TREASURY DEPARTMENT

UNITED STATES INTERNAL REVENUE

U.S. Internal Revenue Service

REGULATIONS 64

(1922 EDITION)

RELATING TO THE

CAPITAL STOCK TAX

UNDER THE

REVENUE ACT OF 1921

Cap. Stk. Tax Regulations
38 Issued Oct 19 1916
38 Revised Aug 9 1918
50 Issued April 29 1919
50 Revised June 21 1920
64 Issued June 15 1922

WASHINGTON
GOVERNMENT PRINTING OFFICE
1922

REGULATIONS

RELATING TO THE

CAPITAL STOCK TAX

UNDER

TITLE X OF THE REVENUE ACT OF 1921.

CONTENTS.

CAPITAL STOCK TAX.

ARTICLE 1. **The law.**—The main provisions of existing law with respect to this tax are embodied in section 1000 of the Revenue Act of 1921, referred to hereinafter as the act.

EFFECTIVE DATE.

SEC. 1000. (a) That on and after July 1, 1922, in lieu of the tax imposed by section 1000 of the Revenue Act of 1918—

ART. 2. **Due date of tax.**—The act was approved November 23, 1921, but the tax is effective from July 1, 1922, except upon the incorporation of an individual or partnership business (see art. 32). This is a special tax and like all special taxes is due and payable annually in advance from July 1 of each year. No portion of the tax so paid is refundable to a corporation which ceases to do business during the year.

CORPORATIONS DEFINED AND DISTINGUISHED.

SECTION 2. That when used in this act—

* * * * * * *

The term "corporation" includes associations, joint-stock companies, and * * * *

The term "domestic" when applied to a corporation or partnership means created or organized in the United States;

The term "foreign" when applied to a corporation or partnership means created or organized outside the United States;

The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

ART. 3. **Corporations.**—The term "corporation" includes associations and joint-stock companies, whether created by statute or by contract, but not partnerships, properly so called. It is immaterial whether the companies were organized for profit or have a capital stock represented by shares.

ART. 4. **Associations and joint-stock companies.**—Associations and joint-stock companies include organizations, by whatever name known, which act or do business in an organized capacity, whether created under and pursuant to State laws, agreements, declarations

of trust, or otherwise, the net income of which, if any, is distributable among the members or shareholders on the basis of the capital stock held by each, or, where there is no capital stock, on the basis of the proportionate share of capital which each has or has invested in the business or property of the organization. But see articles 5, 6, 7, 8. An organization, the membership interests in which are transferable without the consent of all of the members, however the transfer may be otherwise restricted, and the business of which is conducted by trustees or directors and officers without the active participation of all the members as such, is an association.

ART. 5. **Limited partnerships as corporations.**—Partnerships with limited liability or partnership associations authorized by the statutes of Pennsylvania and a few other States are only nominally partnerships. Such so-called limited partnerships, offering opportunity for limiting the liability of all the members, providing for the transferability of partnership shares, and capable of holding real estate and bringing suit in the common name, are more truly corporations than partnerships, and are taxable as corporations. In all doubtful cases limited partnerships will be treated as corporations unless they submit satisfactory proof that they are not in effect so organized. Michigan partnership associations are corporations. The liability of Virginia limited partnerships is determined in each case from a consideration of the certificate of partnership and all pertinent facts relative thereto.

ART. 6. **Limited partnerships as partnerships.**—So-called limited partnerships of the type authorized by the statutes of New York and most of the States are partnerships and not corporations within the meaning of the statute. Such limited partnerships which can not limit the liability of the general partners, although the special partners enjoy limited liability so long as they observe the statutory conditions, which are dissolved by the death or transfer of the interest of a general partner, and which can not hold real estate or sue in the partnership name, are so like common law partnerships that they can not be differentiated therefrom for tax purposes. Michigan and Illinois limited partnerships are partnerships. California special partnerships are partnerships.

ART. 7. **Partnership banks.**—A partnership bank, conducted like a corporation and so organized that the interests of its members may be transferred without the consent of the other members, is a joint-stock company or association within the meaning of the statute. A partnership bank, the interests of whose members can not be so transferred, is a partnership.

ART. 8. **Massachusetts trusts.**—The test of liability in all cases involving trusts of the Massachusetts type is whether the cestuis que

trustent have by the terms of the trust agreement a voice in the management or control of the trust. Where the trustees are in complete control of the business, the beneficiaries having no control except the right of filling vacancies among the trustees or of consenting to a modification of the terms of the trust or of dissolving the trust, no association exists. If, however, the cestuis que trustent have a voice in the control or management of the business of the trust, whether through the right to elect trustees periodically or to remove the trustees or to restrict the trustees as to the management of the trust or otherwise, the trust is an association within the meaning of the statute. Where the trustees hold in their own right a sufficient number of the certificates of beneficial interest to constitute control as between the beneficiaries, the trust will be held to be an association regardless of the powers conferred upon the trustee by the instrument creating the trust.

ART. 9. **Domestic corporations.**—A domestic corporation is a corporation created or organized in the United States, which includes the States, Territories of Alaska and Hawaii, and the District of Columbia.

ART. 10. **Foreign corporations.**—A foreign corporation is a corporation created or organized outside the United States as defined in article 9.

TAX ON DOMESTIC CORPORATIONS.

SEC. 1000 (a) (1). Every domestic corporation shall pay annually a special excise tax with respect to carrying on or doing business, equivalent to $1 for each $1,000 of so much of the fair average value of its capital stock for the preceding year ending June 30 as is in excess of $5,000. In estimating the value of capital stock the surplus and undivided profits shall be included;

ART. 11. **Basis of the tax: "Carrying on or doing business."**—The basis of the tax in the case of a domestic corporation is "carrying on or doing business" in the capacity of a corporation or association. The words "carrying on or doing business" must be given their ordinary and natural signification. "Business" is a very comprehensive term and embraces whatever occupies the time, attention, or labor of men for the purpose of livelihood or profit. In other words, business necessarily involves the idea of gain. The true basis of distinction is, in the first instance, between—

(*a*) A corporation organized for the purpose of doing business as above defined, and

(*b*) A corporation organized for the sole purpose of owning and holding property and distributing its avails;

and, in the second instance, between—

(*c*) A corporation of class (*a*) which is continuing the body and substance of the business for which it was organized or is still active and maintaining its organization for the purpose of continued efforts in the pursuit of profit or gain, and

(*d*) A corporation which, although included in class (*a*), has substantially retired from the business for which it was organized and has reduced its activities to the mere ownership and holding of property, distributing its avails, and doing only the acts necessary to the maintenance of its corporate existence and the private management of its purely internal affairs.

The distinction in each case must depend upon the peculiar facts in the case. Corporations of class (*a*) will be presumed to be subject to the tax unless they submit proof, satisfactory to the commissioner, that they are not actually carrying on or doing business. If a corporation claim exemption on the ground that it belongs to class (*b*), it will be required to file an excerpt from its charter setting forth its corporate powers together with a full and comprehensive statement showing the nature of the activities in which it is and has been actually engaged. If it claim exemption on the ground that it belongs to class (*d*), it will be required to furnish a copy of any amendment of its charter, or other evidence, satisfactory to the commissioner, showing that it has reduced its activities to the mere ownership of property, receipt of its avails, and the doing of only what is necessary to the maintenance of its corporate existence.

