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tions 7 to 17 of the Soil Conservation and Domestic Allotment Act, as amended, the 1939 Agricultural Conservation Program Bulletin, as approved November 10, 1938,<sup>1</sup> is hereby amended as follows:

(1) Section 701.2 (b) (13) is hereby amended to read as follows:

(13) *Special wind-erosion area* means the following counties in Kansas, Oklahoma, Texas, New Mexico, and Colorado:

*Kansas.*—Greeley, Wichita, Hamilton, Kearny, Stanton, Grant, Morton, Stevens.

*Oklahoma.*—Cimarron, Texas.

*Texas.*—Dallam, Sherman, Hartley, Moore.

*New Mexico.*—Quay, Harding, Union.

<sup>1</sup> 3 F. R. 2715 DL.

*Colorado.*—Las Animas, Baca, Prowers, Kiowa, Cheyenne, Kit Carson, Lincoln, Crowley, Otero, Bent.

(2) Section 701.7 (h) (4) is hereby amended to read as follows:

(4) Stripcropping including protection of summer fallow by means of strip-fallowing.

(3) Section 701.7 (k) (3) is hereby amended to read as follows:

(3) Natural vegetative cover or small-grain stubble of crops harvested in 1939 left on cropland not tilled after July 1, 1939 where it is determined by the county committee that such cover is necessary as a protection against wind erosion and the operator's farming plan provides that such cover will be left on the land until the spring of 1940. This practice is applicable only in the special wind-erosion area. No credit will be given for this practice on any wind erosion farm except on land on which contour listing (practice (i) (1)) is carried out prior to May 1, 1939 and a good vegetative growth is obtained following the carrying out of such practice.

(4) Section 701.9 (c) is hereby amended to read as follows:

(c) *Wheat.*—(i) Farms in the North Central Region and in areas in the Western and Northeast Regions where wheat acreage allotments may be established for all farms) 50 cents per bushel of the normal yield for the farm for each acre planted to wheat in excess of the wheat acreage allotment or, if the farm is a non-wheat-allotment farm, for each acre of wheat classified as soil-depleting acreage under section 701.2 (d) (4) (xix) and (xx) in excess of 8 acres.

(ii) (Farms in the Southern and East Central Regions and in areas in the Western and Northeast Regions where wheat acreage allotments are established only for farms normally producing 100 bushels or more of wheat for market) 50 cents per bushel of the normal yield for the farm for each acre planted to wheat in excess of the wheat acreage allotment or, if the farm is a non-wheat-allotment farm, for each acre of wheat classified as soil-depleting acreage under section 701.2 (d) (4) (xix) and (xx) in excess of the larger of (1) eight acres, or (2) the usual acreage of wheat established for the farm.

(5) Section 701.9 (d) is hereby amended to read as follows:

(d) *Tobacco.*—(i) 2 cents per pound of the normal yield for the farm for each acre of Burley, flue-cured, fire-cured and dark air-cured, or cigar filler and binder (except Type 45) tobacco harvested in excess of the applicable tobacco acreage allotment established for the farm but not in excess of 110 percent of such allotment.

(ii) 8 cents per pound of the normal yield for the farm for each acre of Burley, flue-cured, fire-cured and dark

air-cured or cigar filler and binder (except Type 45) tobacco harvested in excess of 110 percent of the applicable tobacco acreage allotment established for the farm.

(iii) 8 cents per pound of the normal yield for the farm for each acre of Georgia-Florida Type 62 tobacco harvested in excess of the Georgia-Florida Type 62 tobacco acreage allotment established for the farm.

Done at Washington, D. C., this 6th day of February, 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,  
Secretary of Agriculture.

[F. R. Doc. 39-423; Filed, February 6, 1939; 11:15 a. m.]

#### SUGAR DIVISION

[G. S. R. Series 2, No. 2, Rev.]

#### PART 801—GENERAL SUGAR REGULATIONS

REGULATIONS GOVERNING NOTICE AND OPPORTUNITY FOR HEARING CONCERNING ALLOTMENTS OF QUOTAS OR PRORATIONS THEREOF AND THE ISSUANCE OF ORDERS PERTAINING THERETO \*

By virtue of the authority vested in the Secretary of Agriculture by the Sugar Act of 1937, approved September 1, 1937, I, H. A. Wallace, Secretary of Agriculture, in order to carry out the powers vested in me by the said act, do hereby make, prescribe, publish, and give public notice of these regulations (Secs. 801.21 to 801.39), which shall have the force and effect of law and shall continue in force and effect until amended or superseded by regulations hereafter made by the Secretary of Agriculture.

#### Definitions

SECTION 801.21 As used in these regulations:

(a) The term "Act" means the Sugar Act of 1937, approved September 1, 1937. (50 Stat. 903-916; 7 U. S. C., Sup. III, 1100-1183)

(b) The term "Secretary" means the Secretary of Agriculture of the United States.

(c) The term "Sugar Division" means the Sugar Division of the United States Department of Agriculture.

(d) The term "Hearing Clerk" means the Hearing Clerk, Office of the Solicitor, United States Department of Agriculture, Washington, D. C.

(e) The term "FEDERAL REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), and acts supplementary thereto and amendatory thereof.

(f) The term "person" means an individual, partnership, corporation, or association.\*

\* Sections 801.21 to 801.39 issued under the authority contained in Sec. 205, 50 Stat. 906; 7 U. S. C., Sup. III, 1115.

*Hearing on Allotments of Quotas and Prorations Thereof*

**SEC. 801.22** *When held.* Whenever the Secretary finds that the allotment of any quota or any proration thereof is necessary to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate and foreign commerce, or to prevent disorderly marketing or importation of sugar or liquid sugar, or to maintain a continuous and stable supply of sugar or liquid sugar, or to afford all interested persons an equitable opportunity to market sugar or liquid sugar, he shall hold, or cause to be held, one or more hearings and give persons who market or import sugar or liquid sugar due notice and opportunity to be heard.\*

**SEC. 801.23** *Notice of hearing.* (a) The notice with respect to any hearing shall include a brief summary of the purpose of the hearing, and the time and place of such hearing.

(b) The Hearing Clerk shall give such notice in the following manner:

(1) By publication of such notice in the **FEDERAL REGISTER**.

(2) By issuing a press release containing or describing such notice and making the same available to such newspapers as will reasonably tend to bring notice to the persons entitled to allotments.

(3) Such other means may be used to give notice, in addition to the above, as are calculated to give actual notice to such persons.

(4) Failure to give notice by any one or more of the means herein provided shall not invalidate, or limit the application of, any order allotting any quota or any proration thereof, provided due notice otherwise has been given.

(c) Proof of giving notice hereunder shall be made by the affidavit of the Hearing Clerk. Such affidavit shall be filed by the Hearing Clerk and the filing thereof noted on a docket. Whenever such affidavit has been filed, it shall constitute a paper or document of the United States Department of Agriculture within the meaning of Title 28, Section 661, of the United States Code.

(d) The notice of hearing shall be issued at least ten days prior to the date fixed for the hearing set forth in said notice unless the Secretary shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Secretary may determine to be reasonable in the circumstances.\*

**SEC. 801.24** *Designation and powers of presiding officer.* Each such hearing shall be conducted by a presiding officer, who shall be the Secretary or such officer or employee of the United States Department of Agriculture as the Secretary may designate for that purpose. Any such designation may be made or revoked by the Secretary at any time. Such hearing shall be conducted in a manner to be de-

termined by the presiding officer to afford a full, fair, and reasonable hearing, subject to the provisions of the Act and applicable regulations issued pursuant thereto.\*

**SEC. 801.25** *Continuance of hearing.* Each such hearing shall be held at the time and place set forth in the notice of hearing, but may at such time and place be continued by the presiding officer from day to day or adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing.\*

**SEC. 801.26** *Submission of evidence.* All persons, including those testifying in behalf of the Sugar Division, shall be given reasonable opportunity to offer evidence with respect to matters specified in the notice of hearing. Every witness shall, before proceeding to testify, be sworn or make affirmation, after which he shall state his name, address, occupation, and whom he represents at the hearing, and shall give such other information respecting his appearance as the presiding officer may request. The presiding officer shall confine the evidence to relevant matters but need not apply the technical rules of evidence. Affidavits as to relevant economic facts may be admitted in evidence, but the Secretary, in determining the weight to be given to such affidavits, will consider the lack of opportunity for cross-examination. Opinion evidence shall be admitted where the presiding officer is satisfied that the witness is qualified to give such evidence. If any person objects to the admission of any evidence offered against him, or to the rejection of any evidence offered by him, or to the limitation of the scope of any evidence introduced by him, he shall state the grounds of such objection.\*

**SEC. 801.27** *Order of procedure.* (a) The presiding officer shall read the notice of hearing and the designation of the presiding officer, and shall then outline briefly the procedural rules to be followed.

(b) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the presiding officer may prescribe.\*

**SEC. 801.28** *Transcript of the evidence.* Testimony given at a hearing shall be reported verbatim. All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of the authenticity, relevancy, and materiality of the contents thereof, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall, if possible under the circumstances, be submitted in quadruplicate and in typewritten, printed, or mimeographed form. In case the required number of copies is not made available, the presiding officer shall exercise his discretion as to whether said exhibit shall be read in evidence or whether additional copies shall be re-

quired to be submitted within a time to be specified by the presiding officer. Where the testimony of a witness refers to a statute, or to a report or published document of a public nature, the presiding officer may, after inquiries relating to and identification of such document, determine whether the same shall be produced at the hearing and physically be made a part of the record or whether it shall be incorporated into the record of the hearing by reference. Documents of a private nature may be incorporated in the record by reference if there is no objection made thereto at the time by any party at interest. Where relevant and material matter offered in evidence is embraced in a document containing matter not material or relevant, such immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable.\*

**SEC. 801.29** *Written arguments; suggested findings of fact.* The presiding officer shall announce at the hearing a reasonable period within which the interested persons and the Sugar Division may file with the Hearing Clerk written arguments or suggested findings of fact, or both, based solely on the evidence received at the hearing. Such period may be extended by the presiding officer for good cause, such as delay in the furnishing of the transcript of the evidence or the transcript being of such volume that it may not be thoroughly digested within the period first fixed.\*

**SEC. 801.30** *Filing the transcript of the evidence.* The presiding officer shall, as soon as practicable after the close of a hearing, notify the Hearing Clerk of its close and of the time for filing written arguments and suggested findings of facts, and furnish the Hearing Clerk with such other information as may be necessary. As soon as practicable after the close of the hearing, the presiding officer shall transmit to the Hearing Clerk an original and three copies of the transcript of the testimony and the original and all copies of exhibits not already on file with the Hearing Clerk. He shall attach to the original transcript of the evidence a certificate stating that the transcript is a true transcript of the testimony given at the hearing, except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits introduced at the hearing, with such exceptions as he shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of evidence. In accordance with such certificate, the Hearing Clerk shall note upon the original and upon each copy of the transcript each correction detailed therein by adding or crossing out at the appropriate place any words necessary to make the text conform to the correct meaning.\*

**SEC. 801.31** *Copies of the transcript of the testimony, etc.* Any person desiring a copy of the transcript of the testimony or of any written exhibit or written argument shall be entitled to the same upon

application to the Hearing Clerk and upon payment of fees therefor as provided by the regulations of the United States Department of Agriculture.\*

*Issuance of Tentative Findings of Fact, Conclusions, and Order; Transmittal of Record*

SEC. 801.32 *Order of procedure.* The presiding officer, within a reasonable time after the expiration of the period allowed for the filing of written arguments, suggested findings of fact, or both, as provided in Sec. 801.29, shall prepare, upon the basis of the evidence presented at the hearing, tentative findings of fact, conclusions, and order, which shall be served by publication in the FEDERAL REGISTER, and by mailing to each person whose appearance was noted at the hearing a copy by registered mail. Within ten days after the date of publication in the FEDERAL REGISTER, any interested person or the Sugar Division may object to any matter set out in the tentative findings of fact, conclusions, and order and shall transmit such objection in writing to the Hearing Clerk. At the same time, such interested person or the Sugar Division shall transmit in writing a brief statement concerning each of the objections taken to the action of the presiding officer at the hearing, as set out in Sec. 801.26, upon which he or it wishes to rely, referring, where relevant, to the pages of the transcript of evidence. As soon as practicable after the close of such ten-day period, the presiding officer shall consider any objection that may have been filed and shall make such modification of the tentative findings of fact, conclusions, and order as he may deem necessary. The presiding officer shall then transmit to the Secretary the record of the proceedings. Such record shall include: a transcript of the evidence taken at the hearing; such written arguments and suggested findings of fact as may have been filed in connection with the hearing; the tentative findings of fact, conclusions, and order, and the objections filed thereto, if any; the statements concerning the objections taken to the ruling of the presiding officer at the hearing; and any modifications of the tentative findings of fact, conclusions, and order which the presiding officer may deem necessary.\*

SEC. 801.33 *Oral argument.* Unless the presiding officer shall issue an announcement authorizing oral argument before him, it shall not be permitted.\*

*Issuance of Final Order*

SEC. 801.34 *Order of procedure.* The Secretary, within a reasonable time after the receipt of the record from the presiding officer, as provided in Sec. 801.32, will, on the basis of such record, and after careful consideration of the same by him, make findings of fact based upon substantial evidence contained in such record and issue a final order.\*

SEC. 801.35 *Notice of issuance of order of allotment.* Whenever any final

order of the Secretary allotting any quota, or any proration thereof, or revising or amending any existing allotment, is issued, a duplicate thereof shall thereupon be filed with the Hearing Clerk for public inspection and such order shall be published in the FEDERAL REGISTER.\*

SEC. 801.36 *Copies of allotment orders.* Upon application to the Hearing Clerk, any person shall be entitled to a copy of any final order allotting any quota or any proration thereof.\*

*Revision or Amendment of Existing Allotment Orders*

SEC. 801.37 *Order of procedure.* The procedure provided in these regulations shall be applicable to a hearing for the purpose of revising or amending any existing allotment order, except that no tentative findings of fact, conclusions, and order shall be required.\*

*Rescission of Prior General Sugar Regulations*

SEC. 801.38 *Rescission of prior regulations.* These regulations (Secs. 801.21 to 801.39) shall supersede General Sugar Regulations, Series 2, No. 2, issued September 21, 1937<sup>1</sup> (Secs. 801.21 to 801.34).\*

*Public Notice of Foregoing Regulations*

SEC. 801.39 *How given.* Public notice of the issuance of the foregoing regulations shall be given by publication in the FEDERAL REGISTER.\*

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the District of Columbia, city of Washington, this 3d day of February, 1939.

