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No. 1

PRESIDENT OF THE UNITED STATES.

EXECUTIVE ORDER

ENLARGING CAPE ROMAIN MIGRATORY BIRD REFUGE

South Carolina

By virtue of and pursuant to the authority vested in me as President of the United States, and in order to effectuate further the purpose of the Migratory Bird Conservation Act (45 Stat. 1222), it is ordered that the following-described area, acquired by the United States, in Charleston County, South Carolina, with all buildings thereon, be, and it is hereby, reserved and set apart for the use of the Department of Agriculture, subject to valid existing rights, as an addition to the Cape Romain Migratory Bird Refuge, established under the said Migratory Bird Conservation Act:

Being all of what is known as Bull Island, lying on the southwest side of Bull Bay, between Price Creek and Bull Creek, and the Atlantic Ocean, and about three miles off the mainland of South Carolina, and about fourteen miles southwest of McClellanville, South Carolina. The following survey was executed under the direction of the Bureau of Biological Survey, Department of Agriculture, in June and July 1935. All bearings in this description were turned from the true meridian as determined by altitude observations on the sun during the progress of the survey, and all distances are expressed in chains.

Beginning at corner No. 1, a point at the edge of the marsh on the north side of Bull Island, on the west side of Jacks Creek which bears S. 40°30' E., at the junction of Jacks Creek with Bull Harbor; from this corner a U. S. B. S. standard concrete post marked "1 WC COR 1 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner on a small grassy sand ridge, bears S. 16°57' E., 8.01 chs. distant; from which witness corner a 10 in. white oak blazed and scribed "BT WC COR 1" bears N. 56° W., 0.23 ch. distant; an 8 in. white oak blazed and scribed "BT WC COR 1" bears S. 3° E., 0.24 ch. distant;

Thence from said initial point, with the north side of Bull Island, along the edge of the marsh with the meanders thereof, in part with the south shore of Bull Harbor and in part with Bull Bay,

N. 51°28' E., 12.27 chs. to a point across Jacks Creek, at its mouth, on the edge of the salt marsh on Bull Bay; thence,  
N. 21°19' E., 4.43 chs.;  
N. 1°54' E., 8.45 chs.;  
S. 88°57' E., 18.80 chs.;  
S. 75°39' E., 15.66 chs.;  
N. 85°24' E., 15.98 chs. to a point at the edge of salt marsh and grass on Bull Bay;

Thence with mean high water along sandy beach and sand dunes,

N. 31°59' E., 17.19 chs.;  
N. 65°32' E., 5.81 chs. to the northeasterly point of Bull Island; thence,  
S. 37°27' E., 8.12 chs.;  
S. 22°23' E., 19.26 chs. to corner No. 2, a point on the northeasterly end of the seashore of Bull Island, facing the Atlantic Ocean; from this corner a U. S. B. S. standard concrete post marked "2 WC COR 2 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner on the west slope of a grassy sand dune about 2.00 chs. northeast of a dense growth of cedar, myrtle, and palmetto, bears S. 71°30' W., 0.50 ch. distant; from which witness corner a U. S. C. & G. S. concrete monument marked "BULL 1934" bears N. 67°48' W., 3.18 chs. distant; an 18 in. cedar blazed and scribed "BT WC COR 2" bears S. 13°00' W., 2.23 chs. distant; and palmettes were blazed for witness trees;

Thence, with mean high water along the east shore of Bull Island, with the meanders thereof, between the beach and a thick growth of pine, cedar, and palmetto,

S. 22°54' E., 8.82 chs.;  
S. 1°07' E., 9.15 chs.;  
S. 15°31' W., 19.17 chs.;  
S. 14°50' W., 17.21 chs.;  
S. 16°07' W., 4.02 chs.;  
S. 19°25' W., 9.97 chs.;  
S. 19°11' W., 12.25 chs.;  
S. 16°45' W., 21.66 chs.;  
S. 13°31' W., 12.76 chs.;  
S. 25°31' W., 9.19 chs. to corner No. 3, a point at mean high water at the northeast end of a strip of sand dunes lying between the beach and a heavy growth of palmetto, oak, and cedar, at the edge of beach and sand dunes; from this corner a U. S. B. S. standard concrete post marked "3 WC COR 3 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner in grassy sand dunes and scattered palmetto, bears N. 75°22' W., 0.79 ch. distant; and palmettes were blazed for witness trees;

Thence, continuing with the southerly shore of Bull Island, with the meanders thereof, along mean high water,

S. 38°15' W., 12.40 chs.;  
S. 60°52' W., 12.58 chs.;  
S. 71°00' W., 15.63 chs.;  
S. 74°32' W., 14.30 chs.;  
S. 73°50' W., 14.75 chs. to a point at mean high water at the edge of beach and sand dunes; from this point a U. S. B. S. standard concrete post marked "3A WC MP 3-5 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner in grassy sand dunes, bears N. 21° E., 0.77 ch. distant; thence,  
S. 75°22' W., 14.66 chs.;  
S. 76°12' W., 15.10 chs.;  
S. 73°52' W., 14.46 chs.;  
S. 72°21' W., 14.12 chs.;  
S. 71°55' W., 14.35 chs. to a point at mean high water at the edge of beach and sand dunes; from this point the northeast corner of a bathhouse bears N. 76°45' W., 4.24 chs. distant; and a U. S. B. S. standard concrete post marked "4 WC MP 3-10 BULLS ISLAND 1935", set 18 in. in the ground for a witness corner in grassy sand dunes, bears N. 76°45' W., 4.09 chs. distant;

