

U. S. TREASURY DEPARTMENT
BUREAU OF INTERNAL REVENUE

REGULATIONS 90

RELATING TO THE

EXCISE TAX
ON EMPLOYERS

UNDER TITLE IX OF THE

SOCIAL SECURITY ACT

*See int. Rev. Bul. #50
Dec 12, 1938
for amendments*



*See T.D. 4953¹ (Nov 9, 1939)
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ANNOUNCEMENT OF 1936 BULLETIN SERVICE

The Internal Revenue Bulletin service for 1936 will consist of weekly bulletins and semiannual cumulative bulletins.

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INTRODUCTORY

These regulations deal with the excise tax imposed on employers by Title IX of the Social Security Act approved August 14, 1935 (Public, No. 271, Seventy-fourth Congress). The regulations have been divided into chapters. The material to be found in each chapter is shown in the Table of Contents.

Chapter I defines terms that are used in the Act and in these regulations.

Chapter II deals with the nature, scope, and imposition of the tax.

Chapter III deals with returns and records.

Chapter IV deals with payment of the tax.

Chapter V deals with miscellaneous administrative provisions incident to the assessment, collection, refund and credit of the tax, and to penalties.

For convenient reference, Titles VII, IX, and XI of the Act and certain applicable provisions of internal revenue laws of particular importance are printed in Appendix A and Appendix B, respectively.

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CHAPTER I

DEFINITIONS

SECTION 1101 (a) AND (b) OF THE ACT

(a) When used in this Act—

(1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

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

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "employee" includes an officer of a corporation.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

SECTION 907 OF THE ACT

When used in this title—

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

(b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

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

(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively

for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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

(e) The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

ARTICLE 1. General definitions.—As used in these regulations—

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

(b) The term "Act" means the Social Security Act (Public, No. 271, Seventy-fourth Congress).

(c) The term "tax" means the excise tax imposed by Title IX of the Act.

(d) The term "taxable year" means any calendar year after the calendar year 1935.

(e) The term "Secretary" means the Secretary of the Treasury.

(f) The term "Commissioner" means the Commissioner of Internal Revenue.

(g) The term "collector" means collector of internal revenue.

(h) The term "taxpayer" means any person subject to the tax.

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

CHAPTER II

NATURE, SCOPE, AND IMPOSITION OF THE TAX

SECTION 901 OF THE ACT

On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

- (1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;
- (2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;
- (3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

ART. 200. Nature of tax.—The tax is an excise tax imposed on employers with respect to having individuals in their employ.

ART. 201. Measure of tax.—(a) The measure of the tax is the total amount of wages payable by an employer with respect to employment during the calendar year, regardless of the time of actual payment.

(b) Wages are *payable* within the meaning of the Act and these regulations (1) if there is an obligation at any time to pay wages with respect to employment during the calendar year, or (2) if, at any time, wages are actually paid with respect to employment during the calendar year. It is immaterial whether such wages are certain in amount at any time within the calendar year, and whether the right exists to enforce the payment of such wages at any time within the calendar year. (See article 207 relating to wages, article 209 (a) relating to estimates of wages, and article 210 relating to adjustments of tax.)

ART. 202. Rate and computation of tax.—The rates of tax applicable for the respective calendar years are as follows:

	Per cent
For the calendar year 1936.....	1
For the calendar year 1937.....	2
For the calendar year 1938 and any subsequent calendar year.....	3

The tax for any calendar year is computed by applying the rate for that year to the total wages *payable* by the employer with respect to employment during such year. (See article 201.)

SECTION 907 OF THE ACT

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

(c) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except * * *

ART. 203. Persons liable for the tax.—Every person who is an "employer," as defined by the Act, is liable for the tax.

Generally, a person is an "employer" if he employs 8 or more individuals on each of some 20 days during a calendar year, each such day being in a different calendar week. (See article 204.)

Certain services, however, are specifically excepted by the Act and to the extent that a person employs individuals who render such services, he is not an "employer." (See articles 206 to 206(7), inclusive.)

Even if an "employer" is not subject to any State unemployment insurance law, he is nevertheless subject to the tax. However, if he is subject to such a State law, he is entitled to credit against the tax any contributions with respect to employment paid by him thereunder to the extent permitted by section 902. (See article 211.)

ART. 204. Who are employers.—Commencing with the calendar year 1936, any person who employs 8 or more individuals (in an employment as defined in section 907(c) of the Act) on a total of 20 or more calendar days during a calendar year, each such day being in a different calendar week, is an employer subject to the tax imposed with respect to such year.

The several weeks in each of which occurs a day on which eight or more individuals are employed need not be consecutive weeks. It is not necessary that the individuals so employed be the same individuals; they may be different individuals on each such calendar day. Neither is it necessary that the eight or more individuals be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient if the total number of individuals employed during the 24 hours of a calendar day is eight or more, regardless of the period of service during that day or the basis of compensation.

In determining whether a person employs a sufficient number of individuals to be an employer subject to the tax, no individual is counted unless he is engaged in the performance within the United States of services not excepted by section 907(c). (See articles 206 to 206(7), inclusive.)

ART. 205. Employed individuals.—An individual is in the employ of another within the meaning of the Act if he performs services in

an employment as defined in section 907 (c). However, the relationship between the individual who performs such services and the person for whom such services are rendered must, as to those services, be the legal relationship of employer and employee. The Act makes no distinction between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees within the meaning of the Act.

The words "employ," "employer," and "employee," as used in this article, are to be taken in their ordinary meaning. An employer, however, may be an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. An employer may be a person acting in a fiduciary capacity or on behalf of another, such as a guardian, committee, trustee, executor or administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, or conservator.

Whether the relationship of employer and employee exists, will in doubtful cases be determined upon an examination of the particular facts of each case.

Generally the relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to *what* shall be done but *how* it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor, not an employee.

If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if two individuals in fact stand in the relation of employer and employee to each other, it is of no consequence that the employee is designated as a partner, coadventurer, agent, or independent contractor.

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

Individuals performing services as independent contractors are not employees. Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

An officer of a corporation is an employee of the corporation, but a director, as such, is not. A director may be an employee of the corporation, however, if he performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors.

SECTION 907(c) OF THE ACT

The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except * * *.

ART. 206. Excepted services generally.—(a) To constitute an "employment" within the meaning of the Act the services performed by the employee must be performed within the United States, that is, within any of the several States, the District of Columbia, or the Territories of Alaska and Hawaii.

To the extent that an employee performs services outside of the United States for the person who employs him, he is not in an "employment" within the meaning of the Act, and to that extent he will not be counted for the purpose of determining whether the person who employs him is an "employer," within the meaning of the Act. Furthermore, remuneration payable to the employee for services which he performs outside of the United States is excluded from the computation of wages upon which his employer's tax is based. However, if any services are performed by the employee within the United States, such services, unless specifically excepted by the Act (see articles 206(1) to 206(7), inclusive), constitute "employment." In such case the employee is counted for the purpose of determining whether the person who employs him is an "employer," within the meaning of the Act, and the wages payable to the employee on account of such services are included in the computation of wages for the purpose of determining the amount of the employer's tax.

The place where the contract for services is entered into and the citizenship or residence of the employee or of the person who employs him are immaterial. Thus, the employee and the person who

employs him may be citizens and residents of a foreign country and the contract for the services may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there is to that extent an "employment" within the meaning of the Act, and the person who has employed such individual may be an "employer" within the meaning of the Act.

(b) Even though the services of the employee are performed within the United States, if they are in a class which is excepted by the Act they are excluded for the purpose (1) of determining whether a person employs a sufficient number of individuals to be an employer subject to the tax, and (2) of computing the total wages payable with respect to employment during the calendar year.

The exception attaches to the services performed by the employee and not to the employee as an individual; and the exception applies only for the period during which the individual is rendering services in an excepted class.

Example: A, who operates a farm and also a grocery store, employs B for \$10 a week. B works on the farm five days of the week and works for one day of the week as a clerk in the grocery store. If the services which B performs on the farm constitute "agricultural labor" (see article 206(1)), such services are excepted by the Act; the services performed as a clerk in the grocery store, however, are not excepted. Therefore, the time during which B works on the farm is not considered in determining whether A is an "employer," but the time during which B is working in the grocery store is so considered. Also, if A is an "employer," in computing the amount of wages payable, the part of the weekly salary of \$10 which is attributable to the work on the farm is disregarded, while the amount which is attributable to the work performed in the grocery store is included.

SECTION 907(c) OF THE ACT

The term "employment" means any service * * * except—

(1) Agricultural labor; * * *

ART. 206(1). Agricultural labor.—The term "agricultural labor" includes all services performed—

(a) By an employee, on a farm, in connection with the cultivation of the soil, the harvesting of crops, or the raising, feeding, or management of live stock, bees, and poultry; or

(b) By an employee in connection with the processing of articles from materials which were produced on a farm; also the packing, packaging, transportation, or marketing of those materials or articles. Such services do not constitute "agricultural labor," however, unless they are performed by an employee of the owner or tenant of the

farm on which the materials in their raw or natural state were produced, and unless such processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.

As used herein the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit, and truck farms, plantations, ranches, ranges, and orchards.

Forestry and lumbering are not included within the exception.