[SEAL] H. A. WALLACE,  
*Secretary of Agriculture.*

[F. R. Doc. 39-413; Filed, February 4, 1939; 12:07 p. m.]

TITLE 8—ALIENS AND CITIZENSHIP  
IMMIGRATION AND NATURALIZATION SERVICE

[General Order No. C-8]

MANIFESTING PASSENGERS ON VESSELS  
TOUCHING AT SEVERAL UNITED STATES  
PORTS

FEBRUARY 4, 1939.

Pursuant to the authority contained in Section 23 of the Immigration Act of 1917 (Act of February 5, 1917, 39 Stat. 892; 8 U. S. C. 102), Sec. 1.12, Title 8, Code of Federal Regulations (Rule 2, Subdivision A, Paragraph 2 of the Immigration Rules and Regulations of January 1, 1930, Edition of December 31, 1936), is amended to read as follows:

SEC. 1.12. *Vessels touching at several ports.* Alien passengers on vessels touching at several United States ports must be manifested for the United States

port of destination or final United States port of call. Such manifests shall be presented at all intermediate ports in the United States. A notation shall be made in the space following the last numbered column on Forms 500 and 630 showing the abbreviated name of the port or ports at which passengers are permitted to go ashore. Passengers who are citizens of the United States shall be examined and admitted at the first port of call. The manifest relating to them should be lifted at the port of examination and a copy thereof delivered to the immigration officer in charge at the port of debarkation by the master, commanding officer, consignee, owner, or agent of such vessel. Where United States citizenship is claimed but not established to the satisfaction of the primary inspector at the first port of call, further examination shall be deferred until the arrival of the vessel at the port of debarkation of the passenger. In such cases, the manifest shall be delivered at the port of debarkation. (\*; Sec. 12, 39 Stat. 882, 8 USC 148)

[SEAL] JAMES L. HOUGHTELING,  
*Commissioner.*

Approved,  
FRANCES PERKINS,  
*Secretary.*

[F. R. Doc. 39-430; Filed, February 6, 1939; 12:08 p. m.]

TITLE 25—INDIANS

OFFICE OF INDIAN AFFAIRS  
TOWNSITE OF WADSWORTH, NEVADA  
ORDER OF RESTORATION

JANUARY 12, 1939.

Whereas, by the Act of July 1, 1898 (30 Stat. 594) inhabitants of the town of Wadsworth, on the Pyramid Lake Indian Reservation, Nevada, were authorized to proceed and acquire title to the said townsite under the provisions of Section 2382, Revised Statutes, and by Section 2 of the Act of June 7, 1924 (43 Stat. 596), the Secretary of the Interior was authorized to survey, plat and sell the unpatented lots in the said townsite as provided by Section 2384, Revised Statutes, and

Whereas, only a small percentage of the lots within said townsite have been sold and it appears improbable that there will be further development of this townsite, and

Whereas, the Indian Tribal Council, the Superintendent in charge of the Reservation, and the Commissioner of Indian Affairs have recommended that all of the undisposed of lots in the said townsite be restored to tribal ownership,

Now, therefore, by virtue of the authority vested in the Secretary of the Interior by Sections 3 and 7 of the Act of June 18, 1934 (48 Stat. 984) I hereby find that restoration to tribal ownership of all unsold lots or portions of the townsite of Wadsworth on the Pyramid Lake

<sup>1</sup> 2 F. R. 1873 (2200 DI).

Reservation, Nevada, will be in the public interest, and the said lots are hereby restored to tribal ownership for the use and benefit of the Pyramid Lake Paiute Tribe of Indians of the Pyramid Lake Indian Reservation, Nevada, and are added to and made a part of the existing reservation, subject to any existing valid rights and equitable claims of lot occupants.

HARRY SLATTERY,  
Acting Secretary.

[F. R. Doc. 39-420; Filed, February 6, 1939; 10:58 a. m.]

**TITLE 26—INTERNAL REVENUE**

**BUREAU OF INTERNAL REVENUE**

[Regulations 64 (1938 Edition)]

**CAPITAL STOCK TAX UNDER SECTION 601 OF THE REVENUE ACT OF 1938**

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93. Termination of capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended.

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*Introductory*

These regulations relate to the capital stock tax imposed under section 601 of the Revenue Act of 1938.

Chapter I deals with the effective date and geographical scope of the tax.

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

Chapter III deals with returns.

Chapter IV deals with domestic corporations.

Chapter V deals with China Trade Act corporations.

Chapter VI deals with foreign corporations.

Chapter VII deals with exemptions from the tax.

Chapter VIII deals with payment and collection of the tax.

Chapter IX contains miscellaneous provisions applicable to the tax.

For regulations relative to a capital stock tax imposed under a prior Revenue Act, reference must be had to the particular regulations promulgated with respect to the prior capital stock tax.

**CHAPTER I**

*Effective Date and Geographical Scope*

**SECTIONS 601 (A) AND (B) AND 901 (A) (10) OF THE REVENUE ACT OF 1938\***

SEC. 601. (a) For each year ending June 30, beginning with the year ending June 30, 1938, there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax \* \* \*

(b) For each year ending June 30, beginning with the year ending June 30, 1938, there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax \* \* \*

SEC. 901. (a) (10) The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

**ARTICLE 1. Effective date of the tax.**—The capital stock tax imposed by section 601 of the Revenue Act of 1938 is in effect on and after July 1, 1937, and applies with respect to each year ending June 30, beginning with the year ending June 30, 1938.

**ART. 2. Geographical scope.**—The tax is applicable (1) to corporations created or organized in the United States, or under the law of the United States or

of any State or Territory, with respect to carrying on or doing business, without reference to where such business is carried on or done, and (2) to every other corporation with respect to carrying on or doing business in any State of the United States, the Territories of Alaska and Hawaii, and the District of Columbia.

**CHAPTER II**

*Definitions*

**SECTION 901 OF THE REVENUE ACT OF 1938**

(a) When used in this Act—

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

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

(4) The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(8) The term "stock" includes the share in an association, joint-stock company, or insurance company.

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

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

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

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

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

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

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

**ART. 21. Definitions.**—As used in these regulations—

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

(b) The term "Act" means the Revenue Act of 1938, with specific reference to section 601 thereof, relating to the capital stock tax.

(c) The term "tax" means the capital stock tax imposed by section 601 of the Revenue Act of 1938.

(d) The term "corporation" includes an association, a joint-stock company, an insurance company, a common law trust, a Massachusetts trust, a business trust, an investment trust, an interinsurance exchange operating through an attorney in fact, and certain partnership associations of the type authorized by the laws of Pennsylvania.

(e) The terms "association," "interinsurance exchange," "joint-stock company," "partnership," "common law trust," "Massachusetts trust," "business trust," and "investment trust," shall have the same meaning and inclusiveness as are attached to them in the applicable Federal income tax regulations.

(f) The term "domestic corporation" means a corporation created or organized in the United States or under the laws of the United States, or of any State, or of the Territory of Alaska, or of the Territory of Hawaii, regardless of where its business is conducted.

(g) The term "foreign corporation" means any corporation other than a domestic corporation.

(h) The term "stock" includes a share or interest in a corporation as defined above in paragraph (d).

(i) The term "capital stock" includes: (1) the sum paid in by the stockholders; (2) surplus (whether earned or paid in); (3) surplus reserves; (4) undivided profits; (5) contributions to capital; and other items, whether tangible or intangible, which enter into the net worth of the corporation. The term is equivalent to the net worth of the organization, regardless of whether it is a stock or non-stock corporation, an association or other entity taxable as a corporation.

(j) The term "taxable year" means any 12-month period after June 30, 1937, beginning July 1 and ending June 30, or any fractional part thereof.

(k) The term "income-tax taxable year" means a calendar year, fiscal year, or fractional part of a year with respect to which the corporation is required to file a Federal income tax return.

(l) The term "3-year period" means the period beginning July 1, 1937, and ending June 30, 1940, and each period of three years thereafter.

(m) The term "declaration year" means (1) the first year of each 3-year period for which a corporation, whether domestic or foreign, is subject to the tax, and (2) the capital stock tax year beginning with or within an income-tax taxable year within which bankruptcy or receivership, due to insolvency, of a domestic corporation, is terminated.

(n) The term "declared value," when applied to a domestic corporation, means the value of its capital stock declared by the corporation on a return for a declaration year, and when applied to a foreign corporation, means the value of its capital employed in the transaction of business in the United States declared by the corporation on a return for a declaration year.

(o) The term "adjustment year" means a capital stock tax year of any 3-year period with respect to which the declared value, relating to such 3-year period, must be adjusted as provided for in section 601 (f).

(p) The term "adjusted value" means the declared value adjusted as provided for in section 601 (f).

(q) The term "adjusted declared value," when applied to a declaration year, means the declared value and, when applied to an adjustment year, means the adjusted value.

ART. 22. *Classification of organizations.*—For the purpose of taxation, the Act makes its own classifications and prescribes its own standards of classifica-

tion. Local law is of no importance in this connection. The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint-stock company, an insurance company, and certain kinds of partnerships.

### CHAPTER III

#### Returns

##### SECTION 60-1 (D) OF THE REVENUE ACT OF 1938

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner with the approval of the Secretary may by regulations prescribe. \* \* \* All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

##### SECTION 3176 OF THE UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1103 OF THE REVENUE ACT OF 1926 AND SECTION 619 (D) OF THE REVENUE ACT OF 1928

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

\* \* \* \* \*  
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. \* \* \*

##### SECTION 806 OF THE REVENUE ACT OF 1938

Any oath or affirmation required or authorized by any internal-revenue law or by any regulations made under authority thereof may be administered by any person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered. This section shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

ART. 31. *Returns—In general.*—The law requires that returns, under oath and complete in all respects, must be filed. If a return is incomplete to the

extent that it is not in substantial compliance with the Act or these regulations, it will not be regarded as a proper return and its filing will not preclude the assertion of penalties for delinquent filing. The statutory requirement that a return shall be made under oath will be considered satisfied by a return made under affirmation.

The return, as well as any separate statement submitted therewith, must be verified under oath by at least one of the responsible officers of the corporation, and preferably by the president and the treasurer. However, see article 35. The oath may be administered by any person duly authorized to administer oaths for general purposes by the laws of the United States or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath is administered, or by a consular officer of the United States.

Section 3176 of the United States Revised Statutes provides that if any corporation fails to make and file a complete return within the prescribed time 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.

ART. 32. *Return by domestic corporation.*—Except in a case where a ruling has been received from the Commissioner (see article 71) specifically exempting the corporation from filing capital stock tax returns, a return must be filed by every domestic corporation in existence during any part of a taxable year, including a corporation incorporated or ceasing to exist within such year. The return must be filed even though the corporation claims exemption from the tax because of not carrying on or doing business at any time during the taxable year (see article 73).

The return shall be submitted, under oath, on Form 707, copies of which may be procured from the collector. The return shall set forth all the information required by the form, including, regardless of whether exemption from the tax is claimed, (1) a declared value for the capital stock, if the return is made for a declaration year, or (2) an adjusted value for the capital stock, if the return is made for an adjustment year. The return shall be filed, in triplicate, with the collector within the time prescribed for filing returns (see article 36).

ART. 33. *Returns by affiliated corporations.*—The tax is imposed upon each

corporation with respect to carrying on or doing business and not upon each business carried on. If more than one corporation is engaged in carrying on a single business, each must file a return and pay the tax. Accordingly, a consolidated return is not permitted for purposes of the capital stock tax. So-called parent and subsidiary corporations must file separate returns and make separate declarations of value for their capital stock, the same as every other corporation. This rule applies to affiliated railroad corporations, even though they may file a consolidated return for income tax purposes.