Thence with mean high water along the edge of beach and sand dunes,

S. 69°57' W., 15.15 chs.;  
S. 69°27' W., 17.28 chs.;  
S. 68°00' W., 15.23 chs.;

S. 66°09' W., 15.47 chs.,  
 S. 65°16' W., 15.95 chs. to a point at mean high water at the edge of beach and sand dunes; from this point a U. S. B. S. standard concrete post marked "4A WC MP 3-15" BULLS ISLAND 1935" set 18 in. in the ground for a witness corner in grassy sand dunes, bears N. 24° W., 1.48 chs. distant; thence,  
 S. 62°53' W., 15.37 chs.,  
 S. 62°42' W., 15.82 chs.,  
 S. 60°52' W., 15.52 chs.;  
 S. 60°00' W., 16.22 chs.,  
 S. 59°20' W., 15.62 chs.,  
 S. 59°29' W., 14.78 chs. to a point at mean high water at the edge of the beach and sand dunes; from this point a U. S. B. S. standard concrete post marked "4B WC MP 3-21 BULLS ISLAND 1935" set 18 in. in the ground for a witness corner in grassy sand dunes, bears N. 69°00' W., 1.16 chs. distant; thence,  
 S. 58°17' W., 14.59 chs.,  
 S. 57°45' W., 14.40 chs.,  
 S. 52°57' W., 14.29 chs.,  
 S. 55°24' W., 11.83 chs.,  
 S. 62°04' W., 14.48 chs.,  
 N. 86°48' W., 13.64 chs. to corner No. 4, a point at mean high water on the southwest extremity of Bull Island, at the edge of beach and sand dunes, near the mouth of and northeast of Price Creek; from this corner a U. S. B. S. standard concrete post marked "5 WC COR 4 BULLS ISLAND 1935" set 18 in. in the ground for a witness corner in low sand dunes and thin beach grass, bears N. 27°12' E., 1.64 chs. distant;

Thence up the left bank of Price Creek, with the meanders thereof, on the beach at mean high water,

N. 22°31' W., 14.02 chs. along the edge of beach and sand dunes; thence,  
 N. 28°05' W., 18.59 chs. to a point at the edge of marsh and at the mouth of a creek 1.00 ch. wide bearing N. 60° E., thence,  
 N. 46°59' W., 12.18 chs.;  
 N. 40°41' W., 13.03 chs. to corner No. 5, a point at the edge of salt marsh at the junction of Bull Narrows and Price Creek; from this corner a U. S. B. S. standard concrete post marked "6 WC COR 5 BULLS ISLAND 1935" set 18 in. in the ground for a witness corner in salt marsh and marsh grass, bears S. 88°52' E., 0.76 ch. distant; a U. S. C. & G. S. monument marked "PRICE 1921" bears S. 24°25' E., 2.71 chs. distant;

Thence with the east bank of Bull Narrows, with the meanders thereof, along the edge of salt marsh and marsh grass,

N. 39°42' E., 15.76 chs.,  
 N. 40°36' E., 13.90 chs.,  
 N. 18°33' E., 17.91 chs.,  
 N. 4°37' E., 15.55 chs.,  
 N. 0°45' W., 12.33 chs.,  
 N. 23°14' E., 0.98 ch. to corner No. 6, a point at the edge of marsh and at the junction of Bull Narrows and a creek bearing N. 25° W. to Sewee Bay; from this corner a U. S. B. S. standard concrete post marked "7 WC COR 6 BULLS ISLAND 1935" set 18 in. in the ground for a witness corner in salt marsh and marsh grass, bears S. 7°45' E., 0.71 ch. distant;

Thence with the south bank of Bull Narrows along the edge of salt marsh and marsh grass,

N. 70°38' E., 13.81 chs.,  
 N. 82°24' E., 9.15 chs.,  
 N. 44°15' E., 35.14 chs.,  
 N. 27°27' E., 10.85 chs.,  
 N. 67°53' E., 11.84 chs.,  
 N. 1°07' W., 16.04 chs.,  
 N. 45°52' E., 3.45 chs. to corner No. 7, a point at the edge of marsh at the junction of Bull Creek and Bull Narrows; from this corner a U. S. B. S. standard concrete post marked "8 WC COR 7 BULLS ISLAND 1935" set 18 in. in the ground for a witness corner in salt marsh and marsh grass, bears S. 45°47' W., 2.27 chs. distant; from which witness corner a 1½ in. iron pipe bears N. 55°20' E., 10.30 chs. distant; this pipe at the edge of marsh is corner No. 7 of the State of South Carolina tract No. 2c;

Thence with the south bank of Bull Creek along the edge of salt marsh and grass,

N. 87°46' E., 18.40 chs.,  
 S. 71°59' E., 20.85 chs.,  
 N. 73°00' E., 10.00 chs. to a point on the east bank and at the mouth of Back Creek which bears S. 10° W., from this point a U. S. B. S. standard concrete post marked "8-A WC MP 7-3 BULLS ISLAND 1935" set 18 in. in the ground for a witness corner in salt marsh and marsh grass, bears N. 73° E., 0.15 ch. distant; thence,  
 N. 22°54' E., 7.37 chs.,  
 N. 13°57' E., 14.87 chs. to corner No. 8, a point at the edge of salt marsh; from this corner a U. S. B. S. standard concrete post marked "9 WC COR 8 BULLS ISLAND 1935" set 18 in. in the ground for a witness corner in salt marsh and marsh grass, bears S. 20° E., 0.75 ch. distant; from which

witness corner a 1½ in. iron pipe bears N. 65°49' W. 8.48 chs. distant; this pipe at the edge of marsh is corner No. 5 of the State of South Carolina tract No. 2c;