SECTION 907(c) OF THE ACT

The term "employment" means any service * * * except—

(2) Domestic service in a private home;

ART. 206(2). Domestic service.—Services of a household nature performed by an employee in or about the private home of the person by whom he is employed are within the above exception.

A private home is the fixed place of abode of an individual or family.

If the home is utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise, it ceases to be a private home.

In general, services of a household nature in or about a private home include services rendered by cooks, maids, butlers, valets, laundresses, furnacemen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use.

The services above enumerated are not within the exception if performed in or about rooming or lodging houses, boarding houses, fraternity houses, clubs, hotels, or commercial offices or establishments.

SECTION 907(c) OF THE ACT

The term "employment" means any service * * * except—

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

ART. 206(3). Officers and members of crews.—The expression "navigable waters of the United States" means such waters as are navigable in fact and which by themselves or their connection with other waters form a continuous channel for commerce with foreign countries or among the States.

The word "vessel" includes every description of watercraft or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

The expression "officers and members of the crew" includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel.

The exception extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids, and by seal hunters and fishermen on sealing and fishing vessels.

SECTION 907 (c) OF THE ACT

The term "employment" means any service * * * except—

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

ART. 206(4). Family employment.—Under section 907 (c) (4) certain services are excepted because of the existence of a family relationship between the employee and the person for whom he performs the services. The exceptions are as follows:

(a) Services performed by a husband for his wife, or by a wife for her husband;

(b) Services performed by a father or mother for a son or daughter;

(c) Services performed by a son or daughter under 21 years of age for the father or mother.

Under (a) and (b) the exception is conditioned solely upon the relationship of the employer to the employee. Under (c), in addition to the relationship of parent and child, there is a further requirement that the child shall be under the age of 21, and the exception continues only during the time that such child is under the age of 21.

Services performed by an employee of a corporation, partnership, or other entity, are not within the exception.

SECTION 907 (c) OF THE ACT

The term "employment" means any service * * * except—

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

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

ART. 206(5)–(6). Government employees.—Services performed by Federal and State employees are excepted. The exception extends to every service performed by an individual in the employ of the United States, the several States, the District of Columbia, or the Territory of Alaska or Hawaii, or any political subdivision or instrumentality thereof, including every unit or agency of government, without distinction between those exercising functions of a governmental nature and those exercising functions of a proprietary nature.

SECTION 907 (c) OF THE ACT

The term "employment" means any service * * * except—

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

ARR. 206(7). Religious, charitable, scientific, literary, and educational organizations and community chests.—Services performed by any employee of an organization of the class specified in section 907(c) (7) are excepted.

For the purpose of the exception the nature of the service is immaterial; the statutory test is the character of the organization for which the service is performed.

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

- (1) It must be organized and operated exclusively for one or more of the specified purposes; and
- (2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

Corporations or other institutions organized and operated exclusively for charitable purposes comprise, in general, organizations for the relief of the poor. The fact that an organization established for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily affect its status under the law.

An educational organization within the meaning of the Act is one designed primarily for the improvement or development of the capabilities of the individual, but, under exceptional circumstances, may include an association whose sole purpose is the instruction of the public, or an association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features. An organization formed, or availed of, to disseminate controversial or partisan propaganda or which by any substantial part of its activities attempts to influence legislation is not an educational organization within the meaning of section 907 (c) (7) of the Act.

Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and also manufactures and sells articles to the public for

profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

An organization otherwise within the statutory class does not lose its status as such by receiving income such as rent, dividends and interest from investments, provided such income is devoted exclusively to one or more of the purposes specified in section 907(c)(7) of the Act.

Money contributed by members of an organization to a common fund to be applied to the relief of the particular members of the organization or their families when in sickness, unemployed, in want, or under other disability, is not a charitable fund.

If an organization has established its status under the law, it need not thereafter make a return or any further showing with respect to its status unless it changes the character of its organization or operations or the purpose for which it was originally created. Collectors will keep a list of all such organizations, to the end that they may occasionally inquire into their status and ascertain whether they are observing the conditions upon which their classification is predicated.

SECTION 901 OF THE ACT

On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year; * * *

SECTION 907(b) OF THE ACT

The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

ART. 207. Wages.—The term "wages" means all remuneration for employment, whether payable in money or something other than money. The name by which such remuneration is designated is immaterial. Thus, salaries, commissions on sales or on insurance premiums, fees, and bonuses are wages within the meaning of the Act if payable by an employer to his employee as compensation for services not excepted by the Act. The basis upon which the remuneration is payable, the amount of remuneration, and the time of payment, are immaterial in determining whether the remuneration constitutes "wages." Thus, it may be payable on the basis of piecework, or a percentage of profits; and it may be payable hourly, daily, weekly, monthly, or annually.

The medium in which the remuneration is payable is also immaterial. It may be payable in cash or in something other than cash, such as goods, lodging, food, and clothing.

Ordinarily, facilities or privileges (such as entertainment, cafeterias, restaurants, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for services if such facilities or privileges are offered or furnished by the employer merely as a convenience to the employer or as a means of promoting the health, good will, contentment, or efficiency of his employees.

ART. 208. Exclusion from wages.—Excluded from the computation of wages is all remuneration payable by an employer to an employee for services which are excepted by section 907(c), or which are performed outside of the United States. (See articles 206 to 206(7), inclusive.)

ART. 209. Items included as wages.—(a) *General.*—The total wages payable by an employer to his employees with respect to employment during any calendar year shall include (A) items payable and actually paid during that calendar year and (B) items payable but not actually paid during that calendar year.

(A) Items actually paid shall include:

(1) Cash; and

(2) The fair value, at the time of payment, of all items other than money.

(B) Items payable but not actually paid shall include:

(1) The amount of all remuneration agreed by the employer to be paid to the employee; and

(2) The fair and reasonable value of all services performed with respect to employment during the calendar year, if there is no agreement between the employer and the employee as to the amount of remuneration for such services; and

(3) The fair estimated amount of all remuneration, if the basis of such remuneration has been agreed upon between the employer and the employee but the exact amount ultimately to be paid can not be determined until a subsequent year; and

(4) The pro rata or other amount, fairly estimated or allocated, of the total remuneration agreed to be paid by the employer to the employee, if such total remuneration is for services rendered in part in the calendar year and in part in a different year or years.

(5) When remuneration for services performed in a calendar year is paid, or when an obligation to pay such remuneration arises, in a subsequent calendar year, the employer is required to advise the collector under oath of the amount thereof (if not reported in the return for the calendar year during which the services were performed)

and to pay any tax with respect thereto at the rate in effect for the calendar year during which the services were performed. (See article 210(b).)

(b) *Dismissal wages.*—Payment to an employee of so-called dismissal wages, vacation allowances, or sick pay, constitutes wages.

(c) *Traveling and other expenses.*—Amounts paid to traveling salesmen or other employees as allowance or reimbursement for traveling or other expenses incurred in the business of the employer constitute wages only to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee.

(d) *Premiums on life insurance.*—Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee constitute wages if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his employees are not wages, if the employee has no option to take the amount of the premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to the surrender value on termination of his employment).

(e) *Deductions by an employer from remuneration of an employee.*—Amounts deducted from the remuneration of an employee by an employer constitute wages paid to the employee at the time of such deduction. It is immaterial that the Act, or any Act of Congress or the law of any State, requires or permits such deduction and the payment of the amount thereof to the United States, a State, or any political subdivision thereof (see section 1101(c)).

(f) *Payments by employers into employees' funds.*—Payments made by an employer into a stock bonus, pension, or profit-sharing fund constitute wages if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time, or upon resignation or dismissal, or if the contract of employment requires such payment as part of the compensation. Whether or not under other circumstances such payments constitute wages depends upon the particular facts of each case.

ART. 210. *Adjustments of tax.*—(a) If the amount of wages payable with respect to employment during the calendar year is computed and reported by the taxpayer in his return for such year, at an amount greater than the amount which is subsequently determined to have been payable, the overpayment of tax shall be refunded or credited. (See article 503 for general provisions applicable with respect to claims for refund or credit.)

(b) If the amount of wages payable with respect to employment during the calendar year is computed and reported by the taxpayer in his return for such year, at an amount less than the amount which is subsequently determined to have been actually payable, the taxpayer shall file with the collector a statement under oath of the amount of the difference, and the tax shall be paid with respect to such difference.

SECTION 902 OF THE ACT

The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

SECTION 907(e) OF THE ACT

The term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

SECTION 907(f) OF THE ACT

The term "contributions" means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

ART. 211. Credit of contributions against tax.—(a) Subject to the limitations hereinafter prescribed in paragraph (b), the taxpayer may credit against the tax the total amount of his contributions under all State laws which have been found by the Social Security Board to contain the provisions specified in section 903(a) of the Act; provided that no credit may be taken for a contribution under a State law if such State has not been duly certified for the calendar year to the Secretary by the Social Security Board.

(b) The allowance of contributions as credit against the tax is subject to the following limitations:

(1) The total credit allowed to any taxpayer for such contributions shall not in any case exceed 90 per cent of the tax against which such credit is applied.