A corporation that has "substantially retired from business" is one that has changed its status, as, for instance, by divesting itself of all control over and management of the property formerly employed by it in the doing of business, and has reduced its activities accordingly.

The leasing of all the property of a corporation whereby it divests itself of control and management thereof, or the sale of all the property of a corporation and the reduction of its activities to the collection of the proceeds of the sale on an installment plan, are instances of a corporation substantially retiring from business.

ART. 12. "Carrying on or doing business" illustrated.—Corporations organized for the purpose of and actually engaged in such activities as buying, selling, or dealing in mineral or timber land or other real estate; leasing property, collecting rents, managing office buildings, making investments of profits; leasing lands and collecting royalties, managing wharves, dividing profits; and in some cases

investing the surplus, are engaged in "carrying on or doing business" within the meaning of the statute.

A corporation may complete its organization and sell its capital stock for cash without incurring liability, but other activities, such as entering into contracts for the purchase of property or construction of a plant are corporate business acts, and constitute doing business. In other words, it is not necessary that a company be actually engaged in the manufacture of its intended product or that it be actually creating profit or gain to incur liability. The making of contracts, buying of materials or machinery, constructing buildings, employing and discharging of individuals are necessary business acts leading to the more profitable end of manufacturing certain products.

The letting of a contract and construction of a hotel preparatory to engaging in the hotel business is sufficient to incur liability.

A corporation organized for the purpose of, and actually engaged in, buying mineral or timber land or other real estate and holding it with a view to future sale at an advance is carrying on or doing business.

A corporation organized for the purpose of owning and leasing real estate which has leased all of the property under its control is still engaged in doing business unless, under the terms of its lease, its activities have been reduced to the mere receipt and distribution of the avails of the leases at the actual cost of so doing. If it is still maintaining its organization for the purpose of continued effort in the pursuit of profit and gain it is doing business.

A corporation owning or managing real estate which leases all of its property, but under the terms of the lease is required to maintain or keep the property in repair, is doing business.

No particular amount of business is required in order to bring a company within the terms of the act.

A corporation engaged in mining or in developing and speculating in mineral lands is doing business.

A corporation engaged in buying and selling securities or other property is doing business, even though for a period it makes no purchases or sales because of unfavorable market conditions.

A corporation formed to take over miscellaneous stocks, bonds, or other property (as of an estate), to negotiate sales of various items from time to time as opportunity and judgment dictate, and to distribute the profits from time to time as liquidation is effected, is, while so engaged, carrying on or doing business.

A parent corporation which finances or manages the operations of its subsidiaries is doing business.

A so-called holding company which, under its charter, is authorized to and does, in addition to receiving and distributing the avails

of the property or securities, held by it, finance the operations of its subsidiaries, is engaged in doing business.

A corporation organized for the purpose of taking over and holding securities, timber land, coal lands, or other real estate, is held to be doing business, if it makes investments or reinvestments of its surplus income or funds in excess of an amount necessary to maintain its original investments.

ART. 13. **Not "doing business."**—Holding companies as distinguished from parent corporations, and corporations all of whose property and business is operated by, or is in the hands of, a receiver or the Alien Property Custodian, are not doing business.

A holding company is defined as one whose corporate powers are limited to the mere owning and holding of property and distribution of its avails, or one which, although incorporated for the purpose of doing business as defined in article 11, has substantially retired from the business for which it was organized and has reduced its activities to the mere ownership and holding of property, distributing its avails, and doing only such acts as are necessary to the maintenance of its corporate existence and the private management of its purely internal affairs.

A holding company, as above defined, will not be considered to be doing business by reason of the reinvestment of its surplus income or funds to the extent only of maintaining its original investments.

ART. 14. **Computation of tax.**—The tax is imposed at the rate of $1 for each full $1,000 of the fair average value of the capital stock of the corporation in excess of the prescribed deduction of $5,000.

The tax being payable in advance is prospective and is measured by the fair average value for the year preceding the taxable year, not the fair value of the average capital stock. If a corporation begins business within the preceding year or increases or decreases its capital within the preceding year, thereby materially changing the fair value of the capital stock, the tax is measured by the fair value of the capital stock outstanding at the date of incidence of the tax (June 30). Therefore, while Form 707 permits, as a matter of convenience to the taxpayer, the using of a balance sheet as of a date prior to June 30, but not prior to the preceding December 31, if there is a material change in the condition and affairs of the company affecting the fair value of the capital stock subsequent to the closing of the books and prior to the date of the incidence of the tax (June 30), the financial condition should be reported under Exhibit A as of June 30, giving effect to such material changes. Under Exhibit B, the market value will be determined by multiplying the average market price per share for the period during which the capital stock as of June 30 has been outstanding by the number of shares outstanding as of that date.

No deduction is allowed corporations organized in the United States for capital invested outside of the United States. If the corporation is doing business it is taxed on its entire capital stock even though most of it may not be employed in the business.

ART. 15. **Fair average value of capital stock.**—The fair average value of the capital stock for the purpose of determining the amount of the capital stock tax must not be confused with the market value of the shares of stock where it may be necessary to determine such value under other provisions of the revenue laws. The fair average value of the capital stock, the statutory basis of the tax, is not necessarily the book value or the value based on prices realized in current sales of shares of stock or the value determined by capitalization of earnings.

Form 707 provides Exhibit A for the book or fair value of the assets, Exhibit B for the market value of the shares, and Exhibit C for the value of the capital stock based on the capitalized earnings. All information called for must be given in every case where it is procurable. The fair average value of the capital stock of a corporation and the tax payable thereon shall be determined from a consideration of the data contained in the return as well as all elements and factors affecting values, which should be harmonized so far as possible in the ultimate fair value found. Fair value is required irrespective of the exhibit used or the method employed in its determination.

EXHIBIT A.—The character of the assets is probably the most important factor in determining the reliability of the value reflected by this exhibit as being indicative of the fair value of the capital stock. If the market value of the assets be established the fair value of the capital stock is held to be not materially less than the fair market value of the net assets. Attempts to average the assets as a means of estimating the fair average value of the capital stock are not permitted.

EXHIBIT B.—The market is regarded as a factor, but only of importance when the underlying factors upon which the market has been established are sound in all essential particulars.

EXHIBIT C.—The weight attaching to this exhibit is largely dependent upon the nature of the business and character of the assets.

In capitalizing the net earnings of the corporation, which should reflect the true earning capacity, the officers should use a rate fairly representing the conditions obtaining in the trade and in the locality, with due regard to other important factors, including the worth of money. But such fair value must not be greatly at variance with the reconstructed book value shown by Exhibit A, unless the corporation is materially affected by extraordinary conditions which support a lower valuation. In any such case a full explanation must

accompany the return. The commissioner will estimate the fair value of the capital stock in cases regarded as involving any understatement or undervaluation.

The fair value of the capital stock, as provided under section 1000(a) (1) of the Revenue Act of 1921, and invested capital under the excess-profits tax provisions of the Revenue Act of 1921 are not necessarily the same.