Thence, continuing with the south bank of Bull Creek along the edge of salt marsh and marsh grass,

N. 68°46' E., 27.23 chs.,  
 N. 84°06' E., 17.43 chs.,  
 N. 89°11' E., 12.12 chs.,  
 S. 70°26' E., 4.26 chs.;  
 S. 65°59' E., 11.15 chs. to a point on the east bank of Wharf Creek; thence,  
 N. 37°56' E., 27.57 chs.;  
 N. 36°03' E., 12.02 chs.;  
 N. 54°38' E., 15.41 chs. to corner No. 9, a point at the edge of salt marsh near the junction of Bull Creek and Bull Harbor; from this corner a U. S. B. S. standard concrete post marked "10 WC COR 9 BULLS ISLAND 1935" set 18 in. in the ground for a witness corner on sandy ridge 0.05 ch. northwest of a U. S. C. & G. S. monument marked "Middle" and 0.40 ch. west of a dense growth of pine, cedar, oak, and palmetto, bears S. 22°36' E., 4.16 chs. distant; from which witness corner a 16 in. white oak, blazed and scribed "BT WC COR 9" bears S. 13° E., 0.46 ch. distant; and from which witness corner a 1½ in. iron pipe bears N. 24°14' W., 18.30 chs. distant; this pipe at the edge of marsh is corner No. 4 of the State of South Carolina tract No. 2c; and cedars were blazed for witness trees;

Thence with the south shore of Bull Harbor, along the edge of the marsh with the meanders thereof,

N. 45°39' E., 9.81 chs.,  
 N. 45°32' E., 9.73 chs.,  
 N. 62°01' E., 18.61 chs.,  
 S. 84°19' E., 11.19 chs.;  
 S. 60°30' E., 5.51 chs.,  
 N. 74°56' E., 6.55 chs.,  
 N. 77°58' E., 26.16 chs. to the place of beginning, containing 5,191.36 acres, be the same more or less.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,

March 13, 1936.

[No. 7316]

[F. R. Doc. 4—Filed, March 13, 1936; 12:47 p. m.]

## TREASURY DEPARTMENT.

Bureau of Internal Revenue.

### REGULATIONS 90 RELATING TO THE EXCISE TAX ON EMPLOYERS UNDER TITLE IX OF THE SOCIAL SECURITY ACT

#### CHAPTER I—DEFINITIONS

##### Section 1101 (a) and (b) of the act

- (a) When used in this Act—
- (1) The term "State" (except when used in section 531) includes Alaska, Hawaii, and the District of Columbia.
  - (2) The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.
  - (3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.
  - (4) The term "corporation" includes associations, joint-stock companies, and insurance companies.
  - (5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.
  - (6) The term "employee" includes an officer of a corporation.
- (b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

##### Section 907 of the act

When used in this title—

- (a) The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were in his employ for some portion of the day (whether or not at the same moment of time) was eight or more.
- (b) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.

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

- (1) Agricultural labor;
- (2) Domestic service in a private home;
- (3) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;
- (4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;
- (5) Service performed in the employ of the United States Government or of an instrumentality of the United States;
- (6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;
- (7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER II—NATURE, SCOPE, AND IMPOSITION OF THE TAX

Section 901 of the act

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

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

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

ART. 201. *Measure of tax.*—(a) The measure of the tax is the total amount of wages payable by an employer with

respect to employment during the calendar year, regardless of the time of actual payment.

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

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

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

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

Section 907 of the act

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

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

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

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

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

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

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

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

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

ART. 205. *Employed individuals.*—An individual is in the employ of another within the meaning of the Act if he per-

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

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

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

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

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

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

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

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

#### Section 907 (c) of the act

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

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

To the extent that an employee performs services outside of the United States for the person who employs him, he is not in an "employment" within the meaning of the Act, and

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

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

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

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

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

#### Section 907 (c) of the act

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

(1) Agricultural labor; \* \* \*

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

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

(b) By an employee in connection with the processing of articles from materials which were produced on a farm; also the packing, packaging, transportation, or marketing of those materials or articles. Such services do not constitute "agricultural labor", however, unless they are performed by an employee of the owner or tenant of the farm on which the materials in their raw or natural state were produced, and unless such processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.

As used herein the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry,

fruit, and truck farms, plantations, ranches, ranges, and orchards.

Forestry and lumbering are not included within the exception.

*Section 907 (c) of the act*

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

(2) Domestic service in a private home;

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

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

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

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

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

*Section 907 (c) of the act*

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

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

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

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

The expression "officers and members of the crew" includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel. The exception extends, for example, to services rendered by the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, deck hands, porters, and chambermaids, and by seal hunters and fishermen on sealing and fishing vessels.