Example (a): On January 15, 1937, M Company, engaged in the manufacture of typewriters, actually pays contributions, with respect to employment in 1936, totaling \$6,200 into the unemployment compensation fund of State A, and contributions totaling \$3,000 into the

unemployment compensation fund of State B. The M Company files its return on January 31, 1937, which discloses a total tax of \$10,000. Of the total contributions of \$9,200, the M Company may credit only the amount of \$9,000 against the tax of \$10,000 disclosed by the return. The result is that a tax of \$1,000 is due and payable by M Company.

Example (b): If in example (a), above, M Company pays total contributions of only \$7,500 into the unemployment compensation funds of State A and State B, the total tax due and payable for the year 1936 is \$2,500 (\$10,000 minus \$7,500).

(2) The contributions must have been actually paid into the State unemployment fund before the date on which the return for the calendar year is required to be filed. (This date is January 31 next following the close of the calendar year unless the time for filing the return is extended. See articles 303 to 305.)

Example: The return of employer A for the calendar year 1936 is filed on January 31, 1937, and proper credit taken therein for contributions actually paid into a State unemployment fund prior to that date. Thereafter, in June, 1937, additional contributions are paid by A to a State fund with respect to employment during the calendar year 1936. No part of such additional contributions is allowable as credit against the tax for the calendar year 1936, or for any other calendar year.

(3) The contributions must have been paid with respect to employment as defined in section 907(c), that is, with respect to services performed by an employee within the United States and not excepted by the Act. (See articles 206 to 206(7), inclusive.)

Example: Contributions are paid by employer A into a State unemployment fund with respect to domestic services in a private home and also with respect to other services not excepted by section 907(c). Such part of the contributions as was paid with respect to the domestic services in a private home (a class of service excepted by section 907(c) of the Act) is not an allowable credit against the tax.

(4) The contributions must have been paid with respect to services performed during the calendar year covered by the return.

Example: During 1936, contributions are paid by employer A into a State unemployment fund with respect to services performed during the calendar year 1936, and also with respect to services performed during 1935. Only contributions paid with respect to services performed in 1936 are allowable as credit against the tax for the calendar year 1936.

(e) If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contributions credited

against the tax, the taxpayer is required to advise the Commissioner under oath of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

ART. 212. Proof of credit.—Credit against the tax for contributions paid into State unemployment funds shall not be allowed unless the taxpayer claiming such credit shall have submitted to the Commissioner:

(1) A certificate of the proper officer of each State (the laws of which required the contributions to be paid) showing (a) the total amount of required contributions (exclusive of penalties and interest) actually paid under each law of the State which has been found by the Social Security Board to contain the provisions specified in section 903(a) of the Act; (b) the amount of penalties and interest, if any; (c) the amount of contributions paid with respect to each class of services excepted by section 907(c); (d) the calendar year of the employment with respect to which contributions were paid; (e) the date upon which each such contribution was paid; (f) whether a claim for refund of such contributions or any part thereof is pending; and (g) whether a refund of such contributions or any part thereof has been authorized or paid. If any refund has been authorized or paid, such certificate must show the date, the amount thereof, and the grounds therefor.

(2) An affidavit by the taxpayer that no part of any payment made by him into a State unemployment fund, which is claimed as a credit against the tax, was deducted or is to be deducted from the wages of individuals in his employ.

The Commissioner may require the submission of such additional proof as he may deem necessary to establish the right to the credit provided for under section 902. (See article 211.)

CHAPTER III

RETURNS AND RECORDS

SECTION 905(b) OF THE ACT

Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. * * * The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

* * * All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. * * *

[The applicable provisions of law will be considered hereinafter under appropriate subjects.]

SECTION 1102 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 905(b) OF THE ACT

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

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

(c) The Commissioner, with the approval of the Secretary, may by regulation prescribe that any return required by any internal revenue law (except returns required under income or estate tax laws) to be under oath may, if the amount of the tax covered thereby is not in excess of \$10, be signed or acknowledged before two witnesses instead of under oath.

(d) Any oath or affirmation required by the provisions of this Act or regulations made under authority thereof may be administered by any officer authorized to administer oaths for general purposes by the law of the United States or of any State, Territory, or possession of the United States, wherein such oath or affirmation is administered, or by any consular officer of the United States.

**SECTION 3165 OF THE UNITED STATES REVISED STATUTES, REENACTED
BY SECTION 1115 OF THE REVENUE ACT OF 1926**

Every collector, deputy collector, internal-revenue agent, and internal-revenue officer assigned to duty under an internal-revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal-revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

**SECTION 1104 OF THE REVENUE ACT OF 1926, AS AMENDED BY SECTION
618 OF THE REVENUE ACT OF 1928**

The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may 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.

**SECTION 3176 OF THE UNITED STATES REVISED STATUTES, AS AMENDED
BY SECTION 1103 OF THE REVENUE ACT OF 1926**

If any person, corporation, company, or association fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the Commissioner of Internal Revenue may, from his own knowledge and from such information as he can obtain through testimony or otherwise, make a return or amend any return made by a collector or deputy collector. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes. * * *

ART. 300. Returns.—Every employer (see article 204) shall make a return under oath on Form 940 for each calendar year according to the instructions thereon and the regulations applicable thereto. The first year for which returns are required is the calendar year 1936. Copies of these prescribed forms may be obtained from collectors of internal revenue.

Each corporation subject to the tax shall render a separate return.

ART. 301. Verification of returns.—Except as provided below, returns must be verified under oath or affirmation, which may be administered by any officer duly authorized to administer oaths for general purposes by the law of the United States or of any State or Territory, wherein such oath is administered, or by a consular officer of the United States. Returns executed abroad may be attested free of

charge before United States consular officers. If a foreign notary or other official having no seal shall act as attesting officer, the authority of such attesting officer should be certified to by some judicial official or other proper officer having knowledge of the appointment and official character of the attesting officer. If the amount of the tax is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath. Returns of corporate employers shall be sworn to by the president, vice president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer of the corporation. The return of a partnership or other unincorporated organization shall be sworn to by a responsible and duly authorized member having knowledge of its affairs and, if the partnership or other unincorporated organization has a manager or chief executive officer, by such manager or chief executive officer.

ART. 302. Use of prescribed forms.—Copies of the prescribed return form may be obtained by taxpayers from collectors. A taxpayer will not be excused from making a return because of the fact that no return form has been furnished to him. Taxpayers should make application for the form to the collector in ample time to have their returns prepared, verified, and filed with the collector on or before the due date. Each taxpayer should carefully prepare his return so as fully and clearly to set forth the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the Act. In lack of a prescribed form, a statement made by a taxpayer disclosing the amount of wages payable by him with respect to employment during the calendar year may be accepted as a tentative return, and if filed within the prescribed time the statement so made will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such tentative return is supplemented by a return made on the proper form. (See article 304, relating to due date of return.)

ART. 303. Time and place for filing returns.—Returns are required to be made on the calendar year basis on or before January 31 next following the close of the calendar year, and must be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or if the employer has no principal place of business in the United States, the return must be filed with the collector of internal revenue at Baltimore, Md.

ART. 304. Extensions of time for filing returns.—It is important that the taxpayer render on or before January 31, next following the close of the taxable year, a return as nearly complete as it is possible for him to prepare. However, the Commissioner is authorized to grant an extension of time for not more than 60 days for filing returns, under such rules and regulations as he may prescribe with the ap-

proval of the Secretary. Accordingly, authority for granting extensions of time for filing returns is hereby delegated to the several collectors of internal revenue. Application for extensions of time for filing returns should be addressed to the collector of internal revenue for the district in which the taxpayer files his returns and must contain a full recital of the causes for the delay. For extensions of time for payment of tax, see article 401.

ART. 305. Due date of return.—The due date is the latest date on which a return is required to be filed in accordance with the provisions of the Act or the last day of the period covered by an extension of time granted by the Commissioner or a collector. When the due date falls on a Sunday or a legal holiday, the due date for filing returns will be the day following such Sunday or legal holiday. If placed in the mails, the return 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 required to be filed. If a return is made and placed in the mails in due course, properly addressed and postage paid, in ample time to reach the office of the collector on or before the due date, no penalty will attach should the return not actually be received by such officer until subsequent to that date. As to additions to the tax in the case of failure to file a return within the prescribed time, see article 502. If an employer ceases business, his last return shall be marked "Final return."

SECTION 905(c) OF THE ACT

Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

ART. 306. Inspection of returns.—Pursuant to the above provision, the inspection of returns made under Title IX of the Act is governed by the provisions of sections 257 and 1203(d) of the Revenue Act of 1926. (See Appendix B, paragraphs 20 and 21.)

The returns upon which the tax has been determined by the Commissioner, although public records, are open to inspection only to the extent authorized by the President (except as otherwise expressly provided) under rules and regulations promulgated by the Secretary of the Treasury and approved by the President.

SECTION 1102 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 905(b) OF THE ACT

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

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

SECTION 1114(a) OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 905(b) OF THE ACT

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

ART. 307. Records.—(a) Every person subject to tax under the Act shall, during the calendar year 1936 or any calendar year thereafter, for each such calendar year, keep such permanent records as are necessary to establish:

(1) The total amount of remuneration payable to his employees in cash or in a medium other than cash, showing separately, (a) total remuneration payable with respect to services excepted by section 907(c), (b) total remuneration payable with respect to services performed outside of the United States, (c) total remuneration payable with respect to all other services.