A parent corporation which owns the controlling interest (that is, more than 50 per cent of the voting stock) in one or more corporations shall submit with its return a list of all such subsidiaries, showing, with respect to each subsidiary, the name and address, the State and date of incorporation, the number of shares of stock of each class held by the parent, and the district in which capital stock tax returns are filed by the subsidiary. The return of each subsidiary shall, in addition to other information required by the return, show the name and address of the parent company and the district in which the return of the parent company is filed.

**ART. 34. Return by foreign corporation.**—A capital stock tax return must be filed by every foreign corporation which, whether on a calendar or fiscal year basis, is required to file an income tax return of net income for purposes of the tax imposed under section 14 (e) (1) of the Revenue Act of 1938. Such return must be filed even though the corporation claims that it was not carrying on or doing business in the United States at any time during the taxable year. In such case the corporation may, in lieu of paying the tax at the time of filing the return, claim exemption from the tax because of not doing business, but in that event the corporation shall attach to the return, in accordance with the instructions set forth on the return form, a detailed statement of its activities in this country during the taxable year.

The return must be submitted, under oath, on Form 708, copies of which may be procured from collectors. The return shall set forth all the information required by the form, including, regardless of whether exemption from the tax is claimed, (1) a declared value (see article 64), if the return is made for a declaration year, or (2) an adjusted value (see article 65), if the return is made for an adjustment year. The return shall be filed, in triplicate, with the collector within the time prescribed for filing returns (see article 36).

**ART. 35. Return of corporation in receivership.**—If at the time for filing a return all the property of a corporation is in custody of a receiver (including a trustee in bankruptcy or other like representative), the return shall be filed by the receiver. Where the business was

operated by the corporation for any part of the taxable year, the return of the receiver shall be complete, including (1) a declared value for the capital stock if the return is made for a declaration year, or (2) an adjusted value for the capital stock if the return is made for an adjustment year. If the receiver's custody was continuous throughout the entire capital stock tax taxable year, no statement of declared value or adjusted value is required but, in lieu thereof, the receiver shall attach a statement to the return showing the date on which the property came into his custody and whether his custody was continuous thereafter.

**ART. 36. Place and time for filing return.**—(a) *General.*—The return shall be filed with the collector for the district in which is located the principal place of business of the corporation, or, if it has no principal place of business in the United States, with the collector at Baltimore, Md. The return must be filed on or before July 31, next following the close of the taxable year, unless the time for filing has been officially extended prior to such date. However, if July 31 falls on a Sunday or a legal holiday, returns filed on the next succeeding business day will be considered timely filed.

If a return is placed in the mails, properly addressed and postage paid, in ample time (as shown by the date of the postmark on the envelope in which it is mailed) to reach the office of the collector in due course before the expiration of the statutory filing period or any official extension thereof, no penalty will attach solely by reason of the fact that the return is actually received by the collector after the expiration of the prescribed time. As to additions to the tax in the case of failure to file the return within the prescribed time, see article 82.

(b) *Extensions of time.*—The Act authorizes the Commissioner to extend, under such rules and regulations as he may prescribe with the approval of the Secretary, the time for filing returns and paying taxes, subject to the limitation that no such extension shall be for more than 60 days. Pursuant thereto, the respective collectors are hereby authorized to grant, under the conditions prescribed herein, extensions of time for filing capital stock tax returns and for payment of such tax. In the exercise of such authority, a collector shall grant an extension of time for filing a return and paying the tax, only: (1) upon a written application under oath filed on or before the statutory due date of the return and showing reasonable cause for the extension; (2) for such reasonable period as may be required by the circumstances, not to extend in any case beyond the 29th day of September next following the close of the taxable year; (3) with the provision that interest at the rate of 6 per cent per annum shall be paid upon the tax from the statutory due date (July 31) to the date of pay-

ment of the tax; and (4) in accordance with such procedure as may be prescribed from time to time by the Commissioner. The determination whether an application presents reasonable cause for an extension depends upon the particular circumstances of each case. Ordinarily, sickness or absence of the officers charged with the responsibility of making the return, or other circumstances beyond the control of the corporation which prevent the filing of a proper return within the time required by law, constitute reasonable cause warranting an extension. Accordingly, a corporation desiring an extension of time for filing its capital stock tax return and paying the tax shall file with the collector on or before the statutory due date of the return an application under oath setting forth the reasons necessitating an extension and stating the time for which the extension is requested. In every case in which an extension is allowed, a copy of the collector's letter granting the extension shall be attached to the return when filed. For general provisions relating to penalties and interest, see article 82.

**ART. 37. Liquidated corporations.**—If a corporation is entirely liquidated during a taxable year, its responsible representatives shall file a return for that year and pay any tax shown due thereon. Such return shall be marked "Final return" and shall be accompanied by a statement setting forth in detail all the facts relating to the liquidation. The return may be filed, and the tax paid, immediately upon completion of the liquidation, adapting for this purpose a return form used for a preceding year in the event the form for the current year is not available. If the return is not filed until the close of the taxable year, sufficient funds of the liquidating corporation should be retained to pay any tax assessable against the corporation; otherwise, the tax may be collected by suit against the stockholders to whom its assets have been distributed. However, if a corporation ceases to exist as a corporate entity in contemplation of law during a taxable year, for example, by failure to renew its charter, but remains in business in a quasi corporate capacity, it becomes an association and, accordingly, must continue to file returns and pay any tax due.

**ART. 38. Change of corporate name.**—A mere change in name by amendment of an existing charter does not create a new corporation. In such case, the return shall be made in the name which the corporation bears at the close of the taxable year and show the name under which the return was filed for the preceding year.

#### Inspection of Returns

#### SECTION 601 (E) OF THE REVENUE ACT OF 1938

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under Title II of the Revenue Act of 1926.

## Returns To Be Public Records

## SECTION 257 OF THE REVENUE ACT OF 1926

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

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

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

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

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

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

ART. 39. *Inspection of returns.*—The inspection of capital stock tax returns by, and the furnishing of copies of such returns to, taxpayers are governed by the provisions of section 257 of the Revenue Act of 1926. Except as expressly provided therein, the returns upon which the tax has been determined by the Commissioner, although public records, are open to inspection and copies of returns may be furnished only to the extent authorized by the President and under rules and regulations promulgated by the Secretary of the Treasury and approved by the President.

## CHAPTER IV

## Domestic Corporations

## SECTION 601 (A) AND (F) OF THE REVENUE ACT OF 1938

(a) For each year ending June 30, beginning with the year ending June 30, 1938, there is hereby imposed upon every domestic

corporation with respect to carrying on or doing business for any part of such year an excise tax of \$1 for each \$1,000 of the adjusted declared value of its capital stock.

(f) (1) The adjusted declared value shall be determined with respect to three-year periods beginning with the year ending June 30, 1938, and each third year thereafter. The first year of each such three-year period, or, in case of a corporation not subject for such year to the tax imposed by this section, the first year of such three-year period for which the corporation is subject to the tax, shall constitute a "declaration year".

(2) For each declaration year the adjusted declared value shall be the value, as declared by the corporation in its return for such declaration year (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending with or prior to the close of such declaration year (or as of the date of organization in the case of a corporation having no income-tax taxable year ending with or prior to the close of such declaration year).

(3) For each year of any three-year period subsequent to the declaration year, the adjusted declared value in the case of a domestic corporation shall be the value declared in the return for the declaration year plus—

(A) the cash, and the fair market value of property, paid in for stock or shares,

(B) paid-in surplus and contributions to capital.

(C) its net income,

(D) its income wholly exempt from Federal income tax, and

(E) the amount, if any, by which the deduction for depletion exceeds the amount which would be allowable if computed without regard to discovery value or to percentage depletion, under section 114 (b) (2), (3), or (4) of this Act or a corresponding section of a later Revenue Act;

and minus—

(i) the cash, and the fair market value of property, distributed to shareholders,

(ii) the amount disallowed as a deduction by section 24 (a) (5) of this Act or a corresponding provision of a later Revenue Act, and

(iii) the excess of the deductions allowable for income tax purposes over its gross income.

(4) The adjustments provided in paragraph (3) shall be made for each income-tax taxable year included in the three-year period from the date as of which the value was declared in the return for the declaration year to the close of the last income-tax taxable year ending with or prior to the close of the year for which the tax is imposed by this section. The amount of such adjustment for each such year shall be computed (on the basis of a separate return) according to the income tax law applicable to such year.

(6) The capital-stock tax year beginning with or within an income-tax taxable year within which bankruptcy or receivership, due to insolvency, of a domestic corporation, is terminated shall constitute a declaration year. In such case the adjusted declared value for any subsequent year of the three-year period shall be determined on the basis of the value declared in the return for such declaration year.

ART. 41. *Nature and rate of tax.*—The tax is an excise tax imposed with respect to carrying on or doing business during a taxable year ending June 30, or any fractional part thereof. It is an excise tax upon the exercise of the privilege of doing business and not upon the business itself and is imposed upon each corporation with respect to carrying on or doing business and not upon each business carried on. If more than one corporation is engaged in carrying

on a single business, each must file a return and pay the tax. The tax is imposed at the rate of \$1 for each full \$1,000 of the adjusted declared value of the capital stock. The tax may not be apportioned under any circumstances. If a corporation is engaged in business for any portion of a taxable year, liability for the tax is incurred for the entire taxable year.

ART. 42. *Doing business.*—The term "business" is very comprehensive and embraces whatever occupies the time, attention, or labor of men for profit. Accordingly, regardless of the nature of its activities, any corporation organized for profit and carrying out the purpose of its organization is doing business within the meaning of the Act. Similarly, even if not organized for profit, any corporation which engages in activities ordinarily carried on for profit is doing business. It is immaterial whether the activities result in a profit or a loss, or whether the corporation has been successful in its enterprise, or that because of unfavorable business conditions, no operations are carried on for a particular period. No particular amount of business need be done, nor is it necessary that the business be continuous throughout the taxable year.

The case is exceptional in which the activities of a corporation organized for profit do not amount to doing business within the meaning of the Act. Such a case is generally limited to one in which the corporation is not pursuing the ends for which organized, i. e., profit.

ART. 43. *Illustrations.*—(a) *General.*—In general "doing business" includes any activities of a corporation whether it engages in—

(1) buying, selling, manufacturing, developing, financing, speculating, or otherwise dealing in or managing, property of any description;

(2) furnishing services of any character;

(3) leasing or managing properties, collecting rents or royalties;

(4) managing, financing, controlling, or directing the operations, performing any function, or in any other way aiding or serving the general purposes of any affiliated or related company;

(5) the orderly liquidation of property by negotiating sales from time to time as opportunity and judgment dictate and distribution of the proceeds as liquidation is effected—for example, the liquidation of an estate, or of properties taken over from another corporation, or of the shareholders' fractional interests in particular property;

(6) investment or reinvestment (in the case of a corporation holding securities) of surplus or other funds in additional securities, with the exception of the reinvestment of funds realized upon the maturity or redemption of securities;

(7) leasing all its properties to another without divesting itself of all control



and management of the properties under such terms that it keeps the properties in repair, or engages in other activities necessary to enable the lessee to utilize the leased properties, regardless of whether such activities are performed on behalf and under the order of the lessee or whether such acts are of major importance; or

(8) any other activities coming within the ordinary and natural signification of the term "carrying on or doing business."

(b) *Exceptions.*—Ordinarily the exceptions to "doing business" are restricted to limited activities of a corporation. For example—

(1) A corporation is not subject to the tax if its corporate powers are limited to the mere owning and holding of property and the distribution of its avails, or, although incorporated for the purpose of doing business, if it has retired from the business for which it was organized and has reduced its activities to the mere ownership and holding of property, the distribution of 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. However, a corporation which has retired from its principal business is subject to the tax if, nevertheless, it engages in other business activities or maintains its organization for the purpose of continued effort in the pursuit of profit or gain.

(2) A corporation may complete its organization and sell its capital stock for cash without incurring liability. However, the exchange of its capital stock for property other than cash or the use of the proceeds from the sale of its capital stock for the purchase of property are corporate business acts and constitute doing business. Entering into contracts for the purchase of property or the construction of a plant are also corporate acts and constitute doing business. In other words, it is not necessary that a corporation be actually engaged in the manufacture of its intended product or that it be actually creating profit or gain to incur liability, since making contracts, buying materials or machinery, and employing and discharging individuals are necessary business acts leading to the ultimate attainment of the objects and purposes for which the corporation was created and has its existence.

(3) A corporation will not be regarded as "doing business" if it had no activities during the entire taxable year, because it has—

(a) become dormant; or

(b) completed its business, as, for example, where a real estate subdivision has been developed, sold and reduced to cash; or

(c) abandoned its business, as, for example, where prospective oil properties are proven worthless.

**ART. 44. Declared value.**—In its return for each declaration year, a corporation must declare a definite and unqualified value for its capital stock. The declaration of value must be made in terms of United States dollars and be specific, as, for example, \$10,000, or "Zero," in the event it is desired to indicate no value. Inasmuch as the declared value can in no case be less than zero, a declaration of a deficit or minus figure shall be considered a declaration of "Zero."