For the purpose of capital-stock tax the fair value of the capital stock is estimated, and is predicated on present values, including actual appreciation of property, whether realized or unrealized, and such intangible assets as good will, trade-marks, and patents to the extent reflected by the earning power, whereas, for the purpose of excess-profits tax, the invested capital is based upon the actual investment of the stockholders in the corporation, irrespective of the present value of its assets. In the case of the capital-stock tax the fair value looks to the present net value of the assets, irrespective of the amount of the investment of the stockholders. (See art. 863, Reg. 62.)

ART. 16. **Surplus and undivided profits.**—The surplus and undivided profits of a corporation must be included in estimating the fair average value of its capital stock. If the fair average value be determined from the book value, the surplus and undivided profits are included in the assets; if from sales, they are necessarily a factor in determining the market price; and, if from net income, they are reflected to a greater or less extent in the earnings.

RETURNS.

Sections 1300 and 1307 of the Act read as follows:

> SEC. 1300. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.
>
> SEC. 1307. That whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return or such statements as he deems sufficient to show whether or not such person is liable to tax.

ART. 17. **Return by domestic corporation.**—Every domestic corporation must make a return on Form 707 even though the law may indicate that it is exempt from the tax. The question of exemption is one for determination by the commissioner. Also see articles 31 and 20.

ART. 18. **Return by affiliated corporation.**—Although section 240 of the Revenue Act of 1921 requires a consolidated return for affiliated

corporations for the purpose of income tax, *for the purpose of capital stock tax each corporation must render a separate return in complete form.* So-called subsidiary corporations, all or a part of the stock of which is owned by another corporation, must render separate returns, the same as every other corporation. No deductions from the assets are permitted on account of intercompany balances, and the shareholdings must be reported in the "Fair value" column at their actual worth at the time of making the return. No deduction is allowed in the return of one corporation for the tax paid by another.

If the fair value is determined by any method other than herein provided, the following requirements must be complied with: (a) The parent company must submit with its return a list of all subsidiaries and the districts in which the returns were filed; (b) the return of the subsidiary company must show the name of the parent company and the district in which the return was filed; (c) the method of determining the fair value, if other than by Exhibits A, B, and C, must be fully explained; (d) a copy of any agreement existing between parent company and subsidiary must be furnished, or a statement made that none exists; and (e) a combined balance sheet and a combined net income statement must be submitted for consideration in connection with any estimate of fair value made on behalf of the reporting corporation.

ART. 19. **Verification of return.**—The return and any separate statement submitted therewith must be verified in the form printed on page 3 of the return. In the absence of the president or treasurer, or both, other responsible officers may execute the jurat to avoid delinquency. However, if the amount of the tax covered thereby is not in excess of $10, the return may be signed or acknowledged before two witnesses instead of under oath. (Sec. 1303 of the Act.)

ART. 20. **Time for making return.**—It shall be the duty of every corporation on or before the 31st day of July in each year to make a return to the collector of the district in which its principal place of business is located. If any corporation fails to make and file a return within the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return, the collector or deputy collector shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise. In any such case the commissioner 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 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. If on account of sickness or absence of the officer of the corporation charged

with making the return, it is impossible to prepare and file a return on or before the 31st day of July (the due date), the collector, upon application in writing, may allow an extension of time not exceeding 30 days from July 31, in which to file the return. *If extension is granted, the letter of the collector should be attached to the return.* (See Sec. 3176, R. S.)

On no account is the Commissioner of Internal Revenue or the collector authorized to grant an extension of time in which to file capital stock tax returns in excess of 30 days from July 31, the due date. If for reasons, other than absence or sickness, beyond the control of the officers making the return, it becomes impossible to file a completed return within the time prescribed by law, a tentative return may be filed.

ART. 21. Tentative return.—The filing of a tentative return within the prescribed period will avoid the penalty for delinquent filing, but will not authorize the withholding of the tax. The regulations do not permit the filing of a tentative return to stay indefinitely the filing of a completed return and the collection of the tax due. Therefore if a tentative return is filed it should be clearly marked "Tentative Return" and should be prepared in as complete a manner as possible, including, among other information, a basis for the computation of the tax—that is, an estimate by the officers of the corporation of the approximate fair value of the capital stock in order that an initial assessment may be made. When the completed return is filed, it should be clearly marked "Completed return," showing that a tentative return was filed. Such action will prevent duplicate assessments and ordinary penalties. In every case a statement should be attached to the tentative return, indicating the approximate date the completed return may be expected. Upon receipt of the completed return any adjustment necessary in the assessment of the correct tax due will be made.

TAX ON FOREIGN CORPORATIONS.

SEC. 1000. (a) (2) Every foreign corporation shall pay annually a special excise tax with respect to carrying on or doing business in the United States, equivalent to $1 for each $1,000 of the average amount of capital employed in the transaction of its business in the United States during the preceding year ending June 30.

ART. 22. Basis of the tax.—The basis of the tax in the case of a foreign corporation is "carrying on or doing business in the United States." Foreign insurance companies are not liable to capital stock tax. (See art. 29.)

A foreign corporation is carrying on or doing business in the United States if it maintains an agent or an office or warehouse in the United States or in any other way enters the United States for the purposes of its business. The purchase of supplies in the United

States in the furtherance of continued efforts in the pursuit of profit or gain is carrying on or doing business in the United States.

ART. 23. **Capital employed in the United States.**—The "capital employed in the transaction of its business in the United States" means the portion of the total capital, surplus, and undivided profits, of the foreign corporation, utilized for the purpose of doing business in the United States. A foreign corporation may have income from sources within the United States for the purpose of the income tax, and yet not have capital employed in the transaction of business here for the purpose of the capital-stock tax. Compare articles 92–94 and 316–329 of Regulations 62. A foreign corporation not actually doing business in the United States is not subject to tax, and, accordingly, the investment of a part of its funds in United States stocks and securities will not constitute capital employed in its business in the United States. For the definition of "doing business" see article 11. If a corporation does business in this country, then, although the mere investment of funds in United States securities is not such a taxable employment of capital, such investment will constitute capital employed in the transaction of business in the United States if made in a subsidiary corporation which the foreign corporation uses as an instrumentality for the conduct of its own business in the United States. Thus the investment of the funds of a foreign corporation in the purchase of facilities, although apparently independent, for the purpose of its business here, or the purchase of stock and securities of a subsidiary corporation for the same purpose, will constitute the employment of capital in the transaction of business in the United States. A foreign corporation may not escape taxation by organizing or purchasing the stock of another corporation to own the facilities which the foreign corporation needs in its business. See article 352, Regulations 62.

ART. 24. **Capital employed in the United States illustrated.**—A foreign corporation may employ capital in the transaction of its business in the United States in various ways. For example, the investment of funds in property in the United States used in its business, in stocks and securities of subsidiary corporations as explained in article 23, in bills and accounts receivable representing business done in the United States, in merchandise kept here for sale, in materials manufactured here, and in deposits in United States banks maintained for use in business here. Generally speaking, approximately such proportion of the entire capital of a foreign corporation will presumably be employed in the transaction of its business in the United States as the gross amount of its business in the United States bears to its total gross business, but this will not always be conclusive, since a corporation may conceivably transact a greater or

less volume of business in one country than in another on the same amount of capital.