(2) The amount of contributions paid by him into any State unemployment fund, with respect to services during the calendar year not excepted by section 907(c), showing separately (a) payments made and not deducted (or to be deducted) from the remuneration of employees, (b) payments made and deducted (or to be deducted) from the remuneration of employees; and also the amount of contributions paid by him into any State unemployment fund with respect to services excepted by section 907(c).

(3) The information required to be shown on the prescribed return and the extent to which such person is liable for the tax.

(b) No particular method of accounting or form of record is prescribed. Each person may adopt such records and such method of accounting as may best meet the requirements of his own business, provided that they clearly and accurately show the information required above, and enable him to make a proper return on the prescribed form.

(c) Records are not required to show the number of individuals employed on any day, but must show the total amount of remunera-

tion actually paid during each calendar month and the number of individuals employed during each calendar month or during each such lesser period as the employer may elect.

(*d*) Any person who employs individuals during any calendar year but who considers that he is not an employer subject to the tax (see articles 203 and 204), should be prepared to establish by proper records (including, where necessary, records of the number of persons employed each day) that he is not an employer subject to the tax.

(*e*) All records required by these regulations shall be kept safe and readily accessible at the place of business of the person required to keep such records. Such records shall at all times be open for inspection by internal revenue officers, and shall be preserved for a period of at least four years from the due date of the tax for the calendar year to which they relate.

ART. 308. Termination of business.—Any employer who contemplates either discontinuing business by retirement therefrom or a merger, consolidation, or reorganization involving the transfer of assets, shall immediately give notice in writing of that fact. If an individual subject to the tax dies, notice of his death shall be given in writing by the executor or administrator of his estate as soon as practicable thereafter. In the case of bankruptcy or receivership proceedings, or a proceeding for the relief of a debtor who is an employer, the trustee in bankruptcy, receiver, or person designated by order of the court as in control of the assets of the debtor, shall give notice in writing of the adjudication of bankruptcy, the appointment of the receiver, or the filing of the debtor's petition or answer in a proceeding for the relief of debtors under sections 74, 75, 77, and 77B of the National Bankruptcy Act, as amended, and of the approval of the debtor's petition or answer under section 77B of that Act. The notice required under this article shall be addressed to the Secretary of the Treasury, Attention of Commissioner of Internal Revenue, Washington, D. C.

CHAPTER IV
PAYMENT OF THE TAX

SECTION 905(a) OF THE ACT

The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. * * *

SECTION 600 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY
SECTION 905(b) OF THE ACT

(b) The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. * * *

SECTION 905(b) OF THE ACT

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. * * *

SECTION 905(d) OF THE ACT

The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

SECTION 905(e) OF THE ACT

At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

SECTION 905(f) OF THE ACT

In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

ART. 400. Payment of tax.—The tax is due and payable to the collector of internal revenue referred to in article 303 without assessment by the Commissioner or notice or demand from the said collector on the date fixed by law for filing the return (the 31st day of January following the close of each calendar year beginning after December 31, 1935) for which the tax is due. The tax may, at the option of the taxpayer, be paid in four equal installments instead of in a single payment, in which case the first installment is to be paid on or before January 31, the second installment on or before April 30, the third installment on or before July 31, and the fourth installment on or before October 31. If the taxpayer elects to pay the tax in four installments, each installment must be equal in amount; but any installment may be paid, at the election of the taxpayer, prior to the date prescribed for its payment. If the tax or any installment thereof is not paid in full on or before the date fixed for its payment either by the Act or by the Commissioner in accordance with the terms of an extension of time granted for the payment of the tax or installment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector. (See article 502, relating to interest and penalties.)

ART. 401. Extension of time for payment of the tax or installment thereof.—If it is shown to the satisfaction of the Commissioner that the payment of the tax or any part or installment thereof upon the date or dates prescribed for the payment thereof will result in undue hardship to the taxpayer, the Commissioner, at the request of the taxpayer, may grant an extension of time for the payment for a period not to exceed six months from the date prescribed for the payment of such amount or installment. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the taxpayer from making payment of the amount at the due date. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

An application for an extension of time for the payment of such tax, part or installment, should be made under oath on the prescribed form, and must be accompanied or supported by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. A sworn statement of assets and liabilities of the taxpayer is required and should accompany the application. An itemized statement showing all receipts and disbursements for each of the three months preceding the due date of the tax or installment shall also be submitted. The application with the evidence must be filed with the collector, who will at once transmit it to the Commis-

sioner, with his recommendations as to the extension. When it is received by the Commissioner it will be examined immediately and, if possible, within 30 days will be rejected, approved, or tentatively approved, subject to certain conditions of which the taxpayer will be immediately notified. The Commissioner will not consider an application for an extension of time for the payment of a tax or installment unless such application is made in writing, and is made to the collector on or before the due date of the tax or installment thereof for which the extension is desired, or on or before the date or dates prescribed for payment in any prior extension granted.

As a condition to the granting of such an extension, the Commissioner will usually require the taxpayer to furnish a bond on the prescribed form in an amount not exceeding double the amount of the tax or installment or to furnish other security satisfactory to the Commissioner for the payment of the tax, or installment thereof, on the date prescribed for payment in the extension, so that the risk of loss to the Government will not be greater at the end of the extension period than it was at the beginning of the period. If a bond is required it must be filed with the collector within 10 days after notification by the Commissioner that such bond is required. It shall be conditioned upon the payment of the tax, or installment, the interest, and additional amounts assessed in connection therewith in accordance with the terms of the extension granted, and shall be executed by a surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds, and shall be subject to the approval of the Commissioner. In lieu of such a bond, the taxpayer may file a bond secured by deposit of bonds or notes of the United States equal in their total par value to an amount not exceeding double the amount of the tax, or installment thereof. (See section 1126 of the Revenue Act of 1926, as amended, Appendix B, paragraph 3.) A request by the taxpayer for an extension of time for the payment of one installment does not operate to procure an extension of time for payment of subsequent installments. Nor does an extension of time for filing a return operate to extend the time for the payment of the tax or any part thereof, unless so specified in the extension. If an extension of time for payment of the tax or any installment is granted, the amount, time for payment of which is so extended, shall be paid on or before the expiration of the period of the extension, together with interest at the rate of one-half of 1 per cent per month on such amount from the date when the payment should have been made if no extension had been granted until the expiration of the period of the extension. (See section 905(e).)

ARR. 402. Fractional part of a cent.—In the payment of the tax or any installment thereof a fractional part of a cent shall be disregarded

unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent should not be disregarded in the computation of the tax or any installment thereof.

SECTION 1118(a) OF THE REVENUE ACT OF 1926

Collectors may receive, at par with an adjustment for accrued interest, notes or certificates of indebtedness issued by the United States and uncertified checks in payment of income, war-profits, and excess-profits taxes and any other taxes payable other than by stamp, during such time and under such rules and regulations as the Commissioner, with the approval of the Secretary, shall prescribe; but if a check so received is not paid by the bank on which it is drawn the person by whom such check has been tendered shall remain liable for the payment of the tax and for all legal penalties and additions to the same extent as if such check had not been tendered.

SECTION 1 OF THE ACT OF MARCH 2, 1911 (36 STAT., 965), AS AMENDED BY THE ACT OF MARCH 3, 1913 (37 STAT., 733)

It shall be lawful for collectors of internal revenue to receive for internal taxes and all public dues 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. No person, however, who may be indebted to the United States on account of internal taxes who shall have tendered a certified check or checks as provisional payment for such duties or taxes, in accordance with the terms of this section, shall be released from the obligation to make ultimate payment thereof until such certified check so received has been duly paid; and if any such check so received is not duly paid by the bank on which it is drawn and so certifying, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of such bank; and such amount shall be paid out of its assets in preference to any or all other claims whatsoever against said bank, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

ART. 403. Method of payment.—(a) *Payment of tax by uncertified checks.*—Collectors may receive uncertified checks in payment of the tax if such checks are collectible at par—that is, for their full amount, without deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words “This check is in payment of an obligation to the United States and must be paid at par. No protest,” with his name and title.

(b) *Procedure with respect to dishonored checks.*—If the bank upon which any such check is drawn should, for any reason, refuse to pay it at par, the check should be returned through the depository bank and treated as a dishonored check. All expenses incident to the attempt to collect such check and the return of it through the depository bank must be paid by the drawer of the check, since no

deduction can be made from amounts received in payment of taxes. If any taxpayer whose check has been returned uncollected by the depository bank should fail at once to make the check good, or to pay the amount thereof, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a check, whether certified or not, in payment of taxes is not released from his obligation until the check has been paid.

CHAPTER V

MISCELLANEOUS PROVISIONS

JEOPARDY ASSESSMENTS

SECTION 1105 OF THE REVENUE ACT OF 1932, AS AMENDED BY SECTION
510 OF THE REVENUE ACT OF 1934

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful without regard to the period prescribed in section 3187 of the Revised Statutes, as amended.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

ART. 500. Jeopardy assessment—Immediate collection of the tax.—(a) Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the amount of taxes due, the period involved, and any other pertinent facts.