The value shall be declared as of the close of the last income-tax taxable year ending with or prior to the close of the declaration year, or as of the date of organization if the corporation has no income-tax taxable year ending with or prior to the close of the declaration year. Thus, for the declaration year ended June 30, 1938, the value shall be declared as of December 31, 1937, if the corporation makes its income tax returns on a calendar year basis, or as of the close of any other month from July 1937, to and including June 1938, if its income tax returns are made on the basis of a fiscal year ending with such month. In the case of a newly organized corporation which does not have an income-tax taxable year ending with or prior to the close of the declaration year, June 30, the value shall be declared as of the date of organization.

A corporation may exercise unrestricted judgment and discretion in determining the value to be declared for its capital stock on a return for any declaration year. In making such declaration, the corporation is not bound by any previous declaration of value.

Extreme care should be exercised in making the declaration of value, since once made it can not be changed, amended, or corrected, except as otherwise provided for in this article, either by the corporation or by the Commissioner. It is not only binding with respect to the year for which declared, but is also the basis for computing the adjusted value for any succeeding adjustment year or years of the 3-year period, and constitutes a prime factor in computing the excess profits tax, if any, for the applicable income-tax taxable years under section 602 of the Revenue Act of 1938. A corporation making a declaration of value on a return filed within the statutory period for filing returns (up to and including the last day of any extension period) may, before the expiration of such period, change, amend, or correct the value by filing another return to take the place of the one previously filed. However, in such case, the last return received by the collector within the prescribed period constitutes the return required by law and the value declared thereon becomes the declared value.

**ART. 45. New declaration of value by domestic corporation emerging from bankruptcy or receivership.**—Section 601 (f) (6) provides that a domestic corporation undergoing bankruptcy or receivership, due to insolvency, shall make a new dec-

laration of value for the capital stock tax year which begins with or within the income-tax taxable year within which the bankruptcy or receivership terminates. Such capital stock tax year constitutes a declaration year regardless of whether a declaration year has already been established for the same 3-year period, and in making the new declaration of value, the corporation is not bound by any previous declaration for any prior year. As used in section 601 (f) (6) the term "insolvency" means either excess of liabilities over assets or inability to meet the claims of creditors as they mature.

The capital stock tax year within which bankruptcy or receivership terminates is not necessarily a declaration year, since such year is determined by the income-tax taxable year in which that event occurs. For example, in the case of a corporation making its income-tax return on a calendar year basis and emerging from bankruptcy or receivership in March 1939, the new declaration year is the year ending June 30, 1940, since that is the capital stock tax year which begins within the 1939 income-tax taxable year. On the other hand, in the case of a corporation making its income-tax return on the basis of a fiscal year ending April 30 and emerging from bankruptcy or receivership in March 1939, the new declaration year would be the year ending June 30, 1939, since that is the capital stock tax year beginning within the income-tax fiscal year ending April 30, 1939. Thus, although the bankruptcy or receivership terminates in both cases on the same date, the new declaration year is not the same because the termination of the bankruptcy or receivership occurs in different income-tax taxable years.

For the purposes of this article, bankruptcy or receivership, due to insolvency, is ordinarily considered terminated when the custody and control of the corporate property is returned to the corporation and the trustee or receiver is discharged and the supervision of the court ceases. In applying this rule, proceedings under section 77 or 77B of the Bankruptcy Act, as amended, or under Chapter X or XI of the Bankruptcy Act, as further amended by the Act of June 22, 1938 (Public, No. 696, Seventy-fifth Congress), will usually be deemed terminated when a final decree is entered therein.

**ART. 46. Adjusted value.**—The adjusted value for each adjustment year of every 3-year period shall be determined as follows:

To the adjusted declared value of the last preceding taxable year shall be added the sum of the following:

(A) Cash received for stock or shares, and, if property was paid in for stock or shares, the fair market value of such property as of the date paid in.

(B) All cash paid in and the fair market value of all property received (whether paid in by, or received from, stockholders or others) constituting paid-in surplus or contributions to capital. The fair market value of property shall be

determined as of the date of such payment or contribution. (See article 47 (e).)

(C) The net income required to be shown on the income tax return. For the purpose of this addition, the term "net income" means the gross income computed under section 22 of the Revenue Act of 1938, less the deductions allowed by section 23 of such Act, or the "net income" computed under corresponding sections of a later Revenue Act. The credits allowed corporations against net income (for example, the credits allowed by section 26 of the Revenue Act of 1938) are not applicable in determining the amount of this adjustment.

(D) The entire amount of the corporate income wholly exempt from Federal income tax, including (1) all items excluded from gross income by sections 22 (b) and 116 of the Revenue Act of 1938, or by similar sections of a later Revenue Act, (2) items which do not constitute income within the meaning of the sixteenth amendment, and (3) items which are exempt from Federal taxation under the provisions of any Act of Congress not inconsistent with or repealed by the applicable Revenue Act.

(E) The amount, if any, by which the deduction for depletion exceeds the amount which would be allowable if computed without regard to discovery value or to percentage depletion, under section 114 (b) (2), (3), or (4) of the Revenue Act of 1938, or a corresponding section of a later Revenue Act.

From the foregoing shall be deducted the sum of the following:

(i) The amount of cash and the fair market value of any property distributed to the shareholders. The fair market value of any property so distributed shall be determined as of the date of distribution. This deduction shall include all distributions of earnings or profits, whether current or accumulated, all distributions in partial or complete liquidation, and all other distributions from capital; but shall not include any payments to shareholders with respect to stock acquired for the treasury or for subsequent resale. (See article 47 (a).)

(ii) The total of the amounts specifically disallowed as deductions by section 24 (a) (5) of the Revenue Act of 1938, or a corresponding section of a later Revenue Act. Deductions disallowed by other sections of a Revenue Act are not to be included.

(iii) The amount of the excess of deductions allowable and claimed for Federal income tax purposes over the amount of gross income.

The adjustments shall be made only with respect to transactions occurring in each income-tax taxable year included in the period from the date as of which the value was declared on the return for the declaration year to the close of the last income-tax taxable year ending with or

within the adjustment year with respect to which the adjusted value is being returned.

For example, a corporation which makes its Federal income tax returns on a calendar year basis files a capital stock tax return for the taxable year ending June 30, 1938, in which the value of its capital stock is declared as of December 31, 1937. To this value must be added items (A) to (E), inclusive, and from the sum thereof must be deducted the total of items (i), (ii), and (iii), for the period from January 1, 1938, to December 31, 1938, the end of the income-tax taxable year. The net amount will constitute the adjusted value for the taxable year ending June 30, 1939. This adjusted value, to the extent that it is true and correct, will constitute the base for computing the adjusted value for the taxable year ending June 30, 1940, by adding thereto items (A) to (E), inclusive, and from the total, deducting items (i), (ii), and (iii), for the period from January 1, 1939, to December 31, 1939. For each subsequent 3-year period, the adjusted value for each adjustment year shall be computed in like manner.

In the event that for any 3-year period two declaration years exist because of a new declaration of value made under section 601 (f) (6), the value declared on the return for the last declaration year shall be used as the base in making the adjustments for the adjustment year, if any. (See article 45.) If, by reason of a change in accounting period under sections 46 and 47 of the Revenue Act of 1938, or corresponding sections of a later Revenue Act, a corporation has two income-tax taxable periods ending within an adjustment year, the adjustments for such adjustment year shall reflect the applicable transactions occurring in each income-tax taxable period.

**ART. 47. Adjustments for specific transactions.**—The application to specific transactions of the provisions for additions and deductions set forth in article 46 may be illustrated as follows:

(a) *Transactions in own capital stock.*—Whether the acquisition or disposition by a corporation of shares of its own capital stock requires adjustments depends upon the real nature of the transaction, which is to be ascertained from all the facts and circumstances.

No direct adjustments are required with respect to the purchase by a corporation of its own stock for its treasury or the sale of treasury stock, whether the purchase or sale is made in the open market or by private transactions, or whether the stock is acquired by the corporation as consideration for the sale of property or in satisfaction of an indebtedness. However, such transactions may result indirectly in adjustments in so far as they affect either the net income under subdivision (C) of article 46 or the excess of allowable deductions over gross income under subdivision (iii) of such article.

In case stock of a corporation is donated to the corporation by its stockholders, no addition on account of the donation shall be made, unless the stock is sold by the corporation in an income-tax taxable year related to an adjustment year, in which event the amount realized upon the sale shall be an addition for such adjustment year under subdivision (B) of article 46.

If a corporation purchases part of its own stock for retirement and such part is retired in due course, the amount paid for the stock so retired shall be deducted under subdivision (i). Ordinarily the deduction on amount of stock purchased for retirement shall be made with respect to the adjustment year related to the income-tax taxable year within which the stock is formally retired. However, if, under the laws of the State under which the corporation was organized, the corporate charter, the by-laws of the corporation, or the terms of the particular stock issue, the shares of stock may not be reissued, the deduction shall be made for the adjustment year related to the income-tax taxable year within which the stock was purchased or acquired, regardless of whether the certificates are actually canceled in such income-tax taxable year.

(b) *Consolidations.*—If two or more corporations are consolidated after June 30, 1938, into a newly created corporation, the year ending June 30 during which the new corporation is created will be for such new corporation a "declaration year." With respect to the liability of corporations, which have been consolidated, see paragraph (d) of this article.

(c) *Mergers.*—If two or more corporations are merged in an income-tax taxable year related to an adjustment year of the surviving or continuing corporation, the adjustments to be made by the surviving or continuing corporation for that adjustment year shall be based only on the adjusted declared value of the continuing corporation prior to the merger. For that purpose the adjusted declared value of the discontinuing corporation does not, by reason of the merger, become an addition to the adjusted declared value of the continuing corporation. Whether the merger, as such, requires any adjustment of the adjusted declared value of the continuing corporation depends upon the manner in which the merger is effected. Thus, if the continuing corporation issues additional shares of its stock to acquire either the stock or the assets of the merged corporation, the fair market value of the stock or assets so acquired shall be added under subdivision (A) of article 46. If, on the other hand, the continuing corporation, as parent company, already owns the capital stock of the merged corporation and the merger is effected by the surrender of such stock in exchange for the assets of the merged corporation, no adjustment will be required. The effect of the merger upon

the discontinuing corporation shall be determined in accordance with the rules set forth in paragraph (d) of this article relative to "Dissolving corporations."

(d) *Dissolving corporations.*—If a corporation winds up its affairs, is completely liquidated and distributes all its assets, between the close of a capital stock tax taxable year (June 30) and the date upon which its next income-tax taxable year normally would have closed, and if the corporation in its next return is required to report an adjusted value, all necessary statutory adjustments shall be made for transactions, including distributions to shareholders, during the period between the close of its preceding income-tax taxable year and the date on which it becomes dormant. For example, a corporation, with an income-tax taxable year ending December 31, 1938, which is liquidated on September 30, 1938, would, in filing its capital stock tax return for the year ending June 30, 1939, make adjustments for transactions occurring between January 1, 1938, and September 30, 1938.

If a corporation is completely liquidated and distributes all its assets on a date subsequent to the close of its income-tax taxable year but prior to the close of the capital stock tax taxable year (June 30) for which the return is being made, and if it is required that such return disclose an adjusted value, the statutory adjustments shall include all transactions during its income-tax taxable year, and shall not include any transactions (whether resulting from operations or from liquidation) which occurred between the date of the close of such income-tax taxable year and the date on which the corporation becomes dormant. For example, a corporation with an income-tax taxable year ending December 31, 1938, which ceases to exist on March 31, 1939, would, in filing its capital stock tax return for the year ending June 30, 1939, make adjustments for transactions between January 1, 1938, and December 31, 1938, and would not include any adjustments for the subsequent period, January 1, 1939, to March 31, 1939. These rules apply to corporations retiring as a result of a consolidation or merger as well as to those retiring for other reasons.

The final returns of liquidated corporations may be filed immediately upon completion of the liquidation (see article 37). The deduction, if any, allowable with respect to property distributed in liquidation to shareholders must be computed in every case on the basis of the fair market value of the property at the time of distribution. The deduction of an amount in excess of such fair market value is not allowable in any case.

(e) *Cancellation of indebtedness.*—If a shareholder in a corporation which is indebted to him gratuitously forgives the debt, the transaction amounts to a contribution to the capital of the corporation, and as such falls within subdivision

(B), article 46. The rule applies even though the stockholder is another corporation, and notwithstanding the fact that the other corporation may not make any corresponding deduction adjustment on its return.

CHAPTER V

*China Trade Act Corporations*

SECTION 601 (G) OF THE REVENUE ACT OF 1938

(g) For the purpose of the tax imposed by this section there shall be allowed in the case of a corporation organized under the China Trade Act, 1922, as a credit against the adjusted declared value of its capital stock, an amount equal to the proportion of such adjusted declared value which the par value of the shares of stock of the corporation, owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the part value of the whole number of shares of stock of the corporation outstanding on such date. For the purposes of this subsection shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested; and as used in this subsection the term "China" shall have the same meaning as when used in the China Trade Act, 1922.

