; and whereas it was contended that a part of the business of such companies was the transportation of articles of merchandise shipped from this country for foreign trade, and that such business could not constitutionally be taxed, the opinion was given that a tax imposed upon an exporter of merchandise, as an incident to his business, is not a tax upon the exported article, as an export, and hence not forbidden by the constitution.[32] But a foreign steamship company having no office in the United States, and whose vessels only occasionally touch at American ports, was not regarded as doing business in this country, within the meaning of that act.[33]

The British income tax law includes non-resident aliens, in so far as they "exercise a trade" in Great Britain. And it is

[32] 28 Opin. Atty. Gen. 211.
[33] Treasury Decisions, No. 1742, par. 21.

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held when a foreign corporation or individual has an agency for the sale of its products in England, the agent being charged with the duty of procuring orders, which are then sent to the head office abroad, and the goods are shipped either to the agent for distribution or direct to the customers, and payment is made either to the agent or direct to the foreign office, such corporation or person "exercises a trade" in England and is subject to the income tax on the profits thereof, collectible from the agent.[84] So in a Scotch case, it appeared that a company registered in Norway, where its head office was maintained and its books kept and corporate meetings held, was under the general management of two Norwegians, elected by the stockholders. This company owned a ship, and all the business of the chartering of the vessel, and all voyage receipts and disbursements, were dealt with by a firm resident in Glasgow, who received and retained all the funds until required for payment of expenses or dividends. It was held that, although the company was not resident in Great Britain, it exercised a trade within the United Kingdom, for the profits of which the Glasgow firm, as its agents, were assessable for the purpose of the income tax.[85] In another case it was shown that a foreign corporation, domiciled abroad, had submarine cables in connection with England and other foreign cables not so connected. The company, under an agreement with the English authorities, also had separate wires, worked by its own staff, between several English towns and cities. No profits were derived from the transmission of messages over these last-mentioned wires. It was held that the company exercised a trade

[84] Werle & Co. v. Colquhoun, L. R. 20 Q. B. Div. 753, 2 Tax Cas. 402; Turner v. Rickman, 4 Tax Cas. 25; Tischler v. Apthorpe, 52 Law T. 814, 2 Tax Cas. 89. But see Grainger v. Gough [1896] App. Cas. 325. Where all the trading of nonresident aliens is done, their sales made, and their profits earned in the country where they live, they cannot be taxed in England on account of profits simply because they have an agent in England, or even a partner, to buy domestic goods for them and ship the same for sale abroad. Sulley v. Attorney General, 5 Hurl. & N. 711.

[85] Wingate v. Webber, 34 Scotch Law Rep. 699, 3 Tax Cas. 569.

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in Great Britain and was assessable on the net profits derived from the receipts in England.[36]

It is provided by the statute that the income from property owned and business carried on in the United States by non-resident aliens shall be computed upon the same basis as that prescribed in the case of foreign corporations, which is ascertained by deducting from the gross amount of income accruing within the year from business transacted and capital invested within the United States, the expenses incurred, losses sustained, etc., within the year in the business conducted within the United States.[37] And the Treasury regulations require that "the responsible heads, agents, or representatives of such non-resident aliens, who are in charge of the property owned or business carried on or capital invested, shall make full and complete return of said income and shall pay the tax."[38] It should further be observed that non-resident aliens are subject to the additional tax or surtax, the same as is prescribed in the case of citizens or residents of the United States.[39]

§ 258. Carrying on of Business or Trade

In addition to the illustrations given in the preceding section, which had to do only with the particular case of non-residents, we may here give some further account of what is meant by "business" and "trade" in general, since these terms are constantly used in describing the sources of taxable income or the persons and corporations subject to the tax. The two words quoted, when associated together, take color from each other. But even as thus limited, the term "business" is a word of very wide import and embraces every thing about which a person can be employed or which he can pursue as an occupation and for profit.[40] It implies, however, continuity of action or effort, and does not include an isolated act or operation,

[36] Erichsen v. Last, L. R. 7 Q. B. Div. 12, 1 Tax Cas. 351.
[37] Supra, §§ 8, 41.
[38] Supra, § 177, art. 8.
[39] Supra, § 168.
[40] People v. Commissioners of Taxes, 22 How. Prac. (N. Y.) 143.

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transactions of the same sort do not constitute the per-
vocation,[41] and probably it should not be so extended as
lude illicit pursuits, such as keeping a gaming house or
g liquor without a license.[42] In construing the corpora-
ax law of 1909, the Supreme Court of the United States,
eaning to enumerate all possible kinds of "business," but
reference to the facts in the group of cases before it,
"We think it clear that corporations organized for the
se of doing business, and actually engaged in such ac-
s as leasing property, collecting rents, managing office
ngs, making investments of profits, or leasing ore lands
collecting royalties, managing wharves, dividing profits,
n some cases investing the surplus, are engaged in busi-
within the meaning of this statute, and in the capacity
sary to make such organizations subject to the law."[43]
in the same case it was specifically held that a company
ng and leasing taxicabs and collecting rents therefrom
engaged in business within the meaning of the statute.
de" is a term more particularly applied to the operations
mmerce, and especially to the buying and selling of com-
ties or the traffic, sale, or barter of goods. But it is legiti-

eople v. Commissioners of Taxes, 23 N. Y. 242; Parkhurst v. , 72 Vt. 355, 47 Atl. 1068; Delaware & H. Canal Co. v. Mah-ck, 63 N. J. Law, 281, 43 Atl. 978, 45 L. R. A. 538; Cooper Co. v. Ferguson, 113 U. S. 727, 5 Sup. Ct. 739, 28 L. Ed. 1137; son v. Morris & E. R. Co., 216 Fed. 83. But the doing of a act of business may constitute the doing of business, when panied by a purpose to perform other like acts of business. n & W. Traction Co. v. Gilligan (U. S. Dist. Ct. S. D. Ohio, W. 14) T. D. No. 2000.

Odell v. City of Atlanta, 97 Ga. 670, 25 S. E. 173; Walsch v. 32 Wis. 159.

Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. 89. But where a corporation was organized to own the stock mining company, and had no assets except such stock, a small n bank, office furniture, etc., and did nothing but to receive the ends from the operating company and distribute them as such g its own stockholders, it was held not to be "doing business" n the meaning of the corporation tax law of 1909, and there-not subject to the tax. United States v. Nipissing Mines Co., Fed. 431, 124 C. C. A. 313.

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mately capable of a wider meaning, and may be so intended when used in a tax statute and in connection with "business." Thus, an English decision holds that the ownership and employment of vessels, which are employed in the transportation of merchandise for hire, is a "trade" or concern in the nature of a trade, within the meaning of an act imposing taxes.[44] So in a case in North Carolina, construing a provision of the constitution authorizing the legislature to tax "trades, professions, franchises, and income," it was said that the word "trade" is employed in its broadest signification, and comprehends, not only all who are engaged in buying and selling merchandise, but all whose occupation or business it is to manufacture and sell the products of their plants, and includes in this sense any employment or business embarked in for gain or profit.[45]

§ 259. Carrying on Several Lines of Business

If a person or corporation carries on, at the same time, several different lines or branches of business, the resulting income is to be assessed and taxed as an entirety, and not as so many separate incomes from the different kinds of business. This is shown by the language of the act of Congress, which imposes the tax, both in the case of individuals and of corporations, on "the entire net income received from all sources." And under the corporation excise tax law of 1909, it was ruled that railroad companies operating leased or purchased lines must include all receipts derived therefrom in their return of net income.[46] This is also the rule in England. Thus, where an insurance company, being a single concern and having only one body of stockholders, carries on the business of fire, marine, and life insurance, and the funds and accounts of the several branches of the business are kept separate, but the results of the whole business are thrown into one profit and loss account, and the dividends are declared out of the balance of that account, it is held that, for the purpose of the income tax, the several branches must be treated as one business, and the net

[44] Attorney General v. Borrodaile, 1 Price, 148.
[45] State v. Worth, 116 N. C. 1007, 21 S. E. 204.
[46] Treasury Decisions, No. 1742, par. 8.

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from all are assessable as one undivided income.[47] is, however, one decision of the Court of Session in nd which is not easily to be reconciled with the general s thus stated. It was there held that a seed-merchant, a farm and working it in connection with his seed busi- cannot claim any deduction from the assessment on ofits as seedsman in respect of losses incurred in the op- n of the farm, that is, profits arising from one branch of siness cannot be offset by the expenses or losses of the [48]

the general rule applies only in cases where each branch partment of the business is wholly owned and operated e taxable person or corporation. If any is owned and ed jointly with another person or company, it must be gated and separately assessed. Thus, in an English case, eared that the corporation in question originally owned teamship and derived its income from the operation of essel as a carrier of freight. Afterwards it acquired a large interest, but not quite the entire ownership, in a d steamship, taking over the management and keeping the nts thereof, and it claimed to be assessed on the average e profits derived from the two ships in one sum. But it eld that the second ship was a concern carried on by two ore persons jointly, and therefore its profits must be ately assessed.[49]

. Salaried Officers

ention was given in an earlier section of this volume to onstitutional validity of income taxation as applied to the es of federal and state officers.[50] And it was there shown

ast v. London Assur. Corp., L. R. 12 Q. B. Div. 389, 2 Tax Cas.
Scottish Union & N. Ins. Co. v. Smiles, 26 Scotch Law Rep.
Tax Cas. 551.
rown v. Watt, 23 Scotch Law Rep. 403, 50 J. P. 583, 2 Tax
43.
arrell v. Sunderland Steamship Co., 88 Law T. 741, 4 Tax Cas.

upra, § 205. And see Melcher v. Boston, 9 Metc. (Mass.) 73;
. Buffington, 3 Cliff. 376, Fed. Cas. No. 3,675.

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that, although the United States cannot tax the salary of a state officer, or vice versa, yet, in the absence of explicit constitutional restrictions, there is nothing to prevent Congress from taxing the compensation of the officers of the federal government, or to prevent a state from taxing the salaries of its own officers or those of its municipalities. This is in accordance with the rules prevailing in other countries where income tax laws are in force. Thus, in Canada, a government official or employe is taxable on his income received in the form of a salary.[51] It was held in Ontario that the income of an officer of the House of Commons of the Dominion of Canada could not be taxed by a provincial legislature or by a municipality of the province.[52] But this was overruled by the Supreme Court of Canada, which held that any civil or other officer of the Dominion might be lawfully taxed in respect to his income as such by the municipality in which he resides.[53] And the highest court in England has ruled that an officer of the Commonwealth of Australia who resides in Victoria and receives his salary in that state, is liable to be assessed in respect of his official salary for an income tax imposed by the legislature of Victoria.[54]

But laws of this kind are construed with strictness, and the salary attached to a public office is not to be brought within the reach of the income tax without explicit language to that effect. Thus it was ruled, in an early case in South Carolina, that the salaries of public officers are not liable to be taxed under an ordinance imposing a tax on all profit or income arising from the "pursuit of any faculty, profession, occupation, trade, or employment." [55] And the court in Virginia decided that, when the tax is laid upon salary or compensation for services, received by any person in the employment of

[51] Abbott v. City of St. John, 40 Can. Sup. Ct. 597, 12 Am. & Eng. Ann. Cas. 821; Robson v. Regina, 4 Terr. L. R. 80.

[52] Leprohon v. Ottawa, 2 Ont. App. 522.

[53] Abbott v. City of St. John, 40 Can. Sup. Ct. 597, 12 Am. & Eng. Ann. Cas. 821.

[54] Webb v. Outrim [1907] App. Cas. 81, 7 Am. & Eng. Ann. Cas. 84.

[55] City Council v. Lee, 1 Treadw. (S. C.) 57.

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a corporation, it will be held not to include the salary paid to a minister of the Gospel by the church or congregation of which he has charge, for it must be understood that the legislature meant only secular employment.[56] But the modern statutes employ language broad enough to cover all kinds of remuneration for services rendered by employés, however denominated. Thus, the act of Congress applies to "income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid." And the Wisconsin statute, in defining "income," includes "all wages, salaries, or fees derived from services." The tax commission of that state explains that "fees derived from services would not include the fees belonging to the state or any political subdivision. For example, if a sheriff receives a salary and turns over the fees received by him in his official capacity to the county, they would not be reckoned as income. If he receives the fees in lieu of salary, such fees would constitute income." [57] In this connection it is also necessary to remark that, although a corporation may be exempt from taxation, in respect to its own income, as being a religious, charitable, or educational institution, it does not follow that its employés are likewise exempt. Thus, the salary of a professor in a college is not exempt from the income tax, though the revenue of the college may be exempt.[58] The act of Congress of 1913 contains a provision that "nothing in this section shall be held to exclude from the computation of the net income the compensation paid any official by the governments of the District of Columbia, Porto Rico, and the Philippine Islands or any political subdivision thereof," in other words, the salaries of these officers are subject to the income tax.[59]

[56] Plumer v. Commonwealth, 3 Gratt. (Va.) 645.

[57] Wisconsin Income Tax Law, edition issued by State Tax Commission, Madison, Wis., November 1911, pp. 9, 10.

[58] Union County v. James, 21 Pa. St. 525.

[59] See, supra, § 69.

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§ 261. Bankrupt and Insolvent Persons and Com

It may seem an anomaly to speak of a bankrupt or in person being subject to the income tax, but it was ev in the contemplation of Congress, in enacting the law o that such cases might arise, as witness the provision t penalty for non-payment shall not be exacted "from tates of insane, deceased, or insolvent persons." It is eral rule of law that a bankrupt's estate is not withdraw taxation by the proceedings in bankruptcy, but remain ject to taxation in the hands of his trustee.[60] And it wa under the corporation excise tax law of 1909 that, w corporation subject to the tax had gone into bankrupt return of net income was to be made by the trustee in ruptcy.[61] So, where an assignee for the benefit of cr carries on the business of the assignor, and makes a p is subject to the income tax. For it is not necessary business should be carried on for the purpose of ma profit for the owner; it is none the less carried on beca object is to earn a larger dividend for creditors.[62] Th principle would apply to a corporation in the hands o ceiver. It is true that a contrary doctrine prevailed un corporation tax law of 1909, but that was only beca tax was not laid on the income of the corporation, but privilege of doing business in a corporate capacity. H was held that receivers of an insolvent corporation, d pointed by a court of equity, which corporation was no business when the act was passed, and had done no b since, were not within the act, and not required to m turns or pay taxes on the income realized by them while as officers of the court and under its direction.[63] But of Congress now in force imposes, not an excise tax porate business, but a tax on all incomes. And it is so

[60] In re Crowell, 199 Fed. 659.

[61] Treasury Decisions, No. 1742, par. 7.

[62] Armitage v. Moore [1900] 2 Q. B. 363, 4 Tax Cas. 199.

[63] Pennsylvania Steel Co. v. New York City Ry. Co., 198 F 117 C. C. A. 556; United States v. Whitridge, 321 U. S. 144, Ct. 24, 58 L. Ed. 159.

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significant, in this connection, that it specially mentions "receivers" as among those persons administering the affairs of others who are required to make returns for them and withhold and deduct the income tax.

§ 262. Estates of Decedents and Dissolved Corporations

The death of a taxpayer does not exempt his income from taxation for the current year, but his estate, in the hands of the executor or administrator, is liable for the tax on so much of the income of the year as accrued prior to the day of his death,[64] the income for the remainder of the year being of course taxable to the distributees of the estate. The same principle applies upon the dissolution of a corporation. But it was held that a corporation which had continued in business through a calendar year could not evade liability for the tax imposed by the act of Congress of 1909, by dissolving before the time when it was required to make a return and have the tax assessed, but that the officers of the corporation still had the authority, and it was their duty, to make and render the return.[65]

§ 263. Partnerships

It has never been the policy of the United States income tax laws to lay the tax on partnerships, as distinct from the individuals composing them. And in the statute now in force, partnerships are carefully distinguished from corporations, as in the section relating to the taxation of corporations, where the tax is made payable by "every corporation, joint stock company or association, and every insurance company, organized in the United States, no matter how created or organized, but not including partnerships." [66] Under provisions of this kind the individual taxpayer is chargeable with the

[64] Mandell v. Pierce, 3 Cliff. 134, Fed. Cas. No. 9,008. And see Treasury Decision No. 2090, December 14, 1914.

[65] United States v. General Inspection & Loading Co., 192 Fed. 223.

[66] Supra, §§ 15, 32. But while partnerships as such are not subject to the income tax, they may be required to file certificates of ownership of bonds, etc., in order to prevent the withholding of the tax at the source. Supra, § 145.

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tax on so much of his income as is derived from the
of a firm in which he may be a member (after allowi
statutory deductions and exemptions), but the firm, a
is neither required to make a return nor pay a tax. Th
expressly provided for in the act of 1864, and though c
in the present statute, the rule must be read into it by
sary implication.

The laws of the states have generally pursued a co
policy. That of South Carolina, for instance, provide
"the words 'citizen' and 'person,' as used in this article
be deemed to include all natural persons, all copartne
and all members of any incorporated association, and
clude, except as hereinafter included, all corporation
chartered by the laws of the United States or of this
other state."[67] Under this statute, it appears, bo
individual and the firm of which he is a member must
return and pay the tax. But if the partnership pays t
on its income, it would be inequitable, and double ta
to exact a tax from the individual upon his share of the
profits, and such an exception should be held to be nece
implied. This point is more fully covered by the pro
of the Wisconsin income tax law, which declares th
term "person," as used in the act, shall include "a
dividual, firm, copartnership," etc., but also provides th
individual taxpayer may deduct from his income as re
for taxation "dividends or income received from stoc
interest in any firm, copartnership, corporation," etc.[68]

The Treasury regulations relative to partnerships
follows: "Individual members of a partnership are lia
income tax upon their respective interests in the net ea
of the partnership, and are required to include said ne
ings in their personal returns. Partnerships are not s
as partnerships, to the income tax and are required to
statements of their income and earnings as partnership

[67] Civ. Code S. Car. 1902, § 327.

[68] Wisconsin Income Tax Law 1911, § 1087m, part 2, par.
§ 1087m, part 4, subd. c.

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when requested to do so by the Commissioner of Internal Revenue or the collector of internal revenue for the district in which said partnership has its principal place of business, and when such a statement is required, as aforesaid, the said statement shall give a complete and correct report of the gross income of the said partnership and also a complete account of the actual legitimate annual expenses of conducting the business of said partnership (not including living and personal expenses of the partners) and the net profits and the name and address of each of the members of said partnership and their respective interests in the net profits thus reported.

"The net annual income of a partnership, when apportioned and paid to the members thereof, shall be returned by each individual partner receiving same, in his annual return of net income, and the tax shall be paid thereon by said individual partner, as required by law.

"When the annual income of a partnership is not distributed and paid to the members thereof, the respective interest of each member in said profits shall be ascertained, and the individuals entitled thereto shall include the said amount in their annual return as part of their gross income, the same as if said profits had been distributed and paid to them.

"Undivided annual net income of partnerships thus returned by the individual members thereof, upon which the tax shall have been paid, shall not, when said profits are actually distributed and paid to the partners, be again included in their annual return as a part of their gross income.

"Foreign partnerships or firms, all the members of which are both citizens or subjects and residents of a foreign country, which are the owners of bonds and mortgages or deeds of trust or other similar obligations, including equipment trust agreements, receivers' certificates, and stocks, of corporations, joint-stock companies or associations, and insurance companies, organized or doing business in the United States, may file with the debtor or withholding agent, with their coupons or orders for registered interest, or orders for other income derived from property or investments in the United States, certificate

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and notice of ownership, setting forth the facts as to residence and alienship, and the debtor or withholding shall not withhold any part of their said income.

"Where a foreign partnership or firm is composed o non-resident foreigners and citizens of the United Stat foreigners resident in the United States or its posse the certificate of ownership shall show this fact, and the and legal address of each member of said partnership, a citizen of the United States, or who is a foreigner re in the United States or its possessions, shall be given said certificate, and no part of said income shall be wi by the paying agent." [69]

§ 264. Limited Partnerships

Under the laws of some of the states (for example, Pe vania) limited partnership associations may be org which possess all the essential privileges and powers porations, including the right to transact business u name indicating rather a corporate existence than an a tion of partners, as, by the use of the word "Compa the name, provided that the name shall also include the "Limited," the right to sue and be sued in that nam right to fix the limit of its own existence, within bounds, and to have a capital stock divided into shares members of such an association are not individually for its debts, and the shares or interests in it are tra able by the owner, provided that the transferee must be elected to membership by the remaining membe bought out. Under the corporation excise tax law o which required payment of the tax from "every corpo joint stock company or association," the opinion was by the Attorney General, and followed by the officers treasury department, that such a limited partnershi within the meaning of the act, and was liable to the organized for profit and having a capital stock repre

[69] Supra, §§ 117, 145.

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shares, although no certificates of stock were issued.[70] eems clear that such an association would also be included in the scope of the income tax law of 1913, the language ne law being the same, and the same reasons existing as nerly for so holding.[71]

55. Corporations

orporations are subject to the income tax under the act of gress of 1913, which lays the tax, subject to certain nerated exceptions, upon "every corporation, joint stock pany or association, and every insurance company, organ- in the United States, no matter how created or organiz- and also upon similar companies "organized, authorized, xisting under the laws of any foreign country," in so far ne latter transact business or have capital invested in the ed States.[72] The income tax law of Hawaii taxes, subject pecified exceptions, "all corporations doing business for it in the territory, no matter where created and organ-." The law of Wisconsin taxes "persons," but declares the term "person" shall include "every corporation, joint k company or association organized for profit, and hav- a capital stock represented by shares, unless otherwise ressly stated." These terms were copied from the provi- s of the corporation excise tax law of 1909. And under statute it was ruled that mutual savings banks, such as be organized under the laws of some of the states, were subject to the tax. Such banks receive deposits, invest money deposited, and divide the profits among the de- tors. But they have no capital stock, and the depositors not stockholders. And though they are in a certain sense

28 Opin. Atty. Gen. p. 189; Treasury Decisions, No. 1742, par. And see Liverpool Ins. Co. v. Massachusetts, 10 Wall. 556, 19 d. 1029; Moorhead v. Seymour, 77 N. Y. Supp. 1050. Compare pman v. Barney, 129 U. S. 677, 9 Sup. Ct. 426, 32 L. Ed. 800.

See, supra, § 185, art. 86.

Supra, § 32. A corporation engaged solely in mining opera- upon its own premises comes within the terms of the statute is subject to the tax. Stratton's Independence v. Howbert, 231 . 399, 34 Sup. Ct. 136, 58 L. Ed. 285.

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organized for profit, yet their organization and the transaction of their business are not for the profit of those who constitute the managing body, except in so far as they may also be depositors.[73] And such banks are expressly excepted from taxability under the act of Congress of 1913.[74]

The rule that a corporation is an artificial entity distinct from its stockholders is a fiction of the law, which is recognized by the courts for some purposes and disregarded for others; and hence, where a railroad corporation leased its property and franchises for the whole term of its charter, the fact that the lessee paid the rent, not to the lessor entity, but directly to its stockholders and bondholders, was held not to prevent the rent so paid from being subject to taxation under the corporation excise tax law of 1909, if that act was otherwise applicable.[75]

A question as to the course to be pursued by a corporation so recently organized that it has not yet been in business for a full year when the time arrives for making the annual return has been thus resolved by the Treasury department: "A corporation organized during the year should render a sworn return on the prescribed form, covering that portion of the year (calendar or fiscal) during which it was engaged in business or had an income accruing to it."[76]

§ 266. Foreign Corporations

Foreign corporations engaged in business within the United States are subject to the normal income tax on one per cent per annum upon the amount of net income accruing to them from business transacted and capital invested in the United States.[77] They are also required to make proper income tax returns, at the place where their principal business within the

[73] 28 Opin. Atty. Gen. p. 189, citing Huntington v. Savings Bank, 96 U. S. 388, 24 L. Ed. 777; Hannon v. Williams, 34 N. J. Eq. 255; Savings Bank v. Town of New London, 20 Conn. 111.

[74] Supra, § 33.

[75] Anderson v. Morris & E. R. Co., 216 Fed. 83. And see, supra, § 185, art. 80.

[76] Supra, § 185, art. 84.

[77] Supra, § 32.

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United States is located.[78] But they are not subject to having any part of their income withheld by a debtor or withholding agent, that is, they are exempt from the process of collection at the source.[79] Within the meaning of the term "foreign corporations," as used in the act of Congress and as defined by the Treasury department, are included both municipal and private corporations organized under the laws of any country foreign to the United States.[80] It cannot be doubted that the United States government has lawful power to impose the income tax on all such foreign organizations in so far as they avail themselves of the benefit and protection of our laws to derive a revenue from capital invested or business operations carried on within our borders.[81] The method of calculating the taxable income of such foreign companies has been thus prescribed: "For the purpose of the tax, the net income of such foreign organizations shall be ascertained by deducting from the gross income arising, received, or accruing from business done and capital invested in this country the deductions enumerated in the act, which deductions shall be limited to expenditures or charges actually incurred in the maintenance and operation of the business transacted and capital invested in the United States, or, as to certain charges, such proportion of the aggregate charges as the gross income from business done and capital invested in the United States bears to the aggregate income within and without the United States. In other words, the deductions from the gross income of a foreign corporation doing business in this country should, as nearly as possible, represent the actual expenses and authorized charges incident to the business done and capital invested in this country, and must not comprehend, either directly or indirectly, any expenditures or charges incurred in the transaction of business or the investment of capital without the United States." [82] As to basing part of the calculation on the ratio between the aggregate amount of the company's business

[78] Supra, § 44. [79] Supra, § 125. [80] Supra, § 166.
[81] See People v. Equitable Trust Co., 96 N. Y. 387.
[82] Supra, § 185, art. 157. And see, supra, § 41.

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and that amount of its business which was done within the United States, it is a fair rule, and one which, in somewhat varying forms, has often been sustained by the courts. Thus, for example, it has been decided that no unconstitutional interference with interstate commerce is effected by a statute of a state (Michigan) levying a specific tax upon the property and business of any railroad corporation operated within the state, and providing that "when the railroad lies partly within and partly without this state, prima facie the gross income of said company from such road for the purpose of taxation shall be on the actual earnings of the road in Michigan, computed by adding to the income derived from the business transacted by said company entirely within this state such proportion of the income of said company arising from the interstate business as the length of the road over which said interstate business is carried in this state bears to the entire length of the road over which said interstate business is carried." [83]

§ 267. Public Service Corporations

The various kinds of corporations now commonly classed under this designation are not exempt from the income tax unless specially released from it by statute. The attempt was made to withdraw them from the operation of the corporation tax law of 1909, on the ground that they exercised a delegated authority from the states which created them and bore such a relation to the general public as to make their functions quasi-governmental in character. But the Supreme Court of the United States ruled otherwise, saying: "In the case of South Carolina v. United States,[84] this court held that when a state, acting within its lawful authority, undertook to carry on the liquor business, it did not withdraw the agencies

[83] Wisconsin & Michigan Ry. Co. v. Powers, 191 U. S. 379, 24 Sup. Ct. 107, 48 L. Ed. 229. And see United States Express Co. v. Minnesota, 223 U. S. 335, 32 Sup. Ct. 211, 56 L. Ed. 459; Maine v. Grand Trunk R. Co., 142 U. S. 217, 12 Sup. Ct. 121, 35 L. Ed. 994; Western Union Telegraph Co. v. Taggart, 163 U. S. 1, 16 Sup. Ct. 1054, 41 L. Ed. 49.

[84] 199 U. S. 437, 26 Sup. Ct. 110, 50 L. Ed. 261, 4 Am. & Eng. Ann. Cas. 737.

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of the state, carrying on the traffic, from the operation of the internal revenue laws of the United States. If a state may not thus withdraw from the operation of a federal taxing law a subject-matter of such taxation, it is difficult to see how the incorporation of companies whose service, though of a public nature, is nevertheless with a view to private profit, can have the effect of denying the federal right to reach such properties and activities for the purposes of revenue. It is no part of the essential governmental functions of a state to provide means of transportation, supply artificial light, water, and the like. These objects are often accomplished through the medium of private corporations, and though the public may derive a benefit from such operations, the companies carrying on such enterprises are nevertheless private companies, whose business is prosecuted for private emolument and advantage. For the purpose of taxation, they stand upon the same footing as other private corporations upon which special franchises have been conferred. The true distinction is between the attempted taxation of those operations of the states essential to the execution of their governmental functions, and which the state can only do itself, and those activities which are of a private character. The former the United States may not interfere with by taxing the agencies of the state in carrying out its purposes; the latter, although regulated by the state, and exercising delegated authority, such as the right of eminent domain, are not removed from the field of legitimate federal taxation." [85] But probably in view of this decision, the act of 1913 expressly disclaims any intention on the part of Congress to subject to the operation of the income tax any part of the revenues of a state or of a municipal corporation, whether derived from "the exercise of any essential governmental function" or from "any public utility." [86]

[85] Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389.

[86] Supra, § 34, providing: That there shall not be taxed under this section any income derived from any public utility or from the exercise of any essential governmental function accruing to any State, Territory, or the District of Columbia, or any political sub-

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The Wisconsin income tax law explicitly exempts "incomes derived from property and privileges by persons now required by law to pay taxes or license fees directly into the treasury of the state in lieu of taxes, and such persons shall continue to pay taxes and license fees as heretofore." And the state tax commission rules that this clause exempts from the payment of the income tax railroad companies and street railway companies, including, in the latter case, connected electric light, heat, and power companies; also palace and sleeping car companies, freight line and equipment companies, express companies, telegraph and telephone companies, boom and improvement companies, plank road companies, fire, life, and accident insurance companies and surety companies, and title guaranty companies, but not water, light, heat, and power companies and other public utilities which are taxable locally.[87]

§ 268. Unincorporated Associations

The federal income tax law, as well as the statutes of some of the states, couple with the word "corporations," in describing those subject to the tax, the term "joint stock companies or associations." This term describes an anomalous kind of body, a hybrid in the law, occupying a position midway be-

division of a State, Territory, or the District of Columbia, nor any income accruing to the government of the Philippine Islands or Porto Rico, or of any political subdivision of the Philippine Islands or Porto Rico: Provided, That whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, has, prior to the passage of this Act, entered in good faith into a contract with any person or corporation, the object and purpose of which is to acquire, construct, operate or maintain a public utility, no tax shall be levied under the provisions of this Act upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory or the District of Columbia, or a political subdivision of a State or Territory; but this provision is not intended to confer upon such person or corporation any financial gain or exemption or to relieve such person or corporation from the payment of a tax as provided for in this section upon the part or portion of the said income to which such person or corporation shall be entitled under such contract.

[87] Wisconsin Income Tax Law 1911, edition published by State Tax Commission, Madison, Wis., p. 21.

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tween a corporation and a partnership. A joint stock company or association is a body of persons united and acting together without a charter (or without being incorporated under a general law), but upon the methods and forms used by incorporated bodies, for the prosecution of some common enterprise. Such an association possesses a common capital contributed by the members composing it, such capital being commonly divided into shares, of which each member possesses one or more, and which are transferable by the owner. It usually transacts business under a company name, by which, under the laws of some states, it may sue and be sued, and its affairs are generally administered by a board of managers or directors. But it differs from a corporation proper, both in the fact that it is not a legal entity separate and distinct from the members composing it, and also in the fact that all the members are personally liable for its debts.[88] A company or association of this kind may be formed and exist at common law. But the statutory law of some of the states (but not all) also authorizes the organization of such associations, or confers upon them more or less of the characteristics and privileges of a corporation. In some cases these statutes go so far in this direction that the only practical difference between a corporation, properly so called, and a joint stock company organized under the state law is that, in the latter case, the stockholders remain personally liable for the debts. The federal corporation tax law of 1909 applied to "every corporation, joint stock company or association organized for profit and having a capital stock represented by shares, organized under the laws of the United States or of any state or territory." And the federal supreme court held that real estate trusts created by deed, for the

[88] See Allen v. Long, 80 Tex. 261, 16 S. W. 43, 26 Am. St. Rep. 735; Adams Express Co. v. Schofield, 111 Ky. 832, 64 S. W. 903; Kossakowski v. People, 177 Ill. 563, 53 N. E. 115; Lyon v. Denison, 80 Mich. 371, 45 N. W. 358, 8 L. R. A. 358; Sandford v. Board of Sup'rs of New York, 15 How. Prac. (N. Y.) 172; In re Jones, 28 Misc. Rep. (N. Y.) 356, 59 N. Y. Supp. 983; Lane v. Albertson, 78 App. Div. 607, 79 N. Y. Supp. 947.

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purpose of purchasing, improving, holding, or selling lands and buildings for the benefit of the shareholders, which are not organized under any statute of the state where they are formed, and do not derive any benefit or privilege from any such statute, and which are not intended to have perpetual duration, but are limited by their terms to a fixed period, were not subject to the federal tax.[89] But it is important to notice that the act of 1913 is made applicable to "every corporation, joint stock company or association organized in the United States, no matter how created or organized." In view of the decision above referred to, this change of language must be considered highly significant, and manifests an intention on the part of Congress to apply the tax to all kinds of joint stock companies or associations, whether organized in accordance with the law of any given state or merely with such powers and characteristics as they may possess at common law. And the Treasury department has ruled that: "It is immaterial how such corporations are created or organized. The terms 'joint-stock companies' or 'associations' shall include associates, real estate trusts, or by whatever name known, which carry on or do business in an organized capacity, whether organized under and pursuant to State laws, trust agreements, declarations of trusts, or otherwise, the net income of which, if any, is distributed, or distributable, among the members or share owners on the basis of the capital stock which each holds, or, where there is no capital stock, on the basis of the proportionate share of capital which each has invested in the business or property of the organization, all of which joint-stock companies or associations shall, in their organized capacity, be subject to the tax imposed by this act." [90]

§ 269. Incorporated Clubs

An incorporated club, organized for social purposes or for sport, and not eleemosynary or educational in character nor in the nature of a benefit or insurance society, is apparently

[89] Eliot v. Freeman, 220 U. S. 178, 31 Sup. Ct. 360, 55 L. Ed. 424.
[90] Supra, § 185, art. 79.

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subject to the payment of the income tax imposed by the act of Congress of 1913, if it derives a revenue from membership dues, rent of rooms, profits of restaurant or bar, etc., and has any net income after paying expenses and deducting the other items allowed by the statute. For it must be observed that the act in question does not require that a corporation, to be taxable, should be "organized for profit" or have "a capital stock represented by shares," as was the case in earlier statutes, but only (with reference to domestic corporations) that it should be "organized within the United States." And the provision exempting certain kinds of corporations specifically enumerates and describes those which Congress intended to release from the tax, from which it follows, by a well-known rule of statutory construction, that no other exceptions can be implied. The ruling of the Treasury Department on this subject is as follows: "All clubs are not exempt from the provisions of the income-tax law, even though not operated for profit. A club desiring to be registered as an exempt organization should file with the Commissioner of Internal Revenue a copy of its charter, or an affidavit of its principal officer, setting forth the nature of its organization, the purpose for which organized, the source, if any, from which it derives income, and the disposition made of such income as is received by it, for consideration and determination as to whether or not it comes within the class of organizations held to be exempt under the provisions of the income tax law. (Treasury Decision No. 2090, December 14, 1914.) A similar rule prevails in England. Thus, where a golf club (an ordinary bona fide members' club) allowed members to introduce visitors and the visitors to play golf on its links, but such visitors paid "green fees" for the privilege, and the fees so collected amounted to a considerable sum every year, it was held that the club was carrying on an enterprise which was beyond the scope of the ordinary functions of a club, and as to which it was possible to keep separate accounts, so as to ascertain what profits it was making, if any, and therefore such profits were liable to assessment for the income tax.[91] And in another case, where a

[91] Carlisle & S. Golf Club v. Smith [1912] 2 K. B. 177.

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society formed for the improvement, spiritual, mental, social, and physical, of young men, carried on a restaurant, as well as educational classes, a gymnasium, and a publication department, the restaurant being conducted on the usual commercial principles and being open to the public, it was held that the association was liable to pay the income tax on the profits made by the restaurant.[92]

But such clubs are not subject to taxation under the statute in Wisconsin, which describes, as subject to the tax, corporations "organized for profit and having a capital stock represented by shares," and which also specifically exempts any "association of individuals not organized or conducted for pecuniary profits." So also in Hawaii, where corporations are taxed only when "doing business for profit in the territory."

§ 270. Inactive Corporations and Holding Companies

The federal corporation tax law of 1909 imposed a tax on all corporations organized for profit and having a capital stock represented by shares, and the tax was levied "with respect to the carrying on or doing business" by such corporations. It was held that a corporation, to be subject to the tax, must not only be organized for the purpose of doing business, but must also be actually engaged in that business. Hence a corporation organized solely for the purpose of taking over and holding the real estate and leasehold interests owned by a mercantile company, leasing such property to the company, collecting the rents and distributing them among its stockholders, and which had actually executed a long term lease of such property to the mercantile company and surrendered the management and control thereof, was held not subject to the tax, although it was organized under a provision of law relative to the organization of business and manufacturing corporations for profit, since, even though a corporation be deemed to have been organized for business purposes, it was not subject to the tax if it abstained from doing

[92] Grove v. Young Men's Christian Ass'n, 88 Law T. 696, 4 Tax Cas. 613.

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ess.[93] On the same principle, a corporation organized
ne purpose of owning and renting an office building, but
n had wholly parted with the management and control
ne property, and by the terms of a reorganization had
alified itself from any activity in respect to it, its sole
ority being to hold the title subject to a lease for 130
, and to receive and distribute the rentals which might
ie under the terms of the lease, or the proceeds of any
of the land, if it should be sold, was held not subject to
ax, because not doing business within the meaning of
aw.[94] So also, a railroad company which had leased its
e road and all its rights and privileges for a term of
s at an annual rental, the lessees operating the road and
eing to return it at the expiration of the lease, was held
to be "engaged in business" with respect to the road,
in the meaning of the statute, although it retained a
chise of corporate existence, and was ready to resume
ession at the expiration of the lease, and to exercise its
chise of eminent domain when required by the lessee.
it was held in the same case that the receipt by a lessor
oad of the income from its road and of interest and divi-
s from invested funds, and the payment of expenses
ental to the receipt of such moneys and their distribution
ng stockholders, did not constitute a business taxable
r the federal statute.[95] And it was ruled by the treasury
rtment that so-called "holding companies," which do not
act any business of their own, but merely receive and

Emery, Bird, Thayer Realty Co. v. United States, 198 Fed. 242.
see Wilkes-Barre & W. V. Traction Co. v. Davis, 214 Fed. 511.
Zonne v. Minneapolis Syndicate, 220 U. S. 187, 31 Sup. Ct. 361,
Ed. 428. And see Abrast Realty Co. v. Maxwell, 206 Fed. 333.
McCoach v. Minehill & S. H. R. Co., 228 U. S. 295, 33 Sup. Ct.
57 L. Ed. 842, affirming Minehill & S. H. R. Co. v. McCoach, 192
670. And see Anderson v. Morris & E. R. Co., 216 Fed. 83.
a railroad company which has leased its property for a term of
, but continues in possession of its corporate powers and exer-
the power of eminent domain conferred by its charter by mak-
pplication for the condemnation of land and filing locations
for, and which issues bonds to pay for extensions and improve-
s, is engaged in business and subject to the tax imposed by the
f 1909. New York Cent. & H. R. R. Co. v. Gill (U. S. Dist.

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disburse the dividends on the stock which they own in the constituent companies, were not subject to the tax.[96]

But in this particular, the act of Congress of 1913 differs widely from that of 1909. It does not lay the tax on the transaction of corporate business or on the privilege of doing business in a corporate capacity, but on the income of the corporation. As to domestic corporations, it does not require that they should be organized for profit or for business, nor that they should be engaged in business, but only that they should have a net income. And as to that income, the tax is not laid on income derived from business, but on "income received from all sources." These changes are too significant to have been made without intention. And since the decisions of the Supreme Court above referred to must have been within the cognizance of Congress in enacting the statute, there is a very strong presumption that the law as now framed was meant to include holding companies and inactive corporations, provided only that they are in receipt of an income over and above expenses and the proper deductions. And the official ruling on this point is that "parent, holding, or other corporations must include in their gross income, and cannot deduct therefrom, any dividends or share of earnings which they may receive from a subsidiary, related, or any other corporation. The fact that the parent or holding company owns all the stock of the subsidiary company is immaterial, and will not warrant such parent company in omitting or deducting dividends from gross income." Treasury Decision No. 2090, December 14, 1914.

§ 271. Lessor Corporations

The Treasury department has ruled that "a railroad company operating leased or purchased lines shall include all receipts derived therefrom [in its own annual return] and if bonded indebtedness of such lines has been assumed, such operating company may deduct the interest paid thereon to an amount not exceeding one-half of the sum of its interest-

Ct. D. Mass., 1914) T. D. No. 1999; Dayton & W. Traction Co. v. Gilligan (U. S. Dist. Ct. S. D. Ohio, W. D., 1914) T. D. No. 2000.

[96] Treasury Decisions, No. 1742, par. 18.

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ring indebtedness and its paid-up capital stock outstanding
he close of the year." But "corporations operating leased
s should not include the stock of the lessor corporations in
ir own statement of capital stock outstanding at the close
the year. The indebtedness of such lessor corporations
uld not be included in the statement of the indebtedness of
lessee, unless the lessee has assumed the same. Each
ed or subsidiary company will make its own separate
rn, accounting therein for all income which it may have
eived by way of dividends, rentals, interest, or from any
er source." [97]

72. Corporations Fraudulently Formed to Evade Tax

n view of the fact that corporations, under the income tax
of 1913, are subject only to the so-called "normal" tax
one per cent, however great may be their earnings or profits,
le the individual taxpayer whose income exceeds $20,000
subjected to an increasingly heavy "additional" tax, the
ice might easily have occurred to wealthy individuals and
ates to reduce the burden of their taxes by the simple
edient of incorporating themselves. But this was met
a clause in the act (introduced by an amendment in the
ate) providing that the additional tax shall be levied on
paid by individuals on their share of undivided or undis-
uted profits of any corporation or similar organization,
ich was formed or fraudulently availed of for the purpose
avoiding the tax by means of allowing gains and profits
accumulate, instead of being distributed. And the fact that
corporation is "a mere holding company" is made prima
ie evidence of such fraudulent purpose.[98] It will be ob-
ved that only the additional tax is referred to in this pro-
on, for the reason that the normal tax of one per cent
uld be collected directly from the corporation on the basis
its net income. Whether such a device would have been
ctive in the absence of a statutory prohibition may well be
ubted. There are decisions to the effect that individuals
not escape liability before the law, whether for taxes or in

[97] Supra, § 185, arts. 81, 82. [98] Supra, § 4.

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respect to other matters, by forming a corporation wh absolutely control and which is their mere alter ego, while the corporation is nominally an independent ent are its "mind, hands, and pockets," or by pretending profits and earnings on which the government seeks tax belong to a corporation, which is really no more shadow of themselves.[99]

§ 273. Corporations of Philippines and Porto Rico

The corporation tax law of 1909 applied to corp "organized under the laws of the United States or state or territory of the United States" or "organize the laws of any foreign country and engaged in bus any state or territory of the United States." And an was rendered by the Attorney General that, as the Ph Islands are not a state or territory of the United Sta not, on the other hand, a "foreign country," a cor created by the government of the Islands would not be to the corporation tax at all. So also, he ruled, a cor "organized under the laws of a foreign country" wo be subject to the income tax with respect to its busine in the Philippines, because such business is not done the United States or its territories." But a corpora ganized under the laws of one of the states, and doi ness wholly within the Philippines, and operating concessionary contract granted by the Philippine leg would be liable to the tax. "The resulting discri against American, and in favor of foreign, corpora to business carried on in the Philippines and Porto R not serve to alter the construction of the act, although invite to amendment." [100] And the officers of the department ruled that companies organized in Por and not engaged in business in the United States w subject to the tax.[101] But this also has been changed act of Congress of 1913, by the provision that "the pr

[99] See In re Kornit Mfg. Co., 192 Fed. 392; Credit Mo America v. Commonwealth, 67 Pa. St. 233.

[100] 29 Opin. Atty. Gen. p. 164.

[101] Treasury Decisions, No. 1742, par. 22.

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is section shall extend to Porto Rico and the Philippine ds; Provided, that the administration of the law and collection of the taxes imposed in Porto Rico and the ppine Islands shall be by the appropriate internal-reve- officers of those governments, and all revenues collected orto Rico and the Philippine Islands thereunder shall e intact to the general governments thereof, respectively." the Treasury Department rules that corporations whose ess is done wholly in Porto Rico and the Philippines, even gh incorporated in the United States, are resident corpo- ns of those possessions, and will make returns and pay ncome tax to the collectors of internal revenue having diction there. (Treasury Decision No. 2090, December 914.)

4. Insurance Companies

e act of Congress of 1913 expressly applies to "every ance company" organized in the United States, or organ- under the laws of a foreign country and doing business e United States. But as to mutual insurance companies, al rules are provided for ascertaining their taxable net ne. In the case of mutual life insurance companies, it is ted that they "shall not include as income in any year such on of any actual premium received from any individual y holder as shall have been paid back or credited to such idual policy holder, or treated as an abatement of pre- n of such individual policy holder, within such year." provision was doubtless inserted in the act in view of the ions which had been made on this point under the cor- tion excise tax law of 1909. That statute allowed insur- companies to deduct from their returns of income for tion "sums other than dividends paid within the year on y and annuity contracts." And it was held that the word idends" was here used in its popular sense as represent- profits, and that so-called dividends of a mutual com- doing business on the level premium plan, consisting ly of the portion of the loading of the premium charged

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in excess of the cost of insurance and returned annually to the policy holders after the first year, so far as the same were used to reduce subsequent premiums, were not income received and not subject to the tax. At the same time it was held that this rule does not apply to a dividend declared in the case of a full-paid participating policy, wherein the policy holder has no further premium payments to make, which dividend constitutes a participation in the profits and income of the invested funds of the company.[102]

In the case of mutual fire insurance companies "requiring their members to make premium deposits to provide for losses and expenses," it is provided that they "shall not return as income any portion of the premium deposits returned to their policy holders, but shall return as taxable income all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves." And in the case of mutual marine insurance companies, they "shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policy holders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof."

[102] Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199, affirmed, 201 Fed. 918. And see New York Life Ins. Co. v. Styles, L. R. 14 App. Cas. 381, 59 Law J. Q. B. 291. But compare Last v. London Assur. Corp., L. R. 10 App. Cas. 438. In the latter case it appeared that a life insurance company issued "participating policies" at an increased premium, according to the terms of which, at the end of each five year period, the gross profits of such policies were dealt with as follows: Two-thirds were returned by way of bonus of abatement of premiums to the holders of such policies then in force, and the remaining one-third went to the company, which bore the whole expense of the business, the portion remaining after payment of expenses constituting the only profit available for dividends among the shareholders. It was held that the two-thirds returned to policy holders were "annual profits or gains" and assessable for the income tax.

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CHAPTER X

EXEMPTIONS AND EXCEPTIONS

Revenues of United States.
. **States and** Municipal Corporations.
. **Political** Subdivisions of State.
. **Public Utilities** Owned by States or Municipalities.
. **Corporations** Exempted by Act of Congress.
. **Agricultural** and Horticultural Organizations.
. **Labor Organizations.**
. **Fraternal** Orders and Benefit Societies.
. **Religious,** Charitable, and Benevolent Associations.
. **Educational** and Scientific Institutions.
. **Building and** Loan Associations.
. **Savings Institutions.**
. **Civic Organizations** and Chambers of Commerce.
. **Income from** Property Otherwise Taxed.
. **Proceeds** of Life Insurance Policies.
. **Exemption** of Fixed Amount of Income.
. **Same; Treasury** Regulations as to Husband and Wife.
. **Taxable Income** and Exemptions for 1913.

5. Revenues of United States

he legislature of Wisconsin, in enacting the income tax of that state, in 1911, was at pains to exempt from taxa- under the statute "income received by the United es." But a similar exception would be necessarily im- l in any tax law of any state. In the federal income tax of 1913 the precise point is not covered, but it is a fixed ciple of statutory construction that the sovereign or gov- nent is never included within the scope of a statute im- ng taxes unless expressly named. Besides, the govern- t of the United States could not properly be described as erson," a "citizen of the United States," or a "corpora- joint stock company or association." This point might f practical importance in its application to the case of a ral officer receiving fees for services or a postmaster ng in money from the sale of stamps. If the receipts of office (or fees) constitute the officer's compensation, they a part of his private income, and may be taxable; but if

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he is paid a salary and required to turn in the fees
ceipts of his office to the treasury, such moneys are
revenues and not taxable.[1]

§ 276. States and Municipal Corporations

It is not within the constitutional authority of Co
to lay the burden of federal taxation upon the rever
a state or a municipal corporation, at least in so far
same are raised by the ordinary methods of state an
taxation, or accrue from property owned or money i
by a state. Thus, it has been held that the word "co
tion," in an internal revenue law, does not include a
so that a railroad wholly owned by a state, mana
state agents, and the profits of which form a part
revenue of the state, is not liable to taxation unde
law.[2] So also, a municipal corporation is, at least in
litical aspects, a portion of the sovereign power of th
or a depository thereof, and therefore is not subject t
tion by Congress upon its municipal revenues.[3] But
emption of a state from taxation extends no further th
functions belonging to a state in its ordinary capaci
exemption of sovereignty being limited by the attrib
sovereignty. Hence if a state unites in one undertak
exercise of the police power with a commercial busi
as in the case of the South Carolina dispensary law,
regulation of the sale of intoxicating liquors was effe
the state itself engaging in the business and monop
the traffic,—the United States cannot be compelled
the operation of the police power by foregoing its r
lay an impost or excise tax on the business part of the
action. And hence, the agents of the state governme
ployed in the operation of the dispensary law were h
ble to pay the internal revenue tax imposed by the

[1] Supra, § 260.

[2] Georgia v. Atkins, 35 Ga. 315, 1 Abb. U. S. 22, Fed. C
5,350.

[3] United States v. Baltimore & O. R. Co., 17 Wall. 322, 21
597.

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gress.[4] And the Supreme Court of the United States also ruled that a municipal corporation engaged in the ness of distilling spirits is subject to internal revenue tion under the laws of the United States, whether its acts at respect are or are not ultra vires.[5] It was probably a view to just such cases as these that Congress, in the me tax law of 1913, has expressly disclaimed the intento apply the statute to the revenues of states or municicorporations.[6]

is undoubtedly within the power of a state to tax the nues of its own municipal corporations if it shall see fit o so. And so far as concerns income taxation, the prin- appears to be that profits derived by a municipality from hing outside the scope of its ordinary and necessary icipal functions, and in the nature of a business enter-, will be subject to the income tax. Thus, in England, unicipal corporation owning and operating its own sys- of waterworks, for distribution to its inhabitants, is held taxable on the income derived therefrom,[7] but it is liable ssessment in respect to surplus revenue derived from lying water beyond the area of compulsory supply and n the sale of water for the purposes of trade or manure.[8] So also, a municipal corporation is subject to tion upon profits derived from the maintenance of a ket or a market hall.[9] And in a case where a quasi-mupal corporation had constructed and was maintaining a er, the funds being raised by a public loan repayable in ual installments, and the money for such repayment was

South Carolina v. United States, 199 U. S. 437, 26 Sup. Ct. 110, Ed. 261, 4 Am. & Eng. Ann. Cas. 737.

Salt Lake City v. Hollister, 118 U. S. 256, 6 Sup. Ct. 1055, 30 L. 176.

Supra, § 34. And see, infra, § 278.

In re Glasgow Corp. Waterworks, 12 Scotch Law Rep. 466, 1 Tax 28.

Glasgow Corp. Water Com'rs v. Miller, 23 Scotch Law Rep. 288, x Cas. 131.

In re Birmingham Corp., 1 Tax Cas. 26; Attorney General v. , 28 Law T. 302, 1 Tax Cas. 55.

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found partly by contributions levied from neighbori
trict councils, whose sewage went through the sew
partly from rates, and this was the only income, it w
nevertheless that the corporation was liable to the
tax.[10] It was ruled by the officers of the treasury
ment that a municipal corporation which owns and c
its own waterworks, or a plant for the production a
tribution of gas or electric light to its citizens, was n
ject to the corporation tax under the act of Cong
1909, although it makes and collects fixed charges
service so rendered and derives a profit therefron
this was on the explicit ground that a municipality i
corporation "organized for profit" or one "having a
stock represented by shares," within the language
statute.[11] Such questions are by no means free from
But they are not of great practical importance at the
time, since the modern income tax laws generally
municipal corporations, either expressly or by the
language which cannot be held to include them.
Wisconsin, the statute exempts "income received
state and all counties, cities, villages, school districts,
er political units of this state." In South Carolina, t
ute is made applicable to "persons" and "citizens
state," but expressly excludes all corporations. In
the phrase employed is more ambiguous; but a mun
could hardly be described as a "corporation doing b
for profit within the territory."

§ 277. Political Subdivisions of State

The federal income tax law of 1913 provides that "
puting net income under this section, there shall be e
the interest upon the obligations of a state or any
subdivision thereof."[12] The last phrase in this sen
not entirely new in the law. As a general rule, a "

[10] Ystradyfodwg & Pontypridd Main Sewerage Board v.
[1907] App. Cas. 264.
[11] Treasury Decisions, No. 1634.
[12] Supra, § 9.

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vision" of a state is a certain defined territory within the together with its inhabitants, organized for the public ntage and not in the interest of any particular individu- r classes, the chief design of which is the exercise of rnmental functions, and to which is committed either gen- or with reference to certain specific purposes the power cal self-government, including the power of taxation, exercised within the territory by the qualified electors he benefit of the people residing within it.[13] Quite early e history of the income tax law, it became necessary for fficers of the Treasury department to interpret this clause e statute with reference to interest on the bonds issued rigation districts and reclamation districts in some of vestern states, and they held that such districts were not cal subdivisions of the states creating them.[14] But the ion was referred to the Attorney General, who gave pinion to the effect that special assessment districts cre- under the laws of the several states for public purposes, as the improvement of streets and public highways, provision for sewerage, gas, and light, and the reclama- drainage, or irrigation of bodies of land within such spe- assessment districts, when such districts are for public are political subdivisions of the state. In deference to opinion, the Treasury department revoked its former g and made a decision that the term "political subdivi- of a state "includes special assessment districts or di- ns of a state created by the proper authority of the acting within its constitutional powers and under its ral laws, for the purpose of carrying out a portion of functions of the state which by long usage and inherent ssities of government have always been regarded as pub- Levee and school districts, when lawfully created under uthority of the state, and which are authorized by the

Bee Smith v. Howell, 60 N. J. Law, 384, 38 Atl. 180; State v. wood Drainage Com'rs, 41 N. J. Law, 154; Allison v. Corker, J. Law, 596, 52 Atl. 362, 60 L. R. A. 564.
T. D. No. 1910, December 4, 1913.

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laws of the state to levy a tax to meet the obligations of such districts, are also held to be political subdivisions of a state." [15]

§ 278. Public Utilities Owned by States or Municipalities

If income accrues to any state or to any political subdivision of a state from the operation of any "public utility," it is expressly excepted from the income tax,[16] and this provision is made broad enough to include the territories, the District of Columbia, the government of the Philippine Islands, and that of Porto Rico. It was probably in the mind of Congress to exempt municipal corporations from the tax when they take upon themselves for the benefit of their citizens such services as are usually performed by various kinds of public service corporations, as, for instance, in the case of a gas plant or waterworks owned and operated by the municipality. If it were not for this provision in the statute, it might be thought that, in such cases, a municipal corporation was engaged in a purely business enterprise, distinct from its governmental functions, and therefore should be subject to the tax. But the statute goes further than this. It also provides that if any state, territory, district, or political subdivision, prior to the passage of the act, shall have contracted in good faith with any person or corporation to acquire, construct, operate or maintain a public utility, the tax shall not be levied on that part of the income from the public utility which accrues to the state, municipality, etc., although the person or corporation contracted with is not relieved from the payment of the tax upon that portion of the income which accrues to him or it under the contract. It is to be noted, however, that this will not apply to any contracts entered into since the passage of the act, that is, after October 3, 1913. Aside from such a provision, it appears that a public enterprise conducted by a municipality and a private corporation jointly or in partnership could not escape taxation on account of the interest of the municipality in it. Thus, a gas company was held taxable under the income tax

[15] T. D. No. 1946, February 10, 1914, supra, § 141.
[16] Supra, § 34.

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of 1862, although its board of trustees or directors was d by the council of the city in which its operations were ed on, under an ordinance to that effect, and though reater part of its capital was raised by means of loans ntied by the city or for which the direct obligations of ity were issued, and though the ordinance creating it ded that the property and works might be taken over e city at any time on certain conditions.[17] The Treasury tment rules that where a municipality purchases a public subject to a mortgage, the mortgage retains its original cter, even though the municipality assumes the mortgage tedness and pays the interest thereon; therefore the indness secured by such mortgage is not an obligation of nunicipality, within the meaning of the income tax law. sury Decision No. 2090, December 14, 1914.)

9. Corporations Exempted by Act of Congress

e corporation excise tax law of 1909 applied to corpons "organized for profit and having a capital stock repted by shares." This raised the question whether coms not "organized for profit" were taxable or exempt the act of 1913, and the argument that they were exreceived a certain plausible support from the fact that ame phrase, "not organized for profit," occurred in that e of the act of 1913 which specially excepts certain kinds mpanies from its operation.[18] But a more careful conion shows that the phrase in question was meant to be cted to those organizations named immediately before ch as chambers of commerce, boards of trade, and civic es or organizations, and was not applicable to corporain general or to the other classes of corporations mend in that part of the statute. As to any particular kind rporation, therefore, its taxable status depends solely whether or not it is within the classes exempted by

City of Philadelphia v. The Collector, 5 Wall. 720, 18 L. Ed.

Supra, § 33. Note that, although a particular corporation may exempt from the income tax, such as a religious society or a e, it does not follow that salaries which it pays to its officers ployés are equally exempt. On the contrary, they are taxable,

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name or description in the act of Congress, not upon the question whether or not it is organized for profit.[19] For these reasons the Treasury department has held that co-operative dairies, mutual telephone companies, local, mutual, or farmers' insurance companies, and other like organizations, are subject to the income tax, although not organized or conducted with a view to making a profit.[20]

But all kinds of corporations claiming to be exempt from the tax, as coming within the excepting clauses of the act, may be called upon by the local collector or by the Commissioner of Internal Revenue to establish their right to the exemption claimed, by affidavit or otherwise. And in this case, the regulations provide, "it will not be sufficient merely to declare that they are exempt, but they must show the character and purpose of the organization, the manner of distributing the net income, if any, or that none of the net income inures to the benefit of any private stockholder or individual. In the absence of such a showing, such organizations, may, at any time, be required to make returns of annual net income, or disclose their books of account to a revenue officer for examination, in order that the status of the company may be determined." [21] And it is also provided by regulation that "any corporation, concerning whose status under the law there is any doubt, or which does not clearly come within one or another of the classes of those specifically enumerated as exempt, should file a return (in blank if desired) and attach thereto a statement setting out fully the nature and purpose of the organization, the source of its income, and what disposition is made of it, and particularly of any surplus." [22]

§ 280. Agricultural and Horticultural Organizations

Following the language of the act of 1909, the income tax law of 1913 specifically exempts from its operation "agricultural or horticultural organizations." The phrase has not been judicially construed by the courts, but several rul-

although the corporation is not required to deduct and withhold for the tax. See Treasury Decision No. 2090, December 14, 1914.

[19] Supra, § 185, art. 80.
[20] Supra, §§ 134, 160.
[21] Supra, § 185, art. 88.
[22] Supra, § 185, art. 91.

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of the treasury department have indicated its meaning, ewed by the officers charged with the administration of aw. Agricultural organizations, it was ruled, do not within the statutory exemption, unless their chief ob- is the promotion or advancement of agricultural in- ts, and no part of the income inures to the benefit of stockholders. "A corporation engaged in agricultural, cultural, or similar pursuits, evidently for profit, is not, n the meaning of the law, such an agricultural or hor- ural association as is specifically enumerated as exempt the requirements of the act cited. Corporations, to within the exempted class, must be such associations y means of exhibits, contests, awards, and premiums, are ned to encourage better production of agricultural or cultural products, not themselves engaged in agricul- or horticultural pursuits, such as county fairs and like nizations of a quasi public character, whose income, ed from gate receipts, entry fees, donations, etc., is used eet the necessary expenses of the association, the pay- of premiums, making improvements, etc., no part of n income inures to the benefit of any private stockhold- individual. A corporation engaged in the business of ng stock or poultry, or growing grain, fruits, or other ucts of this character, is an agricultural or horticultural ty only in the sense that it indicates the kind of busi- in which it is engaged. If the business of the corpora- so engaged is so carried on that its income inures or inure to the benefit of its stockholders, it will be held to corporation organized for profit, and, regardless of the that it may be engaged in agricultural or horticultural its, it must make returns of annual net income for each dar year, and pay any special excise tax to which such ns may show it to be liable." [28] Thus, fruit growers' iations whose purpose is to promote the mutual benefit eir members in growing, harvesting, and marketing products, and which are not organized for profit and no capital stock represented by shares, and whose in-

[28] Treasury Decisions, No. 1737.

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come is derived wholly from membership fees, dues, and assessments to meet necessary expenses, are not liable to the tax.[24] But on the other hand, corporations owning sugar or other plantations and disposing of the products thereof, are not entitled to the exemption simply in view of the nature of their business.[25] And corporations engaged in growing fruits, vegetables, and like products for profit, and which distribute such profits among their members on the basis of the capital invested, are liable to the statute, and must make returns and pay the taxes if any are found to be due.[26]

§ 281. Labor Organizations

A specific exemption is made in the federal income tax law in favor of "labor organizations." This phrase is not elsewhere defined in the act, but the intention of Congress in this behalf is plainly indicated by the events of political history and the trend of legislation in recent years. The term "labor," as here used, evidently cannot be taken in the rather wide sense given to it in some other phrases familiar in the law, such as "work and labor," "common labor," "worldly labor," and the like. But the organizations referred to are those associations of mechanics and artisans, and even of unskilled laborers, which are formed for the purpose of the mutual advantage and protection of their members, for enforcing the regulations which they prescribe with reference to the conditions and hours of labor and the rate of wages, and other such objects, and which are commonly called "trades unions" or "brotherhoods," "federations," "guilds," or "unions" of the mechanics employed in any given trade or craft. Though such associations are not explicitly exempted in the income tax laws of the states, they do not ordinarily come within the definition of the kinds of corporations which shall be taxable, or else they fall within the terms of a general exempting clause, as in Wisconsin, where the statute exempts "associations of individuals not organized or conducted for pecuniary profit."

[24] Treasury Decisions, No. 1742, par. 29.
[25] Treasury Decisions, No. 1742, par. 23.
[26] Treasury Decisions, No. 1742, par. 30.

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32. Fraternal Orders and Benefit Societies

here is also a specific exemption in the act of Congress avor of "fraternal and beneficiary societies, orders, or ociations operating under the lodge system, and provid- for the payment of life, sick, accident, and other benefits he members of such associations and dependents of such nbers." As here used, the word "lodge" means the meet- place (and hence the meeting itself or the aggregate of members) of a secret society or fraternity.[27] Such bod- are very numerous in the United States, and for the most they combine with their social, moral, or philanthropic ects the grant of pecuniary relief to sick or disabled nbers and to the families of deceased members.[28] Many

State v. Farmers' & Mechanics' Mut. Aid Ass'n, 35 Kan. 51, 9 956. "A society or association operating under the lodge sys- is considered to be one organized under a charter, with properly inted or elected officers, with an adopted ritual or ceremonial, ing meetings at stated intervals, and supported by fees, dues, or ssments." Internal Revenue Regulations, No. 33, art. 89. Supra, 5, art. 89.

"It is noteworthy that while the phrase 'fraternal beneficial' is in the connection above shown to designate a particular kind ocieties or associations that may be incorporated, yet it was not ght necessary to otherwise define the descriptive phrase thus loyed. We must accordingly assume that the words 'fraternal ficial' were used in their ordinary sense, to designate an as- ation or society that is engaged in some work that is of a fra- al and beneficial character. According to this view, a fraternal ficial society would be one whose members have adopted the e or a very similar calling, avocation, or profession, or who are king in unison to accomplish some worthy object, and for that on have banded themselves together as an association or society id and assist one another, and to promote the common cause. term 'fraternal' can properly be applied to such an association, the reason that the pursuit of a common object, calling, or pro- on usually has a tendency to create a brotherly feeling among e who are thus engaged. It is a well known fact that there are he present time many voluntary or incorporated societies which made up exclusively of persons who are engaged in the same ation. As a general rule, such associations have been formed the purpose of promoting the social, moral, and intellectual wel- of the members of such associations and their families, as well or advancing their interests in other ways and in other respects." onal Union v. Marlow, 74 Fed. 775, 21 C. C. A. 89.

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are in fact but mutual insurance associations, their revenues being derived from entrance fees, membership dues, and occasional assessments levied on the members, and expended (over and above the cost of management and other small necessary expenses) in the payment of sick, accident, and death benefits. The officers of the treasury department have ruled that such an association, if it does not "operate under the lodge system," is simply an insurance company and subject to the tax, notwithstanding that all its funds are derived from membership fees and assessments and expended in the payment of such benefits.[29] A similar decision was made by a federal court in construing a state statute relating to insurance companies, which, in one section, provided that the term "insurance company" should not apply to "secret or fraternal societies, lodges, or councils which are under the supervision of a grand or supreme body, and secure members through the lodge system exclusively." It was said: "We think the association comes within the provisions of the Kentucky statute just cited; for, while it has among its purposes the promotion of acquaintance and friendship among traveling men, and to obtain for them better railroad rates and hotel accommodations, it may be said to be its principal purpose to provide a benefit fund for members in case of death or accident. This fund is derived from dues, and when depleted is replaced by assessment upon members. The certificate of membership provides for payment of a specific sum for death by accident. Provisions are made for enforcing and collecting the payment of dues. We think this association comes under the Kentucky statute, unless it is within the exception embodied in section 641 of the statutes. We find nothing in the organization of a secret or fraternal character. We do not find the supervision of a grand or supreme body and members secured by the lodge system

[29] Treasury Decisions, No. 1738. There is no exemption in the income tax law in favor of insurance companies other than fraternal beneficiary societies operating under the lodge system. Commercial Travelers' Life & Accident Ass'n v. Rodway (U. S. Dist. Ct. N. D. Ohio) T. D. No. 1918.

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clusively. Not all commercial travelers may become mem-
rs entitled to the benefits of the insurance. An applica-
n is required, setting forth the willingness of each ap-
cant to submit to a physical examination, and waiving all
ovisions of law now existing or that may hereafter exist
eventing any examining or attending physician from disclos-
g any information acquired while acting in a professional
pacity or otherwise, or rendering him incompetent to tes-
y as a witness in any way whatever. The 'benefits' are
ited at a fixed amount in case of death, and certain specific
ms for various injuries. It is evident that persons not
swering these questions satisfactorily, though otherwise
gible, would be rejected as members. We do not discover
this association the features which characterize associations
hich the statute exempts from its provisions." [30]

283. Religious, Charitable, and Benevolent Associations

The act of Congress also exempts "any corporation or
sociation organized and operated exclusively for reli-
ous, charitable, scientific, or educational purposes, no part
the net income of which inures to the benefit of any
ivate stockholder or individual." And the statute of
Visconsin exempts any "association of individuals" or-
nized for "religious or benevolent" purposes, and not
rganized or conducted for pecuniary profit." The rules
ith reference to the exemption of such associations from
e burdens of ordinary taxation have been well worked
ut by the courts, and will generally be found applicable
the case of the special tax here under consideration.
ecifically with regard to the corporation excise tax of
09, it was ruled that a charitable institution was exempt
hether it was supported by voluntary contributions or by
ate appropriations.[31] In England, the rule has been stat-
that, in the income tax law, the words "charitable pur-
ses" are to be interpreted, not according to their popular

[30] Corley v. Travelers' Protective Ass'n, 105 Fed. 854, 46 C. C. A.
3.

[31] Treasury Decisions, No. 1742, par. 4.

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meaning, but according to their technical legal s
tion, though it was held in the same case that the
would include a home or asylum for the mainten
single persons and widows belonging to the M
brotherhood.[32] And it is a general rule, in the c
tion of exemptions from taxation that the word "
is not to be restricted to the relief of the sick or p
extends to any form of philanthropic endeavor or
beneficence.[33] And even under the more restricte
of exemption under the tax laws of some of the sta
tending to "public" charities, or "institutions of pur
lic charity," it is held that the term "public" is not
lent to "universal." The exemption would not ap
charity limited to a certain class of privileged indi
But on the other hand, it need not be open to all
alike, for the "public" to which it administers relief
limited to the inhabitants of a given city or other p
may be restricted to the sufferers from particular
or forms of need, or with reference to nationality, c
religious connections.[34] Also, it is a well-recogni
that an institution such as a hospital or asylum c
lose its character as a "charitable institution" bec

[32] Income Tax Com'rs v. Pemsel [1891] App. Cas. 531, 3
53.

[33] See Gerke v. Purcell, 25 Ohio St. 229; Cleveland Libr
v. Pelton, 36 Ohio St. 253; State v. Academy of Science, 13
213; Massachusetts Society v. Boston, 142 Mass. 24, 6 N
In England, on the question whether the income from a
ment is exempt as devoted to a "charitable purpose," th
whether such income is "given in trust to be expended in
people to something considered by the donor to be for thei
and which assistance the donor intends shall be given to pe
in his opinion, cannot without such assistance, by reason of
obtain that benefit, and where the intention of the donor
sist such poverty as the substantial cause of his gift."
Com'rs of Income Tax, L. R. 22 Q. B. Div. 296, 308; In re
Bootham Ward Strays, 60 Law J. Q. B. 612.

[34] Bangor v. Masonic Lodge, 73 Me. 428; Burd Orphan
v. School Dist., 90 Pa. St. 21; Hebrew Orphan Asylum v. N
11 Hun (N. Y.) 116; Income Tax Com'rs v. Pemsel [1891]
531, 3 Tax Cas. 53; Hastings v. Long, 11 Pa. Dist. R. 70.

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ives pay patients, or in other words requires those of cient pecuniary ability to pay for the accommodation treatment which they receive, if the income thus de- d is not distributed among the corporators or stock- lers, but applied exclusively to the purposes of the in- ution, and if, at the same time, poor or indigent patients received and treated without charge.[35] But an English sion holds that if a hospital takes paying patients at re- erative prices, and applies its surplus income to the ex- ion and improvement of the hospital buildings, the sur- is profit and assessable for the income tax.[36] The ness of maintaining a cemetery, from which revenues derived in the form of cash for the sale of grave-sites urial lots and annual dues or assessments upon lot- ers for the care of the grounds, is not a charity, and a oration owning and conducting the cemetery is taxable he income derived from it.[37] But the federal income law of 1913 contains a specific exception in favor of netery companies organized and operated exclusively the mutual benefit of their members." And on this the asury department remarks that "the provisions of the law ly indicate that companies which operate cemeteries for it are liable to the tax. The status of cemetery associa-

State v. Board of Assessors, 52 La. Ann. 223, 26 South. 872; epin County v. Brotherhood of Gethsemane, 27 Minn. 460, 8 . 595, 38 Am. Rep. 298; Philadelphia v. Pennsylvania Hospital, Pa. St. 9, 25 Atl. 1076; Cawse v. Nottingham Lunatic Asylum 1] 1 Q. B. 585, 60 Law J. Q. B. 485; Blake v. London, 18 Q. B. 437. But see Needham v. Bowers, L. R. 21 Q. B. Div. 437, 2 Cas. 360.

St. Andrew's Hospital v. Shearsmith, L. R. 19 Q. B. Div. 624, x Cas. 219. And in general, if a charitable, religious, or philan- ic organization incidentally to its main enterprises engages in a business as printing and selling books, its profits therefrom hargeable with the income tax. Religious Tract & Book Soc. v. es, 33 Scotch Law Rep. 289, 3 Tax Cas. 415; Trustees of ns & Hymns v. Whitwell, 3 Tax Cas. 7.

Paddington Burial Board v. Com'rs of Inland Revenue, L. R. . B. Div. 9, 2 Tax Cas. 46; Paisley Cemetery Co. v. Reith, 35 ch Law Rep. 947, 4 Tax Cas. 1; Edinburgh Southern Cemetery . Kinmont, 2 Tax Cas. 516.

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tions under the law will, therefore, depend upon the character and purpose of the organization and what disposition is made of the income."[38]

§ 284. Educational and Scientific Institutions

The act of Congress exempts corporations organized for "scientific or educational purposes," and that of Wisconsin "scientific and educational associations." It has been held that a provision of an income tax law exempting from its operation private schools, colleges, and other educational institutions does not make an illegal discrimination such as to render the law invalid as to other corporations or persons upon whom the tax is imposed.[39] But it seems clear that a private school, in which tuition fees are charged, and from which a revenue is derived over and above the expenses, would not be exempt under either of the provisions quoted, since the federal statute applies only to educational institutions "no part of the net income of which inures to the benefit of any private stockholder or individual," and the state law applies to such institutions only when "not organized or conducted for pecuniary profit." On the other hand, the exemption under these statutes is apparently broad enough to include various kinds of institutions which derive their current revenues partly from endowment funds and partly from small charges to the public for admission to their buildings or for the use of their privileges, such as art galleries, museums of curiosities or antiquities, academies of the fine arts, institutions for the exhibition of objects illustrating the natural sciences, public libraries, and the like. In the general law of taxation, and with reference to exemptions, there has been much doubt as to whether such institutions could be classed as "schools," "institutions of learning," "purely public chari-

[38] Internal Revenue Regulations No. 33, art. 90, supra, § 185, art. 90.

[39] Peacock v. Pratt, 121 Fed. 772, 58 C. C. A. 48.

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ties," or the like.[40] But under the income tax laws, the test is in the question whether or not they are conducted for profit, or whether or not any part of the income is distributed to the proprietors, corporators, or shareholders as a gain or profit. And on the analogy of many similar cases, it would seem that the mere fact of admission fees being charged would not make them institutions conducted for profit, if the revenue so obtained is applied to the upkeep or expansion of the institution, rather than to the benefit of any private person interested in it.

§ 285. Building and Loan Associations

Domestic building and loan associations are exempt under the act of Congress of 1913 when "organized and operated exclusively for the mutual benefit of their members," following the language of the corporation tax law of 1909. And a similar exemption is found in the Wisconsin statute. It was ruled by the treasury department that "building and loan associations are not exempt if they loan money to others than their members, thus doing a business similar to that engaged in by banks and trust companies. It is also held that building

[40] Academy of Fine Arts v. Philadelphia County, 22 Pa. St. 496; Gerke v. Purcell, 25 Ohio St. 229; Salem Lyceum v. Salem, 154 Mass. 15, 27 N. E. 672; Mercantile Library Co. v. Philadelphia, 14 Pa. Co. Ct. R. 204; Cleveland Library Ass'n v. Pelton, 36 Ohio St. 253; Philadelphia Library Co. v. Donohugh, 12 Phila. (Pa.) 284; Manchester v. McAdam [1896] App. Cas. 500. In England, it has been held that a corporation founding and maintaining a free public library was not a "literary or scientific institution" within the meaning of the exemption clauses in the income tax law. Andrews v. Mayor of Bristol, 61 Law J. Q. B. 715. Also it was held by the court of Queen's Bench, under the exemption of income from property devoted to the "promotion of education, literature, science, or the fine arts," that the property of an institution of civil engineers was not entitled to exemption, because it was appropriated and applied not for the promotion of general education or science, but for the promotion of a particular branch of knowledge in order to enable the members of the institution to practice with more success their own profession. In re Duty on Estate of Institution of Civil Engineers, L. R. 19 Q. B. Div. 610. But this decision was reversed on appeal, in Commissioners of Inland Revenue v. Forrest, L. R. 15 App. Cas. 334.

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and loan associations which receive sums of money on deposit, which is not in payment of stock, and on which the depositor receives a fixed rate of interest, regardless of the earnings of the association, are conducting a business similar to a banking business, and are therefore subject to the special excise tax on corporations and should be required to make a return showing their net income." [41] It was likewise held that such associations, providing for the loaning of funds to nonmembers, for issuing preferred or guarantied interest-paying stock, and allowing directors to cancel outstanding certificates of general stock not borrowed upon, paying the holder the book value of stock canceled, thereby being authorized to retire any and all stock in their discretion, are not exempt from the tax.[42] But both the ruling of the Treasury department and the decision cited have been overruled by later decisions of the federal courts. The present doctrine is that neither the loaning of money to non-members nor the issuance of prepaid stock bearing a fixed dividend is sufficient to take the association out of the benefit of the exemption. In one of the cases so holding it was pointed out that the words of the statute, "no part of the income of which inures to the benefit of any stockholder," apply only to that group of corporations enumerated in the clause immediately preceding, that is, religious, charitable, and educational corporations, and have no application to building associations, which are organized for the express purpose of benefiting their stockholders, but all such associations, if they come within the terms of the proviso as to organization and operation, are exempt. It was accordingly held that a building association is not excluded from the benefit of the exemption, as not being "organized and operated exclusively for the mutual benefit of its members," because it issues both prepaid and installment stock, the prepaid stock being entitled to a fixed dividend, payable, however, only out of earnings of the association.[43]

[41] Treasury Decisions, No. 1655.

[42] Pacific B. & L. Ass'n v. Hartson, 201 Fed. 1011.

[43] Herold v. Park View Bldg. & Loan Ass'n, 210 Fed. 577, 127 C. C. A. 213, affirming Parkview B. & L. Ass'n v. Herold, 203 Fed. 876.

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in another case it was held that the fact that building loan associations organized under the laws of Ohio are orized to borrow money from, and loan money to, those are not members, does not deprive them of the quality of uality, nor place them on a par with banking corporations, deprive them of the benefit of exemption from the in- e tax.[44]

6. Savings Institutions

Wisconsin, "mutual savings associations" are exempt n the payment of the income tax. Whether or not an tution exercising some of the functions of a bank is to be ed as a "savings bank," "savings institution," or "savings ciation," must be determined not by the name which it mes or by which it is chartered, but by its organization, ers, and mode of doing business, as provided in its articles ncorporation.[45] And the phrases above quoted do not y to every bank merely because it receives deposits of ngs. The kind of associations intended by the law in Wis- in are those which are operated exclusively for the mutual fit of the depositors, who alone—and not any stockhold- or proprietors—are entitled to participate in the profits. n associations are authorized under the laws of numerous es, as for example, Massachusetts, where they are thus ribed: A savings bank, as existing in this state, subject ne general laws, is an institution for the purpose of receiv- deposits for the benefit of depositors, investing the same, mulating the profits or interest thereof, paying such prof- or interest to the depositor, or retaining the same for his ter security. There is no capital stock, and no stock- ers who are entitled to receive profits from the business; its affairs are administered by a board of trustees, the se- ties in which the deposits shall be invested are prescribed law, and the conduct of its affairs is under the super-

Central Building, Loan & Sav. Co. v. Bowland, 216 Fed. 526. see Wilson v. Parvin, 119 Fed. 652, 56 C. C. A. 268; People v. ton, 140 N. Y. 549, 35 N. E. 979, 24 L. R. A. 57.
State v. Lincoln Sav. Bank, 14 Lea (Tenn.) 42.

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vision of a public officer.[46] So, in New Jersey, it is sai
a savings bank is a quasi charitable and purely benevol
stitution, its only object being the safe keeping and pro
investment of the funds of the depositors. The memb
the corporation have no property interest in its fun
which they are by law constituted the managers and gua
The depositors, who alone are beneficially interested, h
voice in the management, nor even in the selection
persons to whom the management is intrusted. Savings
have no capital stock. They are incorporated and org
not for the benefit of the corporators, but solely for t
vantage of their depositors.[47]

Also under the federal income tax law of 1913 the
special exemption in favor of "mutual savings banks n
ing a capital stock represented by shares."[48]

§ 287. Civic Organizations and Chambers of Comm

It is specially provided in the federal income tax la
its terms shall not apply to "business leagues, nor to ch
of commerce or boards of trade, not organized for profi
part of the net income of which inures to the benefit
private stockholder or individual; nor to any civic lea
organization not organized for profit, but operated excl
for the promotion of social welfare." A board of trade,
term is used in America, is an organization of the pr
merchants, manufacturers, tradesmen, etc., of a city, f
purpose of furthering its commercial interests, encou
the establishment of manufactures, promoting trade, se
or improving shipping facilities, and generally advanci
prosperity of the place as an industrial and commercia
munity.[49] Exactly similar organizations are sometimes
"chambers of commerce," and the two terms are fre

[46] Commonwealth v. Reading Sav. Bank, 133 Mass. 13,
Rep. 495.
[47] Parrett v. Bloomfield Sav. Inst., 64 N. J. Eq. 425, 54 A
[48] Supra, § 33.
[49] Black, Law Dict., voc. "Board."

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d to be synonymous.[50] But more strictly speaking, one
ie objects of a chamber of commerce is to promote con-
nce or facility in buying, selling, and exchanging com-
ties. If these commodities include stocks, bonds, and
securities, the body practically fulfills the functions of a
exchange. And in fact, in some cities, the stock ex-
ge is officially denominated the "chamber of commerce"
ie "board of trade." If, in this sense, it is organized
profit, or has a net income which inures to the benefit of
members, it is clearly not within the exemption, but is
ct to taxation under the act.

3. Income from Property Otherwise Taxed

the several states, particularly Massachusetts, North Car-
and Oklahoma, the law specifically exempts from the in-
tax such income as is derived from property which is it-
subject to a tax or on which a tax has already been paid
he current year. The Wisconsin statute contains the fol-
g provision: "Any person who shall have paid a tax
his personal property during any year shall be permitted
esent the receipt therefor to, and have the same accepted
ie tax collector to its full amount in the payment of taxes
upon the income of such person during said year." But
who claims exemption from an income tax on the ground
his income consists of or is derived from property not
to taxation, must affirmatively show that such is the
[51] and it is believed the same rule should apply to the
of one who claims exemption on the ground that the
erty which has yielded the income is subject to taxation
s paid the tax. And income derived from an independent
e is not exempted from the income tax because it has
applied to the payment of a debt due for real estate, pur-
d on credit, and upon which real estate a tax has been
sed and paid for the same period within which such in-
accrued.[52]

[50] Century Dict., voc. "Chamber," "Trade."
[51] City of New Orleans v. Fourchy, 30 La. Ann. 910.
[52] Lott v. Hubbard, 44 Ala. 593.