ART. 25. **Return by foreign corporation.**—Every foreign corporation carrying on or doing business in the United States shall make return on Form 708, irrespective of the amount of capital employed in this country in the transaction of its business. The capital actually employed in the transaction of the business of a foreign corporation in the United States and the tax payable thereon shall be calculated in accordance with the instructions on the form.

ART. 26. **Computation of tax.**—The tax is at the rate of $1 for each full $1,000 of the capital of a foreign corporation actually employed in the transaction of its business in the United States, and is in all cases to be computed on the basis of the average amount of capital so employed during the preceding year ending June 30. The measure of the tax is accordingly different from that of domestic corporations which pay a tax measured by the fair average value of their capital stock. No deduction from the total fair average amount of capital so employed is allowed in computing the tax.

ART. 27. **Measure of tax.**—The measure of the tax is the average amount of capital employed in the transaction of business in the United States during the preceding fiscal year. It will usually be sufficient to determine the amount of capital so employed at the beginning of each year and the amount so employed at the end of such year, and to divide the sum of such amounts by two. Where, however, there have been material changes in the amount of capital, the average amount should be determined with due regard to the times at which such changes occurred. A foreign corporation may, if it so desire, compute the average amount of capital employed on a monthly basis.

EXEMPTION FROM TAX.

SEC. 1000. (b) The taxes imposed by this section shall not apply in any year to any corporation which was not engaged in business (or, in the case of a foreign corporation, not engaged in business in the United States) during the preceding year ending June 30, nor to any corporation enumerated in section 231, nor to any insurance company subject to the tax imposed by section 243 or 246.

ART. 28. **Corporation not in business during preceding year.**—The tax being payable in advance does not apply to any corporation which was not engaged in business during any part of the fiscal year preceding the year for which the tax is due, but if it was in business even one day of the preceding year and one day of the taxable year it is subject to the tax. There is no relation between the amount of the tax payable and the length of time the corporation was in business. A corporation engaged in business during a part of the preceding year, but not engaged in business at the beginning of the taxable year, is not required to make any return if it is dissolved

or in process of dissolution, but if it is only temporarily inactive and subsequently during the year reengages in business it should file a return in the month in which it recommences business and pay the tax due from the first of such month to the end of the taxable year. A corporation organized and beginning corporate activities on or after July 1 is not subject to tax for the remainder of the taxable period in which the company was organized, unless, as of *July 1*, it takes over the business of an organization which was subject to capital stock tax, in which event the new corporation is required to file a return and pay the tax. Also see article 32 relative to election to be taxed as a corporation. In the case of foreign corporations "engaged in business" means the transaction of any business within the United States.

ART. 29. **Organizations and insurance companies exempt.**—The tax does not apply to insurance companies (stock, mutual, domestic, or foreign) nor to corporations the fair value of whose capital stock for the preceding year does not exceed $5,000 nor to any of the following classes of corporations specified in section 231 of the act, viz:

(1) Labor, agricultural, or horticultural organizations:

Agricultural or horticultural organizations exempt from tax do not include corporations engaged in growing agricultural or horticultural products or raising live stock or similar products for profit, but include only those organizations which, having no net income inuring to the benefit of their members, are educational or instructive in character and have for their purpose the betterment of the conditions of those engaged in these pursuits, the improvement of the grade of their products, and the encouragement and promotion of these industries to a higher degree of efficiency. Included in this class as exempt are organizations such as county fairs and like associations of a quasi-public character, which through a system of awards, prizes, or premiums are designed to encourage the production of better live stock, better agricultural and horticultural products, and whose income, derived from gate receipts, entry fees, donations, etc., is used exclusively to meet the necessary expenses of upkeep and operation. Societies or associations which have for their purpose the holding of annual or periodical race meets, from which profits inure or may inure to the benefit of the members or stockholders, do not come within the terms of this exemption. A corporation engaged in the business of raising stock or poultry, or growing grain, fruits, or other products of this character, as a means of livelihood and for the purpose of gain, is an agricultural or horticultural society only in the sense that its name indicates the kind of business in which it is engaged, and it is not exempt from tax. (Art. 512, Reg. 62.)

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

A Massachusetts savings bank, otherwise exempt, which establishes an insurance department under the statutes of that State, does not thereby become subject to tax upon the income received by such department. (Art. 513, Reg. 62.)

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

A fraternal beneficiary society is exempt from tax only if operated under the "lodge system," or for the exclusive benefit of the members of a society so operating. "Operating under the lodge system" means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization and largely self-governing, called lodges, chapters, or the like. In order to be exempt it is also necessary that the society have an established system for the payment to its members or their dependents of life, sick, accident, or other benefits. (Art. 514, Reg. 62.)

(4) Domestic building and loan associations substantially all the business of which is confined to making loans to members; and cooperative banks without capital stock organized and operated for mutual purposes and without profit:

In general, a building and loan association entitled to exemption is one organized pursuant to the laws of any State, Territory, or the District of Columbia, which accumulates funds to be loaned primarily to its shareholders for the purpose of building or acquiring homes. In order to be exempt the association (1) must be mutual, that is, all of its stockholders, or members must share in the profits on substantially the same footing; and (2) must be operated so that substantially all of its business is confined to the making of loans to bona fide shareholders. A building and loan association otherwise exempt does not lose its exempt status because—

(1) It has paid-up shares which are (a) preferred as to earnings, and (b) have a definite rate of interest which may be higher than the rate of dividends paid on other stock.

(2) It borrows money (accepting deposits is held to be a form of borrowing) which it uses for loans to shareholders, the dues, fines, and penalties paid by shareholders being inadequate for this purpose.

(3) It makes loans to nonmembers from accumulated funds which are not needed for loans to shareholders. In any such case, however, the burden will be upon the association to show that substantially all of its loans are made to members.

(4) The amount of its prepaid or full-paid stock is disproportionate to running or installment stock, provided the issuance of such prepaid or full-paid stock is ancillary to the furtherance of the main business of the association; that is, that it is intended to provide a fund from which loans may be made primarily to persons subscribing to running or installment stock to enable them to acquire or build homes.

Cooperative banks without capital stock organized and operated for mutual purposes and without profit are exempt. Credit unions such as those organized under the laws of Massachusetts, being in substance and in fact the same as cooperative banks, are likewise exempt from tax. (Art. 515, Reg. 62.)

(5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and

any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private stockholder or individual:

A cemetery company in order to be exempt must be owned and operated exclusively for the benefit of its lot owners or must not be operated for profit. Any cemetery corporation chartered solely for burial purposes and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private stockholder or individual, is exempt from income tax. A cemetery company of which all lot owners are members, issuing preferred stock entitling the holder to a semiannual dividend of 4 per cent, and whose articles of incorporation provide that the preferred stock shall be retired at par as soon as sufficient funds are realized from sales and that all funds realized in addition thereto shall be used by the company for the care and improvement of the cemetery property, is within the exemption. (Art. 516, Reg. 62.)

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual:

This exemption applies to corporations, associations, and community chests, funds, or foundations. In order to be exempt, the organization must meet three tests: (a) It must be organized and operated for one or more of the specified purposes; (b) it must be organized and operated exclusively for such purposes; and (c) no part of its net income must inure to the benefit of private stockholders or individuals.