(b) If a jeopardy assessment is made, the taxpayer may stay the collection of the tax by filing with the collector a bond in such amount, not exceeding double the amount of the tax, and with such sureties, as the collector deems necessary, conditioned upon the payment of the tax at the usual time. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector to collect and sell such bonds or notes so deposited in case of default. (See paragraph 3, Appendix B.)

CLOSING AGREEMENTS

SECTION 606 (a) AND (b) OF THE REVENUE ACT OF 1928

(a) *Authorization.*—The Commissioner (or any officer or employee of the Bureau of Internal Revenue, including the field service, authorized in writing by the Commissioner) is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal-revenue tax for any taxable period ending prior to the date of the agreement.

(b) *Finality of agreements.*—If such agreement is approved by the Secretary, or the Undersecretary, within such time as may be stated in such agreement, or later agreed to, such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact—

(1) the case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the United States, and

(2) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

ART. 501. Closing agreements.—Agreements for the final determination of taxes may be entered into under the provisions of section 606 (a) and (b) of the Revenue Act of 1928. Such closing or final agreements may relate to any taxable period ending prior to the date of the agreement. Such an agreement may be executed even though under such agreement the taxpayer is not liable for any tax for the period covered by the agreement. The matter agreed upon may relate to the total tax liability of the taxpayer or it may relate to one or more separate items affecting the tax liability of the taxpayer. Accordingly, there may be a series of agreements relating to the tax liability for a single taxable period.

INTEREST AND PENALTIES

SECTION 905(a) OF THE ACT

* * * If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid. * * *

SECTION 404 OF THE REVENUE ACT OF 1935

Notwithstanding any provision of law to the contrary, interest accruing during any period of time after the date of the enactment of this Act upon any internal-revenue tax (including amounts assessed or collected as a part thereof) or customs duty, not paid when due, shall be at the rate of 6 per centum per annum.

SECTION 406 OF THE REVENUE ACT OF 1935

In the case of a failure to make and file an internal-revenue tax return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the date of the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

SECTION 3176, AS AMENDED, UNITED STATES REVISED STATUTES AS AMENDED BY SECTION 1103 OF THE REVENUE ACT OF 1926

* * * In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

SECTION 3184 OF THE UNITED STATES REVISED STATUTES

SEC. 3184. 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.

ART. 502. Interest and penalties.—A failure to file a return when due causes to accrue, under the provisions of section 406 of the Revenue Act of 1935, a penalty of from 5 per cent to 25 per cent of the amount of the tax, depending upon the period of delinquency.

Failure to pay the tax when due and payable causes to accrue, under the provisions of section 404 of the Revenue Act of 1935, interest at the rate of one-half of 1 per cent a month from the time when the tax became due until assessed, or until paid prior to assessment.

If assessment is made of the tax, penalty, or interest, and payment is not made within 10 days after the issuance of the form for first notice and demand, based on assessment approved by the Commissioner, there will accrue under section 3184, Revised Statutes, a 5 per cent penalty and interest at the rate of one-half of 1 per cent per month (see section 404 of the Revenue Act of 1935) computed on the entire assessment (including penalty and interest, if any) from 10 days after issuance of said form until date of payment. In cases where assessment is settled by partial payments, interest should be computed from the expiration of the first 10-day notice through the date of the first payment and from the next succeeding day to the date of the next payment, until the assessment is paid in full.

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

If a false or fraudulent return be willfully made, the penalty under section 3176 of the Revised Statutes is 50 per cent of the total tax.

Under section 1114 of the Revenue Act of 1926 (see paragraph 17, Appendix B) any person who willfully fails to pay or collect any tax due, file return, or keep records, or who attempts in any manner to evade or defeat the tax, is subject to a fine of \$10,000 or imprisonment, or both, with costs of prosecution, and is also liable to a penalty equal to the amount of the tax not collected or paid. These penalties apply to an officer or employee who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs, as well as to a person who fails or refuses to perform any of the duties imposed by the Act, i. e., pay the tax, make return, keep records, supply information, etc.

CREDITS AND REFUNDS

SECTION 3220 OF UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1111 OF THE REVENUE ACT OF 1926, AND SECTION 619(b) OF THE REVENUE ACT OF 1928

Except as otherwise provided * * * the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized 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; * * *

SECTION 3228(a) OF UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1112 OF THE REVENUE ACT OF 1926, SECTION 619(c) OF THE REVENUE ACT OF 1928, AND SECTION 1106(a) OF THE REVENUE ACT OF 1932

All claims for the refunding or crediting of any internal-revenue 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 must, * * * be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum. The amount of the refund * * * shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

ART. 503. Refund and credit of taxes erroneously collected.—(a) A tax (including interest, penalties, and additions to tax) erroneously, illegally, or otherwise wrongfully collected, may be credited or refunded to the person who paid the tax. A claim for such credit or refund shall be made on Form 843 in accordance with the instructions printed on such form and in accordance with these regulations. Copies of the prescribed form may be obtained from any collector. A separate claim on such form shall be made for each taxable year or period. All grounds in detail and all facts alleged in support of the claim must be clearly set forth under oath.

(b) The claim must be accompanied by a certificate of the proper State officer showing (1) whether a claim for refund or credit with respect to any contributions paid by the taxpayer into a State unemployment fund for the taxable year is pending, (2) whether a refund or credit with respect to any such contributions has been authorized, and (3) if such a refund or credit has been made, the amount and date thereof and grounds therefor.

(c) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed prior to the expiration of such period.

(d) A claim which does not comply with the requirements of this article will not be considered for any purpose as a claim for refund or credit. With respect to limitations upon the refunding or crediting of taxes, see section 3228 of the Revised Statutes, as amended.

(e) If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed

by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. The affidavit may be made by the agent of the person assessed, but in such case a power of attorney must accompany the claim.

(f) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and may be sent to such persons in care of an attorney or agent who has filed a power of attorney specifically authorizing him to receive such checks. The Commissioner may, however, send any such check direct to the claimant. In this connection, see section 3477 of the Revised Statutes, which provides:

SEC. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

The Commissioner has no authority to refund on equitable grounds penalties or other amounts legally collected.

(g) Any refund or credit made by a State to a taxpayer with respect to any contributions paid by him into a State unemployment fund for the taxable year shall be considered in determining the amount of the refund, if any, due with respect to the tax paid for such taxable year. If, subsequent to the making of a refund with respect to the tax, a refund or credit is made by a State with respect to the contributions paid into the State unemployment fund, the taxpayer is required to advise the collector under oath of the date and amount of the refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest.

(For other applicable provisions of law relating to refunds, see Appendix B, paragraphs 22 to 27, inclusive.)

ART. 504. Claim for payment of judgment obtained against collector.—
 (a) A claim for the amount of a judgment against a collector of internal revenue for the recovery of taxes, penalties, or other sums should be made under oath, on Form 843, and filed directly with the Commissioner of Internal Revenue, Washington, D. C. Two certified copies of the final judgment, a certificate of probable cause, and an itemized bill of the court costs paid, receipted by the clerk or other proper officer of the court should be attached to the claim. With respect to the certificate of probable cause, section 989 of the Revised Statutes provides:

SEC. 989. When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him and by him paid into the Treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

If the judgment was affirmed on appeal, two certified copies of the mandate of the appellate court should also be attached to the claim. A judgment will not be paid until the period for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

(b) If the judgment debtor shall have already paid the amount recovered against him, the claim should be made in his name, accompanied by two certified copies of the final judgment, and an itemized bill of the court costs paid. A certificate of the clerk of the court in which the judgment was recovered (or other satisfactory evidence), showing that the judgment has been satisfied and specifying the exact sum paid in its satisfaction, should accompany the claim.

ART. 505. Claim for payment of judgment obtained in United States district court against the United States.—A claim for the payment of a judgment rendered by a United States district court against the United States representing taxes, penalties, or other sums should be made under oath, on Form 843, in duplicate, and filed directly with the Commissioner of Internal Revenue, Washington, D. C. Two certified copies of the final judgment and an itemized bill of the court costs paid, receipted by the clerk or other proper officer of the court should be attached to the claim. If the judgment was affirmed

on appeal, two certified copies of the mandate of the appellate court should also be attached to the claim. A judgment will not be paid until the period for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

ART. 506. Claim for payment of judgment obtained in the Court of Claims against the United States.—A claim for the payment of a judgment rendered by the United States Court of Claims against the United States, representing taxes, penalties, or other sums, should be made under oath, on Form 843, in duplicate, and filed directly with the Commissioner of Internal Revenue, Washington, D. C., accompanied by a certificate of judgment issued by the clerk of the court and two copies of the printed opinion of the court, if an opinion was rendered. A judgment will not be paid until the period for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

ART. 507. Examination of returns and determination of tax by the Commissioner.—As soon as practicable after the returns under Title IX are filed, they will be examined and the correct amount of tax determined under such procedure as may be prescribed from time to time by the Commissioner.

AUTHORITY FOR REGULATIONS

SECTION 908 OF THE ACT

The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

In pursuance of the Act and other provisions of the internal revenue laws, the foregoing regulations are hereby prescribed.

GUY T. HELVERING,
Commissioner of Internal Revenue.

Approved February 17, 1936.