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§ 289. Proceeds of Life Insurance Policies

Money received from a life insurance company in settlement of a claim under a policy for the death of the assured would probably have to be reckoned as part of the "income" of the beneficiary or recipient, if not specifically exempted. But in pursuance of a humane and wise policy, the income tax laws have generally provided for the exemption of such funds. The act of Congress excepts from the description of taxable income the proceeds of life insurance policies paid upon the death of the person insured, without any limitation as to the amount. The statutes in Wisconsin exempts "insurance to the total amount of ten thousand dollars received by any person or persons legally dependent upon the decedent, in payment of a death claim by any insurance company, fraternal benefit society, or other insurer." It will be observed that insurance money is not exempt in the hands of any beneficiary who was not "legally dependent upon the decedent," and that any amount of money so received above the sum of ten thousand dollars is taxable as income of the year, without regard to the relation between the decedent and the beneficiary. It may also be remarked that, under either of these statutes, money received by the assured himself, as in the case of accident insurance, will not be exempt, since in theory it merely takes the place of what he would have earned during the period of his disability. But as to life insurance proper, the act of Congress also exempts "payments made by or credited to the insured, on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon surrender of the contract." Money so returned, it is provided, "shall not be included as income." [53]

[53] Supra, § 6. Proceeds of life insurance policies are not taxable at the source, supra, § 97. An endowment insurance contract whereby, in consideration of an annual premium, one hundred pounds is payable on the death of the assured within fifteen years, and two hundred pounds if he is alive at the end of that period, is an "insurance on his life" within the meaning of the income tax law, and he is entitled to deduct the whole amount of the premium from his assessment for income tax. Gould v. Curtis [1912] 1 K. B. 635.

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§ 290. Exemption of Fixed Amount of Income

All income tax laws have wholly exempted incomes below a certain fixed minimum, and allowed the deduction of a like amount from incomes large enough to be subject to the tax. The object is to relieve from the burden of this tax those persons whose annual earnings or gains are no more than sufficient to maintain a decently comfortable existence, and to permit persons of larger means to deduct a sum which may represent the ordinary living expenses of the average family, so that the tax may not fall upon the necessaries of life or a reasonable share of its comforts, but only upon superfluous income. As corporations and partnerships have no corresponding expenses, they are not entitled to the exemption of a fixed sum. The amount of this fixed exemption has varied enormously in different localities and at different times. In the European countries deriving a revenue from this source, it is very small, as, for instance, in Great Britain, $800; in Prussia, $214; in Norway, $270; in Denmark, $540; in Austria, $250. Under the act of Congress of 1861, the exemption was $800. This was reduced to $600 in the acts of 1862 and 1864, but was raised to $2,000 in the act of 1870. In the act of 1894, it was fixed at $4,000. The income tax law of North Carolina exempts incomes below $1,000; in South Carolina the exemption is $2,500; in Oklahoma, $3,500; in Virginia, $1,000; in Hawaii, $1,000. The Massachusetts statute taxes "The excess above two thousand dollars of the income from a profession, trade, or employment." The Wisconsin statute allows exemptions as follows: (a) To an individual, income up to and including $800; (b) To husband and wife, $1,200; (c) For each child under the age of eighteen years, $200; (d) For each additional person, for whose support the taxpayer is legally liable and who is entirely dependent upon the taxpayer for his support, $200. The provision of the act of Congress of 1913 is that each taxable person shall be entitled to an exemption of $3,000, with an additional exemption of $1,000 in case the taxpayer is either a "married man with a wife living with him" or a "married woman with a husband living with her." [54] But in no event shall this additional ex-

[54] Supra, § 10. The specific exemption allowed in this part of

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emption be deducted by both a husband and wife, and only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together. It is, in fact, a common provision of income tax laws that only one deduction of the fixed amount is allowed to be made from the aggregate income of a family, the husband and father, if he makes the return, being required to include the separate income of his wife and of any of his minor children who may have independent sources of income. In the case of guardians making the return for their wards, the deduction is allowed to be made from the income of each ward, except where two or more of them are included in the same family, in which event only one deduction from the aggregate is allowed. Objection has been made to the constitutional validity of such a provision, but it has been sustained by the courts.[55]

§ 291. Same; Treasury Regulations as to Husband and Wife

With reference to the joint exemption allowed to husband and wife, and the method of making returns and claiming the exemption, the Treasury department has made the following regulations:

"Every single person and every married person not living with husband or wife in the sense below defined who has a net income exceeding $3,000 per annum is liable to pay the normal income tax under this law, but in making return for such tax may claim an exemption of $3,000 from their total net income.

"Husband and wife living together are entitled to an exemption of $4,000 only from the aggregate net income of both, which may be deducted in making the return of such income for taxation. However, when the husband and wife are separated and living permanently apart from each other, each shall be entitled to an exemption of $3,000.

"If the husband and wife not living apart have separate estates, the income from both may be made on one return,

the statute cannot be deducted in computing the normal tax of nonresident aliens. Supra, § 177, art. 8.

[55] Robertson v. Pratt, 13 Hawaii, 590.

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but the amount of income of each, and the full name and address of both, must be shown in such return.

"The husband, as the head and legal representative of the household and general custodian of its income, should make and render the return of the aggregate income of himself and wife, and for the purpose of levying the income tax it is assumed that he can ascertain the total amount of said income.

"If a wife has a separate estate managed by herself as her own separate property and receives an income of $3,000 or over, she may make return of her own income, and if the husband has other net income, making the aggregate of both incomes more than $4,000, the wife's return should be attached to the return of her husband, or his income should be included in her return, in order that a deduction of $4,000 may be made from the aggregate of both incomes. The tax in such case, however, will be imposed only upon so much of the aggregate income of both as shall exceed $4,000.

"If either husband or wife separately has an income equal to or in excess of $3,000, a return of annual net income is required under the law, and such return must include the income of both, and in such case the return must be made even though the combined income of both be less than $4,000.

"If the aggregate net income of both exceeds $4,000, an annual return of their combined incomes must be made in the manner stated, although neither one separately may have an income of $3,000 per annum. They are jointly and separately liable for such return and for the payment of the tax.

"The single or married status of the person claiming the specific exemption shall be determined as of the time of claiming such exemption if such claim be made within the year for which return is made, otherwise the status at the close of the year." [56]

Also the following additional regulations have been prescribed: "Where either dies during the year, having a net taxable income of $3,000 or more, a return of income should be made by the executor or administrator of the deceased as of

[56] See, supra, §§ 129, 177, art. 10. For the language of the act, see supra, § 10.

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the date of his death, and the executor or administrator may claim an exemption of $4,000. The survivor, when making a return at the end of the year for the entire year, will be allowed the applicable exemption for the single or married status existing at the close of the year.

"The regulations of the department requiring the incomes of husband and wife to be combined and authorizing the aggregate exemption of $4,000 from such combined income, are applicable for the purpose of the normal tax only. The additional tax, or surtax, imposed by the act will be computed on the basis of the separate income of each individual; that is, on the amount of each individual's income in excess of the minimum amounts upon which the surtax at the graduated rates is to be calculated." (Treasury Decision No. 2090, December 14, 1914.)

§ 292. Taxable Income and Exemptions for 1913

In regard to the federal income tax, special provision had to be made with reference to taxing the income of the year 1913, since, prior to the adoption of the Sixteenth Amendment, Congress had no constitutional authority to lay a tax on incomes, unless the tax should be apportioned among the several states. This point has been covered by the insertion of the following proviso in the statute: "That for the year ending December thirty-first, 1913, said tax shall be computed on the net income accruing from March first to December thirty-first, 1913, both dates inclusive, after deducting five-sixths only of the specific exemptions and deductions herein provided for." [57] Under the corporation excise tax law of 1909, corporations were allowed an exemption of five thousand dollars from their net income before becoming subject to the tax. But it was ruled by the Treasury department that corporations should not be permitted to deduct from their gross or net income for the year 1913 any portion of this specific exemption of $5,000. For while they remained subject to the excise tax during the first two months of that year, they were subject to the income tax for the remainder of the year, and under the latter statute they are not entitled to any specific exemption at all.[58]

[57] Supra, §§ 11, 101.

[58] T. D. No. 1937, January 26, 1914.

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CHAPTER XI

DEDUCTIONS AND ALLOWANCES

§ 293. Expenses of Business.
294. Same; Wages and Salaries.
295. Same; Gifts, Charities, Pensions to Employés.
296. Same; Traveling Expenses.
297. Same; Cost of Insurance.
298. Same; Rent of Land, Buildings, or Equipment.
299. Same; Mining Operations.
300. Same; Judgments.
301. Repairs, New Buildings, and Improvements.
302. Interest on Indebtedness.
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§ 293. Expenses of Business

The income tax act of Congress of 1913 allows the individual taxpayer to deduct from his return of net income "the necessary expenses actually paid in carrying on any business, not including personal, living, or family expenses." In the case of domestic corporations, it allows the deduction of "all the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties." In the case of foreign corporations, the deduction may include "all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States." [1]

[1] Supra, §§ 7, 35, 41.

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The Wisconsin income tax law allows a corporation to deduct "ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and property," and in the case of an individual, "the ordinary and necessary expenses actually paid within the year in carrying on the profession, occupation, or business from which the income is derived." In South Carolina, the deduction includes "the necessary expenses actually incurred in carrying on any business, occupation, or profession, not including remuneration to the taxpayer for personal supervision or the support and maintenance of his or her family." The statute of Hawaii allows the deduction of "the necessary expenses actually incurred in carrying on any business, trade, profession, or occupation, or in managing any property." The provision in Virginia is more restricted, as it relates only to so much of the income as may be derived from farming or other agricultural pursuits, and allows the deduction of "all sums paid for taxes or for labor, fences, fertilizers, clover or other seed purchased and used upon the land upon which the vegetable and agricultural productions were grown or produced, and the rent of said land paid by said person, if he be not the owner thereof."

It is the very evident purpose of all these statutes to lay the tax only upon net income, that is to say, upon so much of the gross income of the person or corporation as may remain after deducting the expenses incurred directly in the production or earning of the income.[2] At the same time, the indi-

[2] Poland v. Lamoille Valley R. Co., 52 Vt. 144, 177. Where an employé is required to furnish a bond and pay the premium thereon himself, as a necessary incident of his employment, the premium so paid will constitute an allowable deduction for him in computing his net income. Treasury Decision No. 2090, December 14, 1914. The expense of collecting income (where it consists of rent or other such items) may be deducted, where the usual and ordinary course of managing the business is to employ an agent or other collector, though it may be otherwise in regard to what may be called "optional expenses of collection," which might be looked on as something of a luxury, as where the income could be collected without incurring any such expense, but the owner prefers to employ some one to collect

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vidual taxpayer is not allowed to deduct so much of his current income as he has spent in the satisfaction of his personal wants or desires or in the support and maintenance of his family, because in the first place such expenditures have not contributed directly to the production of the income to be taxed, and in the second place, such expenses are supposed to be covered, in the case of the ordinary or average family, by the money exemption which the statutes also allow.[3] But provisions of this kind should be construed with some measure of liberality. Thus it is held that, where a statute taxes a certain class of corporations (such as insurance companies) only upon income derived from one particular source (such as mortgages), and allows all taxpayers to deduct expenses incurred "in the production of their income," such a company is entitled to deduct all the expenses incurred in the production, not merely of its income from mortgages, but of its income as a whole.[4]

What may be comprehended in the general description of

it. Stevens v. Bishop, L. R. 20 Q. B. Div. 442. And see Duke of Norfolk v. Lamarque, L. R. 24 Q. B. Div. 485. The Treasury department has ruled that a fiduciary, receiving or collecting income for the beneficiary may deduct "commissions for the collection of rents" as a necessary expense in managing the estate or trust. Supra, § 139. But there seems to be no reason why this should not equally apply to any person who holds rented property as an investment. See Treasury Decision No. 2090, December 14, 1914, so holding.

[3] "Expenses for medical attendance, store accounts, family supplies, wages of domestic servants, cost of board, room, or house rent for family or personal use, are not expenses that can be deducted from gross income. In case an individual owns his own residence, he cannot deduct the estimated value of his rent, neither shall he be required to include such estimated rental of his home as income." Instruction No. 10, on Form No. 1040, printed in the Appendix hereto. As to allowable deductions for rent paid, see, infra, § 298. What wages or salaries are deductible, see, infra, § 294. As to including rental value of home in income return (which is required in Wisconsin) see, supra, § 228. It is held in England that the hire of a domestic servant is not a necessary expense in carrying on business. Bowers v. Harding, 1 Q. B. 560, 3 Tax Cas. 22. But a parish minister may deduct the cost of keeping a horse and carriage as part of the necessary expenses of his avocation. Jardine v. Inland Revenue, [1907] Sess. Cas. 77.

[4] Commissioners of Taxation v. Teece [1899] App. Cas. 254.

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"ordinary and necessary expenses" will depend greatly upon the nature of the business, trade, or pursuit carried on. But in all cases the prime distinction is to be taken between investment of capital assets and current expenses.[5] Thus, in the case of a manufacturing establishment, the purchase and renewal of the machinery necessary for the operation of the plant would be regarded as an investment of capital, and could not be deducted as an item of expense. This was brought out in an English case, where a corporation, with a view to extending its business, opened a factory and installed machinery, but subsequently closed it, removed a portion of the machinery, and re-opened the factory on a smaller scale, and thereby lost a portion of the original expenditure. This was held to be a loss of capital, and that no deduction could be allowed therefor in assessing its income for taxation.[6] On the other hand, where the business is one which is carried on in an office, whatever constitutes permanent equipment might be regarded as an investment of capital, but whatever is currently consumed or used up in the ordinary business of the office (stationery, for example) would come under the description of expense.[7] Thus it is held that ordinary expenditures made by an insurance company for the renewal of office furniture and other such perishable equipment does not constitute an addition to its assets, but is an expense of maintenance and operation, which it is entitled to deduct in computing net income

[5] For example, an English case holds that, where a plantation is set out with rubber trees, some of which have reached the age of producing, but others not, the expense of cultivating, weeding, and caring for those portions of the estate not yet in bearing is a proper deduction, and as it is an annually recurring expense, it is prima facie not capital expenditure, but income expenditure and so deductible. Vallambrosa Rubber Co. v. Farmer, [1910] Sess. Cas. 519. The same principle would of course apply to orchards, orange groves, and vineyards.

[6] Smith v. Westinghouse Brake Co., 2 Tex. Cas. 357.

[7] In a case where the taxpayer claimed a deduction for necessary expenses incurred in carrying on his business as a surveyor, being the cost of books and instruments used by him, it was held that the deduction could not be allowed. In re Assessment of Taxes, 16 Hawaii, 796.

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for the purpose of the tax.[8] The cost of raw materials is naturally an "expense" to the manufacturer,[9] and the merchant will reckon as an "expense" the prime cost of the goods which he buys to sell again, including such items as freight or expressage. But in an English case, where part of the business taken over by a company consisted of unexecuted contracts, it was held that the price paid for such contracts was not a proper deduction from the profits arising from their performance.[10] Wages and salaries paid to clerks, salesmen, operatives, managers, and so on, are always an expense of operating any business in which their employment is necessary (see the next section), and although the point has not often been decided with reference to tax laws, it can hardly be doubted that the cost of advertising should be accounted an "ordinary and necessary expense," in view of the conditions under which all modern business is transacted.[11] And if the law of the state or an ordinance of the municipality requires the payment of an annual license fee or occupation tax, as a condition to the right to carry on the particular business, it is a part of the necessary and proper expense thereof.[12] But in England it is held that brewers supplying "tied" houses (that is, public houses for which the brewers procure and pay for the license, on the condition that the house shall sell no other beer but theirs) are not entitled to deduct from their profits, for the purpose of the income tax, the expenses of unsuccessful applications for new licenses for such houses.[13] It appears also —though the question has more frequently arisen in other con-

[8] Mutual Benefit Life Ins. Co. v. Herold, 198 Fed. 199.

[9] "In ascertaining expenses proper to be included in the deductions to be made under the item of 'expenses,' corporations carrying materials and supplies on hand for use should include in such expenses the charges for materials and supplies only to the amount that the same are actually disbursed and used in operation and maintenance during the year for which the return is made." Supra, § 185, art. 123.

[10] City of London Contract Corp. v. Styles, 2 Tax Cas. 239.

[11] Foster v. Goddard, 1 Black (U. S.) 506, 17 L. Ed. 228.

[12] Kane v. Schuylkill Fire Ins. Co., 199 Pa. St. 205, 48 Atl. 989.

[13] Southwell v. Savill Brothers, Limited [1901] 2 K. B. 349, 4 Tax Cas. 430.

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nections—that money paid to an attorney at law for his professional services, in advising concerning legal problems which arise in the course of the business conducted, and in drawing such papers as require legal skill and knowledge, may justly be treated as a part of the "expenses" of the business, [14] and similar decisions are to be found in regard to the costs and expenses of prosecuting or defending suits at law, when litigation becomes a necessary incident of the business, either for the recovery of debts or the repulse of unjust claims.[15] Many other items of expenditure may present much more difficult problems, but in general it may be said that the test is to determine whether a particular outlay was an investment or an expense of "maintenance or operation," and, in the latter case, whether it was "necessary" and "ordinary." [16] In an English case, it appeared that a colliery company was a member of a "coal owners' association," to which it paid an annual subscription based on its output of coal. The object of the association was to pay to its members an indemnity in the event of deficiency or stoppage of output caused by strikes or other such interferences. The company contended that the subscription made for this purpose was a kind of insurance and therefore deductible as an expense of its business. But the court held otherwise, and refused to permit it as a deduction in es-

[14] Brady v. Dilley, 27 Md. 570.

[15] Babbitt v. Selectmen of Savoy, 3 Cush. (Mass.) 530; Scofield v. Moore, 58 Hun (N. Y.) 601, 11 N. Y. Supp. 303. The Treasury department rules that "costs of suits and other legal proceedings arising from ordinary business may be treated as an expense of such business, and may be deducted from gross income for the year in which such costs were paid." Instruction No. 18, on Form No. 1040 (individual income-tax return), printed in the Appendix to this volume. But expenses of administration of an estate, such as court costs and attorneys' fees, are chargeable against the corpus of the estate, and not allowable as deductions in the return of a fiduciary. Treasury Decision No. 2090, December 14, 1914.

[16] On this point the following rulings of the Treasury department are instructive: "General expenses, such as coal, ship stores, etc., of foreign steamship companies, shall be prorated as provided in the act for interest deductions in the case of foreign corporations." Supra, § 185, art. 116. "Expenses of operation and maintenance shall include all expenditures for material, labor, fuel, and other

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timating the profits of the company for income taxation.[17] But this decision was "distinguished" in a later case, not very easy to reconcile with it. It appeared that the company in question was a member of an association of manufacturers, which was mainly formed for the purpose of keeping up prices. Under the rules and pooling arrangements of the association, the members were entitled each to a fixed proportion of all orders received, and any member invoicing more than its proportion must pay a fixed sum per ton on the excess to the pool account, which was distributed among those members which had invoiced less than their proportions. It was held that the net payments made by the company to the association (including a share of administration expenses) in excess of those received from the association by the company, were an admissible deduction for the purpose of arriving at the company's taxable profits.[18] Under the corporation tax law of 1909, the officers of the treasury department ruled that sales of stock and bonds were to be regarded as sales of capital assets, and should be so accounted for, but that the proceeds derived from the sale of bonds, used in defraying ordinary and necessary expenses, were a proper deduction in determining the company's net income.[19] But a charge entered upon the books of a corporation (in whatever form as a matter of bookkeeping) because of the sale of an issue of its bonds at less than their par value, to the extent of the difference between the amount received and the nominal value, is not a part of its "expenses actually paid within the year" to be deducted from gross income.[20]

The Treasury department rules that "the reserve required to be set aside by banks in various states, and kept and main-

items entering into the cost of the goods sold or inventoried at the end of the year, and all other expenses incurred in the operation of the business, except such as are required by the act to be segregated in the return." Supra, § 185, art. 114.

[17] Rhymney Iron Co. v. Fowler [1896] 2 Q. B. 79, 3 Tax Cas. 476.

[18] Guest, Keen & Nettlefolds, Limited, v. Fowler [1910] 1 K. B. 713, 5 Tax Cas. 511.

[19] Treasury Decisions, No. 1742, par. 55.

[20] Baldwin Locomotive Works v. McCoach, 215 Fed. 967.

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tained in such banks as a guaranty of depositors in the banks of said states (which said guaranty fund is subject to draft by said banking commissions or boards, in amounts to be determined by said state banking commissions or boards, only for the purpose of supplying deficiencies in estates of failed or insolvent banks) is not an expenditure and cannot be considered either as a tax or an expense. It is a reserve required to be kept and maintained for a certain and specifically designated purpose. The amounts actually expended from such fund in paying therefrom drafts of the state banking commissions or boards on said fund are in the nature of insurance cost, and as such may be deducted as a business expense. The reserve, per se, is not deductible in a return of income. (Treasury Decision No. 2090, December 14, 1914.)

It is also ruled that "in case of a public utility constructed, operated, or maintained under contract with any State, territory, or the District of Columbia, or a city, where a portion of the net earnings of such public utility is payable under such contract to the State, territory, etc., the amount so paid may be deducted by the public utility operating under such contract as an expense of business." (Idem.)

§ 294. Same; Wages and Salaries

Wages and salaries paid to clerks, servants, agents, salesmen, managers, superintendents, officers, and other employés of the individual or corporate taxpayer are deductible from income, either because specially mentioned, as they are in some of the statutes, or as a necessary expense of conducting the business.[21] But this applies only to the compensation of those employés or agents who are engaged in the conduct of the business from which the income is derived, as under the Wisconsin statute, where a deduction is allowed for "payments made within the year for personal services of officers and employés actually employed in the production of such income." This might cover the compensation of a secretary,

[21] See Dunwoody v. United States, 22 Ct. Cl. 269, 278; Foster v. Goddard, 1 Black (U. S.) 506, 17 L. Ed. 228.

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amanuensis, or stenographer, if occupied in the work of a profession or vocation carried on by his employer and from which the latter's taxable income was derived. But the wages of domestic servants would be classed as "family or living expenses," for which no deduction is allowed.[22] It is probably immaterial whether the compensation of an employé is paid in the form of a fixed annual or monthly wage or in the form of a commission on sales or business transacted. Indeed, the Treasury department rules that commissions allowed to salesmen, although paid in stock, may be deducted as an expense of the business if so charged on the books at the actual value of such stock.[23] But where one insurance company buys the business of another, and agrees to employ the latter's general manager at a fixed annual salary, but with the privilege of commuting such salary by paying him a gross sum and taking his agreement not to enter the employ of any other company, and does so commute, the payment so made is part of the consideration of the transfer of the business, and therefore capital expenditure, and not a deductible expense.[24]

It should also be observed that an individual taxpayer cannot escape paying the income tax, or reduce its burden, by paying himself a salary for his own services in supervising and conducting his own business, and then deducting the amount of it from the income which the business yields.

[22] Bowers v. Harding, 1 Q. B. 560, 3 Tax Cas. 22. And see, supra, § 293, note 3.

[23] Supra, § 185, art. 117. And if commissions are paid to salesmen in cash, as a part of the expense of conducting the business, they are allowable deductions to the employer paying the commission. Treasury Decision No. 2090, December 14, 1914. The department has also ruled that so-called "spending money" or "treating money," actually advanced by corporations to their traveling salesmen, and as a part of the expense of selling the product of the corporation, is an allowable deduction in the corporation's return of income. But there must be some showing that all the allowance claimed as a deduction was actually expended for the purpose for which the allowance was made. Idem.

[24] Royal Ins. Co. v. Watson [1897] App. Cas. 1, 3 Tax Cas. 500.

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Some statutes specially provide against this, as in South Carolina, where the deduction includes "the necessary expenses actually incurred in carrying on any business, occupation, or profession, not including remuneration to the taxpayer for personal supervision." And under any such statute, it is believed, this would be regarded as a cheat or evasion which the courts would not sanction. Thus, in a Scotch case, it was ruled that, where testamentary trustees receive annually the income of property and distribute it among the beneficiaries, the whole of such income is taxable, without deduction of the expenses incurred in the management or administration of the trust.[25] And in the case of a corporation where practically the whole of the stock is owned by one person, or perhaps by two former partners who have simply incorporated their business, the same principle applies. It has been ruled that salaries paid to an officer who is a stockholder, to constitute an allowable deduction, must be a reasonable and fair compensation for the services rendered, without regard to the amount of stock which such officer may hold, and must have been authorized by the board of directors and made a matter of record on the minute books of the corporation.[26] But "amounts paid as compensation or additional compensation to officers or employes, which amounts are based upon the stock holdings of such officers or employés, are held to be dividends, and although paid in lieu of salaries or wages, are not allowable deductions from gross income, for the reason that dividends are not deductible." [27]

§ 295. Same; Gifts, Charities, Pensions to Employés

The ruling of the United States Treasury department on this subject is that money or any other thing of value disposed of by way of gift, donation, or endowment, shall not be deducted or made the basis for a deduction from the in-

[25] Aikin v. Macdonald's Trustees, 32 Scotch Law Rep. 85, 3 Tax Cas. 306.

[26] Treasury Decisions, No. 1742, par. 81.

[27] Supra, § 185, art. 119.

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come of persons or corporations in their tax returns under the income tax law.[28] And this ruling is fortified by a decision to the effect that money paid out by a corporation for charities is not a part of its expenses which may be deducted from gross income, in ascertaining its taxable net income.[29] As applied to voluntary payments or presents by a corporation to its employés, the rule is that amounts paid for pensions to retired servants, or to their families or others dependent upon them, or paid on account of injuries received by employés, are proper deductions as "ordinary and necessary expenses," but that gifts or gratuities to employés in the service of a corporation are not properly deductible in ascertaining its net income.[30] But it is also ruled that "donations made for purposes connected with the operation of the property, when limited to charitable institutions, hospitals, or educational institutions, conducted for the benefit of its employés or their dependents, shall be a proper deduction for ordinary and necessary expenses."[31] But there is a decision in an English case that voluntary contributions made by a minister towards the stipend of his assistant minister are not an allowable deduction, although it was necessary for him to supplement the stipend in this way in order to secure a competent assistant.[32] A problem of more difficulty was presented in a case where S.,

[28] Supra, § 103.

[29] Baldwin Locomotive Works v. McCoach, 215 Fed. 967.

[30] Treasury Decisions No. 1742, par. 64. And see, supra, § 185, art. 120.

[31] Supra, § 185, art. 121. A later ruling, more fully explanatory of this point is that "donations by corporations which legitimately represent a consideration for a benefit flowing directly or indirectly to the corporation as an incident of its business are allowable deductions from gross income in ascertaining net income subject to the income tax; as, donations to a hospital, upon consideration that employees of the corporation are to have a ward for their use in case of accident or illness. The absence of consideration moving in some form to the corporation will make a contribution a mere gratuity; and gratuities are not allowable deductions in a return of income by corporations." Treasury Decision No. 2090, December 14, 1914.

[32] Lothian v. Macrae, 22 Scotch Law Rep. 219, 2 Tax Cas. 65.

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a manufacturing corporation, entered into an agreement with W., another manufacturing company, in the same line of business, whereby, in return for the right to nominate a majority of the directors of W., the S. company undertook to pay to W. each half year such a sum as might be necessary to make up any deficit in the dividend on W.'s preferred stock. As this was done for business reasons, and to promote the trade of S., it was held not to be a charity, but a subsidy granted for trade purposes, and therefore was considered properly deductible, under the head of "expenses," for the purpose of the income tax.[33]

§ 296. Same; Traveling Expenses

The expenses of a journey may be included in the "necessary and ordinary expenses" of carrying on a given business, where the journey is made as a necessary incident of the business or is otherwise undertaken directly for its expansion or advantage, as, where a traveling salesman is allowed his expenses on the road, where the business of an individual necessarily requires him to move from place to place, where a buyer for a store is sent to a distant market to replenish the stock, or where an officer of a corporation travels on its necessary and proper errands.[34] But traveling expenses are not deductible where they are incurred merely for the comfort or convenience of the person concerned. Thus, a public officer, whose duties are to be performed in one place, but who chooses to reside in another, is not entitled to deduct, for the purpose of the income tax, his expenses incurred in going to and fro between the two places.[35] And where the directors of a corporation travel from their places of residence to the place of meeting of the company, their traveling expenses are not an allowable deduction.[36] But it is at least doubtful

[33] Moore v. Stewarts & Lloyds, Ltd., 8 Fraser, 1129.

[34] See Jardine v. Inland Revenue [1907] Sess. Cas. 77, holding that a parish minister may deduct the cost of keeping a horse and carriage as part of the necessary expenses of his avocation.

[35] Cook v. Knott, 2 Tax Cas. 246.

[36] Revell v. Directors of Elworthy Bros., Limited, 3 Tax Cas. 12.

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whether hotel bills and other items of personal expenditure can be brought under the description of "traveling expenses" in any case where such expenses might constitute a proper deduction from income. The precise question has not arisen under the income tax laws, but analogous cases are not wanting. Thus, in a contract of employment of a traveling salesman for a certain salary per annum and an allowance for expenses not to exceed a certain sum per day, the word "expenses" was construed as not including the living expenses of the salesman.[37] And a similar decision was made in a case in Ohio, on the construction of a statute allowing to a county commissioner his "reasonable and necessary expenses actually paid in the discharge of his official duties." It was held that this meant official expenses only, as distinguished from those which pertained to the commissioner's personal comfort and necessities. The court said that, for his personal expenses of any kind, he could claim nothing beyond his per diem compensation and mileage; and it was a fair inference that, if it had been intended to reimburse him for board or traveling expenses in addition to mileage, when traveling on county business, the legislature would have expressed that intention in plain terms.[38]

§ 297. Same; Cost of Insurance

Premiums paid for policies of fire insurance were allowed to be deducted from the taxpayer's net income under the federal income tax act of 1894, and although this item is not specified in the statute now in force, nor in the laws of the states, it cannot be doubted that it should be allowed as a part of the "necessary and ordinary" expense of conducting a business, where the insurance is written on any building in which the business is carried on, or on a stock in trade, or on unfinished products of a factory, or on office furniture and fixtures, though of course the cost of insuring one's dwelling could not be so deducted. This is also the rule in Eng-

[37] Dowd v. Krall, 32 Misc. Rep. (N. Y.) 252, 65 N. Y. Supp. 797.
[38] Richardson v. State, 66 Ohio St. 108, 63 N. E. 593.

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land under the income tax law of that country,[39] and it is a general principle of law that the cost of insurance is properly included under the head of "expenses" in almost any connection in which that term can be used.[40] Thus, as between a life beneficiary and a remainderman, premiums paid for fire insurance on the premises are a proper expense of administering the property and are therefore payable out of income.[41] But where, under a life insurance policy, the insurer advances the annual premium to the assured as a loan on the security of the policy, and gives him a receipt for the premium as "paid," the assured is not entitled to deduct the amount of the premium from his gross income, for it is not in fact "paid by him." [42] And funds set aside by a corporation as a reserve for insuring its own property cannot be claimed as deduction, although any loss actually sustained and charged to such fund may be deducted.[43]

§ 298. Same; Rent of Land, Buildings, or Equipment

The act of Congress in force allows corporations to deduct from net income, under the head of expenses, "rentals or other payments required to be made as a condition to the contin-

[39] Society of Writers to the Signet v. Inland Revenue, 24 Scotch Law Rep. 27, 2 Tax Cas. 257.

[40] See Foster v. Goddard, 1 Black (U. S.) 506, 17 L. Ed. 228. The Treasury Department rules that premiums paid for insurance on property which is not occupied by the owner as a dwelling, but is rented or leased to secure an income, constitute allowable deductions in computing his net income. But premiums paid on life insurance by the insured cannot be deducted. However, premiums paid on life insurance taken out by a partnership upon the lives of individual members of such partnership constitute allowable deductions in ascertaining the net earnings of the partnership. But when such policies mature, or upon the death of the insured partner, the amount received from the insurance company should be included in the gross income of the partnership. So also, in cases where corporations pay premiums on insurance policies insuring, in favor of the corporations, the lives of officers or others, such premiums may allowably be deducted from the gross income of the corporations paying the same. Treasury Decision No. 2090, December 14, 1914.

[41] Bridge v. Bridge, 146 Mass. 373, 15 N. E. 899.

[42] Hunter v. King, [1904] App. Cas. 161.

[43] Supra, § 185, art. 122.

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ued use or possession of property," [44] and although this is not repeated in the provisions relating to individual taxpayers, it seems clear that, in the case of any business conducted on leased premises, the rent is a "necessary expense" of the business. Rent is not specially mentioned in the statutes of the several states, except Virginia, where the rent paid for agricultural land is allowed to be deducted from the profit realized on the crops. But only the actual rent paid, or the actual rental value of the premises, can be thus deducted, and not the additional expense which may be incurred in the purchase of a lease for a term of years. Thus, the English courts hold that where leasehold premises are purchased and used for trade purposes, the deduction from the assessment on the trade profits in respect to such premises must be limited to the existing annual value thereof, whatever may have been the premium originally paid, that is, the tenant is only enti-

[44] Supra, § 35. A corporation is entitled to deduct the entire amount of rent which it pays for the building in which its business is carried on, although a part of the building is used as a dwelling for the manager of the business. Russell v. Town & County Bank, L. R. 13 App. Cas. 418. Payments measured by a fixed percentage on the stock of a railroad corporation, whose lines are leased by another railroad corporation, and which rent is payable by the lessee directly to the stockholders of the lessor corporation, have, under the income tax law, with respect to the corporation paying such sums, the status of a rental payment. In such cases there are two corporations involved, the lessor and the lessee, one the rent payer and the other the rent receiver. To the lessee, rental payments are an expense of operation; to the lessor, the rentals are an income. A contract which provides that the rentals shall be paid to a third party, not a party to the contract, does not change the character of the payment, nor relieve the lessor from liability to tax on the rental income which the lessee pays to it or to such third party. The income of the third party, the stockholder, is dividends on the stock which he holds in the lessor company. Dividends cannot be paid unless the lessor has an income out of which to pay them. Hence the lessor company is required under the law to return as income the rentals which the lessee is required to pay. In paying direct to the stockholders, the lessee is acting as the agent of the lessor, and the amounts received by stockholders are, in effect and in fact, dividends received out of the earnings of the lessor. Treasury Decision No. 2090, December 14, 1914.

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tled to deduct the annual rent, and not to amortize the premium by distributing it over the years yet to run.[45] So they hold that a brewer paying a premium for a lease of a public house, for the purpose of letting it to a tenant under a covenant to buy beer brewed by him, is not entitled to a deduction on account of the gradual exhaustion of the premium.[46] That rent paid for personal property, as well as for land, may be an expense of the business in which it is employed, appears from a case in Pennsylvania, where it was held that compensation for the use of rolling-stock or other equipment which is hired, and not owned, by a railroad company, is certainly a part of the expense of the business which it transacts, and is therefore a part of the operating expenses of the road.[47] But the English law does not permit the deduction, as an expense of business, of royalties paid for the use of a patent.[48]

§ 299. Same; Mining Operations

The rule is settled in England that the cost of sinking a pit or shaft on a coal or iron mining property, to open up new seams or deposits, is an expenditure of capital and properly chargeable to that account, and cannot be regarded as an ordinary expense of the business, so as to be deductible from income for the purpose of estimating the taxable net income.[49] And a tenant of minerals, though he may be under a constant vanishing expense in sinking new pits as the old ones become exhausted, is not entitled, in computing his profits for the assessment of the income tax, to deduct from the gross profits a sum estimated as representing the amount of capital

[45] Gillatt v. Colquhoun, 2 Tax Cas. 76.

[46] Watney v. Musgrave, L. R. 5 Ex. Div. 241, 1 Tax Cas. 272.

[47] Commonwealth v. Philadelphia & E. R. R., 164 Pa. St. 252, 30 Atl. 145.

[48] Lanston Monotype Corp. v. Anderson, [1911] 2 K. B. 1019.

[49] In re Addie & Sons, 12 Scotch Law Rep. 274, 1 Tax Cas. 1. But see Morant v. Wheal Grenville Min. Co., 71 Law T. 758, holding that the question of whether the cost of sinking a shaft by a mining company is a capital expenditure or a working expenditure, or partly the one and partly the other, is a question of fact to be decided on the circumstances of each case.

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expended in making bores and sinking pits which have become exhausted by the year's work.[50] But in construing and applying the corporation tax act of Congress of 1909, the Commissioner of Internal Revenue made a regulation that the cost of drilling wells, by natural-gas companies, might be charged to expense account, rather than investment account, and so allowed in their returns. It was said: "The cost of drilling gas wells has been held by competent authorities as properly chargeable to either investment or expense. While it is preferred that the cost of drilling wells be charged to investment, the general custom of producers of natural gas in charging the cost of drilling to expense will be recognized, and returns of net income may be made in accordance therewith. Each return of annual net income should in such case state that the expense of drilling gas wells has been charged to expense. All other expenditures in tangible property in development work shall be chargeable to capital assets." [51] But the Commissioner also ruled that, in the case of petroleum producing properties, the cost of drilling and equipping new producing wells should be considered and treated as an addition to capital investment account, but that the expense of drilling holes which proved to be dry might be charged to profit and loss.[52]

§ 300. Same; Judgments

If a judgment is recovered against the taxpayer (whether an individual or a corporation) and paid within the year for which the return is to be made, the question whether it is deductible as an "ordinary and necessary expense" should be determined by reference to the cause of action on which it was recovered. If the claim was for goods sold, money had and received, services rendered, or otherwise founded on contract or quasi contract, it should be easy to determine whether the plaintiff's demand arose out of or was incident to the conduct of the de-

[50] Coltness Iron Co. v. Black, L. R. 6 App. Cas. 315.
[51] Treasury Decisions, No. 1754.
[52] Treasury Decisions, No. 1755.

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fendant's business, and if so, the change in its form, from a disputed claim to a judgment, should not affect the question of its allowance as a deduction. But in the case of a judgment for a tort, the matter is not so clear. So far as the authorities go, they may be said to favor the rule that if the tort was committed directly in the course of the business operations of the defendant, or the circumstances constituting it were such as might ordinarily arise in the prosecution of that business, then the payment of the damages (whether by settlement out of court or after judgment) may be regarded as an "expense" of the business. But if the tort had no connection with the business carried on, and did not arise out of its usual or ordinary conduct, it cannot be considered as an expense of that business. And this would naturally apply also to torts having also a criminal aspect, such as libel or slander or assault and battery. Thus it was ruled, under the corporation tax law of 1909, that amounts paid on account of injuries received by employés in the course of their employment would be proper deductions as ordinary and necessary expenses of the business.[53] And in an English case, the Lord Chancellor gave as an illustration of an allowable deduction "losses sustained by a railway company in compensating passengers for accidents in traveling." [54] So again, a decision in Massachusetts holds that the "operating expenses" of a railroad company should be construed to include a claim for damages done to property by the railroad company in negligently running a train at a highway crossing.[55] But on the other hand, where a brewery company owned an inn, which was carried on by a manager as a part of its business, and a customer sleeping in the inn was injured by the fall of a chimney, which accident was attributable to the negligence of the company's servants, and he recovered a judgment for damages, it was held that the amount thereof could not be deducted in estimating the balance of profits for the purpose of the income tax, the loss not being

[53] Treasury Decisions, No. 1742, par. 64.
[54] Strong & Co. v. Woodifield [1906] App. Cas. 448.
[55] Smith v. Eastern R. Co., 124 Mass. 154.

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connected with or arising out of the trade, and not being money wholly or exclusively laid out for the purposes of the trade.[56] And in the case in which this decision was made, a further illustration was given, as follows: "If a man kept a grocer's shop, for keeping which a house is necessary, and one of the window shutters fell upon and injured a man walking in the street, the loss thereby arising to the grocer ought not to be deducted" from net taxable income.

§ 301. Repairs, New Buildings, and Improvements

The cost of repairs to property, such as may be necessary to restore dilapidation or to keep it in serviceable and efficient condition for the purpose of the business in which it is employed, is plainly deductible as an "ordinary and necessary expense" of the business or of "the maintenance and operation of the business or property," as these terms are used in the income tax laws. Thus, under the act of Congress of 1864, it was said: "The object of the law was to impose a tax on net income or profits only, and that cannot be regarded as net income or profits which is required and expended to keep the property up in the usual condition proper for operation. Such expenditure is properly classed with repairs, which are a part of the current expenses." [57] And it has been ruled that the cost of erecting a building, if included in the terms of a lease under which the property is held by a corporation, is a proper deduction from its return of income for taxation, but should be prorated according to the time fixed by the lease.[58] But if

[56] Strong & Co. v. Woodifield [1906] App. Cas. 448.

[57] Grant v. Hartford & N. H. R. Co., 93 U. S. 225, 23 L. Ed. 878. "Incidental repairs, which neither add to the value of the property nor appreciably prolong its life, but keep it in an operating condition, may be deducted as expenses." Internal Revenue Regulations No. 33, art. 131, supra, § 185, art. 131.

[58] Treasury Decisions, No. 1742, par. 51. "The cost of erecting permanent buildings on ground leased by a company is a proper deduction as a rental charge, provided such buildings are left on the ground at the expiration of the lease as a part of the rental payment. In such case, the cost will be prorated according to the number of years constituting the term of the lease, and the annual deduction

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a corporation has been allowed a deduction for repairs to, and renewals of, its machinery and other appliances, sufficient to cover the actual loss by wear and tear, it cannot be allowed a further deduction for estimated depreciation of its plant; in other words, it cannot "get deduction for deterioration twice over." [59] But "repairs" do not include new constructions. And the income tax laws generally provide that no deduction shall be allowed to the taxpayer for money laid out in the cost of new buildings, permanent improvements, or betterments, made to increase the value of his property or estate.[60] This is in accordance with general principles of law. Thus, in estimating the profits of the business of a partnership, it is error to include among the expenditures such amounts as have been expended in permanent improvements to the real estate of the firm. Such improvements must be regarded as an investment of capital.[61] So, a corporation purchasing gas works in a defective structural condition is not entitled to deduct, in making its return of income for taxation, sums set aside annually out of the profits to be expended in future years on restoring the plant and apparatus.[62] And a railway company is not entitled to deduct from its profits sums expended in improving a section of the line so as to bring it up to the stand-

will be made accordingly." Internal Revenue Regulations No. 33, art. 115, supra, § 185, art. 115.

[59] Caledonian Ry. Co. v. Banks, 18 Scotch Law Rep. 85, 1 Tax Cas. 487.

[60] "Amounts expended in additions and betterments which constitute an increase in capital investment are not a proper deduction." Internal Revenue Regulations No. 33, art. 118, supra, § 185, art. 118. Additional machinery installed in a sugar mill is a "betterment," notwithstanding the fact that it is necessary in order to keep the plantation up to its former efficiency. In re Income Tax Appeal Cases, 18 Hawaii, 596. But the provision that no deduction shall be made for new buildings or improvements "made to increase the value of any property or estate" does not imply that deduction may be made for all amounts so paid out which do not in fact increase the value of the property. Hawaiian Commercial & Sugar Co. v. Tax Assessor, 14 Hawaii, 601, 28 Ann. Cas. 980.

[61] Braun's Appeal, 105 Pa. St. 414.

[62] Clayton v. New Castle-Under-Lyme Corp., 2 Tax Cas. 416.

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ard of the main line, nor the cost of the extra weight of heavy rails and other equipment substituted for lighter ones.[63] In this connection, however, it is pertinent to remark that modern ideas of sound corporation finance require that only those expenditures for improvements or betterments should be charged to capital accounts which will bring in new income, increase current income, or lessen the cost of production. Those which do not increase the productivity of the plant, in one way or the other, are charged against working expenses, repair or replacement account, or profit and loss. In this view, if a railroad company replaces a wooden bridge with a stone or steel bridge, it would not be treated as an investment of capital assets, unless, perhaps, it was part of a comprehensive system of improvements undertaken with a view to running heavier trains and handling a large volume of traffic.[64] But the few decisions which have been rendered on this point under the income tax laws regard it in a different aspect. In Hawaii, it is held that the cost of a replacement may be allowed as a deduction if the old article is practically but not totally abandoned, and that expenditure for a steel and concrete bridge to replace a wooden one is deductible as a replacement only up to the cost of a new bridge like the old one; beyond that it is a "betterment." [65] Under the Civil War income tax law, it was held that, where a railroad company replaces an old and worn-out bridge by another of like dimensions and materials, the outlay may be described as "repairs"; but if the old bridge is replaced by a new one of much more costly and valuable type, as, stone instead of wood, its cost may be charged as "expenses" of the company's business.[66] But in view of the provision that no deduction shall be allowed "for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any

[63] Highland Ry. Co. v. Balderstone, 26 Scotch Law Rep. 657, 2 Tax Cas. 485.

[64] See Greene, Corporation Finance (3d edn., 1904) p. 86.

[65] In re Income Tax Appeal Cases, 18 Hawaii, 596.

[66] Hartford & N. H. R. Co. v. Grant, 9 Blatchf. 542, Fed. Cas. No. 6,159.

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property or estate," [67] it seems scarcely possible that this last view should now be held sound.

§ 302. Interest on Indebtedness

The income tax law of Wisconsin allows, in the case of the individual only, the deduction of "interest paid within the year on existing indebtedness." That of Hawaii provides for the deduction of "all interest paid by such person or corporation on existing indebtedness." The act of Congress of 1913 discriminates between individuals and corporations. In the case of the former, it allows a deduction of "all interest paid within the year by a taxable person on indebtedness." [68] But in the case of a corporation, the deduction allowed is of "interest accrued and paid within the year on its indebtedness to an amount of such indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of the capital employed in the business at the close of the year." [69]

[67] Supra, § 7.

[68] Supra, § 7. Contrast with this language the terms of the Treasury regulation (Internal Revenue Regulations No. 33, art. 6, supra, § 177, art. 6) which allows the deduction of "all interest paid within the year on personal indebtedness of the taxpayer incurred in the conduct of business." The addition of these two restrictions—that the indebtedness should be "personal" and that it should have been "incurred in the conduct of business"—appears to the present writer to be entirely inconsistent with both the language of the law and the intention of Congress, and it is believed that the regulation would not survive the test of a judicial scrutiny. One who pays accrued interest on a bond which he buys should certainly be allowed to deduct the amount as "interest paid on indebtedness," though it is not the "personal" indebtedness of the taxpayer. Such also would be the case of a person who acquires the equity in a piece of property subject to a mortgage, which he does not assume. Again, one who pays interest on a mortgage on his home or on any piece of property which he holds as an investment clearly pays "interest on indebtedness," though such indebtedness was not "incurred in the conduct of business."

[69] Supra, § 39. For the Treasury regulations as to the method of

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To this there is added a proviso that, "in case of indebtedness wholly secured by collateral the subject of sale in ordinary business of such corporation, joint stock company, or association, the total interest secured and paid by such company, corporation, or association within the year on any such indebtedness may be deducted as a part of its expense of doing business." [70] And further it is provided that, "in the case of

calculating the amount of interest paid which a corporation may claim as a deduction, see, supra, § 147. See also Instruction No. 9, on reverse of Form No. 1031 (corporation return) printed in the Appendix to this volume. This relates to the item "total amount of bonded and other indebtedness outstanding at close of year," and provides that this item "should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In the case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head." Rule for calculation of deductible interest paid by foreign corporation, see Treasury Decision No. 2090. December 14, 1914.

[70] As to the meaning and application of this proviso, see the Treasury regulation, supra, § 158. The opinion may be hazarded that it was intended chiefly to apply to corporations which borrow extensively on their own debentures, for the purpose of lending the money so raised on farm or city mortgages, pledging such mortgages as collateral security for the debentures. The ruling of the Treasury Department on the subject is as follows: "As used in the act, the expression 'collateral the subject of sale,' etc., refers to physical or tangible property bound for the performance of certain covenants or payment of certain obligations, and which physical or tangible property is the subject of sale in the ordinary business of a corporation owning the same. Where such corporation is, as a matter of its ordinary business, engaged in buying and selling, or dealing in such property, the interest actually paid within the year on indebtedness wholly secured by such collateral may be allowably deducted from gross income as an expense of doing business, without regard to the limit of deductible interest as otherwise provided by the statute. The corporation must be organized and operated for the purpose of buying, selling, and dealing in the particular kind of property which becomes the collateral in question, and the particular property pledged for the debt upon which the interest is paid must be the 'subject of sale in the ordinary business of the corporation.' Real estate mortgaged, and the property of corporations organized for and engaged in the business of buying, selling, and dealing in real estate, warehouse receipts representing property the subject of sale in the ordinary business of the corporation owning the same, and which warehouse receipts are pledged as collateral for such

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bonds or other indebtedness, which have been issued with a guaranty that the interest payable thereon shall be free from taxation, no deduction for the payment of the tax herein imposed shall be allowed." [71] But in the case of a bank, banking association, or loan or trust company, the deduction may cover "interest paid within the year on deposits or on moneys received for investment and secured by interest-bearing certificates of indebtedness issued by such bank, banking association, loan or trust company." [72]

Construing a similar provision in the act of 1909 (with reference to the capital stock of a corporation as the measure of the indebtedness for which it might claim a deduction with respect to interest paid), it was ruled that the full amount of stock as represented by the par value of the shares issued is to be regarded as the paid-up capital stock, except when such stock is assessable on account of deferred payments, in which case the amount actually paid on such shares will constitute the actual paid-up capital. Capital stock is also held to include both preferred and common stock, but surplus and undivided profits are not to be included.[73] There was also a

corporation's own debt, are examples where the interest paid will be deductible as a business expense and not be subject to the statutory limitation as to interest deduction." Treasury Decision No. 2090, December 14, 1914.

[71] Supra, § 39.

[72] Supra, § 39. Where depositors in a savings bank do not receive a fixed rate of interest independently of what the bank itself may make or lose in lending their money, but receive a share of such profits as the bank, by lending their money, may, after deducting expenses, find that it has made, such share of profits is a "dividend" within the meaning of the income tax law, and not "interest," and hence not deductible as interest paid on deposits. Cary v. Savings Union, 22 Wall. 38, 22 L. Ed. 779.

[73] Treasury Decisions, No. 1742, pars. 15–17. "The full amount of stock, as represented by the par value of the shares issued, is to be regarded as the paid-up capital stock, except when such stock is assessable on account of deferred payments, or payable in installments, in which case the amount actually paid on such shares will constitute the actual paid-up capital stock of the corporation." Internal Revenue Regulations No. 33, art. 95, supra, § 185, art. 95. It

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ruling that interest on portions of bonded or other indebtedness bearing different rates of interest may be deducted from gross income, provided the aggregate amount of such indebtedness does not exceed the paid-up capital stock plus half the bonded debt.[74] An opinion was given by the Attorney General, on the construction of the same statute, that, in ascertaining the net income of a corporation for taxation under that act, the business of the corporation being holding and dealing in real estate, interest on an indebtedness assumed by the corporation and secured by mortgage on a property which it acquires, can be deducted only to an amount not exceeding interest at a corresponding rate on the amount of its paid-up capital stock. For by assuming the indebtedness, the corporation makes it "its" indebtedness, and the limitation of the statute applies. But where such a corporation takes title to real property subject to a mortgage, but does not assume the indebtedness secured thereby, the interest on such indebtedness may be deducted from its gross income, without limitation as to the amount of its paid-up capital stock, because the indebtedness in this case is not "its" indebtedness, but the interest payment is a "charge required to be made as a condition to the continued use or possession of property." [75]

is also ruled that "the amount received by a corporation for the original issue and sale of its capital stock is held to be the capital of the corporation. In cases where the stock, as originally issued, is sold at a price greater or less than the par value, neither the premium nor the discount will be taken into account in determining the net income of the corporation for the year in which the stock is sold. This is purely a capital transaction, and the income is neither increased nor decreased by reason of the sale, per se, of the stock at a price greater or less than its par value." Treasury Decision No. 2090, December 14, 1914.

[74] Treasury Decisions, No. 1742, par. 67. And see, supra, § 185, art. 151.

[75] 28 Opin. Atty. Gen. p. 198. Substantially the same view of the statute was taken in the case of Anderson v. Forty-Two Broadway Co., 213 Fed. 777, affirming Forty-Two Broadway Co. v. Anderson, 209 Fed. 991. In this case, complainant was a corporation organized to build and rent a building in New York City. It had a paid-up capital of $600 and a bonded debt of nearly five millions, secured

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In regard to interest payments in general, it has been held that the amount paid for accrued interest on securities purchased is properly chargeable to income account,[76] and therefore, on a parity of reasoning, should be deductible from the return of income for taxation. Under the English law, money paid in the form of interest on deposits by a company doing a banking business or a loan and discount business, is not deductible from its assessment for the income tax.[77] But the rule must be otherwise under the act of Congress now in force, since it explicitly provides for the deduction, "in the case of a bank, banking association, or trust company, of interest paid within the year on deposits." [78] As to the case of bank discounts, it is held in England that where a mercantile company, in order to be able to pay cash for goods purchased and thereby secure them at a better price than if bought on credit, borrows money on short time paper from bankers, the interest on such banking loans is not a proper deduction for

by mortgage, and during the year for which it was sought to be taxed, it had no net income after deducting the interest on its bonded debt from its gross income. The Commissioner allowed it to deduct only "interest paid within the year on bonded indebtedness not exceeding the paid-up capital stock." But it was held that the interest on the whole amount of the bonded debt was deductible as "necessary expenses paid, including charges such as rentals or franchise payments required as a condition to the continued use of the property." For if the company had not paid the interest on its bonds, the mortgage would have been foreclosed and the property lost to it. The Treasury regulations on this point are not very clear. But their purport appears to be that mortgage indebtedness, whether assumed or not, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is to be considered a debt of the corporation, and interest paid on it is deductible only under the head of "interest accrued and paid within the year on indebtedness," and, together with other interest charges, must not exceed the limit fixed by the statute. See Instruction No. 12, on reverse of Form 1030; Treasury Decisions No. 1865; supra, § 185, art. 148.

[76] People v. Davenport, 30 Hun (N. Y.) 177.

[77] Mersey Loan & Discount Co. v. Wootton, 2 Tax Cas. 316.

[78] Supra, § 39.

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the purpose of the income tax.[79] But the officers of the treasury department, under the act of 1909, held that discounts, other than bank discounts on notes executed by the corporation, should be segregated from the interest item on the return, and should be included under the heading of expenses.[80] In Wisconsin, the state tax commission rules that "discounts on obligations incurred but not discharged within the year would not come under the head of interest paid. When the interest is deducted from a loan in advance, such interest cannot be said to be 'paid' until the note is paid." [81]

But in any case, nothing can be deducted under this head except what is strictly and properly to be described as "interest." * Thus, in an English case, where a mining company borrowed money to be employed in its business, and covenanted to pay interest thereon annually and also to repay the capital with an additional bonus of ten per cent, it was held that the bonus paid could not be claimed as a deduction in estimating the assessable profits of the company.[82] So where a mortgage company raises money on an issue of debentures, and lends the money at a higher rate of interest, a commission paid to brokers and other expenses incurred in raising the money cannot be deducted from its assessment.[83] And where a company is empowered by act of Parliament to raise money upon mortgage for the purpose of carrying out a government contract, but is required by the same act to establish

[79] Anglo-Continental Guano Works v. Bell, 70 Law T. (N. S.) 670, 3 Tax Cas. 239.

[80] Treasury Decisions, No. 1742, par. 90.

[81] Wisconsin Income Tax Law, edition published by State Tax Commission, 1911, p. 17.

* Assessments laid by a corporation on its capital stock, and paid by the stockholder, are regarded as an investment of capital on his part, and do not constitute an allowable deduction in the return of the individual stockholder. Treasury Decision No. 2090, December 14, 1914.

[82] Arizona Copper Co. v. Smiles, 29 Scotch Law Rep. 134, 3 Tax Cas. 149.

[83] Texas Land & Mtg. Co. v. Holtham, 3 Tax Cas. 255.

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a sinking fund for the extinction of the mortgage debt, and a sum is to be set aside for payment into the sinking fund out of each quarterly payment received under the contract or out of other money belonging to the company, the sums so set aside are not allowable as a deduction in arriving at the company's taxable profits.[84]

§ 303. Taxes Accrued or Paid

In the income tax law of Hawaii it is provided that "all government taxes and license fees paid within the year shall be deducted from the gains, profits or income of the person who, or the corporation which, has actually paid the same, whether such person or corporation be owner, tenant, or mortgagor." The concluding clause of this provision was apparently copied from the act of Congress of 1894, which in turn, derived it from the acts of 1864 and 1870. In all these statutes, it is of course apparent that the use of the word "mortgagor" is a legislative blunder for "mortgagee." And although the other existing acts do not specially provide for this case, it can hardly be doubted that a mortgagee of realty paying the taxes thereon would be entitled to deduct them from his return of income for taxation. The statute in Wisconsin, however, is quite strict in this particular. In the case of corporations, it allows the deduction of "sums paid by such person [corporation] within the year for taxes imposed by any state of this Union or subdivision thereof, or any territory or possession of the United States, upon the source from which the income taxed by this act is derived." This excludes any taxes assessed under the authority of the federal government. As to individuals, it provides for the deduction of "taxes paid by such persons during the year, other than inheritance taxes, upon the property or business from which the income hereby taxed is derived." This would not allow the taxpayer to deduct

[84] City of Dublin Steam Packet Co. v. O'Brien, 6 Tax Cas. 101, following Mersey Docks & Harbour Board v. Lucas, 2 Tax Cas. 25.

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the amount paid by him under the federal income tax law, since that is not a tax on his property or business, but upon the income itself.

The act of Congress of 1913, in its application to individual taxpayers, allows the deduction of "all national, state, county, school, and municipal taxes paid within the year, not including those assessed against local benefits." [85] In the case of a corporation, it permits the deduction of "all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof, or imposed by the government of any foreign country." [86] The meaning is that a domestic corporation may deduct any and all taxes assessed against it, and paid, under federal, state, or municipal authority, and whether in the nature of franchise or occupation taxes or taxes on property, and that such a corporation, owning property or doing business in foreign countries, may also deduct such taxes paid abroad as are imposed by the foreign government. This was the practical construction placed on the corresponding provision of the act of 1909 by the officers of the government who were charged with its administration.[87] This is also in substantial accordance with the provisions of the English income tax law, which permit an English company doing business abroad to deduct from its assessment for income tax any amount paid by it for taxes assessed by the foreign government on the net profits of its business.[88] As to foreign corporations doing business in America, the pro-

[85] Supra, § 7. Taxes paid by citizens or resident aliens of the United States to a foreign country are not allowable deductions in computing net income. The provision of law for the deduction of taxes applies only to taxes paid to the United States or to some state or political subdivision thereof in the United States. Treasury Decision No. 2090, December 14, 1914. Taxes paid by a tenant to his landlord are considered as additional payment for rent and are deductible as an expense of carrying on business. Idem.

[86] Supra, § 40.

[87] Treasury Decisions, No. 1742, par. 73.

[88] Stevens v. Durban-Roodepoort Gold Min. Co., 5 Tax Cas. 402.

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vision of the act of 1913 is that such a company may deduct "all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof or the District of Columbia." [89]

Funds set aside by a corporation out of its current earnings as a reserve for the payment of accruing taxes, or taxes which have accrued but which have not yet been paid, cannot be allowed as a deduction, since the statute specifically provides that only such sums as are "paid" within the year for taxes can be deducted.[90] And where the state law provides that stockholders in banking corporations shall be assessed and taxed upon the value of their shares of stock therein, and that the bank shall collect the tax and pay over the amount to the proper local authorities, this does not convert the tax into a tax upon or against the bank itself. Hence if a bank pays the taxes assessed upon its shareholders, but neglects or omits to collect the sums so paid from the several stockholders, or to reimburse itself by deducting such sums from their dividends, it will not be entitled to claim a deduction thereof in its income-tax return under the heading of taxes paid.[91] Customs duties paid on the importation of goods from abroad may be classed as "taxes," for the purposes of this statute, but if an importing merchant has included such duties in estimating the cost of the goods, for the purpose of computing his profits on their sale, he will not be entitled to deduct them from his net income as taxes paid.[92] As to legacy or inheritance taxes, they are

[89] Supra, § 41. It will be noticed that this provision does not contemplate the prorating of any taxes paid by the foreign corporation to its home government. In other words, it is not allowed to deduct (on account of its American business) any portion of the taxes it may have paid outside the United States.

[90] Treasury Decisions, No. 1742, par. 77. And see Internal Revenue Regulations No. 33, art. 156, supra, § 185, art. 156.

[91] Northern Trust Co. v. McCoach, 215 Fed. 991; National Bank of Commerce v. Allen, 211 Fed. 743; Eliot Nat. Bank v. Gill, 210 Fed. 933; Treasury Decisions No. 1763.

[92] Treasury Decisions, No. 1742, par. 74. See Internal Revenue Regulations No. 33, art. 155, supra, § 185, art. 155.

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probably included under the broad general term "taxes" in the federal statute, but the Wisconsin statute expressly forbids their deduction. In New York, it is held that the federal inheritance tax to be paid under the War Revenue Act of 1898 is not to be deducted from the valuation of an estate for the purpose of a state transfer or inheritance tax, for it is not a tax upon property, but one against the legatee and payable out of his legacy.[93] But a contrary decision has been made in Massachusetts.[94] The Treasury officials have ruled that taxes paid by a corporation pursuant to a contract guaranteeing that the interest payable on its bonds or other indebtedness shall be free from taxes are not allowable to it as a deduction.[95] Water rents are not taxes, but it appears that they may be deducted under the description of necessary expenses when their payment is incidental to the management of an estate or trust or a business property or an investment.[96]

§ 304. Losses Uncompensated

The federal income tax law allows the individual taxpayer to deduct "losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise." [97] In the case of corporations, the deduction is to be for "all losses actually sustained within the year and not compensated by insurance or otherwise." [98] Under the statute in Wisconsin, a deduction is allowed, in both cases, for "losses actually sustained within the year and not compensated for by insurance or otherwise." The law in Hawaii provides for the deduction of "all losses actually sustained during the year,

[93] In re Gihon's Estate, 169 N. Y. 443, 62 N. E. 561.
[94] Hooper v. Bradford, 178 Mass. 95, 59 N. E. 678.
[95] Supra, § 185, art. 153.
[96] Supra, § 139.
[97] Supra, § 7. For Treasury regulations on this point, see supra, §§ 156, 165.
[98] Supra, § 36. See Treasury regulations, supra, §§ 156, 165.

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incurred in trade or arising from losses by fire not covered by insurance, or losses otherwise actually incurred." These phrases, if taken in their widest sense, might include the loss or impairment of capital assets by such causes as bad investments, the bankruptcy of a debtor, the failure of a bank, the enforcement of one's liability as indorser, and the like. But bearing in mind the purpose of the statutes in which they occur—to impose a tax on incomes, not on property or capital—and taking the context into consideration, it seems probable that a more restricted meaning should be given to them. Apparently the legislative purpose was to include only those losses which are incident to the business out of which the taxable income is produced, or such as involve the destruction or impairment of property employed, or capital invested, in that business.[99] This is the doctrine

[99] This is the view strongly held by the Treasury department, as, in ruling that a loss sustained on a single sale of real estate is not deductible unless the dealing in real estate is the business of the person concerned, because otherwise it cannot be said to have been "incurred in trade." Supra, § 156. For the same reason, the department holds that shrinkage in the value of stocks, bonds, and other like securities is not deductible under the head of losses. Supra, § 165. The latest ruling on this subject is as follows: "Loss, to be deductible must be an absolute loss, not a speculative or fluctuating valuation of continuing investment, but must be an actual loss, actually sustained and ascertained, during the tax year for which the deduction is sought to be made; it must be incurred in trade and be determined and ascertained upon an actual, a completed, a closed transaction. The term 'in trade,' as used in the law, is held to mean the trade or trades in which the person making the return is engaged: that is, in which he has invested money otherwise than for the purpose of being employed in isolated transactions, and to which he devotes at least a part of his time and attention. A person may engage in more than one trade, and may deduct losses incurred in all of them, provided that in each trade the above requirements are met. As to losses on stocks, grain, cotton, etc., if these are incurred by a person engaged in trade to which the buying and selling of stocks, etc., are incident as a part of the business, as by a member of a stock, grain, or cotton exchange, such losses may be deducted. A person can be engaged in more than one business, but it must be clearly shown in such cases that he is actually a dealer, or trader, or manufacturer, or whatever the occupation may be, and

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prevailing in England, where it is said: "Only such losses can be deducted as are connected with, in the sense that they are really incidental to, the trade itself. They cannot be deducted if they are mainly incidental to some other vocation or fall on the trader in some other character than that of trader. The nature of the trade is to be considered," so that a taxpayer is not allowed to deduct a loss which he has sustained in being compelled to pay a judgment recovered against him in an action of tort, where the circumstances of the tort were not an incident of his business.[100] Under the English law it is also held that one who carries on two lines of business cannot deduct a loss sustained in one from the profits made in the other. Thus a seed merchant, taking a farm and working it in connection with his seed business, cannot claim any allowance from the assessment on his profits as seed merchant in respect of losses on the farm.[101] But on the other hand, a loss sustained by the embezzlement of funds by an employé is incurred in trade, or sustained in connection with the income-producing business, and therefore may be deducted.[102] But mere shrinkage in value of property or other assets is not properly to be described as a "loss," within the meaning of the statutes, though an allowance for it may be made under the head of "depreciation."[103] And so, loss due to the voluntary removal of build-

is actually engaged in one or more lines of recognized business, before losses can be claimed with respect to either or more than one line of business, and his status as such dealer must be clearly established." Treasury Decision No. 2090, December 14, 1914.

[100] Strong & Co. v. Woodifield [1906] App. Cas. 448.

[101] Brown v. Watt, 23 Scotch Law Rep. 403, 2 Tax Cas. 143.

[102] United States v. Central Nat. Bank, 10 Fed. 612.

[103] Supra, § 165. The cost of replacing a steamship which has become unserviceable by reason of her condemnation by the federal inspectors is not a "loss" to be deducted from income. In re Wilder's Steamship Co., 16 Hawaii, 567. So the value of sugar mills, buildings, and a plantation railroad, discarded on account of the erection of a larger mill at a different place and the construction of a different railroad connected therewith is not a "loss actually sustained during the year incurred in trade," and cannot be deducted in ascertaining

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ings, etc., incident to the making of improvements, is either a proper charge to the cost of the new additions or to depreciation already provided, as the facts may indicate, but in no case is it a proper deduction in determining net income, except as it may be reflected in the reasonable amount allowable as a deduction for depreciation.[104] It will be observed that losses cannot be deducted if compensated for by insurance or otherwise. But by a reasonable construction of the statute we should conclude that a loss partially compensated for by insurance or otherwise, if otherwise deductible, might be deducted to the extent of the excess of loss over insurance or other compensation received. The ruling of the Treasury department is that the deduction for loss "must be based upon the difference between the cost value and salvage value of property or assets, including in the latter value, such amount if any, as has, in the current or previous years, been set aside and deducted from gross income by way of depreciation, and has not been paid out in making good such depreciation."[105] And a corporation cannot deduct losses which have been made good by contributions from its stockholders.[106] Further, the loss must have been "actually sustained within the year." Under these terms, it is considered that reserves set aside to take care of anticipated or probable losses cannot be deducted.[107] And so, where one makes an unfortunate investment, giving too high a price for property, and makes such profit as he can from it for a time, then realizes that the possibilities of the property are ex-

taxable net income. Hawaiian Commercial & Sugar Co. v. Tax Assessor, 14 Hawaii, 601, 28 Ann. Cas. 980.

[104] Treasury Decisions, No. 1742, par. 93. And see Internal Revenue Regulations No. 33, art. 127, supra, § 185. The loss of an old mill in good condition, by its voluntary abandonment because of the erection of a larger mill in a different place on account of the enlargement of the plantation, is not an "expense" within the meaning of the income tax law. Hawaiian Commercial & Sugar Co. v. Tax Assessor, 14 Hawaii, 601, 28 Ann. Cas. 980.

[105] Internal Revenue Regulations No. 33, art. 124, supra, § 185.

[106] Columbia Conduit Co. v. Commonwealth, 90 Pa. St. 307.

[107] Internal Revenue Regulations No. 33, art. 126, supra, § 185.

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hausted, and writes it off on his books as a total loss, it cannot be deducted as a loss actually sustained at the time of writing it off; for the loss was incurred at the beginning.[108] And a claimed loss cannot be regarded as a loss sustained during a particular year because it was written off on the books in that year, nor does it become an actual loss by the mere act of writing off that sum to the account of profit and loss.[109]

§ 305. Debts Written Off as Worthless

The federal income tax law of 1894 allowed the deduction of "debts ascertained to be worthless." That of 1913 copies this phrase with some enlargement, as follows: "Debts actually ascertained to be worthless and charged off during the year." [110] But this applies only in the case of individual taxpayers. In that part of the law which relates to corporations there is no corresponding provision. This probably results from the fact that those portions of the act of 1913 which relate to corporations were copied almost bodily from the corporation tax law of 1909 (which made no provision for the deduction of bad debts) without adverting to the resulting discrimination between corporations and individuals. But the act of 1909 did contain a provision for deducting uncompensated losses, and under this clause the officers of the treasury department ruled that bad debts, if so charged off on the company's books during the year, were proper deductions, though, if such debts were subsequently collected, they must be accounted for as income.[111] It is reason-

[108] In re Pacific Guano & Fertilizer Co., 16 Hawaii, 552.

[109] In re Hackfeld & Co., 16 Hawaii, 559.

[110] Supra, § 7. The Treasury department holds that "debts cannot be regarded as worthless until after legal proceedings to recover the same have proved fruitless, or it clearly appears that the debtor is insolvent." Instruction No. 14, on Form No. 1040 (individual tax return) printed in the Appendix to this volume. But it is difficult to perceive how the department felt itself warranted in setting up a rule of such severity which the language of the statute does not warrant.

[111] Treasury Decisions, No. 1742, par. 75. And see, supra, § 185, art. 125.

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able that a similar construction should be applied to the act now in force. Under the former income tax laws it was held that a merchant, in making his statement of income, was entitled to deduct from his gross profits the bad debts made during the year to which the statement related, or such as appeared to be uncollectible at the end of that year, but not debts which became worthless after the expiration of that year, although before the date of the return.[112]

The term "debts" should not be taken in its broadest sense. It is a term capable of a wide variety of meanings. But considering the connection in which it is found and the general purpose of the statute, it is apparent that it includes only such debts as arise in or are connected with the business of the year, or, in other words, debts which, if they had been paid, would have constituted a part of the year's taxable income. Money owing to one may constitute a part of his capital, so that its payment would not swell his income, but only change the form of the capital. In this case, if it should prove uncollectible, it would not constitute a proper deduction. Thus, in an English case, it appeared that the company in question carried on the business of zinc smelting, and for this purpose it required large quantities of "blende." To supply the blende a new company was formed, which from time to time received assistance from the smelting company in the form of advances on loan. The new company proving unsuccessful and going into liquidation, the amount due from it to the smelting company was written off as a bad debt. But it was held that the advances were an investment of capital, and that the loss was not deductible in estimating the profits of the company for assessment under the income tax.[113] On the other hand, where a brewing company made loans to its customers on the security of public houses, and if the security did not realize the amount of the loan, the company wrote off the

[112] United States v. Mayer, Deady, 127, Fed. Cas. No. 15,753.

[113] English Crown Spelter Co. v. Baker, 99 Law T. 353, 5 Tax Cas. 327.

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loss as a bad debt, it was held that, in arriving at its profits for assessment to income tax, the company was entitled to deduct the amount of such losses as worthless debts.[114]

§ 306. Depreciation of Property

The act of Congress of 1913 provides, in the case of an individual taxpayer, for a deduction from his return of income for assessment of "a reasonable allowance for the exhaustion, wear and tear of property, arising out of its use or employment in the business," and in the case of a corporation "a reasonable allowance for depreciation by use, wear and tear of property, if any." [115] According to the plain import of these terms, an allowance for depreciation can be claimed only in respect to tangible property which is directly employed in the production of the income taxed, such as buildings, machinery, furniture and fixtures, ships, vehicles, rolling stock and roadbed, and the like. For the language of the act only applies to property which is "used" or "employed" in business, and which, in the process of such use, is subject to "exhaustion" or "wear and tear." In this respect the act exhibits a departure, in the way of greater strictness, from the terms of the corporation tax law of 1909, which allowed a deduction of "a reasonable allowance for depreciation of property, if any." In accordance with the latter and broader phrase, the Wisconsin statute, both in the case of individuals and cor-

[114] Reid's Brewery Co. v. Male [1891] 2 Q. B. 1, 3 Tax Cas. 279.

[115] Supra, §§ 7, 36, 165. And see the Treasury regulations on the subject of depreciation, at large, in Internal Revenue Regulations, No. 33, supra, § 185, arts. 129–140. If costumes purchased by actors and actresses are used exclusively in the production of a play, and are not adapted for occasional personal use and are not so used, a deduction may be claimed on account of such depreciation in their value as occurs during the year, on account of wear and tear arising from their use in the productions of the play or their becoming obsolete at the close of the production. Treasury Decision No. 2090, December 14, 1914. Depreciation of farm buildings, other than a dwelling occupied by the owner, actually sustained within the year, in excess of repairs made, will be considered an allowable deduction. Idem.

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porations, provides for "a reasonable allowance for depreciation of the property from which the income is derived."

Depreciation is a well-known and important item in all modern corporation accounting. And in estimating the net profits of any business, this item must be reckoned with, either by figuring a corresponding reduction in the value of capital assets, by the creation of a surplus or reserve fund for the eventual replacement of the plant or such portions of it as will become exhausted, or by the expenditure of current earnings in the restoration of machinery or other property which has been impaired or has deteriorated by use.[116] In the latter case, there is no shrinkage in the value of assets, but there is an annual expenditure over and above the ordinary operating expenses. And under the income tax law, it is ruled that depreciation, to be an allowable deduction in the return of annual net income of a corporation, must be charged off on the ledger of the corporation, so as to show a reduction in its capital assets to the extent of the depreciation claimed. In other words, if a corporation expends money in repairing or replacing depreciated property, it may claim an allowance therefor under the head of repairs or expenses of the business, but in that case will not be entitled to claim also for deprecia-

[116] The treasury ruling on this subject is that "the corporation will be allowed the usual depreciation of its machinery, equipment, etc., such depreciation to be determined on the basis of the cost and estimated life of the property with respect to which the depreciation is claimed." Supra, § 185, art. 143. And again, "the amount claimed for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account, in order to be allowable, should be so entered on the books as to constitute and show as a liability against the assets of the corporation." Instruction No. 13, on reverse of Form No. 1030. See this Form in the Appendix. As to reserves for depreciation, it has been held that when a company sets aside out of its net profits, and before making dividends, a sum of money to be held as a reserve fund against depreciation of buildings, plant, and machinery, this amount cannot be deducted in making return for the income tax. Forder v. Handyside, L. R. 1 Ex. Div. 233.

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tion.[117] The question of what is a "reasonable allowance" for depreciation is one depending on the circumstances of each particular case, and if the amount of the tax to be paid is brought into litigation, it is to be determined as a question of fact on the evidence.[118] The general rule prescribed by the Commissioner of Internal Revenue under the corporation tax law of 1909 was as follows: "The deduction for depreciation should be the estimated amount of the loss, accrued during the year to which the return relates, in the value of the property in respect of which such deduction is claimed, that arises from exhaustion, wear and tear, or obsolescence out of the uses to which the property is put, and which loss has not been made good by payments for ordinary maintenance and repairs deducted under the heading of expenses of maintenance and operation or in the ascertainment of gross income. This estimate should be formed upon the assumed life of the property, its cost value, and its use. Expenses paid in any one year in making good exhaustion, wear and tear, or obsolescence in respect of which any deduction for depreciation is claimed must not be included in the deduction for expenses of maintenance and operation of the property or in the ascertainment of gross income, but must be made out of accumulative allowances deducted for depreciation in current and previous years." [119]

The application of a general rule of this kind to a concrete case is well illustrated in a Scotch case, which concerned the method of figuring the deduction to be allowed for annual wear and tear of such a piece of property as a steamship. It was said that the proper method is to take the average life of such a property (here estimated at 22 years), and over that

[117] Treasury Decisions, No. 1742, par. 83. And see Instruction No. 14, on reverse of Form No. 1030 (printed in the Appendix hereto) stating that, "where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income."

[118] United States v. Nipissing Mines Co., 202 Fed. 803.

[119] Internal Revenue Regulations, No. 31, art. 4.

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period spread the whole original cost, allowing for each year a deduction equal to the quotient obtained by dividing such cost by such number of years, without taking into account the value of the use of the money so annually allowed by way of deduction, or considering what the owner may do with it. The method pursued by the commissioners of inland revenue in this case was to calculate the sum which, being allowed annually and placed at interest, would amount to the original cost of the vessel at the end of the 22 years, thus in effect requiring the owner to establish a sinking fund and keep it invested, or to amortize the value of his property by the growth of a fund for its replacement. But this the court held to be incorrect.[120]

In the case of an income derived from the rent of a building—such as a dwelling, an apartment house, a hotel, a store, or an office building—no decision has apparently yet been rendered concerning the right of the owner to claim a deduction for depreciation. But applying the principles established in other cases, it may be stated in the first place, that a claim should not be allowed both for repairs and for depreciation, if the repairs make good the depreciation. But secondly, such a property is clearly subject to "wear and tear," and diminishes in value thereby, and its average life should be susceptible of calculation to a fair degree of certainty, considering not only its gradual physical impairment, but also the increasing difficulty of continuing to obtain the same rent for it as it becomes more and more old-fashioned or unsuited to modern requirements. On the question of obsolescence as an element of depreciation, however, we shall have more to say in a later paragraph.

If an allowance for depreciation can be applied to anything else than tangible property employed in the business, then an interesting question arises concerning shrinkage in the market

120 Leith, Hull & Hamburg Steam Packet Co. v. Inland Revenue, 1 Sess. Cas. Scotch (1899) 1117. Further as to the allowance for depreciation in the case of steamships, see Cunard S. S. Co. v. Coulson [1899] 1 Q. B. 865.

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value of stocks, bonds, and other investments. As above stated, the act of Congress now in force would exclude such a case, if read literally.[121] But it was held otherwise under the somewhat broader terms of the act of 1909. The treasury department ruled that premiums on stocks and bonds arbitrarily charged off on the books of a corporation did not constitute a proper deduction on account of depreciation, unless there had been an actual shrinkage in value of such securities to the extent of the reduction claimed during the year for which the return was made.[122] The language of the Wisconsin statute, in this particular, is practically the same as that of the act of Congress of 1909. But its construction has not been judicially settled, and the revenue officers of that state tentatively hold that it was not intended to apply to the case of diminishing market value of intangible property such as corporate stocks or bonds, while suggesting an amendment to the statute in the interest of greater clarity of expression.[123]

[121] The Treasury department takes the view that a deduction for shrinkage in the value of securities cannot be claimed under the head of depreciation. See, supra, § 165. And see Instruction No. 13, on reverse of Form No. 1030, printed in the Appendix. But "depreciation in book values of capital assets shall be treated in the return in the manner prescribed in the case of loss from the sale of capital assets, but amounts arbitrarily charged off will not be allowed as deductions except so far as they represent an actual shrinkage in values which may be determined to have taken place during the year for which the return is made." Supra, § 185, art. 134. This appears to mean that a shrinkage in the book value of capital assets may be deducted as a "loss" but not as a "depreciation."

[122] Treasury Decisions, No. 1742, par. 87.

[123] "Deductions for losses under other income tax laws have generally been confined to damage to or destruction of physical property of the taxpayer, and bad accounts which had previously been reported as income. Losses resulting from fluctuation in market value have not been allowed. Various claims have been made for losses under the paragraph quoted, including depreciation in the value of corporate stocks and other like property resulting from change in market value or destruction of or damage to the physical property of the corporation issuing the stock. Considered as a whole, the income tax act does not seem to contemplate the assessment of appreciation in value until actually realized by sale or other disposition of the property. It would seem to follow that depreciation should not

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The question of allowing for depreciation in the case of property which, though not physically impaired, has become obsolete is one of great difficulty. Undoubtedly, a business property diminishes in value unless it is kept up to the standard of efficiency set by new inventions, new appliances, and new methods, since it cannot otherwise successfully compete with its better-equipped rivals. And in a broad sense, this is clearly "depreciation." But it is not depreciation by reason of "wear and tear," or by reason of its use in the business. And so the decisions under income tax laws, in so far as they have adverted to this point, tend to the application of a stricter rule. Thus, in an English case it was held that depreciation on account of wear and tear does not include the loss on apparatus which is discarded because it has become old-fashioned or obsolete, as in the case where a street railway company changes its motive power from horse power to electric power, and thereupon is obliged to take up and cast aside the rails in use, which, though not worn out, cannot be used for the new track.[124] So again, under the English statute, which allows a deduction for "diminished value by reason of wear and tear during the year of any machinery or plant," it was ruled that the owners of a ship engaged in trade were not entitled to a deduction for depreciation in the value of their vessel caused by the building of ships of a better construction or better

be allowed in such cases until the amount of the loss is determined in like manner. Following the English decisions and the precedents of the internal revenue department under the income tax of 1863, and the rules prescribed for administration of the income tax of 1894, the Commission felt compelled to deny deductions for depreciation of this character while the property was still held by the taxpayer. The soundness of this construction has been sharply challenged, and the law on the subject is not entirely clear. If the purpose of the legislature is to confine deductions for losses as above indicated, the statute should be amended so as to more clearly express that intention. If, on the other hand, a wider range of deduction is deemed advisable, there is equal reason for making the statute more specific. The subject is properly one for the consideration of the legislature and attention is called to it for that reason." Report of Wisconsin State Tax Commission, 1912, p. 49.

[124] London County Council v. Edwards, 5 Tax Cas. 383.

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equipped, though this circumstance rendered their own property less desirable for the use of charterers and so diminished its earning power.[125]

It has been ruled that "good will" represents the value attached to a business over and above the value of the physical property, and is such an entirely intangible asset that no claim for depreciation in connection therewith can be allowed, [126] and also that "unearned increment" will not be considered in fixing the value on which depreciation shall be based.[127]

The English income tax law provides that where full effect cannot be given to the deduction for wear and tear in any given year, owing to the profits chargeable with the income tax being less than the deduction, that part of the deduction to which effect has not been given shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear in that year.[128] In a late case, upon the assessment of the profits of plaintiff's ships for income tax, it was admitted that, prior to the year of assessment, plaintiff had received allowances for depreciation of the ships by wear and tear of an amount aggregating at least 96 per cent of their prime cost, and that, at the time of the assessment, the break-up value of the ships was more than 4 per cent, and that in one instance plaintiff had received more than 100 per cent of the original cost. Nevertheless it was held that the commissioners were bound to allow a just and reasonable deduction for depreciation during the year of assessment.[129]

[125] Burnley Steamship Co. v. Aikin, 31 Scotch Law Rep. 803, 3 Tax Cas. 275.