ART. 51. *Definitions.*—As used in this chapter the term—

(a) *China Trade Act Corporation* means a corporation chartered under the China Trade Act, 1922.

(b) *China* means (1) China including Manchuria, Thibet, Mongolia, and any territory leased by China to any foreign government, (2) the Crown Colony of Hongkong, and (3) the Province of Macao.

(c) *Possessions of the United States* include Puerto Rico, the Philippine Islands, the Panama Canal Zone, Guam, Tutulla, Wake, Palmyra, and the Virgin Islands.

(d) *Persons resident* means persons who on June 30 of the taxable year had their domicile in China, the United States, or a possession of the United States.

ART. 52. *General.*—Corporations organized under the China Trade Act, 1922, are domestic corporations and, with the exceptions noted in this chapter, are subject to all of the provisions of these regulations relating to domestic corporations, including those governing declarations of value and subsequent adjustments thereof. (See articles 44 and 45.) In view of the provisions of section 12 of the China Trade Act, the income-tax taxable years of all China Trade Act corporations end on December 31. All declarations of value and adjustments shall be shown in United States dollars. In declaring a value for the capital stock, conversion of foreign currencies must be made at the rate of exchange prevailing on the date as of which the declaration is required to be made. For the purpose of computing adjustments, conversion must be made for adjustments (A), (B), and (i) of section 601 (f) (3) at the rate of exchange prevailing on the date of consummation of the transactions; conver-

sions for all other adjustments to be made at the prevailing rate on December 31 of the taxable year. The prevailing rate of exchange shall be the rate certified to the Secretary by the Federal Reserve Bank of New York under the provisions of section 522 (c) of the Tariff Act of 1930 (46 Stat., 740).

ART. 53. *Credits and computation of tax.*—A China Trade Act corporation is allowed a credit against the adjusted declared value of its capital stock for each taxable year equal to the proportion of such adjusted declared value which the par value of the shares of its stock owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China, wherever resident, bears to the par value of the whole number of the shares of stock outstanding on such date.

Only those shares of stock, the equitable right to the income from which is in good faith vested on June 30 of any taxable year in persons resident in China, the United States, or possessions of the United States, and individual citizens of the United States or China, wherever resident, may be considered in determining such credit.

If a corporation claims the credit mentioned above, it shall file a capital stock tax return (Form 707) executed in accordance with the law and these regulations (see Chapter III) and complete the form in accordance with the instructions thereon. It must also securely attach to such return, and make a part thereof, a supplemental form (707a) which shall contain all of the information required by the law, these regulations and the instructions thereon.

CHAPTER VI

*Foreign Corporations*

SECTION 601 (B) AND (F) OF THE REVENUE ACT OF 1938

(b) For each year ending June 30, beginning with the year ending June 30, 1938, there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to \$1 for each \$1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

(f) (1) The adjusted declared value shall be determined with respect to three-year periods beginning with the year ending June 30, 1938, and each third year thereafter. The first year of each such three-year period, or, in case of a corporation not subject for such year to the tax imposed by this section, the first year of such three-year period for which the corporation is subject to the tax, shall constitute a "declaration year."

(2) For each declaration year the adjusted declared value shall be the value, as declared by the corporation in its return for such declaration year (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending with or prior to the close of such declaration year (or as of the date of organization in the case of a corporation having no income-tax taxable year ending with or prior to the close of such declaration year).

(5) For each year of any three-year period subsequent to the declaration year, the adjusted declared value in the case of a foreign corporation shall be the value declared in the return for the declaration year adjusted (for the same income-tax taxable years as in the case of a domestic corporation), in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, to reflect increases or decreases in the capital employed in the transaction of its business in the United States.

**ART. 61. Nature and rate of tax.**—The tax is an excise tax imposed with respect to carrying on or doing business in the United States during a taxable year ending June 30, or any fractional part thereof. The tax is imposed at the rate of \$1 for each full \$1,000 of the adjusted declared value of capital employed by a foreign corporation in the transaction of business in the United States. For the provisions under which foreign corporations are required to file capital stock tax returns, see article 34.

**ART. 62. Carrying on or doing business in the United States.**—The determination as to whether a foreign corporation is carrying on or doing business in the United States within the meaning of the Act depends upon the particular facts of each case. Ordinarily, if in the furtherance of efforts in the pursuit of profit or gain a foreign corporation maintains an agent, an office, warehouse, or other place of business, in the United States, it will be regarded as carrying on or doing business in the United States. As to the meaning of "carrying on or doing business," in general, see articles 42 and 43.

**ART. 63. Capital employed in the United States.**—The phrase "capital employed in the transaction of its business in the United States" means the portion of the total capital of the foreign corporation utilized in carrying on or doing business in the United States.

A foreign corporation may employ capital in the transaction of its business in the United States in various ways. For example, property in the United States used in its business; notes and accounts receivable, and other like assets, representing business done in the United States; merchandise kept in the United States for sale; and funds on deposit in the United States for use in the corporation's business in the United States, are capital employed in the transaction of business in the United States.

**ART. 64. Declared value.**—In its return for a "declaration year" a foreign corporation shall declare a definite value for the capital employed by it in the transaction of business in the United States. The rules relating to the declared value of the capital stock of domestic corporations (see article 44) are applicable to the declared value of the capital of foreign corporations employed in the transaction of business in the United States.

**ART. 65. Adjusted value.**—(a) *General rule.*—The adjusted value for any taxable year of a 3-year period following a declaration year is the value applicable to the last preceding taxable year adjusted to reflect the net increase or decrease in the capital employed in the transaction of business in the United States. The adjustments which are to be made must reflect the changes taking place during the income-tax taxable year ending with or prior to the close of the taxable year. For example: A foreign corporation, which makes its Federal income tax returns on a calendar year basis, files a capital stock tax return for the taxable year ended June 30, 1938, and declares the value of its capital employed in the transaction of its business in the United States as of December 31, 1937. To this value adjustments must be made to reflect the changes taking place during the year ended December 31, 1938. The resultant amount will constitute the adjusted value on which will be computed the capital stock tax for the second taxable year ending June 30, 1939. This adjusted value, to the extent that it is true and correct, will constitute the base for computing the adjusted value for the third taxable year ending June 30, 1940.

Ordinarily and unless the circumstances of the case require otherwise, the adjustments shall be made on the basis of the values disclosed by the books of account and records. In making the adjustments, transitory capital shall be considered separately from the nontransitory or all other capital. For this purpose, transitory capital means tangible personal property, such as a ship, train, motor bus, or other means of conveyance, employed in the regular operation of transportation services between points in the United States and points outside the United States. The term does not include such assets within the United States as working capital (cash, inventories, etc.) or equipment used normally at terminal points, such as machinery for loading and unloading, or tugboats for towing, etc.

Adjustment of the nontransitory or all other capital shall be made without any proration, whether because of a time factor or otherwise, on the basis of the increase or decrease during the applicable income-tax taxable year of the gross assets in the United States. For example, if at the end of the applicable income-tax taxable year the amount of the gross assets in the United States exceeds the amount thereof at the beginning of such year, the amount of the excess shall be added as the increase of the nontransitory capital. If, instead, the amount of the gross assets in the United States at the end of the applicable income-tax taxable year is less than the amount at the beginning of such year, the amount of

the reduction shall be deducted as the decrease of the nontransitory capital.

Adjustment of the transitory capital shall be made for the following increases and decreases:

(1) An addition or a deduction, as the case may be, shall be made for the proportionate value of each unit added to or definitely withdrawn from the transitory capital. For example, if during the applicable income-tax taxable year a ship having a value of \$1,000,000 is entered in the service of the business in the United States under a schedule which will normally require that one-fifth of its time be spent within the territorial limits of the United States, one-fifth of the value of such ship (\$200,000) shall be added to reflect the resultant increase in the transitory capital. If, instead, such a ship had been in the service of the business in the United States and was definitely withdrawn therefrom during the applicable income-tax taxable year, a deduction of \$200,000 should be made to reflect the resultant decrease in the transitory capital.

(2) An addition or a deduction, as the case may be, shall be made for the increase or decrease in the proportionate value of each unit of transitory capital which by reason of a change during the applicable income-tax taxable year becomes employed in the transaction of business in the United States for a greater or lesser period than prior to such change. For example, if on the basis of a schedule requiring that one-fifth of its time be spent within the territorial limits of the United States \$200,000 represents the proportionate value of a ship worth \$1,000,000 employed in the transaction of business in the United States, and if during the applicable income-tax taxable year a change in schedule is made so that the time to be spent within United States territorial limits becomes increased to one-fourth, an addition of \$50,000 shall be made to reflect the increase of the proportionate value of such ship from \$200,000 to \$250,000. If, instead, the schedule has been changed so that only one-tenth of the time would be spent within the territorial limits of the United States, a deduction of \$100,000 should be made to reflect the decrease of the proportionate value of the ship from \$200,000 to \$100,000.

The sum of the transitory capital and of the nontransitory or all other capital, both adjusted as above outlined, shall constitute the adjusted value for the second taxable year. Such value, to the extent that it is true and correct, will constitute the base for computing the adjusted value for the third taxable year of the 3-year period.

(b) *Special rule.*—Application for permission to make the adjustment on the basis of some other method will be considered by the Commissioner in the case

of any foreign corporation, where, by reason of the facts and circumstances in the particular case, the general rule will not fairly reflect the changes in the capital employed in the transaction of its business in the United States, and where, in good faith and unaffected by considerations solely of tax liability, the corporation desires to make the adjustment on the basis of such other method. In such case the application shall be made in the form of an affidavit setting forth all the facts and containing a full explanation of the method sought to be used.

CHAPTER VII

Exemptions

SECTION 601 (C) OF THE REVENUE ACT OF 1938

(c) The taxes imposed by this section shall not apply—

- (1) to any corporation enumerated in section 101 of this Act;
- (2) to any insurance company subject to the tax imposed by section 201, 204, or 207 of this Act.

SECTIONS 101, 201, 204, AND 207 OF THE REVENUE ACT OF 1938

SEC. 101. The following organizations shall be exempt from taxation under this title—

- (1) Labor, agricultural, or horticultural organizations;
- (2) Mutual savings banks not having a capital stock represented by shares;
- (3) Fraternal beneficiary societies, orders, or associations, (A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents;
- (4) Domestic building and loan associations substantially all the business of which is confined to making loans to members; and cooperative banks without capital stock organized and operated for mutual purposes and without profit;
- (5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incidental to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;
- (7) Business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;
- (9) Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net

earnings of which inures to the benefit of any private shareholder;

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

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

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

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

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

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

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

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

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

Sec. 201. (a) *Definition.*—When used in this title the term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.

(b) *Imposition of tax.*—

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

Sec. 204 (a) *Imposition of tax.*—

(1) *In general.*—In lieu of the tax imposed by sections 13 and 14, there shall be levied, collected, and paid for each taxable year upon the special class net income of every insurance company (other than a life or mutual insurance company) a tax \* \* \*

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

Sec. 207. (a) *Imposition of tax.*—

(1) *In general.*—There shall be levied, collected, and paid for each taxable year upon the special class net income of every mutual insurance company (other than a life insurance company) a tax \* \* \*

(2) *Foreign corporations.*—The tax imposed by paragraph (1) shall apply to foreign corporations as well as domestic corporations; but foreign insurance companies not carrying on an insurance business within the United States shall be taxable as other foreign corporations.

ART. 71. *Proof of exemption under section 601 (c) (1) of the Revenue Act of*

1938.—In every case, where not already established under section 601 (c) (1), or a similar provision of a prior Act, the exemption from the capital stock tax as a corporation enumerated in section 101 of the Revenue Act of 1938, or in a corresponding section of a prior Act, must be established by an official ruling. To establish such exemption each corporation making claim thereto shall file a capital stock tax return, complete in all respects including (1) a declaration of value for its capital stock, (2) a statement of the subsection of section 101 under which exemption is claimed, and (3) the necessary supporting evidence required in the case.

In support of its claim for exemption, the corporation shall submit with the return a statement setting forth (1) the character of the organization, (2) the purpose for which it was organized, (3) its actual activities for a period of at least one year, (4) the sources of its income and the disposition thereof, (5) whether or not any of its income is credited to surplus or may inure to the benefit of any private shareholder or individual, and (6) in general all facts relating to its operations which affect its right to exemption. In addition, the corporation shall submit a copy of (1) the charter or articles of incorporation, (2) the by-laws of the corporation, and (3) the latest financial statement showing the assets, liabilities, receipts and disbursements of the organization. If, however, the corporation has received a ruling from the Commissioner exempting it from filing Federal income tax returns and if the conditions on which such ruling was based have not changed, the corporation may submit a copy of such ruling with the capital stock tax return in lieu of the detailed information specified in the foregoing sentence.

Original documents should not be submitted in any case as all evidence becomes a part of the records of the Bureau and, under the rules of the Department, may not be returned.

A corporation, the status of which has not been determined, may (1) pay any tax shown on such return to avoid any statutory interest that deferred payment might entail, or (2) defer payment of the tax until a ruling has been made. If the corporation exercises option (1) and the claim for exemption is allowed, it will be advised, and may thereafter file a claim for the refund of the tax paid. If option (2) is exercised instead and the claim for exemption is rejected, the corporation will be required to pay the tax together with statutory interest from the due date of the tax and not from the date of the rejection of the claim for exemption.