*Section 907 (c) of the act*

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

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

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

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

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

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

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

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

*Section 907 (c) of the act*

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

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

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

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

*Section 907 (c) of the act*

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

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

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

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

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

(1) It must be organized and operated exclusively for one or more of the specified purposes; and

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals.

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

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

Since a corporation or other institution to be within the prescribed class must be organized and operated exclusively for one or more of the specified purposes, an organization which has certain religious purposes and also manufactures and sells articles to the public for profit is not within the statutory class even though its property is held in common and its profits do not inure to the benefit of individual members of the organization.

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

Money contributed by members of an organization to a common fund to be applied to the relief of the particular

members of the organization or their families when in sickness, unemployed, in want, or under other disability, is not a charitable fund.

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

#### Section 901 of the act

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

#### Section 907 (b) of the Act

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

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

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

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

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

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

(A) Items actually paid shall include:

(1) Cash; and

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

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

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

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

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

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

(5) When remuneration for services performed in a calendar year is paid, or when an obligation to pay such remuneration arises, in a subsequent calendar year, the employer is required to advise the collector under oath of the amount thereof (if not reported in the return for the calendar year during which the services were performed) and to pay any tax with respect thereto at the rate in effect for the calendar year during which the services were performed. (See article 210 (b).)

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

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

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

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

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

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

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

#### Section 902 of the act

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

allowed only for contributions made under the laws of States certified for the taxable year as provided in section 903.

*Section 907 (e) of the act*

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

*Section 907 (f) of the act*

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

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

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

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

*Example (a):* On January 15, 1937, M Company, engaged in the manufacture of typewriters, actually pays contributions, with respect to employment in 1936, totaling \$6,200 into the unemployment compensation fund of State A, and contributions totaling \$3,000 into the unemployment compensation fund of State B. The M Company files its return on January 31, 1937, which discloses a total tax of \$10,000. Of the total contributions of \$9,200, the M Company may credit only the amount of \$9,000 against the tax of \$10,000 disclosed by the return. The result is that a tax of \$1,000 is due and payable by M Company.

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

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

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

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

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

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

*Example:* During 1936, contributions are paid by employer A into a State unemployment fund with respect to services performed during the calendar year 1936, and also with re-

spect to services performed during 1935. Only contributions paid with respect to services performed in 1936 are allowable as credit against the tax for the calendar year 1936.

(c) If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contributions credited against the tax, the taxpayer is required to advise the Commissioner under oath of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

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

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

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

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

CHAPTER III—RETURNS AND RECORDS

*Section 905 (b) of the act*

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

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

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

*Section 1102 of the Revenue Act of 1926, made applicable by section 905 (b) of the act*

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

(b) Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him,

to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

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

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

*Section 3165 of the United States Revised Statutes, reenacted by section 1115 of the Revenue Act of 1926*

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

*Section 1104 of the Revenue Act of 1926, as amended by section 618 of the Revenue Act of 1928*

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

*Section 3176 of the United States Revised Statutes, as amended by section 1103 of the Revenue Act of 1926*

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

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

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

**ART. 301. Verification of returns.**—Except as provided below, returns must be verified under oath or affirmation, which may be administered by any officer duly authorized to administer oaths for general purposes by the law of the United States or of any State or Territory, wherein such oath is administered, or by a consular officer of the United States. Returns executed abroad may be attested free of charge before United States consular officers. If a foreign notary or other official having no seal shall act as attesting

officer, the authority of such attesting officer should be certified to by some judicial official or other proper officer having knowledge of the appointment and official character of the attesting officer. If the amount of the tax is \$10 or less, the return may be signed or acknowledged before two witnesses instead of under oath. Returns of corporate employers shall be sworn to by the president, vice president, or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer of the corporation. The return of a partnership or other unincorporated organization shall be sworn to by a responsible and duly authorized member having knowledge of its affairs and, if the partnership or other unincorporated organization has a manager or chief executive officer, by such manager or chief executive officer.

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

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

**ART. 304. Extensions of time for filing returns.**—It is important that the taxpayer render on or before January 31, next following the close of the taxable year, a return as nearly complete as it is possible for him to prepare. However, the Commissioner is authorized to grant an extension of time for not more than 60 days for filing returns, under such rules and regulations as he may prescribe with the approval of the Secretary. Accordingly, authority for granting extensions of time for filing returns is hereby delegated to the several collectors of internal revenue. Application for extensions of time for filing returns should be addressed to the collector of internal revenue for the district in which the taxpayer files his returns and must contain a full recital of the causes for the delay. For extensions of time for payment of tax, see article 401.

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

*Section 905 (c) of the act*

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

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

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

*Section 1102 of the Revenue Act of 1926 made applicable by section 905 (b) of the act*

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

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

*Section 1114 (a) of the Revenue Act of 1926, made applicable by section 905 (b) of the act*

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

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

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

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

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

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

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

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

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

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

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

## CHAPTER IV—PAYMENT OF THE TAX

*Section 905 (a) of the act*

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

*Section 600 of the Revenue Act of 1926, made applicable by section 905 (b) of the act*

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

*Section 905 (b) of the act*

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

*Section 905 (d) of the act*

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

*Section 905 (e) of the act*

At the request of the taxpayer the time for payment of the tax or any installment thereof may be extended under regulations prescribed by the Commissioner with the approval of the Secretary of the Treasury, for a period not to exceed six months from the last day of the period prescribed for the payment of the tax or any installment thereof. The

amount of the tax in respect of which any extension is granted shall be paid (with interest at the rate of one-half of 1 per centum per month) on or before the date of the expiration of the period of the extension.