[126] Treasury Decisions, No. 1742, par. 82.

[127] Internal Revenue Regulations No. 33, art. 146, supra, § 185, art. 146.

[128] See Scottish Shire Line v. Inland Revenue [1912] Sess. Cas. 1108.

[129] Hall v. Rickman, 94 Law T. 224.

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§ 307. Same; Depreciation of Patents

That species of property which is represented by the ownership of a patent is subject to depreciation both on account of the limited time during which the monopoly may be enjoyed and on account of the fact that, at any time, the patenting of new inventions or improvements may render the original machine, process, or other thing covered by the patent more or less obsolete. Accordingly the Treasury department has prescribed special rules for calculating the amount of depreciation allowable for this kind of property with reference to the income tax. It is provided that "the deduction claimed for exhaustion of the capital assets as represented by patents to be made in the return of annual net income of a corporation for any given year shall be one-seventeenth of the actual cost of such patents reduced to a cash basis. Where the patent has been secured from the government by a corporation itself, its cost would be represented by the various government fees, cost of drawings, experimental models, attorneys' fees, etc. Where the patent has been purchased by the corporation for a cash consideration, the amount would represent the cost. Where the corporation has purchased a patent and made payment therefor in stocks or other securities, the actual cash value of such stocks or other securities at the time of the purchase will represent the cost of the patent to the corporation." "With respect to the depreciation of patents, one-seventeenth of the cost is allowable as a proper deduction each year until the cost of the patent has been returned to the corporation. Where the value of a patent has disappeared through obsolescence or any other cause, and the fact has been established that the patent is valueless, the unreturned cash investment remaining in the patent may be claimed as a total loss and be deducted from gross income in the return of annual net income for the year during which the facts as to obsolescence or loss shall be established, such unreturned cash value to be fixed in accordance with the pro-

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portion that the number of years which the patent still has to run bears to the full patent period of seventeen years." [130]

§ 308. Depletion of Ores or Other Natural Deposits

It has been a vexed question whether or not a company engaged in the business of mining coal, ores of gold or silver, or other natural deposits, should be allowed to deduct from its income as returned for assessment, under the head of depreciation, an amount representing the diminution in the value of its property caused by the extraction of ores during the year. Two American decisions and one English case have ruled that this was not admissible.[131] But other decisions (in both countries) have maintained that such a deduction should be allowed, on the ground that a mining property is valuable only for the minerals which it contains, that its value constantly decreases as the minerals are extracted, until it reaches the vanishing point at the time when the mineral deposits are exhausted, and that each year's operations causes a shrinkage in the value of the property equal to the value (value in place) of the ores taken out, which is properly described as a "depreciation." [132] And this rule was also adopted by the officers of the internal revenue bureau.[133] So far as concerns taxation under the federal statute, this question is set at rest by the

[130] Internal Revenue Regulations No. 33, arts. 137, 138. See, supra, § 185.

[131] Commonwealth v. Ocean Oil Co., 59 Pa. St. 61; Alianza Co. v. Bell, [1906] App. Cas. 18; Stratton's Independence v. Howbert, 207 Fed. 419. The case last cited reached the Supreme Court of the United States on certificate from the Circuit Court of Appeals (231 U. S. 399, 34 Sup. Ct. 136, 58 L. Ed. 285) where it was held that, assuming that the depletion of the mineral supply from the process of mining is an element to be considered in determining the reasonable depreciation that is to be deducted from the annual net income of a mining company, the difference between the gross proceeds of the sales of ores during the year, and the amount expended in extracting, mining, and marketing such ores, cannot be treated as the value of the ore in place for such purpose.

[132] United States v. Nipissing Mines Co., 202 Fed. 803; Knowles v. McAdam, L. R. 3 Ex. Div. 23, 1 Tax Cas. 161.

[133] Treasury Decisions, No. 1742, par. 97.

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terms of the act of 1913, which includes under the head of allowance for depreciation "in the case of mines, a reasonable allowance for depletion of ores and all other natural deposits, not to exceed five per centum of the gross value at the mine of the output for the year for which the computation is made." [134] The same rule will apply to the case of natural gas companies and those sinking oil wells. And under the corporation tax law of 1909, the administrative officers ruled that natural gas companies should be allowed to make deductions for depreciation on the basis of the gradual exhaustion of their deposits, and prescribed elaborate instructions for reckoning this depreciation, [135] which was also done with reference to com-

[134] Supra, § 36. The term "gross value at the mine," as here used, has been defined by the Treasury department as "the market value of ore, coal, crude oil, and gas at the mine or well, where such value is established by actual sales at the mine or well; and in case the market value of the product of the mine or well is established at some place other than at the mine or well, or on the basis of the bullion or metallic value of the ore, then the gross value at the mine is held to be the value of the ore, coal, oil, or gas sold, or of the metal produced, less transportation, reduction, and smelting charges. If the rate of five per cent per annum shall return to the corporation its capital investment prior to the exhaustion of the deposits, the rate on which the annual depreciation for depletion of deposits is based must be lowered in accordance with the estimated number of years it will take to exhaust the estimated reserves. In case the reserves shall be in excess of the estimates, no further deduction on account of depletion shall be made where the capital investment has been returned to the corporation." Internal Revenue Regulations No. 33, art. 142, supra, § 185.

[135] "For the purpose of enabling corporations engaged in the production and transportation of natural gas to properly gauge depreciation of investment in the field and main line divisions on account of depletion to be deducted each year, in making their annual return of net income, the following methods are recommended:

"First. That the producing gas area of said company be laid off in squares not exceeding one square mile, and that three months prior to September 30 of each year, one or more representative wells be shut in in each square or territory, and that as of September 30 an accurate gauge be taken of the rock pressure of said wells, and the decline in the average rock pressure from year to year shall be considered as the base of determining the exhaustion of deposit. For instance, a corporation may have 80 square miles of territory, and the average rock pressure September 30, 1909, may have been 600

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panies operating petroleum producing properties.[136] But "corporations leasing oil or gas territory shall base their depletion deduction upon the cost of the lease, and not upon

pounds per square inch. On September 30, 1910, the average rock pressure may have been 540 pounds, or a decline of 10 per cent, and this percentage is to be applied as a basis of depreciation for the year 1910 on the cost of the field and main line divisions, less depreciation charged off prior to that date and any salvage value that may remain in the property.

"Second. If by reason of lack of area or for any other good and sufficient reason, any corporation engaged in the production of gas shall prefer the 'volume basis' as more accurately reflecting the rate of exhaustion of deposits, the amount of capital invested to be returned out of the income of any given year may be determined on that basis. In case the 'volume basis' is adopted, the volume of each well must be taken with instruments generally recognized as reliable for determining the daily volume produced by each well at stated periods each year, and the percentage of loss in daily production shall determine the percentage of the capital investment which shall be returnable out of gross income and the proper deduction to be made each year in the return of annual net income as return of capital invested.

"Any unreturned cash investment remaining when wells or territory have to be abandoned or lines taken up because of failure of the supply of gas, less salvage, may be deducted as part of the reasonable depreciation for the year in which such territory is abandoned, unless such values shall have been returned in the reduction made because of loss of volume or decrease in rock pressure, which in such case would be considered as having reached the vanishing point." Treasury Decisions, No. 1754.

[136] "In the ascertainment of net income deduction will be allowed for depreciation arising from exhaustion of deposits and for depreciation and obsolescence of improvements in accordance with the general regulations respecting depreciation allowances, on the basis of the original capital-investment cost, reduced to a cash basis, of the properties concerned to the company reporting. Claims for depreciation on account of depletion of deposits based on any values other than the cost of the property in cash or cash values (including cost of development) will not be considered.

"In all producing oil fields an average value per barrel of the settled daily production shall be adopted as the guide in determining the value of the property, and the following method of depreciating said values is recommended:

"Each corporation will fix this valuation per barrel as of January 1, 1909, or upon the date of commencement of production, if after that date, for ascertaining the deductions for depreciation on the basis of depletion of deposits. This valuation per barrel should be based on the cost of the property to the corporation plus the

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the estimated value in place of the oil or gas." [137] And "corporations operating mines (including oil or gas wells) upon a royalty basis only cannot claim depreciation because of the exhaustion of the deposits." [138]

§ 309. Depreciation of Timber Lands

The principles stated in the preceding section might justly be applied to the case of income derived from timber lands, if the property were not otherwise valuable. The Treasury department has ruled that the mere removal of timber by cutting from timber lands, unless the timber is disposed of through sales or plant operations, is to be considered simply as a change in the form of assets; but if the timber is disposed of through sales or otherwise, it is to be accounted for in accordance with the regulations governing the disposition of capital or other assets.[139] It is clearly to be implied from this that an increase in the value of such property from the

cost of the development thereof with a proper deduction from that valuation for the number of years the property has been in operation, and the resulting proportioned decrease in daily production of oil. With this basis per barrel fixed as of January 1, 1909, or at the date of commencement of production, if after January 1, 1909, the value of the property as a whole is to be determined by applying this unit value per barrel to the daily average production for the month of December, or other representative month, in the year for which the return is made. The representative month chosen shall be the same in each year. This unit valuation per barrel is to be retained in arriving at all future depreciation deductions, except where an additional production is secured by drilling or an additional production is acquired by purchases, in which cases a new average rate per barrel based upon the actual cash invested in such development, or in the new properties and their development, may be adopted. The amount of income each year to be applied to the return of the cash investment shall be ascertained by multiplying the unit valuation ascertained as required above by the difference between the daily average production in barrels during the representative month of each year. The product of such multiplication will be the amount deductible from gross income on account of return of cash investment based upon the rate of depletion of deposits." Treasury Decisions, No. 1755.

[137] Internal Revenue Regulations No. 33, art. 144, supra, § 185.

[138] Internal Revenue Regulations No. 33, art. 145, supra, § 185.

[139] Treasury Decisions No. 1742, par. 91. For the rule as to taxing profits on sale of capital assets, see, supra, § 250.

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mere natural growth of the timber, where no cutting is done, or not more than is compensated for by the natural growth, is not to be considered as in any sense "income." Income from such property begins only when timber is cut in substantial quantities and disposed of by sale or otherwise. In regard to an allowance for depreciation or depletion when the land is being stripped of its timber, the ruling of the Treasury department is as follows: "Corporations owning tracts of timber lands and removing therefrom and selling, or otherwise disposing of, the timber will be permitted to deduct from their gross income on account of depreciation or depletion an amount representing the original cost of such timber, plus any carrying charges that may have been capitalized or not deducted from income.[140] The purpose of the depreciation or depletion deduction is to secure to the corporation, when the timber has been exhausted, an aggregate amount which, plus the salvage value of the land, will equal the capital actually invested in such timber and land." [141]

§ 310. Amortization of Bonds

Closely connected with the subject of depreciations is the rule or principle of the amortization of various forms of securities, and particularly corporate bonds. This principle is well explained by a court in New York, as follows: "It is a common matter with bankers and dealers in stocks to compute, by the aid of tables, what the actual income is of a stock running a certain definite time, for which a certain premium is paid. The actual income is plainly less than the amount yearly received, because the premium paid must be so dis-

[140] "Carrying charges" would include the cost of proper foresting operations as well as protection against fires and depredation. The meaning of the regulation is that if these costs have already been charged up as "expenses of the business" and a deduction claimed for them under that head, they cannot also be deducted under the head of depreciation. Taxes paid on the property might financially be called "carrying charges," but would be properly deductible under the head of "taxes paid." Interest on the company's bonds would likewise be deductible under its appropriate description.

[141] Internal Revenue Regulations No. 33, art. 139, supra, § 185.

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tributed, in the calculation, over the time the stock has to run, that the owner at the end of the time will have his original investment unimpaired. Otherwise, though he may not notice this, he will have been gradually impairing his capital, in fact, using it up in the form of income. The rule is that so much out of the moneys received annually on these bonds shall be treated as income as, according to the computations and tables above mentioned, they are found to produce. The residue belongs to principal, and annually added thereto will make up for the gradual depreciation which must come as the bonds approach maturity, and will keep the fund unimpaired when they are paid off." [142] Thus, if a trustee under a will, who holds a fund in trust to pay the income to a person during his life, with remainder over, makes an investment in bonds, which are payable at a day certain and are bought at a premium, he is not obliged to pay the entire net income to the tenant for life, but is entitled to deduct such an amount from the actual interest received on each bond as will, by successive deductions, make good to the capital the amount of the premium paid upon the original purchase of the bond, without regard to the market value of the bond at the time of making such deductions.[143] And under the income tax law of 1913, the officers of the internal revenue bureau consider this gradual diminution in the market value of a bond (originally bought at a premium) as its maturity approaches, in the light of a "depreciation" of property, and have made the following ruling in regard to it: "Relative to amortization of bonds, where a corporation holds bonds which were purchased at a rate above par, and said corporation shall proportionately reduce the value of those bonds on its books each year, so that the book value shall be the redemption value of the bonds when such bonds become due and payable, the return of annual net income of the corporation holding such bonds may show the depreciation on account of amortization of such bonds. The

[142] People v. Davenport, 30 Hun (N. Y.) 177.

[143] New England Trust Co. v. Eaton, 140 Mass. 532, 4 N. E. 69, 54 Am. Rep. 493.

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requirement is, however, that the amount carried to the amortization account each year shall be equitably proportioned with respect to the difference between the purchase price and the maturing value and the number of years to elapse until the bonds become due and payable. With respect to bond issues, where such bonds are disposed of for a price less than par and are redeemable at par, it is also held that, because of the fact that such bonds must be redeemed at their face value, the loss sustained by reason of their sale for less than their face value may be prorated by the issuing corporation in accordance with the life of the bond." [144] But under the income tax law of Wisconsin, the courts of that state have expressly decided that, in returning the interest on bonds as income for taxation, the bondholder cannot annually deduct therefrom a pro rata share of the premium paid in purchasing the bonds.[145]

§ 311. Dividends from Corporations Subject to Tax

In order to avoid double taxation, it is customary for the income tax laws to allow the deduction of dividends received from corporations liable to the tax, or which have been assessed for it. In the act of Congress of 1909, the deduction was allowed of all amounts received within the year as dividends on the stock of any corporation "subject to the tax." And an opinion was given by the Attorney General that, in computing the income of a corporation for the purpose of taxation under that act, the dividends received by it as a stockholder in any other corporation of a character to which the act applied should be deducted from its gross earnings, although the dividend-paying corporation had not a sufficient net income to be taxable itself, for if such corporation was of the character described in the act (that is, not among those exempted entirely), it was "subject to the tax imposed" although its income for any given year might not reach the taxa-

[144] Internal Revenue Regulations No. 33, art. 135, supra, § 185. And see Treasury Decisions, No. 1727.

[145] Van Dyke v. City of Milwaukee (Wis.) 146 N. W. 812.

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ble limit.[146] The act of 1913, as applied to the individual taxpayer, allows the deduction of "the amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association, or insurance company which is taxable upon its net income as hereinafter provided." But it is to be noted that this applies only in the case of persons who are liable for the normal tax only. Those whose incomes reach a figure such as to be subject to the additional tax or surtax must include in their returns the amount of dividends received from corporations, and must pay the tax thereon.[147] An exception, however, is probably to be made in the case of stock in domestic corporations owned by nonresident aliens. According to the rulings of the Treasury department, such owners are not subject to the income tax at all in respect to dividends received on such stock.[148] But, whether from inadvertence or by design, there is no similar provision in the case of corporations, so that corporations, as distinguished from individuals, will not be allowed to deduct dividends received from other companies. This bears with special rigor upon "holding" companies, and this circumstance may have been influential in the mind of Congress in framing the provision.

In the Wisconsin income tax law, the provision on this subject is both more comprehensive and more explicit, and applies alike to individual taxpayers and corporations. It authorizes the deduction of "dividends or income received within the year from stocks or interest in any firm, copartnership, or corporation, joint stock company or association, the income of which shall have been assessed under the provisions of this act." In Hawaii, the provision is that "in assessing the income of any person or corporation, there shall not be included the amount received from any corporation, as dividends upon the stock of such corporation, if the tax of two per cent

[146] 28 Opin. Atty. Gen. 140.
[147] Supra, §§ 16, 140.
[148] Supra, §§ 171, 257.

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has been assessed upon its net profits by said corporation as required by this act."

§ 312. Special Rules as to Insurance Companies

The act of Congress of 1913 allows a deduction, in the case of insurance companies of "sums other than dividends paid within the year on policy and annuity contracts." This covers the ordinary outgo of an insurance company in the way of payments of losses under its policies and periodical payments made to beneficiaries under annuity contracts.[149] But special provision is also made for companies doing business on the mutual plan. In the case of mutual life insurance companies, they "shall not include as income in any year such portion of any actual premium received from any individual policy holder as shall have been paid back or credited to such individual policy holder, or treated as an abatement of premium of such individual policy holder, within such year." [150] In the case of mutual fire insurance companies, they are likewise entitled to deduct "any portion of the premium deposits returned to their policy holders, but shall return as taxable income

[149] Supra, § 36. For the treasury regulation as to what "losses" an insurance company may take credit for, see, supra, § 185, art. 147. On the meaning of the word "dividends" in this connection, an instructive case is that of Mutual Benefit Life Ins. Co. v. Commonwealth, 128 Ky. 174, 107 S. W. 802. It appeared in this case that an insurance company, in its policy, stipulated for a premium larger than was actually needed to carry the risk insured against under ordinary conditions, but which might be needed under extraordinary conditions, and, in order to provide in advance against such a contingency, collected as premium for the first year the full amount stipulated for, setting aside so much thereof as was overpayment as a guaranty against misfortune, and then, for the premiums for the succeeding years, did not collect the entire amount stipulated for, because of the sufficiency of the overpayment of the first year's premium to guard against additional risks, but designated the part not collected from the policy holder as a "dividend." It was held that the company was not liable to taxation on the entire premiums stipulated for in the policy, but only for the amount actually collected, for the part of such premiums designated by the company as a dividend was not in fact a dividend, but merely an overcharge which was never collected from the policy holder, and hence was not received by the company as "cash or otherwise" within the terms of the statute.

[150] Supra, § 38.

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all income received by them from all other sources plus such portions of the premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves." [151] As to mutual marine insurance companies, the direction is that they "shall include in their return of gross income gross premiums collected and received by them less amounts paid for reinsurance, but shall be entitled to include in deductions from gross income amounts repaid to policy holders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof." [152]

This act also allows the deduction of "the net addition, if any, required by law to be made within the year to reserve funds," and provides that, "in the case of assessment insurance companies, whether domestic or foreign, the actual deposit of funds with state or territorial officers, pursuant to law, as additions to guarantee or reserve funds, shall be treated as being payments required by law to reserve funds."

Aside from the matter of reserve funds required by law, it has been a vexed question whether or not an insurance company could claim a deduction in respect to premiums covering a risk which extends beyond the end of the fiscal year. In an English case, a fire insurance company set up a claim to deduct a portion of its premium receipts for the year, representing the unearned or unexhausted portion of such premiums, where it remained liable on the policies for one or several years longer. The company contended that such a deduction should be allowed to it either as a fixed percentage of the total premium receipts (suggesting one-third as a proper proportion), or else to the extent of the amount which it would cost to reinsure its unexpired risks. But the court held otherwise. Conceding that it would be impossible to ascertain the true net profits of an insurance company in this situation with such mathematical accuracy as to do perfect and absolute justice, it was held that the fair and proper method

[151] Supra, § 37.

[152] Supra, § 38.

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is to take on the one side the whole receipts, and on the other side the whole expenditure and disbursements, for the given year, the balance remaining being, for the time at least, net profits on which the income tax should be assessed. This being done year by year, there is an absolute balancing of accounts; and if any wrong is done by losses afterwards occurring in respect of premiums on which, as profits, the income tax has been assessed and paid, it will be taken into consideration in the ensuing year.[153] And later an exactly similar decision was rendered by the Court of Appeal.[154] But only four years afterwards, the same court ruled that the profits of a fire insurance company, for the purpose of the income tax, are not to be computed by merely deducting the total of losses and disbursements for the year from the total premium receipts for the same period, but allowance must be made for outstanding policies at the end of the year, or for the unearned portion of premiums received, which may be done by deducting a fair and reasonable percentage of the year's premium receipts.[155] Substantially the same view was taken by the internal revenue officers in construing the act of Congress of 1909, for it was ruled that unearned premiums set aside by insurance companies as reserves should not be included as income until earned, unless the same should be entered on the ledger as income during the year in which they were received.[156]

§ 313. Rules as to Foreign Corporations

As foreign corporations are taxed only upon so much of their income as they receive from business transacted or capital invested in the United States, under the federal statute, so their allowable deductions are correspondingly restricted. Thus, the item of "expenses" will cover only expenditures in the maintenance and operation of the business and property within the United States. So "losses" must be "actually

[153] Imperial Fire Ins. Co. v. Wilson, 35 Law T. 271, 1 Tax Cas. 71.
[154] General Accident, etc., Co. v. McGowan [1908] App. Cas. 207, 5 Tax Cas. 308.
[155] Sun Insurance Office v. Clark [1912] App. Cas. 443.
[156] Treasury Decisions, No. 1742, par. 70.

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sustained within the year in business conducted by it within the United States." And as to deducting interest paid by a foreign company, the rule prescribed is that it may claim a deduction for interest on its indebtedness, to an amount of such indebtedness not exceeding that portion of its paid-up capital stock (plus one half the sum of its bonded debt) which may be regarded as invested or employed in this country, which is to be ascertained by taking the ratio between "the gross amount of its income for the year from business transacted and capital invested within the United States" and "the gross amount of its income derived from all sources within and without the United States." As to taxes, a foreign company is allowed to deduct only "sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof or the District of Columbia." [157]

§ 314. Bookkeeping to Show Deductions

The regulations prescribed by the Treasury department, with reference to corporations, provide that: "It is immaterial whether the deductions except for taxes and losses are evidenced by actual disbursements in cash, or whether evidenced in such other way as to be properly acknowledged by the corporate officers and so entered on the books of the corporation as to constitute a liability against the assets of the corporation making the return. Deductions for taxes, however, should be the aggregate of the amounts actually paid, as shown on the cash book of the corporation. Deductions for losses should be confined to losses actually sustained and charged off during the year and not compensated by insurance or otherwise. Except as the same may be modified by the provisions of the act, limiting certain deductions and authorizing others, the net income as returned for the purpose of the tax should be the same as that shown by the books or the annual balance sheet." [158]

[157] Supra, § 41.

[158] Internal Revenue Regulations No. 33, art. 158, supra, § 185, art. 158.

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CHAPTER XII

RETURNS OF TAXPAYERS AND WITHHOLDING AGENTS

§ 315. Taxpayers' Returns, Who Required to Make.
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§ 315. Taxpayers' Returns, Who Required to Make

The act of Congress of 1913 requires an income tax return to be made by every citizen of the United States of lawful age, whether residing at home or abroad, and by all resident aliens, provided that in the one case or the other they have a net income of $3,000 or more for the taxable year, and in the same case by non-resident aliens deriving an income from property owned or a business, trade, or profession carried on in the United States.[1] But for the year 1913, as the income tax was laid only for five-sixths of the calendar year, with a proportionate allowance for the exemptions and deductions which might be claimed, it was held by the Treasury department that individuals whose net income was $2,500 or more between March 1 and December 31 of that year, were required to make

[1] Supra, §§ 1, 12.

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the return.[2] Special provision is made by the statute for persons subject to the tax, but who are physically unable to make the required return, on account of minority, insanity, absence from the country, or serious illness. If a person in such a situation is one a part of whose income is subject to be withheld "at the source," the return may be made for him by the withholding agent.[3] If not subject to have the tax so withheld, a person who is sick or absent from the country may apply for and obtain an extension of time for filing his return.[4] In case of the death of a person whose net income for that part of the year during which he lived was $3,000 or more, a return is to be made by his executor or administrator.[5] But a person for whom a return has been made, and the tax paid, by a withholding agent, is not required to make a return for himself, unless he has other net income,[6] and of course if his other income was derived from sources to which the income tax does not apply, such as bonds of states or municipal corporations, or if it consisted entirely of dividends received from corporations subject to the tax, he would not be required to make any return, unless, in the latter case, the income was large enough to subject him to the surtax.

It might be a debatable question whether the phrase "net income," as used in these various provisions of the statute means the income of the person before or after subtracting

[2] Supra, §§ 11, 135.
[3] Supra, §§ 24, 106.
[4] Supra, §§ 65, 142, 143.
[5] Supra, § 178, art. 17.
[6] Supra, § 17. "A beneficiary is liable for the normal tax upon the amount of net income derived by him from a taxable source through a fiduciary, less the amount of exemption claimed and the amount of income on which the normal tax has been withheld at source, and is also liable for the additional tax assessable on the amount of net income received by him in excess of $20,000; and in order to determine whether the net income of a beneficiary is or is not in excess of $20,000 and subject to the additional tax, the amount derived by him from an estate and all other taxable sources is required to be shown on his personal annual return. Treasury Decision No. 2090. December 14, 1914.

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the items specially allowed to be deducted, such as business expenses, interest and taxes paid, losses incurred, bad debts, depreciation of property, and dividends from corporations. But the legislative history of the act shows that "net income" is intended. For the measure as originally passed by the House of Representatives required returns to be made by persons "having a net income" of the designated amount, and this was changed by the Senate so as to read "having an income," etc. But this amendment was rejected by the conference committee; hence, the omission of the word "net" must be regarded as significant. This part of the law applies to persons residing abroad, as well as to residents of the United States. As to corporations, the requirement is that a return shall be made by "all corporations, joint stock companies or associaitons, and insurance companies subject to the tax herein imposed," including foreign corporations doing business in the United States.

The Wisconsin statute requires a return from "every corporation, joint stock company or association, whether taxable under this act or not." As to individuals, the provision is that the assessor of incomes is to ascertain what persons in his district are subject to the tax, and any person who, in his judgment, is so subject shall be required by him to make a report. The state tax commission rules that the fact that the individual is not subject to the income tax will not relieve him from the duty of making a return when so demanded; and also that a person who is in fact subject to the tax is not relieved from the obligation to make a return by the fact that he has not been formally required to do so by the assessor, and there is a penalty prescribed for failure or refusal to make the return.

In South Carolina, the law provides that "all persons liable for the payment of any of the tax herein provided for," including non-residents, shall make a return. In North Carolina, the blank furnished to taxpayers for listing their real and

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personal property shall contain the following question: "Was your gross income from salaries, fees, trade, profession and property not taxed, any or all of them, for the year ending June first, in excess of one thousand dollars?" And if the taxpayer answers this question in the affirmative, he is to be furnished with another blank on which to make his return of income for taxation. Provision is also made for reporting the names of persons who have not made this return but are believed to be liable for the income tax, and for requiring such persons to make the return. In Oklahoma, the provision is practically the same as in North Carolina, except that the question relates to income in excess of $3,500. In Hawaii, the statute provides that "it shall be the duty of all persons of lawful age having an income of six hundred dollars or more for the preceding year, from all sources, and of all corporations made liable to income tax, to make and render a list or return." All the statutes above referred to may be seen in full in the appendix to this volume.

§ 316. Returns by Guardians, Trustees, and Other Fiduciaries

The act of Congress of 1913 provides that "guardians, trustees, executors, administrators, agents, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the net income of the person for whom they act, subject to this tax, coming into their custody or control and management." [7] The use of the word "agents" in this sentence is ambiguous, but its scope should be limited by the terms with which it is associated, and so should be understood as meaning agents who are charged with the collection of the whole or the chief part of another person's income, as guardians, receivers, and conservators of lunatics are. The act also provides that all persons, firms, and corporations, "in whatever capacity acting,"

[7] Supra, § 13.

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that is, whether acting in a fiduciary capacity or not, "having the control, receipt, disposal or payment of fixed or determinable annual or periodical gains, profits, and income of another person subject to tax," and who are required to withhold the tax from such income and pay it over to the government, "shall in behalf of such person make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld." [8] But in neither of these two cases is a return required where the income concerned does not exceed $3,000. There is also a provision that "any person for whom return has been made and the tax paid, or to be paid as aforesaid, shall not be required to make a return unless such person has other net income." [9] As regards guardians, trustees, etc., almost identical terms are found in the statutes of the various states, requiring them to make returns for their wards or beneficiaries.

The federal statute also provides that "a return made by one of two or more joint guardians, trustees, executors, administrators, agents, receivers, and conservators, or other persons acting in a fiduciary capacity, filed in the district where such person resides, or in the district where the will or other instrument under which he acts is recorded, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph." [10] It is also to be noted that the act lays the duty of making a return, and also of withholding the income tax, upon "lessees" with respect to rent payable by them in excess of $3,000 for any taxable year.

Detailed and elaborate regulations and instructions with reference to the returns to be made by fiduciaries have been prescribed by the Treasury department, and appropriate forms provided, which need not be recapitulated in this place, as

[8] Supra, § 14.
[9] Supra, § 17.
[10] Supra, § 13.

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they are printed in full in other parts of this volume.[11] Attention may, however, be called to the following important points: The annual return of the fiduciary must contain the name and address of each of the beneficiaries for whom he acts, if there are more than one, and the share of the income to which each may be entitled, and the amount of exemption claimed, the amount of income on which the fiduciary is liable for the income tax, and the amount of tax withheld. This has reference only to the income accruing and payable through the particular fiduciary making the return, not to any income of the beneficiary derived from other sources. But it applies to the income accruing in the hands of the fiduciary whether or not it was distributed and paid over to the beneficiaries during the year. In the case of joint fiduciaries, either may execute the return, and if the fiduciary is a corporation, the return may be signed and executed by its president, secretary, or treasurer. These returns are required to be verified by affidavit. The fiduciary's return is to be filed with the collector of internal revenue for the district where the fiduciary resides, if he has no other place of business, otherwise in the district in which he has his principal place of business. If the return is not duly made, notice of failure to make the return will be served on the fiduciary, but the person so notified may file evidence with the collector that the return was filed with some other collector, or (if the fact be so) that his beneficiary did not receive an income subject to the tax during the year. Fiduciary agents, in addition to the annual return of income required by these regulations, are also required to make an annual list return, similar to that exacted from withholding agents, when payments of income in excess of $3,000 have been made to any beneficiary. The penalty imposed upon a fiduciary who neg-

[11] See, supra, §§ 118, 139. Also § 184, arts. 70–75, supra. And see Form No. 1041 (for returns by fiduciaries) printed in the Appendix to this volume. And see Treasury Decision No. 2090, December 14, 1914.

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lects or refuses to make the required income tax return is apparently the same as that prescribed in the case of a similar default on the part of an individual taxpayer, that is, a fine of from $20 to $1000.[12]

§ 317. Form and Contents of Returns

The federal income tax law provides that returns of individuals shall be "in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources, and from the total thereof deducting the aggregate items or expenses and allowances herein authorized." [13] In pursuance of this authorization, the officers mentioned have prescribed a form of return for individual taxpayers, No. 1040, which may be seen in full in the collection of forms printed in the Appendix to this volume. It will be noted that this form does not require any mention to be made of income derived from interest on state, municipal, and other non-taxable bonds, although the language of the statute, "income from all separate sources," would be broad enough to include it. As to income consisting of dividends received from corporations which are subject to the tax, this item is not taxable in the case of persons who are subject to the normal tax only, that is, whose whole taxable income does not exceed $20,000. Such persons may therefore leave blank the spaces in Form 1040 which refer to this item, namely, line 11 on the second page of the form and line 4 on the first page.

[12] Supra, § 31. And note that the statute makes guardians, trustees, and other fiduciaries "subject to all the provisions of this section [that is, of the income tax law as a whole] which apply to individuals. Supra, § 13.

[13] Supra, § 12. Regulations made by the Commissioner pursuant to statutory authority, with the approval of the Secretary of the Treasury, in respect to the assessment and collection of internal revenue taxes, have the force of statutes; and the acts of the Commissioner are presumed to be the acts of the Secretary. In re Huttman, 70 Fed. 699. And see, supra, § 196.

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But such dividends are subject to the surtax or additional tax, and hence persons whose incomes exceed $20,000 must fill in these lines and show the amount of such dividends received by them.[14] All individual returns are required to be verified by oath or affirmation.[15] The oath may be taken before a collector or deputy collector of internal revenue. But this is not obligatory. Any officer authorized by law to administer oaths may take the affidavit, but the Treasury department rules that if the verification is made before a justice of the peace or a magistrate not using a seal, a certificate of the clerk of a court of record as to the authority of such officer to administer oaths should be attached to the return. Private corporations and others desiring to have the prescribed forms printed for themselves may do so, if they will strictly observe the official requirements as to size, print, and contents of the forms.[16]

It is also the policy of the state income tax laws to leave to the proper state officer or commission the settlement of the details and form of the taxpayer's return, except in North Carolina and Oklahoma, where the form of the return is prescribed in the statute, and consists of a mere statement, under oath, that the person's income from the sources mentioned,

[14] Supra, §§ 16, 140.

[15] Supra, § 18. A return of income rendered by an individual residing abroad may be acknowledged before any duly appointed officer of the country in which he resides authorized to administer oaths and use a seal. If a return is executed in a state before a notary who is not required by the laws of the state to use a seal, and none is used, the notary should file with the Commissioner of Internal Revenue the certificate of an officer possessing a seal, showing that he is duly commissioned and authorized to administer oaths, otherwise the certificate will not be recognized. Returns acknowledged before commanding officers of naval vessels while at sea or in foreign ports will be accepted, but not returns executed before a summary court officer of the United Army. Treasury Decision No. 2090, December 14, 1914.

[16] Supra, § 137.

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during the fiscal year, over and above the statutory exemption, amounted to such and such a sum.

§ 318. Including Income of Wife and Children

The Wisconsin statute provides that, in computing the exemptions allowed and the amount of the tax payable, "the income of a wife shall be added to the income of her husband, and the income of each child under eighteen years of age to that of its parent or parents, when said wife or child is not living separately from said husband, parent, or parents." In Virginia the corresponding provision is that "only one deduction of one thousand dollars shall be made from the aggregate income of any family." In Hawaii, the act provides that "only one deduction of one thousand dollars shall be made from the aggregate annual income of all the members of one family composed of one or both parents and one or more minor children, or husband and wife." With the exception of Wisconsin, none of these statutes expressly requires a taxpayer who is a husband and head of a family to include in his own return the separate income of his wife and children. Yet such is their apparent intention. And it is difficult to see in what other way the provision could be made effective. It may be added that the constitutional validity of provisions of this kind has been sustained by the courts.[17]

§ 319. Returns by Husband and Wife

The act of Congress of 1913 treats husband and wife as separate and distinct taxpayers, each of whom, without reference to the other, is required to make a return and pay the tax if he or she has a sufficient income. And the language of the statute shows that it was within the contemplation of Congress that both a husband and wife might be separately taxable, or that either, without the other, might be taxable.[18] But as to

[17] Robertson v. Pratt, 13 Hawaii, 590.
[18] Supra, § 10. And see also, supra, § 291.

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the matter of exemptions, a married pair living together may claim an exemption greater by $1,000 than that allowed to an unmarried person, presumably on account of the greater expenses of family life. This additional exemption, however, cannot be claimed by both the husband and the wife. It may be claimed by a married man, living with and supporting his wife, provided that she herself has not a taxable income. Or it may be claimed by a married woman, with a husband living with her, where she has a taxable income and he has not. But if both have taxable incomes, apparently one only can claim the additional exemption. So far the statute is reasonably intelligible. But its meaning is much clouded by the addition of the provision that "only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together." Apparently the intention is that if either of the spouses (whether the husband or the wife) has an income large enough to be taxable, while the other has a separate and independent income not large enough to be taxable, both incomes shall be added together and included in the return to be made by the taxable person, and thereupon a total deduction of $4,000 may be made from the aggregate amount of income so included.

The regulations of the Treasury department provide that "if the husband and wife, not living apart, have separate estates, the income from both may be made on one return, but the amount of income of each and the full name and address of both must be shown in such return." [19] An official form for a joint return by husband and wife has been prescribed in Form No. 1040 Revised. The same Treasury regulation above referred to continues as follows: "The husband, as the head and legal representative of the household and general custodian of its income, should make and render the return of the aggregate

[19] Supra, § 129.

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income of himself and wife, and for the purpose of levying the income tax it is assumed that he can ascertain the total amount of said income. If a wife has a separate estate managed by herself as her own separate property, and receives an income of more than $3,000, she may make return of her own income, and if the husband has other net income, making the aggregate of both incomes more than $4,000, the wife's return should be attached to the return of her husband, or his income should be included in her return, in order that a deduction of $4,000 may be made from the aggregate of both incomes. The tax in such case, however, will be imposed only upon so much of the aggregate income of both as shall exceed $4,000. If either husband or wife separately has an income equal to or in excess of $3,000, a return of annual net income is required under the law, and such return must include the income of both, and in such case the return must be made even though the combined income of both be less than $4,000. If the aggregate net income of both exceeds $4,000, an annual return of their combined incomes must be made in the manner stated, although neither one separately has an income of $3,000 per annum. They are jointly and separately liable for such return and for the payment of the tax. The single or married status of the person claiming the specific exemption shall be determined as of the time of claiming such exemption if such claim be made within the year for which return is made, otherwise the status at the close of the year."

§ 320. Returns of Corporations

Annual income tax returns are required by the act of Congress to be made by "all corporations, joint stock companies or associations, and insurance companies subject to the tax herein imposed." [20] The English cases hold that a corporation which is specifically exempted from the operation of the in-

[20] Supra, § 44.

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come tax law is not required to make any return.[21] But a contrary ruling was made by the internal revenue department in construing the act of Congress of 1909, for it was held that corporations claiming a special exemption must nevertheless make a return (which might be in blank, if desired) accompanied by a statement setting forth the ground on which the exemption was claimed.[22] It was also held by the courts that all corporations must make the required return, whether or not they had a sufficient income to be taxable, and if they omitted to do so, they were liable to the penalty imposed by the statute, though the only reason was the belief that no return was necessary where there was no taxable income.[23] But these decisions were based on the ground that the existence of a taxable income, above the statutory exemption, might often be a matter of close calculation, and might depend on the allowance or rejection of many claims for deductions, under the headings of expenses, interest paid, depreciation of property, and the like. And it would obviously be improper to allow a corporation to decide for itself whether or not it was liable to the tax and to make or withhold a return accordingly. But these considerations do not apply in the case of a corporation which is expressly and entirely exempted from the payment of the tax. And no language could be chosen more broad and sweeping than the words employed in the act of Congress of 1913 in regard to exempt corporations, viz., "nothing in this section shall apply to" the companies thereafter specifically described. Since the whole of the income tax law is contained within one section of the tariff act in which it is found, it is evident that the word "section" in the phrase quoted cannot be restricted

[21] Commissioners of Inland Revenue v. Incorporated Council of Law Reporting, 22 Q. B. Div. 291, 3 Tax Cas. 105.

[22] Treasury Decisions, No. 1742, par. 3.

[23] United States v. Acorn Roofing Co., 204 Fed. 157; United States v. Military Construction Co., 204 Fed. 153. See also 29 Opin. Atty. Gen. p. 217.

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to the subdivision or paragraph in which the phrase occurs, but means the entire act in so far as it relates to income taxation. Hence if given classes of corporations are expressly exempted from the incidence of the tax, they are also expressly exempted from the duty of making a return.

The regulations of the Treasury department recognize this principle. But they also hold that every corporation not specifically enumerated as exempt must make the return, whether or not it has any income liable to the tax, and whether or not it is subordinate to or controlled by another corporation.[24] A company newly organized or chartered is required to make a return covering that portion of the year during which it has been engaged in business or has had an income accruing to it.[25] And a corporation going into liquidation during any tax period may, at the time of such liquidation, prepare a final return covering the income received during the fractional part of the year during which it was engaged in business.[26] A

[24] Internal Revenue Regulations No. 33, art. 80, supra, § 185.

[25] Internal Revenue Regulations No. 33, art. 84, supra, § 185. A corporation organized and transacting no business within the calendar year of its organization must nevertheless make and file a return on the basis of the calendar year, unless such corporation shall designate a fiscal year other than the calendar year in the manner and form as provided for that purpose. The duty to make a return depends upon corporate or associational existence, and not upon the receipt of income. Treasury Decision No. 2090, December 14, 1914.

[26] Internal Revenue Regulations No. 33, art. 85, supra, § 185. "All corporations having an existence as such during all or any portion of a year, unless coming within the classes specifically enumerated as exempt, are required to make returns. Dissolved corporations whose fiscal year corresponds with the calendar year will make returns covering the period from January 1 to the date of dissolution, and corporations having a fiscal year other than the calendar year will make returns covering the period from the beginning of the fiscal year to the date of dissolution; and new corporations will make return for the period from the date of their organization to December 31. The net income in all such cases will be ascertained in the manner set out in paragraph G (supra, §§ 35–41) of the act." Treasury Decision No. 2090, December 14, 1914.

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foreign corporation having several branch offices in the United States should designate one of such branches as its principal office, and should also designate the proper officers to make the required return.[27]

For the purpose of making the proper annual returns of income, the Treasury department has divided all the kinds of corporations subject to the tax into various classes, and has prescribed the form proper to be used by the corporations belonging to each class. (All the forms hereinafter referred to may be seen printed in full in the collection of official forms contained in the Appendix to this volume.) In the first place, insurance companies appear to be placed in a class by themselves, by the language of the statute, since it repeatedly speaks of "corporations, joint stock companies or associations, and insurance companies." Form No. 1030 has therefore been prescribed for the use of these companies. Other corporations are divided by the regulations into five classes. Class A, designated as "Financial and Commercial," includes banks, banking associations, trust companies, guaranty and surety companies, title insurance companies, and building associations, if the latter are not in the exempt class. These companies are to use Form No. 1031. Class B, designated as "Public Service Corporations," includes railroad, steamboat, ferryboat, and stage-line companies, street-railway companies, pipe-line, gas-light, and electric-light companies, express companies, telegraph and telephone companies. These companies are directed to use Form No. 1032. Class C, "Industrial and Manufacturing Companies," includes mining, oil, and gas producing companies, lumber and coke companies, rolling mills, foundry and machine shops, saw mills, flour, woolen, cotton, and other mills, manufacturers of cars, automobiles, elevators, agricultural implements, etc., manufacturers or refiners of sugar, ice and refrigerating companies, slaughter-

[27] Internal Revenue Regulations No. 33, art. 83, supra, § 185.

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house, tannery, packing, or canning companies, printing and publishing companies, etc. Form No. 1033 is the proper form for the use of these companies. Class D, described as "Mercantile Companies," includes all dealers (not otherwise classed as producers or manufacturers) in coal, lumber, grain, produce, and all goods, wares, and merchandise. These companies will use Form No. 1034. Class E, "Miscellaneous Corporations," will naturally include all companies subject to the tax and not included in any of the other classes, and is further described as including "architects, contractors, hotel, theater, and other companies or associations not otherwise classified." The proper form for these companies is No. 1035.

As to the contents of the returns to be made by corporations, very detailed and elaborate instructions have been promulgated by the Treasury department. As these may be seen at large on the several official forms above referred to, they need not be here repeated. But attention should be directed to a few important points. For instance, as the "principal place of business" of the company is required to be stated, it should be noted that this is construed as meaning the "place or office in which the books of account or other data to be used in preparing the return of annual net income are ordinarily kept." [28] Hence a company which has its factory, mill, or other operating plant at one place, but maintains a head office or executive office at another place, where its financial and other records are kept, should designate the latter, and not the former, as its principal place of business.[29] Again, whereas the return is to include a statement of the "amount of paid-up capital stock outstanding," it is ruled that "in cases where the capital stock is issued payable in installments or upon assessment, only so much of the capital as has been actually paid in upon such installments or assessments should be reported under this

[28] Instruction No. 7, on reverse of Form No. 1030.

[29] See Burdick v. Dillon, 144 Fed. 737, 75 C. C. A. 603; In re Marine Machine & Conveyor Co., 91 Fed. 630.

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item." [30] And further, this item "should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received; or in case no stock is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation." [31] There is also a ruling that "interest received upon the obligations of a state or any political subdivision thereof and upon the obligations of the United States or its possessions should be included in gross income." [32] But note that interest on public securities is deductible under Item 6b, and therefore does not figure in the computation of net income on which the tax is payable. Again, it is ruled that "dividends received upon the stock of other corporations must be included in gross income, and are not deductible therefrom in the ascertainment of net income," [33] and this is undoubtedly correct since the exemption of such dividends from the income tax is available only in the case of individuals subject to the normal tax only, and not in the case of corporations.[34] As to the deductions allowable, the department holds that "amounts of income expended in paying dividends on stock, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account, are not proper deductions. Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted under Item 4, if the interest is paid as rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property." [35] "Taxes for which credit may be taken in the return are such taxes, actually paid within the year, as are

[30] Instruction No. 8, on reverse of Form No. 1030.
[31] Instruction No. 8, on reverse of Form No. 1030.
[32] Instruction No. 18, on reverse of Form No. 1030. See supra, §§ 9, 109, 128.
[33] Instruction No. 17, on reverse of Form No. 1030.
[34] See, supra, §§ 245, 311.
[35] Note B on Official Form No. 1030. See, supra, §§ 50, 302.

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imposed by authority of the United States, or of any state or territory thereof, or by the government of any foreign country, not including taxes paid by a corporation pursuant to guaranty on its bonds or the income therefrom,[36] and not including those taxes assessed against local benefits. A reserve for taxes, as such, is not deductible, but only taxes actually paid." [37]

Under the income tax law, systems and methods of corporation bookkeeping and financial accounting become important, not only that companies may be able to make up their annual returns in accordance with the forms and regulations prescribed, but also in order that the revenue officers may be able to probe and verify the items returned if in doubt as to their correctness. The Treasury department advises companies concerned that it does not require the use of any particular system of bookkeeping or accounting, but that the business transacted by corporations must be so recorded that each item set forth in the return may be readily verified by an examination of the books of account,[38] and that ordinarily the books of a corporation are assumed to reflect the facts as to its earnings, income, etc., and will be taken as the best guide in computing its taxable income. But, with certain necessary exceptions, the net income disclosed by the books and verified by the annual balance sheet, or the annual report to stockholders, should be the same as that returned for taxation.[39] And further, "in order that certain classes of corporations may arrive at their correct income, it is necessary that an inventory, or its equivalent, of materials, supplies, and merchandise on hand for use or sale at the close of each calendar year shall be made, in order to determine the gross income or to determine the expense of operation. A physical inventory is at all times preferred, but where a physical inventory

[36] As to tax-free bonds of corporations, see, supra, §§ 138, 303.
[37] Instruction No. 20, on reverse of Form No. 1030. As to deduction of taxes generally, see, supra, § 303.
[38] Internal Revenue Regulations No. 33, art. 182, supra, § 185.
[39] Internal Revenue Regulations No. 33, art. 183, supra, § 185.

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is impossible, and an equivalent inventory is equally accurate, the latter will be acceptable. An equivalent inventory is an inventory of materials, supplies, and merchandise on hand taken from the books of the corporation." [40]

The return of a corporation is required to be executed and verified by its president and its treasurer. But in cases where the company has no officer called "treasurer," the return may be signed by any officer holding an equivalent position, as, for instance, the cashier of a bank. It is conceived that the spirit and purpose of the statute and of the regulations are fully met where the return is verified by two officers of the company, one being its principal administrative officer and the other its chief financial officer. These officers do not execute the return in the name of the corporation, but in their own names individually, and hence the seal of the corporation is not required to be affixed.

§ 321. Time for Filing Returns

The time for filing an income-tax return, under the federal statute, is the first day of March in each year, the return relating to the income of the preceding calendar year, that is, the year ending on the thirty-first of December preceding. This applies alike to individuals and corporations, except that the latter are permitted to designate a fiscal year of their own, which may not be coterminous with the calendar year, and be taxed upon the income of such fiscal year, and in this case the return is to be made within sixty days after the close of such fiscal year.[41] It is also provided that when the neglect of any taxpayer (individual or corporate) to file the return at the time prescribed is due to "sickness or absence," the collector of in-

[40] Internal Revenue Regulations No. 33, art. 161, supra, § 185.

[41] As to the designation of a fiscal year different from the calendar year, see, supra, §§ 43, 112, 163, 175. And see also Treasury Decision No. 2090, December 14, 1914.

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ternal revenue "may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days." [42] The Wisconsin income tax law contains similar provisions as to allowing corporations to base their returns on the business of their own fiscal year, and as to an extension of time in case of the "sickness or absence of an officer of any corporation, joint stock company or association required to make said return, or for other sufficient reason." But the time for filing returns is not prescribed by the statute, but is left to the determination of the state tax commission, which has apparently designated the first of March in each year.[43] It was ruled by the treasury department, under the act of 1909, that where a corporation makes its return in due time, but it is returned for corrections, and a correct return is afterwards filed, though after the appointed day, the corporation is not to be regarded as delinquent, and the penalty for neglecting or refusing to make a return will not attach.[44]

It is ruled by the Treasury department that if a return is made out and deposited in the mails properly addressed, and with postage paid, in ample time, in due course of the mails, to reach the office of the collector or deputy collector before the expiration of the time limited, its actual failure to arrive in time will not subject the taxpayer to a penalty.[45] The date for filing a return may obviously be one of three dates, viz., the first day of March, the last day of an extension period granted by the collector, or the sixtieth day after the closing of a corporation's fiscal year. Whether it be one or another of these, the date when the return should be filed is designated by the Treasury department as the "last due date." And it is ruled

[42] Supra, §§ 65, 142. Provision has also been made for an extension of time for filing returns by American citizens living abroad. Supra, § 143.

[43] Wisconsin Income Tax Law, edition published by State Tax Commission, 1911, p. 32.

[44] Treasury Decisions, No. 1711.

[45] Internal Revenue Regulations No. 33, art. 174, supra, § 185.

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that if the proper day for filing the return shall fall upon a Sunday or a legal holiday, the "last due date" will be held to be the day next following such Sunday or legal holiday, and the return should be made to the collector not later than such following day.[46] It has been decided that the acceptance by the Commissioner of Internal Revenue of a return filed by a corporation under the act of 1909, after the proper time, does not amount to a waiver of the penalty already incurred for delay in filing it. In other words, the Commissioner is bound to accept the return, though late, since it must in any case serve as the basis of the assessment to be made, but when it is filed after the proper day, he accepts it only for that purpose, and not as made in compliance with the law.[47]

§ 322. Where Returns are to be Filed

The federal statute requires the return of an individual taxpayer to be filed with the collector of internal revenue "for the district in which such person resides or has his principal place of business, or, in the case of a person residing in a foreign country, in the place where his principal business is carried on within the United States."[48] In the case of a domestic corporation, the return is to be filed with the collector "for the district in which it has its principal place of business," and in the case of a foreign corporation, "in the place where its principal business is located within the United States."[49] Under similar provisions in the corporation tax law of 1909, it was ruled that returns filed with a deputy collector of internal revenue are regarded as having been filed with the collector;[50] that the "principal place of business" means the principal office where a cor-

[46] Internal Revenue Regulations No. 33, arts. 175, 176, supra, § 185.

[47] United States v. Surprise Five, Ten, and Nineteen Cent Store (U. S. Dist. Ct. S. D. N. Y.) Treasury Decisions No. 1864.

[48] Supra, § 12.

[49] Supra, § 44.

[50] Treasury Decisions No. 1742, par. 40.

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poration keeps its books from which the required return is to be prepared, and not necessarily the place where the operating plant is located;[51] and that foreign corporations having several branch offices in the United States should each designate one of such branches as its principal office, and should also designate the proper officers to make the required return.[52] Under the law in Wisconsin an important distinction is made between the returns of corporations and those of individuals. The former are to be filed with the state tax commission, the latter with the assessor of incomes of the district. In the case of a guardian, trustee, executor, etc., the district is that in which he resides, rather than that in which the ward or beneficiary may reside. In the case of a non-resident, the income is to be "assessed and taxed in the town, city, or village from which such income is derived," where apparently also the return should be filed. In South Carolina, the return is to be rendered to the auditor of the county in which the taxpayer resides, whether he makes the return for himself or in the capacity of a guardian, trustee, or other fiduciary. But in the case of a non-resident, the return is to be filed with the auditor or auditors of the county or counties where his taxable income arises. In Oklahoma, the return is to be made to the local assessor of taxes, and forwarded by him to the state auditor; and in North Carolina, it is to be rendered to the list-taker, and forwarded to the state corporation commission.

§ 323. Publicity or Inspection of Returns

The act of Congress of 1913, in so far as relates to corporations, provides that, when the assessment shall have been made, the returns shall be filed in the office of the Commissioner of Internal Revenue, "and shall constitute public records and be open to inspection as such: Provided, that any and all such re-

[51] Treasury Decisions, No. 1742, par. 13.
[52] Treasury Decisions, No. 1742, par. 11.

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turns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President." [53] It also contains a provision apparently intended to aid in the administration of the revenue laws of such states as may lay a tax on incomes, concurrently with the federal statute, by throwing open to their officers, under proper restrictions, the facts in the possession of the federal officers concerning taxable corporations. This provision is as follows: "That the proper officers of any state imposing a general income tax may, upon the request of the governor thereof, have access to said returns or to an abstract thereof, showing the name and income of each such corporation, joint stock company, association, or insurance company, at such times and in such manner as the Secretary of the Treasury may prescribe." The substantive part of this enactment was taken from the corporation tax law of 1909, and the proviso from an amendatory act of 1910. In pursuance thereof, regulations were prescribed by the Secretary of the Treasury July 28, 1914, and approved by the President, and the latter issued an executive order of the same date putting them in force. These regulations may be epitomized as follows: The returns of all corporations shall be open to the inspection of the proper officers and employés of the Treasury Department, and of the officers and employés of other departments of the government, but in the latter case only on a written application, signed by the head of the department, setting forth the reasons for making it, and addressed to the Secretary of the Treasury. But if inspection of the return of any corporation is desired for the purpose of using the return (or information derived from it) in any legal proceeding, or if inspection is desired by any official of any state or territory, then the application must first be referred to the Attorney General, and, if recommended by him, transmitted to the Secretary of the Treasury. Any bona fide stockholder may be permitted to inspect the return made by his own cor-

[53] Supra, § 55.

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poration, on satisfactory proof of his ownership of stock in it, and on application to the Secretary of the Treasury showing good and sufficient cause. But the granting of such an application is in the discretion of the Secretary, and permission granted cannot be delegated or transferred to another person. The returns of certain corporations may be inspected by any person, on written application to the Secretary of the Treasury, setting forth briefly and succinctly the facts necessary to enable him to act upon the request. These are (a) companies whose stock is listed upon any duly organized and recognized stock exchange within the United States; (b) corporations whose stock is advertised in the press or offered to the public by the corporation itself for sale.[54] It will be observed that there is no similar provision in the statute concerning the returns made by individual taxpayers, and these apparently are not public records nor open to inspection by any one or on any conditions.

In the Wisconsin statute it is provided that "nothing herein shall be construed as preventing the assessment roll, the tax roll, and all proceedings had before the county board of review and all evidence taken at such hearing from being open to public inspection at such times and under such conditions as the state tax commission may direct." This, as construed by the revenue officers of the state, authorizes inspection by the public of the roll or list of persons subject to the income tax and the amount of their taxable income, as prepared by the assessors of income, and also the proceedings before the board of review to such an extent as the tax commission may authorize.

To the limited extent to which statutes of this character authorize the publication or inspection of taxpayers' returns, it is held that they do not violate the constitutional prohibitions against unreasonable searches and seizures.[55] But aside from statutory authorization, the courts have shown great reluctance to force the disclosure of matters contained in such essentially

[54] These regulations may be seen in full in § 170, supra.

[55] Flint v. Stone Tracy Co., 220 U. S. 107, 31 Sup. Ct. 342, 55 L. Ed. 389.

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confidential documents, even when desired in the interests of public justice. Thus, in England, it is held that a court will not compel the tax officers to produce or exhibit documents in their possession (such as a taxpayer's return) for use in litigation or for the use of a receiver, when it is stated that such a course would be prejudicial and injurious to the public service and interests.[56] And in the United States the rule is even more strict. For it is held competent for the Secretary of the Treasury to make a regulation (as has been done) forbidding collectors of internal revenue to produce the records of their offices or furnish copies thereof for the use of third persons, or for use as evidence in behalf of litigants in any court, or to allow the use of official papers in their custody for any other purpose than that of aiding in the collection of the revenues of the United States, and forbidding them to "testify as to facts contained in the records or coming to their knowledge in their official capacity." And neither a state nor a state court, even in a criminal proceeding, has any power to require a collector to violate the regulation, nor to punish him for contempt because of his refusal to produce or put in evidence the records of his office, or to testify as to their contents. And if a state court undertakes thus to punish a collector for such refusal, by attachment as for contempt, he will be released by the federal courts on habeas corpus.[57] It is evident, therefore, that so far as concerns the use of income tax returns as

[56] In re Joseph Hargreaves, Ltd. [1900] 1 Ch. 347, 4 Tax Cas. 173. But in another case it is said that, notwithstanding the oath administered to a collector of taxes, that he will not disclose anything he learns in that capacity, except with the consent of the commissioners or by virtue of an act of Parliament, he is bound, when subpœnaed as a witness, to give evidence of all facts within his knowledge touching the matter in question. Lee v. Birrell, 3 Camp. 337. And in an action for slander, whereby it is alleged the plaintiff's business was injured, the defendant may obtain by subpœna, and put in evidence, the plaintiff's income tax returns for the period covered, in order to contradict the plaintiff's evidence, or that of his books, as to the alleged decline of his business. Macdonald v. Hedderwick, 3 Fraser, 674. Compare, however, Gray v. Wyllie, 6 Fraser, 448.

[57] Boske v. Comingore, 177 U. S. 459, 20 Sup. Ct. 701, 44 L. Ed. 846; In re Lamberton, 124 Fed. 446; Stegall v. Thurman, 175 Fed.

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evidence in any court, their production cannot be forced except by the consent of the United States. Congress naturally has supreme authority in this matter, and it has, as above stated, declared such returns to be public records. But it has delegated to the executive officers the duty of prescribing the conditions under which such returns may be inspected. And the regulations thereupon made appear to contemplate and sanction the use of income tax returns as evidence in courts of justice to a limited extent, but only with the approval of the high officers of the Treasury department, and not on the initiative of collectors of internal revenue, and not in obedience to the writ of subpœna. For the regulations provide for the following three cases: First, if the return of a corporation (not of an individual taxpayer) is desired to be used in any legal proceedings other than those to which the United States is a party (that is, in private litigation or proceedings by a state or municipality), or to be used in any manner by which any information contained in the return could be made public, the application for permission to inspect such return or to furnish a certified copy thereof shall be referred to the Attorney General, and if recommended by him transmitted to the Secretary of the Treasury. Second, all returns, whether of persons or corporations, may be furnished, either in the original or by certified copies, for use in any legal proceedings before any United States grand jury or in the trial of any cause to which both the United States and the person or corporation rendering the return are parties, either as plaintiff or defendant, providing such return would constitute material evidence in the proceeding or trial; but this can be done only with the approval of the Secretary of the Treasury. Third, in any case arising in the collection of the income tax, the Commissioner of Internal Revenue may furnish for use to the proper officer either the original or certified copies of returns, without the approval of the Secretary of the Treasury. Further it is provided that "in no case shall any collector, or any other

813; In re Weeks, 82 Fed. 729; In re Huttman, 70 Fed. 699; In re Comingore, 96 Fed. 552. Contra, see In re Hirsch, 74 Fed. 928.

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internal revenue officer outside of the Treasury Department in Washington, permit to be inspected any return, or furnish any information whatsoever relative to any return or any information secured by him in his official capacity relating to such return, except in answer to a proper subpœna in a case to which the United States is a party." And "returns of individuals are under no conditions to be made public, except where such publicity shall result through the use of such returns in any legal proceedings in which the United States is a party." [58]

§ 324. Penalties for Divulging Information

To encourage frank and full disclosures by taxpayers, and to remove as far as possible the inquisitorial features of such a law, the income tax statutes denounce very heavy penalties upon the officers charged with the assessment and collection of the tax if they shall divulge or make known (except to the limited extent authorized by the statute) the return of any taxpayer or its items or details. The act of Congress also forbids these officers to permit any person to see or examine any return or any copy thereof or any book containing any abstract or particulars thereof; and also provides that it shall be unlawful for any person to print or publish in any manner whatever not provided by law, any income return or any part thereof, or the amount or source of income, profits, losses, or expenditures appearing in any income return. Any violation of these provisions is declared a misdemeanor, and the punishment prescribed is a fine not exceeding $1,000, or imprisonment not exceeding one year, or both, and in addition, if the offender is an officer or employé of the United States, dismissal from office and perpetual incapacity for holding any office under the government.[59] In Wisconsin, the prohibition is substantially the same, except that the penalty, though of the same character, is not so severe, and except that it applies

[58] See § 170, supra, where the regulations are set forth at length.
[59] Rev. Stat. U. S., § 3167, as amended by Income Tax Act of 1913 (Comp. St. 1913, § 5887). And see, supra, §§ 59, 148.

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only to the officers and employés of the state or the assessment districts, so that, if they violate their duty and disclose the contents of returns, there is apparently nothing to forbid any person from printing and publishing such information.[60] In Oklahoma, on the other hand, the provision is that "it shall be unlawful for any person to print or publish in any manner whatever any income tax return, or any part thereof, or the taxes due thereon, unless the tax herein becomes delinquent, and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not to exceed fifty dollars and imprisoned in the county jail not more than thirty days for each offense." [61] And in North Carolina, the provision is substantially the same as in Oklahoma, except that no permission is given for the publication of the tax returns in case of delinquency.[62]

§ 325. Proceedings in Case of Refusal or Neglect to File Return

As a general rule, where a taxable person or corporation refuses or omits to make the required return, it is made the duty of the assessor or collector to make and compile the return on the best information he can obtain. Thus, under the act of Congress, the return in such cases is to be made by the collector or deputy collector of internal revenue according to the best information which he can obtain, including that elicited on his examination of witnesses and of books and papers, and on his own view and information. And when duly certified by the collector the return so prepared shall be the return of the taxable person.[63] But if any person liable to pay an income tax, and failing to make the required return, shall consent to disclose the particulars of any business or occupation liable to pay such tax, it shall be the duty of the

[60] Wisconsin Income Tax Law 1911, § 1087m, subsec. 24, pars. 1–3.

[61] Oklahoma Income Tax Law, § 6; Laws Oklahoma 1907, p. 730.

[62] Acts North Carolina 1907, c. 256, § 23.

[63] Supra, § 65. And see Internal Revenue Regulations No. 33, art. 21, supra, § 178.

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collector or deputy collector to make up the return, which being distinctly read and consented to, and verified by oath or affirmation by the person liable to make such return, the same may be received as the list or return of such person.[64] There is also another provision of the act of Congress, applicable, it would seem, to cases where a taxable person has attempted to evade the law by omitting to make any return, and where the collector, at the time the return was due, had no knowledge of the case or suspicion as to the proposed evasion. This clause provides that in case of the refusal or neglect to make a return "the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons upon notification of the amount of such assessment." [65]

In Wisconsin, while penalties are prescribed for the neglect or refusal to make a return, there is no provision for the making of the return by the taxing officers, except that, if it is discovered that any taxable person or corporation has failed to make a return in any one of the three next previous years, the proper officer may "make such additions or corrections to the assessment as is deemed true and just, such correction to be made in the next tax levy." In South Carolina, any person or corporation failing to make the required return "shall be assessed by the auditor on account of the income tax, in such amount as appears to him from the best information obtainable by him either by examination of the defaulting taxpayer or any other evidence, that such taxpayer is liable for." In Hawaii, the provision of the statute is that, in such cases, "the assessor may make such assessments as he may consider just, and the same shall be binding and conclusive upon all parties, and shall not be subject to appeal."

[64] Supra, § 62. And see Internal Revenue Regulations No. 33, art. 20, supra, § 178.

[65] Supra, § 20.

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As a general principle of law, it is held, if the taxpayer refuses to give in his income to the assessor, it is the duty of the assessor to ascertain its amount by inquiry or otherwise, to the best of his information and judgment; and if, in discharging this duty, acting in good faith, the assessor fixes the amount of such income at a larger sum than it in fact amounted to, and assesses it at the sum thus ascertained by him, such assessment is legal, notwithstanding the mistake or overstatement, and the collection of the tax so assessed, by the tax collector, is also legal.[66] And in making his estimate of the value of property for the purpose of the income tax (as, for instance, in determining the rental value of the taxpayer's residence) the assessor is not bound to accept and follow the valuation placed on the same property by any other assessor for the purposes of any other tax.[67] It should also be observed that an assessment for the income tax cannot be impeached collaterally or re-examined in any collateral proceeding. It may be subject to appeal or review, but cannot be revised in any other mode than the special statutory mode provided for that purpose. Hence a proof in bankruptcy by a collector of taxes, in respect of arrears due under an assessment for the income tax, cannot be expunged on the ground that the debtor had not received the income or made the profits so assessed.[68]

§ 326. Same; Examination of Books, Papers, and Witnesses

It is provided in the Revised Statutes, as amended by the act of Congress of 1913, that if any person shall refuse or neglect to make the required return, on notice and demand, or shall render a return which, in the opinion of the collector, is false or fraudulent or contains any undervaluation or understatement, "it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the

[66] Lott v. Hubbard, 44 Ala. 593.
[67] Walker v. Brisley, 4 Tax Cas. 254.
[68] Calvert v. Walker [1899] 2 Q. B. 145, 4 Tax. Cas. 79.

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business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the state in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such state, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end, he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned." And in another part of the statute, it is provided that "jurisdiction is hereby conferred upon the district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books shall reside, to compel such attendance, production of books, and testimony by appropriate process." [69] And another federal statute provides that "every collector, deputy collector, and inspector is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law to be taken." [70]

§ 327. Same; Constitutional Validity

The courts have sustained the constitutionality of provisions in former internal revenue laws closely similar to those just cited.[71] In one of the cases the court remarked that both acts of congress and of state legislatures conferred not only upon legislative committees, but also upon various officers, the high power to send for persons and papers to be examined in furtherance of a stated purpose, and this had been for so long a

[69] Rev. Stat. U. S., § 3173 and Income Tax Act 1913, subdivisions "I" and "L" amending the same, Comp. St. 1913, § 5896 supra, §§ 64, 67.

[70] Rev. Stat. U. S., § 3165 (Comp. St. 1913, § 5885).

[71] In re Phillips, 10 Int. Rev. Rec. 107, Fed. Cas. No. 11,097.

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time acquiesced in that it was now scarcely worth while to debate the question seriously; and whereas it may be conceded that no extraordinary power is granted by our law for any other reason than necessity, the court thought there was both a necessity and a propriety in the provision here made for the proper enforcement of the internal revenue laws.[72] This view derives considerable support also from the decision of the Supreme Court sustaining the validity of that part of the Interstate Commerce Act which gives to the Interstate Commerce Commission the power to require the attendance of witnesses and the production of books and papers.[73] Also there are decisions of the state courts to the effect that there is no violation of the constitutional provision against unreasonable searches and seizures by a statute giving to revenue officers the right to examine books and papers of taxpayers for the purpose of properly listing and assessing their taxable property.[74] It is true that if such compulsory submission to interrogation, or compulsory production of books and papers, were required directly in a criminal prosecution or in a quasi-criminal proceeding to forfeit property or collect penalties, it might be regarded as an invasion of the person's constitutional right to avoid criminating himself. There is no lack of authorities so holding.[75] But these cases are probably to be distinguished on the ground that an investigation merely to determine the extent of a person's taxable income is not criminal or penal, nor even, when conducted by a collector of taxes, a judicial investigation at all. And whereas it may be contended that information elicited by this investigation might be used

[72] Perry v. Newsome, 10 Int. Rev. Rec. 20, Fed. Cas. No. 11,009.

[73] Interstate Commerce Commission v. Brimson, 154 U. S. 447, 14 Sup. Ct. 1125, 38 L. Ed. 1047.

[74] Co-operative Bldg. & Loan Ass'n v. State, 156 Ind. 463, 60 N. E. 146; Washington Nat. Bank v. Daily, 166 Ind. 631, 77 N. E. 53; In re Conrades, 112 Mo. App. 21, 85 S. W. 150.

[75] Boyd v. United States, 116 U. S. 616, 6 Sup. Ct. 524, 29 L. Ed. 746; In re Pacific Railway Com'n, 32 Fed. 241; People v. Reardon, 197 N. Y. 236, 90 N. E. 829, 27 L. R. A. (N. S.) 141, 134 Am. St. Rep. 871; Robson v. Doyle, 191 Ill. 566, 61 N. E. 435; Weeks v. United States, 232 U. S. 383, 34 Sup. Ct. 341, 58 L. Ed. 652.

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against the person in a subsequent prosecution, as, for instance, for perjury, it must be answered that, even in a proceeding of this kind, it is the privilege of the witness to refuse to answer any question on the ground that it might criminate him. It was so held in the case concerning the powers of the Interstate Commerce Commission in this regard.[76] And in an earlier case under the internal revenue law, where a person liable for taxes refused to produce his books of account, when summoned to do so, on the ground that a criminal proceeding had been commenced against him for making a false return, and that he could not produce the books or give evidence without criminating himself, it was held that he must bring the books containing entries relating to his business before the assessor, and must then be asked to exhibit any entry relating to a particular point to be named, and if he should then say that he could not do so without criminating himself, he would be protected from exhibiting it.[77]

§ 328. Same; Jurisdiction of Courts to Enforce Obedience

The provision of the income tax law giving to the federal district courts jurisdiction to compel the attendance of witnesses before the collector, or the production of books, or the giving of testimony, by appropriate process, is not unconstitutional as imposing on the judicial tribunals duties which are not judicial in their nature.[78] For the object of the proceeding in court under this provision is not to punish the witness for contempt of the order of the collector summoning him to appear and testify, because there is no such thing as contempt of an administrative officer. But the object is to make an order, on cause shown, or in the absence of cause shown against it, requiring the witness to obey the summons of the collector, and then he may be punished, if he still refuses, not

[76] Interstate Commerce Commission v. Brimson, 154 U. S. 447, 14 Sup. Ct. 1125, 38 L. Ed. 1047.

[77] In re Lippman, 3 Ben. 95, Fed. Cas. No. 8,382. Compare In re Phillips, 10 Int. Rev. Rec. 107, Fed. Cas. No. 11,097.

[78] Interstate Commerce Commission v. Brimson, 154 U. S. 447, 14 Sup. Ct. 1124, 38 L. Ed. 1047.

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for disobeying the order of the collector but for disobeying the order of the court.[79]

§ 329. Same; Authority of Officers; Scope of Examination

The provision of the statute that "it shall be lawful" for the collector to summon witnesses before him or require the production of books and papers does not make it obligatory on him to take this course. If he can obtain the necessary information in other ways, he is at liberty to do so.[80] It should be observed that a deputy collector may exercise this power as well as the collector; his authority is the same.[81] But whereas the collector is given authority to "summon" persons before him to give evidence, Congress, in using this term, "did not contemplate it to be of the legal dignity of a writ or other judicial process, but simply a notice, and similar in its nature to a summons issued by an overseer of roads requiring persons to attend, with the necessary implements, and to work on the public highway."[82] This notice or summons may be delivered personally, but it should in all cases give the person concerned a reasonable time to comply. In one of the cases, a supervisor of internal revenue entered a bank conducted by a firm and demanded to see their books and papers. The members of the firm, doubting his right to such inspection, asked time to consult their counsel. This was refused, and on their failure to produce their books, the supervisor served them with a summons requiring them to appear before him at his office in that city instanter on the same day. He had no regular office in that city, and no place was specified in the summons.

[79] In re Kinney, 102 Fed. 468.

[80] Bailey v. New York Cent. & H. R. R. Co., 22 Wall. 604, 22 L. Ed. 840.

[81] Landram v. United States, 16 Ct. Cl. 74. As to the powers of the deputy collector, see Act Cong. Feb. 8, 1875 (Comp. St. 1913, § 5849), which provides that "each such deputy shall have the like authority in every respect to collect the taxes levied or assessed within the portion of the district assigned to him which is by law vested in the collector himself."

[82] Matter of Meador, 1 Abb. U. S. 317, 326, Fed. Cas. No. 9,375.

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The firm then consulted their counsel, and though he was somewhat in doubt, he advised them to submit to the inspection. They then sought the supervisor to apprise him of their consent, but were unable to find him, and he left the town the same night. It was held that the firm were not unreasonable in asking a short time to consult their counsel, that a compliance with the summons according to its terms was manifestly impossible, and that they should not be punished as for a contempt.[83]

It appears to be the intention of the act, though the language is far from clear, that the taxpayer may be interrogated by the collector concerning every point relating to the sources and extent of his income, or as to exemptions or deductions claimed by him, and that the mere production and submission of his books and accounts will not necessarily end the investigation if the collector is not satisfied with what he finds there. Indeed such examinations may be chiefly necessary in the case of persons who have kept no books at all, or whose accounts are fragmentary and uninforming. It has been decided that the person summoned must not only produce his books, but must submit to an examination and testify concerning entries in them.[84] But since the language of the act of Congress gives the collector power to require persons to attend before him "to give testimony or answer interrogatories under oath respecting any objects liable to tax or the returns thereof," it certainly seems to be within the lawful power of the collector to put the taxpayer through an examination as grilling and complete as an examination in bankruptcy or in proceedings supplementary to execution. But all this does not deprive the witness of his constitutional rights. He may offer proper objections to any question or to the examination of any book or

[83] United States v. Fordyce, 13 Int. Rev. Rec. 77, Fed. Cas. No. 15,130.

[84] In re Strouse, 1 Sawy. 605, Fed. Cas. No. 13,548; Matter of Meador, 1 Abb. U. S. 317, Fed. Cas. No. 9,375. As to the right of the collector to enter premises for the purpose of examining articles claimed to be therein subject to the tax, see United States v. Mann, 95 U. S. 580, 24 L. Ed. 531.

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paper, either on constitutional grounds, on the ground that the matter is beyond the powers of the collector to inquire into, or on the ground of a lack of relevancy or materiality.[85] And after an assessment has been made and the tax paid, the collector has no power to summon the taxpayer before him for this purpose. This is only to be done before the assessment is made, and is in aid of the making of a correct assessment.[86]

Under former internal revenue laws, it was held that the only books which the collector had the right to examine were those of the person whose assessment was in question, not those of third persons who had had dealings with him. Thus, a corporation was not bound to produce and submit its books to the collector on an inquiry into the income of one of its stockholders.[87] But the terms of the present statute are so broad that it is believed this rule could not now apply. The collector is now given power to summon, not only the person whose return is in question, but "any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper." It appears that he has practically unlimited power to interrogate all persons who have had business dealings with the taxpayer, or made payments to him, or who are supposed to have any information about his income, or its origin or amount, and also to inspect the books of any person if they contain entries relating to the disputed income.

The fact that national banks are subject to inspection and examination by the bank inspectors does not exempt them from being called upon to allow inspection of their books on the part of revenue officers.[88]

[85] Interstate Commerce Commission v. Brimson, 154 U. S. 447, 14 Sup. Ct. 1125, 38 L. Ed. 1047.

[86] In re Brown, 3 Int. Rev. Rec. 134, Fed. Cas. No. 1,977.

[87] In re Chadwick, 1 Low. 439, Fed. Cas. No. 2,570.

[88] United States v. Rhawn, 11 Phila. 521, Fed. Cas. No. 16,150.

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§ 330. Same; Examination and Inspection Under State Income Tax Laws

In Wisconsin there are stringent provisions for requiring the delinquent taxpayer or corporation to furnish the information necessary to make or complete the return, but none for the examination of witnesses or of books and papers, except when an appeal is taken to the board of review. In South Carolina, the law seems to authorize an "examination of the defaulting taxpayer," though it makes no explicit provision for compelling his attendance. In Oklahoma the state auditor "may take such steps as he may deem necessary" to compel any delinquent to make a proper return of his income, and "to enable him to obtain such information, he or anyone designated by him to obtain such information shall have the power to summon witnesses within the county in which such persons live," and may invoke the aid of the courts to compel their attendance. In Hawaii, "it shall be lawful for the assessor to summon such person, or any of the officers of such corporation, or any person having possession, custody, or care of books of account containing entries relating to the business of such person or corporation, or any other person he may deem proper, wherever residing or found, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogatories under oath, respecting any income liable to tax or the returns thereof." [89] But as to the production of records or other documents by public officers, the law is not very clear, and the question has not often arisen. There is, however, a Scotch decision in reference to compelling the production of documents for the purpose of discovering taxable income, holding that a public department cannot be compelled by a court of law to produce confidential documents in its possession coming from third parties, if so to compel it would be to discourage similar communications being made in the future.[90] In the statute of Hawaii we find the following

[89] Session Laws Hawaii 1901, Act No. 20, § 6, p. 31.

[90] Brown's Trustees v. Hay, 35 Scotch Law Rep. 340, 3 Tax Cas. 598.

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severe and extraordinary provision: "It shall be the duty of every person or corporation doing business for profit to keep full, regular, and accurate books of accounts upon which all its transactions shall be entered from day to day in regular order, which books shall be open to the inspection of the assessor of the division or any person authorized by him to inspect the same, during business hours." It is perhaps fortunate that no penalty for the violation of this provision has been prescribed.

§ 331. Penalties for Failure to Make Return

Under the federal income tax law, penalties for the neglect or refusal to make and file the required returns are prescribed as follows:

Neglect or refusal to make a return, or to verify a return, subjects the individual taxpayer to a fine of from $20 to $1,000, and the Commissioner of Internal Revenue will add fifty per cent to the amount of the tax as assessed by him. But if the omission to make a return at the proper time was due to the "sickness or absence" of the taxpayer, this addition to the assessment will not be made, provided a return is made within the further time allowed by the collector, not exceeding thirty days.[91]

Certain persons and corporations, having the management of another person's property, or having fixed and determinable payments to make to such person at stated intervals, exceeding $3,000 for any taxable year, are required to make a return for such person and to withhold and pay over to the government the amount of the income tax thereon; as, for example mortgagors, employers paying salaries, testamentary and other trustees, executors, receivers, conservators, and disbursing officers of the United States. And if any one subject to this provision, whether it be a "person, corporation, joint stock company, association, or insurance company," shall refuse or neglect to make a return at the proper time,

[91] Supra, §§ 31, 142.

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a penalty is imposed of not less than $20 nor more than $1,000.[92]

If a corporation, joint stock company or association, or insurance company, liable to the tax, shall neglect or refuse to make its own return at the appointed time, it is liable to a penalty of not more than $10,000, and in addition is liable to have its assessment increased fifty per cent.[93]

§ 332. Penalties for False or Fraudulent Returns

For false or fraudulent income tax returns, the United States statute prescribes the following penalties:

If an individual taxpayer "makes any false or fraudulent return or statement with intent to defeat or evade the assessment required" by the statute, he shall be guilty of a misdemeanor, and be punished by a fine not exceeding $2,000, or imprisonment for not more than one year, or both, in the discretion of the court, with the costs of prosecution. And in addition, the amount of the tax assessed upon him shall be increased by the addition of one hundred per cent.[94]

If the return made by or on behalf of a corporation is false or fraudulent, as above defined, the officers of the corporation signing and verifying it are liable to the same punishment as above prescribed for individuals, and the assessment shall likewise be increased by the addition of one hundred per cent of its amount, and further, by the explicit language of the statute, the corporation itself shall be liable to a penalty of not more than $10,000.[95]

In regard to the validity of these various penalties, there can be little room for dispute. Courts have often sustained them in the case of general taxes, and, specifically with reference to an income tax, it has been held that the imposition of an addition of 100 per cent as a penalty for making a false or fraudulent return is not unconstitutional.[96] It has also been held that an assessor of internal revenue, on ascertaining

[92] Supra, §§ 31, 142.
[93] Supra, §§ 56, 142.
[94] Supra, §§ 31, 65.
[95] Supra, §§ 31, 56, 65.
[96] Doll v. Evans, 9 Phila. 364, Fed. Cas. No. 3,969.

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that the return made by a taxpayer was false and fraudulent, has power to reassess the tax and add the penalty, notwithstanding that the taxpayer has already paid the amount first assessed against him on his original return.[97] But the penalty of 100 per cent cannot be lawfully collected if the reassessment of the tax includes any sum not legally taxed, and there must first be an inquiry and a determination that the omission was false and fraudulent.[98]

In regard to the meaning of the terms employed in this part of the statute, there is a distinction to be taken between "false" and "fraudulent" returns. Fraud implies an intention to deceive or mislead. But a return which is simply incorrect is "false," though made in good faith and under a mistake of law.[99] And under the former income tax laws it was held that the addition of 100 per cent to the tax was authorized for an untrue return, although the return was not willfully false.[100] But the language of the present statute apparently reverses this rule, and authorizes the imposition of penalties only in cases where the return is both "false" and "fraudulent." For, as to the penalty for false swearing, it is denounced against any person who "makes any false or fraudulent return with intent to defeat or evade the assessment," and a false return made with intent to defeat or evade the assessment is necessarily fraudulent also. And as to the addition of the penalty of 100 per cent, this is authorized "in the case of any return of a false or fraudulent list or valuation intentionally," and of course a false return made intentionally is fraudulent also. It may be stated, therefore, that no penalty attaches to the making of a return which is incorrect in fact, but made in good faith and with no fraudulent intention, except that the amount of taxable income shown, if

[97] Doll v. Evans, 9 Phila. 364, Fed. Cas. No. 3,969.

[98] Michigan Cent. R. Co. v. Slack, Holmes, 231, Fed. Cas. No. 9,527.

[99] Eliot Nat. Bank v. Gill, 210 Fed. 933.

[100] German Sav. Bank v. Archbold, 15 Blatchf. 398, Fed. Cas. No. 5,364.

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understated, may be increased by the collector to the proper figure on notice, hearing, and proof.

In regard to the manner of enforcing the penalties, it is ruled that the penalty imposed on a corporation for failing to make the required return is to be recovered by a civil action (not by indictment in a criminal proceeding), in which the amount of the penalty will be determined by the court, within the limits stated, after a verdict for the plaintiff.[101] But it is not within the jurisdiction of a court to modify a penalty prescribed for making a false return, its discretion being confined to the limits marked out for it by the law.[102]

Intentional falsehood in the verified return is also a criminal offense. It is believed that the penalties of perjury as at common law would attach to such false swearing, unless the statute expressly declares the offense to be a misdemeanor or expressly prescribes a punishment in the nature of a fine. For it has been decided that, although an act imposing a tax on incomes makes no provision for compelling a person to make oath to his return, yet if it permits him to do so, and he avails himself of the privilege, and makes a false return, he is guilty of perjury.[103] But the present act of Congress explicitly declares this offense to be a misdemeanor, and prescribes the punishment, viz., a fine not to exceed $2,000 or imprisonment for not more than one year, or both in the discretion of the court.[104] Where two persons composing a partnership make and sign, in their partnership name, a false return to the collector of internal revenue, they may be jointly indicted therefor.[105]

§ 333. Penalties Under State Income Tax Laws

Under the Wisconsin statute, any individual taxpayer who fails or refuses to make the required return, or who makes

[101] Treasury Decisions, No. 1740.