H. MORGENTHAU, JR.,
Secretary of the Treasury.

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APPENDIX A

TITLE VII OF THE SOCIAL SECURITY ACT—SOCIAL SECURITY BOARD ESTABLISHMENT

SECTION 701. There is hereby established a Social Security Board (in this Act referred to as the "Board") to be composed of three members to be appointed by the President, by and with the advice and consent of the Senate. During his term of membership on the Board, no member shall engage in any other business, vocation, or employment. Not more than two of the members of the Board shall be members of the same political party. Each member shall receive a salary at the rate of \$10,000 a year and shall hold office for a term of six years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this Act shall expire, as designated by the President at the time of appointment, one at the end of two years, one at the end of four years, and one at the end of six years, after the date of the enactment of this Act. The President shall designate one of the members as the chairman of the Board.

DUTIES OF SOCIAL SECURITY BOARD

SEC. 702. The Board shall perform the duties imposed upon it by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

EXPENSES OF THE BOARD

SEC. 703. The Board is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out its functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

REPORTS

SEC. 704. The Board shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which it is charged.

TITLE IX OF THE SOCIAL SECURITY ACT—TAX ON EMPLOYERS OF EIGHT OR MORE

IMPOSITION OF TAX

SECTION 901. On and after January 1, 1936, every employer (as defined in section 907) shall pay for each calendar year an excise tax, with respect to

having individuals in his employ, equal to the following percentages of the total wages (as defined in section 907) payable by him (regardless of the time of payment) with respect to employment (as defined in section 907) during such calendar year:

- (1) With respect to employment during the calendar year 1936 the rate shall be 1 per centum;
- (2) With respect to employment during the calendar year 1937 the rate shall be 2 per centum;
- (3) With respect to employment after December 31, 1937, the rate shall be 3 per centum.

CREDIT AGAINST TAX

SEC. 902. The taxpayer may credit against the tax imposed by section 901 the amount of contributions, with respect to employment during the taxable year, paid by him (before the date of filing his return for the taxable year) into an unemployment fund under a State law. The total credit allowed to a taxpayer under this section for all contributions paid into unemployment funds with respect to employment during such taxable year shall not exceed 90 per centum of the tax against which it is credited, and credit shall be allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

CERTIFICATION OF STATE LAWS

SEC. 903. (a) The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

- (1) All compensation is to be paid through public employment offices in the State or such other agencies as the Board may approve;
- (2) No compensation shall be payable with respect to any day of unemployment occurring within two years after the first day of the first period with respect to which contributions are required;
- (3) All money received in the unemployment fund shall immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904;
- (4) All money withdrawn from the Unemployment Trust Fund by the State agency shall be used solely in the payment of compensation, exclusive of expenses of administration;
- (5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
- (6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

The Board shall, upon approving such law, notify the Governor of the State of its approval.

(b) On December 31 in each taxable year the Board shall certify to the Secretary of the Treasury each State whose law it has previously approved,

except that it shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Board finds has changed its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision.

(c) If, at any time during the taxable year, the Board has reason to believe that a State whose law it has previously approved, may not be certified under subsection (b), it shall promptly so notify the Governor of such State.

UNEMPLOYMENT TRUST FUND

SEC. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund." The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund. Such deposit may be made directly with the Secretary of the Treasury or with any Federal reserve bank or member bank of the Federal Reserve System designated by him for such purpose.

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at par, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition.

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency and shall credit quarterly on March 31, June 30, September 30, and December 31, of each year, to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date.

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment.

ADMINISTRATION, REFUNDS, AND PENALTIES

SEC. 905. (a) The tax imposed by this title shall be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and shall be paid into the Treasury of the United States as internal-revenue collections. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of one-half of 1 per centum per month from the date the tax became due until paid.

(b) Not later than January 31, next following the close of the taxable year, each employer shall make a return of the tax under this title for such taxable year. Each such return shall be made under oath, shall be filed with the collector of internal revenue for the district in which is located the principal place of business of the employer, or, if he has no principal place of business in the United States, then with the collector at Baltimore, Maryland, and shall contain such information and be made in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as not inconsistent with this title, be applicable in respect of the tax imposed by this title. The Commissioner may extend the time for filing the return of the tax imposed by this title, under such rules and regulations as he may prescribe with the approval of the Secretary of the Treasury, but no such extension shall be for more than sixty days.

(c) Returns filed under this title shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

(d) The taxpayer may elect to pay the tax in four equal installments instead of in a single payment, in which case the first installment shall be paid not later than the last day prescribed for the filing of returns, the second installment shall be paid on or before the last day of the third month, the third installment on or before the last day of the sixth month, and the fourth installment on or before the last day of the ninth month, after such last day. If the tax or any installment thereof is not paid on or before the last day of the period fixed for its payment, the whole amount of the tax unpaid shall be paid upon notice and demand from the collector.

(e) At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

(f) In the payment of any tax under this title a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

INTERSTATE COMMERCE

SEC. 906. No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate commerce, or that the State law does not distinguish between employees engaged in interstate commerce and those engaged in intrastate commerce.

DEFINITIONS

SEC. 907. When used in this title—

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

(b) The term “wages” means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

(c) The term “employment” means any service, of whatever nature, performed within the United States by an employee for his employer, except—

(1) Agricultural labor;

(2) Domestic service in a private home;

(3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

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

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

(d) The term “State agency” means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(e) The term “unemployment fund” means a special fund, established under a State law and administered by a State agency, for the payment of compensation.

(f) The term “contributions” means payments required by a State law to be made by an employer into an unemployment fund, to the extent that such payments are made by him without any part thereof being deducted or deductible from the wages of individuals in his employ.

(g) The term “compensation” means cash benefits payable to individuals with respect to their unemployment.

RULES AND REGULATIONS

SEC. 908. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make and publish rules and regulations for the enforcement of this title, except sections 903, 904, and 910.

ALLOWANCE OF ADDITIONAL CREDIT

SEC. 909. (a) In addition to the credit allowed under section 902, a taxpayer may, subject to the conditions imposed by section 910, credit against the tax imposed by section 901 for any taxable year after the taxable year 1937, an amount, with respect to each State law, equal to the amount, if any, by which the contributions, with respect to employment in such taxable year, actually

paid by the taxpayer under such law before the date of filing his return for such taxable year, is exceeded by whichever of the following is the lesser—

(1) The amount of contributions which he would have been required to pay under such law for such taxable year if he had been subject to the highest rate applicable from time to time throughout such year to any employer under such law; or

(2) Two and seven-tenths per centum of the wages payable by him with respect to employment with respect to which contributions for such year were required under such law.

(b) If the amount of the contributions actually so paid by the taxpayer is less than the amount which he should have paid under the State law, the additional credit under subsection (a) shall be reduced proportionately.

(c) The total credits allowed to a taxpayer under this title shall not exceed 90 per centum of the tax against which such credits are taken.

CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE

Sec. 910. (a) A taxpayer shall be allowed the additional credit under section 909, with respect to his contribution rate under a State law being lower, for any taxable year, than that of another employer subject to such law, only if the Board finds that under such law—

(1) Such lower rate, with respect to contributions to a pooled fund, is permitted on the basis of not less than three years of compensation experience;

(2) Such lower rate, with respect to contributions to a guaranteed employment account, is permitted only when his guaranty of employment was fulfilled in the preceding calendar year, and such guaranteed employment account amounts to not less than $7\frac{1}{2}$ per centum of the total wages payable by him, in accordance with such guaranty, with respect to employment in such State in the preceding calendar year;

(3) Such lower rate, with respect to contributions to a separate reserve account, is permitted only when (A) compensation has been payable from such account throughout the preceding calendar year, and (B) such account amounts to not less than five times the largest amount of compensation paid from such account within any one of the three preceding calendar years, and (C) such account amounts to not less than $7\frac{1}{2}$ per centum of the total wages payable by him (plus the total wages payable by any other employers who may be contributing to such account) with respect to employment in such State in the preceding calendar year.

(b) Such additional credit shall be reduced, if any contributions under such law are made by such taxpayer at a lower rate under conditions not fulfilling the requirements of subsection (a), by the amount bearing the same ratio to such additional credit as the amount of contributions made at such lower rate bears to the total of his contributions paid for such year under such law.

(c) As used in this section—

(1) The term "reserve account" means a separate account in an unemployment fund, with respect to an employer or group of employers, from which compensation is payable only with respect to the unemployment of individuals who were in the employ of such employer, or of one of the employers comprising the group.

(2) The term "pooled fund" means an unemployment fund or any part thereof in which all contributions are mingled and undivided, and from which compensation is payable to all eligible individuals, except that to individuals last employed by employers with respect to whom reserve

accounts are maintained by the State agency, it is payable only when such accounts are exhausted.

(3) The term "guaranteed employment account" means a separate account, in an unemployment fund, of contributions paid by an employer (or group of employers) who

(A) guarantees in advance thirty hours of wages for each of forty calendar weeks (or more, with one weekly hour deducted for each added week guaranteed) in twelve months, to all the individuals in his employ in one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within twelve or less consecutive calendar weeks), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties,

from which account compensation shall be payable with respect to the unemployment of any such individual whose guaranty is not fulfilled or renewed and who is otherwise eligible for compensation under the State law.

(4) The term "year of compensation experience", as applied to an employer, means any calendar year throughout which compensation was payable with respect to any individual in his employ who became unemployed and was eligible for compensation.