*Section 905 (f) of the act*

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

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

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

An application for an extension of time for the payment of such tax, part or installment, should be made under oath on the prescribed form, and must be accompanied or supported by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. A sworn statement of assets and liabilities of the taxpayer is required and should accompany the application. An itemized statement showing all receipts and disbursements for each of the three months preceding the due date of the tax or installment shall also be submitted. The application with the evidence must be filed with the collector, who will at once transmit it to the Commissioner, with his recommendations as to the extension. When it is received by the Commissioner it will be examined immediately and, if possible, within 30 days will be rejected, approved, or tentatively approved, subject to certain conditions of which the taxpayer will be immediately notified. The Commissioner will not consider an application for an extension of time for the payment of a tax or installment unless such application is made in writing, and is made to the collector on or before the due date of the tax or installment thereof for which the extension is desired, or on or before the date or dates prescribed for payment in any prior extension granted.

As a condition to the granting of such an extension, the Commissioner will usually require the taxpayer to furnish a bond on the prescribed form in an amount not exceeding double the amount of the tax or installment or to furnish

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

ART. 402. *Fractional part of a cent.*—In the payment of the tax or any installment thereof a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent should not be disregarded in the computation of the tax or any installment thereof.

*Section 1118 (a) of the Revenue Act of 1926*

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

*Section 1 of the act of March 2, 1911 (36 Stat. 965), as amended by the act of March 3, 1913 (37 Stat. 733)*

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

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

(b) *Procedure with respect to dishonored checks*.—If the bank upon which any such check is drawn should, for any reason, refuse to pay it at par, the check should be returned through the depository bank and treated as a dishonored check. All expenses incident to the attempt to collect such check and the return of it through the depository bank must be paid by the drawer of the check, since no deduction can be made from amounts received in payment of taxes. If any taxpayer whose check has been returned uncollected by the depository bank should fail at once to make the check good, or to pay the amount thereof, the collector should proceed to collect the tax as though no check had been given. A taxpayer who tenders a check, whether certified or not, in payment of taxes is not released from his obligation until the check has been paid.

#### CHAPTER V—MISCELLANEOUS PROVISIONS

##### Jeopardy Assessments

##### *Section 1105 of the Revenue Act of 1932, as amended by section 510 of the Revenue Act of 1934*

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

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

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

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

##### Closing Agreements

##### *Section 606 (a) and (b) of the Revenue Act of 1928*

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

revenue tax for any taxable period ending prior to the date of the agreement.

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

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

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

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

##### Interest and Penalties

##### *Section 905 (a) of the act*

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

##### *Section 404 of the Revenue Act of 1935*

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

##### *Section 406 of the Revenue Act of 1935*

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

##### *Section 3176, as amended, United States Revised Statutes as amended by section 1103 of the Revenue Act of 1926*

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

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

##### *Section 3184 of the United States Revised Statutes*

Sec. 3184. Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner of Internal Revenue,

give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof. If such person does not pay the taxes within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of five per centum additional upon the amount of taxes, and interest at the rate of one per centum a month.

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

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

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

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

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

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

#### Credits and Refunds

*Section 3220 of United States Revised Statutes, as amended by section 1111 of the Revenue Act of 1926, and section 619 (b) of the Revenue Act of 1928*

Except as otherwise provided \* \* \* the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; \* \* \*

*Section 3228 (a) of United States Revised Statutes, as amended by section 1112 of the Revenue Act of 1926, section 619 (c) of the Revenue Act of 1928, and section 1106 (a) of the Revenue Act of 1932*

All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally as-

essed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, \* \* \* be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum. The amount of the refund \* \* \* shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

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

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

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

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

(e) If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. The affidavit may be made by the agent of the person assessed, but in such case a power of attorney must accompany the claim.

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

Sec. 3477. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of

the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

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

(g) Any refund or credit made by a State to a taxpayer with respect to any contributions paid by him into a State unemployment fund for the taxable year shall be considered in determining the amount of the refund, if any, due with respect to the tax paid for such taxable year. If, subsequent to the making of a refund with respect to the tax, a refund or credit is made by a State with respect to the contributions paid into the State unemployment fund, the taxpayer is required to advise the collector under oath of the date and amount of the refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest. (For other applicable provisions of law relating to refunds, see Appendix B, paragraphs 22 to 27, inclusive.)

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

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

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

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

ART. 505. *Claim for payment of judgment obtained in United States district court against the United States.*—A claim for the payment of a judgment rendered by a United States district court against the United States representing taxes, penalties, or other sums should be made under oath, on Form 843, in duplicate, and filed directly with the Commissioner of Internal Revenue, Washington, D. C. Two certified copies of the final judgment and an itemized bill of the court costs paid, received by the clerk or other proper officer of the court should be attached to the claim. If the judgment was affirmed on appeal, two certified copies of the mandate of the appellate court should also be attached to the claim. A judgment will not be paid until the period

for appeal has expired unless a stipulation, signed by both parties to the suit, waiving the right to appeal, has been filed with the clerk of the court, and two certified copies of such waiver are furnished to the Commissioner.

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

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

#### Authority for Regulations

##### Section 908 of the act

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

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

GUY T. HELVERING,  
Commissioner of Internal Revenue.