[102] Lord Advocate v. McLaren, 42 Scotch Law Rep. 762, 5 Tax Cas. 110.

[103] United States v. Smith, 1 Sawy. 277, Fed. Cas. No. 16,341.

[104] Supra, § 31.

[105] United States v. McGinnis, 1 Abb. U. S. 120, Fed. Cas. No. 15,678.

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a false or fraudulent return, is liable to a fine of not more than $500, or imprisonment for not more than one year, or both. In the case of a corporation, a penalty is denounced of not less than $100 nor more than $5,000, at the discretion of the court, for either failing to make its return or for rendering a false or fraudulent return, and in the latter case, the officers of the corporation signing and verifying the return are liable to the same penalty as above prescribed for individuals. Furthermore, both in the case of an individual and in that of a corporation, and whether there was a failure to make the return or a false or fraudulent return was filed, if the revenue officers discover an additional amount of taxable income, "the amount so discovered shall be subject to twice the original rate." In South Carolina, if the taxpayer neglects or refuses to make a return, the auditor is to add fifty per cent as a penalty to the amount of tax due, and one hundred per cent in the case of a false or fraudulent return having been made. In Oklahoma, non-payment of the income tax when due subjects the taxpayer to the same penalties as are provided in the case of ad valorem taxes, and false swearing in a return is declared to be perjury. In Hawaii, "in case of any false or fraudulent return or valuation by any taxpayer, the assessor shall add 200 per cent to the just valuation of the income of such taxpayer, and the amount of the tax assessed on such increase shall become part of the tax on the said income."

§ 334. Returns of Withholding Agents

The persons and corporations who are described in the Treasury regulations as "debtors" and "withholding agents" are required to make monthly and annual list returns. These terms do not include fiduciaries, such as trustees, guardians, executors, or the like, nor do they include employers, lessees, mortgagors and others who are required to deduct the income tax from fixed periodical payments to be made by them. Both of these classes of persons are required to make annual returns, but separate regulations have been prescribed for them

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and forms provided for their use.[106] "Debtors," as the term is used by the Internal Revenue officers with reference to the income tax, are corporations and other similar organizations which are required by the statute to deduct and pay over the income tax on interest due on their bonds or other similar obligations, and the term "withholding agents" is applied either generally to those who are described as "debtors," or more particularly to banks or other collecting agencies which are required by the regulations to deduct and pay over the income tax on coupons or orders for registered interest on such bonds or similar obligations, when they are not accompanied by certificates of ownership, and on foreign interest or dividends. The monthly returns are required to contain a list of all coupon or interest payments made on which the income tax was deducted and withheld, and also the name and address in full of the owners of the bonds, the amount of the income, amount of exemption claimed, amount of income on which the withholding agent is liable for the tax, and the amount of tax withheld. The annual returns are summaries of the monthly returns. Instructions and regulations for the preparation and return of these monthly and annual lists have been prescribed by the Treasury department and special forms provided for them.[107] It should be noted that whereas the regulations originally directed that the monthly returns should be verified by affidavit, and the forms were drawn accordingly, this requirement has since been indefinitely "waived" as to the monthly list, though not as to the annual returns.[108] No penalties are prescribed for the neglect or failure to render these returns. They are not required or even mentioned in the act of Congress itself, and although the general authority given to the officers of the Treasury department to make regulations for the collection of the tax would undoubtedly cover this case, yet those officers would not have authority to pre-

[106] Supra, § 316.

[107] See, supra, § 123. And see Forms numbered 1012, 1013, and 1042 to 1044a, printed in full in the Appendix to this volume.

[108] Supra, § 161.

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scribe penalties not included in the statute. For it is a general principle of constitutional law that, while the legislative body may secure obedience to the rules and regulations made by administrative officers under such a grant of authority, by declaring their violation to be a punishable offense, yet no such power resides in the officers who make the rules.[109]

[109] Johnson v. United States, 26 App. D. C. 128.

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CHAPTER XIII

ASSESSMENT, PAYMENT, AND COLLECTION OF TAX

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§ 335. Assessment of Tax

All income tax returns filed with the collectors of internal revenue are directed to be forwarded by those officers to the Commissioner of Internal Revenue at Washington,[1] and the act of Congress prescribes that all assessments of the income tax, both in the case of individual taxpayers and of corporations, shall be made by the Commissioner,[2] acting primarily, of course, on the basis of the returns so placed before him. The assessment lists are then sent to the several collectors, in their respective districts, that they may proceed with the collection of the tax. It is not within the duty or the authority of a collector to ascertain whether the conclusions of the assessor in any given case are correct, nor can he revise the assessments in any way, nor refuse to enforce an assessment regularly made by the assessor in the exercise of the latter's jurisdiction. The duties of the collector in the enforcement of a tax assessed are

[1] Internal Revenue Regulations No. 33, art. 24, supra, § 178, art. 24.
[2] Supra, §§ 19, 53.

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purely ministerial. He has the right to assume that the taxes assessed are due, and that all proper steps have been taken to ascertain this fact. The assessment, duly certified to him, is his authority to proceed and constitutes his protection. For the assessor acts judicially in determining what persons and things are subject to taxation, and if the subject-matter is within his jurisdiction, a mistake as to the person or thing taxed, or an irregularity in the proceedings on his part, will not invalidate his action as assessor so far as to make the collector, who proceeds on a warrant in proper form to collect the tax a trespasser.[3]

Under the Wisconsin statute, the assessment of the income tax upon corporations, joint stock companies, and associations is to be made by the state tax commission, but upon individual taxpayers by the county assessor of incomes. In South Carolina, the income tax "shall be assessed, levied, and collected in the same manner, at the same time, as other taxes, and by the same county officials as are now charged with the assessment, levy, and collection of state and county taxes." In Oklahoma, the returns are to be forwarded to the state auditor who "shall certify the amount of the tax due upon the income so reported to the county clerk," and the latter shall extend the same on the tax rolls and deliver them to the county treasurer. In North Carolina, the lists are to be forwarded to the Corporation Commission, which "shall certify the amount of the tax due upon the income so reported to the chairman of the board of county commissioners of the county in which said taxpayer resides, and the same shall be paid to the sheriff of said county, together with other taxes for that year."

§ 336. Increasing Amount of Taxable Income Returned

The federal income tax law provides that "if the collector or deputy collector have reason to believe that the amount of any income returned is understated, he shall give due notice to the person making the return to show cause why the amount

[3] Haffin v. Mason, 15 Wall. 671, 21 L. Ed. 196; Erskine v. Hohnbach, 14 Wall. 613, 20 L. Ed. 745; Delaware R. Co. v. Prettyman, 17 Int. Rev. Rec. 99, Fed. Cas. No. 3,767.

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of the return should not be increased, and upon proof of the amount understated may increase the same accordingly." [4] In order to understand the force of this provision, it is permissible to recur to the earlier acts of Congress on the same subject, where the idea was more clearly expressed. In the act of 1864, it was provided that "if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts, and be permitted to prove and declare, under oath or affirmation, the amount of annual income liable to be assessed, but such oaths and evidence shall not be considered as conclusive of the facts." This was repeated in the act of 1870. Under these earlier statutes, the assessor (or collector) was to increase a return which, according to his information and judgment, was understated, after which the taxpayer might appear before him and prove the true amount of his income. But under the present act, the increase is not to be made until after a hearing. The collector is first to give notice to the taxpayer and summon him to show cause why his assessment should not be increased. Apparently the burden of proof in such cases is upon the government, that is, the collector. For although the taxpayer is called upon to "show cause why the amount of the return should not be increased," yet the increase can only be made "upon proof of the amount understated." Under earlier internal revenue laws it was held that, if the books and accounts of the taxpayer correspond with and justify the return he has made, then the burden is on the government to establish any

[4] Supra. § 18. Note that this provision applies only when a return has been made. Other parts of the act of Congress prescribe what is to be done when the taxpayer has neglected or refused to make any return. See, supra, §§ 20, 53, 65. The authority to summon the taxpayer to show cause, and to increase the return on proof of understatement, is here expressly given to deputy collectors, as well as to the collectors themselves. But the powers specifically conferred on collectors and deputy collectors cannot be exercised by mere clerks employed by the collectors. United States v. Rhawn, 11 Phila. 521, Fed. Cas. No. 16,150. In regard to the authority of the officers and the procedure under a similar clause in the earlier

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deficiency or understatement.[5] But on the other hand, while the taxpayer may present his affidavit to the collector stating the amount of his assessable income, and exhibit his books and accounts in support thereof, neither the affidavit nor the exhibits will be so far conclusive as to prevent the collector from taking other evidence if he is not convinced of their correctness.[6]

§ 337. Assessment on Discovery of Delinquency or of Fraud

The act of Congress provides that "in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, the Commissioner of Internal Revenue shall, upon discovery thereof, at any time within three years after said return is due, make a return upon information obtained as provided for in this section or by existing law." [7] In another part of the act it is provided that "when any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed." [8] The duplication of authority and duty resulting from these concurrent provisions probably arises from the fact that the latter provision was found in a section of the Revised Statutes which was slightly amended and then incorporated in the income tax law, without adverting to the inconsistencies thereby introduced. On the principle of construction which requires that effect shall be given, if possible, to all the different parts and clauses of a statute, it must probably be held that the authority to take

income tax laws, see United States v. Hodson, 14 Int. Rev. Rec. 100, Fed. Cas. No. 15,376.

[5] Dandelet v. Smith, 18 Wall. 642, 21 L. Ed. 758.

[6] Pahlman v. Raster, 20 Wall. 189, 22 L. Ed. 342.

[7] Supra, § 20.

[8] Supra, § 65.

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the action here described is concurrent in the Commissioner and the several collectors. But whereas the Commissioner is expressly bound by the limitation of three years, it may be a serious question whether collectors are so bound, that part of the act which relates to them containing no such limitation.

When the Commissioner undertakes thus to make a return for a delinquent taxpayer, or to correct a return suspected to be false or fraudulent, the law makes no provision for notice to the person or corporation affected nor for an opportunity to satisfy the Commissioner of the truth of the matter or contest his proposed return or assessment. But it is a general principle of law that a proceeding for the assessment of property for taxation is judicial in its character, and, in order to its validity, the law authorizing it must provide some kind of notice and an opportunity to be heard respecting it, before the proceeding becomes final, or it will want the essential ingredient of due process of law.[9] The action of the Commissioner is to be based upon "information obtained as provided for in this section or by existing law." As the whole of the income tax law constitutes one section of the tariff act of 1913, any reference to "this section" means the income tax law as a whole. We are therefore to conclude that the "information" is to be obtained by the Commissioner by an examination of the taxpayer (and of other witnesses if he desires to call them) and a scrutiny of his books and papers, together with "his own view and information," if that affords him any light.[10] But in any event there must be proof or some kind of evidence, obtained by the Commissioner or produced before him, to warrant him in fixing the amount of the taxable income of the person or corporation affected.[11] Under former income tax laws, it was held that a reassessment might be made although the return of the taxpayer was correct, and the error in the original assessment

[9] Santa Clara County v. Southern Pac. R. Co., 18 Fed. 385, 9 Sawy. 165; Eaton v. Union County Nat. Bank, 141 Ind. 159, 40 N. E. 693; Central of Georgia Ry. Co. v. Wright, 207 U. S. 127, 28 Sup. Ct. 47, 52 L. Ed. 134, 12 Ann. Cas. 463.

[10] Supra, §§ 64, 65.

[11] Barker v. White, 11 Blatchf. 445, Fed. Cas. No. 996.

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was due to the mistake of the revenue officers.[12] But the language of the present act could hardly be stretched to this extent, since assuming a return to have been made, the Commissioner cannot correct it unless it was "false or fraudulent."

The fact that a return was made and that the tax assessed thereon was punctually paid by the taxpayer does not estop the Commissioner from taking the action contemplated in this provision of the law; but the discovery that the return was false or fraudulent opens up the whole matter and warrants him in fixing the correct amount of the tax.[13] But he is strictly limited as to time, and can do nothing under this provision when more than three years have elapsed since the date when the return in question was due.[14] But the corrected assessment is not required to be made within the three years. The limitation is not on the making of the assessment, but on the discovery of the failure to make a return or of the falsity of the return made, within the three-year period.[15]

§ 338. Impeaching and Contesting Assessment

An assessment of taxes made by the Commissioner of Internal Revenue is prima facie valid and correct, but it is not conclusive or unimpeachable in any proceeding where it is directly involved. On the contrary, in a suit by the government for the amount of the tax or in any similar proceeding, it is open to the taxpayer to challenge the validity of the assessment and show illegality, want of jurisdiction, or that the assessment is excessive or incorrect, though he must assume the burden of proving these matters in order to overcome the presumption

[12] Barker v. White, 11 Blatchf. 445, Fed. Cas. No. 996; United States v. Black, 11 Blatchf. 538, Fed. Cas. No. 14,600.

[13] Eliot Nat. Bank v. Gill, 210 Fed. 933; The Collector v. Beggs, 17 Wall. 182, 21 L. Ed. 624; United States v. Little Miami, C. & X. R. Co., 1 Fed. 700; Doll v. Evans, Fed. Cas. No. 3,969. Compare In re Brown, Fed. Cas. No. 1,977; Commonwealth v. Pennsylvania, Co., 145 Pa. St. 266, 23 Atl. 549.

[14] In re Archer, 9 Ben. 427, Fed. Cas. No. 506. See United States v. O'Neill, 19 Fed. 567.

[15] Eliot Nat. Bank v. Gill, 210 Fed. 933.

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which supports the assessment.[16] And if any indistinguishable or inseparable part or proportion of an assessment of internal revenue taxes is illegal, the whole assessment is illegal.[17] But when the taxpayer has produced sufficient evidence to rebut the presumption of law as to the validity of the assessment, then the burden of proof is shifted on the government to establish its validity.[18] When the validity of the assessment comes into question only collaterally, as, for instance, in a suit against a collector to recover the value of property sold by him to enforce its collection, the rule is different. In these circumstances, the assessment cannot be impeached collaterally on account of mere mistakes, errors, or irregularities,[19] but a want of jurisdiction over the person or subject-matter, or an entire want of authority in the officer to make the assessment, may be shown against it even collaterally.[20]

§ 339. Appeal and Review of Assessment

Under the federal income tax law, when the collector believes that the amount of income disclosed by any return filed with him has been understated, he may, on notice, hearing, and proof, increase the amount returned to the figure which he is satisfied is correct. But his decision is not final, and provision for an appeal to a higher officer is made in the following terms: "If dissatisfied with the decision of the collector, such person may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish sworn testimony of witnesses to prove any relevant facts."[21] This evidently contemplates a hearing de novo before the Commis-

[16] Clinkenbeard v. United States, 21 Wall. 65, 22 L. Ed. 477; United States v. Thurber, 28 Fed. 56; United States v. Bank of America, 15 Fed. 730; United States v. Rindskopf, 8 Biss. 507, Fed. Cas. No. 16,166; Runkle v. Citizens' Ins. Co., 6 Fed. 143; United States v. Myers, 3 Hughes, 239, Fed. Cas. No. 15,846; Schmitt v. Trowbridge, Fed. Cas. No. 12,468.

[17] Hubbard v. Brainard, 35 Conn. 563.

[18] United States v. Rindskopf, 8 Biss. 507, Fed. Cas. No. 16,166.

[19] Kensett v. Stivers, 10 Fed. 517, 18 Blatchf. 397; Milan Distilling Co. v. Tillson, 26 Int. Rev. Rec. 5, Fed. Cas. No. 9,539.

[20] Runkle v. Citizens' Ins. Co., 6 Fed. 143.

[21] Supra, § 18.

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sioner. In similar cases under general revenue laws, that is, where an appeal is allowed from an assessor or collector to a commissioner or a board of equalization or review, it is usual to provide that the decision of the latter shall be final. This has not been done in the statute under consideration, but it is the evident meaning of Congress that the decision of the Commissioner shall be final in so far as to preclude any further investigation by the officers acting in the assessment and collection of the tax. But such provisions in the tax laws are not understood so as to make the proceeding final in the sense of debarring an aggrieved party from the privilege of prosecuting or defending his rights in the courts.[22]

Under the law in Wisconsin, the assessment of corporations, joint stock companies and associations is made by the state tax commission, and it is provided that any such company, "feeling aggrieved by the decision of said commission regarding the assessment of its income, shall be granted the same rights of hearing and appeal as are now granted corporations assessed by said commission." And the commission explains that the remedy here referred to is found in a statute which provides that any company claiming to be aggrieved by the levy of a tax, and alleging facts showing substantial injustice in the determination of the commission, may, within six months from the payment of the tax, bring an action against the state in the circuit court of Dane county to recover such part of the tax as shall exceed the amount the company should have paid.[23] But as to the review of assessments of income tax upon individuals, as distinguished from corporations, the provision is entirely different. For this purpose a board of review is created in each county, to hold stated meetings, of which notice is given, and having power to enforce the attendance of witnesses and the exhibition of books, to hear com-

[22] See McGehee v. Mathis, 21 Ark. 40; Milan Distilling Co. v. Tillson, 26 Int. Rev. Rec. 5, Fed. Cas. No. 9,539; Corning & Co. v. United States, 34 Ct. Cl. 271.

[23] Wisconsin Income Tax Law 1911, edition published by State Tax Commission, p. 38, citing Laws Wis. 1903, c. 315, § 20, as amended by Laws Wis. 1905, c. 216, § 5.

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plaints preferred by persons aggrieved or other persons, and to increase or lessen the amount of any assessment of income. Any person dissatisfied with the decision of the board of review may appeal to the state tax commission within twenty days. But, as is usually the case where statutes provide a special tribunal for the review of tax assessments, the taxpayer must exhaust his remedy thus provided before questioning the amount of the assessment in any proceeding in a court of justice.[24]

The only other income tax law making explicit provision for a review of the assessment is that of Hawaii. Herein it is provided that, if any person or corporation refuses or neglects to make the required return, or refuses to verify it, the assessor shall make such an assessment as he deems just, and there shall be no appeal therefrom. But any person or corporation which has made a legal return as required may appeal, in respect to the amount assessed, to the Tax Appeal Court, having first given the assessor written notice of his intention to appeal and of the grounds of appeal, and having deposited the costs of appeal.[25]

§ 340. Notice of Assessment

Under the federal income tax law, all persons and corporations against whom assessments have been made "shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year." [26] Assessment lists are made in duplicate in the office of the Commissioner of Internal Revenue, and one copy sent to each collector of internal revenue, covering the persons and corporations assessed in his district. Thereupon the collector carries out the provision of the statute quoted above, by sending to each taxable person and corporation in his district a notice of the amount of income tax assessed against him or it, and that the same will be due and payable on or before the thirtieth day of June ensuing. This is a preliminary notice of assessment,

[24] Wisconsin Income Tax Law 1911, § 1087m, subds. 14–19.
[25] Session Laws Hawaii 1901, Act No. 20, p. 31, §§ 8, 9.
[26] Supra, §§ 19, 53.

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and is not to be confused with the formal demand for payment of the tax which must follow if it is not paid by the appointed day, and which is necessary to fix the liability for the penalty and added interest, nor with the third notice (a general demand for the tax, penalty, and interest) which issues if payment is not made within ten days after service of the second demand, and which is necessary to create a lien in favor of the United States.[27]

§ 341. Time for Payment of Tax

Corporations which exercise the privilege granted them by the federal statute of designating a fiscal year differing from the calendar year are required to pay their income taxes within one hundred and twenty days after the date upon which they are required to file their lists or returns of income for assessment.[28] And "debtors" or "withholding agents," that is to say, those persons, firms, and corporations who are required to deduct and withhold the income tax from interest payments, rents, salaries, etc., disbursable by them, are directed to remit the sums so withheld by them for the income tax to the collector of internal revenue with their annual returns, but these returns are not to be made until the persons as against whom the income tax was so withheld shall have had time to file their claims for exemptions and deductions, which they are allowed to do not later than thirty days before the first day of March.[29] But aside from these exceptional cases, and as establishing the general rule for individuals and corporations alike, the act of Congress provides that "all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June." But the penalty for delinquency applies only to "sums due and unpaid

[27] As to the second and third demands mentioned in the text, see, infra, §§ 342, 346.

[28] Supra, § 53. As to the privilege of designating a fiscal year, and the procedure thereon, see, supra, §§ 43, 112, 163, 175.

[29] Supra, § 150. And see, supra, § 179, arts. 33, 34. As to the annual returns of debtors and withholding agents, see supra, §§ 123, 334.

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after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector." [30] Under a similar provision in the corporation tax law of 1909, it was ruled that the taxes are due and payable ten days after the date of the actual mailing of the notice and demand. But where a notice so sent is not delivered in due time, by reason of delay in the mail, and satisfactory evidence of that fact is furnished, the penalty will not be collected, provided the full tax due is paid to the collector within ten days after the actual receipt of the notice.[31] But if a notice from the collector was mailed to a delinquent taxpayer in a franked envelope, properly addressed, bearing the return address of the collector, and was not returned by the post office department, the presumption is that it was duly received.[32] Where a check is tendered in payment of the tax, which is not accepted as payment by the collector, and he deposits it in a bank for collection, the penalty for non-payment must be exacted, unless the collection is made and the tax turned over to the collector within ten days after mailing notice to the taxpayer. It is immaterial that the check was deposited in due time for the collection to have been made if the bank had been diligent. And the fact that the particular bank is a government depository does not make it an agency for the collection of internal revenue taxes, and therefore laches on its part in the performance of business duties, outside of its functions as such depository cannot be imputed to the government or affect its interests.[33]

Under the laws of the states, income taxes are generally made payable at the same time with the general taxes for the year on real and personal property.

§ 342. Demand for Payment of Tax

The act of Congress provides for the addition of a percentage in the way of a penalty, and of interest, to "any sum or sums due and unpaid after the thirtieth day of June in any

[30] Supra, §§ 19, 20, 53.
[31] Treasury Decisions, No. 1659.
[32] United States v. General Inspection & Loading Co., 204 Fed. 657.
[33] Treasury Decisions, No. 1651.

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year, and for ten days after notice and demand thereof by the collector." [34] This is construed by the Treasury department as meaning that, while the taxpayer is supposed to have been already notified of the amount of his tax and of the day when it is due, and may, if he chooses, make payment at any time after receiving such notice, yet if the tax is not paid at the close of the day of June 30th, it then becomes necessary for the collector to send him a formal demand for payment, and thereupon the taxpayer has ten days after service of such demand in which to make his payment, and he does not become "delinquent" in the sense of being subject to any penalty until the expiration of the ten days.[35] It will be observed that this is supplementary or additional to the "preliminary notice of assessment," of which mention was made in an earlier section (supra, § 340.) That preliminary notice is sufficient to inform the taxpayer of the amount assessed against him and of the date for payment, and if he makes his payment before the expiration of the day appointed, nothing further will be required. But the demand now under consideration is to follow in case of a default and as a means of establishing delinquency.

Provisions of this kind in a revenue law, designed for the information and protection of the citizen, and prescribed as a preliminary to the imposition of penalties upon him, are mandatory in the strictest sense, and must be strictly construed and literally followed, and if any prescribed notice or demand is omitted, the government cannot enforce its claims to any additional tax or interest.[36] Nor can any substitution be permitted. Thus, for instance, the issuance of a warrant to the collector of internal revenue taxes is not an equivalent for the demand which he is required by law to make, at least where the person taxed has had no notice of it.[37] And while the prescribed notice and demand may not be a part of the assessment, nor a condition precedent to a valid assessment, yet it is necessary by the terms of the statute before the taxpayer can be

[34] Supra, §§ 21, 54.

[35] Supra, §§ 159, 164.

[36] United States v. Allen, 14 Fed. 263; Eastman v. Little, 5 N. H. 290; Dow v. Chandler, 85 Mo. 245.

[37] Brown v. Goodwin, 1 Abb. New Cas. (N. Y.) 452.

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charged with the penalty and interest for delinquency, and it is also necessary before the collector can distrain for the taxes,[38] and to create and bring into operation a lien in favor of the government.[39]

§ 343. Payment and Receipt

Payment of internal revenue taxes may be made in any money which is a legal tender for that purpose. Also, by an act of Congress, collectors are authorized to receive in payment of internal revenue taxes certified checks drawn on national and state banks and trust companies during such time and under such regulations as the Secretary of the Treasury may prescribe.[40] The regulations permit the acceptance of certified checks drawn on banks and trust companies in the place where the collector has his office, and also of "out of town" checks, provided the latter can be collected without any expense to the government; but collectors are warned that if they accept any other form of exchange or security they do so at their own peril, except perhaps in cases where the bank in which they make their deposits will accept such paper indorsed by the collector "without recourse." [41]

Where a tax past due to the United States has been paid to the collector, he and his sureties are liable therefor, although the amount so paid had not then been returned to the assessor's office or passed upon by him nor had a sworn statement of the taxpayer been delivered.[42] And where an internal revenue tax is required to be paid by the "owner" of the property, it need not necessarily be paid by the owner in person. It is enough if the payment is made by him acting through some friend or agent, whether compensated or not, or by any person who will act in his behalf, and whose act is not disavowed by the owner.[43]

[38] United States v. Bristow, 20 Fed. 378; United States v. Pennsylvania Co., 27 Fed. 539.

[39] United States v. Pacific R. R., 4 Dill. 71, Fed. Cas. No. 15,984.

[40] Act Cong. Mar. 2, 1911, 36 Stat. 965.

[41] Supra, § 149.

[42] King v. United States, 99 U. S. 229, 25 L. Ed. 373.

[43] Bennett v. Hunter, 9 Wall. 326, 19 L. Ed. 672; United States

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Upon payment of an income tax, it is made the duty of the collector to "give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made, such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor to justify him in withholding the amount therein expressed from his next payment to his creditor." [44]

§ 344. Penalty for Delinquency

Failure to pay the federal income tax when due, and for ten days after notice and demand thereof by the collector, will subject the taxpayer, whether an individual or a corporation, to a penalty of five per cent of the amount of the tax unpaid, which is to be added to that amount, together with interest at the rate of one per cent a month from the time the tax became due until it is paid. But an exception is made in favor of the estates of insane, deceased, and insolvent persons.[45] Also an indulgence has been granted to persons absent in foreign countries at the time for paying the tax, the provision being that the penalty and interest will not be enforced against them if they make payment within ten days (or place their remittance in the mails) subsequent to the time when the notice and demand should be received by them in the ordinary course of the mails.[46]

There is no constitutional objection to adding a penalty to a tax for failing to pay it at or within the appointed time.[47] And when the addition of a penalty follows automatically and

v. Lee, 106 U. S. 196, 1 Sup. Ct. 240, 27 L. Ed. 171; Tracey v. Irwin, 18 Wall. 549, 21 L. Ed. 786.

[44] Supra, § 66.

[45] Supra, §§ 21, 54.

[46] Supra, § 174.

[47] De Treville v. Smalls, 98 U. S. 517, 25 L. Ed. 174. See Savings Bank v. Archbold, 104 U. S. 708, 26 L. Ed. 901.

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as a mere matter of computation, upon the failure to pay at the proper time, its imposition is not a judicial proceeding, and if the taxpayer had notice and a hearing on the question of fixing the amount of his assessment, it is immaterial that the penalty is added without further notice or an opportunity to be heard, and he cannot complain that he is deprived of his property without due process of law.[48] But penalties are never extended by implication, and unless expressly imposed, they cannot be enforced.[49]

Whether the interest on the unpaid tax begins to run from the end of the ten days allowed for payment in the collector's demand, or relates back to the day when the tax should ordinarily have been paid (June 30th in most cases) is an unsettled question. It is a general rule that interest cannot be claimed on unpaid taxes until after a demand for them,[50] and that a taxpayer is not technically in default until the expiration of any period of time allowed him to make payment.[51] But the statute makes the interest run from "the time the tax became due," and explicitly provides that assessments "shall be paid on or before the thirtieth day of June."

In the case of corporations going out of existence in the course of the year, and leaving no assets, the Treasury department has ruled that the former officers of the corporation cannot be held individually liable for the penalty prescribed by law, nor are the individual assets of the stockholders liable. But if the corporation left assets which have been distributed among the stockholders, such assets are available for the collection of the tax, though not for the penalty.[52] It should also be observed that a pardon for offenses against the revenue laws cannot relieve the offenders from the payment of taxes.[53]

[48] Passavant v. United States, 148 U. S. 214, 13 Sup. Ct. 572, 37 L. Ed. 426.

[49] Elliott v. Railroad Co., 99 U. S. 573, 25 L. Ed. 292.

[50] Second & Third Street Passenger Ry. Co. v. Philadelphia, 51 Pa. St. 465.

[51] Harrison v. United States, 20 Ct. Cl. 175.

[52] Treasury Decisions No. 1852.

[53] United States v. Roelle, Fed. Cas. No. 16,186.

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§ 345. Rate of Tax

In two states and one territory the laws levy a "flat" tax on incomes. That is, the rate of the tax remains the same whatever be the amount of the taxable income. In Virginia, the rate of the tax is one per cent, as it is also in North Carolina. In Hawaii, it is two per cent. The act of Congress of 1913 also imposes a flat tax of one per cent upon the income of corporations. But as concerns individuals, it is graded or progressive, the rate of taxation increasing as the amount of taxable income increases, within or beyond certain fixed limits. This progressive feature is also found in the income tax laws of South Carolina, Wisconsin, and Oklahoma. The act of Congress (as to individuals only) first levies a "normal income tax" of one per cent on all incomes in excess of the statutory exemption, and then provides that there shall also be levied an "additional income tax" at the rate of "one per centum per annum upon the amount by which the total net income exceeds $20,000, and does not exceed $50,000, and two per centum per annum upon the amount by which the total net income exceeds $50,000 and does not exceed $75,000, and three per centum per annum upon the amount by which the total net income exceeds $75,000 and does not exceed $100,000, and four per centum per annum upon the amount by which the total net income exceeds $100,000 and does not exceed $250,000, and five per centum per annum upon the amount by which the total net income exceeds $250,000 and does not exceed $500,000, and six per centum per annum upon the amount by which the total net income exceeds $500,000." In Wisconsin, the rate for individuals is one per cent upon the first thousand dollars of taxable income or part thereof, and from this point the rate increases with each successive thousand dollars of taxable income, advancing first by quarters of one per cent and after the fifth thousand by halves of one per cent, to the twelfth thousand, on which the rate is five and one-half per cent, with a rate of six per cent on any sum in excess of twelve thousand dollars. As to corporations, under the Wisconsin statute, the rate is determined by the ratio between the taxable income of the company and

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the "assessed value of the property used and employed in the acquisition of such income." If this ratio is one per cent or less, the rate of the tax is one-half of one per cent of such income. From this point it advances "until the rate of profits equals twelve per cent of such assessed value of the property used and employed in the acquisition of such income, when such rate shall continue as a proportional rate of six per cent of such taxable income. In South Carolina, the tax is at the rate of one per cent on incomes over and above $2,500 and up to $5,000; one and one-half per cent on $5,000 and over, up to $7,500; two per cent on $7,500 and over, up to $10,000; two and one-half per cent on $10,000 and over, up to $15,000; and three per cent on $15,000 and over. In Oklahoma, the rate is five mills on the dollar on the excess of income over $3,500 and less than $5,000; seven and one-half mills on the excess of $5,000 and less than $10,000; twelve mills on the excess over $10,000 and less than $20,000; fifteen mills on the excess over $20,000 and less than $50,000; twenty mills on the excess over $50,000 and less than $100,000; and thirty-three and one-third mills on all amounts over $100,000.

For purposes of comparison a table is appended, showing the amount of the tax payable by individuals and by corporations under the federal statute and also the amount of the tax under the progressive income tax laws of the three states mentioned. The reader will notice that the "amount of taxable income" in the first column does not mean gross income, but the net income on which the tax will be payable after deducting all exemptions and allowances. A glance at the table will show that the progressive feature of the tax is applied with the greatest severity under the act of Congress, but with Wisconsin a close second in its application to very large incomes. Attention may also be called to the striking disparity between the taxes payable by individuals and those payable by corporations under the federal statute, when the income reaches large figures, which is entirely due to the fact that the tax on corporations is flat, while that on individuals is progressive.

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Amount of Taxable Income.	U. S. Am't of Tax on Individuals.	U. S. Am't of Tax on Corporations.	Wisconsin Am't of Tax.	S. Carolina Am't of Tax.	Oklahoma Am't of Tax.
$ 5,000.	$ 50.	$ 50.	$ 75.	$ 75.	$ 37.50.
10,000.	100.	100.	250.	250.	120.
15,000.	150.	150.	535.	450.	180.
20,000.	200.	200.	835.	600.	300.
25,000.	300.	250.	1,135.	750.	375.
50,000.	800.	500.	2,635.	1,500.	1,000.
100,000.	2,550.	1,000.	5,635.	3,000.	2,000.
200,000.	7,550.	2,000.	11,635.	6,000.	6,666.66.
500,000.	25,050.	5,000.	29,635.	15,000.	16,666.66.
1,000,000.	60,050.	10,000.	59,635.	30,000.	33,333.33.

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§ 346. Lien of Income Tax

An act of Congress, amending a section of the Revised Statutes, provides: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto upon all property and rights to property belonging to such person: *Provided, however,* That such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: *Provided further,* Whenever any state by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that state, or in the state of Louisiana in the parishes thereof, then such lien shall not be valid in that state as against any mortgagee, purchaser, or judgment creditor, until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the state of Louisiana, within which the property subject to the lien is situated." [54] An opinion was given by the Attorney General that this statute was applicable to the special tax on corporations imposed by the act of 1909, and if so, it would, for the same reasons, be applicable under the income tax law of 1913.

It will be observed that the lien for unpaid income taxes is to date "from the time when the assessment list was received by the collector," but is created only by a neglect or refusal to pay "after demand." The explanation is that an unpaid income tax is and continues a mere personal liability of the taxpayer until its payment is demanded. A demand in due form, stating the amount of the tax, is necessary to create and bring into operation the lien. But when such a demand has been made, and payment is thereafter neglected or refused, the lien of the tax

[54] Act Cong. March 4, 1913, amending Rev. Stat. U. S., § 3186 (Comp. St. 1913, § 5908).

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relates back to the time when the assessment list was received by the collector, though it attaches only to the property belonging to the taxpayer at the time when the demand was made.[55] The preliminary notice of assessment referred to in an earlier section (supra, § 340) is not such a demand as to lay a foundation for the lien, nor is the demand of payment of the tax which is issued upon non-payment of the tax on the day when due (supra, § 342), for this last must give the taxpayer ten days after service to make his payment before delinquency is established, and because it cannot include any demand for penalty or interest, liability for which does not attach until delinquency. Accordingly it is the custom of the revenue officers, in case of non-payment after the ten days, to follow with a general demand for payment of the tax, penalty, and interest, which establishes the lien.[56]

Prior to the act of Congress amending the Revised Statutes in this particular, it was held that a state law requiring that all liens on real property must be recorded in order to affect third parties did not apply to tax liens in favor of the United States, and though such tax liens were not recorded, they might be enforced against the lands in the hands of purchasers for value without notice, mortgagees, and judgment creditors.[57] This is expressly changed by the amendatory act recited above. And after its enactment, collectors of internal revenue were given general instructions to file notices of such liens in the proper offices "when deemed advisable in order to protect the interests of the government," and particularly "where the collector apprehends that attempts will be made to defeat collection by transfer of property or placing incumbrances thereon, or where, from the size of the assessment or for any other rea-

[55] United States v. Pacific R. R., 1 Fed. 97, 1 McCrary, 1; Brown v. Goodwin, 1 Abb. New Cas. (N. Y.) 452; United States v. Pacific R. R., 4 Dill. 71, Fed. Cas. No. 15,984.

[56] Internal Revenue Regulations No. 33, art. 197, supra, § 186, art. 197. And see, supra, § 159.

[57] United States v. Snyder, 149 U. S. 210, 13 Sup. Ct. 846, 37 L. Ed. 705; Hartman v. Bean, 99 U. S. 393, 25 L. Ed. 455; United States v. Turner, Fed. Cas. No. 16,548; Alkan v. Bean, 8 Biss. 83, Fed. Cas. No. 202; United States v. Black, 3 Brewst. (Pa.) 167.

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son, the collector is of the opinion that such action is advisable to protect the government," and "when the tax has been paid, notice should in like manner be filed, showing satisfaction of the claim and removal of lien." [58]

A lien for taxes does not stand upon the footing of an ordinary incumbrance, and is not displaced by a sale of the property under a pre-existing judgment or decree, unless otherwise directed by statute.[59] But it is the practice in some of the state courts that when property incumbered by a tax lien in favor of the United States is sold on execution issuing out of the state court, the government's lien must first be paid out of the proceeds of the execution sale, and its priority will be recognized in the state court.[60] The lien, however, does not come into existence unless all the prescribed steps in connection with the making of the assessment and whatever else is declared by the statute to be necessary to the fixing of liability have been duly and properly taken.[61] But the lien, once attached, cannot be waived or released by any disclaimer on the part of the collector.[62]

Under the corporation tax law of 1909, it was ruled that the assets of a corporation are subject to the lien for the payment of the tax, provided that the corporation has not been dissolved and all its assets distributed prior to the time when the list of assessments came into the hands of the collector. And even if a corporation is dissolved before the tax falls due, so that the government cannot claim a lien on its assets, still the tax imposed may be collected by the government by pursuing the assets into the hands of the stockholders, in the same manner as any other creditor might obtain satisfaction of his debt.[63]

As to tax liens under the laws of the states, it may be ob-

[58] Treasury Decisions No. 1841.
[59] Osterberg v. Union Trust Co., 93 U. S. 424, 23 L. Ed. 964.
[60] Appeal of Dungan, 68 Pa. St. 204, 8 Am. Rep. 169. But compare Bosset v. Miller, 2 Woodw. Dec. (Pa.) 40.
[61] United States v. Pacific R. R., 1 Fed. 97, 1 McCrary, 1.
[62] Alkan v. Bean, 8 Biss. 83, Fed. Cas. No. 202.
[63] 28 Opin. Atty. Gen. 241.

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served that, in Oklahoma, it is expressly provided by statute that the amount due for income tax shall be a lien upon the real and personal property of the taxpayer. But elsewhere the matter is left to be regulated by the laws relating to taxes in general.

§ 347. Collection by Suit

The rule is thoroughly well established that an action of debt or any other proper form of proceeding may be maintained in the name of the United States for the recovery of any sum due from the defendant for internal revenue taxes.[64] Specially with reference to the income tax law, it must be remembered that it contains a provision that "all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal revenue taxes not heretofore specifically repealed, and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed." [65] And an almost identical provision, inserted in the War Revenue Act of 1898, was held to confer express statutory authority for the maintenance of an action by the United States to recover the stamp tax thereby imposed.[66] The reasoning of the case cited is of course equally applicable to the case of the income tax. Likewise in Wisconsin it is held that the special remedies provided for the collection of the income tax are not exclusive, but there is an additional remedy in

[64] Billings v. United States, 232 U. S. 261, 34 Sup. Ct. 421, 58 L. Ed. 596; United States v. Chamberlin, 219 U. S. 250, 31 Sup. Ct. 155, 55 L. Ed. 204; Dollar Sav. Bank v. United States, 19 Wall. 227, 22 L. Ed. 80; United States v. Bristow, 20 Fed. 378; United States v. Little Miami, C. & X. R. Co., 1 Fed. 700; United States v. Pacific R. R., 4 Dill. 66, Fed. Cas. No. 15,983; United States v. Halloran, 14 Blatchf. 1, Fed. Cas. No. 15,286; United States v. Washington Mills, 2 Cliff. 601, Fed. Cas. No. 16,647; United States v. Tilden, 9 Ben. 368, Fed. Cas. No. 16,519. And see Rev. Stat. U. S. § 3213 (Comp. St. 1913, § 5937).

[65] Supra, § 68.

[66] United States v. Chamberlin, 219 U. S. 250, 31 Sup. Ct. 155, 55 L. Ed. 204.

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the form of an action of debt in the name of the town, city or village.[67]

Jurisdiction of such actions by the United States is given to the federal district courts. The Judicial Code provides that these courts shall have "original jurisdiction of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue," and specifically "of all cases arising under any law providing for internal revenue." [68] And "taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs or in the district where the delinquent resides." [69] But a suit will not lie to recover such a tax in a district other than those mentioned, although the defendant may be found there and served with process there.[70] It is immaterial in these cases that the amount in controversy does not equal or exceed $3,000; that limitation upon the jurisdiction of the federal courts is not applicable in internal revenue cases.[71] It may be doubted whether the courts of the states would have jurisdiction of suits for the recovery of these taxes. It is provided that the jurisdiction of the federal courts shall be exclusive of that of the state courts in "all suits for penalties and forfeitures incurred under the laws of the United States." [72] But a reasonable construction of this provision might lead to the conclusion that it was

[67] City of Superior v. Allouez Bay Dock Co., 156 Wis. 177, 145 N. W. 656.

[68] Federal Judicial Code, 1911, § 24 (Comp. St. 1913, § 991). And see Coffey v. United States, 116 U. S. 427, 6 Sup. Ct. 432, 29 L. Ed. 681. As to the courts of the District of Columbia being "courts of the United States," see James v. United States, 202 U. S. 401, 26 Sup. Ct. 685, 50 L. Ed. 1079. As to the jurisdiction of the district court of Alaska, see McAllister v. United States, 141 U. S. 174, 11 Sup. Ct. 949, 35 L. Ed. 693.

[69] Federal Judicial Code, 1911, § 44 (Comp. St. 1913, § 1026).

[70] United States v. New York, N. H. & H. R. Co., 10 Ben. 144, Fed. Cas. No. 15,874.

[71] Ames v. Hager, 36 Fed. 129, 1 L. R. A. 377.

[72] Federal Judicial Code, 1911, § 256 (Comp. St. 1913, § 1233). See United States v. Mooney, 116 U. S. 104, 6 Sup. Ct. 304, 29 L. Ed. 550.

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the intention of Congress to grant exclusive jurisdiction to the federal courts in cases where the suit was brought solely for a penalty or forfeiture, and not to include cases where the action was for the recovery of a tax, though it might incidentally include a claim for a penalty.

By way of defense to such an action, the defendant may allege and show want of jurisdiction in the assessing officers, or that the assessment was erroneous, illegal, or excessive.[73] But the government is not estopped or debarred from maintaining a suit to recover income taxes by the fact that the taxpayer made a return, on which a tax was assessed against him, and that he paid the amount of the tax, when the suit is based on the claim of the government that the amount so assessed and paid was incorrect and too small in amount.[74] But on the other hand, the defendant is entitled to a deduction of any amount admitted by the government to have been previously overpaid, even though there is no plea of set-off.[75]

It is a well-established principle that the United States is not bound by any statute of limitations, nor barred by any laches or delay of its officers, however gross, in a suit brought by it as a sovereign government to enforce a public right or to assert a public interest.[76] And this rule has been applied to suits for the recovery of taxes.[77] But very long delay in demanding a tax or instituting proceedings for its recovery may bar an action by the government, if it is shown that the delay has prejudiced the defendant by the disappearance or loss of evidence

[73] Clinkenbeard v. United States, 21 Wall. 65, 22 L. Ed. 477; United States v. Thurber, 28 Fed. 56; United States v. Nebraska Distilling Co., 80 Fed. 285, 25 C. C. A. 418.

[74] United States v. Tilden, 9 Ben. 368, 24 Int. Rev. Rec. 99, Fed. Cas. No. 16,519; United States v. Philadelphia & R. R. Co., 123 U. S. 113, 8 Sup. Ct. 77, 31 L. Ed. 138; United States v. Little Miami, C. & X. R. Co., 1 Fed. 700; United States v. Hazard, Fed. Cas. No. 15,337; United States v. New York Guaranty & Indemnity Co., 8 Ben. 269, Fed. Cas. No. 15,872.

[75] Missouri R., F. S. & G. R. Co. v. United States, 19 Fed. 66.

[76] United States v. Beebe, 127 U. S. 338, 8 Sup. Ct. 1083, 32 L. Ed. 121; United States v. Insley, 130 U. S. 263, 9 Sup. Ct. 485, 32 L. Ed. 968.

[77] United States v. Tilden, 9 Ben. 368, Fed. Cas. No. 16,519.

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essential to his defense.[78] And in a case where the amount of taxes assessable against a corporation was settled by agreement between the company and the assessor, and accordingly assessed and the amount paid, and nearly twelve years afterwards a suit was brought by the government on the allegation that the assessment was too low and that a further sum was due, it was held that the fact of the assessment, the payment of the tax under it, and the acquiescence of the government, for so long a period afterwards, raised a presumption that the assessment was correct, and that the money paid covered the defendant's entire liability, and that the burden was thus cast upon the government of proving, by evidence such as fully to satisfy the mind, that the assessment was erroneous.[79]

The assessment list, regular in form, makes a prima facie case for the government, and it is not necessary for it, in the first instance, to go into the particulars of the assessment, or to show that it was properly made.[80] But the assessment is not conclusive evidence. It may be attacked and controverted as excessive or illegal, in defense to the action.[81] In regard to the particulars of the income alleged to have been received by the defendant and to be subject to the tax, the burden of proof is on the government to show their existence and amount, and also, it would appear, that the exemptions and deductions claimed by the taxpayer are fictitious, exaggerated, or not allowable.[82] But when evidence for this purpose has been adduced, it is for the taxpayer to controvert it by proper proof, and if he fails to do so, a finding in favor of the United States

[78] United States v. Marquette, H. & O. R. Co., 17 Fed. 719.

[79] United States v. Philadelphia & R. R. Co., 123 U. S. 113, 8 Sup. Ct. 77, 31 L. Ed. 138.

[80] Western Express Co. v. United States, 141 Fed. 28, 72 C. C. A. 516; United States v. Butler, Fed. Cas. No. 14,702; United States v. Cole, 134 Fed. 697.

[81] United States v. Bank of America, 15 Fed. 730; United States v. Rindskopf, 8 Biss. 507, Fed. Cas. No. 16,166; Runkle v. Citizens' Ins. Co., 6 Fed. 143.

[82] Little Miami, C. & X. R. Co. v. United States, 108 U. S. 277, 2 Sup. Ct. 627, 27 L. Ed. 724; United States v. Central Nat. Bank, 15 Fed. 222.

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is justified.[83] But it should be observed that internal revenue regulations prescribed by the Treasury department, for the guidance of officers in the administration of the law, have not the force of rules of evidence in actions by the government to enforce payment of the tax.[84]

§ 348. Collection by Distraint

The laws of the United States, made applicable to the collection of income taxes, provide that "if any person liable to pay any tax neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities and evidences of debt, of the person delinquent as aforesaid." [85] Distraint is not a judicial process by which the property of a debtor can be taken for the satisfaction of a debt, but it is an executive process by which the right to seize and take property for the payment of taxes is exercised; its use does not deprive the citizen of his property without due process of law, nor otherwise contravene the constitution; summary remedies for the collection of debts due to a government have always existed.[86] And the right and duty of the collector to distrain is not suspended or in any way affected by the commencement of an action by the government to recover the same taxes.[87] A distress warrant from the Treasury is conclusive evidence of the facts recited in it and of the authority to make the levy, so far as to justify the marshal in acting under it, but the question of indebtedness may be the

[83] United States v. Cole, 134 Fed. 697.

[84] United States v. Cole, 134 Fed. 697.

[85] Rev. Stat. U. S., § 3187 (Comp. St. 1913, § 5908). For the procedure on distraint and sale, see §§ 3188 to 3195. These sections may be seen printed in full in the appendix to this volume.

[86] Murray v. Hoboken Land & Imp. Co., 18 How. 272, 15 L. Ed. 372; Allen v. Sheridan, 145 Fed. 963; Mason v Rollins, 2 Biss. 99, Fed. Cas. No. 9,252; Marshall v. Wadsworth, 64 N. H. 386, 10 Atl. 685.

[87] Harding v. Woodcock, 137 U. S. 43, 11 Sup. Ct. 6, 34 L. Ed. 580.

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subject of litigation, the levy providing security for the event of the suit.[88] It is necessary, however, to the validity of a sale made on distress that the collector should strictly comply with the directions of the statute in regard to notice and demand, advertisement of the sale, and whatever else is intended for the benefit or protection of the taxpayer.[89] State exemption laws are not applicable to debts due by a citizen to the United States; and as concerns the exemption of property from distraint for internal revenue taxes, the provision of the Revised Statutes which authorizes the use of this process also enumerates the property which shall be exempt, and this alone applies, without regard to the laws of the particular state.[90] In the execution of a distraint, stock in a corporation may be seized or levied on by the simple service of a notice on the proper officer of the corporation.[91] It should be added that property seized and sold by a collector, in the enforcement of the internal revenue laws, cannot be replevied from the purchaser by the former owner under process from a state court, and such a proceeding will not be tolerated by a federal court, the remedy for a wrongful seizure given by the statute being exclusive.[92] Moreover, severe penalties are denounced against persons who forcibly obstruct or hinder collectors in the performance of their duty, or who forcibly rescue property seized by a collector for non-payment of taxes.[93]

§ 349. Sale of Real Estate for Delinquent Taxes

The federal statutes also provide that "when goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is au-

[88] Murray v. Hoboken Land & Imp. Co., 18 How. 272, 15 L. Ed. 372.

[89] State Nat. Bank v. Morrison, 1 McCrary, 204, Fed. Cas. No. 13,325; Blake v. Johnson, 1 N. H. 91; Parker v. Rule, 9 Cranch, 64, 3 L. Ed. 658.

[90] United States v. Howell, 9 Fed. 674.

[91] Miller v. United States, 11 Wall. 268, 20 L. Ed. 135.

[92] Allen v. Sheridan, 145 Fed. 963.

[93] Rev. Stat. U. S., § 3177 (Comp. St. 1913, § 5900). See United States v. Ford, 34 Fed. 26.

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thorized to collect the same by seizure and sale of real estate." [94] So far as regards this provision, it is probably correct to say, as some of the decisions have maintained, that no right to seize and sell land exists until there has been a failure to find sufficient personal estate, and this fact is essential to the validity of the sale, and must be proved, if challenged, by evidence outside the collector's deed.[95] But the statutes also provide that the Commissioner of Internal Revenue "may direct a bill in chancery to be filed, in a district or circuit court of the United States to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax." [96] And it is held that the remedy thus provided is cumulative, and that it is not necessary to exhaust the possible remedy against the goods and chattels of the taxpayer before resorting to a bill in equity to subject his real estate.[97] But when the United States has foreclosed a lien on realty for delinquent internal revenue taxes, and bid in the property, and seeks to maintain its title as against a vendee of the former owner, the remedy is by an action at law to recover possession, and not by a bill in equity to remove cloud on title.[98]

The Revised Statutes contain detailed and specific directions as to the procedure to be followed on a seizure and sale of land, the allowance of a right of redemption, and the deed to be given by the collector.[99] In general it may be said, according to the rule applicable to all sales for taxes, that the collector must proceed strictly in accordance with the directions of the

[94] Rev. Stat. U. S., § 3196 (Comp. St. 1913, § 5918).

[95] Brown v. Goodwin, 75 N. Y. 409. And see Mansfield v. Excelsior Refinery Co., 135 U. S. 326, 10 Sup. Ct. 825, 34 L. Ed. 162.

[96] Rev. Stat. U. S., § 3207 (Comp. St. 1913, § 5929).

[97] Mansfield v. Excelsior Refinery Co., 135 U. S. 326, 10 Sup. Ct. 825, 34 L. Ed. 162; Blacklock v. United States, 208 U. S. 75, 28 Sup. Ct. 228, 52 L. Ed. 396; United States v. Curry, 201 Fed. 371; Alkan v. Bean, 8 Biss. 83, Fed. Cas. No. 202.

[98] United States v. Wilson, 118 U. S. 86, 6 Sup. Ct. 991, 30 L. Ed. 110.

[99] See Rev. Stat. U. S., §§ 3196–3208 (Comp. St. 1913, §§ 5918–5930).

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statute, at least in so far as regards all steps to be taken for advising the taxpayer of the proceedings or otherwise intended for his benefit.[100] And the general doctrine is that the collector's deed is prima facie evidence of the facts required by the statute to be stated in it (such being the provision of the statute itself), but not of any other recitals nor of any facts not included in the deed,[101] although, under certain earlier statutes levying direct taxes, it was held that the collector's deed was prima facie evidence of the regularity of the sale and of all antecedent facts essential to its validity and to that of the purchaser's title thereunder, and could only be affected by proof that the lands were not subject to the tax, that it had been paid prior to the sale, or that the property had been redeemed.[102]

§ 350. Remedies of Taxpayer Illegally Assessed

If there are any circumstances under which an individual or corporation complaining of his or its assessment for the income tax can succeed in procuring an injunction to restrain its assessment or collection, they must be very rare and exceptional. The general rule in such cases has been thus set forth by the United States Supreme Court: When a court of equity is asked to enjoin the collection of taxes, it is essential that the case be brought within some of the recognized rules of equity jurisdiction, and neither illegality nor irregularity in the proceedings, nor error or excess in the valuation, nor the hardship and injustice of the law, provided it be constitutional, nor any grievance which can be remedied by a suit at law, either before or after the payment of the tax, will authorize an injunction against its collection; and no injunction can be granted until it is shown that all the taxes conceded to be due, or which the court can see ought to be paid, or which can be shown to be due

100 Allen v. Smith, 1 Leigh (Va.) 231.

101 Fox v. Stafford, 90 N. C. 296; Stewart v. Pergusson, 133 N. C. 276, 45 S. E. 585; Brown v. Goodwin, 75 N. Y. 409. And see Williams v. Peyton, 4 Wheat. 77, 4 L. Ed. 518.

102 De Treville v. Smalls, 98 U. S. 517, 25 L. Ed. 174; Keely v. Sanders, 99 U. S. 441, 25 L. Ed. 327; Sherry v. McKinley, 99 U. S. 496, 25 L. Ed. 330.

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by affidavits, have been paid or unconditionally tendered.[103] But besides this, it is explicitly provided by a law of the United States that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." [104] Hence it is held that a bill in equity will not lie to enjoin a collector of internal revenue taxes from proceeding by distraint or otherwise to collect a tax assessed by the Commissioner of Internal Revenue, although the tax is alleged in the bill to have been illegally assessed.[105] And a bill in equity filed in the Supreme Court of the District of Columbia, to enjoin the Commissioner from assessing the complainant for the "additional tax" or surtax, on the ground that that feature of the income tax law was unconstitutional, was dismissed on the ground that the complainant had an adequate remedy at law, by paying the amount of the tax under protest and suing for its recovery.[106] In other cases also it has been held that even the alleged unconstitutionality of an act of Congress levying taxes furnishes no ground to enjoin their collection.[107] And the fact that a particular collector may be financially unable to respond in a suit to recover back taxes paid to him, is no justification for an injunction, since the government will assume his responsibility.[108]

As to the case where the injunction is not asked against the officers of the government, but against a corporation, to restrain it from paying an internal revenue tax, it has been held that such a suit, brought by a stockholder, was properly dis-

[103] State Railroad Tax Cases, 92 U. S. 575, 23 L. Ed. 663; Schulenberg-Boeckeler Lumber Co. v. Town of Hayward, 20 Fed. 422; Lexington v. McQuillan's Heirs, 9 Dana (Ky.) 513, 35 Am. Dec. 159.

[104] Rev. Stat. U. S., § 3224 (Comp. St. 1913, § 5947).

[105] Snyder v. Marks, 109 U. S. 189, 3 Sup. Ct. 157, 27 L. Ed. 901; Shelton v. Platt, 139 U. S. 591, 11 Sup. Ct. 646, 35 L. Ed. 273; Wisconsin v. Frear, 231 U. S. 616, 34 Sup. Ct. 272, 58 L. Ed. 400; Cutting v. Gilbert, 5 Blatchf. 259, Fed. Cas. No. 3,519; Smith v. Com'rs of Leavenworth, 9 Kan. 296. See Frayser v. Russell, 3 Hughes, 227, Fed. Cas. No. 5,067.

[106] Dodge v. Osborn, Treasury Decisions No. 1983.

[107] Delaware R. Co. v. Prettyman, 17 Int. Rev. Rec. 99, Fed. Cas. No. 3,767.

[108] Cutting v. Gilbert, 5 Blatchf. 259, Fed. Cas. No. 3,519.

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missed where the corporation made no serious defense, and there was no showing of irreparable injury or of any effort to secure action by the corporation or its directors, as is required by Equity Rule 94, other than a demand on the resident managing agent, the distance of the directors (in Alaska) from the place where the plaintiff resided, and in which the court was held, being relied on as an excuse for not making any further effort.[109]

Likewise it is held that a bill of peace will not lie, on the theory that all persons charged with an internal revenue tax have such a unity of interest in contesting the tax that they may join as plaintiffs in a bill to restrain the assessment and collection of it, and that a determinate number of such persons may appear in the name of themselves and for the rest.[110]

Certiorari is not a proper remedy to review an assessment made by revenue officers in so far as their proceedings thereon have been purely administrative, nor for alleged irregularities in their proceedings, or for undue or excessive assessment, nor for alleged mistakes in the manner of making the assessment.[111] But where the particular matter complained of involved a determination to be made by the revenue officers in a judicial or quasi-judicial capacity, as, for instance, where it was necessary for them to decide whether the particular person, corporation, property, or income was subject to the tax or exempt from it, and generally where it is alleged that the assessment was illegal (not merely irregular or excessive), then certiorari may issue to review the action of those officers.[112]

[109] Corbus v. Alaska Treadwell Gold Min. Co., 187 U. S. 455, 23 Sup. Ct. 157, 47 L. Ed. 256, distinguishing Pollock v. Farmers' Loan & T. Co., 157 U. S. 429, 15 Sup. Ct. 673, 39 L. Ed. 759. And see Straus v. Abrast Realty Co., 200 Fed. 327. Compare State v. Frear, 148 Wis. 456, 134 N. W. 673, 135 N. W. 164, Ann. Cas. 1913A, 1147.

[110] Cutting v. Gilbert, 5 Blatchf. 259, Fed. Cas. No. 3,519.

[111] State v. City of Elizabeth, 50 N. J. Law, 347, 13 Atl. 5.

[112] Ewing v. City of St. Louis, 5 Wall. 413, 18 L. Ed. 657; Spears v. Loague, 6 Cold. (Tenn.) 420; State v. City of Elizabeth, 50 N. J. Law, 347, 13 Atl. 5; Alexandria Canal, R. & B. Co. v. District of Columbia, 5 Mackey (D. C.) 376; Wood v. District of Columbia, 6 Mackey (D. C.) 142; Le Roy v. New York, 20 Johns. (N. Y.) 430, 11 Am. Dec. 289; Baldwin v. Calkins, 10 Wend. (N. Y.) 167. See Rex

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The principles were stated in a recent case in Iowa, where it was remarked that, where there is jurisdiction to assess, and the board of equalization makes an erroneous or excessive assessment, the remedy of the taxpayer is by appeal and not by certiorari; but where there is no jurisdiction to make any assessment (as in the case where the board assesses a person on intangible personal property after he has left the state and taken up a domicile elsewhere), certiorari is the proper remedy. "There is a clear distinction between a case of erroneous or over assessment, and a case of assessment without authority, as one made under an unconstitutional law, or one made of property exempt from taxation, or one of property for the assessment of which the law has made no provision." [113]

It has been ruled in some of the cases that mandamus will lie on behalf of a person illegally assessed, to compel the revenue officers to strike the assessment from the roll,[114] and that if an assessor of taxes makes an erroneously high assessment on given property, in consequence of a mistaken view of the law, and refuses to reduce it to the proper figures, on application made to him for that purpose, he may be compelled to do so by mandamus.[115] So, where the amount of an assessment has been fixed by the revenue officers having power to hear appeals and review assessments, the duty of those charged with the collection of the tax, to enter the assessment, as so fixed, is purely ministerial, and if they assume to increase it, and to enter the increased assessment on the books they may be compelled by mandamus to restore it to the proper amount.[116] Also the English decisions hold that, in a case where an allowance which ought to be granted is refused, mandamus lies to the commissioners of taxes requiring them to grant the allowance and to give a certificate of the allowance with an order for the

v. Com'rs of Income Tax, 91 Law T. 94. Compare Degge v. Hitchcock, 229 U. S. 162, 33 Sup. Ct. 639, 57 L. Ed. 1135.

[113] Remey v. Board of Equalization, 80 Iowa, 470, 45 N. W. 899.

[114] People v. Assessors of Barton, 44 Barb. (N. Y.) 148; Smith v. King, 14 Or. 10, 12 Pac. 8.

[115] People v. Olmsted, 45 Barb. (N. Y.) 644.

[116] State v. Covington, 35 S. C. 245, 14 S. E. 499.

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payment thereof.[117] But where it is claimed that a board of assessors have assessed a particular piece of property in the name of the wrong person, the proper remedy is by certiorari to review their proceedings, and not by mandamus to compel them to correct or change the assessment list.[118] As to the allowance of an appeal or petition for review of an assessment before administrative officers, the rule is that they may be compelled by mandamus to grant an appeal if they are clearly wrong in refusing it, but that they cannot be thus constrained to decide the appeal in a particular manner, nor, having rendered a decision, to revise or reverse it.[119]

As to the common-law writ of prohibition, this remedy is given to arrest a proceeding in an inferior court in a case which is not within its jurisdiction and it is not an appropriate remedy to restrain officers charged with the assessment or collection of a tax from proceeding in the exercise of their duty, though it be alleged that the tax is invalid or the assessment illegal.[120] However, in a case in South Carolina, a corporation which claimed to be exempt from the particular tax in question, and which therefore made no return of its property, a return and assessment being made against it by the proper officer, sued for and obtained a writ of prohibition forbidding the revenue officers to proceed with the collection of the tax.[121]

§ 351. Compromise of Litigation

An unrepealed act of Congress provides that "the Commissioner of Internal Revenue, with the advice and consent

117 Commissioners of Income Tax v. Pemsel [1891] A. C. 531; Queen v. Com'rs of Income Tax, L. R. 22 Q. B. Div. 296.

118 People v. Gilon, 56 Hun, 641, 9 N. Y. Supp. 212.

119 Gibbs v. Hampden County Com'rs, 19 Pick. (Mass.) 298; People v. Supervisors of Otsego County, 51 N. Y. 401.

120 Coronado v. San Diego, 97 Cal. 440, 32 Pac. 518; Le Conte v. Town of Berkeley, 57 Cal. 269; Hobart v. Tillson, 66 Cal. 210, 5 Pac. 83; Farmers' Co-operative Union v. Thresher, 62 Cal. 407; Camron v. Kenfield, 57 Cal. 550; Talbot v. Dent, 9 B. Mon. (Ky.) 526; Cody v. Lennard, 45 Ga. 85. See State v. Commissioners of Roads, 1 Mill, Const. (S. C.) 55, 12 Am. Dec. 596.

121 State v. Hood, 15 Rich. (S. C.) 177.

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of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon; and with the advice and consent of the said Secretary and the recommendation of the Attorney General, he may compromise any such case after a suit thereon has been commenced." [122] This was held applicable to the penalties imposed by the corporation tax law of 1909 for failure to file the return required of corporations. But the Commissioner of Internal Revenue instructed the collectors on this point as follows: "Particular attention is called to the fact that no solicitation of an offer should be made, and no delinquent should be induced by threats to invoke the power of the commissioner to compromise, and no assurance should be given of the probable action of the commissioner if an offer is made. But where the officers of a corporation are ignorant of a provision of law providing for a compromise of offenses against the revenues, and they desire to make an appeal for clemency in the manner provided, it is the duty of the collector to give them suitable instructions. The amount to be offered in each such case must be left to the discretion of the corporation making the offer, and in nowise should be suggested by the collector or any other revenue officer. In connection with the corporation tax law, this right of compromise extends only to the penalty prescribed under paragraph 8, and not to the tax itself, nor to the addition of fifty per cent assessed." [123] And on the application of this subject to the tax imposed by an earlier statute, the Supreme Court of the United States said: "The power intrusted by law to the Secretary was not a judicial one, but one of mercy, to mitigate the severity of the law. It admitted of no appeal to the Court of Claims, or to any other court. It was the exercise of his discretion

[122] Rev. Stat. U. S., § 3229 (Comp. St. 1913, § 5952).

[123] Treasury Decisions, No. 1692. For regulation as to compromise of penalties for failure to make returns under the income tax law of 1913, and the minimum amounts which will be accepted see, supra, § 169.

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in a matter intrusted to him alone, and from which there could be no appeal." [124]

In passing upon cases submitted to him for compromise, the Secretary of the Treasury, while he is not at liberty to act from motives merely of compassion or charity, may consider not only the pecuniary interests of the government, but also take into view general considerations of justice and equity and of public policy.[125] But collectors of internal revenue have no power to make any compromise, settlement, or commutation of taxes, so as to bind or affect the government.[126]

[124] Dorsheimer v. United States, 7 Wall. 166, 174.
[125] 17 Opin. Atty. Gen. p. 213.
[126] Martin's Adm'r v. United States, 4 T. B. Mon. (Ky.) 487.

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CHAPTER XIV

COLLECTION AT THE SOURCE

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§ 352. Explanation of Terms

The theory of "collection at the source" is that the government enforces payment of the income tax (in certain limited fields) not directly from the person who receives the income and is therefore liable for it, but indirectly, by exacting its payment, before the income reaches his hands, from the person who is to pay it to him. In other words, if A. is to receive from B. a payment which is in the nature of income and is subject to the tax, the government does not leave it to A. to account for the payment in his annual return, and thereafter pay the tax on it in due season, but requires B. to deduct from the payment, at the time of making it, the amount due as income tax and pay it directly to the proper revenue offi-

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cers. Persons who are in the position of B. are denominated by the Treasury regulations "debtors." It is of course to be understood that not all persons who are debtors to others, or who have payments to make to others, are within this technical designation. It applies only to those classes of persons who are described in the statute as charged with the duty of deducting and paying over the income tax, and then only in respect to such classes of payments as come within its terms. But the word "debtors" is applied by the government officers to all who come within this limited description. The term "withholding agents" is sometimes synonymous with "debtors," and sometimes has a wider meaning. For a "debtor" may appoint a fiscal or other agent to perform the duties imposed upon him with respect to the income tax, and then the latter is called a "withholding agent." The "source" is defined as the place where the income originates and is payable.

§ 353. Applicable to Normal Tax Only

In the federal income tax law, the provision for collection at the source applies only to "the normal tax hereinbefore imposed upon individuals." [1] That is, it does not apply at all to the income of corporations, and in regard to individuals, it applies only to the tax of one per cent imposed upon all incomes above the exempted amount, and not to the surtax or "additional" tax on incomes exceeding $20,000. Hence the "debtor,"—for instance, an employer paying a salary, a mortgagor paying interest, or a testamentary trustee paying over the annual income of an estate—is required and authorized to withhold only one per cent on the amount, no matter how great the income may be. Further, the regulations provide that when the normal tax has been withheld by the "debtor" or his authorized agent, "no other person, firm, or corporation, in whatever capacity acting, having the receipt, custody, or disposal of any income, as herein provided, shall be required to again deduct and withhold the normal tax of one per cent." [2]

[1] Supra, § 30.

[2] Supra, § 98.

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§ 354. To What Classes of Income Applicable

Bringing together the various provisions of the act of Congress which relate to the matter of collection at the source, it may be seen that this feature of the law is applied to three distinct classes of income. First, "income derived from interest upon bonds, and mortgages, and deeds of trust, and other similar obligations of corporations, joint stock companies or associations and insurance companies, whether payable annually or at shorter or longer periods, although such interest does not amount to $3,000." Second, it is provided that it shall apply to "all persons, firms, copartnerships, companies, corporations, joint stock companies or associations, and insurance companies, in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, agents, receivers, conservators, employers, and all officers and employés of the United States having the control, receipt, custody, disposal or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on capital stock or from the net earnings of corporations and joint stock companies or associations subject to like tax." Third, "the amount of such tax shall be deducted and withheld from coupons, checks, or bills of exchange for or in payment of interest upon bonds of foreign countries and upon foreign mortgages or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries; and the tax in each case shall be withheld and deducted for and in behalf of any person subject to the tax hereinbefore imposed, although such interest, dividends, or compensation does not exceed $3,000." [8]

[8] Supra, §§ 22, 25, 26.

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§ 355. Coupons from Corporate Bonds and Registered Interest

In respect to the first of the three classes of income mentioned in the preceding section (interest on corporate bonds and mortgages and similar obligations), the Treasury department defines the term "similar obligations" as including equipment trust agreements, and receivers' certificates.[4] When the interest is evidenced by detachable coupons, the income tax is to be deducted when these are presented for payment, unless they are accompanied by a certificate of ownership (as

[4] Supra, § 73. Obligations of corporations similar to bonds, mortgages, deeds of trust, etc., for income tax purposes, are held to be those obligations of corporations which, though not bonds, mortgages, or deeds of trust, are similar in form, purpose, or in being extended beyond the time of ordinary bankable commercial paper. Interest payments on ordinary bankable commercial paper of corporations payable to individuals are subject to withholding at the source only when the payment to any one individual within a taxable year exceeds $3,000. On all other obligations of corporations payable to individuals, interest payments are subject to withholding regardless of the amount of interest payment. Equipment trust notes secured by mortgage issued by a corporation are subject to withholding. Temporary receipts issued pending preparation and issue of the notes themselves stand in the place of the notes, and where an interest period intervenes and receipts are to be presented for indorsement thereon of a payment of interest, the requisite certificates of ownership, either claiming or not claiming the exemption, should be filed. A simple promissory note, not exceeding one year in time, is not "similar to bonds," etc., and the interest on such a note is not subject to withholding, except when the amount of interest thereon payable to an individual in any one year is in excess of $3,000, or when the interest thereon is payable to a nonresident alien, in which latter case the tax should be withheld regardless of the amount of interest payment. Scrip certificates issued by a corporation to its stockholders in lieu of dividends, such scrip certificates bearing interest payable semi-annually, and redeemable at a specified time not longer than one year from date of issue, are not corporate obligations similar to bonds, mortgages, or deeds of trust, and the interest payable thereon will not be subject to withholding, except when the amount thereof payable to an individual in a calendar year exceeds $3,000. Payment in scrip is held to be equivalent to payment in cash, and when the amount of such scrip payment to any one individual in a calendar year is in excess of $3,000, the tax must be withheld and accounted for in excess of exemption claimed. Treasury Decision No. 2090, December 14, 1914.

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described in the next section) in which a claim for exemption is made.* When the interest on such obligations is registered, the following ruling of the Treasury department applies: "A debtor whose bonds may be registered, both as to principal and interest, shall deduct the normal tax of one per cent from the accruing interest on all bonds before sending out checks for said interest to registered owners, or before paying such interest upon interest orders signed by the registered holders of said bonds," unless a certificate claiming exemption shall be filed with it.[5] It will be observed that all this applies only to interest on bonds or similar obligations made by corporations. Where interest, whether on bond and mortgage or on any other obligation, is payable by an individual, it does not come within this class.† Provision is elsewhere made for deducting the income tax from interest payments made by individuals. But there is this important difference, that the feature of deduction at the source does not apply to interest payments made by an individual, unless those made to any one person exceed $3,000 in any one year, whereas interest on the obligations of corporations is subject to deduction at the source irrespective of the amount, unless,

* When bonds, under a provision to that effect contained in them, are retired, not on an interest day, but within an interest period, and prior to the expiration of the full term of the bond, ownership certificates will be required, and they should cover that part of the interest period affected between the beginning of such period and the date of the retirement of the bonds. Treasury Decision No. 2090, December 14, 1914.

[5] Supra, § 77.

† Where an individual issues coupon bonds secured by a mortgage on real estate, and subsequently a corporation purchases the real estate and assumes (as between the mortgagor and itself) the payment of the bonds and coupons, it is held that the situation is not changed by the purchase by the corporation. The corporation purchases only the mortgagor's equity of redemption and his possession; the property is the security, and the character of the bond obligation remains unchanged and as created, even though the corporation is to pay all interest and will ultimately pay off the mortgage. There will therefore be no withholding of the income tax by the corporation (it being placed in the stead of the mortgagor) until the interest payment to any one person in any year exceeds $3,000. Treasury Decision No. 2090, December 14, 1914.

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as above stated, exemption is claimed. It has been judicially declared that when a corporation is required to deduct and pay over the income tax on its interest payments, the tax is not thereby laid on the corporation, but it is and remains a tax on the creditor; the corporation is merely made use of as a convenient means of collecting the tax.[6]

§ 356. Certificates of Ownership

Though individuals subject to the income tax are entitled to a specific exemption of $3,000 or $4,000, as the case may be, the act of Congress made no clear provision for their claiming or obtaining this exemption in respect to income derived from interest on corporate securities, since, as to such items, the tax is deductible at the source although the interest does not amount to $3,000. But the regulations of the Treasury department have covered this point by providing for "certificates of ownership" in which the exemption may be claimed. These certificates are to accompany coupons or orders for registered interest when the same are presented for payment or deposited in bank for collection. As now framed (see Forms 1000 revised, and 1000 B, revised) such a certificate sets forth the name of the corporation paying the interest, a description of the bonds, giving name of the issue and the rate of interest (and there must be a separate certificate for each group of coupons, whether from different issues of bonds of the same corporation, or from bonds of different corporations), also the date of the maturity of the interest, the amount of interest, the total exemption to which the payee or depositor is entitled under the act of Congress (that is, either $3,000 or $4,000) and the "amount of exemption now claimed" or else a statement that the owner "does not now" claim the exemption. The certificate further sets forth that the signer is the owner of the bonds described, and bears his signature and address, with the date. It was at first required by the Treasury department that these certificates should be signed with the full name of the owner,

[6] United States v. Railroad Co., 17 Wall. 322, 21 L. Ed. 597.

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but this was afterwards modified so as to make sufficient a certificate "signed either with the Christian name or the ordinary or usual business signature." [7] The certificate may also be signed by the duly authorized agent of the owner, whose name and address, as well as that of the owner, shall be given. But in this case, the bank or other collecting agency to whom the certificate thus signed is first presented for collection must be satisfied as to the identity and responsibility of the agent, calling upon him for evidence of his authority, if necessary, and when so satisfied, shall write or stamp a statement to that effect on the face of the certificate.[8] It was also at first required that the serial numbers of the bonds should be written out in the certificate, but this requirement has been waived "until further notice." [9]

These certificates are meant not only for the aid of the taxpayer in securing his exemption, but also as a sure and valuable means of information to the revenue officers. Hence two forms are provided, in one of which the owner claims his exemption, in the other of which he "does not now" claim it.[10] The use of the latter form will be appropriate for one who has already, in successive deposits of coupons for collection, claimed all that he is entitled to under the law (that is, $3,000 or $4,000), or who wishes to reserve the whole amount of his exemption for some special collection. And it should be noticed that the "exemption" here meant is only the specific exemption of a fixed amount of income, not including such deductions as the taxpayer may be entitled to for taxes paid, interest paid, expenses of his business, or the like.

Certificates of ownership are required not only from individual owners of bonds, but also from "fiduciaries," that is trustees, guardians, executors, administrators, receivers, and others holding the corpus of an estate in trust,[11] and like-

[7] Supra, § 80. See, supra, § 127.
[8] Supra, § 116. [9] Supra, § 113. [10] Supra, § 79.
[11] Supra, §§ 119, 146. And see Forms 1015, revised, and 1019, revised. These forms may be adapted so that but one certificate will be required to be filed with coupons from the same issue of bonds, the property of different estates or trusts. Supra, § 146.

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wise from partnerships and corporations as owners of the coupons presented or collected, though these are not subject to the provisions of the law respecting deduction at the source, the certificate in such cases specifically claiming exemption from such deduction.[12] It is also provided by regulation that coupons and interest orders payable in the United States, representing the interest on bonds owned by non-resident aliens must be accompanied by a certificate in the prescribed form (Form 1004, revised), although these persons are not subject to the income tax. This certificate may be signed either by the owner, or on his behalf by a responsible bank or banker in the United States or in a foreign country,[13] and while it is required that the certificate shall be printed in the English language, it is also provided that, "directly under each line of the English text on each of the above-mentioned certificates, there may be printed the text of said certificate in a foreign language." [14]

When a coupon or interest order is thus accompanied by the proper certificate of ownership, the bank or collecting agency receiving it for collection will send the certificate with it through the channels of collection, no one being bound or authorized to deduct the income tax, until it reaches the "debtor," that is, the corporation whose obligation it is. The latter will then deduct and withhold the income tax, and pay the same over to the government, provided exemption is not claimed in the certificate. If exemption is claimed to an amount equal to the amount of interest due, the debtor will make no deduction for the tax. If exemption is claimed, but to an amount less than the amount of the interest, the debtor will deduct the tax on the balance.[15]

But if coupons or interest orders are not accompanied by certificates of ownership, then the first bank, trust company, or other collecting agency receiving the same for collection or on deposit will deduct and withhold the income tax, and will attach to the coupons or interest orders its own certificate

[12] Form 1001, revised.
[13] Supra, § 111. And see, also, supra, § 154.
[14] Supra, § 130.
[15] Supra, §§ 75, 79.

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(Form 1002, revised), giving the name and address of the person from whom the same were received, also the name and address of the owner of the coupons if known, or, if not known, a statement to that effect, with a description of the coupons or orders, and an acknowledgment of responsibility for withholding the income tax. When this is done, the debtor corporation will not deduct the tax, but will deliver to the government the certificate so attached by the bank or collecting agency.[16]

In the case of registered interest, the holder of the bonds may file a certificate claiming exemption, either with the debtor corporation or with its fiscal agent through whom the interest is customarily paid, five days before the date on which the interest is due. But if this is not done, the debtor will deduct and withhold the income tax before sending out checks for the interest, or, as the case may be, before paying such interest on orders signed by the registered holder of the bonds.[17]

All these certificates, after having served their primary purpose, are to be sent promptly to the collector of internal revenue of the proper district, where they are further useful to the government as furnishing a check on the income tax returns made by the owners of the bonds or other securities referred to.[18]

§ 357. Same; Certificates by Joint Owners

In case corporate securities are owned jointly by several persons, they should be accompanied by the ordinary certificates of ownership provided for individual owners (Forms 1000, revised, and 1000 B, revised) which in that case may be signed by one of the owners, and the names, addresses, and proportion of ownership of each of the joint owners will be indorsed on the back of the certificate. Where the securities belong to a partnership, it is not regarded by the revenue officers as a case of "joint ownership," as here described, since a separate form (Form 1003) has been provided for this case.

[16] Supra, § 76. [17] Supra, §§ 77, 153. [18] Supra, § 83.

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§ 358. Substitute Certificates by Bank or Collecting Agency

A Treasury regulation provides that responsible banks, bankers, and other collecting agents receiving coupons for collection with certificates of ownership attached may either present the coupons with the certificates of ownership attached to the debtor corporation (that is, send them through the channels of collection with the owner's certificate attached until they reach the place of payment), or, at the option of the bank or collecting agent, the owners' certificates may be detached from the coupons and forwarded to the Commissioner of Internal Revenue; but in the latter case, the bank or collecting agent will substitute for the owner's certificate, and attach to the coupons in lieu thereof, its own certificate, containing essentially all the data appearing in the owner's certificate, except the name of the owner. It is understood that this permission was given in view of many remonstrances made by persons who objected to giving information as to their ownership of bonds to all the chain of banks through whose hands their coupons might pass in the ordinary processes of collection. Banks or other collecting agents who thus substitute their own certificates for the owners' certificates are required to keep a complete record of all such transactions and substitutions of certificates, showing all the original certificates for which their own have been substituted.[19] In such substitute certificates, the name of the bank or collecting agent may be printed or stamped, and a facsimile of the signature of the person authorized to sign for the bank may also be printed or stamped, provided that the bank shall file with the Commissioner of Internal Revenue a specimen of the facsimile signature and a certificate that it authorizes the use thereof, until revoked by written notice to the Commissioner.[20]

To meet all the various cases which may grow out of this provision, in view of the various classes of persons, firms, and corporations which may own the bonds, the Treasury de-

[19] Supra, §§ 115, 124.

[20] Supra, § 155.

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partment has prescribed a set of forms, numbered as below, and to be used, respectively, in the cases mentioned.

1000 A, in case of individual owners.
1001 A, in case of domestic corporations.
1003 A, in case of domestic partnerships.
1004 A, in case of non-resident aliens.
1011 A, in case of partnership claiming deductions.
1014 A, in case of foreign partnerships.
1015 A, in case of fiduciaries.
1016 A, in case of foreign corporations not subject to tax.
1018 A, in case of foreign corporations engaged in business in the United States.

§ 359. Certificates Not Required to be Stamped

A question arose as to whether or not the various certificates authorized or prescribed by the Treasury regulations with respect to the income tax (certificates of ownership, certificates claiming exemption, etc.) were required to bear a documentary stamp under the Emergency Revenue Act of October 22, 1914, since that law requires the stamping of "other certificates required by law." But the Treasury department ruled that income-tax certificates need not be stamped, since they are not "required" by any specific statute or by any express provision of law, although they are required by the regulations.[21]

§ 360. Interest on Tax-Free Bonds

Bonds of many corporations are issued under a contract by which they are made "tax free," that is, a contract by which the obligor undertakes to pay all taxes which may be assessed on the bonds. But apparently such a covenant does not bind the obligor to pay the income tax on the interest, unless it includes the income tax by name. Under a similar statute enacted by Congress at an earlier day, it was held that a provision in a corporation mortgage requiring the company to pay the debt and interest "without any deduction, defalcation, or abatement to be made of anything for or in respect

[21] Treasury Decisions No. 2049, Nov. 12, 1914.

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of any taxes, charges, or assessments whatsoever," relates to taxes on the property mortgaged or on the mortgage debt, and does not refer to the periodical interest payments regarded as income of the bondholder, and hence does not require the company to pay the interest clear of the income tax (levied in 1864), which tax companies were "authorized to deduct and withhold from all payments on account of any interest or coupons due and payable." On the contrary, it was held, the company complies with its contract when it pays the interest less the tax and retains the tax for the government.[22]

The position of the Treasury department on this question is one of indifference as between the bondholder and the corporation. It will exact payment of the income tax on corporate interest, in the usual manner, without regard to the existence of such a contract or covenant, leaving the question of ultimate responsibility to be settled by the parties themselves. The regulation declares that "the stipulation in bonds whereby the tax which may be assessed against them or the income therefrom is guaranteed, is a contract wholly between the corporation and the bondholder, and in so far as the income tax law applies, the government will not differentiate between coupons from bonds of this character and those from bonds carrying no such guaranty. The debtor corporation, or its duly authorized withholding agent, will be held responsible for the normal tax due on the coupons on which no tax has been withheld in cases wherein no exemption is claimed." [23]

§ 361. Rents, Interest on Mortgages, Salaries, etc.