TITLE XI OF THE SOCIAL SECURITY ACT—GENERAL PROVISIONS

DEFINITIONS

SECTION 1101. (a) When used in this Act—

(1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.

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

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "employee" includes an officer of a corporation.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

RULES AND REGULATIONS

SEC. 1102. The Secretary of the Treasury, the Secretary of Labor, and the Social Security Board, respectively, shall make and publish such rules and

regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

SEPARABILITY

SEC. 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby.

RESERVATION OF POWER

SEC. 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

SHORT TITLE

SEC. 1105. This Act may be cited as the "Social Security Act."

APPENDIX B

COMPROMISES

CIVIL AND CRIMINAL CASES

PARAGRAPH 1. 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. (Section 3229, Revised Statutes.)

CONCEALMENT OF ASSETS

PAR. 2. Any person who, in connection with any compromise under section 3229 of the Revised Statutes, as amended, or offer of such compromise, or in connection with any closing agreement under section 606 of this Act, or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record, or makes under oath any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned for not more than one year, or both. (Section 616, Revenue Act of 1928.)

DEPOSIT OF UNITED STATES BONDS OR NOTES IN LIEU OF SURETY

PAR. 3. Wherever by the laws of the United States or regulations made pursuant thereto, any person is required to furnish any recognizance, stipulation, bond, guaranty, or undertaking, hereinafter called "penal bond," with surety or sureties, such person may, in lieu of such surety or sureties, deposit as security with the official having authority to approve such penal bond, United States Liberty bonds or other bonds or notes of the United States in a sum equal at their par value to the amount of such penal bond required to be furnished, together with an agreement authorizing such official to collect or sell such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. The acceptance of such United States bonds or notes in lieu of surety or sureties required by

law shall have the same force and effect as individual or corporate sureties, or certified checks, bank drafts, post-office money orders, or cash, for the penalty or amount of such penal bond. The bonds or notes deposited hereunder and such other United States bonds or notes as may be substituted therefor from time to time as such security, may be deposited with the Treasurer of the United States, a Federal reserve bank, or other depository duly designated for that purpose by the Secretary, which shall issue receipt therefor, describing such bonds or notes so deposited. As soon as security for the performance of such penal bond is no longer necessary, such bonds or notes so deposited shall be returned to the depositor: *Provided*, That in case a person or persons supplying a contractor with labor or material as provided by the Act of Congress, approved February 24, 1905 (33 Stat. 811); entitled "An Act to amend an Act approved August thirteenth, eighteen hundred and ninety-four, entitled 'An Act for the protection of persons furnishing materials and labor for the construction of public works,'" shall file with the obligee, at any time after a default in the performance of any contract subject to said Acts, the application and affidavit therein provided, the obligee shall not deliver to the obligor the deposited bonds or notes nor any surplus proceeds thereof until the expiration of the time limited by said Acts for the institution of suit by such person or persons, and, in case suit shall be instituted within such time, shall hold said bonds or notes or proceeds subject to the order of the court having jurisdiction thereof: *Provided further*, That nothing herein contained shall affect or impair the priority of the claim of the United States against the bonds or notes deposited or any right or remedy granted by said Acts or by this section to the United States for default upon any obligation of said penal bond: *Provided further*, That all laws inconsistent with this section are hereby so modified as to conform to the provisions hereof: *And provided further*, That nothing contained herein shall affect the authority of courts over the security, where such bonds are taken as security in judicial proceedings, or the authority of any administrative officer of the United States to receive United States bonds for security in cases authorized by existing laws. The Secretary may prescribe rules and regulations necessary and proper for carrying this section into effect.

In order to avoid the frequent substitution of securities such rules and regulations may limit the effect of this section, in appropriate classes of cases, to bonds and notes of the United States maturing more than a year after the date of deposit of such bonds as security. The phrase "bonds or notes of the United States" shall be deemed, for the purposes of this section, to mean any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States. (Section 1126, Revenue Act of 1926, as amended by section 7 of the Act of February 4, 1935 (Public, No. 3).)

EXAMINATION OF BOOKS AND WITNESSES

PAR. 4. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be in-

cluded in such return, with power to administer oaths to such person or persons. (Section 1104, Revenue Act of 1926, as amended by section 618, Revenue Act of 1928.)

UNNECESSARY EXAMINATIONS

PAR. 5. No taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the Commissioner, after investigation, notifies the taxpayer in writing that an additional inspection is necessary. (Section 1105, Revenue Act of 1926.)

TRANSFEREES

PAR. 6. The Commissioner, for the purpose of determining the liability at law or in equity of a transferee of the property of any person with respect to any Federal taxes imposed upon such person, is hereby authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon such liability, and may require the attendance of the transferor or transferee, or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter, with power to administer oaths to such person or persons. (Section 507, Revenue Act of 1934.)

LIENS FOR TAXES

PAR. 7. (a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law provided for the filing of such notice; or

(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

(3) in the office of the clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(c) Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

(1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

(2) May issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of

the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations;

(3) May issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(4) May issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States.

(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272 (j) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency), or of any similar provisions of any prior law, and the requirements of subsection (c) of this section.

(f) Subsections (c), (d), and (e) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section. (Section 3186, Revised Statutes, as amended, and further amended by section 613, Revenue Act of 1928, and by section 509, Revenue Act of 1934.)

ENFORCEMENT OF TAX LIENS

PAR. 8. Section 3207 of the Revised Statutes, as amended, is reenacted without change, as follows:

"SEC. 3207. (a) In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell real estate to satisfy the same, the Commissioner of Internal Revenue may direct a bill in chancery to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any 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.

"(b) Any person having a lien upon or any interest in such real estate, notice of which has been duly filed of record in the jurisdiction in which the real

estate is located, prior to the filing of notice of the lien of the United States as provided by section 3186 of the Revised Statutes as amended, or any person purchasing the real estate at a sale to satisfy such prior lien or interest, may make written request to the Commissioner of Internal Revenue to direct the filing of a bill in chancery as provided in subdivision (a), and if the Commissioner fails to direct the filing of such bill within six months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the real estate is located, praying leave to file a bill for a final determination of all claims to or liens upon the real estate in question. After a full hearing in open court, the district court may in its discretion enter an order granting leave to file such bill, in which the United States and all persons having liens upon or claiming any interest in the real estate shall be made parties. Service on the United States shall be had in the manner provided by sections 5 and 6 of the Act of March 3, 1887, entitled 'An Act to provide for the bringing of suits against the Government of the United States.' Upon the filing of such bill the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of bills filed under subdivision (a) of this section. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid, and all costs of the proceedings on the petition and the bill shall be borne by the person filing the bill." (Section 1127, Revenue Act of 1926.)

PRIORITY OF DEBTS DUE UNITED STATES

PAR. 9. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (Section 3466, Revised Statutes.)

PAR. 10. Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (Section 3467, Revised Statutes, as amended by section 518, Revenue Act of 1934.)

LIMITATION ON ASSESSMENTS AND SUITS BY THE UNITED STATES

PAR. 11. (a) Except in the case of income, war-profits, excess-profits, estate, and gift taxes—

(1) Notwithstanding the provisions of section 3182 of the Revised Statutes or any other provision of law, all internal-revenue taxes shall (except as provided in paragraph (2) or (3) of this subdivision) be assessed within four years after such taxes became due, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of five years after such taxes became due.

(2) In case of a false or fraudulent return with intent to evade tax, of a failure to file a return within the time required by law, or of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding

in court for the collection of such tax may be begun without assessment, at any time.

(3) Where the assessment of any tax imposed by this Act or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (A) within six years after the assessment of the tax, or (B) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer. (Section 1109(a) of the Revenue Act of 1926, as amended by section 619(a) of the Revenue Act of 1928.)

LIMITATION ON PROSECUTIONS FOR INTERNAL REVENUE OFFENSES

PAR. 12. (a) The Act entitled "An Act to limit the time within which prosecutions may be instituted against persons charged with violating internal revenue laws," approved July 5, 1884, as amended, and as reenacted by section 1110 of the Revenue Act of 1926, is amended to read as follows:

"That no person shall be prosecuted, tried, or punished, for any of the various offenses arising under the internal revenue laws of the United States unless the indictment is found or the information instituted within three years next after the commission of the offense, except that the period of limitation shall be six years—

"(1) for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner,

"(2) for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, and

"(3) for the offense of willfully aiding or assisting in, or procuring, counseling, or advising, the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document).

"For offenses arising under section 37 of the Criminal Code, where the object of the conspiracy is to attempt in any manner to evade or defeat any tax or the payment thereof, the period of limitation shall also be six years. The time during which the person committing any of the offenses above mentioned is absent from the district wherein the same is committed shall not be taken as any part of the time limited by law for the commencement of such proceedings. Where a complaint is instituted before a commissioner of the United States within the period above limited, the time shall be extended until the discharge of the grand jury at its next session within the district."

(b) The amendment made by subsection (a) of this section shall apply to offenses whenever committed; except that it shall not apply to offenses the prosecution of which was barred before the date of the enactment of this Act. (Section 1108, Revenue Act of 1932.)