Approved:

H. MORCEN THAU, Jr.,  
Secretary of the Treasury.

[F. R. Doc. 2—Filed, March 13, 1936; 12:01 p. m.]

## DEPARTMENT OF AGRICULTURE.

### Agricultural Adjustment Administration.

NOTICE OF HEARING WITH RESPECT TO PROPOSAL TO AMEND ORDER NO. 3 REGULATING HANDLING OF MILK IN ST. LOUIS, MISSOURI, MARKETING AREA, AND WITH RESPECT TO PROPOSAL TO AMEND MARKETING AGREEMENT TENTATIVELY APPROVED DECEMBER 10, 1935

Whereas, under section 8c of Title I of the Agricultural Adjustment Act, as amended, hereinafter called the act, the Secretary of Agriculture, hereinafter called the Secretary, has issued an order regulating the handling of milk in the St. Louis, Missouri, Marketing Area, effective 12:01 a. m., C. S. T., February 1, 1936; and

Whereas, the Secretary tentatively approved the marketing agreement regulating the handling of milk in the said marketing area on December 10, 1935; and

Whereas, the Secretary has reason to believe that an amendment should be made to said order and said marketing agreement; and

Whereas, under the act, notice of hearing is required in connection with a proposal to amend an order, and the General Regulations, Series A, No. 1, of the Agricultural Adjustment Administration, provide for notice and opportunity for hearing upon marketing agreements and orders;

Now, therefore, pursuant to the act and the General Regulations, notice is hereby given of a hearing to be held on a proposal to amend the order regulating the handling of milk in the St. Louis Marketing Area and the tentatively approved marketing agreement regulating the handling of milk in the St. Louis Marketing Area, in the Chase Hotel, St. Louis, Missouri, on March 16th, 1936, at 9:30 a. m.

This public hearing is for the purpose of receiving evidence as to the necessity for (1) reducing the size of the market-

ing area, (2) changing the minimum prices set forth in Article IV in said order and said marketing agreement, and (3) modifying the classifications set forth in Article III of the said order and said agreement.

Copies of the proposal to amend the order and the marketing agreement may be inspected in, or procured from, the Office of the Hearing Clerk, Room 4725, South Building, United States Department of Agriculture, Washington, D. C.

H. A. WALLACE, *Secretary*.

MARCH 12, 1936.

[F. R. Doc. 5—Filed, March 13, 1936; 1:01 p. m.]

## FEDERAL TRADE COMMISSION.

### TRADE PRACTICE RULES

#### VEGETABLE IVORY BUTTON MANUFACTURING INDUSTRY

##### GROUP I

The unfair trade practices which are embraced in Group I rules are considered to be unfair methods of competition within the decisions of the Federal Trade Commission and the Courts, and appropriate proceedings in the public interest will be taken by the Commission to prevent the use of such unlawful practices in or directly affecting interstate commerce.

##### Rule 1:

The use of false or deceptive selling methods or false or deceptive credit terms which have the tendency, capacity or effect of misleading or deceiving purchasers or prospective purchasers is an unfair trade practice.

##### Rule 2:

The false or deceptive marking or branding of products of the industry for the purpose or with the capacity, tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

##### Rule 3:

The making, or causing, or permitting to be made or published any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of any industry products, or in any other material respect, with the purpose, or with the capacity, tendency, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

##### Rule 4:

Defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers and the tendency to injuriously affect the business of such competitors, is an unfair trade practice.

##### Rule 5:

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of a competitor, not made in good faith but for the purpose of harassing or intimidating such customers or prospective customers or otherwise prejudicing or injuring competitors in their businesses, is an unfair trade practice.

##### Rule 6:

The secret payment or allowance of rebates, refunds, commissions, credits, unearned discounts, or allowances, whether in the form of money, or disguised as free samples to pur-

chasers or in some other form of disguise, or secretly extending or granting to certain purchasers special allowances on the return or exchange of unused goods or other special privileges or services not extended or granted to all purchasers under like terms and conditions, with the intent and the effect of thereby injuring a competitor and where the effect may be to substantially lessen competition, or tend to create a monopoly, or unreasonably restrain trade, is an unfair trade practice.

##### Rule 7:

It is an unfair trade practice for a member of the industry directly or indirectly to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

##### Rule 8:

Wilfully inducing or attempting to induce, by any false or deceptive means whatsoever, the breach of any lawful contract or contracts existing between competitors and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

##### Rule 9:

Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonations of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

##### Rule 10:

It is an unfair trade practice for any member of the industry engaged in interstate commerce in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of industry products sold for use, consumption, or resale within the United States or any place subject to its jurisdiction, whether in the form of price differentials, discounts, terms of payment, transportation allowances, free goods, services or otherwise, and where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

##### Rule 11:

The practice of imitating or causing to be imitated, or directly or indirectly promoting or aiding the imitation of, the trade-marks, trade names, or other exclusively owned symbols or marks of identification of competitors, or the exclusively owned patterns of competitors which have not been directly or by operation of law dedicated to the public, having the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers or the consuming public, is an unfair trade practice.

##### Rule 12:

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor

and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

**Rule 13:**

The practice of using any product of the industry as a "loss leader" to induce the purchase of other merchandise, the sale of which merchandise is used to recoup the loss sustained on the "loss leader" product so sold, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers and which unfairly diverts trade from or otherwise injures competitors, is an unfair trade practice.