The act of Congress provides that the income tax shall be deducted and withheld by certain classes of persons (including partnerships and corporations) who have the "control, receipt, custody, disposal, or payment" of certain kinds of income accruing to another person and exceeding $3,000 per annum. The persons and corporations intended are described

[22] Haight v. Railroad Co., 6 Wall. 15, 18 L. Ed. 818. And see Baltimore v. Baltimore Railroad, 10 Wall. 543, 19 L. Ed. 1043.

[23] Supra, § 138.

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as "including lessees, mortgagors of real or personal property, trustees, executors, administrators, agents, receivers, conservators, employers, and all officers and employés of the United States," the last phrase meaning disbursing officers and paymasters. The kinds of income affected are described as "interest (except on corporate bonds), rents, salaries, wages, royalties, taxable annuities, emoluments, or other fixed or determinable annual gains, profits, and income," other than dividends of corporations.[24]

From this it appears that three things are requisite in order to require or authorize the deduction of the income tax from a payment of the kind mentioned. First, it must be a fixed or determinable payment; that is, not uncertain, fluctuating, or contingent, but definitely settled both as to liability and as to amount, the amount being either stipulated at a fixed sum or determinable by mere calculation. Second, the income must be "annual," that is, it must accrue to the taxpayer in pursuance of some contract or engagement made for a yearly period or which, at least, may extend over a year, and it must be payable periodically, and not when and as the occasion may arise or at uncertain intervals. Third, it must exceed, not merely equal, the sum of $3,000. The last requirement does not mean that the payment of income shall exceed $3,000 at any one time; it is sufficient if payments of any of the kinds mentioned, made monthly or at other periods, shall aggregate more than $3,000 before the end of the year. As to this the Treasury department has ruled that the "withholding agent" (person responsible for the payment) shall not begin deducting the income tax until the periodical payments shall have reached an aggregate in excess of $3,000, but when that amount has been reached, he shall deduct the tax on the whole $3,000 and excess, unless a claim for exemption is filed as elsewhere provided.[25] Thus, for example, an employer paying a salary at the rate of $300 per month, will not deduct anything for the income tax from the first ten monthly payments, but from the eleventh he will deduct $33, that is, one

[24] Supra, §§ 22, 96.

[25] Supra, § 102.

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per cent on $3,300, and from the twelfth $3, that is, one per cent on $300, thus deducting $36 in all, or one per cent on the entire salary of $3,600.

Specifically in regard to rent, it appears to be the intention of the statute to hold the tenant alone responsible for the deduction of the income tax, so that a real estate agent employed in collecting rents for the owner of property need not concern himself with this matter. And the Treasury department has explicitly ruled that real estate agents are not required to deduct and withhold the normal tax from rents collected, even though the amount is in excess of $3,000. "The agent stands in the place of the landlord and receives money from tenants in exactly the same capacity as the landlord would receive such money, and should be treated as such. A real estate agent does not act as an agent of the debtor. Therefore the duty of withholding the tax cannot be transferred from the debtor to such agent, because such transfer would simply be transferring the duty of withholding to the landlord himself." Further it has been ruled that, "where a tenant rents two pieces of property from the same owner, the tenant should combine the payments, and when such payments so combined aggregate in excess of $3,000, the normal tax should be deducted and withheld, subject to authorized exemptions claimed. Where a board of education for a school district rents property at an annual rental exceeding $3,000, such board of education is regarded as a tenant, and should withhold the normal tax, subject, however, to the exemption claimed. A lessee paying rent in excess of $3,000 a year, under a lease from two or more individuals, must make deduction from all payments to individuals in excess of $3,000, unless certificates of exemption are filed. He should ascertain in what proportion the rent is divided by the use of office Form 1000B, which may be adapted and executed by one of the parties in interest, the others executing Form 1007. The withholding should be made from the income of individuals, and not from the aggregate amount paid. The situation is not different if the lessors are husband and wife, if their individ-

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ual interests are separate. The situation is not changed if, by instruction, the actual payments of rent are made to one lessor, the payments to be distributed by him. Where notes are given in payment of rent, the lessee's obligation to withhold is not altered. The lessee's obligation is the same as in the case of cash rental, withholding occurring at the time the notes are given, and not at maturity. When rental payments in excess of $3,000 a year are payable to a fiduciary, who fails or refuses to file Form 1063, agreeing to act as the source, the beneficiaries are not entitled to file exemption certificates directly, the lease having been taken from the fiduciary. If the fiduciary's certificate is not filed, the lessee should withhold 1 per cent. on the entire amount. The lessee is not presumed to have knowledge of the beneficiaries unless they are parties to the lease. (Treasury Decision No. 2090, December 14, 1914.) But if rented property is in the hands of an executor, trustee, or receiver, representing the estate which owns it, another rule comes into play, and he will be chargeable with the collection of the income tax in the character of a fiduciary. On the relative rights and duties of landlords and tenants with respect to the income tax, some of the English cases are instructive.[26] Thus, in an action to recover rent in arrear, the tenant may deduct or offset the amount he has paid for taxes due on the property, and presumably also any sum he has paid on account of the owner's income tax.[27] But if the tenant pays the tax and omits to deduct it in his next payment of rent, he cannot afterwards recover the amount as money paid for the use of the landlord.[28] Thus, where a tenant of land, during a course of twelve years, pays to the collector of taxes the landlord's property tax, and also the full rent as it becomes due, to the landlord, without claiming any deduction on account of the tax so paid, he cannot recover back from the landlord in an action against him any part of the tax so paid,

[26] See, for example, Hancock v. Gillard, 76 Law J. K. B. 20.
[27] Phillips v. Beer, 4 Camp. 266; Tinckler v. Prentice, 4 Taunt. 549.
[28] Cumming v. Bedborough, 15 Mees. & W. 438.

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both because his paying the full amount when he might have deducted is a voluntary payment, and because such an arrangement smacks of fraud on the revenue laws, since, if the tenant had deducted each year, as the law intends, the landlord would probably have raised the rent.[29] But an agreement that if the tenant will continue to pay his rent in full without deduction in respect of the landlord's tax paid by him, the latter will (at some future time) repay to the tenant all sums which he has paid or shall pay for the taxes, is not invalid as being contrary to the provisions of the statute.[30]

As to the deduction of the income tax from payments made as interest, it is requisite, under this part of the statute, that the obligation on which the interest accrues, should be that of an individual, as distinguished from a corporation, and that it should exceed $3,000 a year.[31] Under the English law, the income tax must be deducted from payments of "yearly interest." But it is held that where a banker makes a short term loan, for anything less than a year, the case does not come within the statute and the borrower is not to deduct for the income tax.[32] And interest accruing by force of law on a judgment is not "yearly interest" from which the income tax is to be deducted.[33] But interest on a mortgage which is calculable by the year is "yearly interest," although it is payable in a lump sum at an uncertain date, as, on the death of the mortgagor, so that when it is paid, the mortgagor's executor is to deduct the income tax.[34] When interest is payable on purchase money on a sale by order of court, the pur-

[29] Denby v. Moore, 1 Barn. & Ald. 123.

[30] Lamb v. Brewster, L. R. 4 Q. B. Div. 607.

[31] As to the right and duty to deduct and withhold income tax from money due as interest on bonded debt, in general, see Attorney General v. London County Council, 70 Law J. K. B. 454.

[32] Goslings v. Sharpe, L. R. 23 Q. B. Div. 324, 2 Tax Cas. 450. In England, in respect to dealings between merchants, discounting bills and the like, and in loans made for short periods, the income tax is not deducted by the one having to make the payment. Mosse v. Salt, 32 Beav. 269.

[33] In re Cooper [1911] 2 K. B. 550.

[34] In re Craven's Mortgage [1907] 2 Ch. 448.

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chaser must pay the full purchase money and interest into court, without deduction for the income tax; but he must apply for the deduction when the money is paid out of court, and such an application would ordinarily be granted, although of course the court could not be subjected to any penalty for not allowing the deduction.[35] In paying a creditor who has proved in an administration proceeding on a bill of exchange, the practice is to deduct the income tax from the interest.[36] A person who has omitted to avail himself of the privilege conferred upon him by the income tax law of deducting and retaining income tax out of payments of yearly interest on money which he makes, may perhaps recover the amount which he should have deducted, from the person on whose behalf the income tax was paid, but he cannot claim a return of such income tax from the revenue officers.[37]

Royalties are plainly included in the comprehensive terms of the act of Congress, and are specially enumerated in the Treasury regulations as being subject to deduction at the source. Payments on such accounts may be contingent on the amount of sales, business transacted, etc., but are "fixed or determinable" if the amount is ascertainable by mere computation. In an English case it appeared that, by an agreement between plaintiffs and defendants, the latter had the exclusive right of manufacturing and selling articles made by a secret process, and were to pay to the plaintiffs for forty years eight per cent on the gross receipts from such sales. The plaintiffs resided abroad and were foreigners, and before paying the amount payable to them under the agreement, the defendants deducted the income tax payable in respect of the amount due under the agreement. It was held that the income tax was rightly deducted.[38]

Annuities, if of sufficient amount, are also made subject to taxation at the source. An English decision holds that,

[35] Holroyd v. Wyatt, 1 De G. & Sm. 125; Humble v. Humble, 12 Beav. 43; Bebb v. Benny, 1 Kay & J. 216.
[36] Dinning v. Henderson, 3 De G. & Sm. 702.
[37] De Peyer v. King, 100 Law T. 256.
[38] Delage v. Nugget Polish Co., 92 Law T. 682.

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where the purchase price of land is payable in several annual installments, the debtor is not to deduct for income tax, as such payments are not income at all, but replacements of capital; but where a person who owned real estate, leased to a tenant at a fixed annual rental, sold the property to the tenant, no sum being fixed on as the price of the property, but the tenant agreeing to pay to the grantor annually during his life a sum equal to the rent which he had been paying, it was held that this was an annuity, and one from which the income tax should annually be deducted and withheld.[39]

§ 362. Note Given for Interest

If a note has been given in payment of interest, rents, or other income taxable under this part of the statute, the maker of the note is to be regarded as the "debtor" or the "source," and is under the duty of withholding the income tax from the amount thereof on paying it at maturity. But if any person has purchased or discounted such a note, and has omitted, in acquiring it from the previous holder, to make a deduction or allowance for the tax, it is held that such purchaser can look for relief only to the person from whom he got the note, and the debtor, that is, the maker of the note, will none the less be required to deduct and withhold the tax at the maturity of the note, and this rule obtains although there was nothing on the face of the note to show that it was for interest or rent, or otherwise as the case might be.[40]

§ 363. Foreign Interest and Dividends

In the case of interest on any foreign bonds, that is, bonds of any foreign government, corporation, or individual, and interest upon any foreign mortgages and other like obligations, and also dividends from any foreign corporation, the income tax is to be deducted from the amount, when the same is paid in the form of a coupon, check, or bill of exchange, although it does not exceed $3,000. The deduction is to be made by "any banker or person who shall sell or otherwise

[39] Chadwick v. Pearl Life Assur. Co., 74 Law J. K. B. 671.
[40] Supra, § 108.

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realize coupons, checks, or bills of exchange drawn or made in payment of any such interest or dividends (not payable in the United States) and any person who shall obtain payment (not in the United States) in behalf of another of such dividends and interest by means of coupons, checks, or bills of exchange, and also any dealer in such coupons who shall purchase the same for any dividends or interest (not payable in the United States) otherwise than from a banker or another dealer in such coupons." [41] But where interest on bonds of a foreign corporation is payable at its fiscal agency in the United States, or, at the option of the holder, within or without the United States, the collection of the interest is treated as a domestic transaction, not as a foreign collection.[42] If the foreign item is in the form of a check or a bill of exchange, the person making the collection and deducting the income tax is required to indorse or stamp on it the words "Income tax withheld by ....." (giving name, address, and date.) But if it is represented by a coupon, he shall attach thereto a statement identifying the same, and the indorsement or stamp showing the tax withheld shall be placed on the statement instead of on the coupon.[43]

§ 364. Licenses for Foreign Collections

Persons, firms, and corporations undertaking as a matter of business or for profit the collection of foreign interest or dividends, such as described in the preceding section, are required to obtain a license therefor from the government. They must make application for such license (on Form 1017) without notice from the collector, and ignorance of the law will be no excuse for failure to obtain a license or to observe the regulations relative to such collections. Failure to obtain the license or to comply with the regulations is declared to be a misdemeanor, and is punishable, for each offense, by a fine not exceeding $5,000, or imprisonment for not more than one year, or both in the discretion of the court.[44] "The col-

[41] Supra, § 26.
[42] Supra, § 157.
[43] Supra, § 172.
[44] Supra, §§ 27, 90.

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lector of internal revenue, on receipt of such application, shall satisfy himself that the person, firm, or corporation making application is considered to be of good character and business standing, and may require that he or they shall be able to show a financial rating in one or more of the recognized mercantile agencies of the United States, equal to at least one-tenth of the estimated annual amount of collections of foreign income as stated in the application. The collector of internal revenue, having thus satisfied himself of the business and financial reliability of the person, firm, or corporation making application for license, may issue the license without requiring a bond for the faithful performance of duty and compliance with the law and regulations." In cases where the applicant fails to satisfy the collector on these points, he may either refuse to issue a license, or grant one upon the filing of a surety bond satisfactory to the Commissioner of Internal Revenue in a penal sum equal to two per cent of the estimated amount of collections stated in the application, but the penal sum of such bond is not to be less than $1,000, nor more than $100,000. When a bond is required, it is to be executed in duplicate and one filed in the office of the collector of internal revenue and the other with the Commissioner of Internal Revenue. For the form of the license, see Form 1010. The license may be issued without cost to the applicant, and shall continue in force until the 1st of January of the next year, when it must be renewed or a new bond furnished, and failure to give or renew the bond will automatically revoke the license. In cases where licenses are issued without a bond, the collector shall, at stated yearly periods, inquire into and satisfy himself of the financial responsibility of the licensee. When any person, firm, or corporation has branch offices, and desires to collect foreign items through such branch offices, the application for license or licenses shall be made (and bond furnished, when a bond is required) by the applicant through its principal office for its branch offices. And in such cases the bond shall be based on the total amount of such foreign business transacted by both the home office and its branch office

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or offices.[45] "All persons licensed shall keep their records in such manner as to show from whom every such item has been received, and such records shall be open at all times to the inspection of internal revenue officers." [46]

§ 365. Fiduciaries

Under this general term are included guardians, trustees, executors, administrators, agents, receivers, conservators, and all other persons who hold in trust an estate of another person. These fiduciaries are required to make annual income tax returns for their beneficiaries.[47] They are also regarded as the "source" for purposes of collecting the income tax on such parts of the income of their beneficiaries as are subject thereto, and are charged with the duty of withholding it and paying it over to the government. And in case the property of the estate, or part of it, consists of bonds or similar obligations of corporations, the fiduciary may file a notice, claiming exemption from having the tax deducted, with the debtor, that is, the debtor corporation, and upon receipt of such notice (on Form 1015, revised,) the debtor corporation will refrain from withholding any part of the interest due on such bonds, on account of such income tax, and will not be held liable to the government for it.[48] Or, as an alternative, the fiduciary may file with the debtor corporation a different form of notice (Form 1019, revised,) stating that it "does not now" claim exemption from deduction of the income tax, and in that case, the debtor organization is the "source" for the deduction and withholding of the tax, and fiduciaries receiving the income described, with the tax deducted from it, will not again deduct and withhold the tax.[49]

The Treasury department explains that the term "fiduciary" is one "which applies to all persons or corporations that occupy positions of peculiar confidence toward others, such as trustees, executors, or administrators, and a fiduciary, for income tax purposes, is any person or corporation that holds in

[45] Supra, § 120.
[46] Supra, § 89.
[47] Supra, § 13.
[48] Supra, § 118.
[49] Supra, § 121.

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trust an estate of another person or persons. There may be a fiduciary relationship between an agent and a principal; but the word 'agent' does not denote a fiduciary within the meaning of the income tax law." And whereas the statute itself uses the word "agents" in this connection, it is explained that this term "does not relate to agents not acting in a fiduciary capacity. Agents not acting in a fiduciary capacity have no responsibility with reference to withholding the tax on, or making a return of, income turned over to resident aliens or citizens of the United States. But the responsible heads, agents, or representatives of nonresident aliens who are in charge of property owned, business carried on, or capital invested within the United States, shall make full and complete returns of the income therefrom and pay the tax thereon." It is also ruled that a fiduciary relation cannot be created by a power of attorney. "A person cannot by a power of attorney delegate to another a duty which he himself could not perform, and inasmuch as an individual cannot relieve a withholding agent from the withholding requirements of the income tax law by filing Form 1015, a person holding a power of attorney from another is without authority to file this certificate as a fiduciary. However, for income tax purposes, he is authorized to file any certificate which his principal, as such, would be entitled to file." (Treasury Decision No. 2090, December 14, 1914.)

§ 366. Kinds of Income Not Taxable at Source

The following varieties of income have been specified by the Treasury department as not subject to the process of deducting and withholding the income tax at the source of payment, although most of them are not subject to the tax at all, under the provisions of the statute:

1. Dividends on the capital stock or from the net earnings of corporations. These, it will be remembered, are not taxable at all, unless the total income (including them) is large enough to be subject to the surtax, and the provision for collection at the source does not apply to the surtax.

2. Proceeds of life insurance policies paid upon the death

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of the assured, or payments made by or credited to the assured on life insurance, endowment, or annuity contracts, upon the return thereof to the insured at the maturity of the term mentioned in the contract, or upon the surrender of the contract.

3. Income of an individual which is not fixed or certain, or payable at stated periods, or is indefinite or irregular as to amount or time of accrual. (See the next section.)

4. The value of property acquired by gift, bequest, devise, or descent.

5. Interest upon the obligations of a state, or any political subdivision thereof, and upon the obligations of the United States or its possessions.

6. Certain salaries, including that of the present President of the United States during the term for which he has been elected, that of the judges of the federal courts now in office, "and the compensation of all officers and employees of a state or any political subdivision thereof, except when such compensation is paid by the United States government." [50] And to the foregoing should be added:

7. Interest on bank deposits or certificates of deposit.[51]

8. Interest represented by coupons or registered interest on the obligations of corporations which matured and were payable before March 1, 1913, though presented for payment at a later date.[52]

§ 367. Indeterminate, Non-Periodical, or Fluctuating Income

So much of a person's income as is not fixed or certain, and not payable at stated periods, or is indefinite or irregular as to the amount or the time of accrual, is not subject to have the income tax withheld at the source, though it must be listed in the annual return of the individual. The treasury department rules that "incomes derived from the following professions and vocations come under this head: Agents compensated on the commission basis, lawyers, doctors, au-

[50] Supra, § 97. [51] Supra, § 110. [52] Supra, § 84.

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thors, inventors, and other professional persons whose income is irregular and indefinite. Such persons shall make personal return of all their income, provided their total net income from all sources is $3,000 or over. For example, when a lawyer receives a retainer of $5,000 as a special fee, a deduction therefrom shall not be made by the payer; but when a lawyer receives a retainer of $5,000 per annum, and the exemption claimed is $3,000, $2,000 of such income would be taxed and the tax retained at the source, or if his exemption claimed should be $4,000, then $1,000 of such income would be taxed and the tax thereon withheld at the source." [53]

§ 368. Income of Partnerships and Corporations

Partnerships as such are not subject to the income tax under the act of Congress of 1913, are not required to make returns, unless specially called for, and are not subject to have any part of their income deducted at the source. But the Treasury department requires them to make proof of their exempt character, by filing a certificate of ownership (Form 1003) with coupons or interest orders from corporate bonds, signed either in the firm's name by one member of the partnership or by each individual member of the firm, and when this is done, the tax will not be withheld by the debtor corporation with respect to the income represented by such coupons or orders.[54] Also a form of exemption certificate (Form 1063) has been provided for the use of firms and organizations claiming exemption from withholding at the source on income other than that derived from corporate bonds.[55] And these provisions have been extended to embrace foreign partnerships composed entirely of non-resident aliens, who are

[53] Supra, § 97. As to officers and enlisted men in the army and navy, Congress has clearly specified the conditions under which they are entitled to foreign service pay, aids' pay, and pay for certificate of merit, and such items of income are considered as fixed and determinable and subject to the withholding provisions of the income tax law. Treasury Decision No. 2090, December 14, 1914.

[54] Supra, §§ 92, 145.

[55] Supra, § 162.

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to use the certificate and notice of ownership provided in Form 1016, and to cover the case of a foreign partnership some part of whose members are citizens of the United States or foreigners residing in the United States or its possessions. Partnerships of the latter class are to use Form 1014.

Corporations of all kinds, whether subject to the income tax or exempt from it, are not within the terms of the statute relating to collection and deduction at the source. But when collecting interest on the bonds of other corporations, represented by coupons or interest orders, they are required to accompany the same by certificates of ownership (Form 1001), in order to establish their right to receive payment of the whole amount without deduction for the tax.[56]

§ 369. Interest on Bank Deposits

By a regulation of the Treasury department, "banks, bankers, trust companies, and other banking institutions receiving deposits of money are not required to withhold at the source the normal income tax of one per cent on the interest paid, or accrued or accruing, to depositors, whether on open accounts or on certificates of deposit; but all such interest, whether paid, or accrued and not paid, must be included in his tax return by the person or persons entitled to receive such interest, whether on open account or on certificate of deposit." [57]

§ 370. Claiming Exemptions and Deductions

Any person subject to the normal income tax, the amount of which is withheld or is to be withheld at the source, on the whole or a part of his income, who wishes to avail himself of the specific exemption of $3,000 or $4,000 provided by the act, may secure it by filing with the withholding agent, not later than thirty days prior to the day on which the return on his income is due, a notice in writing (which need not be in the form of an affidavit) to the effect that he claims the ben-

[56] Supra, § 81.

[57] Supra, § 110.

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efit of the exemption provided, to an amount stated, giving also the total amount of the exemption to which he is entitled, and his name, address, and the date.[58] The proper form to use for this purpose is Form 1007, revised. Also a form has been provided (Form 1008) by which a person so situated may claim and secure the benefit of the deductions which the statute allows for expenses, taxes, interest paid, bad debts, etc.[59] This notice (not under oath) is addressed to the withholding agent, and sets forth the total amount of the person's income from "all other sources whatever" and an itemized list of the several deductions claimed with the amount of each. As an alternative to this course, the taxable person is permitted to file his claim for deductions with the proper collector of internal revenue, and in that case it is provided that "the collector will immediately furnish the withholding agent (whose name and address must be shown on Form 1008) with a statement of the amount of deductions claimed, and said withholding agent shall not withhold and pay the normal tax to the extent of the deductions claimed as per said list." [60] It is further directed that "withholding agents should not file their annual returns until after the expiration of the time allowed persons to file claims for exemptions and deductions, and if claims for deductions are filed with the collector in the required time, yet not in sufficient time to have the adjustment made by the withholding agent, the collector will make the adjustment on the withholding agent's return, and in reporting such withholding agent for assessment will make al-

[58] Supra, §§ 23, 99. A landlord in receipt of annual rent from a tenant in excess of $3,000 may, at the time the amount of rental payments aggregates $3,000, file with the tenant a claim for exemption under paragraph C of the income tax law (supra, § 10) on Form 1007, revised. He may also, after December 31 of the taxable year, file with the tenant, or with the collector of internal revenue, a claim for deductions under paragraph B (supra, § 7) on Form 1008, revised. Treasury Decision No. 2090, December 14, 1914.

[59] Supra, § 103.

[60] Internal Revenue Regulations No. 33, art. 33, supra, § 176, art. 33.

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lowance for the amount of such deductions claimed. Notice of such adjustment however, must be furnished the withholding agent." [61] If any person, for the purpose of obtaining any allowance or reduction by virtue of a claim for such exemption, either for himself or for any other person, shall knowingly make any false statement or false or fraudulent representation, he shall be liable to a penalty of $300, as the statute provides.[62]

If a taxable person whose income tax is thus deducted and withheld omits to make his claim for exemption and deductions, in the manner thus provided, the tax collected in excess of that for which he was legally liable can only be remitted on presentation of a claim for refund under Rev. Stat. § 3220 (Comp. St. 1913, § 5944) which claim may be made either by the withholding agent against whom the assessment was made, or by the person on account of whom such taxes were withheld.[63]

§ 371. Same; Persons Under Disabilities or Absent

If the person whose tax is withheld at the source is unable to make the return of deductions claimed and the claim for exemptions mentioned in the preceding section—that is to say, if he is a minor or an insane person, or is absent from the United States, or is disabled by serious illness—then the return and application may be made for him by the person required to withhold and pay the tax. The latter, in so doing, will append an affidavit to the certificate (Form 1009), under the penalties of the act, that he has sufficient knowledge of the affairs and property of his beneficiary to enable him to make a full and complete return for him, and that the return and application made by him are full and complete.[64]

[61] Internal Revenue Regulations No. 33, art. 33, supra, § 176, art. 33. And see, supra, § 150.

[62] Supra, §§ 23, 91.

[63] Internal Revenue Regulations No. 33, art. 33, supra, § 176, art. 33.

[64] Supra, §§ 24, 106.

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§ 372. Deducting Source Collections from Personal Returns

Each taxable person, making his own return, is entitled to deduct from his total income as shown thereon "the amount of income the tax upon which has been paid or withheld for payment at the source of the income, provided, that whenever the tax upon the income of a person is required to be withheld and paid at the source as herein required, if such annual income does not exceed the sum of $3,000, or is not fixed or certain, or is indefinite or irregular as to amount or time of accrual, the same shall not be deducted in the personal return of such person." [65]

§ 373. Personal Liability of Debtors or Withholding Agents

Persons, firms, and corporations having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual gains, profits, and income of another person, exceeding $3,000 for any taxable year, other than dividends on corporate stock, are not only required to deduct and withhold from payments so to be made a sum sufficient to pay the normal income tax, and pay over the same to the proper federal officers, but they are also made personally liable for the tax so to be paid by them for others.[66] This clause of the act has not yet been construed by the courts, but it seems probable that the intention was not merely to make withholding agents debtors to the government for the amount of taxes they should collect, but also to impose upon them the statutory penalties for delinquency. It will be observed that this clause of the statute does not apply to persons engaged in the business of collecting foreign interest or dividends, who are required (in proper cases) to deduct and pay over the tax thereon. But these persons are made "subject to regulations enabling the government to ascertain and verify the due withholding of the income tax required to be withheld

[65] Supra, § 7.

[66] Supra, § 22.

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and paid," and "any person who shall undertake to collect such payments without having obtained a license therefor, or without complying with such regulations, shall be deemed guilty of a misdemeanor," and may be very heavily fined and even imprisoned.[67] Again, the provision for personal liability, above mentioned, apparently does not apply to the case of corporations required to deduct and withhold the income tax from payments of interest on their bonds. But undoubtedly they become debtors to the government for the amount they are required to withhold and pay over, and on general principles of law, their liability is not that of an ordinary debtor, but that of a tax debtor, which may be enforced by the processes appropriate for the collection of taxes. Thus, in England, it is held that if official liquidators, such as receivers, trustees in bankruptcy, or assignees for creditors, pay away all the assets of the corporation or estate without making provision for a debt due to the government in respect to the income tax, they are guilty of misapplying the assets, and are personally responsible for the debt, and payment of it may be enforced by attachment.[68] So, in a case arising under the earlier income tax laws of this country, where a railroad company paid to the holders of its bonds the entire amount of semi-annual interest accruing thereon for a certain half-yearly period, it was held that the internal revenue officers rightly assessed against the company itself a tax upon the amount so paid equal to the amount of the income tax thereon.[69]

§ 374. Exempt Corporations Not Required to Act as Withholding Agents

Those various classes of corporations or associations which are specifically exempted from the operation of the income tax law, are exempted not only from the payment of the tax on their own incomes, but also from every obligation or requirement imposed by any part of the income tax law. Hence they

[67] Supra, § 27.

[68] In re Watchmakers' Alliance, 5 Tax Cas. 117.

[69] Lake Shore & M. S. R. Co. v. Rose, 95 U. S. 78, 24 L. Ed. 376. And see Stockdale v. Insurance Co., 20 Wall. 323, 22 L. Ed. 348.

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are not required to act or perform any duty as withholding agents.[70] Hence, for example, a religious society paying a salary to its minister, or a college paying a salary to its president or a professor, in excess of $3,000 per annum, is not required to make any deduction on account of the income tax, and is under no responsibility to the government in regard thereto, although a non-exempt corporation would be required to deduct and pay over the tax in the same circumstances.

[70] See, supra, § 151. But the owner of bonds issued by such an exempt corporation is not relieved from the necessity of filing a certificate of ownership with coupons detached from such bonds, when presenting the same to a bank or other collecting agency for collection. And while the corporation, as a source of income, is under no obligation to withhold the tax in cases where no exemption is claimed, it should, nevertheless, forward, with a letter of transmittal, such certificates as are received by it, to the collector of internal revenue for its district on or before the twentieth day of the month next succeeding that in which the said certificates were received. No particular form of certificate has been prescribed for presentation with coupons detached from the bonds of exempt organizations, but certificates in the usual form, claiming or not claiming exemption, may be used. Where such organizations have an issue of registered bonds, they should, before sending out checks issued in payment of registered interest, stamp or write across the face of such check "Corporation exempt under paragraph G from withholding;" otherwise the first bank or collecting agent would deduct and withhold the normal tax therefrom. Treasury Decision No. 2090, December 14, 1914.

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CHAPTER XV

REFUNDING AND RECOVERY OF TAXES ILLEGALLY EXACTED

§ 375. Statutory Provisions.
376. Abatement and Refund by Commissioner of Internal Revenue.
377. Suit for Recovery of Taxes Paid.
378. Same; Burden of Proof and Evidence.
379. Same; Payment of Tax Under Protest.
380. Same; Payment Voluntary or Under Duress.
381. Same; Appeal to Commissioner as Pre-Requisite.
382. Same; Jurisdiction.
383. Same; Limitation of Actions.
384. Same; Amount of Recovery; Interest; Costs.
385. Same; Payment of Judgment, Reimbursement of Collector.
386. Action of Tort Against Collector.
387. Remission of Penalties.

§ 375. Statutory Provisions

As a general rule, the income tax laws make no specific provision for the refund or recovery of taxes illegally exacted or assessed to an excessive amount, the rights and remedies of the taxpayer in these cases being governed by the ordinary rules of law applicable in matters of taxation. In Wisconsin, however, there is a provision applicable to corporations only, which permits a company which is dissatisfied with the assessment of its income by the state tax commission to bring an action against the state for the recovery of so much of the tax paid by it as is in excess of the amount which it admits to have been legally chargeable upon it. This action must be brought in the circuit court of Dane county, within six months after the payment of the tax, and must be based on a petition alleging facts showing substantial injustice in the determination of the tax commission.[1] The act of Congress of 1913

[1] Wisconsin Income Tax Law 1911, § 1087m, subd. 13; Laws Wis. 1903, c. 315, § 20, as amended by Laws Wis. 1905, c. 216, § 5. But see Montreal Mining Co. v. State, 155 Wis. 245, 144 N. W. 195, holding that the income tax law does not authorize an action by a corporation against the state to recover income taxes unlawfully levied

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likewise provides that "all administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal revenue taxes not heretofore specifically repealed and not inconsistent with the provisions of this section, are hereby extended and made applicable to all the provisions of this section and to the tax herein imposed." [2]

§ 376. Abatement and Refund by Commissioner of Internal Revenue

The general laws applicable to the collection of United States internal revenue taxes contain a provision (not repealed by the act of Congress of 1913) under which a taxpayer may obtain a refund of taxes which he should not have been required to pay, without the necessity of an action at law. This section reads as follows: "The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected. Provided, that where a second assessment is made in case of a list, statement, or return which, in the opinion of the collector or deputy collector, was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation." [3]

This statute is held by the Treasury department to be appli-

and paid, the remedy being that provided for the cancellation of illegal taxes on personal property, and the refunding of moneys paid thereon, conferred by Stat. 1913, § 1164, as amended by Laws 1913, c. 478, made applicable to income taxes by chapter 27.

[2] Supra, § 68. Those provisions of the Revised Statutes which relate to the assessment and collection of internal revenue taxes are printed in full in the Appendix to this volume.

[3] Rev. Stat. U. S., § 3220 (Comp. St. 1913, § 5944).

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cable to the case of income taxes, and as authorizing either a claim for the abatement of an income tax alleged to have been erroneously assessed or to be excessive in amount, which may be filed before payment and before any steps are taken to collect it, or an application, after the tax has been paid, for the refunding of so much of it as is claimed to be excessive or illegal; and a claim for abatement may be made either by the withholding agent against whom the assessment was made or by the person on account of whom the taxes were withheld.[4] These two remedies should not be confused. The Treasury department has prescribed an official form and procedure for an application for abatement, and a different form and procedure for an application for refund, and these regulations have the force of law and must be followed by the applicant.[5] Also the burden is on him to produce satisfactory and sufficient evidence in support of his claim.[6]

The authority thus conferred on the Commissioner to allow a refund of a tax is exclusive,[7] and in exercising it he acts judicially. While he will naturally defer to any decisions of the courts applicable to the questions of law involved, he is not bound by the decision of any other administrative officer. Even three adverse decisions by successive Secretaries of the Treasury will not prevent the Commissioner from taking up and allowing a claim for the refund of taxes.[8] Nor can he be constrained by mandamus to grant the refund demanded. In any case where a federal officer has a discretion as to the refunding of money collected from a citizen or claimed to be due him from the government, or a quasi-judicial duty to perform in respect to ascertaining or settling the amount, his action cannot be controlled by the writ of mandamus.[9] His

[4] Internal Revenue Regulations No. 33, art. 33, supra, § 179, art. 33.
[5] Hastings v. Herold, 184 Fed. 759.
[6] Treasury Decisions No. 1859.
[7] Boehm v. United States, 21 Ct. Cl. 290.
[8] Sybrandt v. United States, 19 Ct. Cl. 461.
[9] Kendall v. Stokes, 3 How. 87, 11 L. Ed. 506; Decatur v. Paulding, 14 Pet. 497, 10 L. Ed. 559; Graham v. Norton, 15 Wall. 427, 21 L. Ed. 177.

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decision on such a claim is in the nature of an award, and there is no appeal from it.[10] But the determination of the Commissioner rests within his own control so long as the sum which he has ordered refunded has not been paid by the government and no suit has been brought for its recovery. Until one or the other of these steps has been taken, he has power to reconsider his award and to revoke it,[11] and it seems that this step may also be taken, in the same circumstances, by the successor in office of the Commissioner who made the award.[12] But in any case where the departmental regulations require the Commissioner to transmit the claim, with his findings thereon, to the Secretary of the Treasury for the latter's consideration and advisement, the award does not become final until this step has been taken.[13]

It should be repeated that the allowance of a claim for refund by the Commissioner of Internal Revenue is not the simple passing of an ordinary claim by an ordinary accounting officer, but is in the nature of an adjudication, on which an action may be maintained, and it is conclusive unless impeached by the United States in some appropriate form.[14] It may be so impeached for fraud or mistake,[15] or for want of jurisdiction or exceeding his jurisdiction,[16] but not for error in the determination of any fact which it was his duty to determine, as, for instance, whether the claim was presented to him in due time.[17] And his decision is absolutely binding on the accounting and disbursing officers of the Treasury. They cannot question it or refuse payment of it on any ground whatever, and the claimant is not obliged to follow the award through the Treasury or satisfy other officials of its correct-

10 First Nat. Bank of Greencastle v. United States, 15 Ct. Cl. 228.
11 Ridgway v. United States, 18 Ct. Cl. 707.
12 Stotesbury v. United States, 23 Ct. Cl. 285.
13 Stotesbury v. United States, 146 U. S. 196, 13 Sup. Ct. 1, 36 L. Ed. 940; Dupasseur v. United States, 19 Ct. Cl. 1.
14 United States v. Kaufman, 96 U. S. 567, 24 L. Ed. 792; Edison Electric Illuminating Co. v. United States, 38 Ct. Cl. 208.
15 Edison Electric Illuminating Co. v. United States, 38 Ct. Cl. 208.
16 Seat v. United States, 18 Ct. Cl. 458.
17 First Nat. Bank of Greencastle v. United States, 15 Ct. Cl. 225.

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ness.[18] The award of a refund establishes a liability on the part of the government upon which an action may be maintained in the Court of Claims.[19]

§ 377. Suit for Recovery of Taxes Paid

The general provisions of the United States internal revenue laws do not explicitly authorize the maintenance of a suit for the recovery back of internal revenue taxes when illegally or improperly exacted, but they do so by clear and necessary implication. For they provide for the reimbursement of a collector for "sums of money recovered against him in any court for any internal taxes collected by him;" prescribe the burden of proof in suits for the recovery of taxes assessed after the rendering of an alleged false return; forbid the maintenance of such a suit until after an appeal shall have been taken to the Commissioner of Internal Revenue; and set up a limitation of two years against "any suit or proceeding for the recovery of any internal tax." [20] Accordingly it is well settled by the decisions of the courts that an action at law may be maintained for the recovery back of any sum claimed to have been illegally exacted and collected by the revenue officers in payment of an internal revenue tax.[21] But no such suit lay at common law. The right to maintain it can only be deduced from and supported by the laws of the United States. And hence it can only be maintained under and in strict pursuance of those statutes, and only after full compliance with any pro-

[18] Barnett v. United States, 16 Ct. Cl. 515; Woolner v. United States, 13 Ct. Cl. 355; First Nat. Bank of Greencastle v. United States, 15 Ct. Cl. 225.

[19] City of Louisville v. United States, 31 Ct. Cl. 1; Boehm v. United States, 21 Ct. Cl. 290; Edison Electric Illuminating Co. v. United States, 38 Ct. Cl. 208.

[20] Rev. Stat. U. S., §§ 3220, 3225, 3226, 3227 (Comp. St. 1913, §§ 5944, 5948, 5949, 5950). And see Hastings v. Herold, 184 Fed. 759; United States v. Barnes, 222 U. S. 513, 32 Sup. Ct. 117, 56 L. Ed. 291.

[21] Kentucky Improvement Co. v. Slack, 100 U. S. 648, 25 L. Ed. 609; Atchison, T. & S. F. Ry. Co. v. O'Connor, 223 U. S. 280, 32 Sup. Ct. 216, 56 L. Ed. 436, Ann. Cas. 1913C, 1050; United States v. Shipley, 197 Fed. 265, 116 C. C. A. 627; Straus v. Abrast Realty Co., 200 Fed. 327; Seabrook v. United States, 21 Ct. Cl. 39.

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visions of the law which are made conditions precedent to the award of relief to the taxpayer.[22] Thus, if the law requires a return to be made for the purposes of taxation, it has been held that an action cannot be maintained by one who has made no return.[23] But probably this rule must be modified in the case of income taxes, for otherwise it might result in denying any relief to a taxpayer objecting to the demand for payment of an income tax precisely on the ground that his income was of such a character or amount that he was not required to make any return.

As to the ground of such an action, in the first place it is held that the collection of a tax which was not due or which was excessive is not the commission of a tort by the collecting officer, but is a taking of private property for public use without just compensation, which places upon the government a quasi contractual obligation to refund the amount collected, or the excess, as the case may be, which obligation should be discharged by the revenue officers on proper application to them, but if they will not repay the sum claimed, or contend that they have no warrant in law to do so, then the obligation resting upon the government may be enforced by the judgment of a court.[24] Or, in some cases, the action may be maintained as for the recovery of money paid under a mistake of fact.[25] The right of action is not restricted to cases where the plaintiff denies his liability to the payment of any tax at all, but where the revenue officers increase the amount of an assessment on the ground of fraud or omission in the return, a suit may be brought to recover back what they are alleged to have wrongfully collected in consequence of the increased assessment.[26]

[22] Hastings v. Herold, 184 Fed. 759; United States v. Barnes, 222 U. S. 513, 32 Sup. Ct. 117, 56 L. Ed. 291.

[23] Goldsmith v. Augusta & S. R. Co., 62 Ga. 468.

[24] Armour v. Roberts, 151 Fed. 846.

[25] Kahn v. Herold, 147 Fed. 575.

[26] United States v. Hodson, Fed. Cas. No. 15,376. As to the authority of the collector to increase an understated return of income, see, supra, § 18. Attention should be called to the following provision of the Revised Statutes: "When a second assessment is made in case of any list, statement, or return, which in the opinion of the

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But no one can recover from a collector the amount of tax paid to him, and for which the plaintiff was in fact justly liable, on account of mere omissions, irregularities, or mistakes in the manner of assessment or collection.[27] Thus, where a complaining taxpayer has had a full hearing before the revenue officers, and has obtained a material abatement of a tax assessed against him, the courts will not allow him to recover against the collector because of mere irregularities in the form of the assessment or in the manner of making it, or because, in compelling payment of the tax, the collector did not conform to certain proceedings, intended to secure a full hearing to taxpayers, which the statute made it lawful but not necessary to observe before resorting to a levy on complainant's property.[28] And where one sets forth in his written protest the ground of his objection to the payment of a tax demanded of him, and thereafter brings suit for the recovery of the tax paid, he cannot recover on any other ground than that so set forth.[29] Where a citizen deposits money with a collector of internal revenue for a special purpose, and the latter pays it into the United States treasury on account of a tax subsequently assessed against such person, who then brings an action to recover the same, the government can set up the tax as a counterclaim, though the money was improperly paid into the treasury.[30]

In regard to the parties to the action, it appears that such an action might be brought by a fiduciary in behalf of his beneficiary. In a case where a federal inheritance tax was wrongfully assessed against three cestuis que trust under a will,

collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement, or return was not false nor fraudulent, and did not contain any understatement or undervaluation." Rev. Stat. U. S. § 3225 (Comp. St. 1913, § 5948). And see Powell v. United States, 135 Fed. 881.

[27] Schafer v. Craft, 144 Fed. 907.

[28] Bailey v. Railroad Co., 22 Wall. 604, 22 L. Ed. 840.

[29] Davies v. Arthur, 96 U. S. 148, 24 L. Ed. 758.

[30] Howser v. United States, 13 Ct. Cl. 284.

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and was jointly paid under protest by the trustees, it was held that such trustees and the beneficiaries were entitled to join in a single suit against the collector of internal revenue to recover the amount paid.[31] Under recent legislation of Congress, a suit of this kind may be brought directly against the United States, instead of against the collector,[32] although the latter is more usually made the defendant. And a cause of action to recover from a collector of internal revenue a sum alleged to have been paid to him under protest for taxes illegally exacted does not abate by his death, the action not being one of tort. But against whom the action should be prosecuted in that case is not entirely clear. One of the federal courts has ruled that the successor in office of the collector should be made the defendant.[33] But the Supreme Court of the United States has held that the action may be continued against the estate of the deceased collector.[34]

§ 378. Same; Burden of Proof and Evidence

In a suit against a collector of internal revenue to recover back taxes paid to him, the burden of proof is on the plaintiff to show that the collector is justly bound to refund the amount claimed, that the tax was illegal, or the assessment excessive, that plaintiff is within the classes of persons or corporations specially exempted by the statute, or whatever else may be the groundwork of his demand.[35] There are several reasons for this rule, aside from the ordinary considerations which impose the burden of proof on a plaintiff, as, for instance, that where the question concerns the kind of business in which the plaintiff is engaged, or the amount, nature, or sources of his income, he may naturally be supposed to have the best and fullest

[31] Armour v. Roberts, 151 Fed. 846.

[32] Emery, Bird, Thayer Realty Co. v. United States, 198 Fed. 242; Christie-Street Commission Co. v. United States, 136 Fed. 326, 69 C. C. A. 464.

[33] Armour v. Roberts, 151 Fed. 846.

[34] Patton v. Brady, 184 U. S. 608, 22 Sup. Ct. 493, 46 L. Ed. 713.

[35] Bailey v. New York Cent. R. Co., 22 Wall. 604, 22 L. Ed. 840; Schafer v. Craft, 144 Fed. 907; German Savings & Loan Soc. v. Oulton, 1 Sawy. 695, Fed. Cas. No. 5,362.

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information and the most direct and accessible evidence in his own possession, and further, there is a presumption in favor of the correctness and validity of official action, more especially where officers are bound to investigate and determine questions of fact, as they are in the assessment of taxes. In an action of this kind, the books and accounts of the taxpayer, though not necessarily conclusive for or against the government, under all circumstances, ought to be the best evidence, if kept correctly, to show whether or not there was any understatement or undervaluation in his tax return; and until it is shown that they cannot be produced, or that they do not contain the information required, resort cannot be had to the recollection or knowledge of witnesses as to circumstances bearing on the ultimate fact in issue.[36] If the plaintiff sustains the burden of proof by producing evidence, which remains uncontradicted, that his tax return was correct, as against the allegation that it was false or fraudulent or understated, it is not sufficient to defeat his recovery that a suspicion of fraud should emerge from the evidence as a whole. There must be clear, affirmative, and convincing testimony to support an allegation of fraud.[37]

§ 379. Same; Payment of Tax Under Protest

It is a general principle of law, applicable to income taxes as well as to any others, that after a taxpayer has exhausted his lawful remedies to induce the administrative officers to cancel or reduce an assessment which he considers illegal or unjust in whole or in part, he must then pay the tax, but may save his right to bring an action for its recovery by accompanying his payment with a protest, addressed to the officer charged with the collection of the tax.[38] This rule was held

[36] Bergdoll v. Pollock, 95 U. S. 337, 24 L. Ed. 512.

[37] Hyams v. United States, 139 Fed. 997.

[38] United States v. New York & Cuba Mail S. S. Co., 200 U. S. 488, 26 Sup. Ct. 327, 50 L. Ed. 569; Bailey v. New York Cent. & H. R. R. Co., 106 U. S. 109, 1 Sup. Ct. 62, 27 L. Ed. 81; Baltimore v. Baltimore Railroad, 10 Wall. 543, 19 L. Ed. 1043; Cutting v. Gilbert, 5 Blatchf. 259, Fed. Cas. No. 3,519; Nelson v. Carman, 5 Blatchf. 511, Fed. Cas. No. 10,103; Shaefer v. Ketchum, 6 Int. Rev. Rec. 4,

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applicable to the corporation excise tax law of 1909, and a ruling was made that, no particular form of protest having been prescribed, any form would be sufficient if filed before the payment of the tax, and the collectors of internal revenue were specially warned that the right of protest must not be denied. In a case arising under this statute, it appeared that, the plaintiff corporation having failed to pay the tax assessed against it, a writ of distraint was issued by the collector, and, the corporation having been notified that the tax would be collected by levy, the deputy collector took from a representative of the corporation the amount of the tax, against the verbal protest of the corporate officer at the time, and a written notice of protest then served, in which the corporation denied that it was liable to the tax. It was held that the protest was sufficient to entitle the corporation to recover the amount from the collector, on its being determined that the corporation was not within the law. The court said: "Where the tax is paid under such circumstances that the terms of protest are understood and sufficiently expressed to be brought to the notice of the government, and where the levy is used merely to protect the government officer in acting under the statute, an action may be maintained to recover the tax." [39] In another case it was said: "The case stands on a different footing from that of the illegal exaction of duties on imports. To recover these the statute makes it necessary that the party interested shall give notice in writing to the collector, if dissatisfied with his decision, setting forth distinctly and specifically the grounds of his objection thereto. No such written notice or protest is required of a party paying illegal taxes under the internal revenue laws. He must pay under protest in some form, it is true, or his payment will be deemed voluntary. But whilst a written protest would in all cases be most convenient, there is no statutory requirement that the protest

Fed. Cas. No. 12,693; Robbins v. Freeland, 14 Int. Rev. Rec. 28, Fed. Cas. No. 11,883.

[39] Abrast Realty Co. v. Maxwell, 206 Fed. 333. And see Treasury Decisions, No. 1742, par. 41.

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shall be in writing." [40] And in another decision it was held sufficient where the taxpayer made a merely verbal protest, which the deputy collector noted on the back of the tax receipt which he gave to the taxpayer.[41] Also, where the plaintiff was a large purchaser and user of internal revenue stamps, and there was a constant dispute between it and the department as to whether certain articles which it manufactured were subject to the tax, it was held that it need not enter a formal protest every time it bought stamps in order to preserve its right to sue.[42]

§ 380. Same; Payment Voluntary or Under Duress

Payment of an internal revenue tax, when made without any objection or protest, is a voluntary payment, and according to the rules of law applicable to taxes in general, the sum so paid cannot be recovered back in an action against the collector, even though the tax was not due or was illegally exacted.[43] On the other hand, there is duress (actual or implied) sufficient to prevent the payment from being regarded as voluntary, when it is made under the pressure of the collector's threat to proceed at once to enforce payment with the penalty and interest added,[44] or when both parties understand at the time that payment must be made or the law will be enforced,[45] or when the citizen must either pay what the collector demands or go out of business,[46] or when the payment is made as the only means of acquiring possession of property,[47] or to avoid the

[40] Wright v. Blakeslee, 101 U. S. 174, 25 L. Ed. 1048.

[41] Shaefer v. Ketchum, 6 Int. Rev. Rec. 4, Fed. Cas. No. 12,693.

[42] Johnson v. Herold, 161 Fed. 593.

[43] United States v. New York & Cuba Mail S. S. Co., 200 U. S. 488, 26 Sup. Ct. 327, 50 L. Ed. 569; Merck v. Treat, 202 Fed. 133, 122 C. C. A. 301; Beer v. Moffatt, 192 Fed. 984; Newhall v. Jordan, 149 Fed. 586; Christie-Street Commission Co. v. United States, 126 Fed. 991.

[44] Herold v. Kahn, 159 Fed. 608, 86 C. C. A. 598.

[45] Shaefer v. Ketchum, 6 Int. Rev. Rec. 4, Fed. Cas. No. 12,693.

[46] Swift Co. v. United States, 111 U. S. 22, 4 Sup. Ct. 244, 28 L. Ed. 341.

[47] Simons v. United States, 19 Ct. Cl. 601.

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seizure and sale of property.[48] These principles are undisputed, but a more difficult question is whether the mere lodging of a formal protest is sufficient to save the payment from being treated as voluntary, when there is no actual duress or threats. It has been held that it is sufficient,[49] and many cases may be found in the reports in which this course was pursued, and the subsequent suit against the collector allowed to proceed without any such question being raised. But doubt was cast upon this point by a decision of the United States Supreme Court, in which it was said: "The rule is firmly established that taxes voluntarily paid cannot be recovered back, and payments with knowledge and without compulsion are voluntary. At the same time, when taxes are paid under protest that they are being illegally exacted, or with notice that the taxpayer contends that they are illegal, and intends to institute suit to compel their repayment, a recovery in such suit may, on occasion, be had, although generally speaking, even a protest or notice will not avail if the payment be made voluntarily, with full knowledge of all the circumstances, and without any coercion by the actual or threatened exercise of power possessed, or supposed to be possessed, by the party exacting or receiving the payment, over the person or property of the person making the payment, from which the latter has no other means of immediate relief than such payment. * * * There are no doubt cases to be found in which the language of the court, if separated from the facts of the particular case under consideration, would seem to imply that a protest alone was sufficient to show that the payment was not voluntary; but on examination it will be found that the protest was used to give effect to the other attending circumstances."[50] Yet in a later decision of the same court, statements were made quite sufficient, it would appear, to neutralize those just quoted. "It is reasonable," said the court, "that a man who denies the

[48] Hubbard v. Brainard, 35 Conn. 563.

[49] Adams v. United States, 1 Ct. Cl. 192, 306; Schmitt v. Trowbridge, Fed. Cas. No. 12,468.

[50] Chesebrough v. United States, 192 U. S. 253, 24 Sup. Ct. 262, 48 L. Ed. 432.

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legality of a tax should have a clear and certain remedy. The rule being established that, apart from special circumstances, he cannot interfere by injunction with the state's collection of its revenues, an action at law to recover back what he has paid is the alternative left. Of course we are speaking of those cases where the state is not put to an action if the citizen refuses to pay. In these latter he can interpose his objections by way of defense; but when, as is common, the state has a more summary remedy, such as distress, and the party indicates by protest that he is yielding to what he cannot prevent, courts sometimes, perhaps, have been a little too slow to recognize the implied duress under which payment is made. But even if the state is driven to an action, if, at the same time, the citizen is put at a serious disadvantage in the assertion of his legal, in this case of his constitutional, rights, by defense in the suit, justice may require that he should be at liberty to avoid those disadvantages by paying promptly and bringing suit on his side. * * * In any event, the penalty would go on accruing during all the time that might be spent before the validity of the defense could be adjudged. As appears from the decision below, the plaintiff could have had no certainty of ultimate success, and we are of opinion that it was not called upon to take the risk of having its contracts disputed, and its business injured, and of finding the tax more or less nearly doubled in case it finally had to pay. In other words, we are of opinion that the payment was made under duress." [51]

§ 381. Same; Appeal to Commissioner as Pre-requisite

The internal revenue laws provide that "no suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of Internal Revenue,

[51] Atchison, T. & S. F. Ry. Co. v. O'Connor, 223 U. S. 280, 32 Sup. Ct. 216, 56 L. Ed. 436, Ann. Cas. 1913C, 1050.

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according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: Provided, that if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner, at any time within the period limited in the next section," that is to say, "within two years next after the cause of action accrued" or within one year after a decision rendered by the Commissioner.[52] This statute is mandatory, and the party aggrieved must pursue the remedy here prescribed before he can resort to a court either of law or equity for relief.[53] It was at one time held in Connecticut that this statute did not operate to prevent the maintenance of such suits in the courts of the state.[54] But the Supreme Court of the United States decided that it was applicable to all courts, state as well as federal.[55] Where, after the assessment of an internal revenue tax, alleged to be illegal, application is made to the Commissioner of Internal Revenue for review, and he overrules the application and refuses to abate the tax, it is held that this is a sufficient compliance with the statute, and the plaintiff is not bound, after paying the tax, to appeal again to the Commissioner as a condition precedent to his right to sue the collector for the recovery of the tax.[56] But aside from such cases, the law must be strictly complied with. A written application to the Commissioner to refund a sum exacted in payment of taxes is not the equivalent of an

[52] Rev. Stat. U. S., §§ 3226, 3227 (Comp. St. 1913, §§ 5949, 5950).

[53] Kings County Sav. Inst. v. Blair, 116 U. S. 200, 6 Sup. Ct. 353, 29 L. Ed. 657; Cheatham v. United States, 92 U. S. 85, 23 L. Ed. 561; Erskine v. Hohnbach, 14 Wall. 613, 20 L. Ed. 745; Stuart v. Barnes, 43 Fed. 281; Com'rs of Sinking Fund v. Buckner, 48 Fed. 533; Magee v. Denton, 5 Blatchf. 130, Fed. Cas. No. 8,943; Hubbard v. Kelley, 8 W. Va. 46.

[54] Hubbard v. Brainard, 35 Conn. 563.

[55] Collector v. Hubbard, 12 Wall. 1, 20 L. Ed. 272.

[56] Weaver v. Ewers, 195 Fed. 247, 115 C. C. A. 219; Schwartzchild & Sulzberger Co. v. Rucker, 143 Fed. 656; San Francisco Sav. & Loan Soc. v. Cary, 2 Sawy. 333, 17 Int. Rev. Rec. 109, Fed. Cas. No. 12,317.

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appeal to him from an adverse decision by the collector.[57] But though the appeal must be addressed to the Commissioner, lodging it with the proper collector of internal revenue, for transmission to the Commissioner in the usual course of business, under the requirements of the Treasury regulations, is in effect the presentation of it to the Commissioner.[58] Further, the taking of such appeal is an absolute condition precedent to the right to maintain an action, and plaintiff's failure to do so is not an objection which can be waived by the collector's entering a general appearance in the suit and omitting to plead such failure.[59] Further, the plaintiff must produce a written appeal in evidence or an authentic copy thereof, or show good cause for its absence,[60] and when he sues in the Court of Claims, it is necessary for him to produce proof not only of the appeal, but of the Commissioner's decision thereon, and a certificate indorsed on the appeal paper, "examined and rejected," signed by a person unknown to the court, and with no proof that he held any official position or what it was, and no proof that the Commissioner adopted it as his decision, is not enough.[61] And again, while a claim for the refund of taxes, before it can be put in suit, must have been rejected by the Commissioner, it is also true that this rejection must have been on the merits, and not on account of mere defect of form in making application to him or other irregularity.[62]

But all this does not make the assessment of an internal revenue tax, unappealed from, res judicata and conclusive, so as to prevent the defendant in a suit brought by the government from setting up as a defense the erroneous assessment

[57] Chesebrough v. United States, 192 U. S. 253, 24 Sup. Ct. 262, 48 L. Ed. 432.

[58] United States v. Savings Bank, 104 U. S. 728, 26 L. Ed. 908; Real Estate Sav. Bank v. United States, 16 Ct. Cl. 335.

[59] De Bary v. Dunne, 162 Fed. 961, disapproving Hendy v. Soule, Deady, 400, Fed. Cas. No. 6,359.

[60] Hubbard v. Kelley, 8 W. Va. 46.

[61] Lauer v. United States, 5 Ct. Cl. 447.

[62] James v. Hicks, 110 U. S. 272, 4 Sup. Ct. 6, 28 L. Ed. 144; Hicks v. James, 4 Hughes, 470, 48 Fed. 542.

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or illegality of the tax.[63] And on the other hand, the rejection of an appeal for refund of a tax collected does not exhaust the Commissioner's authority so that he is prevented from allowing the repayment of a judgment recovered against a collector in a suit brought to recover back the same tax.[64]

§ 382. Same; Jurisdiction

If a suit for the recovery of taxes alleged to have been illegally exacted under the internal revenue laws is to be brought and prosecuted directly against the United States, it is within the jurisdiction of the Court of Claims,[65] and equally within the jurisdiction of a United States district court under the Tucker Act.[66] If the action is instituted against the collector of internal revenue to whom the taxes were paid, the proper federal district court will have jurisdiction over it, both under that provision of the statutes which invests those courts with jurisdiction of causes "arising under the laws of the United States" and under that provision which specially gives them original jurisdiction of "all cases arising under any law providing for internal revenue." [67] And under either provision, it is not required that the parties should be citizens of different states, and if the action is framed with reference to the special provision regarding actions arising under the revenue laws, the requirement as to the amount in controversy (which must exceed $3,000 in ordinary cases) does not apply.[68] A final judgment of a federal district court in such a case is reviewable in the circuit court of appeals, but not in the Supreme Court of the United States, except in the single case where the issue is as to the constitutional validity of the statute imposing the tax.[69]

[63] Clinkenbeard v. United States, 21 Wall. 65, 22 L. Ed. 477.

[64] Nixon v. United States, 18 Ct. Cl. 448.

[65] Federal Judicial Code, 1911, § 145 (Comp. St. 1913, § 1136).

[66] Dooley v. United States, 182 U. S. 222, 21 Sup. Ct. 762, 45 L. Ed. 1074; United States v. Finch, 201 Fed. 95, 119 C. C. A. 433.

[67] Federal Judicial Code, 1911, § 24 (Comp. St. 1913, § 991).

[68] Patton v. Brady, 184 U. S. 608, 22 Sup. Ct. 493, 46 L. Ed. 713; Com'rs of Sinking Fund v. Buckner, 48 Fed. 533.

[69] Hubbard v. Soby, 146 U. S. 56, 13 Sup. Ct. 13, 36 L. Ed. 886; United States v. Hopewell, 51 Fed. 798, 2 C. C. A. 510; Louisville

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There is nothing in the laws of the United States to prevent a state court of competent jurisdiction from taking cognizance of such an action against a collector of internal revenue. But the collector, if sued in a state court, would have the privilege of removing the cause into the federal district court. An act of Congress provides that "any civil suit commenced in any court of a state against any officer appointed under or acting by authority of any revenue law of the United States, on account of any act done under color of his office or of any such law" and "affecting the validity of any such revenue law," may, "at any time before the trial or final hearing thereof, be removed for trial into the district court next to be holden in the district where the same is pending." [70] And it has been held that an action against a collector of internal revenue to recover back taxes alleged to have been illegally or erroneously assessed by him, and paid to him under protest, is one which may be removed to the federal court under this act.[71]

§ 383. Same; Limitation of Actions

The internal revenue laws provide that "no suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued," and, in connection with the requirement that an appeal shall first be taken to the Commissioner of Internal Revenue and decided by him, it is provided that "if such

Public Warehouse Co. v. Collector of Customs, 49 Fed. 561, 1 C. C. A. 371; Federal Judicial Code, 1911, §§ 128, 238 (Comp. St. 1913, §§ 1120, 1215).

[70] Rev. Stat. U. S., § 643, re-enacted as section 33 of the Federal Judicial Code of 1911 (Comp. St. 1913, § 1015).

[71] Venable v. Richards, 105 U. S. 636, 26 L. Ed. 1196; City of Philadelphia v. The Collector, 5 Wall. 720, 18 L. Ed. 614; Collector of Internal Revenue v. Hubbard, 12 Wall. 1, 20 L. Ed. 272; Tennessee v. Davis, 100 U. S. 257, 25 L. Ed. 648.

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decision is delayed more than six months from the date of such appeal, then the said suit may be brought without first having a decision of the Commissioner at any time within the period limited," that is, two years.[72] It has been held that the statute of limitations begins to run from the accrual of the cause of action, and its running is not suspended during the pendency of the appeal to the Commissioner.[73] But the earlier decisions of the Supreme Court apparently lay down the rule that the cause of action is lost unless presented to the Commissioner of Internal Revenue within two years after it accrued,[74] but that, having been so presented, by appeal, the claimant then is entitled to two years from the date of the Commissioner's decision in which to bring his suit.[75] However this may be, it is clear that this special statute of limitations, applicable only to cases under the internal revenue laws, is not repealed or superseded by the later statutes establishing generally a limitation of six years for suits against the United States.[76] And a suit for the recovery of internal revenue taxes paid, brought in the Court of Claims, is barred by the special limitation of two years, notwithstanding the fact that the general statute of limitations applicable to suits in that court allows six years.[77] In any court, where the complaint in such an action shows that more than two years have elapsed since the cause of action accrued, the objection may be taken by demurrer,[78] and statements made by the revenue officers to the claimant, pending his appeal to the Commissioner, that the claim would be allowed, or that it had been certified favor-

[72] Rev. Stat. U. S. §§ 3226, 3227 (Comp. St. 1913, §§ 5949, 5950).

[73] Christie-Street Commission Co. v. United States, 129 Fed. 506, affirmed, 136 Fed. 326, 69 C. C. A. 464.

[74] Kings County Sav. Inst. v. Blair, 116 U. S. 200, 6 Sup. Ct. 353, 29 L. Ed. 657.

[75] Wright v. Blakeslee, 101 U. S. 174, 25 L. Ed. 1048; Cheatham v. United States, 92 U. S. 85, 23 L. Ed. 561.

[76] Christie-Street Commission Co. v. United States, 126 Fed. 991, affirmed, 136 Fed. 326, 69 C. C. A. 464.

[77] Fort Pitt Gas Co. v. United States (Ct. Cl.) Treasury Decisions No. 1979.

[78] Com'rs of Sinking Fund v. Buckner, 48 Fed. 533.

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ably to the auditing office, do not raise an estoppel against the government so as to avoid the bar of the statute.[79]

As to the provision with regard to cases where the decision of the Commissioner is delayed for more than six months after the taking of the appeal to him, this will enable the claimant, at the end of the six months, to bring a suit for the recovery of the taxes without waiting any longer for a decision on his appeal.[80] And the clause has been interpreted as meaning that, when the Commissioner's decision is not made within the six months, the cause of action accrues then, at the end of the six months, and it will be barred if suit is not brought within two years from that time.[81] But the better opinion appears to be that the provision that the claimant "may" bring suit without a decision by the Commissioner, if the decision is delayed more than six months, is permissive only, and that it does not oblige the claimant to commence his suit within a maximum period of two years and six months after taking his appeal in any case, but he may, at his election, wait for the Commissioner's decision, however long it may be delayed, and if it is adverse to him, bring his suit at any time within two years after its rendition.[82]

§ 384. Same; Amount of Recovery; Interest; Costs

It is a well settled rule that, in suits against collectors of internal revenue to recover moneys alleged to have been illegally exacted in payment of taxes, and paid under protest, interest is recoverable by the successful plaintiff, without any special statutory warrant for it, and this although the judgment is not to be paid by the collector, but directly from the Treasury, for this does not make the suit formally one against the United States, notwithstanding the ultimate liability of

[79] Christie-Street Commission Co. v. United States, 129 Fed. 506, affirmed, 136 Fed. 326, 69 C. C. A. 464.

[80] Coblens v. Abel, Woolw. 293, Fed. Cas. No. 2,926.

[81] Schwartzchild & Sulzberger Co. v. Rucker, 143 Fed. 656; Christie-Street Commission Co. v. United States, 126 Fed. 991.

[82] Merck v. Treat, 174 Fed. 388, 98 C. C. A. 606; Arnson v. Murphy, 109 U. S. 238, 3 Sup. Ct. 184, 27 L. Ed. 920; James v. Hicks, 110 U. S. 272, 4 Sup. Ct. 6, 28 L. Ed. 144.

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the government.[83] Ordinarily such interest will run from the date of the payment made to the collector,[84] although under some special circumstances, such as unreasonable delay in bringing suit, it may be limited to run from the date of the demand for repayment,[85] or even from the date of commencing the suit.[86] Further, if the collector brings a writ of error to review a judgment recovered against him for money exacted by and paid to him as taxes, and the appellate court affirms the judgment, it will allow interest on the judgment.[87] But where a person from whom an internal revenue tax has been illegally exacted accepts from the government, without objection, the repayment of the sum thus illegally exacted, he thereby gives up his right to sue for interest as incidental damages.[88]

When judgment goes against the collector in such a case, the court may, if it so finds, "certify that there was probable cause for the act done by the collector, or that he acted under the directions of the Secretary of the Treasury or other proper officer of the government," and in that case, "no execution shall issue against the collector, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury." [89] And the rule as to costs in the case of recovery of judgment against the collector for taxes illegally exacted is that costs incurred

[83] Billings v. United States, 232 U. S. 261, 34 Sup. Ct. 421, 58 L. Ed. 596; National Home v. Parrish, 229 U. S. 494, 33 Sup. Ct. 944, 57 L. Ed. 1296; Erskine v. Van Arsdale, 15 Wall. 75, 21 L. Ed. 63; Redfield v. Bartels, 139 U. S. 694, 11 Sup. Ct. 683, 35 L. Ed. 310; Kinney v. Conant, 166 Fed. 720, 92 C. C. A. 410; Herold v. Shanley, 146 Fed. 20, 76 C. C. A. 478; Pennsylvania Co. for Insurances on Lives, etc., v. McClain, 105 Fed. 367.

[84] Conant v. Kinney, 162 Fed. 581, affirmed, Kinney v. Conant, 166 Fed. 720, 92 C. C. A. 410.

[85] Treat v. Taylor, 166 Fed. 1021, 91 C. C. A. 330. And see Com'rs of Sinking Fund v. Buckner, 48 Fed. 533.

[86] Burroughs v. Abel, 105 Fed. 366.

[87] Cochran v. Schell, 107 U. S. 625, 2 Sup. Ct. 827, 27 L. Ed. 543.

[88] Stewart v. Barnes, 153 U. S. 456, 14 Sup. Ct. 849, 38 L. Ed. 781.

[89] Rev. Stat. U. S., § 989 (Comp. St. 1913, § 1635).

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before judgment, and before the granting of this "certificate of probable cause" are properly awarded against him.[90]

§ 385. Same; Payment of Judgment, Reimbursement of Collector

As stated in the preceding section, if judgment is recovered against the collector for taxes illegally exacted, but the court grants a certificate that there was probable cause for his action in making the collection, no execution shall issue against him, but the claim shall be paid out of the Treasury. But the suit is a private suit, and there is no claim against the government until this certificate has been obtained from the court, but then the government assumes a certain liability.[91] Another provision of the internal revenue laws authorizes the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, to "repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with the costs and expenses of suit." [92] It is held that the Commissioner, when acting under this section, is not bound by the judgment recovered against the collector, and he is not precluded from acting because no notice was given to the government which would enable it to defend in the court where the judgment was rendered. The term "repay" in the statute does not imply that the collector must pay the judgment before the Commissioner can act. The statute is for the protection of the officer, and the damages and costs may be allowed by the Commissioner directly to the judgment creditor.[93] And where the Commissioner makes an order for the allowance of the amount of the judgment directly to the creditor, instead of to the collector,

[90] Treat v. Farmers' Loan & Trust Co., 185 Fed. 760, 108 C. C. A. 98.

[91] White v. Arthur, 10 Fed. 80, 20 Blatchf. 237. And see United States v. Sherman, 98 U. S. 565, 25 L. Ed. 235.

[92] Rev. Stat. U. S., § 3220 (Comp. St. 1913, § 5944).

[93] United States v. Frerichs, 124 U. S. 315, 8 Sup. Ct. 514, 31 L. Ed. 471; Dunnegan v. United States, 17 Ct. Cl. 247; Nixon v. United States, 18 Ct. Cl. 448.

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the creditor may sue on such allowance in the Court of Claims, if the collector does not object and sets up no claim himself.[94]

§ 386. Action of Tort Against Collector

An assessor of internal revenue acts judicially in determining what persons and things are subject to taxation under an act of Congress. If the subject-matter is within his jurisdiction, that is, if he is bound to inquire and determine who and what are subject to the tax, a mistake as to the person or thing taxed, or an irregularity in the proceedings on his part, will not invalidate his action as assessor so far as to make the collector, who proceeds on a warrant in proper form to collect the tax, a trespasser.[95] In a decision of the United States Supreme Court it was held that, if a collector of internal revenue has a proper warrant from the assessor for the collection of taxes specially assessed for deficiency of an original return, he cannot be sued in trespass for distraining and selling the taxpayer's property, on such person's refusal to pay the new assessment, even though such assessment may have been illegally made, for the warrant of the assessor is a justification to him.[96] And in another case in the same court it was said: "Taxes illegally exacted under the revenue laws of the United States may be recovered back, if paid under protest, in an action of assumpsit against the collector, but the person taxed cannot enjoin the collector from enforcing payment, and very grave doubts are entertained whether trespass against the collector is a proper remedy under existing laws." [97] It should also be noticed that "all property taken or detained by any officer or other person, under authority of any revenue law of the United States, shall be irrepleviable, and shall be deemed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof." [98] Hence even if a collector should levy

[94] Nixon v. United States, 18 Ct. Cl. 448.

[95] Delaware R. Co. v. Prettyman, 17 Int. Rev. Rec. 99, Fed. Cas. No. 3,767.

[96] Haffin v. Mason, 15 Wall. 671, 21 L. Ed. 196.

[97] Barnes v. The Railroads, 17 Wall. 294, 21 L. Ed. 544.

[98] Rev. Stat. U. S., § 934 (Comp. St. 1913, § 1560).

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upon or distrain the property of one person for payment of the tax due from another, replevin is not an available remedy for the rightful owner.[99]

§ 387. Remission of Penalties

The corporation excise tax law of 1909 was amended by an act of Congress, March 3, 1913, providing that a corporation which had been charged with an additional tax imposed as a penalty for neglect to file its return in due season, might apply to the Commissioner of Internal Revenue for a refund of such additional tax, within a year after the passage of the act or within a year after date of notice of the assessment. "And the Commissioner of Internal Revenue, with the advice and consent of the Solicitor of Internal Revenue, is hereby directed to remit, abate, and pay back all such additional taxes, in excess of $100 for any single year, whenever in any case it appears to his satisfaction that the additional tax was assessed or imposed solely because of a neglect to make a return at the time or times specified in said act, and without any intention or design on the part of any officer of such corporation to hinder or delay the United States in the collection of the tax originally assessed."

It is doubtful whether or not this supplementary or amendatory act is repealed by the act of 1913. But if it should be so held, still the taxpayer has his remedy under the general provisions of the internal revenue laws, which authorizes the refund by the Commissioner (or the recovery by suit), not only of the tax collected, but also of "all penalties collected without authority." [100]

[99] Treat v. Staples, Holmes, 1, Fed. Cas. No. 14,162; Brice v. Elliott, Fed. Cas. No. 1,854.

[100] Rev. Stat. U. S., §§ 3220, 3226, 3227 (Comp. St. 1913, §§ 5944, 5949, 5950).

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APPENDIX

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UNITED STATES CORPORATION EXCISE TAX LAW OF 1909

Act of Congress, August 5, 1909, 36 Stat. 112, Comp. St. 1913, § 6300

§ 38. "That every corporation, joint stock company, or association organized for profit and having a capital stock represented by shares, and every insurance company now or hereafter organized under the laws of the United States or of any state or territory of the United States, or under the acts of Congress applicable to Alaska or the District of Columbia, or now or hereafter organized under the laws of any foreign country, and engaged in business in any state or territory of the United States or in Alaska or in the District of Columbia, shall be subject to pay annually a special excise tax with respect to the carrying on or doing business by such corporation, joint stock company, or association, or insurance company, equivalent to one per centum upon the entire net income over and above five thousand dollars, received by it from all sources during such year, exclusive of amounts received by it as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies subject to the tax hereby imposed; or, if organized under the laws of any foreign country, upon the amount of net income over and above five thousand dollars received by it from business transacted and capital invested within the United States and its territories, Alaska, and the District of Columbia, during such year, exclusive of amounts so received by it as dividends upon stock of other corporations, joint stock companies or associations or insurance companies subject to the tax hereby imposed: Provided, however, that nothing in this section contained shall apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders, or associations operating under the lodge system, and providing for the payment of life, sick, accident, and other

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benefits to the members of such societies, orders or associations, and dependents of such members, nor to domestic building and loan associations, organized and operated exclusively for the mutual benefit of their members, nor to any corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

Second. Such net income shall be ascertained by deducting from the gross amount of the income of such corporation, joint stock company or association, or insurance company, received within the year from all sources, (first) all the ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and properties, including all charges such as rentals or franchise payments, required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, all interest actually paid by it within the year on deposits; (fourth) all sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof, or imposed by the government of any foreign country as a condition to carry on business therein; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax hereby imposed: Provided,

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that in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, such net income shall be ascertained by deducting from the gross amount of its income received within the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia, (first) all the ordinary and necessary expenses actually paid within the year out of earnings in the maintenance and operation of its business and property within the United States and its territories, Alaska, and the District of Columbia, including all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; (second) all losses actually sustained within the year in business conducted by it within the United States or its territories, Alaska, or the District of Columbia not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property, if any, and in the case of insurance companies the sums other than dividends, paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; (third) interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness, not exceeding the proportion of its paid-up capital stock outstanding at the close of the year which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia bears to the gross amount of its income derived from all sources within and without the United States; (fourth) the sums paid by it within the year for taxes imposed under the authority of the United States or of any state or territory thereof; (fifth) all amounts received by it within the year as dividends upon stock of other corporations, joint stock companies or associations, and insurance companies, subject to the tax hereby imposed. In the case of assessment insurance companies the actual deposit of sums with state or territorial officers, pursuant to law, as additions to guaranty

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or reserve funds shall be treated as being payments required by law to reserve funds.

Third. There shall be deducted from the amount of the net income of each of such corporations, joint stock companies or associations, or insurance companies, ascertained as provided in the foregoing paragraphs of this section, the sum of five thousand dollars, and said tax shall be computed upon the remainder of said net income of such corporation, joint stock company or association, or insurance company, for the year ending December thirty-first, nineteen hundred and nine, and for each calendar year thereafter; and on or before the first day of March, nineteen hundred and ten, and the first day of March in each year thereafter, a true and accurate return under oath or affirmation of its president, vice-president, or other principal officer, and its treasurer or assistant treasurer, shall be made by each of the corporations, joint stock companies or associations, and insurance companies, subject to the tax imposed by this section, to the collector of internal revenue for the district in which such corporation, joint stock company or association, or insurance company has its principal place of business, or, in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, in the place where its principal business is carried on within the United States, in such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth (first) the total amount of the paid-up capital stock of such corporation, joint stock company or association, or insurance company, outstanding at the close of the year; (second) the total amount of the bonded and other indebtedness of such corporation, joint stock company or association, or insurance company at the close of the year; (third) the gross amount of the income of such corporation, joint stock company or association, or insurance company, received during such year from all sources, and if organized under the laws of a foreign country the gross amount of its income received within the year from business transacted and capital

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invested within the United States and any of its territories, Alaska, and the District of Columbia; also the amount received by such corporation, joint stock company or association, or insurance company within the year by way of dividends upon stock of other corporations, joint stock companies or associations, or insurance companies, subject to the tax imposed by this section; (fourth) the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of such corporation, joint stock company or association, or insurance company within the year, stating separately all charges such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, and if organized under the laws of a foreign country the amount so paid in the maintenance and operation of its business within the United States and its territories, Alaska, and the District of Columbia; (fifth) the total amount of all losses actually sustained during the year and not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve funds; and in the case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, all losses actually sustained by it during the year in business conducted by it within the United States or its territories, Alaska, and the District of Columbia, not compensated by insurance or otherwise, stating separately any amounts allowed for depreciation of property, and in the case of insurance companies the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made within the year to reserve fund; (sixth) the amount of interest actually paid within the year on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the paid-up capital stock of such corporation, joint stock com-

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pany or association, or insurance company, outstanding at the close of the year, and in the case of a bank, banking association, or trust company, stating separately all interest paid by it within the year on deposits; or in case of a corporation, joint stock company or association, or insurance company, organized under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded and other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States and any of its territories, Alaska, and the District of Columbia, bears to the gross amount of its income derived from all sources within and without the United States; (seventh) the amount paid by it within the year for taxes imposed under the authority of the United States or any state or territory thereof, and separately the amount so paid by it for taxes imposed by the government of any foreign country as a condition to carrying on business therein; (eighth) the net income of such corporation, joint stock company or association, or insurance company, after making the deductions in this section authorized. All such returns shall as received be transmitted forthwith by the collector to the Commissioner of Internal Revenue.

Fourth. Whenever evidence shall be produced before the Commissioner of Internal Revenue which in the opinion of the Commissioner justifies the belief that the return made by any corporation, joint stock company or association, or insurance company is incorrect, or whenever any collector shall report to the Commissioner of Internal Revenue that any corporation, joint stock company or association, or insurance company has failed to make a return as required by law, the Commissioner of Internal Revenue may require from the corporation, joint stock company or association, or insurance company making such return, such further information with reference to its capital, income, losses, and expenditures as he may deem expedient; and the Commissioner of Internal Rev-

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enue, for the purpose of ascertaining the correctness of such return or for the purpose of making a return where none has been made, is hereby authorized, by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of such corporation, joint stock company or association, or insurance company, and to require the attendance of any officer or employee of such corporation, joint stock company or association, or insurance company, and to take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons; and the Commissioner of Internal Revenue may also invoke the aid of any court of the United States having jurisdiction to require the attendance of such officers or employees and the production of such books and papers. Upon the information so acquired the Commissioner of Internal Revenue may amend any return or make a return where none has been made. All proceedings taken by the Commissioner of Internal Revenue under the provisions of this section shall be subject to the approval of the Secretary of the Treasury.

Fifth. All returns shall be retained by the Commissioner of Internal Revenue, who shall make assessments thereon; and in case of any return made with false or fraudulent intent, he shall add one hundred per centum of such tax, and in case of a refusal or neglect to make a return or to verify the same as aforesaid he shall add fifty per centum of such tax. In case of neglect occasioned by the sickness or absence of an officer of such corporation, joint stock company or association, or insurance company, required to make said return, or for other sufficient reason, the collector may allow such further time for making and delivering such return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax originally assessed, unless the refusal, neglect, or falsity is discovered after the date for payment of said taxes, in which case the amount so added

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shall be paid by the delinquent corporation, joint stock company or association, or insurance company, immediately upon notice given by the collector. All assessments shall be made and the several corporations, joint stock companies or associations, or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint stock company or association, or insurance company immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the thirtieth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due.

[NOTE. This subdivision of the section was amended by Act of Congress, March 3, 1913, Comp. St. 1913, § 6309, by providing as follows: "Any corporation, joint stock company, association, or any insurance company subject to the special excise tax provided by section thirty-eight of the act of August fifth, nineteen hundred and nine, known as the special excise corporation-tax law, which has been or may be compelled to pay or become liable for any additional tax within the provisions of subsection five of said section thirty-eight, which additional tax has been or may hereafter be imposed for a neglect to file a return as provided in said corporation-tax law on or before the first of March of any year, may, within one year after the passage of this act, or within one year after the date of notice of assessment where such notice is given after the passage of

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this act, make application to the Commissioner of Internal Revenue for a refund of such additional tax. And the Commissioner of Internal Revenue, with the advice and consent of the Solicitor of Internal Revenue, is hereby directed to remit, abate, or pay back all such additional taxes in excess of $100 for any single year whenever in any case it appears to his satisfaction that the additional tax was assessed or imposed solely because of a neglect to make a return at the time or times specified in said act, and without any intention or design on the part of any officer of such corporation, joint-stock company, association, or insurance company to hinder or delay the United States in the collection of the tax originally assessed."]

Sixth. When the assessment shall be made, as provided in this section, the returns, together with any corrections thereof which may have been made by the commissioner, shall be filed in the office of the Commissioner of Internal Revenue, and shall constitute public records and be open to public inspection as such.

[NOTE. This subdivision of the section was amended by Act of Congress of June 17, 1910, Stat. at L. 2d Sess. 61st Cong. 494, chap. 297, by adding the following words "That any and all such returns shall be open to inspection only upon the order of the President, under rules and regulations to be prescribed by the Secretary of the Treasury and approved by the President."]

Seventh. It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or make known in any manner whatever not provided by law to any person any information obtained by him in the discharge of his official duty, or to divulge or make known in any manner not provided by law any document received, evidence taken, or report made under this section except upon the special direction of the President; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thou-

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sand dollars, or by imprisonment not exceeding one year, or both, at the discretion of the court.

Eighth. If any of the corporations, joint stock companies or associations, or insurance companies aforesaid, shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association, or insurance company shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars.

Any person authorized by law to make, render, sign, or verify any return, who makes any false or fraudulent return. or statement, with intent to defeat or evade the assessment required by this section to be made, shall be guilty of a misdemeanor, and shall be fined not exceeding one thousand dollars or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

All laws relating to the collection, remission, and refund of internal-revenue taxes, so far as applicable to and not inconsistent with the provisions of this section, are hereby extended and made applicable to the tax imposed by this section.

Jurisdiction is hereby conferred upon the circuit and district courts of the United States for the district within which any person summoned under this section to appear to testify or to produce books as aforesaid, shall reside, to compel such attendance, production of books, and testimony by appropriate process.