LIMITATIONS ON SUITS BY TAXPAYERS

PAR. 13. (a) Section 3226 of the Revised Statutes, as amended, is amended to read as follows:

“SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue 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 a claim for refund or credit has been duly filed with 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; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates.” (Section 1103, Revenue Act of 1932.)

LISTING OF TAXPAYERS

PAR. 14. 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 3172 of Revised Statutes as reenacted by section 1115, Revenue Act of 1926.)

RECEIPTS FOR PAYMENT

PAR. 15. 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 3183, Revised Statutes, as amended by chapter 125, section 3, Act of March 1, 1879.)

SUITS TO RESTRAIN, BARRED

PAR. 16. No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. (Section 3224, Revised Statutes.)

PENALTIES

PAR. 17. (a) Any person required under this Act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this Act, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner

to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) Any person who willfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, the internal-revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(d) Any person who willfully fails to pay, collect, or truthfully account for and pay over, any tax imposed by Titles IV, V, VI, VII, VIII, and IX, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subdivision for any offense for which a penalty may be assessed under authority of section 3176 of the Revised Statutes, as amended, or for any offense for which a penalty has been recovered under section 3256 of the Revised Statutes.

(e) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process. Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(f) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. (Section 1114 of the Revenue Act of 1926.)

PENALTY FOR FALSE CLAIM

PAR. 18. Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; * * * or whoever shall enter into any agree-

ment, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; * * * shall be fined not more than \$10,000 or imprisoned not more than ten years, or both. * * * (Section 35, Criminal Code of the United States, as amended by the Act approved June 18, 1934, Public, No. 394.)

RETURNS

NOTICE AND SUMMONS

PAR. 19. 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, (1) in case of a special tax, on or before the thirty-first day of July in each year, and (2) in other cases before the day on which the taxes accrue, to make a list or return, verified by oath, to the collector or a deputy collector of the district where located, of the articles or objects, including 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, article 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 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. 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 erroneous, false, or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, 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 or income liable to tax or the returns thereof. The collector may summon any person residing or found within the State or Territory in which his district lies; and when the person intended to be summoned does not reside and can not be found within such State or Territory, 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: *Provided*, That "person," as used in this section, shall be construed to include any corporation, joint-stock company or association, or insurance company when such construction is necessary to carry out its provisions. (Section 3173, Revised Statutes, as reenacted by section 1115, Revenue Act of 1926.)

INSPECTION OF RETURNS

PAR. 20. (a) Returns upon which the tax has been determined by the Commissioner shall constitute public records; but, except as hereinafter provided in this section and section 1203, they shall be open to inspection only upon order of the President and under rules and regulations prescribed by the Secretary and approved by the President. Whenever a return is open to the inspection of any person a certified copy thereof shall, upon request, be furnished to such person under rules and regulations prescribed by the Commissioner with the approval of the Secretary. The Commissioner may prescribe a reasonable fee for furnishing such copy.

(b) (1) The Secretary and any officer or employee of the Treasury Department, upon request from the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, or a select committee of the Senate or House specially authorized to investigate returns by a resolution of the Senate or House, or a joint committee so authorized by concurrent resolution, shall furnish such committee sitting in executive session with any data of any character contained in or shown by any return.

(2) Any such committee shall have the right, acting directly as a committee, or by or through such examiners or agents as it may designate or appoint, to inspect any or all of the returns at such times and in such manner as it may determine.

(3) Any relevant or useful information thus obtained may be submitted by the committee obtaining it to the Senate or the House, or to both the Senate and the House, as the case may be.

(c) The proper officers of any State may, upon the request of the governor thereof, have access to the returns of any corporation, or to an abstract thereof showing the name and income of the corporation, at such times and in such manner as the Secretary may prescribe.

(d) All bona fide shareholders of record owning 1 per centum or more of the outstanding stock of any corporation shall, upon making request of the Commissioner, be allowed to examine the annual income returns of such corporation and of its subsidiaries. Any shareholder who pursuant to the provisions of this section is allowed to examine the return of any corporation, and who makes known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any such return, shall be guilty of a misdemeanor and be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both.

(e) The Commissioner shall as soon as practicable in each year cause to be prepared and made available to public inspection in such manner as he may

determine, in the office of the collector in each internal-revenue district and in such other places as he may determine, lists containing the name and the post-office address of each person making an income-tax return in such district. (Section 257, Revenue Act of 1926.)

PAR. 21. (d) The Joint Committee shall have the same right to obtain data and to inspect returns as the Committee on Ways and Means or the Committee on Finance, and to submit any relevant or useful information thus obtained to the Senate, the House of Representatives, the Committee on Ways and Means, or the Committee on Finance. The Committee on Ways and Means or the Committee on Finance may submit such information to the House or to the Senate, or to both the House and the Senate, as the case may be. (Section 1203(d), Revenue Act of 1926.)

REFUND OR CREDIT—LIMITATIONS

EFFECT OF EXPIRATION OF PERIOD OF LIMITATIONS AGAINST UNITED STATES

PAR. 22. Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid (whether before or after the enactment of this act) after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim. (Section 607 of the Revenue Act of 1928.)

EFFECT OF EXPIRATION OF PERIOD OF LIMITATIONS AGAINST TAXPAYER

PAR. 23. A refund of any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) made after the enactment of this Act, shall be considered erroneous—

(a) if made after the expiration of the period of limitation for filing claim therefor, unless within such period claim was filed; or

(b) in the case of a claim filed within the proper time and disallowed by the Commissioner after the enactment of this Act, if the refund was made after the expiration of the period of limitation for filing suit, unless—

(1) within such period suit was begun by the taxpayer, or

(2) within such period, the taxpayer and the Commissioner agreed in writing to suspend the running of the statute of limitations for filing suit from the date of the agreement to the date of final decision in one or more named cases then pending before the United States Board of Tax Appeals or the courts. If such agreement has been entered into, the running of such statute of limitations shall be suspended in accordance with the terms of the agreement. (Section 608 of the Revenue Act of 1928, as amended by section 503 of the Revenue Act of 1934.)

ERRONEOUS CREDITS

PAR. 24. (a) *Credit against barred deficiency.*—Any credit against a liability in respect of any taxable year shall be void if any payment in respect of such liability would be considered an overpayment under section 607.

(b) *Credit of barred overpayment.*—A credit of an overpayment in respect of any tax shall be void if a refund of such overpayment would be considered erroneous under section 608.

(c) *Application of section.*—The provisions of this section shall apply to any credit made before or after the enactment of this Act. (Section 609 of the Revenue Act of 1928.)

RECOVERY OF AMOUNTS ERRONEOUSLY REFUNDED

PAR. 25. (a) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) refund of which is erroneously made, within the meaning of section 608, after the enactment of this Act, may be recovered by suit brought in the name of the United States, but only if such suit is begun within two years after the making of such refund.

(b) Any portion of an internal-revenue tax (or any interest, penalty, additional amount, or addition to such tax) which has been erroneously refunded (if such refund would not be considered as erroneous under section 608) may be recovered by suit brought in the name of the United States, but only if such suit is begun before the expiration of two years after the making of such refund or before May 1, 1928, whichever date is later.

(c) Despite the provisions of subsections (a) and (b) such suit may be brought at any time within five years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact. (Section 610, Revenue Act of 1928, as amended by section 502, Revenue Act of 1934.)

INTEREST

PAR. 26. (a) Interest shall be allowed and paid upon any overpayment in respect of any internal-revenue tax, at the rate of 6 per centum per annum, as follows:

(1) In the case of a credit, from the date of the overpayment to the due date of the amount against which the credit is taken, but if the amount against which the credit is taken is an additional assessment of a tax imposed by the Revenue Act of 1921 or any subsequent revenue Act, then to the date of the assessment of that amount.

(2) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner.

(b) As used in this section the term "additional assessment" means a further assessment for a tax of the same character previously paid in part, and includes the assessment of a deficiency of any income or estate tax imposed by the Revenue Act of 1924 or by any subsequent revenue Act. (Section 614 (a) and (b) of the Revenue Act of 1928.)

PAR. 27. (a) No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, except as provided in subdivision (b).

(b) In any judgment of any court rendered (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any overpayment in respect of any internal-revenue tax, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to a date preceding the date of the refund check by not more than thirty days, such date to be determined by the Commissioner of Internal Revenue. (Section 177 of the Judicial Code, as amended by section 1117 of the Revenue Act of 1926 and section 615 of the Revenue Act of 1928.)

REGULATIONS

RETROACTIVE REGULATIONS

PAR. 28. The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect. (Section 1108 (a), Revenue Act of 1926, as amended by section 605, Revenue Act of 1928, and by section 506, Revenue Act of 1934.)

WHEN LAW IS CHANGED

PAR. 29. The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue. (Section 3447, Revised Statutes; United States Code, Title 26, section 1691 (2).)

ADMINISTRATIVE REVIEW

PAR. 30. In the absence of fraud or mistake in mathematical calculation, the findings of facts in and the decision of the Commissioner upon (or in case the Secretary is authorized to approve the same, then after such approval) the merits of any claim presented under or authorized by the internal-revenue laws shall not, except as provided in Title IX of the Revenue Act of 1924, as amended, be subject to review by any other administrative or accounting officer, employee, or agent of the United States. (Section 1107, Revenue Act of 1926.)

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