The collector, upon receipt of the return and accompanying papers, properly executed, will forward them to the Commissioner for decision as to whether the organization is exempt. After consideration by the Commissioner, the corporation will be advised whether its claim for

exemption is allowed or rejected. If the claim is allowed, no further capital stock tax returns will be required so long as its income tax status is not changed.

Collectors will keep a list of all such exempt corporations, to the end that they may from time to time inquire into their status and ascertain whether or not they are observing the conditions upon which their exemption is predicated.

For a more detailed discussion of the several classes of corporations that are enumerated in section 101, reference is made to the applicable income tax regulations.

**ART. 72. Insurance companies.**—Only those insurance companies subject to the income tax imposed by section 201, 204, or 207 of the Revenue Act of 1938 are exempt from capital stock tax under section 601 (c) (2) of the Revenue Act of 1938. Such exempt status must be established by an official ruling. For that purpose a capital stock tax return, complete in all respects including a declaration of value for its capital stock, shall be filed, showing under which of the specified sections the corporation is subject to income tax. After consideration by the Commissioner, the corporation will be advised whether its claim for exemption is allowed or rejected. If the claim is allowed, no further capital stock tax returns will be required so long as its income tax status is not changed.

The exemption provided by section 601 (c) (2) does not apply to incorporated insurance agencies, attorneys in fact for reciprocal insurance companies or interinsurance exchanges, holding companies for insurance companies, or any corporation (other than an insurance company) which is closely affiliated with, or is a facility of, or whose capital stock is held by, an insurance company.

**ART. 73. Not doing business.**—A domestic corporation which did not carry on or do any business (see article 42), or a foreign corporation which did not carry on or do any business in the United States (see article 62), during a taxable year ending June 30, may claim exemption on the ground of not doing business within the meaning of the Act. If such claim is allowed, the corporation will not be required to pay any capital stock tax for such year.

As corporations are generally organized to do business, every corporation is presumed to be subject to the tax unless it submits evidence satisfactory to the Commissioner that it has not carried on or done business during any part of the taxable year. Accordingly, exemption from the tax must be established by an official ruling by the Commissioner. The fact that an exemption from the tax was allowed for one year because of not doing business is not acceptable as proof that business was not carried on in any subsequent year. Likewise, the mere citation of a court decision, or of a provision of the Act or of these regulations, or a statement to the effect that the same

conditions existed during the taxable year as prevailed in a previous year, or any other mere conclusion, does not constitute satisfactory proof. If a corporation claims exemption from the tax because of not doing business, a capital stock tax return, completed in accordance with the requirements of these regulations (see Chapter III), must be filed for each such year, regardless of whether or not its claim for exemption has been allowed for the previous taxable year. The following evidence must be attached to such return: (1) An excerpt from its charter setting forth its corporate powers; (2) copies of the minutes of all meetings of the board of directors held during the taxable year, and of all reports made by an executive or other standing committee, or any other governing body, upon the activities of the corporation during the taxable year; (3) a comparative statement of the assets and liabilities as of the beginning and close of the taxable year; (4) a detailed statement for such year of the cash receipts from all sources and the cash disbursements for all purposes; and (5) a comprehensive statement of all activities in which the corporation was actually engaged during the taxable period, and in general all facts relating to its operations which may affect its right to exemption. In addition there shall be submitted all other information, data, and records that the Commissioner may require. Original documents should not be submitted, as all evidence becomes a part of the official records and under the rules of the Department may not be returned. (See articles 36 and 74.)

The collector upon receipt of the return, including the necessary evidence to support the claim for exemption, shall forward it to the Commissioner for decision as to whether the organization is exempt from payment of the tax for that year.

**ART. 74. Action on claims for exemption.**—Claims for exemption from liability for the tax should be made at the time the return is filed. Claims made at a later date will be considered only if made by filing with the collector a claim for the abatement or refund (as the case may be) of any tax assessed or paid. Such claim shall be accompanied by the necessary supporting evidence. If a claim for exemption is rejected, the tax found due shall be assessed at once. Interest on such tax accrues at the statutory rate from the due date and not from the date when the exemption was rejected. (For discussion of incomplete returns, see article 31; for discussion of penalties and interest, see articles 81 and 82.)

If the claim for exemption relates to a return upon which the corporation declared a value for its capital stock and the claim is allowed, such declaration does not become effective as the statutory declared value. In such case the succeeding year becomes a declaration year and the corporation must declare

a value upon its return for such taxable year. If the corporation has established its declared value for the first year of a 3-year period and the claim for exemption relates to a return for the second year upon which the declared value is adjusted as required by section 601 (f) (3) such adjusted value does not become voided by an allowance of the claim. For example, if a claim for exemption is rejected for the taxable year ending June 30, 1938, and such a claim is allowed for the taxable year ending June 30, 1939, while no tax is due for the second taxable year ending June 30, 1939, the adjusted value for that year will constitute the base for the statutory adjustments to be made in the return for the third taxable year ending June 30, 1940.

## CHAPTER VIII

*Payment and Collection of Tax*

## SECTION 601 (d) OF THE REVENUE ACT OF 1938

(d) \* \* \* The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 6 per centum per annum from the time when the tax became due until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, insofar as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. \* \* \*

## SECTION 3176 OF THE UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 1103 OF THE REVENUE ACT OF 1926 AND SECTION 619 (D) OF THE REVENUE ACT OF 1928; AND SECTION 406 OF THE REVENUE ACT OF 1935

SEC. 3176. \* \* \* In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner of Internal Revenue or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

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

SEC. 406. In the case of a failure to make and file an internal-revenue tax return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after the date of the enactment of this Act, if a 25 per centum addition to the tax is prescribed by existing law, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

## SECTION 1114 OF THE REVENUE ACT OF 1926

SEC. 1114. (a) Any person required under this Act to pay any tax, or required by laws or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection

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

(b) Any person required under this Act to collect, account for and pay over any tax imposed by this Act, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

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

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

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

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

## SECTION 3184 OF THE UNITED STATES REVISED STATUTES, AS AMENDED BY SECTION 805 OF THE REVENUE ACT OF 1938

Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes

with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of 6 per centum per annum from the date of such notice to the date of payment.

## SECTION 35 (A) OF THE CRIMINAL CODE OF THE UNITED STATES, AS AMENDED AND AS FURTHER AMENDED BY ACT OF CONGRESS APPROVED APRIL 4, 1938 (PUBLIC, No. 465, SEVENTY-FIFTH CONGRESS)

(A) Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; \* \* \* shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

ART. 81. *Time for payment of tax.*—The tax is payable to the collector for the district in which the return is filed, on or before the statutory due date, which is the last day of July next following the close of the taxable year (see article 36 (a)). For provisions relating to an extension of time for filing the return and paying the tax, see article 36 (b).

ART. 82. *Penalties, interest, and additions to the tax.*—Section 601 (d) provides that if the tax is not paid when due there shall be added, as part of the tax, interest at the rate of 6 per cent per annum from the time the tax became due until the tax is paid. The due date of the tax is the last day of July next following the close of the taxable year. If payment is deferred beyond the due date interest will accrue from that date irrespective of the reason for the delay in payment and regardless of whether the time for filing the return had been extended.

Section 601 (d) further provides that all provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, in so far as not inconsistent, be applicable in respect of the capital stock tax. By this provision of the Act, the following additions to the tax and penalties apply to the capital stock tax.

Section 3176, United States Revised Statutes, as amended, and as modified by section 406 of the Revenue Act of 1935, provides for the addition of a certain per cent of the amount of the tax in case

of failure to make and file a return within the prescribed time (see article 36), unless the return is later filed and the failure to file the return within the prescribed time is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 per cent if the failure is for not more than 30 days, with an additional 5 per cent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per cent in the aggregate. The addition to the tax is computed on the basis of the exact number of days of continued delinquency and not on a calendar month basis.

To avoid the addition to the tax for delinquency, a corporation filing a tardy return must make an affirmative showing of all facts alleged as a reasonable cause for the delinquency. Such showing shall be made in the form of an affidavit which shall be attached to the return. If the Commissioner determines that the delinquency was due to a reasonable cause, and not to willful neglect the addition to the tax will not be assessed.

Section 3176 of the United States Revised Statutes also provides for an addition to the tax in case a false or fraudulent return is willfully made. In such case the amount to be added to the tax is 50 per cent of the total tax for the taxable year involved.

If payment of any tax, including penalty or interest, is not made within 10 days after the date of issuance of Form 17 (First notice and demand) based on assessment made by the Commissioner, there will accrue under section 3184, United States Revised Statutes, as amended, a penalty of 5 per cent of the total assessment, and interest at the rate of 6 per cent per annum upon the entire assessment from the date of the notice until the date of payment. If a claim for abatement is filed with the collector within 10 days after the date of the issuance of the first notice and demand, the 5 per cent penalty does not attach. However, in the event the claim for abatement is rejected and the liability is not paid within 10 days after issuance by the collector of demand for payment, the 5 per cent penalty applies. The filing of an abatement claim does not stay the running of interest, which continues to run for the full period that intervenes between the date of the first notice and the date of payment.

Under section 1114 of the Revenue Act of 1926, any corporation which willfully fails to pay any tax due, file a return, or keep records, or attempts in any manner to evade or defeat the tax, is subject to a fine of \$10,000, or imprisonment, or both, with costs of prosecution. For willful failure to pay, or a willful attempt in any manner to evade or defeat the tax, the statute also imposes a penalty equal to the amount of the tax not paid, which penalty is assessable in

the same manner as the tax. These penalties apply to an officer or employee who, as such officer or employee, is under a duty to perform the act in respect of which the violation occurs.

#### CHAPTER IX

##### Miscellaneous Provisions

ART. 91. *Administrative provisions.*—Section 601 (d) of the Act makes applicable to the capital stock tax all provisions of law applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926 in so far as such provisions are not inconsistent with section 601. Provisions of the Revenue Act of 1926 thus made applicable and other statutory provisions otherwise applicable to the capital stock tax, are set forth hereunder.

##### Records, Statements, and Special Returns

###### SECTION 1102 OF THE REVENUE ACT OF 1926

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

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

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

##### Examination of Books and Witnesses

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

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

##### Closing Agreements

###### SECTION 606 (A) AND (B) OF THE REVENUE ACT OF 1928, AS AMENDED BY SECTIONS 801 AND 802 OF THE REVENUE ACT OF 1938

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

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

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

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

##### Limitation on Assessments and Suits by the United States

###### SECTION 1109 OF THE REVENUE ACT OF 1926, AS AMENDED BY SECTION 619 (A) OF THE REVENUE ACT OF 1928

SEC. 1109. (a) Except in the case of income, war-profits, excess-profits, estate, and gift taxes—

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

(2) In case of a false or fraudulent return with intent to evade tax, of a failure to file a return within the time required by law, or of a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

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

##### Refunds

###### SECTION 3220 OF THE REVISED STATUTES, AS AMENDED, AND AS FURTHER AMENDED BY SECTION 619 (B) OF THE REVENUE ACT OF 1928 AND BY SECTION 3 OF THE ACT OF MAY 29, 1928 (45 STAT., P. 996)

SEC. 3220. Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, 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, by internal-revenue districts and alphabetically arranged of all refunds in excess of \$500, at the beginning of each regular session of Congress of all transactions under this section.



**SECTION 3226 OF THE REVISED STATUTES, AS AMENDED, AND AS FURTHER AMENDED BY SECTION 1103 OF THE REVENUE ACT OF 1932 AND BY SECTION 807 OF THE REVENUE ACT OF 1936**

SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates. Any consideration, reconsideration, or action by the Commissioner with respect to such claim following the mailing of a notice by registered mail of disallowance shall not operate to extend the period within which suit may be begun.

**SECTION 3228 (A) OF THE REVISED STATUTES, AS AMENDED, AND AS FURTHER AMENDED BY SECTION 1112 OF THE REVENUE ACT OF 1926 AND BY SECTION 619 OF THE REVENUE ACT OF 1928 AND BY SECTION 1106 (A) OF THE REVENUE ACT OF 1932**

SEC. 3228. (a) 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, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

**Interest on Refunds**

**SECTION 614 OF THE REVENUE ACT OF 1928, AS AMENDED BY SECTION 804 OF THE REVENUE ACT OF 1936**

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

(2) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days, such date to be determined by the Commissioner, whether or not such refund check is accepted by the taxpayer after tender of such check to the taxpayer. The acceptance of such check shall be without prejudice to any right of the taxpayer to claim any additional overpayment and interest thereon.

**Jeopardy Assessments**

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

SEC. 1105. (a) If the Commissioner believes that the collection of any tax (other than

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

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

ART. 92. **Jeopardy assessment.**—Whenever, in the opinion of the collector, it becomes necessary to protect the interests of the Government by making an immediate assessment and collection of the tax, the case should be promptly reported to the Commissioner by telegram or letter. The communication should state the full name and address of the person involved, the amount of taxes due, the period involved, and the reason for the recommendation, which will enable the Commissioner to assess the tax immediately, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, and the collector shall forthwith issue a notice and demand for payment thereof.