FEDERAL INCOME TAX LAW OF 1894

Act of Congress, August 27, 1894, 28 Stat. 509, c. 349

Section 27. That from and after the first day of January, eighteen hundred and ninety-five, and until the first day of January, nineteen hundred, there shall be assessed, levied, collected and paid annually upon the gains, profits, and income received in the preceding calendar year by every citizen of the United States, whether residing at home or

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abroad, and every person residing therein, whether said gains, profits, or income be derived from any kind of property, rents, interest, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, a tax of two per centum on the amount so derived over and above four thousand dollars, and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income from all property owned and of every business, trade, or profession carried on in the United States by persons residing without the United States. And the tax herein provided for shall be assessed by the Commissioner of Internal Revenue, and collected and paid, upon the gains, profits, and income for the year ending the thirty-first day of December next preceding the time for levying, collecting, and paying said tax.

Section 28. That in estimating the gains, profits, and income of any person there shall be included all income derived from interest upon notes, bonds, and other securities, except such bonds of the United States the principal and interest of which are by the law of their issuance exempt from all federal taxation; profits realized within the year from sales of real estate purchased within two years previous to the close of the year for which income is estimated; interest received or accrued upon all notes, bonds, mortgages, and other forms of indebtedness bearing interest, whether paid or not, if good and collectible, less the interest which has become due from said person or which has been paid by him during the year; the amount of all premium on all bonds, notes, or coupons; the amount of sales of live stock, sugar, cotton, wool, butter, cheese, pork, beef, mutton, or other meats, hay, and grain, or other vegetable or other productions, being the growth or produce of the estate of such person, less the amount expended in the purchase or production of said stock or produce, and not including any part thereof consumed directly by the family; money and the value of all personal property acquired by

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gift or inheritance; all other gains, profits, and income derived from any source whatever, except that portion of the salary, compensation or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, from which the tax has been deducted, and except that portion of any salary upon which the employer is required by law to withhold, and does withhold, the tax and pays the same to the officer authorized to receive it. In computing incomes the necessary expenses actually incurred in carrying on any business, occupation, or profession shall be deducted and also all interest due or paid within the year by such person on existing indebtedness. And all national, state, county, school, and municipal taxes, not including those assessed against local benefits, paid within the year shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether such person be owner, tenant, or mortgagor; also losses actually sustained during the year, incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise, and debts ascertained to be worthless, but excluding all estimated depreciation of values and losses within the year on sales of real estate purchased within two years previous to the year for which income is estimated: Provided, that no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: Provided, further, that only one deduction of four thousand dollars shall be made from the aggregate income of all the members of any family, composed of one or both parents, and one or more minor children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except that in case where two or more wards are comprised in one family, and have joint property interests, the aggregate deduction in their favor shall not exceed four thousand dollars: and provided further, that in case where the salary or

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other compensation paid to any person in the employment or service of the United States shall not exceed the rate of four thousand dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, and shall include that portion of any income or salary upon which a tax has not been paid by the employer, where the employer is required by law to pay on the excess over four thousand dollars: Provided also, that in computing the income of any person, corporation, company, or association, there shall not be included the amount received from any corporation, company, or association as dividends upon the stock of such corporation, company, or association, if the tax of two per centum has been paid upon its net profits by said corporation, company, or association as required by this act.

Section 29. That it shall be the duty of all persons of lawful age having an income of more than three thousand five hundred dollars for the taxable year, computed on the basis herein prescribed, to make and render a list or return, on or before the day provided by law, in such form and manner as may be directed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to the collector or a deputy collector of the district in which they reside, of the amount of their income, gains, and profits, as aforesaid; and all guardians and trustees, executors, administrators, agents, receivers, and all persons or corporations acting in any fiduciary capacity shall make and render a list or return, as aforesaid, to the collector or a deputy collector of the district in which such person or corporation acting in a fiduciary capacity resides or does business, of the amount of income, gains, and profits of any minor or person for whom they act, but persons having less than three thousand five hundred dollars income are not required to make such report; and the collector or deputy col-

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lector shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return if he has reason to believe that the same is understated; and in case any such person having a taxable income shall neglect or refuse to make and render such list and return, or shall render a wilfully false or fraudulent list or return, it shall be the duty of the collector or deputy collector to make such list according to the best information he can obtain, by the examination of such person, or any other evidence, and to add fifty per centum as a penalty to the amount of the tax due on such list in all cases of wilfull neglect or refusal to make and render a list or return; and in all cases of a wilfully false or fraudulent list or return having been rendered to add one hundred per centum as a penalty to the amount of tax ascertained to be due, the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a list or return, or of rendering a false or fraudulent return. Provided, that any person or corporation in his, her, or its own behalf, or as such fiduciary, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, that he, she, or his or her, or its ward or beneficiary, was not possessed of an income of four thousand dollars, liable to be assessed according to the provisions of this act; or may declare that he, she, or it, or his, her, or its ward or beneficiary has been assessed and has paid an income tax elsewhere in the same year, under authority of the United States, upon all his, her, or its income, gains, or profits, and upon all the income, gains, or profits for which he, she, or it is liable as such fiduciary, as prescribed by law; and if the collector or deputy collector shall be satisfied of the truth of the declaration, such person or corporation shall thereupon be exempt from income tax in the said district for that year; or if the list or return of any person or corporation, company, or as-

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sociation shall have been increased by the collector or deputy collector, such person or corporation, company, or association may be permitted to prove the amount of income liable to be assessed; but such proof shall not be considered conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the collector or deputy collector. Any person or company, corporation, or association feeling aggrieved by the decision of the deputy collector, in such cases, may appeal to the collector of the district, and his decision thereon, unless reversed by the Commissioner of Internal Revenue, shall be final. If dissatisfied with the decision of the collector, such person or corporation, company, or association may submit the case, with all the papers, to the Commissioner of Internal Revenue for his decision, and may furnish the testimony of witnesses to prove any relevant facts, having served notice to that effect upon the Commissioner of Internal Revenue, as herein prescribed.

Such notice shall state the time and place at which, and the officer before whom, the testimony will be taken; the name, age, residence, and business of the proposed witness, with the questions to be propounded to the witness, or a brief statement of the substance of the testimony he is expected to give: Provided, that the Government may at the same time and place take testimony upon like notice to rebut the testimony of the witnesses examined by the person taxed.

The notice shall be delivered or mailed to the Commissioner of Internal Revenue a sufficient number of days previous to the day fixed for taking the testimony, to allow him, after its receipt, at least five days, exclusive of the period required for mail communication with the place at which the testimony is to be taken, in which to give, should he so desire, instructions as to the cross-examination of the proposed witness.

Whenever practicable, the affidavit or deposition shall be taken before a collector or deputy collector of internal

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revenue, in which case reasonable notice shall be given to the collector or deputy collector of the time fixed for taking the deposition or affidavit: Provided further, that no penalty shall be assessed upon any person or corporation, company, or association for such neglect or refusal or for making or rendering a wilfully false or fraudulent return, except after reasonable notice of the time and place of hearing, to be prescribed by the Commissioner of Internal Revenue, so as to give the person charged an opportunity to be heard.

Section 30. The taxes on incomes herein imposed shall be due and payable on or before the first day of July in each year; and to any sum or sums annually due and unpaid after the first day of July as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied, in addition thereto, the sum of five per centum on the amount of taxes unpaid, and interest at the rate of one per centum per month upon said tax from the time the same becomes due, as a penalty, except from the estates of deceased, insane, or insolvent persons.

Section 31. Any non-resident may receive the benefit of the exemptions hereinbefore provided for by filing with the deputy collector of any district a true list of all his property and sources of income in the United States and complying with the provisions of section twenty-nine of this act as if a resident. In computing income, he shall include all income from every source, but unless he be a citizen of the United States, he shall only pay on that part of the income which is derived from any source in the United States. In case such non-resident fails to file such statement, the collector of each district shall collect the tax on the income derived from property situate in his district, subject to income tax, making no allowance for exemptions, and all property belonging to such non-resident shall be liable to distraint for tax: Provided, that non-resident corporations shall be subject to the same laws as to tax as resident corporations, and the collection of the tax shall be made in the

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same manner as provided for collections of taxes against non-resident persons.

Section 32. That there shall be assessed, levied, and collected, except as herein otherwise provided, a tax of two per centum annually on the net profits or income above actual operating and business expenses, including expenses for materials purchased for manufacture or bought for resale, losses, and interest on bonded and other indebtedness, of all banks, banking institutions, trust companies, savings institutions, fire, marine, life, and other insurance companies, railroad, canal, turnpike, canal navigation, slack water, telephone, telegraph, express, electric light, gas, water, street railway companies, and all other corporations, companies, or associations doing business for profit in the United States, no matter how created and organized, but not including partnerships.

That said tax shall be paid on or before the first day of July in each year; and if the president or other chief officer of any corporation, company, or association, or in the case of any foreign corporation, company, or association, the resident manager or agent, shall neglect or refuse to file with the collector of the internal revenue district in which said corporation, company, or association shall be located or be engaged in business, a statement verified by his oath or affirmation, in such form as shall be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, showing the amount of net profits or income received by said corporation, company, or association during the whole calendar year last preceding the date of filing said statement as hereinafter required, the corporation, company, or association making default shall forfeit as a penalty the sum of one thousand dollars and two per centum on the amount of taxes due, for each month until the same is paid, the payment of said penalty to be enforced as provided in other cases of neglect and refusal to make return of taxes under the internal revenue laws.

The net profits or income of all corporations, companies,

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or associations shall include the amounts paid to shareholders, or carried to the account of any fund, or used for construction, enlargement of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporations, companies, or associations.

That nothing herein contained shall apply to states, counties, or municipalities; nor to corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or associations operating upon the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members; nor to the stocks, shares, funds, or securities held by any fiduciary or trustee for charitable, religious, or educational purposes; nor to building and loan associations or companies which make loans only to their shareholders; nor to such savings banks, savings institutions or societies as shall, first, have no stockholders or members except depositors and no capital except deposits; secondly, shall not receive deposits to an aggregate amount, in any one year, of more than one thousand dollars from the same depositor; thirdly, shall not allow an accumulation or total of deposits, by any one depositor, exceeding ten thousand dollars; fourthly, shall actually divide and distribute to its depositors, ratably to deposits, all the earnings over the necessary and proper expenses of such bank, institution, or society, except such as shall be applied to surplus; fifthly, shall not possess, in any form, a surplus fund exceeding ten per centum of its aggregate deposits; nor to such savings banks, savings institutions, or societies composed of members who do not participate in the profits thereof and which pay interest or dividends only to their depositors; nor to that part of the business of any savings bank, institution, or other similar association having a capital stock that is conducted on the mutual

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plan solely for the benefit of its depositors on such plan, and which shall keep its accounts or its business conducted on such mutual plan separate and apart from its other accounts.

Nor to any insurance company or association which conducts all its business solely upon the mutual plan, and only for the benefit of its policy holders or members, and having no capital stock and no stock or shareholders, and holding all its property in trust and in reserve for its policy holders or members; nor to that part of the business of any insurance company having a capital stock and stock and shareholders, which is conducted on the mutual plan, separate from its stock plan of insurance, and solely for the benefit of the policy holders and members insured on said mutual plan, and holding all the property belonging to and derived from said mutual part of its business in trust and reserve for the benefit of its policy holders and members insured on said mutual plan.

That all state, county, municipal, and town taxes paid by corporations, companies, or associations, shall be included in the operating and business expenses of such corporations, companies, or associations.

Section 33. That there shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in congress, when exceeding the rate of four thousand dollars per annum, a tax of two per centum on the excess above the said four thousand dollars; and it shall be the duty of all paymasters and all disbursing officers under the government of the United States, or persons in the employ thereof, when making any payment to any officers or persons as aforesaid, whose compensation is determined by a fixed salary, or upon the settling or adjusting the accounts of such officers or persons, to deduct and withhold the aforesaid tax of two per centum; and the pay roll, receipts, or account of officers or persons pay-

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ing such tax as aforesaid shall be made to exhibit the fact of such payment. And it shall be the duty of the accounting officers of the treasury department, when auditing the accounts of any paymaster or disbursing officer, or any officer withholding his salary from moneys received by him, or when settling or adjusting the accounts of any such officer, to require evidence that the taxes mentioned in this section have been deducted and paid over to the Treasurer of the United States, or other officer authorized to receive the same. Every corporation which pays to any employé a salary or compensation exceeding four thousand dollars per annum shall report the same to the collector or deputy collector of his district and said employé shall pay thereon, subject to the exemptions herein provided for, the tax of two per centum on the excess of his salary over four thousand dollars; Provided that salaries due to state, county, or municipal officers shall be exempt from the income tax herein levied.

Section 34. That sections thirty-one hundred and sixty-seven, thirty-one hundred and seventy-two, thirty-one hundred and seventy-three, and thirty-one hundred and seventy-six of the Revised Statutes of the United States as amended are hereby amended so as to read as follows:

Section 3167. That it shall be unlawful for any collector, deputy collector, agent, clerk or other officer or employé of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof, to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the

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amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding one thousand dollars or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employé of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

Section 3172. That every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

Section 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first Monday of March in each year, and in other cases before the day on which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: Provided that if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but

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shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case, it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: Provided further, that in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid, shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person resid-

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ing or found within the state in which his district lies; and when the person intended to be summoned does not reside and cannot be found within such state, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

Section 3176. When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add one hundred per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add fifty per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the same manner as the tax, unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes.

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Section 35. That every corporation, company, or association doing business for a profit shall make and render to the collector of its collection district, on or before the first Monday of March in every year, beginning with the year eighteen hundred and ninety-five, a full return, verified by oath or affirmation, in such form as the Commissioner of Internal Revenue shall prescribe, of all the following matters for the whole calendar year last preceding the date of such return:

First. The gross profits of such corporation, company, or association from all kinds of business of every name and nature.

Second. The expenses of such corporation, company, or association, exclusive of interest, annuities, and dividends.

Third. The net profits of such corporation, company, or association, without allowance for interest, annuities, or dividends.

Fourth. The amount paid on account of interest, annuities, and dividends, stated separately.

Fifth. The amount paid in salaries of four thousand dollars or less to each person employed.

Sixth. The amount paid in salaries of more than four thousand dollars to each person employed and the name and address of each of such persons and the amount paid to each.

Section 36. That it shall be the duty of every corporation, company, or association doing business for profit to keep full, regular, and accurate books of account, upon which all its transactions shall be entered from day to day, in regular order, and whenever a collector or deputy collector of the district in which any corporation, company, or association is assessable shall believe that a true and correct return of the income of such corporation, company, or association has not been made, he shall make an affidavit of such belief and of the grounds upon which it is founded, and file the same with the Commissioner of Internal Revenue, and if said Commissioner shall, on examination thereof, and after full hearing upon notice given to all parties, conclude there is good ground for such belief, he shall issue a request in writing to such cor-

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poration, company, or association to permit an inspection of the books of such corporation, company, or association to be made; and if such corporation, company, or association shall refuse to comply with such request, then the collector or deputy collector of the district shall make from such information as he can obtain an estimate of the amount of such income, and then add fifty per centum thereto, which said assessment so made shall then be the lawful assessment of such income.

Section 37. That it shall be the duty of every collector of internal revenue, to whom any payment of any tax other than the tax represented by an adhesive stamp or other engraved stamp is made under the provisions of this act, to give to the person making such payment a full written or printed receipt, expressing the amount paid and the particular account for which such payment was made; and whenever such payment is made such collector shall, if required, give a separate receipt for each tax paid by any debtor, on account of payments made to or to be made by him to separate creditors in such form that such debtor can conveniently produce the same separately to his several creditors in satisfaction of their respective demands to the amounts specified in such receipts; and such receipts shall be sufficient evidence in favor of such debtor, to justify him in withholding the amount therein expressed from his next payment to his creditor; but such creditor may, upon giving to his debtor a full written receipt, acknowledging the payment to him of whatever sum may be actually paid, and accepting the amount of tax paid as aforesaid (specifying the same) as a further satisfaction of the debt to that amount, require the surrender to him of such collector's receipt.

[NOTE. By a joint resolution of February 21, 1895 (28 Stat. 971), the time for making returns of income for the year 1894 was extended, and it was provided that, "in computing incomes under said act the amounts necessarily paid for fire insurance premiums and for ordinary repairs shall be deducted;" and that "in computing incomes under said act the amounts

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received as dividends upon the stock of any corporation, company, or association shall not be included in case such dividends are also liable to the tax of two per centum upon the net profits of said corporation, company, or association, although such tax may not have been actually paid by said corporation, company, or association at the time of making returns by the person, corporation, or association receiving such dividends, and returns or reports of the names and salaries of employés shall not be required from employers unless called for by the collector in order to verify the returns of employés."]

CIVIL WAR INCOME TAX ACTS OF CONGRESS

Act of Congress August 5, 1861, ch. 45, §§ 49–51, 12 Stat. 309

Section 49. From and after the first day of January next, there shall be levied, collected, and paid, upon the annual income of every person residing within the United States, whether such income is derived from any kind of property, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, if such annual income exceeds the sum of eight hundred dollars, a tax of three per centum on the amount of such excess of such income above eight hundred dollars: Provided, that upon such portion of said income as shall be derived from interest upon treasury notes or other securities of the United States, there shall be levied, collected, and paid a tax of one and one-half per centum. Upon the income, rents, or dividends accruing upon any property, securities, or stocks owned in the United States by any citizen of the United States residing abroad, there shall be levied, collected, and paid a tax of five per centum, excepting that portion of said income derived from interest on treasury notes or other securities of the Government of the United States, which shall pay one and one-half per centum. The tax herein provided shall be assessed upon the annual income of the persons hereinafter named for the year next preceding the time for assessing said

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tax, to wit, the year next preceding the first of January, eighteen hundred and sixty-two, and the said taxes, when so assessed and made public, shall become a lien on the property or other sources of said income for the amount of the same, with the interest and other expenses of collection until paid: Provided, that, in estimating said income, all national, state, or local taxes assessed upon the property, from which the income is derived, shall be first deducted.

Section 50. It shall be the duty of the President of the United States, and he is hereby authorized, by and with the advice and consent of the Senate, to appoint one principal assessor and one principal collector in each of the States and Territories of the United States, and in the District of Columbia, to assess and collect the internal duties or income tax imposed by this act, with authority in each of said officers to appoint so many assistants as the public service may require, to be approved by the Secretary of the Treasury. The said taxes to be assessed and collected under such regulations as the Secretary of the Treasury may prescribe. The said collectors, herein authorized to be appointed, shall give bonds, to the satisfaction of the Secretary of the Treasury, in such sums as he may prescribe, for the faithful performance of their respective duties. And the Secretary of the Treasury shall prescribe such reasonable compensation for the assessment and collection of said internal duties or income tax as may appear to him just and proper; not, however, to exceed in any case the sum of two thousand five hundred dollars per annum for the principal officers herein referred to, and twelve hundred dollars per annum for an assistant. The assistant collectors herein provided shall give bonds to the satisfaction of the principal collector for the faithful performance of their duties. The Secretary of the Treasury is further authorized to select and appoint one or more depositaries in each State for the deposit and safe-keeping of the moneys arising from the taxes herein imposed when collected, and the receipt of the proper officer of such depository to the collector for the moneys deposited by him shall be the proper voucher for such

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collector in the settlement of his account at the Treasury Department. And he is further authorized and empowered to make such officer or depositary the disbursing agent of the Treasury for the payment of all interest due to the citizens of such State upon the treasury notes or other government securities issued by authority of law. And he shall also prescribe the forms of returns to be made to the department by all assessors and collectors appointed under the authority of this act. He shall also prescribe the form of oath or obligation to be taken by the several officers authorized or directed to be appointed and commissioned by the President under this act, before a competent magistrate duly authorized to administer oaths, and the form of the return to be made thereon to the Treasury Department.

Section 51. The tax herein imposed by the forty-ninth section of this act shall be due and payable on or before the thirtieth day of June in the year 1862, and all sums due and unpaid at that day shall draw interest thereafter at the rate of six per centum per annum; and if any person or persons shall neglect or refuse to pay after due notice said tax assessed against him, her, or them, for the space of more than thirty days after the same is due and payable, it shall be lawful for any collector or assistant collector charged with the duty of collecting said tax, and they are hereby authorized, to levy the same on the visible property of any such person, or so much thereof as may be sufficient to pay such tax with the interest due thereon and the expenses incident to such levy and sale, first giving thirty days' public notice of the time and place of the sale thereof; and in case of the failure of any person or persons authorized to act as agent or agents for the collection of the rents or other income of any person residing abroad shall neglect or refuse to pay the tax assessed thereon (having had due notice) for more than thirty days after the thirtieth of June, 1862, the collector or his assistant, for the district where such property is located, or rents or income is payable, shall be and is hereby authorized to levy upon the property itself, and to sell the same, or so much thereof as

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may be necessary to pay the tax assessed, together with the interest and expenses incident to such levy and sale, first giving thirty days' public notice of the time and place of sale. And in all cases of the sale of property herein authorized, the conveyance by the officer authorized to make the sale, duly executed, shall give a valid title to the purchaser, whether the property sold shall be real or personal. And the several collectors and assistants appointed under the authority of this act may, if they find no property to satisfy the taxes assessed upon any person by authority of the forty-ninth section of this act, and which such person neglects to pay as hereinbefore provided, shall have power, and it shall be their duty, to examine under oath the person assessed under this act, or any other person, and may sell at public auction, after ten days' notice, any stock, bonds, or choses in action, belonging to said person, or so much thereof as will pay such tax and the expenses of such sale; and in case he refuses to testify, the said several collectors and assistants shall have power to arrest such person and commit him to prison, to be held in custody until the same shall be paid, with interest thereon at the rate of six per centum per annum, from the time when the same was payable as aforesaid, and all fees and charges of such commitment and custody. And the place of custody shall in all cases be the same provided by law for the custody of persons committed for any cause by the authority of the United States, and the warrant of the collector, stating the cause of commitment, shall be sufficient authority to the proper officer for receiving and keeping such person in custody until the amount of said tax and interest, and all fees and the expense of such custody, shall have been fully paid and discharged; which fees and expenses shall be the same as are chargeable under the laws of the United States in other cases of commitment and custody. And it shall be the duty of such collector to pay the expenses of such custody, and the same, with his fees, shall be allowed on settlement of his accounts. And the person so committed shall have the same right to be discharged from such custody as may be allowed by the laws of the State

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or Territory, or the District of Columbia, where he is so held in custody, to persons committed under the laws of such State or Territory, or District of Columbia, for the non-payment of taxes, and in the manner provided by such laws; or he may be discharged at any time by order of the Secretary of the Treasury.

Act of Congress July 1, 1862, ch. 119, §§ 89–93, 12 Stat. 432, 473

Sec. 89. And be it further enacted, that for the purpose of modifying and re-enacting, as hereinafter provided, so much of an act, entitled "An act to provide increased revenue from imports to pay interest on the public debt, and for other purposes," approved fifth of August, eighteen hundred and sixty-one, as relates to income tax; that is to say, sections forty-nine, fifty (except so much as relates to the selection and appointment of depositaries) and fifty-one, be, and the same are hereby, repealed.

Sec. 90. And be it further enacted, That there shall be levied, collected, and paid annually, upon the annual gains, profits, or income of every person residing within the United States, whether derived from any kind of property, rents, interest, dividends, salaries, or from any profession, trade, employment, or vocation carried on in the United States or elsewhere, or from any other source whatever, except as hereinafter mentioned, if such annual gains, profits, or income exceed the sum of six hundred dollars, and do not exceed the sum of ten thousand dollars, a duty of three per centum on the amount of such annual gains, profits, or income over and above the said sum of six hundred dollars; if said income exceeds the sum of ten thousand dollars, a duty of five per centum upon the amount thereof exceeding six hundred dollars; and upon the annual gains, profits, or income, rents, and dividends accruing upon any property, securities, and stocks owned in the United States by any citizen of the United States residing abroad, except as hereinafter mentioned, and not in the employment of the govern-

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ment of the United States, there shall be levied, collected, and paid a duty of five per centum.

Sec. 91. And be it further enacted that in estimating said annual gains, profits, or income, whether subject to a duty, as provided in this act, of three per centum or of five per centum, all other national, state, and local taxes, lawfully assessed upon the property or other sources of income of any person as aforesaid, from which said annual gains, profits, or income of such person is or should be derived, shall be first deducted from the gains, profits, or income of the person or persons who actually pay the same, whether owner or tenant, and all gains, profits, or income derived from salaries of officers, or payments to persons in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above six hundred dollars, or derived from interest or dividends on stock, capital, or deposits in any bank, trust company, or savings institution, insurance, gas, bridge, express, telegraph, steamboat, ferry-boat, or railroad company or corporation, or on any bonds or other evidences of indebtedness of any railroad company or other corporation, which shall have been assessed and paid by said banks, trust companies, savings institutions, insurance, gas, bridge, telegraph, steamboat, ferry-boat, express, or railroad companies, as aforesaid, or derived from advertisements, or on any articles manufactured, upon which specific, stamp or ad valorem duties shall have been directly assessed or paid, shall also be deducted; and the duty hereinbefore provided for shall be assessed and collected upon the income for the year ending the thirty-first day of December next preceding the time for levying and collecting said duty, that is to say, on the first day of May, eighteen hundred and sixty-three, and in each year thereafter: Provided, that upon such portion of said gains, profits, or income, whether subject to a duty as provided in this act of three per centum or of five per centum, which shall be derived from interest upon notes, bonds, or other securities of the United States, there shall be levied, collect-

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ed, and paid a duty not exceeding one and one-half of one per centum, anything in this act to the contrary notwithstanding.

Sec. 92. And be it further enacted, That the duties on incomes herein imposed shall be due and payable on or before the thirtieth day of June, in the year eighteen hundred and sixty-three, and in each year thereafter until and including the year eighteen hundred and sixty-six and no longer; and to any sum or sums annually due and unpaid for thirty days after the thirtieth of June as aforesaid, and for ten days after demand thereof by the collector, there shall be levied in addition thereto the sum of five per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased and insolvent persons; and if any person or persons, or party, liable to pay such duty, shall neglect or refuse to pay the same, the amount due shall be a lien in favor of the United States from the time it was so due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all the property, and rights to property, stocks, securities, and debts of every description from which the income upon which said duty is assessed or levied shall have accrued, or may or should accrue; and in default of the payment of said duty for the space of thirty days, after the same shall have become due, and be demanded, as aforesaid, said lien may be enforced by distraint upon such property, rights to property, stocks, securities, and evidences of debt, by whomsoever holden; and for this purpose the Commissioner of Internal Revenue, upon the certificate of the collector or deputy collector that said duty is due and unpaid for the space of ten days after notice duly given of the levy of such duty, shall issue a warrant in form and manner to be prescribed by said Commissioner of Internal Revenue, under the directions of the Secretary of the Treasury, and by virtue of such warrant there may be levied on such property, rights to property, stocks, securities, and evidences of debt, a further sum, to be fixed and stated in such warrant, over and above the said annual duty, interest, and penalty for

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non-payment, sufficient for the fees and expenses of such levy. And in all cases of sale, as aforesaid, the certificate of such sale by the collector or deputy collector of the sale, shall give title to the purchaser, of all right, title, and interest of such delinquent in and to such property, whether the property shall be real or personal; and where the subject of sale shall be stocks, the certificate of said sale shall be lawful authority and notice to the proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor in lieu of any original or prior certificates, which shall be void whether cancelled or not; and said certificate of sale of the collector or deputy collector, where the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person or party holding the same, as against any person or persons, or other party holding or claiming to hold possession of such securities or other evidences of debt.

Sec. 93. And be it further enacted, That it shall be the duty of all persons of lawful age, and of all guardians and trustees, whether such trustees are so by virtue of their office as executors, administrators, or other fiduciary capacity, to make return in the list or schedule, as provided in this act, to the proper officer of internal revenue, of the amount of his or her income, or the income of such minors or persons as may be held in trust, as aforesaid, according to the requirements hereinbefore stated, and in case of neglect or refusal to make such return, the assessor or assistant assessor shall assess the amount of his or her income, and proceed thereafter to collect the duty thereon in the same manner as is provided for in other cases of neglect and refusal to furnish lists or schedules in the general provisions of this act, where not otherwise incompatible, and the assistant assessor may increase the amount of the list or return of any party making such return, if he shall be satisfied that the same is understated: Provided, that any party, in his or her

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own behalf, or as guardian or trustee, as aforesaid, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue, that he or she was not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act, or that he or she has been assessed elsewhere and the same year for an income duty, under authority of the United States, and shall thereupon be exempt from an income duty; or, if the list or return of any party shall have been increased by the assistant assessor, in manner as aforesaid, he or she may be permitted to declare, as aforesaid, the amount of his or her annual income, or the amount held in trust, as aforesaid, liable to be assessed, as aforesaid, and the same so declared shall be received as the sum upon which duties are to be assessed and collected.

[NOTE. This act was amended by Act Cong. March 3, 1863, 12 Stat. 713, 723, by adding the following: "In estimating the annual gains, profits, or income of any person, under the act to which this act is an amendment, the amount actually paid by such person for the rent of the dwelling house or estate on which he resides shall be first deducted from the gains, profits, or income of such person."]

Act of Congress June 30, 1864, 13 Stat. 223, 281, as amended by Act of Congress March 3, 1865, 13 Stat. 469, 479

Section 116. There shall be levied, collected, and paid annually upon the annual gains, profits, and income of every person residing in the United States, or of any citizen of the United States residing abroad, and whether derived from any kind of property, rents, interests, dividends, or salaries, or from any profession, trade, employment, or vocation, carried on in the United States or elsewhere, or from any other source whatever, a duty of five per centum on the excess over six hundred dollars and not exceeding five thousand dollars, and a duty of ten per centum on the excess over five thousand dollars; and in ascertaining the income of any person liable to an

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income tax, the amount of income received from institutions whose officers, as required by law, withhold a per centum of the dividends made by such institutions and pay the same to the Commissioner of Internal Revenue or other officer authorized to receive the same, shall be included, and the amount so withheld shall be deducted from the tax which otherwise would be assessed upon such person. And the duty herein provided for shall be assessed, collected, and paid upon the gains, profits, and income for the year ending on the thirty-first day of December next preceding the time for levying, collecting, and paying said duty: Provided, that incomes derived from interest upon notes, bonds, and other securities of the United States, and also all premiums on gold and coupons shall be included in estimating incomes under this act. Provided further, that only one deduction of six hundred dollars shall be made from the aggregate incomes of all the members of any family composed of parents and minor children, or husband and wife: And provided further, that net profits realized by sales of real estate purchased within the year for which income is estimated, shall be chargeable as income; and losses on sales of real estate purchased within the year for which income is estimated shall be deducted from the income of such year.

Section 117. In estimating the annual gains, profits, and income of any person, all national, state, county, and municipal taxes paid within the year shall be deducted from the gains, profits, or income of the person who has actually paid the same, whether owner, tenant, or mortgagor; also the salary or pay received for services in the civil, military, naval, or other service of the United States, including senators, representatives, and delegates in Congress, above the rate of six hundred dollars per annum; also the amount paid by any person for the rent of the homestead used or occupied by himself or his family, and the rental value of any homestead used or occupied by any person or by his family, in his own right or in the right of his wife, shall not be included and assessed as part of the income of such person. In estimating the annual gains, profits, or income of any person, the interest received or ac-

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crued upon all notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectable, less the interest paid by or due from such person, shall be included and assessed as part of the income of such person for each year; and also all income or gains derived from the purchase and sale of stocks or other property, real or personal, and of live stock, and the amount of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay or grain, or other vegetable or other productions, being the growth or produce of the estate of such person sold, not including any part thereof unsold or on hand during the year next preceding the thirty-first of December, until the same shall be sold, shall be included and assessed as part of the income of such person for each year, and his share of the gains and profits of all companies, whether incorporated or partnership, shall be included in estimating the annual gains, profits, or income of any person entitled to the same, whether divided or otherwise. In estimating deductions from income, as aforesaid, when any person rents buildings, lands, or other property, or hires labor to cultivate land, or to conduct any other business from which such income is actually derived, or pays interest upon any actual incumbrance thereon, the amount actually paid for such rent, labor, or interest shall be deducted; and also the amount paid out for usual or ordinary repairs, not exceeding the average paid out for such purposes for the preceding five years shall be deducted, but no deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments, made to increase the value of any property or estate: Provided, that in cases where the salary or other compensation paid to any person in the employment or service of the United States shall not exceed the rate of six hundred dollars per annum, or shall be by fees, or uncertain or irregular in the amount or in the time during which the same shall have accrued or been earned, such salary or other compensation shall be included in estimating the annual gains, profits, or income of the person to whom the same shall have been paid, in such manner as the commissioner of

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internal revenue, under the direction of the Secretary of the Treasury, may prescribe.

Section 118. It shall be the duty of all persons of lawful age to make and render a list or return, in such form and manner as may be prescribed by the commissioner of internal revenue, to the assistant assessor of the district in which they reside, of the amount of their income, gains, and profits as aforesaid; and all guardians and trustees, whether as executors, administrators, or in any other fiduciary capacity, shall make and render a list or return, as aforesaid, to the assistant assessor of the district in which such guardian or trustee resides, of the amount of income, gains, and profits of any minor or person for whom they act as guardian or trustee; and the assistant assessor shall require every list or return to be verified by the oath or affirmation of the party rendering it, and may increase the amount of any list or return, if he has reason to believe that the same is understated; and in case any person, guardian, or trustee shall neglect or refuse to make and render such list or return, or shall render a false or fraudulent list or return, it shall be the duty of the assessor or assistant assessor to make such list, according to the best information he can obtain, by the examination of such person, and his books and accounts, or any other evidence, and to add twenty-five per centum as a penalty to the amount of the duty due on such list in all cases of wilful neglect or refusal to make and render a list or return, and, in all cases of a false or fraudulent return having been rendered, to add one hundred per centum, as a penalty, to the amount of duty ascertained to be due, the duty and the additions thereto as penalty to be assessed and collected in the manner provided for in other cases of wilful neglect or refusal to render a list or return, or of rendering a false or fraudulent return: Provided, that any party, in his or her own behalf, or as guardian or trustee, shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the commissioner of internal revenue, that he or she, or his or her ward or beneficiary, was

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not possessed of an income of six hundred dollars, liable to be assessed according to the provisions of this act; or may declare that he or she has been assessed and paid an income duty elsewhere in the same year, under the authority of the United States, upon his or her gains and profits, as prescribed by law, and if the assistant assessor shall be satisfied of the truth of the declaration, shall thereupon be exempt from income duty in said district; or if the list or return of any party shall have been increased by the assistant assessor, such party may exhibit his books and accounts, and be permitted to prove and declare, under oath or affirmation, the amount of annual income liable to be assessed; but such oaths and evidence shall not be considered as conclusive of the facts, and no deductions claimed in such cases shall be made or allowed until approved by the assistant assessor. Any person feeling aggrieved by the decision of the assistant assessor in such cases may appeal to the assessor of the district, and his decision thereon, unless reversed by the commissioner of internal revenue, shall be final, and the form, time, and manner of proceedings shall be subject to rules and regulations to be prescribed by the commissioner of internal revenue.

Section 119. The duties on incomes herein imposed shall be levied on the first day of May, and be due and payable on or before the thirtieth day of June, in each year, until and including the year eighteen hundred and seventy, and no longer; and to any sum or sums annually due and unpaid after the thirtieth of June, as aforesaid, and for ten days after notice and demand thereof by the collector, there shall be levied in addition thereto the sum of ten per centum on the amount of duties unpaid, as a penalty, except from the estates of deceased and insolvent persons. And if any person liable to pay such duty shall neglect or refuse to pay the same, after such demand, the amount due shall be a lien in favor of the United States from the time it was due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all the property and rights to property belonging to such person; and in default of the pay-

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ment of the said duty aforesaid, such lien may be enforced by distraint upon such property, rights to property, stocks, securities, and evidences of debt, by whomsoever holden; and for this purpose, the collector, after demands duly given, as aforesaid, shall issue a warrant, in form and manner to be prescribed by the commissioner of internal revenue, under the directions of the Secretary of the Treasury, and by virtue of such warrant there may be levied on such property, rights to property, stocks, securities, and evidences of debt, a further sum, to be fixed and stated in such warrant, over and above the said annual duty, interest, and penalty for non-payment, sufficient for the fees, costs, and expenses of such levy. And in all cases of sale, as aforesaid, the certificate of such sale by the collector shall vest in the purchaser all right, title, and interest of such delinquent in and to such property, whether the property be real or personal; and where the subject of sale shall be stocks, the certificate of said sale shall be lawful authority and notice to the proper corporation, company, or association, to record the same on the books or records, in the same manner as if transferred or assigned by the person or party holding the same, to issue new certificates of stock therefor in lieu of any original or prior certificates, which shall be void whether cancelled or not. And said certificates of sale of the collector, when the subject of sale shall be securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

Sections 120 and 121. (These sections imposed a tax of five per cent on dividends declared by banks, trust companies, savings institutions, and insurance companies, and also the same tax on any undivided profits of such companies carried during the year to surplus or contingent funds.)

Section 122. (This section made a similar provision as to "railroad, canal, turnpike, canal navigation, and slackwater companies," in addition to taxing at the same rate the annual payments of interest on their bonds.)

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Section 123. There shall be levied, collected, and paid on all salaries of officers, or payments for services to persons in the civil, military, naval, or other employment or service of the United States, including senators and representatives and delegates in Congress, when exceeding the rate of six hundred dollars per annum, a duty of five per centum on the excess above the said six hundred dollars; and it shall be the duty of all paymasters, and all disbursing officers, under the government of the United States, or in the employ thereof, when making any payments to officers and persons as aforesaid, or upon settling and adjusting the accounts of such officers and persons, to deduct and withhold the aforesaid duty of five per centum, and [they] shall, at the same time, make a certificate stating the name of the officer or person from whom such deduction was made, and the amount thereof, which shall be transmitted to the office of the commissioner of internal revenue, and entered as part of the internal duties; and the pay-roll, receipts, or account of officers or persons paying such duty, as aforesaid, shall be made to exhibit the fact of such payment. And it shall be the duty of the several auditors of the Treasury Department, when auditing the accounts of any paymaster or disbursing officer, or when settling or adjusting the accounts of any such officer, to require evidence that the duties or taxes mentioned in this section have been deducted or paid over to the commissioner of internal revenue: Provided, that payments of prize money shall be regarded as income from salaries, and the duty thereon shall be adjusted and collected in like manner.

[NOTE. For various amendments to the foregoing statute, see Act Cong. March 10, 1866, 14 Stat. 4; Act Cong. July 13, 1866, 14 Stat. 98, 137–139; Act Cong. March 2, 1867, 14 Stat. 471, 477–480.]

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Act of Congress, July 14, 1870, c. 255, 16 Stat. 256

Section 6. There shall be levied and collected annually, as hereinafter provided, for the years eighteen hundred and seventy and eighteen hundred and seventy-one, and no longer, a tax of two and one-half per centum upon the gains, profits, and income of every person residing within the United States, and of every citizen of the United States residing abroad, derived from any source whatever, whether within or without the United States, except as hereafter provided, and a like tax annually upon the gains, profits, and income derived from any business, trade, or profession carried on in the United States by any person residing without the United States, and not a citizen thereof, or from rents of real estate within the United States owned by any person residing without the United States, and not a citizen thereof.

Section 7. In estimating the gains, profits, and income of any person, there shall be included all income derived from any kind of property, rents, interest received or accrued upon all notes, bonds, and mortgages, or other forms of indebtedness bearing interest, whether paid or not, if good and collectable, interest upon notes, bonds, or other securities of the United States; and the amount of all premium on gold and coupons; the gains, profits, and income of any business, profession, trade, employment, office, or vocation, including any amount received as salary or pay for services in the civil, military, naval, or other service of the United States, or as senator, representative, or delegate in Congress, except that portion thereof from which, under authority of acts of Congress previous hereto, a tax of five per centum shall have been withheld; the share of any person of the gains and profits, whether divided or not, of all companies or partnerships, but not including the amount received from any corporations whose officers, as authorized by law, withhold and pay as taxes a per centum of the dividends made, and of interest or coupons paid by such corporations; profits realized within

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the year from sales of real estate purchased within two years previous to the year for which income is estimated; the amount of sales of live stock, sugar, wool, butter, cheese, pork, beef, mutton, or other meats, hay and grain, fruits, vegetables, or other productions, being the growth or produce of the estate of such person, but not including any part thereof consumed directly by the family; and all other gains, profits, and income drawn from any source whatever, but not including the rental value of the homestead used or occupied by any person or by his family.

Section 8. Military or naval pensions allowed to any person under the laws of the United States, and the sum of two thousand dollars of the gains, profits, and income of any person, shall be exempt from said income tax, in the manner hereinafter provided. Only one deduction of two thousand dollars shall be made from the aggregate income of all members of any family composed of one or both parents and one or more minor children, or of husband and wife; but when a wife has by law a separate income, beyond the control of her husband, and is living separate and apart from him, such deduction shall then be made from her income, gains, and profits; and guardians and trustees shall be allowed to make the deduction in favor of each ward or beneficiary, except that in a case of two or more wards or beneficiaries comprised in one family, having joint property interest, only one deduction shall be made in their favor. For the purpose of allowing such deduction from the income of any religious or social community holding all their property and the income thereof jointly and in common, each five of the persons composing such society, and any remaining fractional number of such persons less than five over such groups of five, shall be held to constitute a family, and a deduction of two thousand dollars shall be allowed for each of such families. Any taxes on the incomes, gains, and profits of such societies now due and unpaid, shall be assessed and collected according to this provision, except that the deduction shall be only

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one thousand dollars for any year prior to eighteen hundred and seventy.

Section 9. In addition to the exemptions provided in the preceding section, there shall be deducted from the gains, profits, and income of any person all national, state, county, and municipal taxes paid by him within the year, whether such person be owner, tenant, or mortgagor; all his losses actually sustained during the year arising from fires, floods, shipwreck, or incurred in trade, and debts ascertained to be worthless, but excluding all estimated depreciation of values; the amount of interest paid during the year, and the amount paid for rent or labor to cultivate land, or to conduct any other business from which income is derived; the amount paid for the rent of the house or premises occupied as a residence for himself or his family, and the amount paid out for usual and ordinary repairs. No deduction shall be made for any amount paid out for new buildings, permanent improvements, or betterments made to increase the value of any property or estate.

Section 10. The tax hereinbefore provided shall be assessed upon the gains, profits, and income for the year ending on the thirty-first day of December next preceding the time for levying and collecting said tax, and shall be levied on the first day of March, eighteen hundred and seventy-one, and eighteen hundred and seventy-two, and be due and payable on or before the thirtieth day of April in each of said years. And in addition to any sum annually due and unpaid after the thirtieth day of April, and for ten days after notice and demand therefor by the collector, there shall be levied and collected, as a penalty, the sum of five per centum on the amount unpaid, and interest on said amount at the rate of one per centum per month from the time the same became due, except from the estates of deceased, insane, or insolvent persons.

Section 11. It shall be the duty of every person of lawful age, whose gross income during the preceding year exceeded two thousand dollars, to make and render a return on or before the day designated by law, to the assistant assessor of the district in which he resides of the gross amount of his income,

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gains, and profits as aforesaid; but not including the amount received from any corporation whose officers, as authorized by law, withhold and pay as taxes a per centum of the dividends made and of the interest or coupons paid by such corporations, nor that portion of the salary or pay received for services in the civil, military, naval, or other service of the United States, or as senator, representative, or delegate in Congress, from which tax has been deducted, nor the wages of minor children not received; and every guardian and trustee, executor or administrator, and any person acting in any other fiduciary capacity, or as resident agent for, or copartner of, any non-resident alien, deriving income, gains, and profits from any business, trade, or profession carried on in the United States, or from rents of real estate situated therein, shall make and render a return as aforesaid to the assistant assessor of the district in which he resides of the amount of income, gains, and profits of any minor or person for whom he acts. The assistant assessor shall require every such return to be verified by the oath of the party rendering it, and may increase the amount of any return, after notice to such party, if he has reason to believe that the same is understated. In case any person having a gross income as above, of two thousand dollars or more, shall neglect or refuse to make and render such return, or shall render a false or fraudulent return, the assessor or the assistant assessor shall make such return, according to the best information he can obtain by the examination of said person, or of his books or accounts, or by any other evidence, and shall add, as a penalty, to the amount of the tax due thereon, fifty per centum in all cases of willful neglect or refusal to make and render a return, and one hundred per centum in all cases of a false or fraudulent return having been rendered. The tax and the addition thereto as penalty shall be assessed and collected in the manner provided for in cases of willful neglect or refusal to render a return, or of rendering a false or fraudulent return. But no penalty shall be assessed upon any person for such neglect or refusal, or for making or rendering a false or fraudulent return, except after reasonable

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notice of the time and place of hearing, to be regulated by the commissioner of internal revenue, so as to give the person charged an opportunity to be heard: Provided that no collector, deputy collector, assessor, or assistant assessor shall permit to be published in any manner such income returns, or any part thereof, except such general statistics, not specifying the names of individuals or firms, as he may make public, under such rules and regulations as the commissioner of internal revenue shall prescribe.

Section 12. When the return of any person is increased by the assistant assessor, such person may exhibit his books and accounts and be permitted to prove and declare, under oath, the amount of income liable to be assessed; but such oath and evidence shall not be conclusive of the facts, and no deductions claimed in such case shall be allowed until approved by the assistant assessor. Any person may appeal from the decision of the assistant assessor, in such cases, to the assessor of the district, and his decision thereon, unless reversed by the commissioner of internal revenue, shall be final. The form, time, and manner of proceedings shall be subject to regulations to be prescribed by the commissioner of internal revenue.

Section 13. Any person in his own behalf, or as such fiduciary or agent, shall be permitted to declare, under oath, that he, or his ward, beneficiary, or principal, was not possessed of an income of two thousand dollars, liable to be assessed according to the provisions of this act; or may declare that an income tax has been assessed and paid elsewhere in the same year, under authority of the United States, upon his income, gains, and profits, or those of his ward, beneficiary, or principal, as required by law; and if the assistant assessor shall be satisfied of the truth of the declaration, such person shall thereupon be exempt from income tax in said district.

Section 14. Consuls of foreign governments who are not citizens of the United States shall be exempt from any income tax imposed by this act which may be derived from their official emoluments, or from property in foreign countries: Provided that the governments which such consuls may represent

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shall extend similar exemptions to consuls of the United States.

Section 15. There shall be levied and collected for and during the year eighteen hundred and seventy-one a tax of two and one-half per centum on the amount of all interest or coupons paid on bonds or other evidences of debt issued and payable in one or more years after date, by any of the corporations in this section hereinafter enumerated, and on the amount of all dividends of earnings, income, or gains hereafter declared, by any bank, trust company, savings institution, insurance company, railroad company, canal company, turnpike company, canal navigation company, and slack-water company, whenever and wherever the same shall be payable, and to whatsoever person the same may be due, including non-residents, whether citizens or aliens, and on all undivided profits of any such corporation which have accrued and been earned and added to any surplus, contingent, or other fund, and every such corporation having paid the tax as aforesaid, is hereby authorized to deduct and withhold from any payment on account of interest, coupons, and dividends an amount equal to the tax of two and one-half per centum on the same; and the payment to the United States, as provided by law, of the amount of tax so deducted from the interest, coupons, and dividends aforesaid, shall discharge the corporation from any liability for that amount of said interest, coupons, or dividends, claimed as due to any person, except in cases where said corporations have provided otherwise by an express contract: Provided, that the tax upon the dividends of insurance companies shall not be deemed due until such dividends are payable, either in money or otherwise; and that the money returned by mutual insurance companies to their policy holders, and the annual or semi-annual interest allowed or paid to the depositors in savings banks and savings institutions, shall not be considered as dividends; and that when any dividend is made, or interest as aforesaid is paid, which includes any part of the surplus or contingent fund of any corporation which has been assessed and the tax paid thereon, or which includes any part of the dividends, interest, or coupons re-

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ceived from other corporations whose officers are authorized by law to withhold a per centum on the same, the amount of tax so paid on that portion of the surplus or contingent fund, and the amount of tax which has been withheld and paid on dividends, interest, or coupons so received, may be deducted from the tax on such dividend or interest.

Section 16. Every person having the care or management of any corporation liable to be taxed under the last preceding section shall make and render to the assessor or assistant assessor of the district in which such person has his office for conducting the business of such corporation, on or before the tenth day of the month following that in which any dividends or sums of money become due or payable as aforesaid, a true and complete return in such form as the commissioner of internal revenue may prescribe, of the amount of income and profits and of taxes as aforesaid; and there shall be annexed thereto a declaration of the president, cashier, or treasurer of the corporation, under oath, that the same contains a true and complete account of the income and profits and of taxes as aforesaid. And for any default in the making or rendering of such return, with such declaration annexed, the corporation so in default shall forfeit, as a penalty, the sum of one thousand dollars; and in case of any default in making or rendering said return, or of any default in the payment of the tax as required, or of any part thereof, the assessment and collection of the tax and penalty shall be in accordance with the general provisions of law in other cases of neglect and refusal.

THE WISCONSIN INCOME TAX LAW OF 1911

Laws of Wisconsin 1911, c. 658, page 984, July 15, 1911

Section 1. There are added to the statutes thirty new sections to read: Section 1087m—1. There shall be assessed, levied, collected, and paid a tax upon incomes received during the year ending December 31, 1911, and upon incomes received annually thereafter, by such persons and from such sources

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as hereinafter described; provided, that firms, copartnerships, corporations, joint stock companies and associations which customarily close their annual accounts on a date other than December 31, or which customarily estimate their income or profits on a basis other than that of actual cash receipts and disbursements, may, with the consent and approval of the tax commission, return for assessment and taxation the income or profits earned during the business year for which the accounts of such person are customarily made up.

Section 1087m—2. 1. The term "person," as used in this act, shall mean and include any individual, firm, copartnership, and every corporation, joint stock company or association organized for profit and having a capital stock represented by shares, unless otherwise expressly stated.

2. The term "income," as used in this act, shall include:

(a) All rent of real estate, including the estimated rental of residence property occupied by the owner thereof.

(b) All interest derived from money loaned or invested in notes, mortgages, bonds or other evidences of debt of any kind whatsoever.

(c) All wages, salaries or fees derived from services; provided that compensation to public officers for public service shall not be computed as a part of the taxable income in such cases where the taxation thereof would be repugnant to the constitution.

(d) All dividends or profits derived from stock or from the purchase and sale of any property or other valuable acquired within three years previous or from any business whatever.

(e) All royalties derived from the possession or use of franchises or legalized privileges of any kind.

(f) And all other income of any kind derived from any source whatever except such as is hereinafter exempted.

3. The tax shall be assessed, levied, and collected upon all income, not hereinafter exempted, received by every person residing within the state, and by every non-resident of the state upon such income as is derived from sources within the state or within its jurisdiction. So much of the income of

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any person residing within the state as is derived from rentals, stocks, bonds, securities or evidences of indebtedness shall be assessed and taxed, whether such income is derived from sources within or without the state; provided, that any person engaged in business within and without the state shall, with respect to income other than that derived from rentals, stocks, bonds, securities or evidences of indebtedness, be taxed only upon that proportion of such income as is derived from business transactions and property located within [the] state, which shall be determined in the manner specified is [in] subdivision (e) of section 1770b, as far as applicable.

Section 1087m—3. Every corporation, joint stock company or association shall be allowed to make from its gross income the following deductions:

(a) Payments made within the year for personal services of officers and employés actually employed in the production of such income; provided, there be reported the name, address, and amount paid each such officer or employé to whom a compensation of seven hundred dollars or more shall have been paid during the assessment year.

(b) Other ordinary and necessary expenses actually paid within the year out of income in the maintenance and operation of its business and property, including a reasonable allowance for depreciation of property from which the income is derived. All bonds issued by a corporation shall be deemed an interest in the property and business of such corporation; and so much of the interest payable on such bonds as is represented by the ratio between the property located and business transacted within this state to he [the] total property and business of such corporation as provided in subdivision 3, of section 1087m—2, shall be subject to taxation under this act at the same rate as the income of such corporation. Such tax shall be assessed to the bondholders under the general designation "The Bondholders of ....." (inserting the name of the corporation), but shall be a lien upon the property and business of such corporation prior to all other liens, and unless paid by the bondholders shall be enforced against the corporation.

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When paid by the corporation the amount of such tax may be deducted from the next interest payment on such bonds, unless otherwise provided by contract.

(c) Losses actually sustained within the year and not compensated for by insurance or otherwise.

(d) Sums paid by such person within the year for taxes imposed by any state of this union or subdivision thereof, or any territory or possession of the United States, upon the source from which the income taxed by this act is derived.

(e) Dividends or income received within the year from stocks or interest in any firm, copartnership or corporation, joint stock company or association, the income of which shall have been assessed under the provisions of this act; provided, such firm, copartnership, corporation, joint stock company or association report at the time of assessment the name and address of each such person owning stocks or interest in the same and the amount of dividends or income paid such person during the assessment year.

(f) Interest received from bonds or other securities exempt from taxation under the laws of the United States.

Section 1087m—4. Persons other than corporations, joint stock companies or associations, in reporting incomes for purposes of taxation shall be allowed the following deductions:

(a) The ordinary and necessary expenses actually paid within the year in carrying on the profession, occupation, or business from which the income is derived, including a reasonable allowance for depreciation of the property from which the income is derived. But no deductions shall be made for any amount paid for personal services unless these be reported, the name, address, and the amount paid each such employé to whom a compensation of seven hundred dollars or more shall have been paid during the assessment year.

(b) Losses during the year and not compensated for by insurance or otherwise.

(c) Dividends or incomes received by any person from stocks, or interest in any firm, copartnership, corporation, joint stock company or association, the income of which shall have

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been assessed under the provisions of this act; provided, such firm, copartnership, corporation, joint stock company or association report at the time of assessment the name and address of each such person owning stock or interest in the same and the amount of dividends or income paid such person during the assessment year.

(d) Interest paid within the year on existing indebtedness; provided, the debtor reports the amount so paid, the form of the indebtedness, together with the name and address of the creditor.

(e) Interest received from bonds or other securities exempt from taxation under the laws of the United States.

(f) Salaries or other compensation received from the United States by officials thereof.

(g) Pensions received from the United States.

(h) Taxes paid by such persons during the year other than inheritance taxes upon the property or business from which the income hereby taxed is derived.

(i) All inheritances, devises and bequests received during the year upon which an inheritance tax shall have been paid to this state.

(j) Insurance to the total amount of ten thousand dollars received by any person or persons legally dependent upon the decedent, in payment of a death claim by any insurance company, fraternal benefit society or other insurer.

Section 1087m—5. 1. There shall be exempt from taxation under this act income as follows, to-wit:

(a) To an individual, income up to and including eight hundred dollars.

(b) To husband and wife, twelve hundred dollars.

(c) For each child under the age of eighteen years, two hundred dollars.

(d) For each additional person, for whose support the taxpayer is legally liable and who is entirely dependent upon the taxpayer for his support, two hundred dollars.

(e) The aforesaid exemptions shall not apply to incomes derived from sources within the state by non-residents

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thereof, nor to firms, copartnerships, corporations, joint stock companies nor associations. In computing said exemptions and the amount of taxes payable under section 1087m—7 of this act, the income of a wife shall be added to the income of her husband, and the income of each child under eighteen years of age to that of its parent or parents, when said wife or child is not living separately from said husband, parent or parents.

(2) Income of any mutual savings or loan and building association, or of any religious, scientific, educational, benevolent, or other association of individuals not organized or conducted for pecuniary profit.

(3) Incomes derived from property and privileges by persons now required by law to pay taxes or license fees directly into the treasury of the state in lieu of taxes, and such persons shall continue to pay taxes and license fees as heretofore.

(4) Incomes received by the United States, the state, and all counties, cities, villages, school districts or other political units of the state.

Section 1087m—6. 1. The tax to be assessed, levied, and collected upon the incomes of all persons, except as otherwise provided by law, after making such deductions and exemptions as are hereinbefore allowed, shall be computed at the following rates, to-wit:

(a) On the first one thousand dollars of taxable income or any part thereof, at the rate of one per cent.

(b) On the second one thousand dollars or any part thereof, one and one-fourth per cent.

(c) On the third one thousand dollars or any part thereof, one and one-half per cent.

(d) On the fourth one thousand dollars or any part thereof, one and three-fourths per cent.

(e) On the fifth one thousand dollars or any part thereof, two per cent.

(f) On the sixth one thousand dollars or any part thereof, two and one-half per cent.

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(g) On the seventh one thousand dollars or any part thereof, three per cent.

(h) On the eighth one thousand dollars or any part thereof, three and one-half per cent.

(i) On the ninth one thousand dollars or any part thereof, four per cent.

(j) On the tenth one thousand dollars or any part thereof, four and one-half per cent.

(k) On the eleventh one thousand dollars or any part thereof, five per cent.

(l) On the twelfth one thousand dollars or any part thereof, five and one-half per cent.

(m) On any sum of taxable income in excess of twelve thousand dollars, six per cent.

2. Providing, however, that the tax to be assessed, levied, and collected upon the incomes of corporations, joint stock companies or associations, after making due allowance for deductions as hereinbefore provided, shall be computed at the following rates to-wit:

(a) If the taxable income equals one per cent or less of the assessed value of the property used and employed in the acquisition of such income, the rate of tax shall be one half of one per cent of such income.

(b) If the taxable income equals more than one, but does not exceed two per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of tax shall be one per cent of such income.

(c) If the taxable income equals more than two, but does not exceed three per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of tax shall be one and one-half per cent of such income.

(d) If the taxable income equals more than three, but does not exceed four per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of the tax shall be two per cent of such income.

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(e) If the taxable income equals more than four, but does not exceed five per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of the tax shall be two and one-half per cent of such income.

(f) If the taxable income equals more than five, but does not exceed six per cent of the assessed value of the property used and employed in the acquisition of such income, the rate of the tax shall be three per cent of such income.

(g) And in like manner the tax upon the taxable income shall continue to increase at the rate of one-half of one per cent for each additional one per cent or fractional part thereof that the taxable income bears to the assessed value of the property used and employed in the acquisition of such income, until the rate of profits equals twelve per cent of such assessed value of the property used and employed in the acquisition of such income, when such rate shall continue as a proportional rate of six per cent of such taxable income.

Section 1087m—7. The legislature intends subsection 2, of section 1087m—6 of this act, to be a separable part thereof, so that said subsection may fail or be declared invalid without adversely affecting any other part of the act: provided that in event of its failing or being declared invalid the incomes of corporations, joint stock companies and associations shall be subject and shall be construed to have been subject to taxation at the rates specified in subsection 1, of section 1087m—6, and said incomes shall be reassessed by the tax commission and taxed for the years for which the rates provided in subsection 2 of section 1087m—6, shall have failed.

Section 1087m—8. 1. The state shall be divided into assessment districts by the state tax commission, but in no instance shall a county be divided.

2. Not less than thirty days prior to the first of March, 1912, there shall be selected and appointed by the state tax commission an assessor of incomes for each assessment dis-

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trict in the state, who shall hold office for the term of three years unless sooner removed as hereinafter provided. Such assessor shall be a citizen and an elector of this state, but need not be a resident of the district in which he is appointed to serve; provided, however, that so far as practicable preference shall be given in making such appointments to residents of the districts.

3. The tax commission may in its discretion transfer any assessor of incomes from one district to another and may remove any assessor of incomes or his deputy from office.

4. Before entering upon his duties such assessor of incomes shall subscribe to the constitutional oath and file the same in the office of the secretary of state.

5. The state tax commission may authorize any assessor of incomes to appoint such deputies and other assistants as may be required for the proper performance of his duties. Such deputies shall qualify in like manner and possess the same powers as the assessor.

Section 1087m—9. The salaries of the assessors of incomes and their deputies and assistants shall be fixed by the state tax commission, but such salaries, together with the expenses of such assessors and their deputies and assistants shall not in any year exceed in amount five cents for every thousand dollars of the valuation of all property as fixed by the tax commission in the state assessment of the preceding year. The assessor shall be furnished all necessary printing, stationery and postage, and he and his deputies shall be entitled to receive their actual necessary expenses while traveling in the performance of their duties. The salaries of the assessor and his assistants, and all such expenditures shall be audited and paid out of the state treasury in the same manner as other similar salaries and state expenses are audited and paid.

Section 1087m—10. 1. The state tax commission and the assessors of incomes shall annually on the first day of January, or as soon thereafter as practicable, proceed to assess as hereinafter provided every income received during the

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preceding calendar year liable to taxation under the provisions of this act. The assessment of corporations, joint stock companies and associations shall be made by the state tax commission, and the assessment of persons, other than corporations, joint stock companies and associations shall be by the county assessor of incomes.

2. In the performance of such duty the state tax commission and the county assessors of incomes shall respectively possess all powers now or hereafter granted by law to the state tax commission or assessors in the assessment of personal property and also the power to estimate incomes.

3. Every corporation, joint stock company or association, whether taxable under this act or not, shall furnish to the tax commission a true and accurate statement at such time, in such manner and form and setting forth such facts as said commission shall deem necessary to enforce the provisions of this act. Such statement shall be made upon the oath or affirmation of the president, vice-president or other principal officer and the treasurer of said corporation, joint stock company or association.

4. Whenever in the judgment of the assessor of incomes any person in his district other than a corporation, joint stock company or association shall be subject to an income tax under the provisions of this act, he shall require such person to make report in such manner and form as the tax commission may prescribe, specifying particularly among other items the amount of income received from services, unsecured notes, mortgages, bonds, stocks, real estate and other such information as the commission may deem necessary to enforce the provisions of this act.

5. Every guardian, trustee, executor, administrator, agent or receiver, and every other person or corporation acting in a fiduciary capacity, shall make and render to the assessor of incomes of the district in which such representative resides, a verified list or return as aforesaid of the amount of income of any such person, ward, or beneficiary. The

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return so made shall be signed by the person rendering it, and by the president or secretary thereof, if a corporation.

6. For each question unanswered, the assessor or deputy assessor, failing to present satisfactory cause for such omission to the state tax commission, shall be subject to a penalty of five dollars, and said penalty shall be deducted from the compensation of said assessor or deputy assessor at the time such compensation is paid.

Section 1087m—11. 1. Whenever evidence shall be produced before the state tax commission, which in the opinion of the commission, justifies the belief that in any one or more of the three next previous years the returns made by any corporation, joint stock company or association are incorrect, or are made with false or fraudulent intent, or when any corporation, joint stock company or association has failed or refused to make a return as required by law the state tax commission may require from every such corporation, joint stock company or association such further information with reference to its capital, income, losses, expenditures and business transactions as is deemed expedient. Upon the information so required the state tax commission may make such additions or corrections to the assessment as is deemed true and just, such corrections to be made in the next tax levy. Whenever the state tax commission shall so increase or make subject to tax any income, it shall give notice in writing to the person liable for the payment of the tax on said income of the amount of the assessment. Such notice may be served by registered mail.

2. In case any return made by any corporation, joint stock company or association is made with false or fraudulent intent or in case of a refusal or neglect to make a return as required by law, and an additional amount is discovered, the amount so discovered shall be subject to twice the original rate. The amount so added to the tax shall be collected at such time and in such manner as may be designated by the state tax commission.

3. In case of neglect occasioned by the sickness or ab-

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sence of an officer of any corporation, joint stock company or association required to make said return, or for other sufficient reason, the state tax commission may allow such further time for making and delivering such return as it may deem necessary, not to exceed thirty days.

4. If any of the corporations, joint stock companies or associations aforesaid shall fail or refuse to make a return at the time or times hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation, joint stock company or association shall be liable to a penalty of not less than one hundred dollars and not to exceed five thousand dollars at the discretion of the court.

5. Any officer of a corporation, joint stock company or association required by law to make, render, sign or verify any return who makes any false or fraudulent return or statement, with intent to defeat or evade the assessment required by this act to be made, shall upon conviction be fined not to exceed five hundred dollars or be imprisoned not to exceed one year, or both, at the discretion of the court, with the cost of prosecution.

Section 1087m—12. 1. Whenever the assessor of incomes or the county board of review herein provided for shall have reason to believe that in any one or more of the three next previous years the returns made by any person other than a corporation, joint stock company or association are incorrect or are made with false or fraudulent intent, or when any such person has failed or refused to make a return as required by law, the assessor or county board of review shall make such additions or corrections to the next assessment as he or they shall deem true and just. Whenever the assessor or the county board of review shall so increase or make subject to tax any income he or they shall give notice in writing to the person liable for the payment of the tax on said income of the amount of the assessment. Such notice may be served by registered mail.

2. In case any return made by any person other than a corporation, joint stock company or association is made

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with false or fraudulent intent, or in case of a refusal or neglect to make a return as required by law, and an additional amount is discovered, the amount so discovered shall be subject to twice the original rate.

3. Any person other than a corporation, joint stock company or association who fails or refuses to make a return at the time hereinbefore specified in each year or shall render a false or fraudulent return shall upon conviction be fined not to exceed five hundred dollars, or be imprisoned not to exceed one year, or both, at the discretion of the court, together with the cost of prosecution.

Section 1087m—13. Any corporation, joint stock company or association subject to assessment by the state tax commission, feeling aggrieved by the decision of said commission regarding the assessment of its income, shall be granted the same rights of hearing and appeal as are now granted corporations assessed by said commission.

Section 1087m—14. The state tax commission shall appoint three resident tax payers of each county to serve as a county board of review, and shall fix their compensation, which shall not be more than ten dollars per day, and shall be audited and paid in the same manner as the salary of assessors under this act is paid.

Section 1087m—15. The county clerk shall be clerk of such board, and shall keep an accurate record of all proceedings thereof, including a correct record of all changes in the assessment rolls made by the board. The county clerk shall take full minutes of all evidence given before the board; provided, however, that the board, with the approval of the assessor of incomes, may in cases where they deem it advisable, employ a stenographic reporter to take such evidence in shorthand, and extend the same in typewritten form. The county clerk shall preserve in his office a record of all such proceedings, minutes and evidence taken, and all documentary evidence offered. The stenographer shall be paid by the state, but the board may, in its dis-

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cretion, charge the expenses to the complaining party or parties appearing before the board.

Section 1087m—16. 1. The county board of review of each county, constituting an assessment district, shall meet annually on the last Monday of July at ten o'clock a. m. at the court house in said county to hear complaints and to review the assessments of income made by the assessor. A majority shall constitute a quorum.

2. In assessment districts composed of more than one county the board of review of the county designated by the assessor of incomes shall meet as provided above and the board of review of each remaining county of the district shall meet as soon thereafter as is possible for the assessor of incomes to be present. The date of such meeting shall be fixed by the assessor of incomes.

3. Notice of the annual meeting of each county board of review shall be published in a newspaper of the county at least one week previous to such meeting.

4. The board may adjourn from day to day, and from time to time, until its business is completed, but no adjournment other than from day to day shall be had except upon written request and for satisfactory cause shown.

5. Attendance of witnesses and the production of books and papers before said board may be compelled by subpœna, issued by the clerk thereof, a justice of the peace or a court commissioner.

Section 1087m—17. 1. The board shall hear and examine, and permit the assessor to examine, any aggrieved or other person upon oath who shall appear before it in relation to any assessment or commission [sic] of income, and may increase or lessen the amount of any income assessed, if satisfied from the evidence submitted and the statements of the assessor, that such change should be made.

2. The board shall not increase any assessments, nor assess any income not on the roll without notice in writing to the person liable for payment of the tax thereon, or his agent, if either be resident of the county, of such intention

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in time to appear and be heard before the board in relation thereof.

Section 1087m—18. No person subject to assessment by the county assessor shall be allowed in any action or proceeding to question any assessment of income, unless objections thereto shall first have been presented to the county board of review in good faith and full disclosure made under oath of any and all income of such party liable to assessment.

Section 1087m—19. 1. Any person dissatisfied with any determination of the county board of review may appeal within twenty days to the state tax commission, to whom a copy of the record of the board shall be certified, together with all evidence or a copy thereof, relating to such assessment.

2. The tax commission shall review such assessments from the record thus submitted and shall make necessary corrections and certify its conclusion to the county clerk, who shall duly notify the person liable for the tax and enter upon the assessment roll any change made by the commission.

Section 1087m—20. 1. The state tax commission shall complete the assessment of income for each corporation, joint stock company, and association on or before the fifteenth day of October in each year and compute the tax thereon, and shall thereupon forthwith certify to each county clerk a statement of the assessment of each corporation, joint stock company and association in his county and the amount of tax levied against each.

2. The state tax commission shall submit in their biennial report the amount of income tax collected for each county in the state, and shall designate the several general classes of property from which the incomes were received, the cost to the state and each county for the administration of the law, and all such facts as shall be required to give a definite understanding of the financial operations of the law.

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Section 1087m—21. The tax upon the income of persons other than corporations, joint stock companies and associations shall be computed by the county clerk, assisted by the assessor of incomes, and said clerk shall on or before November first, certify to each town, city and village clerk the names of all persons whose incomes are assessed in his own town, city or village, and the amount of tax levied against each such person, and such amount shall be entered by the town, city and village clerks in a separate column designated "income tax" upon the tax roll of the year, and shall be collected and paid as personal property taxes are now collected and paid.

Section 1087m—22. The place at which the income tax herein provided for shall be assessed, levied and collected shall be determined as follows:

1. In their return for purposes of assessment persons deriving incomes from within and without the state, or from more than one political subdivision of the state, shall make a separate accounting of the income derived from without the state and from each political subdivision of the state in such form and manner as the tax commission may prescribe.

2. The entire taxable income of every person deriving income from within and without the state or from within different political subdivisions of the state, when such person resides within the state, shall be combined and aggregated for the purpose of determining the proper exemptions and proper rate of taxation. The taxable income so computed shall be assessed, and taxes at such rate shall be paid, in the several towns, cities and villages in proportion to the respective amounts of income derived from each, counting that part of income derived from without the state when taxable as having been derived from the town, city or village in which said person resides.

3. Income derived by non-residents of the state from sources within the state or within its jurisdiction, shall be separately assessed and taxed in the town, city or village

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from which such income is derived, at a rate determined by the total income derived from within any single town, city or village.

4. All laws not in conflict with the provisions of this act regulating the time, place and manner of payment of taxes on personal property, the collection thereof by action, distress or otherwise and the return of personal property taxes unpaid, shall apply to the income tax herein provided for.

Section 1087m—23. The revenue derived from such income tax shall be divided as follows, to-wit: Ten per cent to the state, twenty per cent to the county and seventy per cent to the town, city or village in which the tax was assessed, levied and collected, which shall be remitted and accounted for in the same manner as the state and county taxes collected from property are remitted and paid.

Section 1087m—24. 1. No commissioner, assessor of incomes, deputy, member of a county board of review, or any other officer, agent, clerk or employé shall divulge or make known to any person in any manner except as provided by law any information whatsoever obtained directly or indirectly by him in the discharge of his duties or permit any income return or copy thereof or any paper or book so obtained to be seen or examined by any person except as provided by law.

2. Any officer, clerk, agent or employé violating any of the provisions of this section shall upon conviction thereof be punished by fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by imprisonment in the state prison for not more than two years, at the discretion of the court.

3. Such officer, agent, clerk or employé upon such conviction shall also forfeit his office or employment and shall be incapable of holding any public office in this state for a period of three years thereafter.

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4. Nothing herein shall be construed as preventing the assessment roll, the tax roll and all proceedings had before the county board of review and all evidence taken at such hearing from being open to public inspection at such times and under such conditions as the state tax commission may direct.

Section 1087m—25. 1. On and after the first Monday in January, 1912, the office of county supervisor of assessment is hereby abolished.

2. The assessor of incomes shall on and after the first Monday of January, 1912, in addition to the duties and powers herein imposed and conferred upon him, perform all the duties and possess all the powers heretofore imposed and conferred by law upon the said county supervisor of assessment. The assessor of incomes shall be under the direction and control of the state tax commission, and shall make such reports to the commission, to the county board of review and the county board of supervisors, and perform such other duties as the commission shall direct.

Section 1087m—26. Any person who shall have paid a tax upon his personal property during any year shall be permitted to present the receipt therefor to, and have the same accepted by, the tax collector to its full amount in the payment of taxes due upon the income of such person during said year. Any bank which has paid taxes during any year upon its shares assessed to the individual stockholders thereof shall be entitled, under the provisions of this section, to present the receipt therefor, and have the same accepted by the tax collector to its full amount in the payment of taxes upon the income of such bank during said year.

Section 1087m—27. Nothing contained in this act shall be construed to affect the assessment or collection of taxes assessed in the year 1911 or prior thereto, under present laws, nor to limit the power of assessors and boards of review relative to correcting assessment rolls, placing omitted property thereon, and reassessing property whenever

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such correction, insertion of omitted property, or reassessment might be made under the laws as they now exist.

Section 1087m—28. The state tax commission is hereby empowered to make such rules and regulations as it shall deem necessary in order to carry out the foregoing provisions.

Section 1087m—29. The state tax commission is hereby authorized to employ such clerks and specialists as are necessary to carry into effective operation this act.

Section 1087m—30. There is hereby appropriated from the general fund of the state, out of any money in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this act.

SOUTH CAROLINA INCOME TAX LAW

Civil Code South Carolina 1902, Sections 325–331

Section 325. There shall be annually assessed, levied and collected upon the gains, gross profits and income received during the preceding calendar year by every citizen of this state, whether such gains, profits or income be derived from any kind of property, rents, interests, dividends, or salaries, or from any profession, trade, employment, or vocation carried on in this state, or from any other source whatever, a tax of one per centum on the amount so derived over and above $2,500 and up to $5,000; one and one-half per centum on $5,000 and over, up to $7,500; two per centum on $7,500 and over, up to $10,000; two and one-half per centum on $10,000 and over, up to $15,000; three per centum on $15,000 and over; and a like tax shall be assessed, levied and collected annually upon the gains, profits and income from all property owned, and every business, trade or profession carried on in this state by persons residing without this state, excepting such corporations as are hereinafter excepted: Provided that, in estimating the gains, profits and income there shall not be included interest upon such bonds or securities of this state, or of the United States, the

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principal and interest of which are, by the law of their issue, exempt from taxation.

Section 326. In computing incomes, the necessary expenses actually incurred in carrying on any business, occupation or profession, not including remuneration to the taxpayer for personal supervision or the support and maintenance of his or her family, shall be deducted from the gross income or revenue; and the word "income," as used in this article, shall be deemed and taken to mean "gross profits:" Provided, that no deduction shall be made or allowed for any amount paid or contracted for permanent improvements or betterments made to increase the value of any property or estate, or for the increase of capital, capital stock or assets.

Section 327. The words "citizen" and "person," as used in this article, shall be deemed to include all natural persons, all copartnerships, and all members of any incorporated association, and to exclude, except as hereinafter included, all corporations duly chartered by the laws of the United States or of this or any other state.

Section 328. The tax herein provided for shall be assessed, levied, and collected in the same manner, at the same time, as other taxes, and by the same county officials as are now charged with the assessment, levy, and collection of state and county taxes, and shall be paid into the state treasury as other general state taxes.

Section 329. All persons liable for the payment of any of the tax herein provided for shall, at the time now or hereafter provided for the making of returns of personal property make, under oath, a full and complete list or return, in such form and manner as may be directed by the Comptroller General, to the auditor of the county in which they reside; or, in case of nonresidents, of the county or counties where said gains, profits, or income arise, of the amount of their income, gains, and profits as aforesaid, and the property or investment, if any, upon which the same are computed, and such other particulars as may be required by

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the Comptroller General. All persons, whether natural or corporations created by charter, acting as guardians, trustees, executors, administrators, agents, receivers, or in any other fiduciary capacity, shall make and render a list or return as aforesaid to the auditor of the county in which such persons or corporations acting in a fiduciary capacity reside or do business, of the income, gains and profits of any minor or person for whom they act.

Section 330. Any person or corporation failing or refusing to make the list or return required by this act, or rendering a willfully false or fraudulent list or return, shall be assessed by the auditor on account of said income tax, in such amount as appears to him from the best information obtainable by him either by examination of the defaulting taxpayer or any other evidence, that such taxpayer is liable for; and in case of failure or neglect to make said list or return, the said auditor shall add fifty per centum as a penalty to the amount of tax due; and in case of a willfully false or fraudulent return or list having been rendered, the auditor shall add one hundred per centum as a penalty to said tax; the tax and the additions thereto as a penalty to be assessed and collected in the manner provided for in the case of failure to make returns or lists of personal property.

Section 331. In every respect not herein specified, the returns for and the levy and collection of the tax provided in this act shall be subject to all the provisions of law relative to the assessment and collection of taxes on personal property.

VIRGINIA INCOME TAX LAW

Acts Virginia 1903, c. 148, p. 155, as amended by Acts 1908, c. 10, p. 20

Section 3. The taxable subjects shall be classified by schedules, as follows:

Section 10. The classification under schedule D shall be as follows, to wit: The aggregate amount of income in excess of one thousand dollars, whether received or due but

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not received, within the year next preceding the first of February in each year.

Income shall include:

First. All rents, except ground rents or rents charge. salaries, interest upon notes, bonds, or other evidences of debt, of whatever description, of the United States, or any other state or country, or any corporation, company, partnership, firm, or individual, collected or received during the year, less the interest due and paid during the year.

Second. The amount of all premiums on gold, silver, or coupons.

Third. The amount of sales of live stock and meat of all kinds, less the value assessed thereon the previous year by the commissioner of the revenue.

Fourth. The amount of sales of wood, butter, cheese, hay, tobacco, grain and other vegetable and agricultural productions during the preceding year, whether the same was grown during the preceding year or not, less all sums paid for taxes and for labor, fences, fertilizers, clover or other seed purchased and used upon the land upon which the vegetable and agricultural productions were grown or produced, and the rent of said land paid by said person, if he be not the owner thereof.

Fifth. All other gains and profits derived from any source whatever.

In addition to the sum of one thousand dollars as aforesaid, there shall be deducted from the income of the person assessed, all losses sustained during the year: provided further, that only one deduction of one thousand dollars shall be made from the aggregate income of any family, except that guardians may make a separate deduction of one thousand dollars, in favor of each ward, out of income coming to said ward.

Section 11. On income, as defined in this schedule, the tax shall be one per centum.

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OKLAHOMA INCOME TAX LAW

Laws Oklahoma 1907, p. 730

Section 1. At the time of making the assessment of real and personal property for taxation in this state, the assessor shall demand of each person a list of his income for the year ending June thirtieth last preceding, in excess of three thousand five hundred dollars. The blank for listing taxes shall contain the question: "Was your gross income from salaries, fees, trade, profession and property upon which a gross receipt or excise tax has not been paid, any and all of them, for the year ending June thirtieth last preceding, in excess of three thousand five hundred dollars?"

Section 2. If the person answers the question in the affirmative, he shall be furnished by the assessor with a blank in the following form, to-wit:

"To the Auditor of the State of Oklahoma: I hereby certify that my income from salaries, fees, trade, profession and property upon which a gross receipt or excise tax has not been paid, any and all of them, for the year ending June thirtieth, in excess of three thousand five hundred dollars was $....."

"I, ... being duly sworn, do certify that the foregoing certificate is true to the best of my knowledge and belief.

"....."

"Subscribed and sworn to before me this ..... day of .....

"....."

"Assessor."

Said person shall fill out, sign, and swear to said certificate before the assessor or other officer authorized by law to administer oaths, and such assessor shall forward the same to the state auditor not later than July first of that year, and said state auditor shall certify the amount of the tax due upon the income so reported to the county clerk of the county in which said person resides, who shall extend the

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same on the tax rolls and shall at the same time and in the same manner as is now, or may hereafter be, provided by law relative to the tax lists of the real and personal property, deliver the same to the county treasurer.

Section 3. It shall be the duty of the assessor of each township to furnish the state auditor a list of all persons whom he may find who are subject to the above tax and who have filled out the list above required, together with the names of other persons in his township not appearing thereon, who, in his opinion, may be liable for an income tax hereunder, and said state auditor may take such steps as he may deem necessary to require any such person whose name is added to make proper return of his said income, and to enable him to obtain such information he or anyone designated by him to obtain such information shall have the power to summon witnesses within the county in which such persons live. Provided, however, if any witness so subpœnaed fails and refuses to appear and give information as provided by this section, the state auditor shall certify such fact to any court and said court shall thereupon issue a subpœna requiring the person subpœnaed to appear and give testimony as required by this section, and if any such person subpœnaed shall fail or refuse to obey said subpœna, such person shall be punished as provided by law in cases of contempt.

Section 4. There is hereby levied, for the benefit of the available common school fund of the state, a tax of five mills on the dollar on the excess over the amount of three thousand five hundred dollars and less than five thousand, and seven and one-half mills on the dollar on the excess of five thousand dollars and less than ten thousand dollars, and twelve mills on the dollar on the excess over the amount of ten thousand dollars and less than twenty thousand dollars, and fifteen mills on the dollar on the excess over the amount of twenty thousand dollars and less than fifty thousand dollars, and twenty mills on the dollar on the excess over the amount of fifty thousand dollars and

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less than one hundred thousand dollars, and thirty-three and one-third mills on the dollar upon all amounts over one hundred thousand dollars of all gross incomes.

Section 5. The above tax shall not be levied upon the income derived from property upon which a gross receipt or excise tax has been paid.

Section 6. It shall be unlawful for any person to print or publish in any manner whatever any income tax return or any part thereof, or the taxes due thereon unless the tax herein becomes delinquent, and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not to exceed fifty dollars and imprisoned in the county jail not more than thirty days for each offense.

Section 7. If any of the taxes herein levied become delinquent they shall become a lien on all the property, personal and real, of such delinquent person and shall be subject to the same penalties and provisions as are all ad valorem taxes.

Section 8. Any person making the affidavits required herein, who shall knowingly swear falsely shall be guilty of perjury.

Section 9. Any assessor who shall fail or refuse to perform the duties herein imposed shall be guilty of malfeasance in office and shall forfeit the amount of taxes lost by the state by such failure or refusal, to be collected in a civil action in the name of the state against the assessor.

Section 10. All acts and parts of acts in conflict herewith are hereby repealed.

Section 11. An emergency is hereby declared to exist by reason whereof this act shall take effect and be in force from and after its passage and approval.

Approved May 26, 1908.

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NORTH CAROLINA INCOME TAX LAW

Acts North Carolina 1907, c. 256, §§ 22–25, p. 298

Section 22. The tax payer shall list his income for the year ending June first from any and all sources in excess of one thousand dollars.

Section 23. The blank for listing taxes shall contain the following question: "Was your gross income from salaries, fees, trade, profession and property not taxed, any or all of them, for the year ending June first, in excess of one thousand dollars?" If the tax payer answers this question in the affirmative, he shall be furnished by the list-taker with a blank in the following form, to wit:

"To the Corporation Commission of the State of North Carolina: I hereby certify that my income from salaries, fees, trade, profession and property not taxed, any or all of them, for the year ending June first, in excess of one thousand dollars was $.....