**GROUP II**

The trade practices embraced in Group II rules do not, per se, constitute violations of law. They are considered by the industry either to be unethical, uneconomical, or otherwise objectionable; or to be conducive to sound business methods which the industry desires to encourage and promote. Such rules, when they conform to the above specifications and are not violative of law, will be received by the Commission, but the observance of said rules must depend upon and be accomplished through the cooperation of the members of the industry concerned, exercised in accordance with existing law. Where, however, such practices are used in such manner as to become unfair methods of competition in commerce or a violation of any law over which the Commission has jurisdiction, appropriate proceedings will be instituted by the Commission as in the case of violation of Group I rules.

**Rule A:**

The practice of shipping goods on approval or on consignment or pretended consignment, which goods have not been previously requested or ordered, is condemned by the industry.

**Rule B:**

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

[SEAL] OTIS B. JOHNSON, *Secretary*.

[F. R. Doc. 1—Filed, March 13, 1936; 10:56 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 13th day of March 1936.

Commissioners: James M. Landis, Chairman; George C. Mathews, Robert E. Healy, J. D. Ross, William O. Douglas.

[File No. 31-11]

IN THE MATTER OF APPLICATION PURSUANT TO SECTION 3 (A) OF THE PUBLIC UTILITY HOLDING COMPANY ACT, BY THE CLEVELAND-CLIFFS IRON COMPANY; THE CLIFFS CORPORATION; WM. G. MATHER, CYRUS S. EATON, AND EDWARD B. GREENE, AS VOTING TRUSTEES; WM. G. MATHER, S. LIVINGSTON MATHER, AND G. G. WADE, AS VOTING TRUSTEES; WM. G. MATHER, INDIVIDUALLY; AND PURSUANT TO SECTION 2 (A) (8) OF SAID ACT BY THE CLIFFS CORPORATION

**ORDER AUTHORIZING HEARING AND DESIGNATING OFFICER TO CONDUCT PROCEEDINGS**

An application having been duly filed with this Commission, by The Cleveland-Cliffs Iron Company, by The Cliffs Corporation, by Wm. G. Mather, Cyrus S. Eaton, and Edward B. Greene, as Voting Trustees of certain shares of common stock of The Cleveland-Cliffs Iron Company, by Wm. G.

Mather, S. Livingston Mather, and G. G. Wade, as Voting Trustees of certain shares of common stock of The Cliffs Corporation, and by Wm. G. Mather, individually, pursuant to Section 3 (a) of the Public Utility Holding Company Act of 1935, and by The Cliffs Corporation pursuant to Section 2 (a) (8) of said Act:

It is ordered, that the matter be set down for hearing on the 3rd day of April 1936, at ten o'clock in the forenoon of that day at Room 1101, Securities and Exchange Building, 1778 Pennsylvania Avenue NW, Washington, D. C.; and

It is further ordered that Charles S. Moore, an officer of the Commission, be, and he hereby is, designated to preside at such hearing, and authorized to adjourn said hearing from time to time, 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; and

It is further ordered that any interested state, state commission, state securities commission, municipality, or other political subdivision of a state, or any representative of interested consumers or security holders, or any other person, desiring to be admitted as a party in this proceeding or to offer evidence in this matter, shall give notice of such intention to the Commission, such notice to be received by the Commission not later than March 30, 1936.

Upon the completion of the taking of testimony in this matter, the officer conducting said hearing is directed to close the hearing and make his report to the Commission.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR, *Secretary*.

[F. R. Doc. 6—Filed, March 13, 1936; 1:03 p. m.]

[Release No. 521 (Class A)]

**SECURITIES EXCHANGE ACT OF 1934**

The Securities and Exchange Commission, deeming it necessary for the exercise of the functions vested in it and necessary and appropriate in the public interest and for the protection of investors so to do, pursuant to authority conferred upon it by the Securities Exchange Act of 1934, particularly Sections 13 and 23 (a) thereof, hereby adopts the following rule:

**RULE KA4. Annual Reports by Issuers Registering Securities on Form 8-B.** (a) A registrant which registers securities on Form 8-B shall file an annual report pursuant to the provisions of Rules KA1 and KA2 for its predecessor, if only one, or, if there was a group of predecessors, for the parent company in such group, covering the last full fiscal year of such predecessor prior to the registrant's succession, if such year ended on or after December 31, 1935, and if such report is not filed by such predecessor. Such annual report shall contain the information that would have been required if it were being filed by such predecessor. A similar separate report shall also be filed for any predecessor which was a subsidiary in a group of predecessors and had securities registered.

(b) The first annual report, other than a report required by paragraph (a) of this rule, filed pursuant to Rule KA1 by a registrant having securities registered on Form 8-B shall include information regarding the single predecessor or parent predecessor referred to in paragraph (a) of this rule for the period from the close of the last fiscal year of such predecessor prior to the registrant's succession to the date of such succession, as if the registrant had been such predecessor during that period. Information shall likewise be included in such first annual report, in the same manner, regarding each predecessor which was a subsidiary in a group of predecessors and has securities registered.

The foregoing rule shall be effective March 12, 1936.

[SEAL]

FRANCIS P. BRASSOR, *Secretary*.

[F. R. Doc. 7—Filed, March 13, 1936; 1:03 p. m.]