(1) Charitable corporations include an association for the relief of the families of clergymen, even though the latter make a contribution to the fund established for this purpose; or for furnishing the services of trained nurses to persons unable to pay for them; or for aiding the general body of litigants by improving the efficient administration of justice. Educational corporations may include an association whose sole purpose is the instruction of the public. This is true of an association to promote acquaintance with the Spanish language and literature, although it has incidental amusement features; of an association to increase knowledge of the civilization of another country; and of a chautauqua association whose primary purpose is to give lectures on subjects useful to the individual and beneficial to the community and whose amusement features are incidental to this purpose. But associations formed to disseminate controversial or partisan propaganda are not educational within the meaning of the statute. Scientific corporations include an association for the scientific study of law, to the end of improvement in its administration. (Art. 517, Reg. 62.)

A corporation organized and operated exclusively for the purpose of maintaining a symphony orchestra and giving musical concerts, the programs being of an educational character, and no part of the

net earnings inuring to the benefit of any private stockholder or individual, is organized for " educational purposes."

(2) Where a religious corporation owns a large quantity of farm land and works it, and also manufactures and sells clothing and other articles for profit, it is not operated exclusively for religious purposes and is not exempt, even though its property is held in common and its profits do not inure to the benefit of individual members of the society.

(3) It does not prevent exemption that private individuals, for whose benefit a charity is organized, receive the income of the corporation or association. The statute refers to individuals having a personal and private interest in the activities of the corporation, such as stockholders. If, however, a corporation issues " voting shares," which entitle the holders upon the dissolution of the corporation to receive the proceeds of its property, including accumulated income, the right to exemption does not exist, even though the by-laws provide that the shareholders shall not receive any dividend or other return upon their shares. (Art. 517, Reg. 62.)

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

A business league is an association of persons having some common business interest, which limits its activities to work for such common interest and does not engage in a regular business of a kind ordinarily carried on for profit. Its work need not be similar to that of a chamber of commerce or board of trade. The fact that it engages in a regular business of a kind ordinarily carried on for profit but on a cooperative basis or so as to produce only sufficient income to be self-sustaining, is not ground for exemption. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not such a league, since its members have no common business interest, and it is not exempt, even though all of its income is devoted to the purpose stated. A clearing house association, not organized for profit, no part of the net income of which inures to any private stockholder or individual, is exempt provided its activities are limited to the exchange of checks and similar work for the common benefit of its members. An association of persons who are engaged in the business of carrying freight and passengers by boats propelled by steam, which is designed to promote the legitimate objects of such business, and all of the income of which is derived from membership dues and is expended for office expenses and the salary of a secretary-treasurer, is exempt from tax. An incorporated cotton exchange whose shares carry the right to dividends is organized for profit and is not exempt. (Art. 518, Reg. 62.)

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare:

A corporation having capital stock and possessing a charter which authorizes it to buy, improve, and sell real estate is organized for profit within the meaning of the statute and is not exempt from tax as a civic league or organization, even though it no longer exercises such powers for profit and is operated exclusively for the promotion of social welfare. (Art. 519, Reg. 62.)

(9) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private stockholder or member:

The exemption applies to practically all social and recreation clubs which are supported by membership fees, dues, and assessments. If a club, by reason of the comprehensive powers granted in its charter, engages in traffic, in agriculture or horticulture, or in the sale of real estate, timber, etc., for profit, such club is not organized and operated exclusively for pleasure, recreation, or social purposes, and any profit realized from such activities is subject to tax. (Art. 520, Reg. 62.)

(10) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses.

It is necessary to exemption of organizations mentioned in the foregoing subsection (other than insurance companies, all of which are exempt) that the income of the company be derived solely from assessments, dues, and fees collected from members.

If income is received from other sources, such as cash premiums or premium deposits, the corporation is not exempt, even though its additional income is tax exempt. Income, however, from sources other than those specified does not prevent exemption where its receipt is a mere incident of the business of the company. Thus the receipt of interest upon a working bank balance, or of the proceeds of the sale of badges, office supplies or equipment, will not defeat the exemption. The same is true of the receipt of interest upon Liberty bonds, where they were purchased as a patriotic duty and were afterwards sold. Where, however, such bonds are bought as a permanent investment, the receipt of the interest destroys the exemption. * * * The exemption does not include a telephone clearing association, whose business is to apportion toll rates between independent telephone companies handling the same calls and whose income consists of compensation paid by such companies and receipts from the sale of form blanks. The phrase "of a purely local character" qualifies all the organizations enumerated in subdivision (10) of section 231. An organization of a "purely local character" is one whose business activities are confined to a particular community, place, or district, irrespective, however, of political subdivisions. The word "purely" intensifies and limits "local," and indicates a clear intention on the part of Congress to exempt from taxation only such organizations as are entirely and unqualifiedly "local" in their operations. (Art. 521, Reg. 62.)

(11) Farmers, fruit growers, or like associations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less the necessary selling expenses, on the basis of the quantity of produce furnished by them; or organized and operated as purchasing agents for the purpose of purchasing supplies and equipment for the use of

members and turning over such supplies and equipment to such members at actual cost, plus necessary expenses:

(a) Cooperative associations, acting as sales agents for farmers, fruit growers, dairymen, etc., and turning back to them the proceeds of the sales, less the necessary selling expenses, on the basis of the produce furnished by them, are exempt from income tax. Thus cooperative dairy companies, which are engaged in collecting milk and disposing of it or the products thereof and distributing the proceeds, less necessary operating expenses, among their members upon the basis of the quantity of milk or of butter fat in the milk furnished by such members, are exempt from the tax. If the proceeds of the business are distributed in any other way than on such a proportionate basis, or if the association deducts more than necessary selling expenses, it does not meet the requirements of the statute and is not exempt. The maintenance of a reasonable reserve for depreciation or possible losses or a reserve required by State statute will not necessarily destroy the exemption. A corporation organized to act as a sales agent for farmers and having a capital stock on which it pays a fixed dividend amounting to the legal rate of interest, all of the capital stock being owned by such farmers, will not for that reason be denied exemption.

(b) Cooperative associations organized and operated as purchasing agents for farmers, fruit growers, dairymen, etc., for the purpose of buying supplies and equipment for the use of members and turning over such supplies and equipment to members at actual cost, plus necessary expenses, are also exempt. In order to be exempt under either (a) or (b) an association must establish that it has no net income for its own account. An association acting both as a sales and a purchasing agent is exempt if, as to each of its functions it meets the requirements of the statute. (Art. 522, Reg. 62.)

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

(13) Federal land banks and national farm-loan associations as provided in section 26 of the act approved July 17, 1916, entitled "An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Joint stock land banks created under the Federal farm loan act of July 17, 1916, are not exempt under this section.

(14) Personal service corporations. This subdivision shall not be in effect after December 31, 1921.

Personal service corporations so classified under the Revenue Act of 1918 are exempt from capital-stock tax for the taxable period July 1, 1921, to June 30, 1922, but are liable to capital-stock tax the same as other corporations effective July 1, 1922, under the Revenue Act of 1921.