The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the sum with respect to which the stay is desired, and with such sureties as the collector deems necessary, conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for this section, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3187 of the United States Revised Statutes, as amended.

**Termination of the Capital Stock Tax Imposed by Section 105 of the Revenue Act of 1935, as Amended**

**SECTION 601 (H) OF THE REVENUE ACT OF 1938**

(h) The capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended, shall not apply to any taxpayer

with respect to any year after the year ending June 30, 1937.

ART. 93. **Termination of capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended.**—The capital stock tax imposed by section 105 of the Revenue Act of 1935, as amended, shall not apply with respect to any year after the taxable year ended June 30, 1937. The capital stock tax for subsequent years is imposed by section 601 of the Revenue Act of 1938.

**Authority for Regulations**

**SECTION 1101 OF THE REVENUE ACT OF 1926, MADE APPLICABLE BY SECTION 601 (D) OF THE REVENUE ACT OF 1938**

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

ART. 94. **Promulgation of regulations.**—In pursuance of the authority granted by law, the foregoing regulations are hereby prescribed and promulgated.

[SEAL] GUY T. HELVERING,  
Commissioner of Internal Revenue.

Approved, February 4, 1939.

JOHN W. HANES,  
Acting Secretary of the Treasury.

[F. R. Doc. 39-428; Filed, February 6, 1939; 12 m.]

**TITLE 31—MONEY AND FINANCE: TREASURY**

**PUBLIC DEBT SERVICE**

[1939—Department Circular 602]

**RECONSTRUCTION FINANCE CORPORATION  
7/8 PERCENT NOTES OF SERIES R, DUE  
JANUARY 15, 1942**

FEBRUARY 6, 1939.

**I. OFFERING OF NOTES**

1. The Secretary of the Treasury, on behalf of the Reconstruction Finance Corporation, invites subscriptions, at 100¼ and accrued interest, from the people of the United States for notes of the Reconstruction Finance Corporation, designated 7/8 percent notes of Series R. The amount of the offering is \$300,000,000, or thereabouts.

**II. DESCRIPTION OF NOTES**

1. The notes will be dated February 15, 1939, and will bear interest from that date at the rate of 7/8 percent per annum, payable on a semiannual basis on July 15, 1939, and thereafter on January 15 and July 15 in each year until the principal amount becomes payable. They will mature January 15, 1942, and will not be subject to call for redemption prior to maturity.

2. The notes will be issued under authority of an act of Congress (known as "Reconstruction Finance Corporation Act") approved January 22, 1932, as amended and supplemented, which provides that the notes shall be fully and

unconditionally guaranteed both as to interest and principal by the United States and such guaranty shall be expressed on the face thereof; and that they shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. These notes shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof.

3. The authorizing act further provides that in the event the Reconstruction Finance Corporation shall be unable to pay upon demand, when due, the principal of or interest on notes issued by it, the Secretary of the Treasury shall pay the amount thereof, which is authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amounts so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such notes.

4. The notes will be acceptable to secure deposits of public moneys, but will not bear the circulation privilege.

5. Bearer notes with interest coupons attached will be issued in denominations of \$1,000, \$5,000, \$10,000 and \$100,000. The notes will not be issued in registered form.

### III. SUBSCRIPTION AND ALLOTMENT

1. Subscriptions will be received at the Federal Reserve banks and branches and at the Treasury Department, Washington. Banking institutions generally may submit subscriptions for account of customers, but only the Federal Reserve banks and the Treasury Department are authorized to act as official agencies. Others than banking institutions will not be permitted to enter subscriptions except for their own account. Subscriptions from banks and trust companies for their own account will be received without deposit but will be restricted in each case to an amount not exceeding one-half of the combined capital and surplus of the subscribing bank or trust company. Subscriptions from all others must be accompanied by payment of 10 percent of the amount of notes applied for. The Secretary of the Treasury reserves the right to close the books as to any or all subscriptions or classes of subscriptions at any time without notice.

2. The Secretary of the Treasury reserves the right to reject any subscription, in whole or in part, to allot less than the amount of notes applied for, to make allotments in full upon applications for smaller amounts and to make reduced allotments upon, or to reject, applications for larger amounts, or to adopt

any or all of said methods or such other methods of allotment and classification of allotments as shall be deemed by him to be in the public interest; and his action in any or all of these respects shall be final. Allotment notices will be sent out promptly upon allotment, and the basis of the allotment will be publicly announced.

### IV. PAYMENT

1. Payment at 100 $\frac{1}{4}$  and accrued interest, if any, for notes allotted hereunder must be made or completed on or before February 15, 1939, or on later allotment. In every case where payment is not so completed, the payment with application up to 10 percent of the amount of notes applied for shall, upon declaration made by the Secretary of the Treasury in his discretion, be forfeited to the United States.

### V. GENERAL PROVISIONS

1. As fiscal agents of the United States, Federal Reserve banks are authorized and requested to receive subscriptions, to make allotments on the basis and up to the amounts indicated by the Secretary of the Treasury to the Federal Reserve banks of the respective districts, to issue allotment notices, to receive payment for notes allotted, to make delivery of notes on full-paid subscriptions allotted, and they may issue interim receipts pending delivery of the definitive notes.

2. The Secretary of the Treasury may at any time, or from time to time, prescribe supplemental or amendatory rules and regulations governing the offering, which will be communicated promptly to the Federal Reserve banks.

[SEAL] HENRY MORGENTHAU, JR.,  
Secretary of the Treasury.

[F. R. Doc. 39-429; Filed, February 6, 1939;  
12 m.]

## TITLE 33—NAVIGATION AND NAVIGABLE WATERS

### WAR DEPARTMENT

#### REGULATIONS TO GOVERN OPENING OF BRIDGE OPERATED BY POLICE JURY OF CALCASIEU PARISH ACROSS CONTRABAND BAYOU NEAR LAKE CHARLES, LOUISIANA<sup>1</sup>

#### THE LAW

The River and Harbor Act of August 18, 1894, contains the following section:

Sec. 5. That it shall be the duty of all persons owning, operating, and tending the drawbridges now built, or which may hereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of War the public interests require to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and

<sup>1</sup>Supplemental to Title 33 of the Code of Federal Regulations.

regulations, when so made and published, shall have the force of law. Every such person who shall willfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than two thousand dollars nor less than one thousand dollars; or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That the proper action to enforce the provisions of this section may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States: *Provided further*, That whenever, in the opinion of the Secretary of War, the public interests require it, he may make rules and regulations to govern the opening of drawbridges for the passage of vessels and other water crafts, and such rules and regulations, when so made and published, shall have the force of law, and any violation thereof shall be punished as hereinbefore provided.

#### THE REGULATIONS

In pursuance of the foregoing law, the following regulations are prescribed to govern the opening of the bridge operated by the Police Jury of Calcasieu Parish across Contraband Bayou near Lake Charles, Louisiana.

1. The owner of, or agency controlling, the bridge will not be required to keep a draw tender in constant attendance at the above-named bridge.

2. Whenever a vessel unable to pass under the closed bridge desires to pass through the draw, at least 6 hours' advance notice of the time the opening is required shall be given, by telephone or otherwise, to the agent of the Police Jury of Calcasieu Parish, at Lake Charles, Louisiana, or to a designated representative.

3. Upon receipt of such notice, the authorized representative specified herein, in compliance therewith, shall arrange for the prompt opening of the draw at the time specified in the notice for the passage of the vessel.

4. The owner of, or agency controlling, the bridge shall keep conspicuously posted on both the upstream and downstream sides of the bridge in a manner that it can easily be read at any time a copy of these regulations together with a notice stating exactly how the representative specified in paragraph 2 may be reached.

5. The operating machinery of the draw shall be maintained in a serviceable condition, and the draw opened and closed at least once every four months to make certain that the machinery is in proper order for satisfactory operation.

6. These regulations are supplemental to the "Rules and regulations to govern the operation of drawbridges crossing all navigable waterways of the United States discharging their waters into the Atlantic Ocean south of and including Chesapeake Bay and the Gulf of Mexico, ex-

cepting the Mississippi River and its tributaries", and shall take effect and be in force on and after January 15, 1939. Approved, January 14, 1939.

[SEAL] HARRY H. WOODRING,  
Secretary of War.

[F. R. Doc. 39-419; Filed, February 6, 1939; 10:58 a. m.]

Notices

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 2327]

IN THE MATTER OF THE FAIRFACTS COMPANY, A CORPORATION

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Robert S. Hall, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Friday, February 10, 1939, at ten o'clock in the forenoon of that day (eastern standard time), in the Reception Room, Third Floor, Hotel Lincoln, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,  
Secretary.

[F. R. Doc. 39-416; Filed, February 6, 1939; 9:07 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 31st day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles

H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3325]

IN THE MATTER OF COTY, INC., ET AL.  
ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Edward E. Reardon, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Friday, February 17, 1939, at ten o'clock in the forenoon of that day (eastern standard time), in Room 2301, United States Court House, Foley Square, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,  
Secretary.

[F. R. Doc. 39-417; Filed, February 6, 1939; 9:08 a. m.]

United States of America—Before Federal Trade Commission

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on 31st day of January, A. D. 1939.

Commissioners: Robert E. Freer, Chairman; Garland S. Ferguson, Charles H. March, Ewin L. Davis, William A. Ayres.

[Docket No. 3639]

IN THE MATTER OF PARFUMS CORDAY, INC.

ORDER APPOINTING EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 U. S. C. A., Section 41),

It is ordered, That Edward E. Reardon, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It is further ordered, That the taking of testimony in this proceeding begin on Saturday, February 18, 1939, at ten o'clock in the forenoon of that day

(eastern standard time), in Room 2301, United States Court House, Foley Square, New York, New York.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report upon the evidence.

By the Commission.

[SEAL] OTIS B. JOHNSON,  
Secretary.

[F. R. Doc. 39-418; Filed, February 6, 1939; 9:08 a. m.]

RURAL ELECTRIFICATION ADMINISTRATION.

[Administrative Order No. 318]

ALLOCATION OF FUNDS FOR LOANS

JANUARY 31, 1939.

By virtue of the authority vested in me by the provisions of Section 5 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for loans for the projects and in the amounts as set forth in the following schedule:

Project designation	Amount
Alabama R9025W1 Bullock.....	\$20,000
Arkansas 9009W1 Craighead.....	3,500
Colorado 9014W3 Alamosa.....	5,000
Florida R9017W1 Jackson.....	10,000
Georgia R9008W1 Wilkes.....	10,000
Georgia R9070W4 Mitchell.....	20,000
Georgia R9090W1 Candler.....	15,000
Illinois R9030W1 Adams.....	5,000
Indiana R9015W1 Fayette.....	2,000
Indiana R9047W1 Orange.....	10,000
Iowa R9038W2 Pocahontas.....	5,000
Kentucky R9030W1 Shelby.....	5,820
Kentucky R9035W1 Warren.....	15,000
Michigan R9026W2 Ingham.....	10,000
Minnesota R9018W4 Douglas.....	10,000
Minnesota R9057W2 Ottertail.....	10,000
Minnesota R9065W2 Dakota.....	10,000
Missouri 9031W1 Mississippi.....	12,000
Missouri 9032W1 Atchison.....	7,500
Missouri 9034W1 Macon.....	10,000
Montana R9015W1 Fergus.....	8,000
Nebraska R9026W2 Platte.....	10,000
New Mexico 9004W1 Eddy.....	3,000
North Carolina R9023W4 Caldwell.....	28,000
Ohio R9001W3 Miami.....	10,000
Ohio R9042W1 Darke.....	5,000
Pennsylvania R9012W1 Sullivan.....	10,000
Texas R9055W1 Floyd.....	5,000
Texas R9086W1 Comanche.....	5,000
Virginia R9030W1 Bath.....	8,000

JOHN M. CARMODY,  
Administrator.

[F. R. Doc. 39-421; Filed, February 6, 1939; 10:59 a. m.]

[Administrative Order No. 319]

ALLOCATION OF FUNDS FOR LOANS

JANUARY 31, 1939.