".....

"..... being duly sworn, says that the foregoing certificate is true to the best of his knowledge and belief.

"Subscribed and sworn to before me this .... day of ....."

Said tax payer shall fill out, sign, and swear to said certificate before the list-taker or other officer authorized by law to administer oaths, and the list-taker shall forward the same to the Corporation Commission of the State not later than July first of that year; and said Corporation Commission shall certify the amount of the tax due upon the income so reported to the chairman of the Board of County Commissioners of the county in which said tax payer resides, and the same shall be paid to the sheriff of said county, together with other taxes for that year; and it shall be unlawful for any person to print or publish in any manner whatever any income, tax return or any part thereof, or

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the amount or source of income appearing in any such return, or the taxes due thereunder, and any person offending against the provisions of this section shall be guilty of a misdemeanor and be punished by a fine not exceeding fifty dollars, or be imprisoned not more than thirty days for each offense.

At the time said tax payer states to the list-taker that he is liable for a tax upon his income, as herein provided, said list-taker shall note the same on a list to be kept by him for that purpose, and on or before July fifth next he shall return such list to the chairman of the Board of Commissioners of that county, and said chairman shall within five days thereafter furnish to said Corporation Commission a copy of such list, and the names of any other persons in his county not appearing thereon, who in his opinion may be liable for an income tax hereunder, and said Corporation Commission may take such steps as he may deem necessary to require any such person whose name is so added to make proper return of his said income.

Section 24. On all gross incomes as provided in the preceding section hereof, a tax shall be levied as follows: On the excess over the amount legally exempted, one per cent. The above tax shall not be levied upon the income derived from property already taxed, nor upon income less than one thousand dollars. The incomes subject to the above tax are those derived from property not taxed; from salaries, fees and commissions, public or private; from annuities, from trades or professions, and from any other sources the incomes from which are not specifically exempted from taxation by law.

Section 25. No city, town, township, or county shall levy any inheritance or income tax.

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HAWAIIAN INCOME TAX LAW

Session Laws Hawaii 1901, Act No. 20, pp. 31–35

Section 1. From and after the first day of July, A. D. 1901, there shall be levied, assessed, collected and paid annually upon the gains, profits, and income over and above one thousand dollars, derived by every person residing in the territory of Hawaii from all property owned, and all business, trade, profession, employment or vocation carried on in the territory, and by every person residing without the territory from all property owned, and every business, trade, profession, employment or vocation carried on in the territory, and by every servant or officer of the territory, wherever residing, a tax of two per cent. on the amount so derived during the year preceding.

Section 2. There shall be levied, assessed, collected and paid annually, except as hereinafter provided, a tax of two per cent. on the net profit or income above actual operating and business expenses, from all property owned, and every business, trade, employment or vocation carried on in the territory of Hawaii, of all corporations doing business for profit in the territory, no matter where created and organized: Provided, however, that nothing therein [herein] contained shall apply to corporations, companies or associations conducted solely for charitable, religious, educational or scientific purposes, including fraternal beneficiary societies, nor to insurance companies taxed on a percentage of the premium under the authority of another act.

Section 3. In estimating the gains, profits, and income of any person or corporation, there shall be included all income derived from interest upon notes, bonds and other securities, except such bonds of the territory of Hawaii, or of municipalities hereafter created by the territory, the principal and interest of which are by the law of their issuance exempt from all taxation; profits realized within the year from sales of real estate, including leaseholds purchased

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within two years, dividends upon the stock of any corporation; the amount of all premium on bonds, notes or coupons; the amount of sales of all movable property, less the amount expended on the purchase or production of the same, and in the case of a person not including any part thereof consumed directly by him or his family; money and the value of all personal property acquired by gift or inheritance, and all other gains, profits and income derived from any source whatsoever.

Section 4. The net profits or income of all corporations shall include the amounts paid or payable to, or distributed or distributable among shareholders from any fund or account, or carried to the account of any fund or used for construction, enlargements of plant, or any other expenditure or investment paid from the net annual profits made or acquired by said corporation. In computing incomes, the necessary expenses actually incurred in carrying on any business, trade, profession, or occupation, or in managing any property, shall be deducted, and also all interest paid by such person or corporation on existing indebtedness. And all government taxes and license fees paid within the year shall be deducted from the gains, profits or income of the person who, or the corporation which, has actually paid the same, whether such person or corporation be owner, tenant or mortgagor; also all losses actually sustained during the year incurred in trade or arising from losses by fire not covered by insurance, or losses otherwise actually incurred. Provided, that no deduction shall be made for any amount paid out for new buildings, permanent improvements or betterments made to increase the value of any property or estate. Provided, further, that no deduction shall be made for personal or family expenses, the exemption of one thousand dollars, mentioned in section 1, being in lieu of same. Provided, further, that where allowable herein, only one deduction of one thousand dollars shall be made from the aggregate annual income of all the members of one family composed of one or both parents and one or more minor

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children, or husband and wife; that guardians shall be allowed to make a deduction in favor of each and every ward, except where two or more wards are comprised in one family, in which case the aggregate deduction in their favor shall not exceed one thousand dollars. Provided, further, that in assessing the income of any person or corporation there shall not be included the amount received from any corporation, as dividends upon the stock of such corporation, if the tax of two per cent. has been assessed upon its net profits by said corporation as required by this act, nor any bequest or inheritance otherwise taxed as such.

Section 5. Every corporation doing business for profit in the Territory shall make and render to the assessor of its tax division, between the first and thirty-first days of July of each year, beginning in the year 1901, a full return verified by oath or affirmation of its duly empowered officer, in such form as the Treasurer of the Territory may prescribe, of all the following matters for the whole twelve months ending June 30th last preceding the date of such return:

First. The gross receipts of such corporation from sales made at home or abroad, and from all kinds of business of any name or nature;

Second. The expenses of such corporation, exclusive of interest, annuities and dividends;

Third. The amount paid on account of interest, annuities and dividends stated separately;

Fourth. The amount expended on permanent improvements;

Fifth. The amount paid in salaries or compensation of more than six hundred dollars to each person employed, and the name and amount paid to each.

Section 6. It shall be the duty of all persons of lawful age having an income of six hundred dollars or more for the preceding year, from all sources, and of all corporations made liable to income tax, to make and render a list or return, between the first and thirty-first days of July of each

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year, in such form as the Treasurer of the Territory may direct, to the assessor of the division in which such persons or corporations reside, locate or do business, of the amount of their or its income, gains and profits as aforesaid; and all guardians, trustees, executors, administrators, agents, receivers, and all corporations or persons acting in a fiduciary capacity, shall make or render a list or return, as aforesaid, to the assessor of the division in which such person or corporation, acting in a fiduciary capacity, resides or does business, of the amount of income, gains, and profits of any minor or person for whom they act; and the assessor shall require every list or return to be verified by the oath or affirmation of the person or authorized officer of the corporation making the same. If any person or corporation refuse or neglect to render such return within the time required as aforesaid, or renders a return which in the opinion of the assessor is false and fraudulent, or contains any understatement, it shall be lawful for the assessor to summon such person, or any of the officers of such corporation, or any person having possession, custody or care of books of account containing entries relating to the business of such person, or corporation, or any other person he may deem proper, wherever residing or found, to appear before him and produce such books at a time and place named in the summons, and to give testimony or answer interrogations under oath, respecting any income liable to tax or the returns thereof. False, willful testimony, given before such assessor shall be deemed perjury and punished as such.

Section 7. It shall be the duty of every person or corporation doing business for profit to keep full, regular and accurate books of accounts upon which all its transactions shall be entered from day to day in regular order, which books shall be open to the inspection of the assessor of the division or any person authorized by him to inspect the same, during business hours.

Section 8. When any person or corporation having a taxable income refuses or neglects to render any return or

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list required by law, or declines to take oath or affirmation thereto, the assessor may make such assessments as he may consider just, and the same shall be binding and conclusive upon all parties and shall not be subject to appeal. In case of any false or fraudulent return or valuation by any taxpayer, the assessor shall add 200 per cent. to the just valuation of the income of such taxpayer and the amount of the tax assessed on such increase shall become part of the tax on the said income.

Section 9. Any person or corporation who or which has made a legal return as aforesaid may appeal from the amount assessed to the Tax Appeal Court constituted under Act 51 of the Session Laws of 1896, in like manner as allowed in case of property tax appeals, and the said court is hereby authorized to hear and determine such appeals subject to the revision of the Supreme Court as provided in the case of property taxes. Where the words "valuation of property" or similar words occur in said act concerning such appeals the words "amount of taxable income" shall be understood in all proceedings in regard to appeals from assessments or judgments in income tax matters. Any person or corporation appealing from the assessment of the assessor shall lodge with the assessor on or before the first day of October of each year a notice in writing of his intention to appeal and the grounds of such appeal, and deposit with him the costs of appeal as prescribed in case of property taxes, which costs shall be subject to the regulations prescribed in said act. The said Tax Appeal Court shall sit for hearing of tax appeals under the authority of this act between the fifth and twenty-fifth days of October of each year.

Section 10. The taxes on income imposed shall be due and payable on or before the fifteenth day of November of each year; and any sum or sums annually due and unpaid after the said fifteenth day of November shall have added thereto ten per cent. on the amount which shall be and become a part of such tax. Interest at the rate of nine per cent. per

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annum shall be added to the amount of such tax and penalty from the time same shall become due.

INCOME TAX PROVISIONS IN STATUTES OF OTHER STATES

Massachusetts

"Personal estate, for the purpose of taxation, shall include * * * the income from an annuity, or from ships and vessels engaged in the foreign carrying trade within the meaning of section seven, and the excess above two thousand dollars of the income from a profession, trade or employment accruing to the person to be taxed during the year ending on the first day of May of the year in which the tax is assessed. Incomes derived from property subject to taxation shall not be taxed." Rev. Laws Mass. 1902, p. 206 (Gen. Stat. Mass. c. 11, § 4.)

Tennessee

"The amount of income derived from United States bonds, and all other stocks and bonds not taxed ad valorem, shall be taxable" at the rate of five per cent. Code Tenn. §§ 690, 710.

UNITED STATES REVISED STATUTES

Provisions of the Revised Statutes of the United States Applicable to the Assessment and Collection of Internal Revenue Taxes, as Amended by Various Subsequent Acts of Congress and Now in Force

Section 3165. *Revenue Officers May Administer Oaths and Take Evidence.* Every collector, deputy collector, and inspector is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

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Section 3167. *Unlawful Disclosure of Tax Returns.* It shall be unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge or to make known in any manner whatever not provided by law to any person the operations, style of work, or apparatus of any manufacturer or producer visited by him in the discharge of his official duties, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return by any person or corporation, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return or any part thereof or the amount or source of income, profits, losses, or expenditures appearing in any income return; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both, at the discretion of the court; and if the offender be an officer or employee of the United States he shall be dismissed from office and be incapable thereafter of holding any office under the Government.

Section 3172. *Canvass of Districts for Objects of Taxation.* Every collector shall, from time to time, cause his deputies to proceed through every part of his district and inquire after and concerning all persons therein who are liable to pay any internal-revenue tax, and all persons owning or having the care and management of any objects liable to pay any tax, and to make a list of such persons and enumerate said objects.

Section 3173. *Annual Returns of Persons Liable to Tax.* It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, in case of a special tax, on or before the thirty-first day of July in each year, in case of income tax on or before the first day of March in each year, and in other cases before the day on

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which the taxes accrue, to make a list or return, verified by oath or affirmation, to the collector or a deputy collector of the district where located, of the articles or objects, including the amount of annual income charged with a duty or tax, the quantity of goods, wares, and merchandise made or sold and charged with a tax, the several rates and aggregate amount, according to the forms and regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, for which such person, partnership, firm, association, or corporation is liable: *Provided,* That if any person liable to pay any duty or tax, or owning, possessing, or having the care or management of property, goods, wares, and merchandise, articles, or objects liable to pay any duty, tax, or license, shall fail to make and exhibit a list or return required by law, but shall consent to disclose the particulars of any and all the property, goods, wares, and merchandise, articles, and objects liable to pay any duty or tax, or any business or occupation liable to pay any tax as aforesaid, then, and in that case it shall be the duty of the collector or deputy collector to make such list or return, which, being distinctly read, consented to, and signed and verified by oath or affirmation by the person so owning, possessing, or having the care and management as aforesaid, may be received as the list of such person: *Provided further,* That in case no annual list or return has been rendered by such person to the collector or deputy collector as required by law, and the person shall be absent from his or her residence or place of business at the time the collector or a deputy collector shall call for the annual list or return, it shall be the duty of such collector or deputy collector to leave at such place of residence or business, with some one of suitable age and discretion, if such be present, otherwise to deposit in the nearest post office, a note or memorandum addressed to such person, requiring him or her to render to such collector or deputy collector the list or return required by law within ten days from the date of such note or memorandum, verified by oath or affirmation. And if any person, on being notified or required as aforesaid,

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shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is false or fraudulent, or contains any undervaluation or understatement, it shall be lawful for the collector to summon such person, or any other person having possession, custody, or care of books of account containing entries relating to the business of such person, or any other person he may deem proper, to appear before him and produce such books, at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects liable to tax or the returns thereof. The collector may summon any person residing or found within the State in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State, he may enter any collection district where such person may be found and there make the examination herein authorized. And to this end he may there exercise all the authority which he might lawfully exercise in the district for which he was commissioned.

Section 3174. *Summons, Form and Manner of Service.* Such summons shall in all cases be served by a deputy collector of the district where the person to whom it is directed may be found, by an attested copy delivered to such person in hand, or left at his last and usual place of abode, allowing such person one day for each twenty-five miles he may be required to travel, computed from the place of service to the place of examination; and the certificate of service signed by such deputy shall be evidence of the facts it states on the hearing of an application for an attachment. When the summons requires the production of books, it shall be sufficient if such books are described with reasonable certainty.

Section 3175. *Proceedings on Failure to Obey Summons.* Whenever any person summoned under the two preceding sections neglects or refuses to obey such summons, or to give testi-

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mony, or to answer interrogatories as required, the collectors may apply to the judge of the district court or to a commissioner of the circuit court of the United States for the district within which the person so summoned resides for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or commissioner shall have power to make such order as he shall deem proper not inconsistent with existing laws for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

Section 3176. *Procedure on Failure to Render Return or Rendering False Return.* When any person, corporation, company, or association refuses or neglects to render any return or list required by law, or renders a false or fraudulent return or list, the collector or any deputy collector shall make, according to the best information which he can obtain, including that derived from the evidence elicited by the examination of the collector, and on his own view and information, such list or return, according to the form prescribed, of the income, property, and objects liable to tax owned or possessed or under the care or management of such person or corporation, company or association, and the Commissioner of Internal Revenue shall assess all taxes not paid by stamps, including the amount, if any, due for special tax, income or other tax, and in case of any return of a false or fraudulent list or valuation intentionally he shall add 100 per centum to such tax; and in case of a refusal or neglect, except in cases of sickness or absence, to make a list or return, or to verify the same as aforesaid, he shall add 50 per centum to such tax. In case of neglect occasioned by sickness or absence as aforesaid the collector may allow such further time for making and delivering such list or return as he may deem necessary, not exceeding thirty days. The amount so added to the tax shall be collected at the same time and in the

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same manner as the tax unless the neglect or falsity is discovered after the tax has been paid, in which case the amount so added shall be collected in the same manner as the tax; and the list or return so made and subscribed by such collector or deputy collector shall be held prima facie good and sufficient for all legal purposes.

Section 3179. *Making False Return or Refusing to Produce Books; Penalty.* Whenever any person delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made, or, being duly summoned to appear to testify, or to appear and produce such books as aforesaid, neglects to appear or to produce said books, he shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

Section 3183. *Duty to Collect Taxes; Receipts to be Given.* It shall be the duty of the collectors, or their deputies, in their respective districts, and they are authorized, to collect all the taxes imposed by law, however the same may be designated. And every collector and deputy collector shall give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered, but no collector or deputy collector shall issue a receipt in lieu of a stamp representing a tax.

Section 3184. *Notice and Demand of Taxes.* Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

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Section 3186. *Lien of Taxes.* If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount shall be a lien in favor of the United States from the time when the assessment list was received by the collector, except when otherwise provided, until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and rights to property belonging to such person: *Provided, however,* that such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector in the office of the clerk of the district court of the district within which the property subject to such lien is situated: *Provided further,* whenever any state by appropriate legislation authorizes the filing of such notice in the office of the registrar or recorder of deeds of the counties of that state, or in the state of Louisiana in the parishes thereof, then such lien shall not be valid in that state as against any mortgagee, purchaser, or judgment creditor, until such notice shall be filed in the office of the registrar or recorder of deeds of the county or counties, or parish or parishes in the state of Louisiana, within which the property subject to the lien is situated.

Section 3187. *Taxes Collectible by Distraint.* If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid, by distraint and sale, in the manner hereafter provided, of the goods, chattels, or effects, including stocks, securities, and evidences of debt, of the person delinquent as aforesaid: *Provided,* That there shall be exempt from distraint and sale, if belonging to the head of a family, the school-books and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market-value of said sheep shall not exceed fifty dollars; the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an

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amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools, or implements, of a trade or profession, to an amount not greater than one hundred dollars shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt.

Section 3188. *Mode of Levying Distraint.* In such case of neglect or refusal, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the said lien exists, for the payment of the sum due as aforesaid, with interest and penalty for non-payment, and also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy.

Section 3189. *Delinquents Must Exhibit Evidence Relating to Property Distrained.* All persons, and officers of companies or corporations, are required, on demand of a collector or deputy collector about to distrain or having distrained on any property, or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due as aforesaid.

Section 3190. *Proceedings on Distraint.* When distraint is made, as aforesaid, the officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded, and the time and place of sale; and the said officer shall forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post-office, if there be one within five miles nearest to the residence of the

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person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof. Such time shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as herein provided, and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint. Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not for a time to exceed in all thirty days.

Section 3191. *Tax payable out of Proceeds of Sale.* When property subject to tax, but upon which the tax has not been paid, is seized upon distraint and sold, the amount of such tax shall, after deducting the expenses of such sale, be first appropriated out of the proceeds thereof to the payment of the tax. And if no assessment of such tax has been made upon such property, the collector shall make a return thereof in the form required by law, and the Commissioner of Internal Revenue shall assess the tax thereon.

Section 3192. *Distrained Property May be Purchased for United States.* When any property advertised for sale under distraint, as aforesaid, is of a kind subject to tax, and the tax has not been paid, and the amount bid for such property is not equal to the amount of the tax, the collector may purchase the same in behalf of the United States for an amount not exceeding the said tax. All property so purchased may be sold by the collector, under such regulations as may be prescribed by the Commissioner of Internal Revenue. The collector shall render to the Commissioner a distinct account of all charges incurred in such sales, and, in case of sale, shall pay into the Treasury the surplus, if any there be, after defraying all lawful charges and fees.

Section 3193. *Property Distrained Restored on Payment Before Sale.* In any case of distraint for the payment of the taxes aforesaid, the goods, chattels, or effects so distrained shall be restored to the owner or possessor, if, prior to the sale,

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payment of the amount due is made to the proper officer charged with the collection, together with the fees and other charges; but in case of non-payment as aforesaid, the said officers shall proceed to sell the said goods, chattels, or effects at public auction, and shall retain from the proceeds of such sale the amount demandable for the use of the United States, and a commission of five per centum thereon for his own use, with the fees and charges for distraint and sale, rendering the overplus, if any there be, to the person who may be entitled to receive the same.

Section 3194. *Certificate of Sale as Evidence.* In all cases of sale, as aforesaid, the certificate of such sale shall be prima-facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale, and shall transfer to the purchaser all right, title, and interest of such delinquent in and to the property sold; and where such property consists of stocks, said certificate shall be notice, when received, to any corporation, company, or association of said transfer, and shall be authority to such corporation, company, or association to record the same on their books and records in the same manner as if transferred or assigned by the party holding the same, in lieu of any original or prior certificates, which shall be void, whether canceled or not. And said certificates, where the subject of sale is securities or other evidences of debt, shall be good and valid receipts to the person holding the same, as against any person holding, or claiming to hold, possession of such securities or other evidences of debt.

Section 3195. *When Property Distrained is not Divisible.* When any property liable to distraint for taxes is not divisible, so as to enable the collector by a sale of part thereof to raise the whole amount of the tax, with all costs, charges, and commissions, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after satisfying the tax, costs, and charges, shall be paid to the person legally entitled to receive the same; or, if he cannot be found, or refuses to receive the same, shall be deposited in the Treasury of the United States, to be there held for his use until he makes

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application therefor to the Secretary of the Treasury, who, upon such application and satisfactory proofs in support thereof, shall, by warrant on the Treasury, cause the same to be paid to the applicant.

Section 3196. *When Real Estate May be Sold to Satisfy Taxes.* When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate.

Section 3197. *Proceedings for Seizure and Sale of Real Estate.* The officer making the seizure mentioned in the preceding section shall give notice to the person whose estate it is proposed to sell, by giving him in hand, or leaving at his last or usual place of abode, if he has any such within the collection-district where said estate is situated, a notice, in writing, stating what particular estate is to be sold, describing the same with reasonable certainty, and the time when and place where said officer proposes to sell the same; which time shall not be less than twenty nor more than forty days from the time of giving said notice. The said officer shall also cause a notification to the same effect to be published in some newspaper within the county where such seizure is made, if any such there be, and shall also cause a like notice to be posted at the post-office nearest to the estate seized, and in two other public places within the county; and the place of said sale shall not be more than five miles distant from the estate seized, except by special order of the Commissioner of Internal Revenue. At the time and place appointed, the officer making such seizure shall proceed to sell the said estate at public auction, offering the same at a minimum price, including the expense of making such levy, and all charges for advertising and an officer's fee of ten dollars. When the real estate so seized consists of several distinct tracts or parcels, the officer making sale thereof shall offer each tract or parcel for sale separately, and shall, if he deem it advisable, apportion the expenses, charges, and fees, aforesaid, to such several tracts or parcels,

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or to any of them, in estimating the minimum price aforesaid. If no person offers for said estate the amount of said minimum price, the officer shall declare the same to be purchased by him for the United States, otherwise, the same shall be declared to be sold to the highest bidder. And in case the same shall be declared to be purchased for the United States, the officer shall immediately transmit a certificate of the purchase to the Commissioner of Internal Revenue, and at the proper time as hereafter provided, shall execute a deed therefor, after its preparation and the indorsement of approval as to its form by the United States district attorney for the district in which the property is situate, and shall without delay cause the same to be duly recorded in the proper registry of deeds, and immediately thereafter shall transmit such deed to the Commissioner of Internal Revenue. And said sale may be adjourned from time to time by said officer for not exceeding thirty days in all, if he shall think it advisable so to do. If the amount bid shall not be then and there paid, the officer shall forthwith proceed to again sell the estate in the same manner. And it is hereby provided that all certificates of purchase and deeds of property purchased by the United States under the internal revenue laws, on sales for taxes, or under executions issuing from United States courts, which now are, or hereafter may be, found in the office of any collector, United States marshal, or United States district attorney, shall be immediately transmitted by such officers respectively to the Commissioner of Internal Revenue. And it is hereby further provided that, for the preparation and approval by the United States district attorney of each deed as above required, a fee of five dollars shall be allowed to that officer, to be paid by the United States, and which he shall account for in his emolument returns.

Section 3198. *Certificate of Purchase and Deed.* Upon any sale of real estate, as provided in the preceding section, and the payment of the purchase-money, the officer making the seizure and sale shall give to the purchaser a certificate of purchase, which shall set forth the real estate purchased, for

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whose taxes the same was sold, the name of the purchaser, and the price paid therefor; and if the said real estate be not redeemed in the manner and within the time hereafter provided, the said collector or deputy collector shall execute to the said purchaser, upon his surrender of said certificate, a deed of the real estate purchased by him as aforesaid, reciting the facts set forth in said certificate, and in accordance with the laws of the State in which such real estate is situate upon the subject of sales of real estate under execution.

Section 3199. *Collector's Deed Prima Facie Evidence.* The deed of sale given in pursuance of the preceding section shall be prima-facie evidence of the facts therein stated; and if the proceedings of the officer as set forth have been substantially in accordance with the provisions of law, shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real estate thus sold at the time the lien of the United States attached thereto.

Section 3200. *Seizure of Land in Other Districts in Same State.* Any collector or deputy collector may, for the collection of taxes imposed upon any person, and committed to him for collection, seize and sell the lands of such person situated in any other collection-district within the State in which such officer resides; and his proceedings in relation thereto shall have the same effect as if the same were had in his proper collection-district.

Section 3201. *Redemption of Land Before Sale.* Any person whose estate may be proceeded against as aforesaid shall have the right to pay the amount due, together with the costs and charges thereon, to the collector or deputy collector at any time prior to the sale thereof, and all further proceedings shall cease from the time of such payment.

Section 3202. *Redemption of Land After Sale.* The owners of any real estate sold as aforesaid, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be per-

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mitted to redeem the land sold, or any particular tract thereof, at any time within one year after the sale thereof, upon payment to the purchaser, or, in case he cannot be found in the county in which the land to be redeemed is situate, then to the collector of the district in which the land is situate, for the use of the purchaser, his heirs or assigns, the amount paid by the said purchaser and interest thereon at the rate of twenty per centum per annum.

Section 3203. *Record of Sales.* It shall be the duty of every collector to keep a record of all sales of land made in his collection-district, whether by himself or his deputies, or by another collector, in which shall be set forth the tax for which any such sale was made, the dates of seizure and sale, the name of the party assessed, and all proceedings in making said sale, the amount of fees and expenses, the name of the purchaser and the date of the deed; and said record shall be certified by the officer making the sale. And on or before the fifth day of each succeeding month he shall transmit a copy of such record of the preceding month to the Commissioner of Internal Revenue. And it shall be the duty of every deputy making sale, as aforesaid, to return a statement of all his proceedings to the collector, and to certify the record thereof. In case of the death or removal of the collector, or the expiration of his term of office from any other cause, said record shall be delivered to his successor in office; and a copy of every such record, certified by the collector, shall be evidence in any court of the truth of the facts therein stated.

Section 3204. *Redemptions to be Entered on Record.* When any lands sold, as aforesaid, are redeemed as heretofore provided, the collector shall make entry of the fact upon the record mentioned in the preceding section, and the said entry shall be evidence of such redemption.

Section 3205. *Successive Seizures May be Made.* Whenever any property, personal or real, which is seized and sold by virtue of the foregoing provisions, is not sufficient to satisfy the claim of the United States for which distraint or seizure is

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made, the collector may, thereafter, and as often as the same may be necessary, proceed to seize and sell, in like manner, any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

Section 3206. *Fees and Charges in Seizure Cases.* The Commissioner of Internal Revenue shall by regulation determine the fees and charges to be allowed in all cases of distraint and other seizures; and shall have power to determine whether any expense incurred in making any distraint or seizure was necessary.

Section 3207. *Proceedings in Chancery to Subject Land to Payment of Tax.* In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a district or circuit court of the United States, to enforce the lien of the United States for tax upon any real estate, or to subject any real estate 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 real estate 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 real estate in question, and, in all cases where a claim or interest of the United States therein is established, shall decree a sale of such real estate, 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.

Section 3208. *Commissioner to have Charge of Real Estate Acquired for United States.* The Commissioner of Inter-

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nal Revenue shall have charge of all real estate which has been or shall be assigned, set off, or conveyed, by purchase or otherwise, to the United States, in payment of debts arising under the laws relating to internal revenue, and of all trusts created for the use of the United States in payment of such debts due them; and, with the approval of the Secretary of the Treasury, may, at public vendue, and upon not less than twenty days' notice, sell and dispose of lands assigned or set off to the United States in payment of such debts, or vested in them by mortgage or other security, for the payment of such debts. And in cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon, at the rate of one per centum per month, to the United States, within two years from the date of the acquisition of such real estate, it shall be lawful for the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to release by deed, or otherwise convey such real estate to the debtor, from whom it was taken, or to his heirs or other legal representatives.

Section 3209. *List to be Sent to District where Taxpayer Resides or has Property.* Whenever a collector has on any list duly returned to him the name of any person not within his collection-district who is liable to tax, or of any person so liable who has, in the collection-district in which he resides, no sufficient property subject to seizure or distraint, from which the money due for tax can be collected, such collector shall transmit a statement containing the name of the person liable to such tax, with the amount and nature thereof, duly certified under his hand, to the collector of any district to which said person shall have removed, or in which he shall have property, real or personal, liable to be seized and sold for tax. And the collector to whom the said certified statement is transmitted shall proceed to collect the said tax in the same way as if the name of the person and objects of tax contained in the said certified statement were on any list of his

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own collection-district; and he shall, upon receiving said certified statement as aforesaid, transmit his receipt for it to the collector sending the same to him.

Section 3213. *Suits for Fines, Penalties, and Forfeitures.* It shall be the duty of the collectors, in their respective districts, subject to the provisions of this Title, to prosecute for the recovery of any sums which may be forfeited by law. All suits for fines, penalties, and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, qui tam or otherwise, before any circuit or district court of the United States, for the district within which said fine, penalty, or forfeiture may have been incurred, or before any other court of competent jurisdiction; and taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action.

Section 3214. *Suits for Taxes Not Brought Without Sanction of Commissioner.* No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner of Internal Revenue authorizes or sanctions the proceedings: *Provided,* That in case of any suit for penalties or forfeitures brought upon information received from any person, other than a collector or deputy collector, the United States shall not be subject to any costs of suit.

Section 3215. *Regulations as to Suits for Government of Officers.* It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to establish such regulations, not inconsistent with law, for the observance of revenue officers, district attorneys, and marshals, respecting suits arising under the internal-revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt

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collection of all revenues and debts due and accruing to the United States under such laws.

Section 3220. *Refund of Taxes and Penalties.* The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized, on appeal to him made, to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty: *Provided,* That where a second assessment is made in case of a list, statement, or return which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, unless it is proved that said list, statement, or return was not false or fraudulent, and did not contain any understatement or undervaluation.

Section 3224. *No Suit Maintainable to Restrain Assessment or Collection of Taxes.* No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.

Section 3225. *Suit to Recover Taxes Under Second Assessment.* When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, no taxes collected under such assessment shall be recovered by any suit, unless it is proved that the said list, statement, or return was not false

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nor fraudulent, and did not contain any understatement or undervaluation.

Section 3226. *Appeal to Commissioner Pre-Requisite to Suit for Recovery of Taxes Paid.* No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the Commissioner has been had therein: *Provided,* That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the Commissioner at any time within the period limited in the next section.

Section 3227. *Limitation of Actions for Recovery of Taxes Wrongfully Collected.* No suit or proceeding for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: *Provided,* That actions for such claims which accrued prior to June six, eighteen hundred and seventy-two, may be brought within one year from said date; and that where any such claim was pending before the Commissioner, as provided in the preceding section, an action thereon may be brought within one year after such decision and not after. But no right of action which was already barred by any statute on the said date shall be revived by this section.

Section 3228. *Claims for Refundment, Limitation.* All claims for the refunding of any internal tax alleged to have

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been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: *Provided,* That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date.

Section 3229. *Compromises.* The Commissioner of Internal Revenue, with the advice and consent of the Secretary of the Treasury, may compromise any civil or criminal case arising under the internal-revenue laws instead of commencing suit thereon; and, with the advice and consent of the said Secretary and the recommendation of the Attorney-General, he may compromise any such case after a suit thereon has been commenced. Whenever a compromise is made in any case there shall be placed on file in the office of the Commissioner the opinion of the Solicitor of Internal Revenue, or of the officer acting as such, with his reasons therefor, with a statement of the amount of tax assessed, the amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and the amount actually paid in accordance with the terms of the compromise.

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FORM 1000.

Form of Certificate to be Presented with Coupons or Interest Orders Stating Whether or not Exemption is Claimed Under Paragraph C, Section 2, of the Federal Income Tax Law

I do solemnly declare that I,....., a citizen or resident of the United States, and residing at....., am the owner of $..... bonds of the denominations of $....., each, Nos. .....
.....
of the.....
(Give name of debtor.)
know as.....bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons, due....., 191.., amounting to $....., or upon which there matured....., 191.., $..... of registered interest.

I {do / do not} now claim, with respect to the income represented by said interest, the benefit of a deduction of $..... allowed under paragraph C, Section II, of the Federal income-tax law.

Name .....
Address.....

Date....., 191...

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REVISED FORM 1000.

Ownership Certificate—Individual—Exemption not Claimed, Shall be in the Following Form and Shall be Printed on White Paper:

Form 1000. Revised.

OWNERSHIP CERTIFICATE—INDIVIDUAL—EXEMPTION NOT CLAIMED.

(To be furnished with coupons or interest orders showing ownership of bonds.)

.....
(Give name of debtor.)

.....
(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered
(Date of maturity of interest.)

interest, $....

I do solemnly declare that I am a citizen or resident of the United States and am the owner of the above-described bonds from which were detached the accompanying coupons, or from which I am entitled to the above-described registered interest, and that all of the information as given in this certificate is true and correct. I do not now claim exemption from having the normal tax of 1 per cent withheld from said income by the debtor at the source.

Date,....., 191..

.....
(Usual business signature of owner of bonds.)

.....
(Full post-office address of owner.)

*By .....*Agent.*
(Usual business signature of agent authorized to sign for owner.)

.....
(Full post-office address of agent.)

*NOTE 1.—To be filled in only when duly authorized agent executes this certificate for owner, in which case the name and address of owner must be given, and collecting agent first receiving certificate must stamp across face, "Satisfied as to identity and responsibility of agent" (giving name and address of collecting agent).

NOTE 2.—If securities are owned jointly by several persons one may sign, and the names, addresses, and proportion of ownership of each, indorsed on the back hereof.

NOTE 3.—When numbers of bonds are required to be given, same are to be entered on back hereof.

TREASURY DEPARTMENT, INTERNAL REVENUE—INCOME TAX.

(SIGNATURES MUST BE CLEARLY AND LEGIBLY WRITTEN.)

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On the back of said certificate there shall be printed, for the use of joint owners of bonds, the following form, to wit:

JOINT OWNERS.

If securities described on other side are owned jointly, the names and addresses of owners and the proportion of ownership of each should be given.

Names.	Full post-office addresses.	Proportion owned.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

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FORM 1000 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.

No. .....

I (we) ..... do solemnly declare that the
(Name of collecting agent.)

owner of $..... bonds of the ..... from which
(Name of debtor organization.)

were detached the accompanying interest coupons due .....,
(Maturity.)

191–, amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form No. ....., which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191–," and in which the said
(Name of collecting agency.) (Date.)

owner {does / does not} claim, with respect to the income represented by said interest, the benefit of a deduction of $....., allowed under paragraph C, Section II, of the Federal income-tax law, the total exemption to which said owner now claims to be entitled thereunder being $....., and I (we) do hereby promise and pledge {myself / ourselves} to forward the above-described certificate executed by the owners as stated and dated ....., 191–, to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Date ....., 191–. Address .....

The certificate of the owner, for which the foregoing certificate of the collecting agent may be thus substituted by the collecting agent first receiving said coupons for collection, must be given the following indorsement by the collecting agents and should be made preferably with a rubber stamp:

Owner's certificate No. .....

.....
(Name of collecting agency.)

....., 191–.
(Give date of certificate.)

The counterpart of the within certificate bearing like number was attached to the coupons within mentioned for delivery to the debtor or withholding agent, by whom the coupons are payable.

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REVISED FORM 1000 B.

Ownership Certificate—Individual—Exemption Claimed, Shall be in the Following Form, and Shall be Printed on Yellow Paper:

Form 1000 B. Revised.

TREASURY DEPARTMENT.
INTERNAL REVENUE—INCOME TAX.

OWNERSHIP CERTIFICATE—INDIVIDUAL—EXEMPTION CLAIMED.

(To be furnished with coupons or interest orders showing ownership of bonds and amount of exemption claimed under paragraph C of the Federal income-tax law.)

.....
(Give name of debtor.)

.....
(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered interest, $....
(Date of maturity of interest.)

Total exemption allowed under paragraph C, $.....

Amount of exemption now claimed, $.....

I do solemnly declare that I am a citizen or resident of the United States and am the owner of the above-described bonds from which were detached the accompanying coupons, or from which I am entitled to the above-described registered interest, and that all of the information as given in this certificate is true and correct.

Date, ..., 191..

.....
(Usual business signature of owner of bonds.)

.....
(Full post-office address of owner.)

*By ....., *Agent.*
(Usual business signature of agent authorized to sign for owner.)

.....
(Full post-office address of agent.)

*NOTE 1.—To be filled in only when duly authorized agent executes this certificate for owner, in which case the name and address of owner must be given, and collecting agent first receiving certificate must stamp across face "Satisfied as to identity and responsibility of agent" (giving name and address of collecting agent).

NOTE 2.—If securities are owned jointly by several persons one may sign, and the names, addresses, and proportion of ownership of each indorsed on the back hereof.

NOTE 3.—When numbers of bonds are required to be given, same are to be entered on back hereof.

(SIGNATURES MUST BE CLEARLY AND LEGIBLY WRITTEN.)

On the back of said certificate there shall be printed, for the use of joint owners of bonds, the following form, to wit:

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JOINT OWNERS.

If securities described on other side are owned jointly, the names and addresses of owners and the proportion of ownership of each should be given.

Names.	Full post-office addresses.	Proportion owned.
.....	.....	.....
.....	.....	.....
.....	.....	.....

FORM 1001.

Certificate to be Furnished by Organizations Not Subject to Tax on Interest at Source

I, ..., the .....of the
(Give name.) (Give official position.)
..... a ..... of ..... locat-
(Name of organization.) (Character of organization.) (State.)
ed at .....do solemnly declare that said
(Post-office address.)
..... is the owner of $..... bonds of the
(Give name of organization.)
denomination of $..... each, Nos.....
.....
.....of the.....
(Give name of debtor.)
known as.....bonds,
(Describe particular issue of bonds.)
from which were detached the accompanying coupons, due .....
191.. amounting to $....., or upon which there matured .....
191.. $..... of registered interest, and that under the provisions of the income-tax law of October 3, 1913, said interest is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed.

Name.....
(Official position.)
Of.....
(Name of organization.)
Date .....191.. Address.....
(Post office.)

This certificate must be signed by the full name of the organization, stating its place of business, and by the president, secretary, or some other principal officer of the said corporation or organization duly authorized to sign same, together with the date of execution.

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REVISED FORM 1001.

Ownership Certificate—Firms and Organizations, Shall be in the Following Form, and Shall be Printed on Yellow Paper:

Form 1001. Revised.

TREASURY DEPARTMENT, INTERNAL REVENUE—INCOME TAX.

OWNERSHIP CERTIFICATE—FIRMS AND ORGANIZATIONS.

(Showing ownership of bonds, which is to be furnished by firms or organizations not subject to withholding of tax on interest at source.)

.....

(Give name of debtor.)

.....

(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered

(Date of maturity of interest.)

interest, $....

I do solemnly declare that the firm or organization named below, and of which I am a member or an officer, is the owner of the above-described bonds from which were detached the accompanying coupons, or upon which there is due the above-described registered interest, and that under the provisions of the Income Tax Law and Regulations said interest is exempt from having the tax withheld at the source, and that all the information given herein is true and correct.

Date, ..., 191.. .....

(Name of firm or organization.)

By .....

(Signature of person duly authorized to sign, and his official position.)

Address: .....

(Give full post-office address of firm or organization.)

NOTE.—When numbers of bonds are required to be given, same are to be entered on back hereof.

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FORM 1001 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

(*When owner is a domestic organization not subject to taxes on income at source.*)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the
(Name of collecting agent.)

owner of $..... bonds of the .....,
(Name of debtor organization.)

from which were detached the accompanying interest coupons due

....., 191.., amounting to $....., has filed with me
(Maturity.)

(us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form No. 1001, which certificate has been indorsed by me (us) as follows: "Owner's certificate No.

....., ..., ..., 191..," and
(Name of collecting agency.) (Date.)

that under the provisions of the income-tax law of October 3, 1913, said interest is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed, and I (we) do hereby promise and pledge {myself / ourselves} to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191...

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FORM 1002.

Form of Certificate to be Presented With Coupons or Interest Orders When Not Accompanied by Certificate of Owners

I, ..., the ..... of
(Name.) (Official position.)
the ....., of ..... do solemnly de-
(Bank or collecting agency.) (Address.)
clare that said..... has (or have) purchased or accept-
(Collecting agency.)
ed for collection the accompanying coupons or interest orders amounting to $....., and which represent interest matured on $.....
of bonds of the ..... and that .....
(Name of debtor.) (Collecting agency.)
received said coupons or orders for registered interest from
..... of ....., and that
(Name of party from whom received.) (Address of said party.)
no certificate of ownership accompanied said coupons or interest orders, and ..... hereby acknowledges responsibility of
(Collecting agency.)
withholding therefrom the normal income tax of 1 per cent, in accordance with the regulations of the Treasury Department.

Name .....
(Collecting agency.)

By .....
(Signature of officer duly authorized to sign, and his official position.)

Address .....
(Give full address.)

Date..... 191...

This certificate shall be dated and signed by and shall state the address of the corporation, organization, collecting agency, or person withholding the tax, with full name and address.

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REVISED FORM 1002.

Certificate for Use of First Bank or Collecting Agency, Shall be in the Following Form, and Shall be Printed on Green Paper:

Form 1002. Revised.

TREASURY DEPARTMENT, INTERNAL REVENUE—INCOME TAX.

CERTIFICATE OF BANK OR COLLECTING AGENCY.

(To be presented with coupons or interest orders when not accompanied by certificate of owners.)

.....
(Give name of debtor.)

.....
(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered
(Date of maturity of interest.)
interest, $....

I (we) do solemnly declare that the bank or collecting agency named below has purchased or accepted for collection the accompanying coupons or interest orders from

....., of .....
(Name of party from whom received.) (Full post-office
..... and that no certificate of own-
address of said party.)
ership accompanied said coupons or interest orders, and that I (we) have no knowledge as to who is the owner or owners of the bonds (except as noted on back hereof)* upon which the above-described interest is due, and the bank or collecting agency hereby acknowledges responsibility of withholding therefrom the normal income tax of 1 per cent, in accordance with the regulations of the Treasury Department.

Date, ..., 191.. .....
(Bank or collecting agency.)

By .....,.....
(Signature of officer authorized to sign and official position.)

.....
(Full address of bank or withholding agency.)

*NOTE.—If the ownership of bonds is known to person signing this certificate, he must give the name and address of the owner on the back hereof.

(SIGNATURES MUST BE CLEARLY AND LEGIBLY WRITTEN.)

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FORM 1003.

Form of Certificate to be Filled Out and Signed by Members of Partnerships

The following certificate should be used when coupons or interest orders are presented by citizens or residents of the United States for collection of interest on bonds, or other similar obligations, owned by the partnerships of which they are members:

I, ..., a member of the firm or partnership of ..... of ..... and residing at ..... do solemnly declare that the said partnership is
(Give full address.)
the owner of $..... bonds of the denomination of $..... each, Nos.....
.....
of the .....
(Give name of debtor.)
known as ..... bonds, from which were
(Describe the particular issue of bonds.)
detached the accompanying interest coupons, due ..... 191.., amounting to $....., or upon which there matured ..... 191.., $..... of registered interest, and that the name and address of said firm or partnership, and the names of the individual members thereof, and their places of residence, are as follows:

Names of partners:	Address:
.....	.....
.....	.....
.....	.....
.....	.....

Name of partner signing: .....
Of firm of: .....
Address: .....

Date.....191..

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FORM 1003 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

(When said owners are firms or copartnerships in the United States.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the
(Name of collecting agent.)

owner of $....., bonds of the .....,
(Name of debtor organization.)

from which were detached the accompanying interest coupons due ....., 191.., amounting to $....., has filed with me
(Maturity.)

(us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form No. 1003, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191.."
(Name of collecting agency.) (Date.)

and that the name and address of the firm or partnership, and the names of the individual members thereof, and their places of residence were recorded on said original certificate, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191..

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FORM 1004.

Form of Certificate to be Presented with Coupons or Interest Orders, Detached from Bonds or Other Obligations Owned by Those Who are Both Citizens or Subjects, and Residents of Foreign Countries

I do solemnly declare that I am not a citizen or resident of the United States of America, but a subject (or citizen) of....., and that I am the owner of $..... bonds of the denominations of $..... each, Nos.....
.....
of the.....known as
(Give name of debtor corporation.)
..... bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons, due....., 191.., amounting to $....., or upon which there matured ....., 191.., $....., of registered interest, and that being a nonresident foreigner, I am exempt from the income tax imposed on such interest by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States, or any of its possessions, has any interest in said bonds, coupons, or interest.

Signature of owner of bonds.....
(Give full name.)

Date....., 191..

Address.....
(Give full post office address.)

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REVISED FORM 1004.

Ownership Certificate—Nonresident Aliens, Shall be in the Following Form, and Shall be Printed on Yellow Paper:

Form 1004. Revised.

TREASURY DEPARTMENT.
INTERNAL REVENUE—INCOME TAX.

OWNERSHIP CERTIFICATE—NONRESIDENT ALIENS.

(To be furnished with coupons detached from bonds or other obligations owned by citizens or subjects, firms, corporations, or organizations of foreign countries and who are not residents of the United States.)

.....
(Give name of debtor.)

.....
(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered
(Date of maturity of interest.)

interest, $....

I do solemnly declare that the owner of the bonds from which were detached the accompanying coupons, or upon which there matured the aforesaid registered interest, is a nonresident alien in respect to the United States, and is exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913; that no citizen of the United States wherever residing, or foreigner residing in the United States or in any of its possessions, has any interest in said bonds; and that all of the information as given in this certificate is true and correct.

Date, ..., 191.. .....
(Signature of owner or, if organization, name.)

.....
(If organization, signature of official authorized to sign, and official position.)

.....
(Full post-office address of owner.)

NOTE.—When numbers of bonds are required to be given, same are to be entered on back hereof.

(SIGNATURES MUST BE CLEARLY AND LEGIBLY WRITTEN.)

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FORM 1004 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

(When owners are both citizens or subjects and residents of foreign countries.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the
(Name of collecting agent.)

owner of $..... bonds of the .....,
(Name of debtor organization.)

from which were detached the accompanying interest coupons due ....., 191.., amounting to $....., has filed with me
(Maturity.)

(us) a duly executed certificate filled up in accordance with Treasury Regulations of October 25, 1913, Form *No. 1004*, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191..,"
(Name of collecting agency.) (Date.)

and that the owner in said certificate declares that, being a nonresident foreigner, said interest is exempt from the income tax imposed on such interest by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States, or any of its possessions, has any interest in said bonds, coupons, or interest; and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191...

FORM 1005.

Form of Temporary Certificates Which May Be Used Only Prior to November 16, 1913, Subject to Substitution

I (we) hereby certify that I am (we are) lawfully entitled to present for payment the accompanying coupons or interest orders amounting to $..... (giving amount) representing interest matured on the

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following bonds.....(giving name of debtor and designating the description, style, and numbers of the bonds); that said coupons or interest orders came into my (our) possession unaccompanied by a certificate of ownership of said bonds, in any of the forms required by the regulations of the United States Treasury Department; and that the name and address of the owner of such bonds are as follows: .....(give name and address of owner; if impossible to do this, so state).

Name of person, firm, or corporation presenting coupons:

.....

Address.....

FORM 1006.

Form of Certificate to be Filed by Persons, Firms or Organizations, Required to Withhold and Pay Said Tax, Other Than the Debtor at the Source

To ..... Collector of Internal Revenue
(Name of Collector of Internal Revenue.)

.....
(Give address and designate district.)

I, ..., ...
(Name.) (Official title, if any.)

of the....., ...
(Person, firm or organization.) (capacity in which acting.)

of ....., do solemnly declare that I (we)
(Post-office address.)

received of....., $....., same being
(Name from whom received.)

income derived from.....
(state source, whether rents, salary or other sources.)

belonging to ....., ...
(give name of person to whom income is due.) (address.)

and that the tax thereon amounting to $..... to which said person is subject, has been withheld at the source of said income by ....., ...
(Name of person withholding.) (Post-office address.)

(Signed) .....

(Address) .....
(Street & No.)

Date: ....., 191..

.....
(City and State.)

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FORM 1007.

Form for Claiming Exemption at the Source as Provided in Paragraph C, Section 2, of the Federal Income Tax Law of October 3, 1913

To .....
(Give name of withholding agent.)

.....
(Post-office address.)

I hereby serve you with notice that I ..... am *single—married and living with my wife—husband* and now claim
(strike out so as to show status correctly.)

the benefit of the exemption of $..... as allowed in paragraphs C and D of Section 2 of the Federal Income Tax Law of October 3, 1913 (my total exemption under said paragraphs being $.....).

(Signed).....

(Address).....
(Street and No.)

Date....., 191..

.....
(City and State.)

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REVISED FORM 1007.

Certificate Claiming Exemption, Allowed Citizens and Resident Aliens Under Paragraph C, Shall be in the Following Form, and Shall be Printed on Yellow Paper:

Form 1007. Revised.

TREASURY DEPARTMENT, INTERNAL REVENUE—INCOME TAX.

EXEMPTION CERTIFICATE ———.

(For claiming exemption at the source as provided in paragraph C of the Federal income tax law of October 3, 1913.)

To .....
(Give name of withholding agent.)

.....
(Full post-office address.)

I hereby serve you with notice that I am single—married, with my (wife—husband) living with me, and that I now claim the benefit of the exemption of $....., as allowed in paragraph C of the Federal income tax law of October 3, 1913 (my total exemption under said paragraph being $.....).

Date, ..., 191.. Signed: .....

Address: .....
(Full post-office address.)

NOTE.—Claim for exemption on Form 1007 can be filed with the debtor or withholding agent at any time, not less than 30 days prior to March first next succeeding the year for which exemption is claimed.

(SIGNATURES MUST BE CLEARLY AND LEGIBLY WRITTEN.)

FORM 1008.

United States Internal Revenue Return Making Applications for Deductions

As provided by Paragraphs B and E, Section II of the Federal Income Tax Law of October 3, 1913.

To: .....
(Name of Withholding Agent.)

.....
(Street and Number.)

.....
(Town or City.) (State.)

I hereby solemnly declare that the following is a true and correct return of my gains, profits, and income from all other sources for the calendar year ended December 31, 191.... (From March 1, to December 31, for the year 1913) and a true and correct return of deductions asked for under Paragraph B of Section II of the Act of October 3, 1913, and I hereby claim deductions as shown below.

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Amount of gains, profits, interest, rents, royalties, profits from copartnerships, and income from all other sources whatsoever $.....

DEDUCTIONS

1. The amount of necessary expenses actually paid in carrying on business, except business expenses of partnerships, and not including personal, living, or family expenses $.....
2. All interest paid within the year on personal indebtedness of tax payer $.....
3. All national, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits.) $.....
4. Losses actually sustained during the year incurred in trade or arising from fires, storms or shipwreck and not compensated for by insurance or otherwise $.....
5. Debts due, which have been actually ascertained to be worthless and charged off within the year $.....
6. Amount representing a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business, not to exceed in the case of mines 5 per cent. of the gross value of the output for the year for which the computation is made, but not including the expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made $.....
7. The amount received as dividends upon the stock or from the net earnings of any corporation, joint stock company, association, or insurance company which is taxable upon its net income $.....
8. The amount of income, the Tax upon which has been paid or withheld for payment at the source of income $.....

$.....

Total Deductions.. ..... $.....

Date ....., 191.. Signed .....

Address.....

.....

NOTE: Money or other things of value, disposed of by gift, donation or endowment, shall not be deducted or be made the basis for a deduction from the income of persons or corporations in their tax returns under the income tax law.

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FORM 1009.

Form of Oath Required of a Withholding Agent when Acting for Another in Filing Return and Making Application for Deductions Allowable under Paragraph B, as provided in Paragraph E, Section 2 of the Federal Income Tax Law of October 3, 1913

I hereby swear (or affirm) that I have sufficient knowledge of the affairs and property of.....
(naming person, and address, for whom acting.)
to enable me to make a full and complete return for.....
(naming person.)
and that the return of income, and application for deductions made by me are true and accurate.

(Signed).....

(Address).....
Street & No.

Date:....., 191..

.....
City and State.

Signed and sworn to before.....191..

.....

FORM 1010.

No. ....

TREASURY DEPARTMENT,

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

LICENSE FOR COLLECTION OF FOREIGN INCOME.

....., located and doing business at ....., and engaged in the business of ....., having made application in accordance with the provisions of Section II of the act of October 3, 1913, and the regulations made in pursuance thereof, is hereby licensed to accept for collection coupons, checks, and bills of exchange for or in payment of interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations, and for the dividends upon stock of foreign corporations, foreign joint-stock companies or associations, or foreign insurance companies engaged in business in foreign countries, from ....., 191–, until revoked.

This license will not be valid until countersigned by the collector of internal revenue for the district in which issued.

.....
Commissioner of Internal Revenue.

Countersigned:

.....
(Collector.)

..... Dist., ...

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FORM 1011.

Form of Certificate to be Filed with Withholding Agents by Partnerships Claiming Deductions

I, ..., a member of the firm or partnership of ..... of....., conducting the business of....., and residing at
(Give character of business conducted by partnership.)
....., do solemnly declare that the said
(Give full address.)
partnership is the owner of $..... bonds of the denomination of $..... each, Nos. ..... of the ..... known as
(Give name of debtor.)
.....bonds, from which were detached
(Describe the particular issue of bonds.)
the accompanying interest coupons due....., 191–, amounting to $....., or upon which there matured ....., 191–, $..... of registered interest, or is the owner of..... ..... upon which there accrued .....,
(Property or investments.)
191–, $..... of income.

We hereby claim a deduction of $..... allowed on account of the actual expenses incurred in conducting said business, under regulations made in pursuance of section 2, act of October 3, 1913, and do solemnly declare that neither the partnership nor its individual members has claimed deductions in excess of its total actual legitimate annual expenses of conducting the business of said partnership, and that no portion of the living or personal expenses of the partners is included in the deductions claimed.

Name of signing partner .....
For .....
(Name of partnership.)
Address .....
Date ....., 191–.

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FORM 1011 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

(When owners are firms or copartnerships in the United States claiming deduction for tax on account of operating expenses incurred.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the
(Name of collecting agent.)

owner of $..... bonds of the .....,
(Name of debtor organization.)

from which were detached the accompanying interest coupons due ....., 191.., amounting to $....., has filed with me
(Maturity.)

(us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1011, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191.."
(Name of collecting agency.) (Date.)

and the partnership in said certificate did claim a deduction of $..... allowed on account of the actual expenses incurred in conducting said business, under regulations made in pursuance of section 2, act of October 3, 1913, and did solemnly declare that neither the partnership nor its individual members has claimed deductions in excess of its total actual legitimate annual expenses of conducting the business of said partnership, and that no portion of the living or personal expenses of the partners is included in the deductions claimed, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191..

FORM 1012.

Monthly List Return of Amount of Normal Income Tax Withheld at the Source

Filed by.....
(Name of debtor organization.)

To be made in duplicate to the collector of internal revenue for the district in which the withholding agent is located on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages or deeds of trust, or other similar

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obligations of corporations, joint-stock companies, or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we)..... of ..... the
(Name.) (State address in full.)

duly authorized withholding agent of.....
(State name of debtor organization.)

located at ....., do solemnly swear (or affirm)
(Address in full.)

that the following is a true and complete return of all coupon and interest payments as above described, made by said organization and from which the normal tax of 1 per cent was deducted and withheld, at the time of payment, or for which it is liable as withholding agent, during the month of ....., 191.., on the ..... bonds (or other obligations) of
(Describe the particular issue of bonds.)

the .....,
(Name of debtor organization.)

and there are herewith inclosed all certificates of ownership which were presented with said coupons or orders for registered interest covering the interest maturing on $..... of the bonds described.

Name.	Address in full.	Amount of income.	Amount of exemption claimed.	Amount of income on which withholding agent is liable for tax.	Amount of tax withheld.
.....	.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Total for months.....		.....	.....	.....	.....
Amount of tax remitted herewith (if any) to collector.....					.....

To ....., Collector. .... District of .... (Address.)

Sworn to and subscribed before me this ..... day of ..... 191..

Signed: .... (Capacity in which acting.)

NOTE A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the collector of internal revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

NOTE B.—All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making monthly

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list returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

Form 1012A. Includes all heading Form 1012, but omits bottom.

Form 1012B. With box heading Form 1012, omits head and tail.

Form 1012C. Omits heading Form 1012, includes tail.

Form 1012D, when necessary to be used, shall be a summary of the monthly list return, Form 1012, as made in detail by the withholding agent and the said summary and lists thereto attached when properly filled in and the summary signed and sworn to shall constitute the complete monthly list return of the withholding agent making same, as fully as if each list attached to the summary was signed and sworn to separately.

FORM 1012 D.

Summary of Monthly List Return of Amount of Normal Income Tax Withheld at the Source

Filed by.....
(Name of debtor organization.)

To be made in duplicate to the Collector of Internal Revenue for the district in which the withholding agent is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint stock companies, or associations, and insurance companies, on which the normal tax of 1 per cent. has been deducted and withheld during the preceding month.

I (we) ..... of ....., the duly
(Name.) (State address in full.)

authorized withholding agent of .....,
(State name of debtor organization.)

located at ....., do solemnly swear (or affirm)
(Address in full.)

that the following is a true and complete return of all coupon and interest payments as above described made by said organization and from which the normal tax of 1 per cent was deducted and withheld, at the time of payment, or for which it is liable as withholding agent, during the month of ....., 191.., on bonds (or other
(Date.)

similar obligations) of the ....., as fully
(Name of debtor organization.)

set forth in detail, on lists attached hereto, said lists, Form 1012, and this summary, constituting the *Monthly List Return of Normal Income Tax Withheld at the Source* as required by the regulations;

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and that there are herewith inclosed all certificates of ownership which were presented with said coupons or orders for registered interest covering the interest maturing on $..... of the bonds described, and that said withholding agent has paid no coupons or orders for registered interest not accompanied by the certificates of ownership as required by Treasury regulations.

Description of obligation.	Amount of income.	Amount of exemption claimed.	Amount of income on which withholding agent is liable for tax.	Amount of tax withheld.
	$	$	$	$
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
Totals for month.....	.....	.....	.....	.....
Amount of tax remitted herewith (if any) to collector.....	.....	.....	.....	.....

To ....., Collector.
.... District of .....

Sworn to and subscribed before me this .....
day of ....., 191..

Signed:
.....

..... (Address.)

..... (Capacity in which acting.)

NOTE A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

NOTE B.—All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

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FORM 1013.

Annual List Return of Amount of Normal Income Tax Withheld at the Source from Interest upon Bonds and Mortgages or Deeds of Trust or Other Similar Obligations of Corporations, Joint-Stock Companies or Associations, and Insurance Companies

Filed by.....
(Name of debtor organization.)

To be made in duplicate to the collector of internal revenue for the district in which the withholding agent is located on or before March 1, showing the totals of each monthly return on Form 1012, and their aggregate totals for the preceding calendar year.

I (we)..... of ....., the duly
(Name.) (State address in full.)
authorized withholding agent of .....,
(State name of debtor organization.)
located at ....., do solemnly swear (or affirm)
(State address in full.)
that the following is a true and complete return of the monthly totals of all coupon and interest payments made and normal taxes withheld therefrom by said organization or for which it is liable as withholding agent as reported on Form 1012, and their aggregate totals for the year ending December 31, 191...

Month.	Amount of income.	Amount of exemption claimed.	Amount of income on which withholding agent is liable for tax.	Amount of tax withheld.	Amount of tax remitted to collector.	Balance of tax due.
	$	$	$	$	$	$
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
Aggregate Totals for year						

To ....., Collector.
.... District of .....

Sworn to and subscribed before me this ..... day of ..... 191..

Signed: .....

..... (Address.)

..... (Capacity in which acting.)

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FORM 1014.

Form of Certificate to be Presented with Coupons or Interest, or Other Income Orders, Detached from Bonds or Other Obligations Owned by Partnerships or Firms of Foreign Countries

I, ..., a member of the firm or partnership of ..... of ....., and residing at ....., do solemnly declare that the said
(Give full address.)

partnership is the owner of $..... bonds of the denomination of $..... each, Nos. ..... of the .....,, known as
(Give name of debtor.)

..... from which were detached the
(Describe the particular issue of bonds.)

accompanying interest coupons, due ....., 191–, amounting to $..... or upon which there matured ....., 191–, $..... of registered interest, or is the owner of ...., upon which there has accrued .....,
(Property or investments.)

191–, $..... of income, and that all the members of said firm or partnership, except .....,
(Give name and address of partners not nonresident aliens.)

are nonresident foreigners and as such are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States or any of its possessions, except those named above, has any interest in said bonds, coupons, or interest.

Name of partner signing .....

For .....
(Name of partnership.)

Address .....

Date: ....., 191–.

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FORM 1014 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

(When owners are firms or copartnerships of foreign countries and claim immunity from income tax.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the
(Name of collecting agent.)

owner of $..... bonds of the .....,
(Name of debtor organization.)

from which were detached the accompanying interest coupons due ....., 191.., amounting to $....., has filed with me
(Maturity.)

(us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1014, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191.."
(Name of collecting agency.) (Date.)

and that said certificates declare that said owners are a copartnership and that all the members of the firm or partnership, except partners whose names are recorded thereon, are nonresident foreigners and as such are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913, and that no citizen of the United States, wherever residing, or foreigner residing in the United States or any of its possessions, except those named above, has any interest in said bonds, coupons, or interest; and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191...

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FORM 1015.

Form of Certificate to be Filed with Debtor or Withholding Agents by Fiduciaries

The following form of certificate should be filed with the debtor, or its paying agents, at the time of the payment to the fiduciary, or his representative, of all coupons, interest orders, rents, and all other kinds of income whatsoever upon which the tax on income is required to be withheld at the source.

I (we) do solemnly declare that I (we) ..... am
(Name fiduciary.)
(are) the duly authorized ..... for the bene-
(Indicate in what capacity acting.)
ficiaries of the estate or trust of ....., which estate or trust is entitled to the income from $..... bonds of the denominations of $..... each, Nos.....
.....
.....
.....
of the .....
(Give name of debtor.)
known as ..... bonds,
(Describe the particular issue of bonds.)
from which were detached the accompanying coupons, due ..... 191–, amounting to $....., or upon which there has matured ..... 191–, $..... of registered interest, or which estate or trust is entitled to other income from property or investments upon which there accrued ..... 191–, $..... of income.

Acting for and in the capacity as stated herein, I (we) hereby assume the duty and responsibility, imposed upon withholding agents under the law, of withholding and paying the income tax due, for which I (we) may be liable, and acting in said fiduciary capacity as stated herein, I (we) do hereby claim exemption from having the normal tax withheld from said income.

....., ...
(Name.) (Capacity in which acting.)

Address: .....

Date: ....., 191–.

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REVISED FORM 1015.

Ownership Certificate—Fiduciary, The Source, Shall be in the Following Form, and Shall be Printed on Yellow Paper:

Form 1015. Revised.

TREASURY DEPARTMENT, INTERNAL REVENUE—INCOME TAX.

OWNERSHIP CERTIFICATE—FIDUCIARY, THE SOURCE.

(To be filed with debtor or withholding agents by fiduciaries claiming exemption from withholding at the source.)

.....
(Give name of debtor.)

.....
(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered
(Date of maturity of interest.)

interest, $....

I (we) do solemnly declare that the estate or trust named below is the owner of the above-described bonds from which were detached the accompanying coupons, or upon which there is due the above-described registered interest, and acting for the estate or trust in the capacity herein stated, I (we) hereby declare that I (we) do now claim exemption from having the normal tax of 1 per cent withheld from said income by the debtor at the source. I (we) hereby assume the duty and responsibility, imposed upon withholding agents under the law, of withholding and paying the income tax due, for which I (we) may be liable.

....., ...
(Name of fiduciary.) (Capacity in which acting.)

Date, ..., 191.. For .....
(Name of estate or trust.)

.....
(Full post-office address.)

NOTE.—When numbers of bonds are required to be given, same are to be entered on the back hereof.

(SIGNATURES MUST BE CLEARLY AND LEGIBLY WRITTEN.)

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FORM 1015 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

(When owners are fiduciaries.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the
(Name of collecting agent.)

owner of $..... bonds of the .....,
(Name of debtor organization.)

from which were detached the accompanying interest coupons due ....., 191.., amounting to $....., has filed with me
(Maturity.)

(us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1015, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191.."
(Name of collecting agency.) (Date.)

that said certificate is executed by a fiduciary, and that the fiduciary, acting for and in the capacity as stated therein, has assumed the duty and responsibility imposed upon withholding agents under the law, of withholding and paying the income tax due, for which he (it) may be liable, and that, acting in said fiduciary capacity as stated therein, he (it) did claim exemption from having the normal tax withheld from said income; and I (we) do hereby promise and pledge myself (ourselves) to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191..

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FORM 1016.

Certificate to be Furnished by Foreign Organizations not Subject to Tax on Interest or Other Income at Source

I, ..., the ..... of the
(Give name.) (Give official position.)
....., a ..... of
(Name of organization.) (Character of organization.)
....., located at ..... do sol-
(Country.) (Post-office address.)
emnly declare that said ..... is
(Give name of organization.)
a foreign organization, not engaged in business in the United States, and is the owner of $..... bonds of the denomination of $..... each, Nos. .....
.....
.....
of the ....., known as .....,
(Give name of debtor.)
.....
(Describe particular issue of bonds.)
bonds, from which were detached the accompanying coupons, due ....., 191–, amounting to $....., or upon which there matured ....., 191–, $....., of registered interest. or is the owner of ..... upon which there was ac-
(Property or investments.)
crued ....., 191–, $..... of income, and that under the provisions of the income-tax law of October 3, 1913, said organization being a foreign organization, said interest or income is exempt from the payment of taxes collectible at the source, which exemption is hereby claimed.

Date ....., 191–. Name .....
Address ....
(Post office.) (Official position.)
Of .....
(Name of organization.)

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FORM 1016 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

(Owners being foreign organization, not subject to the income tax at the source.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations.)

No. .....

I (we) ..... do solemnly declare that the
(Name of collecting agent.)

owner of $..... bonds of the .....,
(Name of debtor organization.)

from which were detached the accompanying interest coupons due .....,
(Maturity.)
191.., amounting to $....., has filed with me (us) a duly executed certificate filled up in accordance with Treasury Regulations of November 28, 1913, Form No. 1016, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191..,"
(Name of collecting agency.) (Date.)

and that under the provisions of the income-tax law of October 3, 1913, the said organization in said certificate declares that it is a foreign organization, and that the said interest or income is exempt from the payment of taxes collectible at the source, which exemption it claims, and I (we) do hereby promise and pledge { myself / ourselves } to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent, ...

Address, ...

Date, ..., 191..

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FORM 1017.

Application for License for the Collection of Income from Foreign Countries

UNITED STATES INTERNAL REVENUE.

Application for license for collection of income from foreign countries.

State of .....
County of .....

The undersigned, ..., ... of
(Name.) (Office.)
.....
(State name of person, firm, or corporation.)

being duly sworn according to law, declares that on and after the ..... day of ....., 191–, {he / we} intend.. to engage in the business of collecting foreign income payments of interest or dividends by means of coupons, checks, or bills of exchange. The aggregate amount of *annual* collections of such foreign income at the principal and branch offices is estimated at $.....

The location of the principal and branch offices is as follows:
Principal office .....
Branch offices .....
.....
(If a firm, state names of members).....
.....

Said person, firm, or corporation is now engaged in business as ..... and desires to conduct the business of collecting foreign income at the above address or addresses, and hereby makes application for the license required to be secured by persons, firms, or corporations engaging in the business of collecting income from foreign countries under the provisions of paragraph E of Section II of the income-tax law of October 3, 1913, and I (we) hereby promise and pledge myself (ourselves) to comply strictly with the provisions of said law and the rules and regulations of the Treasury Department which have been or may hereafter be issued in respect to the collection and payment of such foreign income.

Signed .....
for .....
(Name of firm or corporation.)

Sworn to before me this ..... day of ....., 191–.
.....

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FORM 1018.

Certificate to be Furnished by Foreign Organizations Engaged in Business in the United States

I, ..., the ....., a
(Give name.) (Give official position.) (Name of organization.)
....., of ....., located at .....,
(Character of organization.) (Country.) (Post-office address.)
do solemnly declare that said ..... is a foreign
(Give name of organization.)
organization engaged in business in the United States, and is the owner of $..... bonds, of the denomination of $..... each, Nos. .....
.....
of the ....., known as .....
(Give name of debtor.)
.....
(Describe particular issue of bonds.)
bonds, from which were detached the accompanying coupons, due ....., 191.., amounting to $....., or upon which there matured ....., 191.., $..... of registered interest, or is the owner of ....., upon which there
(Property or investments.)
was accrued ....., 191.., $..... of income.

Under the provisions of the income-tax law of October 3, 1913, the said organization is subject to the normal tax of 1 per cent per annum upon the amount of net income accruing from business transacted and capital invested within the United States, for which tax it will make its return in due course, but it hereby claims exemption from having the said normal tax of 1 per cent on said income withheld at the source.

Name .....
.....
(Official position.)

Date ....., 191—. Of .....
(Name of organization.)

Address .....
(Post office.)

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FORM 1018 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

(Owners being foreign organizations engaged in business in the United States and subject to tax.)

The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue, at Washington, as prescribed by regulations:

No. .....

I (we) ..... do solemnly declare that the
(Name of collecting agent.)

owner of $..... bonds of the .....,
(Name of debtor organization.)

from which were detached the accompanying interest coupons due ....., 191.., amounting to $....., has filed with me
(Maturity.)

(us) a duly executed certificate filled up in accordance with Treasury Regulations of December 5, 1913, Form No. 1018, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 19.."
(Name of collecting agency.) (Date.)

and that under the regulations made in pursuance of Section II, act of October 3, 1913, said organization is subject to the normal tax of 1 per centum per annum upon the amount of net income accruing from business transacted and capital invested with the United States and did therein claim exemption from having the said tax withheld at the source from said income, and I (we) do hereby promise and pledge myself (ourselves) to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations

Signature of collecting agent, ...

Address, ...

Date, ..., 191...

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FORM 1019.

Form of Certificate to be Filed with Debtor or Withholding Agents by Fiduciaries When Not Claiming Any Exemption, as an Alternative to the Filing of Form No. 1015 in Which Exemption is Claimed

The following form of certificate may be filed with the debtor, or its paying agents, at the time of the payment to the fiduciary, or his representative, of all coupons, interest orders, rents, and all other kinds of income whatsoever upon which the tax on income is required to be withheld at the source, as an alternative to the filing of Form No. 1015:

I (we) do solemnly declare that I (we) ..... am (are)
(Name fiduciary.)
the duly authorized ..... for the beneficiaries
(Indicate in what capacity acting.)
of the estate or trust of ....., which estate or trust is entitled to the income from $..... bonds of the denominations of $..... each, Nos. .....
.....
.....
.....
of the.....
(Give name of debtor.)
known as ..... bonds, from which were
(Describe the particular issue of bonds.)
detached the accompanying coupons, due ....., 191.., amounting to $....., or upon which there has matured ....., 191.., $..... of registered interest, or which estate or trust is entitled to other income from property or investments upon which there accrued ....., 191.., $..... of income.

Acting for and in the capacity herein stated, I hereby declare that I (we) do not now claim any exemption from having the normal tax of 1 per cent withheld from said income by the debtor at the source.

....., ...
(Name.) (Capacity in which acting.)

Date: ....., 191... .....
(Address.)

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REVISED FORM 1019.

Certificate of Ownership—Fiduciary, Not Source, Shall be in the Following Form, and Shall be Printed on White Paper:

Form 1019. Revised.

TREASURY DEPARTMENT, INTERNAL REVENUE—INCOME TAX.

OWNERSHIP CERTIFICATE—FIDUCIARY, NOT SOURCE.

(To be filed with debtor or withholding agents by fiduciaries when not claiming any exemption, as an alternative to the filing of Form No. 1015 in which exemption is claimed.)

.....
(Give name of debtor.)

.....
(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered
(Date of maturity of interest.)

interest, $....

I (we) do solemnly declare that the estate or trust named below is the owner of the above-described bonds from which were detached the accompanying coupons, or upon which there is due the above-described registered interest, and acting for the estate or trust in the capacity herein stated, I (we) hereby declare that I (we) do not now claim exemption from having the normal tax of 1 per cent withheld from said income by the debtor at the source.

....., ...
(Name of fiduciary.) (Capacity in which acting.)

Date, ..., 191.. For.....
(Name of estate or trust.)

.....
(Full post-office address.)

NOTE.—When numbers of bonds are required to be given, same are to be entered on the back hereof.

(SIGNATURES MUST BE CLEARLY AND LEGIBLY WRITTEN.)

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FORM 1019 A.

Form of Certificate to be Attached to Interest Coupons in Cases Where the Collecting Agent's Certificate is Substituted for the Certificate of the Owners

(When owners are fiduciaries.)

(The owner's certificate, of which the following certificate is the counterpart, and bears the same number as this certificate, will be sent by the collecting agent direct to the Commissioner of Internal Revenue at Washington, as prescribed by regulations.)

No. ....

I (we) ....., do solemnly declare that the
(Name of collecting agent.)
owner of $.....,... bonds of the ....., from
(Name of debtor organization.)
which were detached the accompanying interest coupons due
....., 191.., amounting to $....., has filed with me
(Maturity.)
(us) a duly executed certificate filled up in accordance with Treasury Regulations of December 8, 1913, *Form No. 1019*, which certificate has been indorsed by me (us) as follows: "Owner's certificate No. ....., ..., ..., 191..," that
(Name of collecting agency.) (Date.)
said certificate is executed by a fiduciary, and that the fiduciary, acting for and in the capacity as stated therein, did not claim any exemption from having the normal tax of 1 per cent withheld from said income by the debtor at the source; and I (we) do hereby promise and pledge myself (ourselves) to forward the above-described certificate executed by the owners as stated and dated ....., 191.., to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Signature of collecting agent: .....

Date: ....., 191.. Address: .....

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FORM 1030.

To be filled in by Collectors.	To be filled in by Internal Revenue Bureau.
List No. ..... Class .... District of	Assessment List ....., 191
Date received ....., 191	Page ..... Line .....

THE PENALTY for failure to have this return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on reverse of this form.)

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

INSURANCE COMPANIES.

Return of net income received during the calendar (fiscal) year ended ....., 191 by .....

the principal place of business of which is located at .....
(Street and No.)

City or Town of ....., in the state of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding, or, if no capital stock the capital employed in business, at close of the year above stated. (See Note 8 on reverse of this form.)..... $.....
2. Total amount of bonded and other indebtedness outstanding at close of year. (See Note 9.)..... $.....

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3. Gross income. (See Note A and instructions, paragraphs 10, 18, 21, 22, 23, 25, and 26.)..... $.....

DEDUCTIONS.

4. (a) Total amount of all the ordinary and necessary expenses of maintenance and operation of the business and properties of the corporation exclusive of interest payments. (See Note B.) $.....

(b) All rentals or other payments required to be made as a condition to the continued use or possession of the property. (See Note 12 on reverse of this form.)..... $.....

5. (a) Total amount of losses sustained during the year not compensated by insurance or otherwise..... $.....

(b) Total amount of depreciation for the year. (See Note 13.)..... $.....

(c) Total amount (other than dividends) paid within the year on policy and annuity contracts..... $.....

(d) Total amount of net addition required by law to be made within the year to reserve fund. (See Note 28.)..... $.....

(e) Amounts of premiums repaid to policyholders and interest paid thereon (applicable only to Mutual Marine Insurance companies)..... $.....

6. (a) Total amount of interest accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year..... $.....

(b) Total amount of interest received upon obligations of a State or political subdivision thereof and upon the obligations of the United States or its possessions ..... $.....

7. (a) Total taxes paid during the year imposed under authority of the United States or any State or Territory thereof. (See Note 20.)..... $.....

(b) Foreign taxes paid.... ..... $.....

Total deductions..... $.....

8. Net income on which tax at 1 per centum is calculated..... $.....

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State of ....., County of .....,
To wit:
....., President, and ....., Treasurer, of
the ....., a corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, including interest upon obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed under the terms of the Federal Income Tax Law of October 3, 1913.

Sworn and subscribed to before me this
..... day of ....., 191

.....
President.

SEAL OF OFFICER TAKING AFFIDAVIT.

.....

.....
Treasurer.

.....
(Official capacity.)

NOTE A.—Gross income of insurance companies shall consist of the total of the gross revenues derived from the operation and management of their businesses and properties, together with all amounts of income from other sources, including dividends on stock of other organizations, whether subject to this tax or not, premiums, interest, rentals, and all items of income resulting from appraisement or adjustment, and shown by entries upon the books during the year for which the return is made.

Mutual marine insurance companies may exclude from the gross premiums collected the "amounts paid for reinsurance," including the remainder in gross income.

Mutual fire insurance companies may omit from gross income "any portion of the premium deposits returned to their policyholders."

Life insurance companies may also omit from their gross income "such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such policyholder, or treated as an abatement of premium of such individual policyholder within the year." The amount thus omitted shall include only such dividends or premiums returned or applied as represent a portion of the actual premium received from any individual policyholder.

NOTE B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered upon its books during the year.

Amounts of income expended in paying dividends on stock, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account are not proper deductions in ascertaining annual net income. Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted under Item 4 if the interest is paid as rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should be stated separately under Item 4 (b). (See Note 12 on reverse of this form.)

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[Reverse of Form 1030.]

INSTRUCTIONS.

SPECIAL NOTICE.—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal business office of the corporation making the return, on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case the return is made on that basis.

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding $10,000 is incurred.

1. Return of annual net income of corporations should be made on forms prescribed by the Treasury Department and should be filed with the Collector of Internal Revenue of the district in which such corporations have their principal places of business.

2. Before transmitting such returns to the collectors they must be verified by two officers of the corporation; that is, by two individuals, each holding a different official title, namely: the President, Vice President, or other principal officer, *and* its Treasurer or Assistant Treasurer, or Chief Financial Officer.

3. The affidavit of verification must be made before a Notary Public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.

4. Under the provisions of the law, the return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.

5. If the return is based upon the business transacted during the *calendar year*, it should be filed with the collector *on or before the first day of March* next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, or consecutive twelve months period other than the calendar year, duly designated in accordance with the law and the regulations, the return must be filed with the collector *on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.*

6. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding thirty days from the date when such return is otherwise due. Application for such extension must be made prior to the date when the return is due.

7. The principal place of business as used in the act and in these regulations is held to mean the place or office in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.

8. Item No. 1 of the schedule on the reverse side of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received,

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or in case no stock is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation.

In cases wherein the capital stock is issued payable in installments or upon assessment, only so much of the capital as has been actually paid in upon such installments or assessments should be reported under this item.

9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item No. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisement, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year. In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year, resulting from business transacted and capital invested within the United States.

11. Item No. 4 (a) should include the total amount of all ordinary and necessary expenses paid out of earnings in the operation of the business and properties of the corporation, etc., exclusive of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (b) should include all rentals or other payments required to be made as a condition to the continued use or possession of the property; that is to say, in cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation, and interest paid on such indebtedness will be deductible only under Item 6 of the return, and, together with other interest charges, must not exceed the limit fixed by the law for such interest deductions.

13. The amount claimed under Item No. 5 (b) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute and show as a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. The change in the value of stocks and bonds is properly taken up in the inventories or annual adjustment in the value of such securities and the income or losses indicated by this adjustment may be accounted for accordingly.

14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renew-

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als, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year on its bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year; or in case of a corporation, joint stock *company, or association, or insurance company organized under the laws of a foreign country,* interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of *capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.*

All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

17. Dividends received upon the stock of other corporations must be included in gross income and, under the provisions of the law, are not deductible therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof and upon the obligations of the United States or its possessions should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes for which credit may be taken in the return are such taxes, actually paid within the year, as are imposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes as such is not deductible, but only taxes actually paid.

21. Reinsurance (except as provided by Note 23) and return premiums should not be included in either gross income or deductions; as "*net written premiums*," agreeing with report to States, should be shown.

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22. Mutual fire insurance companies which require their members to make premium deposits to provide for losses and expenses need not return as income any portion of the premium deposits returned to their policyholders.

23. Mutual marine insurance companies shall include in their return of gross income the gross premiums collected and received by them, *less reinsurance*. (See Note 21.)

24. Mutual marine insurance companies are entitled to deduct from gross income amounts repaid to policyholders on account of premiums previously paid by them and interest paid upon such amounts between the ascertainment thereof and the payment thereof.

25. Life insurance companies need not include as income in any year such portion of any actual premium received from any individual policyholder as shall have been paid back or credited to such individual policyholder, or treated as an abatement of premium of such individual policyholder within such year.

26. Mutual fire insurance companies must return as income such portions of premium deposits as are retained by the companies for purposes other than the payment of losses and expenses and reinsurance reserves.

27. The deduction allowed under the act of August 5, 1909, of amounts received as dividends upon stock of other corporations subject to the tax therein imposed is not allowed under the act of October 3, 1913.

28. In the case of assessment insurance companies, whether domestic or foreign, the actual deposits of sums with the State or Territorial officers pursuant to law, as additions to guarantee or reserve funds shall be treated as being payments required by law to reserve funds.

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FORM 1031.

To be filled in by Collectors.	To be filled in by Internal Revenue Bureau.
List No. ..... Class	
..... District of	Assessment List ....., 191
Date received ....., 191	Page ..... Line .....

THE PENALTY for failure to have this return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on reverse of this form.)

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

BANKS AND OTHER FINANCIAL INSTITUTIONS.

Return of net income received during the {calendar / fiscal} year ended ....., 191 by .... a corporation (Name of banking or other financial institution.), the principal place of business of which is located at ..... City or Town of ....., (Street and No.) in the State of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year..... $.....
2. Total amount of bonded and other indebtedness outstanding at close of year..... $.....

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3. Gross Income (see Note A and instructions, paragraphs 10, 17, 18, and 19.)..... $.....

DEDUCTIONS.

4. (a) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation exclusive of interest payments. (See Note B.)..... $.....

(b) All rentals or other payments required to be made as a condition to the continued use or possession of the property. (See paragraph 12 on reverse of this form.)..... $.....

5. (a) Total amount of losses sustained during the year not compensated by insurance or otherwise..... $.....

(b) Total amount of depreciation for the year $.....

6. (a) Total amount of interest, exclusive of interest on deposits, accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year; or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year..... $.....