ART. 30. **Claims for exemption.**—It may be stated generally that in all claims for exemption under the act, it is necessary that the claimant establish to the satisfaction of the commissioner that it is in practice *actually operated* in an exempt manner. In those cases falling under paragraphs of the statute requiring that the organization be "organized" or "organized and operated" in the manner specified it is necessary also that the claimant establish to the satisfaction of the commissioner that it is so organized. The term "organized," as thus used, refers to the real substance and intent of the organization and not its mere form. In determining the real substance and intent of the organization the provisions of the charter and by-laws are not in themselves conclusive, but only prima facie evidence giving rise to presumptions according to their terms. The burden is upon the claimant to overcome these presumptions by extraneous evidence to the satisfaction of the commissioner.

ART. 31. **Return by corporation claiming exemption.**—As corporations are generally organized to do business every existing company is presumed to be subject to the tax unless satisfactory evidence is submitted showing that it is exempt. Corporations claiming exemption should fill out Form 707 but instead of computing the tax should enter in the space provided for the computation the notation "Exemption claimed." In all such cases the return so filled out must be filed with the collector, together with a comprehensive statement of the reasons for claiming exemption.

If exemption has been allowed for the preceding taxable year and there has been no change in the status or conditions of the company then the first 13 lines of Form 707 should be completed and a statement attached to the effect that exemption is claimed for the same reasons as for the previous year and that the same status and conditions of the company exist for the taxable period in question. In this way the records of the collectors' offices will be complete and corporations will avoid requests for the filing of returns and unnecessary correspondence. The determination of liability rests with the Commissioner of Internal Revenue and without complete information it is impossible to make a decision.

ELECTION TO BE TAXED AS CORPORATION.

SEC. 229. That in the case of the organization as a corporation within four months after the passage of this act of any trade or business in which capital is a material income-producing factor, and which was previously owned by a partnership or individual, the net income of such trade or business from January 1, 1921, to the date of such organization may at the option of the individual or partnership be taxed as the net income of a corporation is taxed under Titles II and III; in which event the net income and invested capital of such trade or business shall be computed as if such corporation had been in existence on and after January 1, 1921,

and the undistributed profits or earnings of such trade or business shall not be subject to the surtaxes imposed in section 211, but amounts distributed on and after January 1, 1921, from the earnings or profits of such trade or business accumulated after December 31, 1920, shall be taxed to the recipients as dividends; and all the provisions of Titles II and III relating to corporations shall so far as practicable apply to such trade or business: *Provided*, That this section shall not apply to any trade or business, the net income of which for the taxable year 1921 was less than 20 per centum of its invested capital for such year: *Provided further*, That any taxpayer who takes advantage of this section shall pay the tax imposed by section 1000 of the Revenue Act of 1918 as if such taxpayer had been a corporation on and after January 1, 1921.

ART. 32. **Election to be taxed as a corporation.**—In the event a business enterprise qualifies under the above provisions and elects to be taxed under Titles II and III as a corporation, then it is required to file capital stock tax returns and pay the tax for the six months' period, January 1 to June 30, 1921, and the 12 months' period, July 1, 1921, to June 30, 1922. The valuations for the first mentioned period will be reported as of December 31, 1920. The values for the last mentioned period will be reported as of June 30, 1921.

The clauses of section 1000 of the Revenue Act of 1918, which require that a corporation must have been engaged in business some part of the year preceding the taxable period in order to be liable for the tax, are not applicable to corporations filing returns under the provisions of section 229, of the Revenue Act of 1921.

RETURNS PUBLIC RECORDS.

SEC. 1000. (c) Section 257 shall apply to all returns filed with the commissioner for purposes of the tax imposed by this section.

SEC. 257. That returns upon which the tax has been determined by the Commissioner shall constitute public records; but 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: *Provided*, That the proper officers of any State imposing an income tax 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: *Provided further*, That all bona fide stockholders 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 stockholder 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.

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 names and the post-office addresses of all individuals making income-tax returns in such district.

ART. 33. **Inspection of returns.**—The returns upon which the tax has been determined by the commissioner, although public records, are in general open to inspection only to the extent authorized by the President. All bona fide stockholders of record owning 1 per cent 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 corporations and of its subsidiaries, but such privilege of examination is personal and can not by power of attorney be delegated by the stockholder to another. Only such officers of any State as are charged with the enforcement of a State income tax law shall 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, and then only in case the information is to be used by them in connection with such enforcement. Any stockholder who 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 1 year, or both. See Treasury Decisions 2961, 2962, 3273, and 3277 for full particulars.

ART. 34. **No authority for credit of excess payment of capital stock tax.**—Section 252 of the Revenue Act of 1921 provides for a credit against additional income taxes due to previous overpayments of income or excess-profits taxes. The law does not authorize the credit of an excess payment of capital stock tax for a given period against an assessment of the same or other tax for a previous or subsequent period. A claim for abatement or refund for the excess assessment should be filed and payment made of the correct tax due for the previous or subsequent period.

LAWS MADE APPLICABLE.

SEC. 1300. That all administrative, special, or stamp provisions of law, including the law relating to the assessment of taxes, so far as applicable, are hereby extended to and made a part of this Act, and every person liable to any tax imposed by this Act, or for the collection thereof, shall keep such records and render, under oath, such statements and returns, and shall comply with such regulations as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

EXAMINATION OF BOOKS AND WITNESSES.

SEC. 1308. That 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 revenue agent or inspector 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.

METHOD OF COLLECTING TAX.

SEC. 1301. That whether or not the method of collecting any tax imposed by Title * * * X of this Act is specifically provided therein, any such tax may, under regulations prescribed by the Commissioner with the approval of the Secretary, be collected by stamp, coupon, serial-numbered ticket, or such other reasonable device or method as may be necessary or helpful in securing a complete and prompt collection of the tax. All administrative and penalty provisions of Title XI, in so far as applicable, shall apply to the collection of any tax which the Commissioner determines or prescribes shall be collected in such manner.

ART. 35. **Time for payment of tax.**—All assessments shall be made by the commissioner. The collector shall within 10 days after receiving any list of taxes from the commissioner give notice to each corporation liable to pay any tax stated therein, to be left at its place of business or to be sent by mail, stating the amount of such tax and demanding payment thereof. If such corporation does not pay the tax within 10 days after the service or the sending by mail of such notice, it shall be the duty of the collector to collect the tax with a penalty of 5 per cent additional, upon the amount of the tax and interest at the rate of 1 per cent a month. See section 3184, Revised Statutes. A collector has no authority to extend the time for payment of the tax, and any extension granted by him will be at his own risk. All taxes are payable direct to the collector of internal revenue of the district in which return is filed. The collector may accept payment of the tax when the return is filed as an "advance collection," subject to any adjustment later found necessary, but no corporation is required to pay the tax until after notice and demand. However, the collection of the tax is facilitated where a corporation transmits with the return a check for the amount of tax due. Tax due from a corporation which has liquidated is legally collectible from the stockholders or others who have received its assets.

ART. 36. **Abatement and refund of taxes.**—Section 3220 of the Revised Statutes, as amended by section 1315 of the Revenue Act of 1921, provides:

> 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; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section.

FRAUDULENT RETURNS.

Section 3225 of the Revised Statutes, as amended by section 1323 of the Revenue Act of 1921, provides:

> When a second assessment is made in case of any list, statement, or return, which in the opinion of the collector or deputy collector was false or fraudulent, or contained any understatement or undervaluation, such assessment shall not be remitted, nor shall taxes collected under such assessment be refunded, or paid back, or recovered by any suit, unless it is proved that such list, statement, or return was not willfully false or fraudulent and did not contain any willful understatement or undervaluation.