By virtue of the authority vested in me by the provisions of Section 4 of the Rural Electrification Act of 1936, as amended, I hereby allocate, from the sums authorized by said Act, funds for loans for

the projects and in the amounts as set forth in the following schedule:

Project designation	Amount
Alabama R9009C1 Clarke-Washing-	
ton	\$60,000
Florida 9014C1 Clay	140,828
Florida R9014C2 Clay	21,172
Georgia R9070C1 Mitchell	61,000
Iowa R9050A1 Lyon	138,000
Iowa R9051A1 Winnebago	288,000
Iowa R9059A1 Woodbury	137,000
Iowa R9061A1 Cherokee	130,000
Kansas 9007B1 Jewell	136,324
Kansas R9007B2 Jewell	18,676
Kansas R9026A1 Coffey	120,000
Kentucky 9020C1 McCracken	83,008
Kentucky R9020C2 McCracken	100,992
Kentucky R9037C1 Owen	95,000
Louisiana 9010B1 Washington	130,000
Maryland 9007A1 Caroline	30,876
Maryland R9007A2 Caroline	113,124
Minnesota R9054B1 Faribault	121,000
Minnesota R9071C1 Blue Earth	294,000
Mississippi R9028E1 Hancock	146,000
Mississippi 9041A1 Pike	6,412
Mississippi R9041A2 Pike	240,588
Missouri 9037A1 Bates	16,388
Missouri R9037A2 Bates	358,612
Missouri R9040A1 Pettis	400,000
Montana R9002C1 Cascade	54,000
Nebraska R9071A1 Madison	280,000
New York 9018C1 N. Y. S. E. & G.	300,000
North Carolina R9025D1 Rutherford	182,000
Oklahoma 9001C1 Kingfisher	73,772
Oklahoma R9001C2 Kingfisher	216,228
Oklahoma R9019A1 Craig	275,000
Pennsylvania R9004B2 Crawford	41,000
Pennsylvania R9017A3 Armstrong	154,000
South Carolina 9009F1 Richland	247,000
Texas R9061C1 Coleman	317,000
Texas R9087A1 Karnes	188,000
Virginia R9018B1 T. E. S.	72,000

JOHN M. CARMODY,  
Administrator.

[F. R. Doc. 39-422; Filed, February 6, 1939;  
10:59 a. m.]

#### SECURITIES AND EXCHANGE COMMISSION.

##### United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 3rd day of February 1939.

IN THE MATTER OF WIL-LOW CAFETERIAS, INC. COMMON STOCK, PAR VALUE \$1 AND \$4 CUMULATIVE CONVERTIBLE PREFERENCE STOCK, NO PAR VALUE

[File No. 1-670]

##### ORDER SETTING HEARING ON APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

The New York Curb Exchange pursuant to Section 12 (d) of the Securities Exchange Act of 1934, as amended, and Rule X-12D2-1 (b) promulgated thereunder, having made application to strike from listing and registration the Common Stock, Par Value \$1, and \$4 Cumulative Convertible Preference Stock, No Par Value, of Wil-Low Cafeterias, Inc.; and

The Commission deeming it necessary for the protection of investors that a hearing be held in this matter at which all interested persons be given an opportunity to be heard;

It is ordered, That the matter be set down for hearing at 10 A. M. on

Wednesday, March 8, 1939, in Room 1101, Securities and Exchange Commission Building, 1778 Pennsylvania Ave., Washington, D. C. and continue thereafter at such times and places as the Commission or its officer herein designated shall determine, and that general notice thereof be given; and

It is further ordered, That Robert P. Reeder, an officer of the Commission, be and he hereby is designated to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda or other records deemed relevant or material to the inquiry, and to perform all other duties in connection therewith authorized by law.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 39-426; Filed, February 6, 1939;  
11:40 a. m.]

##### United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 4th day of February 1939.

[File No. 7-342]

IN THE MATTER OF BETHLEHEM STEEL CORPORATION (DELAWARE), PREFERRED STOCK, \$100 PAR VALUE

##### ORDER DENYING APPLICATION UNDER SECTION 12 (F) AND 23 (A) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, AND RULE X-12F-2 (B) PROMULGATED THEREUNDER

Continuance of unlisted trading privileges on the Baltimore Stock Exchange in the Preferred Stock, \$100 Par Value, of Bethlehem Steel Corporation (New Jersey), having been permitted by action of this Commission on October 1, 1934; and Said Exchange, pursuant to paragraph (b) of Rule X-12F-2, having applied to this Commission setting forth that there have been effected changes in said security other than those specified in paragraph (a) of said Rule and asking the Commission to determine that said security after said changes is substantially equivalent to the said security heretofore admitted to unlisted trading privileges; and

The Commission having considered the matter;

It is ordered, That the determination sought by said application is not made and the application be and the same is hereby denied.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 39-427; Filed, February 6, 1939;  
11:41 a. m.]

##### United States of America—Before the Securities and Exchange Commission

At the regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 6th day of February, A. D. 1939.

##### IN THE MATTER OF THE UNITED TELEPHONE AND ELECTRIC COMPANY

Including related matters arising upon the following designated applications:

William C. A. Henry, File No. 55-13; B. F. Napheys, Jr., File No. 55-13; Stewart Lynch, File No. 55-13; Clyde L. Paul, File No. 55-15; Haysler A. Poague, File No. 55-16; J. K. Johnston, File No. 55-17; Richards, Layton & Finger, File No. 55-18; A. E. Buening, File No. 55-19; Elliott S. Belden, File No. 55-19; D. J. Eisenhower, File No. 55-19; A. Z. Patterson, File No. 55-20; Henry S. Buzick, File No. 55-21; John W. Huxley, Jr., File No. 55-22; Planters State Bank, File No. 55-23; R. W. Samuelson, File No. 55-24; Clarence A. Southerland, File No. 55-25; Burch, Litowich & Royce, File No. 55-26; Louis R. Gates, File No. 55-27; Louis R. Gates, File No. 55-28; B. I. Litowich, File No. 55-29; Henry S. Buzick, R. W. Samuelson and R. W. Dockstader, acting as Buzick 7% Preferred Stockholders Committee, File No. 55-30; The Union National Bank, File No. 55-31; Bowersock, Fizzell & Rhodes, File No. 55-32; Bowersock, Fizzell & Rhodes, File No. 55-33; R. W. Dockstader, File No. 55-34; Haskins & Sells, File No. 55-35.

Ira C. Snyder, File No. 55-36; Ben Polson, File No. 55-37; Albert Nordstrom, File No. 55-38; Gertrude Cordts, File No. 55-39; Marvel, Morford and Logan, File No. 55-40; Howard Duane, File No. 55-41; Herring, Morris, James & Hitchens, File No. 55-42; James Vance Humphrey, File No. 55-43; C. W. Floyd and James Tod, File No. 55-44; Polson 7% Preferred Stockholders Protective Committee, File No. 55-45; The Union National Bank of Manhattan, Kansas, File No. 55-46; The Allen 6% Preferred Stockholders Protective Committee, File No. 55-47; Donald L. Pettis, File No. 55-48; The Omaha National Bank, File No. 55-49; Hal E. Harlan, File No. 55-50; Henry J. Allen, File No. 55-51; William Ritchie, File No. 55-52.

##### SUPPLEMENTAL NOTICE OF AND ORDER FOR HEARING

Applications pursuant to Section 11 (f) and Rule U-11F-2 of the Public Utility Holding Company Act of 1935 having been filed with this Commission and hearings on such applications having been set by this Commission in its Notice of and Order for Hearing, dated February 1, 1939; and

Other applications pursuant to Section 11 (f) and Rule U-11F-2 of the Public Utility Holding Company Act of 1935 having been duly filed with this

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Commission, and the Commission having given consideration to the preferences expressed by such applicants as to the place where hearings on such applications are to be held;

It is ordered, That a hearing on the applications filed pursuant to Section 11 (f) and Rule U-11F-2 of the Public Utility Holding Company Act of 1935 by Marvel, Morford and Logan, and Howard Duane, and Herring, Morris, James & Hitchens be held on February 14, 1939, at ten o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C.; and

It is further ordered, That a hearing on the applications filed pursuant to Section 11 (f) and Rule U-11F-2 of the Public Utility Holding Company Act of 1935 by Ira C. Snyder, Gertrude Cordts, Albert Nordstrom, Ben Polson, James Vance Humphrey, C. W. Floyd, James Tod, Hal E. Harlan, Henry J. Allen, Donald L. Pettis, Omaha National Bank, Allen 6% Preferred Stockholders Protective Committee, Union National Bank of Manhattan, Kansas, Polson 7% Preferred Stockholders Protective Committee, and William Ritchie, be held on February 21, 1939, at ten o'clock in the forenoon of that day, in Room 563 of the United States Main Post Office Building, Pershing Road and Broadway, Kansas City, Missouri:

It is further ordered, That Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at both hearings in this matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time;

Notice of such hearing is hereby given to such applicants and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before February 11, 1939.

The matter concerned herewith is in regard to applications, as set forth below (in addition to those set forth in the Notice of and Order for Hearing, dated February 1, 1939), made pursuant to Rule U-11F-2 requesting the approval by the Commission of a maximum amount of final compensation for services rendered in connection with the reorganization of The United Telephone and Electric Company in the United States District Court in the District of Delaware and for reimbursement in a stated maximum amount for expenses incurred in connection with such reorganization.

To Be Heard at Washington, D. C., in Addition to Applications as Set Forth in the Order of the Securities and Exchange Commission Dated February 1, 1939

1. Marvel, Morford and Logan, counsel to the Gates 6% Preferred Stockholders Committee, final compensation in the maximum amount of \$5,000 and reimbursement for expenses in the maximum amount of \$17.22;
2. Howard Duane, counsel to Common Stockholders Protective Committee, final compensation in the maximum amount of \$750;
3. Herring, Morris, James & Hitchens, counsel to the Allen 6% Preferred Stockholders Committee, final compensation in the maximum amount of \$15,000.

To Be Heard at Kansas City, Missouri, in Addition to Applications as Set Forth in the Order of the Securities and Exchange Commission Dated February 1, 1939

1. Ira C. Snyder, counsel to the Polson 7% Preferred Stockholders Committee, final compensation in the maximum amount of \$38,000;
2. Ben Polson, Chairman of the Polson 7% Preferred Stockholders Committee, final compensation in the maximum amount of \$6,000;
3. Albert Nordstrom, member of Polson 7% Preferred Stockholders Committee, final compensation in the maximum amount of \$4,000;
4. Gertrude Cordts, Secretary of the Polson 7% Preferred Stockholders Committee, final compensation in the maximum amount of \$4,500;
5. James Vance Humphrey, counsel to the Polson 7% Preferred Stockholders Committee, final compensation in the amount of \$1,500 and reimbursement for expenses in the maximum amount of \$75;
6. C. W. Floyd and James Tod as trustees for Cora B. Mercer, an incompetent girl, acting under the last will and testament of Joseph H. Mercer, a member of the Polson 7% Preferred Stockholders Committee, final compensation in the maximum amount of \$750 and reimbursement for expenses in the maximum amount of \$50;
7. Hal E. Harlan, member of the Allen 6% Preferred Stockholders Protective Committee, final compensation in the maximum amount of \$3,275;
8. Henry J. Allen, Chairman of Allen 6% Preferred Stockholders Protective Committee, final compensation in the maximum amount of \$5,000;
9. Donald L. Pettis, Secretary and member of Allen 6% Preferred Stockholders Protective Committee, final compensation in the maximum amount of \$25,000;
10. Omaha National Bank Depository for Allen 6% Preferred Stockholders Protective Committee, final compensation in

the maximum amount of \$4,618.17 and reimbursement for expenses in the maximum amount of \$298.88;

11. Allen 6% Preferred Stockholders Protective Committee, reimbursement for expenses in the maximum amount of \$11,494.40;
12. Union National Bank of Manhattan, Kansas, Depository for the Polson 7% Preferred Stockholders Protective Committee, final compensation in the maximum amount of \$1,503.10;
13. Polson 7% Preferred Stockholders Protective Committee, reimbursement for expenses in the maximum amount of \$5,634.16;
14. William Ritchie, counsel to Allen 6% Preferred Stockholders Protective Committee, final compensation in the maximum amount of \$32,500.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,  
Secretary.

[F. R. Doc. 39-425; Filed, February 6, 1939; 11:40 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C. on the 6th day of February, A. D. 1939.

[File No. 31-433]

IN THE MATTER OF YORK RAILWAYS COMPANY

NOTICE OF AND ORDER FOR HEARING

An application having been filed with this Commission by York Railways Company, a subsidiary of certain registered holding companies, pursuant to Section 11 (f) of the Public Utility Holding Company Act of 1935 and Rule U-11F-1 thereunder, for approval of a Plan of Reorganization of York Railways Company; and

Said Plan proposing (a) that the outstanding issue of \$4,990,000 principal amount of first mortgage bonds of York Railways Company, which is further secured by the pledge of the securities of Edison Light and Power Company, York Steam Heating Company, and York Bus Company, subsidiaries of York Railways Company, and which fell due December 1, 1937, be extended for a period of ten years from its maturity at the same rate of interest; (b) that York Railways Company by supplemental indenture agree that no dividends will be paid by it or expenditures made out of surplus earnings except for the retirement of bonds or for additions to and renewal and replacement of physical property of it or its subsidiaries until either the issue has been further reduced to \$4,000,000 of outstanding bonds, or the bonds have been assumed by Metropolitan Edison Company or Pennsylvania Edison Company; (c) that, except as modified by such

agreement, the rights of the holders of the remaining outstanding securities of York Railways Company, which are 32,000 shares of \$50 par value 5% cumulative preferred stock and 50,000 shares of \$50 par value common stock, remain unaffected; and (d) that all other claims against York Railways Company remain unaffected by the Plan.

*It is ordered,* That a hearing on such matter be held on February 23, 1939, at 10:00 in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-

room clerk in Room 1102 will advise as to the room where such hearing will be held.

*It is further ordered,* That William W. Swift or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before February 18, 1939.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,  
*Secretary.*

[F. R. Doc. 39-424; Filed, February 6, 1939;  
11:40 a. m.]