[Release No. 520 (Class A)]

## SECURITIES EXCHANGE ACT OF 1934

## RULE ADOPTING FORM 8-B

The Securities and Exchange Commission, finding—

(1) that the requirements of Form 8-B, as more specifically defined in the instruction book accompanying that form, are necessary and appropriate in the public interest and for the protection of investors, and that, insofar as the information required by such form and instruction book is not within the provisions of Section 12(b) of the Securities Exchange Act of 1934, it is of a character comparable to such information and is applicable to the class of issuers and securities for which such form is prescribed; and

(2) that the exhibits required by such instruction book are necessary and appropriate for the proper protection of investors and to insure fair dealing in the securities registered on Form 8-B.

pursuant to authority conferred upon it by the Securities Exchange Act of 1934, particularly Sections 12 and 23 (a) thereof, hereby adopts Form 8-B and the instruction book accompanying Form 8-B.<sup>1</sup>

## AMENDMENT TO RULE JB1

The Securities and Exchange Commission, pursuant to authority conferred upon it by the Securities Exchange Act of 1934, particularly Sections 12 and 23 (a) thereof, hereby amends Rule JB1 by inserting immediately after the paragraph under the caption "Form 8-A for Additional Securities" the following paragraph:

Form 8-B for Securities Issued in Certain Cases upon the Registrant's Succession to an Issuer or Issuers of Previously Registered Securities. This form shall be used by an issuer, not having securities previously registered, for applications filed on and after March 12, 1936, for the registration of securities, if the conditions set forth in the following paragraphs (a), (b), (c), and (d) exist:

(a) (1) The registrant, having no assets at the time other than nominal assets, succeeded to a single predecessor which had securities registered pursuant to Section 12(b) and (c) of the Act on the exchange or exchanges on which registration is applied for on this form; or

(1) The registrant was organized as the successor to, or, having no assets at the time other than nominal assets, succeeded to, a group of predecessors consisting of a parent which had securities so registered and one or more wholly owned subsidiaries of such parent; or

(11) The registrant was a wholly owned subsidiary of a corporation having securities so registered, which corporation, either alone or with one or more of its other wholly owned subsidiaries, was merged into the registrant.

(b) Substantially all of the securities to be registered on this form were or are to be issued in exchange for or otherwise in respect of previously registered securities of one or more of the predecessors, or are securities which, having been previously registered, have become or are to become securities of the registrant by operation of law or otherwise upon the succession.

(c) The registrant acquired all the assets and assumed all the liabilities of its predecessor or predecessors.

(d) Except for such changes as may have resulted (A) from the substitution of issuers incident to the succession, or (B) from changes in capital stock liability per share, or (C) from the issuance of securities in satisfaction of dividends or interest in arrears on securities of predecessors, the capital structure of the registrant immediately following the succession was substantially the same as the capital structure of the single predecessor or the combined capital structure of the predecessors, or in a case falling within paragraph (a) (11) above, the combined capital structure of all the constituent corporations.

The term "wholly-owned subsidiary" as used in this rule refers to a subsidiary substantially all the outstanding stock of which is held, directly or indirectly, by a single parent.

The foregoing amendment shall be effective March 12, 1936.

[SEAL]

FRANCIS P. BRASSOR, *Secretary*.

[F. R. Doc. 8—Filed, March 13, 1936; 1:10 p. m.]

<sup>1</sup> Form 8-B and the Instruction Book for Form 8-B were filed with the Division of the Federal Register; copies are available upon application to the Securities and Exchange Commission.

Tuesday, March 17, 1936

No. 2

## TREASURY DEPARTMENT.

## Bureau of Internal Revenue.

REGULATIONS 93 RELATING TO THE CARRIERS' TAX, EMPLOYEES' TAX, AND EMPLOYEES' REPRESENTATIVES' TAX UNDER THE ACT APPROVED AUGUST 29, 1935

## CHAPTER I. DEFINITIONS

ARTICLE 1. *Definitions of miscellaneous terms.*—When used in these regulations, the term—

(a) *Act*, unless otherwise indicated, means the Act entitled "An Act To levy an exise tax upon carriers and an income tax upon their employees, and for other purposes", approved August 29, 1935 (Public, No. 400, 74th Congress; 49 Stat. 974).

(b) *Railway Labor Act* means the Act approved May 20, 1926 (44 Stat. 577), as amended by the Act approved June 21, 1934 (48 Stat. 1185).

(c) *Tax* means the carriers' tax, the employees' tax, or the representatives' tax.

(d) *Carriers' tax* means the tax imposed by section 4 of the Act.

(e) *Employees' tax* means the tax imposed by section 2 of the Act.

(f) *Representatives' tax* means the tax imposed by section 7 of the Act.

(g) *Commissioner* means the Commissioner of Internal Revenue.

(h) *Collector* means the collector of internal revenue.

(i) *Person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, trustee, executor, administrator, committee, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(j) *United States* when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

*Section 1 (a) of the act*

(a) The term "carrier" means any express company, sleeping-car company, or carrier by railroad, subject to the Interstate Commerce Act, and any company which may be directly or indirectly owned or controlled thereby or under common control therewith, and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of and operating the business of any such carrier": *Provided, however*, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

ART. 2. *Definition of "carrier"*.—When used in these regulations, the term *carrier* means—

(a) Any express company, sleeping-car company, or carrier by railroad, subject to the Interstate Commerce Act.