MEDIUM OF PAYMENT OF TAX.

Section 1325 of the act reads as follows:

> SEC. 1325. That 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 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 the same as if such check had not been tendered.

ART. 37. **Payment of tax by uncertified checks.**—Collectors may accept uncertified checks in payment of taxes, provided such checks are collectible at par—that is, for their full amount, without any deduction for exchange or other charges. The collector will stamp on the face of each check before deposit the words, "This check is in payment of an obligation to the United States and must be paid at par.

No protest," with his name and title. The day on which the collector receives the check will be considered the date of payment so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover the taxes of two or more corporations, the remittance must be accompanied by a letter of transmittal stating (a) the name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order, or other instrument included in the same remittance; (d) the name of each corporation whose tax is paid by the remittance; (e) the amount of the payment on account of each corporation; and (f) the kind of tax paid.

ART. 38. **Procedure with respect to dishonored checks.**—If the bank on which any such check is drawn shall refuse to pay it at par, the check shall be returned through the depositary bank and be treated in the same manner as a bad check. All expenses incident to the attempt to collect such a check and the return of it through the depositary bank must be paid by the drawer of the check to the bank on which it is drawn, since no deduction can be made from amounts received in payment of taxes. See section 3210 of the Revised Statutes. Any taxpayer whose check is not paid by the bank on which drawn becomes liable, under the terms of the law, for payment of the tax and for all legal penalties and additions, and the collector shall proceed to collect the same as though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not released from his obligation until the check has been paid. (Act of March 2, 1911, 36 Stat. 965.)

PENALTIES.

SEC. 1004. That any person who carries on any business or occupation for which a special tax is imposed by sections 1000, 1001, or 1002, without having paid the special tax therein provided, shall, besides being liable for the payment of such special tax, be subject to a penalty of not more than $1,000 or to imprisonment for not more than one year, or both.

ART. 39. **Doing business without payment of tax.**—Every corporation which does business without having paid the tax is liable to a penalty of $1,000. A corporation paying the capital stock tax is not on that account exempt from any occupational tax.

SEC. 1302. (a) That any person required under Titles * * * X, * * *, to pay, or to collect, account for and pay over any tax, or required by law or regulations made under authority thereof to make a return or supply any information for the purposes of the computation, assessment, or collection of any such tax, who fails to pay, collect, or truly account for and pay over any such tax, make any such return or supply any such information at the time or times required by law or regulation shall in addition to other penalties provided by law be subject to a penalty of not more than $1,000.

(b) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax, make such return or supply such information at the time or times required by law or regulation, or who willfully attempts in any manner to evade such tax, shall be guilty of a misdemeanor and in addition to other penalties provided by law shall be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person who willfully refuses to pay, collect, or truly account for and pay over any such tax 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: *Provided, however,* That 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.

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

ART. 40. **Penalty for nonpayment of tax.**—(a) Any corporation which fails to pay the tax when due and payable is liable to a penalty of $1,000. If it willfully refuses to pay or willfully attempts to evade the tax, it is liable also to a fine of $10,000 and costs and to a 100 per cent penalty to be added to the tax. See also article 39. (b) Any officer or employee of a corporation who in the course of his duty fails to pay the tax when due and payable is liable to a penalty of $1,000. If he willfully refuses to pay or willfully attempts to evade the tax, he is liable also to a fine of $10,000 and costs and to imprisonment for a year, and to a penalty of the amount of the tax unpaid or evaded.

ART. 41. **Penalties for failure to make return and for false return.**—Any corporation which fails to make a return within the required time is liable to a penalty of $1,000. If it willfully refuses to make a return it is liable also to a fine of $10,000 and costs.

Any officer or employee of a corporation who in the course of his duty fails to make a return within the required time is liable to a penalty of $1,000. If he willfully refuses to make a return he is liable also to a fine of $10,000 and costs and to imprisonment for a year.

In case of failure to file a return on time, a penalty of 25 per cent of the amount of the tax is added to it unless the return is later filed and failure to file it within the prescribed time is satisfactorily shown to the Commissioner to be due to a reasonable cause and not to willful neglect. This penalty is imposed by section 3176 of the Revised Statutes as amended. Two classes of delinquents are liable to this penalty: (a) Those who do not file returns and for whom

returns are made by the collector or commissioner; and (b) those who file tardy returns and are unable to show reasonable cause for the delay. A taxpayer who files a tardy return and wishes to avoid the penalty must make an affirmative showing of all the facts alleged as a reasonable cause for failure to file the return on time in the form of an affidavit, which should be attached to the return. If such an affidavit is furnished with the return or upon the collector's demand, the collector, unless otherwise directed by the commissioner, will forward the affidavit with the return, and if the commissioner determines that the delinquency was due to a reasonable cause and not to willful neglect the 25 per cent penalty will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return in the prescribed time, then the delay is due to "reasonable cause."

UNNECESSARY EXAMINATIONS.

SEC. 1309. That 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.

JURISDICTION OF COURTS.

SEC. 1310. (a) That if any person is summoned under this Act to appear, to testify, or to produce books, papers or other data, the district court of the United States for the district in which such person resides shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

(b) The district courts of the United States at the instance of the United States are hereby invested with such jurisdiction to make and issue, both in actions at law and suits in equity, writs and orders of injunction, and of ne exeat republica, orders appointing receivers, and such other orders and process, and to render such judgments and decrees, granting in proper cases both legal and equitable relief together, as may be necessary or appropriate for the enforcement of the provisions of this Act. The remedies hereby provided are in addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such provisions.

(c) Paragraph twentieth of section 24 of the Judicial Code is amended by adding at the end thereof the following new paragraph:

"Concurrent with the Court of Claims, of any suit or proceeding, commenced after the passage of the Revenue Act of 1921, 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 any sum alleged to have been excessive or in any manner wrongfully collected, under the internal-revenue laws, even if the claim exceeds $10,000, if the collector of internal-revenue by whom such tax, penalty, or sum was collected is dead at the time such suit or proceeding is commenced."

AMENDMENTS TO REVISED STATUTES.

SEC. 1311. That sections 3164, 3165, 3167, 3172, 3173, and 3176 of the Revised Statutes, as amended, are reenacted, without change, as follows:

COLLECTOR TO REPORT WILLFUL VIOLATIONS.

"SEC. 3164. It shall be the duty of every collector of internal revenue having knowledge of any willful violation of any law of the United States relating to the revenue, within thirty days after coming into possession of such knowledge, to file with the district attorney of the district in which any fine, penalty, or forfeiture may be incurred, a statement of all the facts and circumstances of the case within his knowledge, together with the names of the witnesses, setting forth the provisions of law believed to be so violated on which reliance may be had for condemnation or conviction.

POWERS OF REVENUE OFFICERS.

"SEC. 3165. 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.

PENALTIES FOR UNLAWFUL DISCLOSURES.

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

CANVASS FOR TAXABLE PERSONS AND OBJECTS.

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

RESPONSIBILITIES OF PERSONS LIABLE TO TAX.

"SEC. 3173. It shall be the duty of any person, partnership, firm, association, or corporation, made liable to any duty, special tax, or other tax imposed by law, when not otherwise provided for, (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 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, otherwiise 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.