(b) Total amount of interest paid within the year on deposits..... $.....

(c) Total amount of interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions ..... $.....

7. (a) Total taxes paid during the year imposed under authority of the United States or any State or Territory thereof.... $.....

(b) Foreign taxes paid..... $.....

Total Deductions..... $.....

8. Net income on which tax at 1 per centum is calculated ..... $.....

State of ....., County of .....to wit:

....., President, and ....., Treasurer, of the ....., a corporation, whose return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and

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belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed.

Sworn and subscribed to before me this
..... day of ....., 191

.....
President.

SEAL OF OFFICER TAKING AFFIDAVIT.

.....

.....
Treasurer.

..... (Official capacity.)

NOTE A.—Gross income shall consist of the total revenues derived from the operation and management of its business and properties, together with all amounts of income from other sources, including dividends received on stock of other organizations, whether subject to this tax or not, and interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions, as shown by entries upon its books during the year for which the return is made.

NOTE B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered upon its books during the year. Amounts of income expended in paying dividends on stock, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account, should not be deducted in ascertaining annual net income. Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted under Item 4, if the interest is paid as a rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should be stated separately under Item 4 (b). (See paragraph 12 on reverse of this form.)

[Reverse of Form 1031.]

INSTRUCTIONS.

SPECIAL NOTICE.—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal business office of the corporation making the return, on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case the return is made on that basis.

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding $10,000 is incurred.

1. This return of annual net income should be filed with the Collector of Internal Revenue of the district in which the corporation has its principal place of business.

2. The principal place of business as used in the act and in these regulations is held to mean the place in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.

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3. Returns must be verified by two officers of the corporation; that is, by two individuals, namely, the president, vice president, or other principal officer, *and* treasurer or assistant treasurer, or chief financial officer.

4. The affidavit of verification must be made before a notary public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.

5. The return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.

6. If the return is based upon the *calendar year* it should be filed with the collector *on or before the first day of March* next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, duly designated in accordance with the law and the regulations, the return must be filed with the collector *on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.*

7. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding 30 days from the date when such return is otherwise due. Application for such extension should be made prior to the date when the return is due, or within the thirty-day period for which such extension is desired and can be granted.

8. Item No. 1 of the schedule on the obverse of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received; or, in case no stock is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation. In cases wherein the capital stock is issued payable in installments or upon assessment, only so much of the capital as has been actually paid in upon such installments or assessments should be reported under this item.

9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item No. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisement, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year. In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year resulting from business transacted and capital invested within the United States.

11. Item No. 4 (a) should include the total amount of all ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of the corporation, etc., exclusive of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (b) should include all rentals or other payments required to be made as a condition to the continued use or possession

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of the property. In cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation and interest paid on such indebtedness will be deductible only under Item 6 of the return.

13. The amount claimed under Item No. 5 (b) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. Decrease in the book value of securities owned, so far as such decrease represents a decline in the actual value of such securities, should be deducted under Item 5 (a) of the return.

14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year on bonded or other indebtedness not exceeding one-half of the sum of interest-bearing indebtedness and the paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year; or in case of a *corporation, joint stock company or association, or insurance company organized* under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of *capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.* All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

17. *Dividends received upon the stock of other corporations* must be included in gross income and *are not deductible* therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States

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or its possessions, should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes deductible in the return are such taxes, actually paid within the year, as are imposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes, as such, is not deductible.

21. The gross income of mercantile corporations should be ascertained in the following manner: From the sum of the total sales during the year plus the sum of the inventory at the end of the year, deduct the sum of the inventory at the beginning of the year plus the cost of the goods and materials purchased during the year; to this difference add the income received from any other source and the result will be the gross income to be reported under Item No. 3 of the return.

22. Gross income in the case of a manufacturing corporation shall include the total receipts from the sale of all manufactured goods sold during the year plus any increase in the inventoried value ascertained through an accounting of the finished and unfinished product, raw material, etc., on hand at the close of the year.

23. To the income thus ascertained there should be added the income arising, accruing, or received from any and all other sources, the aggregate thus ascertained to be the gross income to be returned under Item No. 3 of the return form. Since the gross income thus ascertained represents the total receipts as well as the inventoried value of finished and unfinished products, raw material, etc., the corporation will include in its deduction under Item No. 4 all expenditures for material, labor, fuel, and other items going to make up the cost of the goods sold or inventoried at the end of the year.

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FORM 1032.

To be filled in by Collectors.	To be filled in by Internal Revenue Bureau.
List No. ..... Class .... District of	Assessment List ....., 191
Date received ....., 191	Page ..... Line .....

THE PENALTY for failure to have this return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on reverse of this form.)

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

PUBLIC SERVICE CORPORATIONS.

Return of net income received during the {calendar / fiscal} year ended ....., 191 by ..... the principal place
(Name of corporation, joint stock company, or association.)
of business of which is located at ..... City or
(Street and No.)
Town of ....., in the State of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year.... $.....
2. Total amount of bonded and other indebtedness outstanding at close of year..... $.....

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3. Gross income (see Note A and instructions, paragraphs 10, 17, 18, and 19.)..... $.....

DEDUCTIONS.

4. (a) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation, exclusive of interest payments. (See Note B.)..... $.....
   (b) All rentals or other payments required to be made as a condition to the continued use or possession of the property. (See paragraph 12 on reverse of this form.) ..... $.....
5. (a) Total amount of losses sustained during the year not compensated by insurance or otherwise..... $.....
   (b) Total amount of depreciation for the year. (See paragraphs 13 and 14.)..... $.....
6. (a) Total amount of interest accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year..... $.....
   (b) Total amount of interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions ..... $.....
7. (a) Total taxes paid during the year, imposed under authority of the United States or any State or Territory thereof ..... $.....
   (b) Foreign taxes paid..... $.....

Total deductions..... $.....

8. Net income on which tax at 1 per centum is calculated ..... $.....

State of ....., County of .....,
to wit:
....., President, and ....., Treasurer, of the ....., a corporation, whose return of annual net income is set forth above, being severally duly

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sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed.

Sworn and subscribed to before me this
..... day of ....., 191

.....
President.

SEAL OF OFFICER TAKING AFFIDAVIT.

.....

.....
Treasurer.

.....
(Official capacity.)

NOTE A.—Gross income shall consist of the total revenues derived from the operation and management of its business and properties, together with all amounts of income from other sources, including dividends received on stock of other organizations, whether subject to this tax or not, and interest received upon obligations of a state or political subdivision thereof, and upon the obligations of the United States or its possessions, as shown by entries upon its books during the year for which return is made.

NOTE B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered upon its books during the year. Amounts of income expended in paying dividends on stock, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account, should not be deducted in ascertaining annual net income. Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted under Item 4, if the interest is paid as rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should be stated separately under Item 4 (b). (See paragraph 12 on reverse of this form.)

[Reverse of Form 1032.]

INSTRUCTIONS.

SPECIAL NOTICE.—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal business office of the corporation making the return, on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case the return is made on that basis.

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding $10,000 is incurred.

1. This return of annual net income should be filed with the Collector of Internal Revenue of the district in which the corporation has its principal place of business.

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2. The principal place of business as used in the act and in these regulations is held to mean the place in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.

3. Returns must be verified by two officers of the corporation; that is, by two individuals, namely, the president, vice president, or other principal officer, *and* treasurer or assistant treasurer, or chief financial officer.

4. The affidavit of verification must be made before a notary public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.

5. The return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.

6. If the return is based upon the *calendar year* it should be filed with the collector *on or before the first day of March* next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, duly designated in accordance with the law and the regulations, the return must be filed with the collector *on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.*

7. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding 30 days from the date when such return is otherwise due. Application for such extension should be made prior to the date when the return is due, or within the thirty-day period for which such extension is desired and can be granted.

8. Item No. 1 of the schedule on the obverse of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received; or, in case no stock is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation. In cases wherein the capital stock is issued payable in installments or upon assessment, only so much of the capital as has been actually paid in upon such installments or assessments should be reported under this item.

9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item No. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisement, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year. In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year resulting from business transacted and capital invested within the United States.

11. Item No. 4 (a) should include the total amount of all ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of the corporation, etc., ex-

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clusive of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (b) should include all rentals or other payments required to be made as a condition to the continued use or possession of the property. In cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation and interest paid on such indebtedness will be deductible only under Item 6 of the return.

13. The amount claimed under Item No. 5 (b) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. Decrease in the book value of securities owned, so far as such decrease represents a decline in the actual value of such securities, should be deducted under Item 5 (a) of the return.

14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year on bonded or other indebtedness not exceeding one-half of the sum of interest-bearing indebtedness and the paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year; or in case of a *corporation, joint stock company or association, or insurance company organized* under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of *capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.* All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

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17. *Dividends received upon the stock of other corporations* must be included in gross income and *are not deductible* therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions, should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes deductible in the return are such taxes, actually paid within the year, as are imposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes, as such, is not deductible.

21. The gross income of mercantile corporations should be ascertained in the following manner: From the sum of the total sales during the year plus the sum of the inventory at the end of the year, deduct the sum of the inventory at the beginning of the year plus the cost of the goods and materials purchased during the year; to this difference add the income received from any other source and the result will be the gross income to be reported under Item No. 3 of the return.

22. Gross income in the case of a manufacturing corporation shall include the total receipts from the sale of all manufactured goods sold during the year plus any increase in the inventoried value ascertained through an accounting of the finished and unfinished product, raw material, etc., on hand at the close of the year.

23. To the income thus ascertained there should be added the income arising, accruing, or received from any and all other sources, the aggregate thus ascertained to be the gross income to be returned under Item No. 3 of the return form. Since the gross income thus ascertained represents the total receipts as well as the inventoried value of finished and unfinished products, raw material, etc., the corporation will include in its deduction under Item No. 4 all expenditures for material, labor, fuel, and other items going to make up the cost of the goods sold or inventoried at the end of the year.

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FORM 1033.

To be filled in by Collectors.	To be filled in by Internal Revenue Bureau.
List No. ..... Class .... District of	Assessment List ....., 191
Date received ....., 191	Page ..... Line .....

THE PENALTY for failure to have this return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on reverse of this form.)

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

MANUFACTURING CORPORATIONS.

Return of net income received during the {calendar / fiscal} year ended ....., 191 by .....
(Name of corporation, joint stock company, or association.)
the principal place of business of which is located at .....
(Street and No.)
City or Town of ....., in the State of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year.... $.....
2. Total amount of bonded and other indebtedness outstanding at close of year..... $.....

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3. Gross income (see Note A and instructions, paragraphs 10, 17, 18, 19, 22, and 23.)..... $.....

DEDUCTIONS.

4. (a) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation exclusive of interest payments (see Note B and paragraph 23.)..... $.....

(b) All rentals or other payments required to be made as a condition to the continued use or possession of the property (see paragraph 12 on reverse of this form.) $.....

5. (a) Total amount of losses sustained during the year not compensated by insurance or otherwise..... $.....

(b) Total amount of depreciation for the year (see paragraphs 13 and 14.)..... $.....

6. (a) Total amount of interest accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year; or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year..... $.....

(b) Total amount of interest received upon the obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions ..... $.....

7. (a) Total taxes paid during the year, imposed under authority of the United States or any State or Territory thereof..... $.....

(b) Foreign taxes paid..... $.....

Total deductions..... $.....

8. Net income on which tax at 1 per centum is calculated ..... $.....

NOTE.—The above blank spaces for figures should show the amount of each respective item. If there is nothing to return as to any item, the word "none" must be written in such blank spaces.

State of ....., County of .....,
to wit:
....., President and ....., Treasurer, of the ....., a corporation, whose

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return of annual net income is set forth above, being severally duly sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed.

Sworn and subscribed to before me this
..... day of ....., 191

.....
President.

SEAL OF OFFICER TAKING AFFIDAVIT.

.....

.....
Treasurer.

..... (Official capacity.)

NOTE A.—Gross income in the case of a manufacturing corporation shall include the total receipts from all manufactured goods sold during the year, increased or decreased accordingly as there is gain or loss ascertained through an accounting or inventory of the finished and unfinished product, raw material, etc., on hand at the close of the year. To the income thus ascertained there should be added the income received from any and all other sources, including dividends received on stock of other organizations, whether subject to this tax or not, and interest received on the obligations of a State or political subdivision thereof, and interest received on the obligations of the United States or its possessions, the aggregate to be the gross income returned.

NOTE B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered on its books during the year. "Total amount of all ordinary and necessary expenses," etc., shall include expenditures for material, labor, salaries, wages, fuel, and other expenses incident to the cost of the finished product. Amounts of *income expended in paying dividends on stock,* preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to property account, *should not be deducted in ascertaining the net income* upon which the tax is computed. Interest paid as rental or in lieu of rental is deductible under Item 4 (b). (See paragraph 12 on the reverse of this form.)

[Reverse of Form 1033.]

INSTRUCTIONS.

SPECIAL NOTICE.—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal business office of the corporation making the return, on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case the return is made on that basis.

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding $10,000 is incurred.

1. This return of annual net income should be filed with the Collector of Internal Revenue of the district in which the corporation has its principal place of business.

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2. The principal place of business as used in the act and in these regulations is held to mean the place in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.

3. Returns must be verified by two officers of the corporation; that is, by two individuals, namely, the president, vice president, or other principal officer, *and* treasurer or assistant treasurer, or chief financial officer.

4. The affidavit of verification must be made before a notary public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.

5. The return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.

6. If the return is based upon the *calendar year* it should be filed with the collector *on or before the first day of March* next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, duly designated in accordance with the law and the regulations, the return must be filed with the collector *on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.*

7. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding 30 days from the date when such return is otherwise due. Application for such extension should be made prior to the date when the return is due, or within the 30-day period for which such extension is desired and can be granted.

8. Item No. 1 of the schedule on the obverse of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received; or, in case no stock is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation. In cases wherein the capital stock is issued payable in installments or upon assessment, only so much of the capital as has been actually paid in upon such installments or assessments should be reported under this item.

9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item No. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisement, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year. In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year resulting from business transacted and capital invested within the United States.

11. Item No. 4 (a) should include the total amount of all ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of the corporation, etc., ex-

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clusive of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (b) should include all rentals or other payments required to be made as a condition to the continued use or possession of the property. In cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation and interest paid on such indebtedness will be deductible only under Item 6 of the return.

13. The amount claimed under Item No. 5 (b) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. Decrease in the book value of securities owned, so far as such decrease represents a decline in the actual value of such securities, should be deducted under Item 5 (a) of the return.

14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year on bonded or other indebtedness not exceeding one-half of the sum of interest-bearing indebtedness and the paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year; or in case of a *corporation, joint stock company or association, or insurance company organized* under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of *capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.* All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

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17. *Dividends received upon the stock of other corporations* must be included in gross income and *are not deductible* therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions, should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes deductible in the return are such taxes, actually paid within the year, as are imposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes, as such, is not deductible.

21. The gross income of mercantile corporations should be ascertained in the following manner: From the sum of the total sales during the year plus the sum of the inventory at the end of the year, deduct the sum of the inventory at the beginning of the year plus the cost of the goods and materials purchased during the year; to this difference add the income received from any other source and the result will be the gross income to be reported under Item No. 3 of the return.

22. Gross income in the case of a manufacturing corporation shall include the total receipts from the sale of all manufactured goods sold during the year plus any increase in the inventoried value ascertained through an accounting of the finished and unfinished product, raw material, etc., on hand at the close of the year.

23. To the income thus ascertained there should be added the income arising, accruing, or received from any and all other sources, the aggregate thus ascertained to be the gross income to be returned under Item No. 3 of the return form. Since the gross income thus ascertained represents the total receipts as well as the inventoried value of finished and unfinished products, raw material, etc., the corporation will include in its deduction under Item No. 4 all expenditures for material, labor, fuel, and other items going to make up the cost of the goods sold or inventoried at the end of the year.

SPECIAL NOTICE.—Any officer of any corporation required by law to make, render, sign or verify any return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by section 2, Act of October 3, 1913, to be made, shall be guilty of a misdemeanor and shall be fined not exceeding $2,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

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FORM 1034.

To be filled in by Collectors.	To be filled in by Internal Revenue Bureau.
List No. ..... Class	Assessment List ....., 191
..... District of	
Date received ....., 191	Page ..... Line .....

THE PENALTY for failure to have this return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on reverse of this form.)

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

MERCANTILE CORPORATIONS.

(Corporations whose principal business is buying and selling.)

Return of net income received during the {calendar / fiscal} year ended ....., 191 by .....
(Name of corporation, joint stock company, or association.)
the principal place of business of which is located at .....
(Street and No.)
City or Town of ....., in the State of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year.... $.....
2. Total amount of bonded and other indebtedness outstanding at close of year..... $.....

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3. Gross income (see Note A and instructions, paragraphs 10, 17, 18, 19, and 21.)..... $.....

DEDUCTIONS.

4. (a) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation exclusive of interest payments (see Note B.)..... $.....

(b) All rentals or other payments required to be made as a condition to the continued use or possession of the property (see paragraph 12 on reverse of this form.) ..... $.....

5. (a) Total amount of losses sustained during the year not compensated by insurance or otherwise..... $.....

(b) Total amount of depreciation for the year $.....

6. (a) Total amount of interest accrued and paid within the year on an amount of bonded and other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year; or, if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year..... $.....

(b) Total amount of interest received upon obligations of a State or political subdivision thereof and upon the obligations of the United States or its possessions ..... $.....

7. (a) Total taxes paid during the year, imposed under authority of the United States or any State or Territory thereof.... $.....

(b) Foreign taxes paid..... $.....

Total deductions..... $.....

8. Net income on which tax at 1 per centum is calculated ..... $.....

NOTE.—The above blank spaces for figures should show the amount of each respective item. If there is nothing to return as to any item, the word "none" must be written in such blank spaces.

State of ....., County of .....,
to wit:

....., President, and ....., Treasurer, of the ....., a corporation, whose return of annual net income is set forth above, being severally duly

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sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief, and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed.

Sworn and subscribed to before me this
..... day of ....., 191

SEAL OF OFFICER TAKING AFFIDAVIT.	.....	..... President.
	..... (Official capacity.)	..... Treasurer.

NOTE A.—The gross amount of income received during the year from all sources shall, in the case of a mercantile corporation, consist of the total amount ascertained through inventory, or its equivalent, which shows the difference between the price received for goods sold and the cost of goods purchased during the year, with an addition of a charge to the account of the sum of the inventory at beginning of the year and a credit to the account of the sum of the inventory at the end of the year. To this amount should be added all items of income received during the year from other sources, including dividends received on stock of other corporations, joint-stock companies, and associations, whether subject to this tax or not, and interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions. In determining this amount no account shall be taken of allowances for depreciation or losses, which items shall be taken account of under the proper heading above as a deduction.

NOTE B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered on its books during the year. Amounts of *income expended in paying dividends* on stock, preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account, *should not be deducted in ascertaining annual net income.* Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted in Item 4, if the interest is paid as a rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should, however, be separately stated under Item 4 (b). (See paragraph 12 on reverse of this form.)

[Reverse of Form 1034.]

INSTRUCTIONS.

SPECIAL NOTICE.—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal business office of the corporation making the return on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case the return is made on that basis.

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding $10,000 is incurred.

1. This return of annual net income should be filed with the Collector of Internal Revenue of the district in which the corporation has its principal place of business.

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2. The principal place of business as used in the act and in these regulations is held to mean the place in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.

3. Returns must be verified by two officers of the corporation; that is, by two individuals, namely, the president, vice president, or other principal officer, *and* treasurer or assistant treasurer, or chief financial officer.

4. The affidavit of verification must be made before a notary public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.

5. The return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.

6. If the return is based upon the *calendar year* it should be filed with the collector *on or before the first day of March* next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, duly designated in accordance with the law and the regulations, the return must be filed with the collector *on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.*

7. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding 30 days from the date when such return is otherwise due. Application for such extension should be made prior to the date when the return is due, or within the 30-day period for which such extension is desired and can be granted.

8. Item No. 1 of the schedule on the obverse of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received; or, in case no stock is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation. In cases wherein the capital stock is issued payable in installments or upon assessment, only so much of the capital as has been actually paid in upon such installments or assessments should be reported under this item.

9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item No. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisement, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year. In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year resulting from business transacted and capital invested within the United States.

11. Item No. 4 (a) should include the total amount of all ordinary and necessary expenses paid out of earnings in the maintenance and

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operation of the business and properties of the corporation, etc., exclusive of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (b) should include all rentals or other payments required to be made as a condition to the continued use or possession of the property. In cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation and interest paid on such indebtedness will be deductible only under Item 6 of the return.

13. The amount claimed under Item No. 5 (b) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. Decrease in the book value of securities owned, so far as such decrease represents a decline in the actual value of such securities, should be deducted under Item 5 (a) of the return.

14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year or bonded or other indebtedness not exceeding one-half of the sum of interest-bearing indebtedness and the paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year; or in case of a *corporation, joint stock company or association, or insurance company organized* under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of *capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.* All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

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17. *Dividends received upon the stock of other corporations* must be included in gross income and *are not deductible* therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions, should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes deductible in the return are such taxes, actually paid within the year, as are imposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes, as such, is not deductible.

21. The gross income of mercantile corporations should be ascertained in the following manner: From the sum of the total sales during the year plus the sum of the inventory at the end of the year, deduct the sum of the inventory at the beginning of the year plus the cost of the goods and materials purchased during the year; to this difference add the income received from any other source and the result will be the gross income to be reported under Item No. 3 of the return.

22. Gross income in the case of a manufacturing corporation shall include the total receipts from the sale of all manufactured goods sold during the year plus any increase in the inventoried value ascertained through an accounting of the finished and unfinished product, raw material, etc., on hand at the close of the year.

23. To the income thus ascertained there should be added the income arising, accruing, or received from any and all other sources, the aggregate thus ascertained to be the gross income to be returned under Item No. 3 of the return form. Since the gross income thus ascertained represents the total receipts as well as the inventoried value of finished and unfinished products, raw material, etc., the corporation will include in its deduction under Item No. 4 all expenditures for material, labor, fuel, and other items going to make up the cost of the goods sold or inventoried at the end of the year.

SPECIAL NOTICE.—Any officer of any corporation required by law to make, render, sign or verify any return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by section 2, Act of October 3, 1913, to be made, shall be guilty of a misdemeanor and shall be fined not exceeding $2,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

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FORM 1035.

To be filled in by Collectors.	To be filled in by Internal Revenue Bureau.
List No. ..... Class .... District of	Assessment List ....., 191
Date received ....., 191	Page ..... Line .....

THE PENALTY for failure to have this return in the hands of the Collector of Internal Revenue on or before March 1, or within 60 days after the close of the fiscal year, is a sum not exceeding $10,000.

(See instructions on reverse of this form.)

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME.

(Section 2, Act of Congress approved October 3, 1913.)

MISCELLANEOUS CORPORATIONS.

Return of net income received during the {calendar / fiscal} year ended ....., 191 by .....
(Name of corporation, joint stock company, or association.)
the principal place of business of which is located at .....
(Street and No.)
City or Town of ....., in the State of .....

(The "year" as hereinafter used means the calendar year or fiscal year as the case may be.)

1. Total amount of paid-up capital stock outstanding at close of the year, or if no capital stock, the capital employed in the business at the close of the year.... $.....
2. Total amount of bonded and other indebtedness outstanding at close of year..... $.....

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3. Gross income (see Note A and instructions, paragraphs 10, 17, 18, and 19.)..... $.....

DEDUCTIONS.

4. (a) Total amount of all the ordinary and necessary expenses paid within the year in the maintenance and operation of the business and properties of the corporation, exclusive of interest payments. (See Note B.)..... $.....

(b) All rentals or other payments required to be made as a condition to the continued use or possession of the property. (See paragraph 12 on reverse of this form.)..... $.....

5. (a) Total amount of losses sustained during the year not compensated by insurance or otherwise..... $.....

(b) Total amount of depreciation for the year. (See paragraphs 13 and 14.)..... $.....

6 (a) Total amount of interest accrued and paid within the year on an amount of bonded or other indebtedness not exceeding one-half of the sum of its interest-bearing indebtedness and its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of its indebtedness not exceeding the amount of capital employed in the business at the close of the year..... $.....

(b) Total amount of interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions..... $.....

7. (a) Total taxes paid during the year imposed under authority of the United States or any State or Territory thereof..... $.....

(b) Foreign taxes paid..... $.....

Total deductions..... $.....

8. Net income on which tax at 1 per centum is calculated..... $.....

NOTE.—The above blank spaces for figures should show the amount of each respective item. If there is nothing to return as to any item the word "none" must be written in such blank spaces.

State of ....., County of .....,
to wit:

....., President, and ....., Treasurer, of the ....., a corporation, whose return of annual net income is set forth above, being severally duly

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sworn, each for himself, deposes and says that the foregoing report and the several items therein set forth are, to his best knowledge and belief and from such information as he has been able to obtain, true and correct in each and every particular; that the amount of gross income therein set forth is the full amount of gross income, without any deduction whatsoever, received from all sources by the said corporation during the year stated, and that the net income therein set forth is the full amount upon which the tax at 1 per centum is to be calculated and assessed.

Sworn and subscribed to before me this
..... day of ....., 191

.....
President.

SEAL OF OFFICER TAKING AFFIDAVIT.

.....

.....
Treasurer.

..... (Official capacity.)

NOTE A.—Gross income shall consist of the total of the gross revenues derived from the operation and management of its business and properties together with all amounts of income from other sources including dividends received on stock of other organizations whether subject to this tax or not, and interest received upon obligations of a State or political subdivision thereof, and upon the obligations of the United States or its possessions, as shown by entries upon its books during the year for which the return is made.

NOTE B.—The deductions authorized shall include all expense items under the various heads acknowledged as liabilities by the corporation making the return and entered on its books during the year. Amounts of income *expended in paying dividends on stock,* preferred or common, or in making permanent improvements or betterments, etc., or in any way transferred to capital account, *are not proper deductions in ascertaining annual net income.* Interest paid on mortgage indebtedness on real estate occupied or used by a corporation may be deducted in Item 4, if the interest is paid as a rental or franchise charge, payment of which is required to be made as a condition to the continued use and possession of the property. The amount so paid and included in Item 4 should be stated separately under Item 4 (b). (See paragraph 12 on reverse of this form.)

[Reverse of Form 1035.]

INSTRUCTIONS.

SPECIAL NOTICE.—This form, properly filled out and executed, must be in the hands of the Collector of Internal Revenue for the district in which is located the principal business office of the corporation making the return, on or before March 1, in case the return is based on the calendar year, or within 60 days after the expiration of the fiscal year in case the return is made on that basis.

For failure to comply with this provision of the law, the amount of the assessment is increased 50 per cent and liability to a specific penalty not exceeding $10,000 is incurred.

1. This return of annual net income should be filed with the Collector of Internal Revenue of the district in which the corporation has its principal place of business.

2. The principal place of business as used in the act and in these

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regulations is held to mean the place in which the books of account and other data to be used in preparing the return of annual net income are ordinarily kept.

3. Returns must be verified by two officers of the corporation; that is, by two individuals, namely, the president, vice president, or other principal officer, *and* treasurer or assistant treasurer, or chief financial officer.

4. The affidavit of verification must be made before a notary public or some other officer qualified to administer oaths, and the seal of the attesting officer, if such officer is required by law to have a seal, must be impressed on the return in the space reserved for that purpose.

5. The return must be true and accurate in every respect and must disclose all the income arising, accruing, or received from all sources during the year for which the return is made.

6. If the return is based upon the *calendar year* it should be filed with the collector *on or before the first day of March* next succeeding such calendar year. If it is made on the basis of business transacted during a fiscal year, duly designated in accordance with the law and the regulations, the return must be filed with the collector *on or before the last day of the 60-day period next following the date designated as the close of the fiscal year.*

7. In case of sickness or absence of an officer required to verify the return, the collector of the district is authorized to extend the time for filing such return not exceeding 30 days from the date when such return is otherwise due. Application for such extension should be made prior to the date when the return is due, or within the 30-day period for which such extension is desired and can be granted.

8. Item No. 1 of the schedule on the obverse of this form should not include unissued or treasury stock, but only such stock as has actually been issued and for which payment has been received; or, in case no stock is issued, there should be reported under this item the amount of capital actually employed in the business and property of the corporation. In cases wherein the capital stock is issued payable in installments or upon assessment, only so much of the capital as has been actually paid in upon such installments or assessments should be reported under this item.

9. Item No. 2 should include all interest-bearing indebtedness for the payment of which the corporation or its property is bound. In case of banking corporations and like financial institutions, deposits should not be reported as indebtedness under this head.

10. Item No. 3 of the return form (gross income) should include all income derived from the operations and management of the business and properties, together with all actual increases in value by appraisement, adjustment, or otherwise in the value of the assets which have been taken up on the books as income or credited to profit and loss during the year. In the case of a corporation organized, authorized, or existing under the laws of any foreign country, the gross income to be returned is the gross amount of its income for the year resulting from business transacted and capital invested within the United States.

11. Item No. 4 (a) should include the total amount of all ordinary and necessary expenses paid out of earnings in the maintenance and operation of the business and properties of the corporation, etc., ex-

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clusive of interest and other payments to be listed under their respective heads on the return forms.

12. Item No. 4 (b) should include all rentals or other payments required to be made as a condition to the continued use or possession of the property. In cases where interest on a mortgage on property occupied or used by the corporation is paid as a condition to its possession and use, thus becoming in the nature of a rental charge, such interest charge may be included in the deduction under this item. Mortgage indebtedness, assumed or unassumed, on property to which the corporation has taken or is taking title, or in which it has an equity, or in the acquirement of which the mortgage was considered a part of the purchase price, is held to be a debt of the corporation and interest paid on such indebtedness will be deductible only under Item 6 of the return.

13. The amount claimed under Item No. 5 (b) for depreciation should be such an amount as measures the loss which the corporation actually sustains during the year in the value of buildings, machinery, and such other property as is subject to depreciation on account of wear and tear, exhaustion, or obsolescence. The amount taken credit for on this account in order to be allowable should be so entered on the books as to constitute a liability against the assets of the corporation. The amount claimed under this item should not cover losses in the value of stocks and bonds. Decrease in the book value of securities owned, so far as such decrease represents a decline in the actual value of such securities, should be deducted under Item 5 (a) of the return.

14. Where depreciation of physical property is made good by renewals, replacements, repairs, etc., and the expense of such renewals, replacements, repairs, etc., is charged to the general expense account, no deduction for depreciation can be made in the return of annual net income. Where a depreciation reserve is set up, all renewals and replacements must be charged to such reserve and the addition to this reserve each year must be a fair measure of the loss which the corporation sustains by reason of the depreciation of its property.

15. The amount of interest deductible is the amount of interest accrued and paid within the year on bonded or other indebtedness not exceeding one-half of the sum of interest-bearing indebtedness and the paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of interest paid within the year on an amount of indebtedness not exceeding the amount of capital employed in the business at the close of the year; or in case of a *corporation, joint stock company or association, or insurance company organized* under the laws of a foreign country, interest so paid on its bonded or other indebtedness to an amount of such bonded or other indebtedness not exceeding the proportion of its paid-up capital stock outstanding at the close of the year, or if no capital stock, the amount of *capital employed in the business at the close of the year, which the gross amount of its income for the year from business transacted and capital invested within the United States bears to the gross amount of its income derived from all sources within and without the United States.* All interest deductions must be claimed under Item 6 on the return form.

16. Dividends declared or paid are not deductible from gross income.

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17. *Dividends received upon the stock of other corporations* must be included in gross income and *are not deductible* therefrom in the ascertainment of the net income on which the tax is computed.

18. Interest received upon the obligations of a State or any political subdivision thereof, and upon the obligations of the United States or its possessions, should be included in gross income, as well as all other interest due and accrued during the period for which return is made.

19. Accrued interest is considered to be interest due and payable, except in the cases of banking or other similar institutions which close their accounts on the basis of the interest earned. In all cases the accrued interest shall be reported on the basis on which the books are closed.

20. Taxes deductible in the return are such taxes, actually paid within the year, as are inposed by authority of the United States or of any State or Territory thereof, or by the government of any foreign country, not including taxes paid by a corporation, pursuant to guaranty, on its bonds or the income therefrom and not including those taxes assessed against local benefits. A reserve for taxes, as such, is not deductible.

21. The gross income of mercantile corporations should be ascertained in the following manner: From the sum of the total sales during the year plus the sum of the inventory at the end of the year, deduct the sum of the inventory at the beginning of the year plus the cost of the goods and materials purchased during the year; to this difference add the income received from any other source and the result will be the gross income to be reported under Item No. 3 of the return.

22. Gross income in the case of a manufacturing corporation shall include the total receipts from the sale of all manufactured goods sold during the year plus any increase in the inventoried value ascertained through an accounting of the finished and unfinished product, raw material, etc., on hand at the close of the year.

23. To the income thus ascertained there should be added the income arising, accruing, or received from any and all other sources, the aggregate thus ascertained to be the gross income to be returned under Item No. 3 of the return form. Since the gross income thus ascertained represents the total receipts as well as the inventoried value of finished and unfinished products, raw material, etc., the corporation will include in its deduction under Item No. 4 all expenditures for material, labor, fuel, and other items going to make up the cost of the goods sold or inventoried at the end of the year.

SPECIAL NOTICE.—Any officer of any corporation required by law to make, render, sign or verify any return, who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by section 2, Act of October 3, 1913, to be made, shall be guilty of a misdemeanor and shall be fined not exceeding $2,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

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FORM 1040.

To be filled in by Collector.
List No. .....
....District of .....
Date received .....

INCOME TAX.

To be filled in by Internal Revenue Bureau.
File No. .....
Assessment List .....
Page .....Line .....

THE PENALTY for failure to have this return in the hands of the Collector of Internal Revenue on or before March 1, is $20 to $1,000.

(See Instructions on Page 4.)

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME OF INDIVIDUALS.

(As provided by Act of Congress, approved October 3, 1913.)

RETURN OF NET INCOME RECEIVED OR ACCRUED DURING THE YEAR ENDED DECEMBER, 31, 191..

(For the year 1913, from March 1 to December 31.)

Filed by (or for) ..... of .....
(Full name of individual.) (Street and No.)
in the City, Town, or Post Office of ..... State of .....

(Fill in pages 2 and 3 before making entries below.)

1. Gross income (see page 2, line 12)	$..
2. General Deductions (see page 3, line 7)	$..
3. Net Income	$..

Deductions and exemptions allowed in computing income subject to the normal tax of 1 per cent.		
4. Dividends and net earnings received or accrued, of corporations, etc., subject to like tax. (See page 2, line 11)	$..	
5. Amount of income on which the normal tax has been deducted and withheld at the source. (See page 2, line 9, column A)	..	
6. Specific exemption of $3,000 or $4,000, as the case may be. (See Instructions 3 and 19.)	..	
Total deductions and exemptions. (Items 4, 5, and 6)		$..
7. Taxable Income on which the normal tax of 1 per cent is to be calculated. (See Instruction 3.)		$..

8. When the net income shown above on line 3 exceeds $20,000, the additional tax thereon must be calculated as per schedule below:

	Income.	Tax.
1 per cent on amount over $20,000 and not exceeding $50,000	$..	$..
2 per cent on amount over $50,000 and not exceeding $75,000	..	..
3 per cent on amount over $75,000 and not exceeding $100,000	..	..
4 per cent on amount over $100,000 and not exceeding $250,000	..	..
5 per cent on amount over $250,000 and not exceeding $500,000	..	..
6 per cent on amount over $500,000	..	..
Total additional or super tax		$..
Total normal tax (1 per cent of amount entered on line 7)		$..
Total tax liability		$..

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Page 2 [of Form 1040]

GROSS INCOME.

This statement must show in the proper spaces the entire amount of gains, profits, and income received by or accrued to the individual from all sources during the year specified on page 1.

Description of Income.	A. Amount of income on which tax has been deducted and withheld at the source.	B. Amount of income on which tax has NOT been deducted and withheld at the source.
1. Total amount derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid	$	$
2. Total amount derived from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, including bonds, stocks, etc.		
3. Total amount derived from rents and from interest on notes, mortgages, and securities (other than reported on lines 5 and 6)		
4. Total amount of gains and profits derived from partnership business, whether the same be divided and distributed or not		
5. Total amount of fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods		
6. Total amount of income derived from coupons, checks, or bills of exchange for or in payment of interest upon bonds issued in *foreign countries* and upon *foreign mortgages* or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries		
7 Total amount of income received from fiduciaries		
8. Total amount of income derived from any source whatever, not specified or entered elsewhere on this page		
9. Totals	$	$

NOTE.—Enter total of Column A on line 5 of first page.

10. Aggregate Totals of Columns A and B	$
11. Total amount of income derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, associations, or insurance companies subject to like tax. (To be entered on line 4 of first page.)	$
12. Total "Gross Income" (to be entered on line 1 of first page.)	$

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Page 3 [of Form 1040]

GENERAL DEDUCTIONS.

1. The amount of necessary expenses actually paid in carrying on business, but not including business expenses of partnerships, and not including personal, living, or family expenses.....	$..
2. All interest paid within the year on personal indebtedness of taxpayer	...
3. All national, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits)	...
4. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise.....	...
5. Debts due which have been actually ascertained to be worthless and which have been charged off within the year.....	...
6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per cent of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made.....	...
7. Total "General Deductions" (to be entered on line 2 of first page.)	...

AFFIDAVIT TO BE EXECUTED BY INDIVIDUAL MAKING HIS OWN RETURN.

I solemnly swear (or affirm) that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all gains, profits, and income received by or accrued to me during the year for which the return is made, and that I am entitled to all the deductions and exemptions entered or claimed therein, under the Federal Income-tax Law of October 3, 1913.

Sworn to and subscribed before me this..... day of ....., 191

..... (Signature of individual.)

SEAL OF OFFICER TAKING AFFIDAVIT.

.....

.....
(Official capacity.)

AFFIDAVIT TO BE EXECUTED BY DULY AUTHORIZED AGENT MAKING RETURN FOR INDIVIDUAL.

I solemnly swear (or affirm) that I have sufficient knowledge of the affairs and property of ..... to enable me to make a full and complete return thereof, and that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all gains, profits, and income received by or accrued to said individual during the year for which the return is made, and that the said individual is entitled, under the Federal In-

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come-tax Law of October 3, 1913, to all the deductions and exemptions entered or claimed therein.

Sworn to and subscribed before me this..... day of ....., 191

.....
(Signature of agent.)

SEAL OF OFFICER TAKING AFFIDAVIT.

.....
(Official capacity.)

ADDRESS IN FULL. .....
.....

[See instructions on back of this page (immediately below).]

Page 4 [of Form 1040]

INSTRUCTIONS.

1. This return shall be made by every citizen of the United States, whether residing at home or abroad, and by every person residing in the United States, though not a citizen thereof, having a *net income* of $3,000 or over for the taxable year, and *also* by every *nonresident alien* deriving income from property owned and business, trade, or profession carried on *in the United States* by him.

2. When an individual by reason of minority, sickness or other disability, or absence from the United States, is unable to make his own return, it may be made for him by his *duly authorized* representative.

3. The *normal tax* of 1 per cent shall be assessed on the total net income less the specific exemption of $3,000 or $4,000 as the case may be. (For the year 1913, the specific exemption allowable is $2,500 or $3,333.33, as the case may be.) If, however, the normal tax has been deducted and withheld on any part of the income at the source, or if any part of the income is received as dividends upon the stock or from the net earnings of any corporation, etc., which is taxable upon its net income, such income shall be deducted from the individual's total *net income* for the purpose of calculating the amount of income on which the individual is liable for the normal tax of 1 per cent by virtue of this return. (See page 1, line 7.)

4. The *additional or super tax* shall be calculated as stated on page 1.

5. This return shall be filed with the Collector of Internal Revenue for the district in which the individual resides if he has no other place of business, otherwise in the district in which he has his *principal place of business;* or in case the person resides in a foreign country, then with the collector for the district in which his principal business is carried on in the United States.

6. This return must be filed on or before the first day of March succeeding the close of the calendar year for which return is made.

7. The *penalty* for *failure to file the return within the time specified by law* is $20 to $1,000. In case of refusal or neglect to render the return within the required time (except in cases of sickness or absence), 50 per cent shall be added to amount of tax assessed. In case of *false or fraudulent return*, 100 per cent shall be added to

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such tax, and any person required by law to make, render, sign, or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000 or be imprisoned not exceeding one year, or both, at the discretion of the court, with the costs of prosecution.

8. When the return is not filed within the required time by reason of sickness or absence of the individual, an extension of time, not exceeding 30 days from March 1, within which to file such return, *may be* granted by the collector, *provided* an application therefor is made by the individual within the period for which such extension is desired.

9. This return properly filled out must be made under oath or affirmation. Affidavits may be made before any officer *authorized by law* to administer oaths. If before a justice of the peace or magistrate, not using a seal, *a certificate of the clerk of the court as to the authority* of such officer to administer oaths should be *attached to the return.*

10. Expense for medical attendance, store accounts, family supplies, wages of domestic servants, cost of board, room, or house rent for family or personal use, *are not expenses that can be deducted from gross income.* In case an individual owns his own residence he can not deduct the estimated value of his rent, neither shall he be required to include such estimated rental of his home as income.

11. The farmer, in computing the net income from his farm for his annual return, shall include all moneys received for produce and animals sold, and for the wool and hides of animals slaughtered, provided such wool and hides are sold, and he shall deduct therefrom the sums actually paid as purchase money for the animals sold or slaughtered during the year.

When animals were raised by the owner and are sold or slaughtered he shall not deduct their value as expenses or loss. He may deduct the amount of money actually paid as expense for producing any farm products, live stock, etc. In deducting expenses for repairs on farm property the amount deducted must not exceed the amount actually expended for such repairs during the year for which the return is made. (See page 3, item 6.) The cost of replacing tools or machinery is a deductible expense to the extent that the cost of the new articles does not exceed the value of the old.

12. In calculating losses, only such losses as shall have been actually sustained and the amount of which has been definitely ascertained during the year covered by the return can be deducted.

13. Persons receiving fees or emoluments for professional or other services, as in the case of physicians or lawyers, should include all actual receipts for services rendered in the year for which return is made, together with all unpaid accounts, charges for services, or contingent income due for that year, if good and collectible.

14. Debts which were contracted during the year for which return is made, but found in said year to be worthless, may be deducted from gross income for said year, but such debts cannot be regarded as worthless until after legal proceedings to recover the same have proved fruitless, or it clearly appears that the debtor is insolvent. If debts contracted prior to the year for which return is made were included as income in return for year in which said debts were contracted, and such debts shall subsequently prove to

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be worthless, they may be deducted under the head of losses in the return for the year in which such debts were charged off as worthless.

15. Amounts due or accrued to the individual members of a partnership from the net earnings of the partnership, whether apportioned and distributed or not, shall be included in the annual return of the individual.

16. United States pensions shall be included as income.

17. Estimated advance in value of real estate is not required to be reported as income, unless the increased value is taken up on the books of the individual as an increase of assets.

18. Costs of suits and other legal proceedings arising from ordinary business may be treated as an expense of such business, and may be deducted from gross income for the year in which such costs were paid.

19. An unmarried individual or a married individual not living with wife or husband shall be allowed an exemption of $3,000. When husband and wife live together they shall be allowed jointly a total exemption of only $4,000 on their aggregate income. They may make a joint return, both subscribing thereto, or if they have separate incomes, they may make separate returns; but in no case shall they jointly claim more than $4,000 exemption on their aggregate income.

20. In computing net income there shall be excluded the compensation of all officers and employees of a State or any political subdivision thereof, except when such compensation is paid by the United States Government.

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FORM 1040 (REVISED).

To be filled in by Collector.
Assessment List 23-B..... (Month.)
Folio ..... Line .....

INCOME TAX.

To be filled in by Internal Revenue Bureau.
File No.....
Examined by.....
Audited by.....

Above space to be stamped by Collector, showing district and date received.

IMPORTANT.—Read this form through carefully. Fill in pages 2 and 3 before making entries on first page.

THE PENALTY for failure to have this return in the hands of the collector of internal revenue on or before March 1 is $20 to $1,000.

(See instructions on page 4.)

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL NET INCOME OF INDIVIDUALS.

(As provided by Act of Congress, approved October 3, 1913.)

INCOME RECEIVED OR ACCRUED DURING THE YEAR ENDED DECEMBER 31, 191...

Filed by (or for)....., of.....
(Street and number.)
.....
(Post-office address.) (State.)

COMPLETE ANSWERS SHOULD BE GIVEN TO THE FOLLOWING QUESTIONS.

Did you render a return of income for the preceding year?....If so, in what Internal Revenue District was it filed?.....
Were you *single* or *married* with wife or husband living with you on December 31, of the year for which this return is rendered?.....
If married, give full name of wife or husband.....
Has your wife or husband income from sources independent of your own?.....
Have you included your wife's or husband's income in this return?.....

	Millions	Thousands	Hundreds	Cts.
1. Gross Income (brought from line 28)	$			
2. General Deductions (brought from line 36)	$			
3. Net Income	$			

Specific deductions and exemptions allowed in computing normal tax of 1 per cent.

	Millions	Thousands	Hundreds	Cts.
4. Dividends (brought from line 27)	$			
5. Income on which the normal tax has been paid or is to be paid at the source (brought from line 23, Column A)	$			
6. Specific exemption of $3,000, or $4,000, as the case may be	$			
Note.—If separate return is made by husband or wife and exemption is prorated, state amount claimed by: Husband... $..... Wife..... $.....				
7. Total deductions and exemptions (Items 4, 5, and 6)				
8. Taxable Income on which the normal tax of 1 per cent is to be calculated				

NOTE.—When the net income shown above on line 3 exceeds $20,000 the additional tax thereon must be calculated as per schedule below.

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	Income. Millions	Thousands	Hundreds	Cts.	Tax. Millions	Thousands	Hundreds	Cts.
One per cent on amount over $20,000 and not exceeding $50,000	$				$			
Two per cent on amount over $50,000 and not exceeding $75,000	$				$			
Three per cent on amount over $75,000 and not exceeding $100,000					$			
Four per cent on amount over $100,000 and not exceeding $250,000	$				$			
Five per cent on amount over $250,000 and not exceeding $500,000	$				$			
Six per cent on amount over $500,000	$				$			
9. Total additional or super tax					$			
10. Total normal tax (1 per cent of amount entered on line 8)					$			
11. Total tax to be paid					$			

[Page] 2 [of Form 1040 (Revised)]

GROSS INCOME

This statement must show in the proper spaces the ENTIRE AMOUNT of gains, profits, and income received by or accrued to the individual from all sources during the year specified on page 1, EXCEPT income derived from the obligations of the United States or any of its possessions, or of any State or political subdivision thereof, including district drainage bonds; and amounts paid by a State or any political subdivision thereof for services rendered as an officer or employee.

DESCRIPTION OF INCOME. Note.—If husband and wife render separate returns, only the income and deductions of the husband or wife (as the case may be) who renders *this return* shall be included herein; but if separate returns are not rendered by both husband and wife the income and deductions of both husband and wife shall be included separately as provided on this form.	A. Income on which the tax has been paid or is to be paid at the source. Millions	Thousands	Hundreds	Cts.	B. Income on which the tax has NOT been paid or is not to be paid at the source. Millions	Thousands	Hundreds	Cts.
Total Amount Derived from—								
12. Salaries and wages	$				$			
Wife's income								
13. Professions and vocations								
Wife's income								
14. Business, trade, commerce, or sales, or dealings in property, whether real or personal								
Wife's income								
15. Rents								
Wife's income								
16. *Interest* on notes, mortgages, bank deposits, and securities other than reported on lines 17 and 20								
Wife's income								
17. *Interest* on bonds, mortgages or deeds of trust, or other similar obligations of domestic corporations, joint stock companies or associations, and insurance companies								
Wife's income								

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GROSS INCOME—Continued.

DESCRIPTION OF INCOME.	A. Income on which the tax has been paid or is to be paid at the source.										B. Income on which the tax has NOT been paid or is not to be paid at the source.									
		Millions			Thousands			Hundreds		Cts.		Millions			Thousands			Hundreds		Cts.
18. Fiduciaries* (excepting dividends from domestic corporations, which must be included as indicated in line 26 below)	$										$									
Wife's income																				
19. Partnership gains and profits, whether distributed or not. (*Net* gains or profits must be reported here.)																				
Wife's income																				
20. Interest upon bonds issued in foreign countries and up on *foreign mortgages* or like obligations (not payable in the United States), and also dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries																				
Wife's income																				
21. Royalties from mines, oil wells, patents, franchises, or other legalized privileges																				
Wife's income																				
22. Other sources not enumerated above																				
Wife's income																				
Note.—State here sources from which income entered on line 22 is received and amount received from each.																				
23. Totals (Note.—Enter total of Column A on line 5)	$										$									
24. Aggregate Totals of Columns A and B											$									
25. Dividends on stock or from the net earnings of domestic corporations, joint stock companies, associations, or insurance companies subject to like tax	$																			
26. Dividends received through fiduciaries (see line 18)																				
27. Total Dividends (to be entered on line 4)											$									
28. Total Gross Income (to be entered on line 1)											$									

*There should be included under this item all income received from guardians, trustees, executors, administrators, agents, receivers, conservators, or other persons acting in a fiduciary capacity.

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[Page] 3 [of Form 1040 (Revised)]

GENERAL DEDUCTIONS

NOTE.—Claims for deductions can not be allowed unless the information required below is clearly set forth.

	Millions	Thousands	Hundreds	Cts.
29. The amount of necessary expenses actually paid within the calendar year, for which the return is made, in carrying on any *individual business*. There *must not* be included under this head personal, living, or family expenses, business expenses of partnerships, or cost of merchandise. Amounts paid for permanent improvement or betterment of property are not proper expense deductions..... $				
Wife's deduction.....				
Note.—State on the following lines the principal business in which the above expenses were incurred.				
30. All interest paid within the year on personal indebtedness of taxpayer.....				
Wife's deduction.....				
31. All national, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits).....				
Wife's deduction.....				
32. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck, and not compensated by insurance or otherwise....				
Wife's deduction.....				
Note.—State (*a*) of what the loss consisted, (*b*) when it was actually sustained, and (*c*) how it was determined to be a loss.				
33. Debts past due which have been actually ascertained to be worthless and which have been charged off within the year.....				
Wife's deduction.....				
Note.—State (*a*) of what the debts consisted, (*b*) when they were created, (*c*) when they became due, and (*d*) how they were actually determined to be worthless.				
34. Amount representing a reasonable allowance for the *exhaustion, wear and tear of property arising out of its use or employment in business.* No deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which a deduction is claimed elsewhere in this return.....				
Wife's deduction.....				
Note.—State (*a*) what the property was on which depreciation is taken (if buildings, state when erected, of what material constructed, and value of same, as of January 1, of the calendar year for which this return is rendered), and (*b*) what percentage of depreciation is claimed.				
35. Amount allowed to cover depletion, in case of mines and oil wells, not to exceed 5 per cent of the gross value at the mine or well of the output for the calendar year for which this return is rendered..				
Wife's deduction.....				
Note.—State (*a*) cost of mine or well, (*b*) gross value at the mine or well of the output for the calendar year for which this return is rendered, and (*c*) what percentage of depletion is claimed.				
36. Total "General Deductions" (to be entered on line 2)..... $				

Note.—If space is insufficient for answering any questions, attach supplemental sheet to this return.

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[Page] 4 [of Form 1040 (Revised)]

AFFIDAVIT TO BE EXECUTED BY INDIVIDUAL MAKING HIS OWN RETURN

I swear (or affirm) that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all taxable gains, profits, and income received by or accrued to me during the year for which the return is made, and that I am entitled to all the deductions and exemptions entered or claimed therein under the Federal Income Tax Law of October 3, 1913.

.....
(Signature of individual.)

Sworn to and subscribed before me this.....day of....., 191

[Seal.]

.....
.....
(Official capacity.)

AFFIDAVIT TO BE EXECUTED BY DULY AUTHORIZED AGENT MAKING RETURN FOR INDIVIDUAL

I swear (or affirm) that I have sufficient knowledge of the affairs and property of.....to enable me to make a full and complete return of the taxable income thereof, and that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all the taxable gains, profits, and income received by or accrued to said individual during the year for which the return is made, and that the said individual is entitled under the Federal Income Tax Law of October 3, 1913, to all the deductions and exemptions entered or claimed therein, and that I am authorized to make this return for the following reasons:

.....
.....
.....

.....
(Signature of agent.)

.....
(Post-office address of agent.)

Sworn to and subscribed before me this.....day of....., 191

[Seal.]

.....
.....
(Official capacity.)

INSTRUCTIONS

1. This return shall be made by every citizen of the United States, whether residing at home or abroad, and by every person residing in the United States, though not a citizen thereof, having a *net income* of $3,000, or over, for the taxable year.

2. This return shall be made by every *nonresident alien* deriving any net income from property owned and business, trade, or profession carried on in the United States by him. No specific exemption is allowed nonresident aliens.

3. When an individual by reason of minority, sickness, or other disability, or absence from the United States, is unable to make his own return, it may be made for him by his *duly authorized* representative.

4. This return should be filed with the Collector of Internal Revenue for the district in which the individual resides. In case the person resides in a foreign country, then with the collector for the district in which his principal business is carried on in the United States.

5. When the return is not filed within the required time by reason of sickness or absence of the individual, an extension of time, not exceeding 30 days from March 1, within which to file such return *may be* granted by the collector, *provided* a written application therefor is made by the individual within the period for which such extension is desired.

6. This return, properly filled out, must be made under oath or affirmation. Affidavits may be made before any officer *authorized by law* to administer oaths.

7. An unmarried individual or married individual not living with husband or wife shall be allowed an exemption of $3,000. When husband and wife live together they shall be allowed jointly a total exemption of only $4,000 on their aggregate income. Either husband or wife may make, sign, and verify a return of their joint income. Where husband and wife have separate incomes they make a joint return of such separate income, both subscribing to the return, or they may make separate returns of their respective incomes but in no case shall they claim or be allowed more than $4,000 exemption on their aggregate incomes.

8. Amounts charged on line 29 for restoring property or making good the exhaustion thereof from its use in business, together with the amount claimed for depreciation on line 34, must not exceed the deterioration of the property in one year.

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FORM 1041.

To be filled in by Collector.

List No. .....
....District of .....
Date received .....

INCOME TAX.

To be filled in by Internal Revenue Bureau.

File No. .....
Assessment List .....
Page .....Line .....

THE PENALTY for failure to have this return in the hands of the Collector of Internal Revenue on or before March 1, is $20 to $1,000.

(See instructions on page 4.)

UNITED STATES INTERNAL REVENUE.

RETURN OF ANNUAL INCOME BY FIDUCIARIES.

(As provided by Act of Congress approved October 3, 1913.)

RETURN OF INCOME RECEIVED OR ACCRUED DURING THE YEAR ENDED DECEMBER 31, 191....

(For the year 1913, from March 1 to December 31.)

Filed by....., acting in the capacity of
(Name of fiduciary.)
....., for the beneficiaries of the estate
(State whether trustee, executor, etc.)
or trust of .....

(Fill in pages 2 and 3 before making entries on this page.)

1. Gross Income (see page 2, line 11)	$..
2. Total Deductions (see page 3, line 9)	$..
3. Amount of income paid or payable to beneficiaries on which the normal tax of 1 per cent has been deducted and withheld as listed below	$..

Names of beneficiaries.	Addresses.	Amount of income paid or accrued to beneficiaries.	Amount of exemption claimed.	Amount of income on which fiduciary is liable for tax.	Amount of tax withheld.
.....	.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
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.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
Totals.....		$.....	$.....	$.....	$.....

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Page 2 [of Form 1041]

GROSS INCOME.

This statement must show in the proper spaces the entire amount of gains, profits, and income coming into the custody or control and management of the fiduciary, for the benefit of the beneficiaries of the trust or estate, during the year specified on page 1.

Description of Income.	A. Amount of income on which tax has been deducted and withheld at the source.	B. Amount of income on which tax has NOT been deducted and withheld at the source.
1. Total amount derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid	$..	$..
2. Total amount derived from professions, vocations, businesses, trade, commerce, or sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, including bonds, stocks, etc		
3. Total amount derived from rents and from interest on notes, mortgages, and securities (other than reported on lines 5 and 6)		
4. Total amount of gains and profits derived from partnership business, whether the same be divided and distributed or not		
5. Total amount of fixed and determinable annual gains, profits, and income derived from interest upon bonds and mortgages or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, whether payable annually or at shorter or longer periods		
6. Total amount of income derived from coupons, checks, or bills of exchange for or in payment of interest upon bonds issued in *foreign countries* and upon *foreign mortgages* or like obligations (not payable in the United States), and also from coupons, checks, or bills of exchange for or in payment of any dividends upon the stock or interest upon the obligations of foreign corporations, associations, and insurance companies engaged in business in foreign countries		
7. Total amount of income derived from any source whatever, not specified or entered elsewhere on this page		
8. Totals	$..	$..

NOTE.—Enter total of Column A on line 8 of third page.

9. Aggregate Totals of Columns A and B	$..
10. Total amount of income derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, associations, or insurance companies subject to like tax (To be entered on line 7 of third page.)	$..
11. Aggregate Total of "Gross Income" (to be entered on line 1 of first page.)	$..

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Page 3 [of Form 1041]

DEDUCTIONS.

1. The amount of necessary expenses actually paid in carrying on business, but not including business expenses of partnerships, and not including personal, living, or family expenses.....	$..
2. All interest paid within the year on personal indebtedness of taxpayer	...
3. All United States, State, county, school, and municipal taxes paid within the year (not including those assessed against local benefits)	...
4. Losses actually sustained during the year incurred in trade or arising from fires, storms, or shipwreck, and not compensated for by insurance or otherwise.....	...
5. Debts due which have been actually ascertained to be worthless and which have been charged off within the year.....	...
6. Amount representing a reasonable allowance for the exhaustion, wear, and tear of property arising out of its use or employment in the business, not to exceed, in the case of mines, 5 per cent of the gross value at the mine of the output for the year for which the computation is made, but no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof, for which an allowance is or has been made.....	...
7. Total amount of income derived from dividends on the stock or from the net earnings of corporations, joint-stock companies, associations, or insurance companies subject to like tax (same as entry on line 10, page 2.).....	...
8. Amount of income on which the normal tax of 1 per cent has been deducted and withheld at the source (see page 2) line 8, column A).....	
9. Total Deductions (to be entered on line 2 of first page.).....	$..

AFFIDAVIT TO BE EXECUTED WHERE FIDUCIARY IS AN INDIVIDUAL.

I solemnly swear (or affirm) that I am the.....for the
(State whether trustee, executor, etc.)
beneficiaries of the estate or trust of .....; that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all gains, profits, and income coming into my custody or control and management during the year for which the return is made; that said beneficiaries are entitled, under the Federal Income-tax Law of October 3, 1913, to all the deductions entered or claimed therein; that all certificates claiming personal exemption, presented by the beneficiaries, are herewith inclosed; and there is contained therein a true and complete list of the names and addresses of all beneficiaries to whom any part of the amount stated on line 3 of the first page thereof has been paid or is payable.

Sworn to and subscribed before me this .... day of ....., 191 .....
(Signature of fiduciary.)

SEAL OF OFFICER TAKING AFFIDAVIT. .....

ADDRESS IN FULL. .....
.....

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AFFIDAVIT TO BE EXECUTED WHERE FIDUCIARY IS AN ORGANIZATION.

I solemnly swear (or affirm) that I am the.....of the
(State official position.)
..... of ....., which organ-
(State name of fiduciary organization.) (Address in full.)
ization is the duly authorized or appointed.....
(State whether trustee, executor, etc.)
for the beneficiaries of the estate or trust of .....; that I am duly authorized to act for said fiduciary; that the foregoing return, to the best of my knowledge and belief, contains a true and complete statement of all gains, profits, and income coming into the custody or control and management of said organization in its fiduciary capacity as stated during the year for which the return is made; that said beneficiaries are entitled under the Federal Income-tax Law of October 3, 1913, to all the deductions entered or claimed therein; that all certificates claiming personal exemption, presented by the beneficiaries, are herewith inclosed; and there is contained therein a true and complete list of the names and addresses of all beneficiaries to whom any part of the amount stated on line 3 of the first page thereof has been paid or is payable.

Sworn to and subscribed before me this .... day of ....., 191 .....
(Signature of officer representing fiduciary.)

SEAL OF OFFICER TAKING AFFIDAVIT. .....

ADDRESS IN FULL. .....

.....

Page 4 [of Form 1041]

INSTRUCTIONS.

1. Fiduciaries shall, when the annual interest of any beneficiary in income accruing and payable through said fiduciary is in excess of $3,000, make and render a return on this form of such income of the person or persons for whom they act, to the Collector of Internal Revenue of the district in which the fiduciary resides. The return shall be made as provided herein, whether the income is distributed or not. See Treasury Decision 1906.

2. The list return required from fiduciaries by regulations provided in Treasury Decision 1906, issued November 28, 1913, shall be made on page 1 of this return, giving thereon the name of each beneficiary of the trust or estate, the amount of income paid or accrued to each beneficiary, the amount of exemption claimed by each beneficiary, if any, the amount of income on which fiduciary is liable for tax, and the amount of income withheld for tax.

3. Where several individuals act jointly in a fiduciary capacity, when this return is required it may be made and executed by one of two or more. When the fiduciary is an organization it shall be

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signed and executed by the President, Secretary, or Treasurer of said organization.

4. This return shall be filed with the Collector of Internal Revenue for the district in which the fiduciary resides if he has no other place of business, otherwise in the district in which he has his principal place of business.

5. This return must be filed on or before the first day of March succeeding the close of the calendar year for which return is made.

6. The penalty for failure to file the return within the time specified by law is $20 to $1,000. In case of refusal or neglect to render the return within the required time (except in case of sickness or absence) 50 per cent shall be added to amount of tax assessed. *In case of false or fraudulent return 100 per cent shall be added to such tax and a fine not exceeding $2,000 or imprisonment not exceeding one year or both may be imposed.*

7. When the return is not filed within the required time by reason of sickness or absence of the fiduciary, an extension of time not exceeding 30 days from March 1, within which to file such return may be granted by the Collector, provided an application therefor is made by the fiduciary within the period for which such extension is desired.

8. This return properly filled out must be made under oath or affirmation. Affidavits may be made before any officer authorized by law to administer oaths. If before a justice of the peace or magistrate, not using a seal, a certificate of the clerk of the court as to the authority of such officer to administer oaths should be attached to the return.

The following instructions, so far as applicable, are to be considered by the fiduciary in determining the amount of income coming into his custody or control and management which should be reported in this return on page 2, and the deductions which should be reported on page 3.

9. Expense for medical attendance, store accounts, family supplies, wages of domestic servants, cost of board, room, or house rent for family or personal use, are not expenses that can be deducted from gross income. In case an individual owns his own residence he can not deduct the estimated value of his rent, neither shall he be required to include such estimated rental of his home as income.

10. The farmer, in computing the net income from his farm for his annual return, shall include all moneys received for produce and animals sold, and for the wool and hides of animals slaughtered, provided such wool and hides are sold, and he shall deduct therefrom the sums actually paid as purchase money for the animals sold or slaughtered during the year.

When animals are raised by the owner and are sold or slaughtered, he shall not deduct their value as expenses or loss. He may deduct the amount of money actually paid as expense for producing any farm products, live stock, etc. In deducting expenses for repairs on farm property the amount deducted must not exceed the amount actually expended for such repairs during the year for which the return is made. (See page 3, item 6.) The cost of replacing tools or machinery is a deductible expense to the extent that the cost of the new articles does not exceed the value of the old.

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11. In calculating losses, only such losses as shall have been actually sustained and the amount of which has been definitely ascertained during the year covered by the return can be deducted.

12. Persons receiving fees or emoluments for professional or other services, as in the case of physicians or lawyers, should include all actual receipts for services rendered in the year for which the return is made, together with all unpaid accounts, charges for services, or contingent income due for that year, if good and collectible.

13. Debts which were contracted during the year for which return is made, but found in said year to be worthless, may be deducted from gross income for said year, but such debts can not be regarded as worthless until after legal proceedings to recover the same have proved fruitless, or it clearly appears that the debtor is insolvent. If debts due to the taxpayer and contracted prior to the year for which return is made were included as income in return for year in which said debts were contracted, and such debts shall subsequently prove to be worthless, they may be deducted under the head of losses in the return for the year in which such debts were charged off as worthless.

14. Amounts due or accrued to the individual members of a partnership from the net earnings of the partnership, whether apportioned and distributed or not, shall be included in the annual return of the individual.

15. United States pensions shall be included as income.

16. Estimated advance in value of real estate is not required to be reported as income, unless the increased value is taken up on the books of the individual as an increase of assets.

17. Costs of suits and other legal proceedings arising from ordinary business may be treated as an expense of such business, and may be deducted from gross income for the year in which such costs were paid.

18. An unmarried individual or a married individual not living with wife or husband shall be allowed an exemption of $3,000. When husband and wife live together they shall be allowed jointly a total exemption of only $4,000 on their aggregate income.

19. In computing net income there should be excluded the compensation of all officers and employees of a State or any political subdivision thereof, except when such compensation is paid by the United States Government.

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FORM 1042.

UNITED STATES INTERNAL REVENUE

Annual List Return of Amount of Normal Income Tax Withheld at the Source on Salaries, Wages, Rent, Interest, or other Fixed and Determinable Annual Gains, Profits, and Income Exceeding $3,000 for the Taxable Year

The income to be made the subject of this return does not include dividends on capital stock or net earnings of corporations, joint-stock companies, etc., subject to like tax or income derived from interest upon bonds or mortgages, or deeds of trusts, or other similar obligations of corporations, joint-stock companies, etc., or from interest upon bonds, mortgages, or dividends of foreign corporations.

Filed by ....., for the year 191
(Name of debtor or withholding agent.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the debtor or his duly appointed withholding agent, as the case may be, is located, on or before the first day of March, showing the names and addresses of persons who have received salaries, wages, rent, etc., as above described, in excess of $3,000, on which the normal tax of 1 per cent has been deducted and withheld during the preceding calendar year.

I (we), ..., of .....
(Name.) (Address in full.)

the ..... of ....., located
(State official title.) (Debtor or withholding agent.)

at ..... do solemnly swear (or
(Address in full.)

affirm) that the following is a true and complete return of all salaries, wages, rent, and other fixed and determinable annual gains, profits, and income in excess of $3,000 as above described, which were paid (or were payable) to each of the persons listed herein, and on which the normal tax of 1 per cent was deducted and withheld during the year stated, and there are herewith inclosed all certificates claiming exemptions and deductions with respect to said income.

Name.	Address in Full.	Character of Income. (State whether Rent, Wages, etc.)	Amount of Income.	Am't of Exemption Claimed.	Am't of Income on which Withholding Agent is Liable for Tax.	Amount of Tax Withheld.
.....	.....	.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
Totals for calendar year			$.....	$.....	$.....	$.....
Amount of tax remitted herewith (if any) to Collector						$.....

To .....
Collector.
.. District of .....
.....
(Address.)

Sworn to and subscribed before me this .. day of ...., 191..
.....

Signed:
.....
.....
(Capacity in which acting.)

Note A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the year for which the list is made.

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FORM 1043.

UNITED STATES INTERNAL REVENUE

Monthly List Return of Amount of Normal Income Tax Withheld on Foreign Income by Licensed Banks or Collecting Agencies

Filed by ..... License No. .....
(Name of bank or collecting agency.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the licensee is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments from coupons, checks, or bills of exchange representing interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations (not payable in the United States), or dividends upon the stock or interest upon the obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month.

I (we), ..., of .....
(Name.) (State address in full.)

the ..... of the above-named bank or collecting
(Official position.)

agency located at ..... do solemnly
(Address in full.)

swear (or affirm) that the following is a true and complete return of all payments as above described, made by said bank or collecting agency, and from which the normal tax of 1 per cent was deducted and withheld at the time of payment, or for which it is liable as withholding agent, during the month of ....., 191.., and there are herewith inclosed all certificates claiming exemption which were presented with said coupons, checks, etc.

Name.	Address in full.	Character of Income. (See Note C.)	Amount of Income.	Am't of Exemption Claimed.	Am't of Income on which Withholding Agent is Liable for Tax.	Amount of Tax Withheld.
.....	.....	.....	$.....	$.....	$.....	$.....
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
Totals for month			$.....	$.....	$.....	$.....
Amount of tax remitted herewith (if any) to Collector						$.....

To ..... Sworn to and subscribed before me this ... day of...., 191.. Signed: .....
Collector.
.. District of .....
.....
(Address.) (Capacity in which acting.)

Note A.—Withholding agents may, if they so desire, pay at the time this list is filed, to the Collector of Internal Revenue with whom the list is filed, the amount of tax withheld during the month for which the list is made.

Note B.—All substitute certificates of collecting agents, authorized by regulations, that are received by debtors or withholding agents will be considered the same as certificates of owners, and in entering same in making Monthly List Returns, debtors or withholding agents will enter the name, address, and the number of the substitute certificate of the collecting agent in lieu of the name and address of the owner of the bonds.

Note C.—Enter "Int. on Bonds," "Int. on Mortg.," "Dividends," etc., as the case may be.

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FORM 1043 A.

UNITED STATES INTERNAL REVENUE

License No. .....

Annual List Return of Amount of Normal Income Tax Withheld on Foreign Income by Licensed Banks or Collecting Agencies

Filed by ....., for the year 191
(Name of bank or collecting agency.)

(To be made in duplicate to the Collector of Internal Revenue for the district in which the withholding agent is located, on or before March 1, showing the totals of each monthly return on Form 1043, and their aggregate totals for the preceding calendar year.)

I (we), ..., of .....
(Name.) (State address in full.)
the ..... of the above-named bank or collecting
(Official position.)
agency, located at ....., do solemnly
(Address in full.)
swear (or affirm) that the following is a true and complete return of the monthly totals of all payments made representing interest upon bonds issued in foreign countries and upon foreign mortgages or like obligations (not payable in the United States), or dividends upon the stock or interest upon the obligations of foreign corporations, associations, or insurance companies engaged in business in foreign countries, and normal taxes withheld therefrom by said organization, or for which it is liable as withholding agent, as reported on Form 1043, and their aggregate totals for the year stated above; and the Monthly List Returns, Form 1043, the totals of which are listed below, constitute a part of this return.

Month.	Amount of Income.	Am't of Exemption Claimed.	Am't of Income on which Withholding Agent is Liable for Tax.	Amount of Tax Withheld.	Amount of Tax Remitted to Collector.	Balance of Tax Due.
January	$.....	$.....	$.....	$.....	$.....	$.....
February	.....	.....	.....	.....	.....	.....
March	.....	.....	.....	.....	.....	.....
April	.....	.....	.....	.....	.....	.....
May	.....	.....	.....	.....	.....	.....
June	.....	.....	.....	.....	.....	.....
July	.....	.....	.....	.....	.....	.....
August	.....	.....	.....	.....	.....	.....
September	.....	.....	.....	.....	.....	.....
October	.....	.....	.....	.....	.....	.....
November	.....	.....	.....	.....	.....	.....
December	.....	.....	.....	.....	.....	.....
Aggregate totals for year.....	$.....	$.....	$.....	$.....	$.....	$.....

To .....
Collector.
.. District of .....
.....
(Address.)

Sworn to and subscribed before me this .. day of ...., 191..
.....

Signed:
.....
.....
(Capacity in which acting.)

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FORM 1044.

UNITED STATES INTERNAL REVENUE

Monthly List Return of Amount of Normal Income Tax Withheld by First Bank or Collecting Agency Receiving Coupons and Interest Orders Not Accompanied by Certificates of Owners

Filed by .....
(Name of bank or collecting agency.)

To be made in duplicate to the Collector of Internal Revenue for the District in which the collecting agency is located, on or before the 20th day of each month, showing the names and addresses of persons who have received payments of interest upon bonds and mortgages, or deeds of trust, or other similar obligations of corporations, joint-stock companies or associations, and insurance companies, on which the normal tax of 1 per cent has been deducted and withheld during the preceding month, the coupons for said payments having been presented without certificates of owners.

I (we), ..., of .....
(Name.) (State address in full.)

the ..... of the above-named bank or collecting
(Official position.)

agency, located at ....., do solemnly
(Address in full.)

swear (or affirm) that the following is a true and complete return of all coupons purchased or accepted for collection as above described during the month of ....., 191.., and the said bank or collecting agency, having acknowledged its responsibility of withholding therefrom the normal tax of 1 per cent, has deducted and withheld the tax as listed below, in accordance with the regulations of the Treasury Department.

Party Presenting Coupons.		Name of Debtor Corporation.	Name of Particular Issue of Bonds.	Amount of Income Subject to Tax.	Amount of Tax Withheld.
Name.	Address.				
.....	.....	.....	.....	$.....	$.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....		
Totals for Month.....				$.....	$.....

To .....
Collector.
.. District of .....
.....
(Address.)

Sworn to and subscribed before me this .. day of ...., 191..
.....

Signed:
.....
.....
(Capacity in which acting.)

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FORM 1044 A.

UNITED STATES INTERNAL REVENUE

Annual List Return of Amount of Normal Income Tax Withheld by First Bank or Collecting Agency From Payments of Interest Upon Bonds and Mortgages, or Deeds of Trust, or Other Similar Obligations of Corporations, Joint-Stock Companies or Associations, and Insurance Companies Where Coupon and Interest Orders were not Accompanied by Certificates of Owners.

Filed by .....
(Name of bank or collecting agency.)

(This return is to be made in duplicate to the Collector of Internal Revenue for the district in which the bank or collecting agency is located on or before March 1, showing the totals of each monthly return on Form 1044 and their aggregate totals, for the preceding calendar year.)

I (we), ..., of .....,
(Name.) (State address in full.)

the ..... of the above-named bank or collecting
(Official position.)

agency, located at ....., do solemnly
(Address in full.)

swear (or affirm) that the following is a true and complete return of the monthly totals of all coupon and interest payments made and normal taxes withheld therefrom by said organization, or for which it is liable as withholding agent, as reported on Form 1044, and their aggregate totals for the year 191..; and the Monthly List Returns, Form 1044, the totals of which are listed below, constitute a part of this return.

Month.	Amount of Income Subject to Tax.	Amount of Tax Withheld.	Amount of Tax Remitted to Collector.	Balance of Tax Due.
January	$...	$...	$...	$...
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
Aggregate totals for year.	$...	$...	$...	$...

To .....
(Collector.)
.. District of .....
.....
(Address.)

Sworn to and subscribed before me this .. day of....., 191..
.....

Signed:
.....
(Capacity in which acting.)

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FORM 1058.

Substitute Certificate—Exemption Claimed, shall be in the Following Form, and Shall be Printed on Yellow Paper:

Form 1058.

SUBSTITUTE CERTIFICATE—EXEMPTION CLAIMED.

(To be attached to interest coupons when the collecting agent's certificate is substituted for the certificate of owner in which exemption was claimed.)

.....
(Give name of debtor.)

.....
(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered
(Date of maturity of interest.)
interest, $....

Total exemption allowed under paragraph C, $.....

Amount of exemption claimed, $....

TREASURY DEPARTMENT. INTERNAL REVENUE—INCOME TAX.

I (we) do solemnly declare that the owner of the above-described bonds from which were detached the accompanying interest coupons has filed with me (us) a certificate of ownership, Form No. ....., duly executed and filled in according to Treasury Regulations, which certificate has been indorsed by me (us) as required by Treasury Regulations, and that under the provisions of the income tax law and regulations, said interest is exempt from the withholding and payment of the income tax at the source, or that exemption was claimed as stated herein; and I (we) do hereby promise and pledge myself (ourselves) to forward the said certificate to the Commissioner of Internal Revenue, at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Date, ..., 191.. .....
(Name of bank or collecting agency.)

By .....
(Signature of person authorized to sign, and his official position.)

No. ....
(Full post-office address of collecting agency.)

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FORM 1059.

Substitute Certificate—Exemption Not Claimed, Shall be in the Following Form, and Shall be Printed on White Paper:

Form 1059.

SUBSTITUTE CERTIFICATE—EXEMPTION NOT CLAIMED.

(To be attached to interest coupons when collecting agent's certificate is substituted for certificate of owner in which exemption was not claimed.)

TREASURY DEPARTMENT,
INTERNAL REVENUE—INCOME TAX.

.. ..
(Give name of debtor.)

.....
(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered
(Date of maturity of interest.)
interest, $....

I (we) do solemnly declare that the owner of the above-described bonds from which were detached the accompanying coupons has filed with me (us) a certificate of ownership, Form No. ....., duly executed and filled in according to Treasury Regulations, which certificate has been indorsed by me (us) as required by Treasury Regulations, and which certificate did not claim any exemption from having the normal tax of 1 per cent withheld by the debtor at the source; and I (we) do hereby promise and pledge myself (ourselves) to forward the said certificate to the Commissioner of Internal Revenue at Washington, D. C., not later than the 20th day of next month, in accordance with Treasury Regulations.

Date, ..., 191.. .....
(Name of bank or collecting agency.)

By .....
(Signature of person authorized to sign, and his official position.)

No. ....
(Full post-office address of collecting agency.)

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FORM 1060.

OWNERSHIP CERTIFICATE—NONRESIDENT ALIEN—TO BE EXECUTED BY BANKS, BANKERS, ETC.

(For use by foreign banks or bankers, to accompany coupons detached from bonds or other obligations owned by citizens or subjects, firms, corporations, or organizations of foreign countries, and who are not residents of the United States.)

....
(Give name of debtor.)

.....
(Full description of bonds, giving name of issue and interest rate.)

....., 191.. Amount of coupon or registered interest, $....
(Date of maturity of interest.)

TREASURY DEPARTMENT.
INTERNAL REVENUE—INCOME TAX.

I (we) do solemnly declare that the owners of the bonds from which were detached the accompanying coupons or upon which there matured the aforesaid registered interest are nonresident aliens as to the United States and are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913; that no citizen of the United States, wherever residing, or foreigner residing in the United States or in any of its possessions, has any interest in said bonds; and that all of the information as given in this certificate is true and correct. I (we) hereby agree that if at any time within three years from the date of this certificate it shall appear that the income or any part thereof represented or covered by this certificate was or is subject to the normal tax imposed by the United States, upon presentation of proof of that fact to me (us) by, from, or through the Commissioner of Internal Revenue, Washington, D. C., I (we) will pay and remit to the United States Government the amount of tax claimed to be due; and I (we) hereby further agree that whenever in the judgment of the Commissioner of Internal Revenue it shall be necessary in or to the administration of the income-tax law, I (we) will, upon request of the said Commissioner of Internal Revenue, disclose and furnish to him the names and addresses of the owners and the amounts of the bonds aforesaid.

Date, ..., 191.. .....
(Name of bank or banker.)

By .....
(Signature of official authorized to sign.)

.....
(Official position.)

.....
(Full post-office address of bank or banker.)

NOTE.—When numbers of bonds are required to be given, same are to be entered on back hereof.

(SIGNATURES MUST BE CLEARLY AND LEGIBLY WRITTEN.)

When foreign banks or bankers shall use the foregoing certificate, they may include in one certificate all the coupons from bonds of the same class and same issue, and may include in one certificate all the interest orders or checks for interest on registered bonds of the same class and same issue.

The above certificate shall be in size 8 by 3½ inches, and shall be printed to read from left to right along the 8-inch dimension.

The certificate shall be printed on yellow paper and such paper shall correspond in weight and texture to white writing paper 21 by 32, about 40 pounds to the ream of 500 sheets.

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FORM 1060 A.

EXEMPTION CERTIFICATE—BANKS OR BANKERS, EITHER FOREIGN OR DOMESTIC.

(For the use of responsible banks or bankers, either foreign or domestic, for and on behalf of nonresident owners of stock of corporations of foreign countries.)

TREASURY DEPARTMENT,
INTERNAL REVENUE—INCOME TAX.

.....
(Give name of foreign corporation.)

.....
(Full description of stock, stating whether common or preferred, or both.)

Amount of dividends, $———

I (we) do solemnly declare that the owners of the stock of foreign corporations upon which the aforesaid dividends were declared are nonresident aliens as to the United States and are exempt from the income tax imposed on such income by the United States Government under the law enacted October 3, 1913; that no citizen of the United States, wherever residing, or foreigner residing in the United States, or in any of its possessions, has any interest in said stock; and that all of the information as given in this certificate is true and correct. I (we) hereby agree that if at any time it shall appear that the income or any part thereof represented or covered by this certificate was, or is, subject to the normal tax imposed by the United States, upon presentation of proof of that fact to me (us) by, from, or through the Commissioner of Internal Revenue, Washington, D. C., I (we) will pay and remit to the United States Government the amount of tax claimed to be due; and I (we) hereby further agree that whenever in the judgment of the Commissioner of Internal Revenue it shall be necessary in or to the administration of the income-tax law, I (we) will, upon request of said Commissioner of Internal Revenue, disclose and furnish to him the names and addresses of the owners and the amount of the stock aforesaid.

Date, ..., 191.. .....
(Name of bank or banker.)

By .....
(Signature of official authorized to sign.)

.....
(Official position.)

.....
(Full post-office address of bank or banker.)

(SIGNATURES MUST BE CLEARLY AND LEGIBLY WRITTEN.)

The above certificate shall be in size 8 by 3½ inches, and shall be printed to read from left to right along the 8-inch dimension. The certificate shall be printed on yellow paper,

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and such paper shall correspond in weight and texture to white writing paper, 21 by 32, about 40 pounds to the ream of 500 sheets. The certificate hereby authorized will be printed by the government and furnished without cost. Banks or bankers desiring to furnish their own certificates may do so, but the certificate so printed must conform in size to that prescribed above and be printed in similar type upon the same color, shade, and weight of paper as used by the government. Sample certificates showing size of type and color of paper can be secured from collectors of internal revenue in their several districts or from the Commissioner of Internal Revenue, Washington, D. C.

FORM 1063.

EXEMPTION CERTIFICATE—FIRMS, ORGANIZATIONS, OR FIDUCIARIES.

(For use of firms, organizations, or fiduciaries entitled to receive income other than that from interest on bonds, to establish their identity and nonliability to withholding at the source.)

.....
(Give name of debtor.)

.....
(Character of income other than interest on bonds, as, rent, dividends from foreign corporations, etc.)

I do solemnly declare that the firm, organization, or person named below is entitled to receive the above described income, and that under the provisions of the income tax law and regulations said income is exempt from having the tax withheld at the source, and that all the information given herein is true and correct.

Date, ..., 191..

.....
(Name of firm, organization, or fiduciary.)

By .....
(Signature of person duly authorized to sign for firm or organization and his official position or name of trust.)

Address .....
(Give full post-office address of firm or organization or fiduciary.)

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