DELINQUENT RETURNS.

"SEC. 3176. 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 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.

"If the failure to file a return or list is due to sickness or absence, the collector may allow such further time, not exceeding thirty days for making and filing the return or list as he deems proper.

"The Commissioner of Internal Revenue shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. 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 of Internal Revenue 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 of Internal Revenue 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."

FINAL DETERMINATIONS AND ASSESSMENTS.

SEC. 1312. That if after a determination and assessment in any case the taxpayer has without protest paid in whole any tax or penalty, or accepted any abatement, credit, or refund based on such determination and assessment, and an agreement is made in writing between the taxpayer and the Commissioner, with the approval of the Secretary, that such determination and assessment shall be final and conclusive, then (except upon a showing of fraud or malfeasance or misrepresentation of fact materially affecting the determination or assessment thus made) (1) the case shall not be reopened or the determination and assessment modified by any officer, employee, or agent of the United States, and (2) no suit, action, or proceeding to annul, modify, or set aside such determination or assessment shall be entertained by any court of the United States.

ADMINISTRATIVE REVIEW.

SEC. 1313. That 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 be subject to review by any other administrative officer, employee, or agent of the United States.

RETROACTIVE REGULATIONS.

SEC. 1314. That in case a regulation or Treasury decision relating to the internal-revenue laws made by the Commissioner or the Secretary, or by the Commissioner with the approval of the Secretary, is reversed by a subsequent regulation or Treasury decision, and such reversal is not immediately occasioned or required by a decision of a court of competent jurisdiction, such subsequent regulation or Treasury decision may, in the discretion of the Commissioner, with the approval of the Secretary, be applied without retroactive effect.

TIME FOR REFUND OF CAPITAL STOCK TAX.

Section 3228 of the Revised Statutes is amended by section 1316 of the act to read as follows:

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 payment of such tax, penalty, or sum.

This section, except as modified by section 252, shall apply retroactively to claims for refund under the Revenue Act of 1916, the Revenue Act of 1917, and the Revenue Act of 1918.

ART. 42. Section 3228, R. S. (refunds), retroactive.—This section is retroactive in its effect. Any claim for the refund of taxes or penalties illegally assessed or collected under the Revenue Acts of 1916, 1917, or 1918, regardless of whether or not such claim was barred in whole or in part at the time of the passage of this act will be considered on its merits if presented within the four-year period specified in the foregoing section.

LIMITATIONS UPON SUITS AND PROSECUTIONS.

SEC. 1318. That section 3226 of the Revised Statutes 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. 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 five years from the date of the payment of such tax, penalty, or sum."

This section shall not affect any suit or proceeding instituted prior to the passage of this Act, but shall apply to all suits and proceedings instituted after the passage of this Act, whether or not barred by prior Acts of Congress.

SEC. 1319. That section 3227 of the Revised Statutes is hereby repealed but such repeal shall not affect any suit or proceeding instituted prior to the passage of this Act.

SEC. 1320. That no suit or proceeding for the collection of any internal revenue tax shall be begun after the expiration of five years from the time such tax was due, except in the case of fraud with intent to evade tax, or willful attempt in any manner to defeat or evade tax. This section shall not apply to suits or proceedings for the collection of taxes under section 250 of this Act, nor to suits or proceedings begun at the time of the passage of this Act.

SEC. 1321. (a) That 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, 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: *Provided*, That the time during which the person committing the offense 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: *Provided further*, That the provisions of this Act shall not apply to offenses committed prior to its passage: *Provided further*, That where a complaint shall be 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: *And provided further*, That this Act shall not apply to offenses committed by officers of the United States."

(b) Any prosecution or proceeding under an indictment found or information instituted prior to the passage of this Act shall not be affected in any manner by this amendment, but such prosecution or proceeding shall be subject to the limitations imposed by law prior to the passage of this Act.

ASSESSMENTS.

SEC. 1322. That all internal revenue taxes, except as provided in section 250 of this Act, shall, notwithstanding the provisions of section 3182 of the Revised Statutes or any other provision of law, be assessed within four years after such taxes became due, but in the case of fraud with intent to evade tax or willful attempt in any manner to defeat or evade tax, such tax may be assessed at any time.

ART. 43. **Section 1322 R. S. (assessments) retroactive.**—This section is retroactive in its effect. Under its terms capital stock taxes may

be assessed at any time within a period of four years after such taxes became due, notwithstanding the fact that assessment may have been barred by a prior statute at the time of passage of the Revenue Act of 1921.

The new period of limitation embodied in the section also has the effect of extending for the same period the time within which the 25 per cent and 50 per cent penalties imposed by section 3176 of the Revised Statutes may be assessed.

INTEREST ON REFUNDS AND JUDGMENTS.

SEC. 1324. (a) That upon the allowance of a claim for the refund of or credit for internal revenue taxes paid, interest shall be allowed and paid upon the total amount of such refund or credit at the rate of one-half of 1 per centum per month to the date of such allowance, as follows: (1) If such amount was paid under a specific protest setting forth in detail the basis of and reasons for such protest, from the time when such tax was paid, or (2) if such amount was not paid under protest but pursuant to an additional assessment, from the time such additional assessment was paid, or (3) if no protest was made and the tax was not paid pursuant to an additional assessment, from six months after the date of filing of such claim for refund or credit. The term "additional assessment" as used in this section means a further assessment for a tax of the same character previously paid in part.

(b) Section 177 of the Judicial Code is amended to read as follows:

"SEC. 177. 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 that interest may be allowed in any judgment of any court rendered after the passage of the Revenue Act of 1921 against the United States for any internal-revenue tax erroneously or illegally assessed or collected, or for any penalty collected without authority or any sum which was excessive or in any manner wrongfully collected, under the internal-revenue laws."

AUTHORITY FOR REGULATIONS.

SEC. 1303. That the Commissioner, with the approval of the Secretary, is hereby authorized to make all needful rules and regulations for the enforcement of the provisions of this Act.

REPEALS.

SEC. 1400. (a) That the following parts of the Revenue Act of 1918 are repealed, to take effect (except as otherwise provided in this Act) on January 1, 1922, subject to the limitations provided in subdivision (b):

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Title X (called "Special Taxes");

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Sections 1314, 1315, 1316, 1317, 1319, and 1320 of Title XIII (being certain administrative provisions) on the passage of this Act.

(b) The parts of the Revenue Act of 1918 which are repealed by this Act shall (unless otherwise specifically provided in this Act) remain in

force for the assessment and collection of all taxes which have accrued under the Revenue Act of 1918 at the time such parts cease to be in effect, and for the imposition and collection of all penalties or forfeitures which have accrued or may accrue in relation to any such taxes. In the case of any tax imposed by any part of the Revenue Act of 1918 repealed by this Act, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act. The unexpended balance of any appropriation heretofore made and now available for the administration of any such part of the Revenue Act of 1918 shall be available for the administration of this Act or the corresponding provision thereof.

ART. 44. **Promulgation of regulations.**—In pursuance of the statute the foregoing regulations are hereby made and promulgated and all rulings inconsistent herewith are hereby revoked.

D. H. BLAIR,
Commissioner of Internal Revenue.

Approved June 15, 1922.
A. W. MELLON,
Secretary of the Treasury.

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