

TITLE 26.—INTERNAL REVENUE

Chapter 1.—INCOME TAX

SUBCHAPTER A—INTRODUCTORY PROVISIONS

§ 1. Application of chapter. The provisions of this chapter shall apply only to taxable years beginning after December 31, 1935. Income, war-profits, and excess-profits taxes for taxable years beginning prior to January 1, 1936, shall not be affected by the provisions of this chapter, but shall remain subject to the applicable provisions of prior revenue Acts, except as such provisions are modified by legislation enacted subsequent to this chapter. (June 22, 1936, 9:00 p. m., c. 690, § 1, 49 Stat. 1652.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provision of the Revenue Act of 1931 (Act May 10, 1931, c. 277, § 1, 48 Stat. 684).

§ 2. Cross References.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 2, 49 Stat. 1652.

§ 3. Classification of Provisions.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 3, 49 Stat. 1652.

§ 4. Special classes of taxpayers. * * *

* * * * *

(1) Foreign personal holding companies and their shareholders—Supplement Q. (As added Aug. 26, 1937, 10 a. m., c. 815, Title II, § 207 (a), 50 Stat. 826.)

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 4, 49 Stat. 1653.

Act August 26, 1937, 10 a. m., c. 815, cited to text, added subsection (1).

SUBCHAPTER B—GENERAL PROVISIONS

PART I.—RATES OF TAX

§ 11. Normal Tax on Individuals.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 11, 49 Stat. 1653.

§ 12. Surtax on individuals.

* * * * *

(h) Rates of surtax.

* * * * *

\$7,700 upon surtax net incomes of \$50,000; and upon surtax net incomes in excess of \$50,000 and not in excess of \$56,000, 31 per centum in addition of such excess.

\$9,560 upon surtax net incomes of \$56,000; and upon surtax net incomes in excess of \$56,000 and not in excess of \$62,000, 35 per centum in addition of such excess.

\$11,660 upon surtax net incomes of \$62,000; and upon surtax net incomes in excess of \$62,000 and not in excess of \$68,000, 39 per centum in addition of such excess.

\$14,000 upon surtax net incomes of \$68,000; and upon surtax net incomes in excess of \$68,000 and not in excess of \$74,000, 43 per centum in addition of such excess.

\$16,580 upon surtax net incomes of \$74,000; and upon surtax net incomes in excess of \$74,000 and not in excess of \$80,000, 47 per centum in addition of such excess.

\$19,100 upon surtax net incomes of \$80,000; and upon surtax net incomes in excess of \$80,000 and not in excess of \$90,000, 51 per centum in addition of such excess.

\$24,500 upon surtax net incomes of \$90,000; and upon surtax net incomes in excess of \$90,000 and not

in excess of \$100,000, 55 per centum in addition of such excess.

\$30,000 upon surtax net incomes of \$100,000; and upon surtax net incomes in excess of \$100,000 and not in excess of \$150,000, 58 per centum in addition of such excess.

\$59,000 upon surtax net incomes of \$150,000; and upon surtax net incomes in excess of \$150,000 and not in excess of \$200,000, 60 per centum in addition of such excess.

\$89,000 upon surtax net incomes of \$200,000; and upon surtax net incomes in excess of \$200,000 and not in excess of \$250,000, 62 per centum in addition of such excess.

\$120,000 upon surtax net incomes of \$250,000; and upon surtax net incomes in excess of \$250,000 and not in excess of \$300,000, 64 per centum in addition of such excess.

\$152,000 upon surtax net incomes of \$300,000; and upon surtax net incomes in excess of \$300,000 and not in excess of \$400,000, 66 per centum in addition of such excess.

\$218,000 upon surtax net incomes of \$400,000; and upon surtax net incomes in excess of \$400,000 and not in excess of \$500,000, 68 per centum in addition of such excess.

\$286,000 upon surtax net incomes of \$500,000; and upon surtax net incomes in excess of \$500,000 and not in excess of \$750,000, 70 per centum in addition of such excess.

\$401,000 upon surtax net incomes of \$750,000; and upon surtax net incomes in excess of \$750,000 and not in excess of \$1,000,000, 72 per centum in addition of such excess.

\$641,000 upon surtax net incomes of \$1,000,000; and upon surtax net incomes in excess of \$1,000,000 and not in excess of \$2,000,000, 73 per centum in addition of such excess.

\$1,371,000 upon surtax net incomes of \$2,000,000; and upon surtax net incomes in excess of \$2,000,000 and not in excess of \$5,000,000, 74 per centum in addition of such excess.

\$3,591,000 upon surtax net incomes of \$5,000,000; and upon surtax net incomes in excess of \$5,000,000, 75 per centum in addition of such excess. (As amended Aug. 30, 1935, 6:00 p. m., c. 829, § 101, 49 Stat. 1014.)

(c) Tax on personal holding companies. For surtax on personal holding companies, see subchapter D. (As amended Aug. 26, 1937, 10 a. m., c. 815, Title I, § 2, 50 Stat. 817.)

* * * * *

Section 107 of Act August 30, 1935, c. 829, cited to the text, provided that the amendment to this section by § 101 of such Act should apply only in the case of taxable years beginning after December 31, 1935.

This section, as amended by Act Aug. 30, 1935, c. 829, § 101, 49 Stat. 1014, was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 12, 49 Stat. 1653.

§ 13. Normal tax on corporations—(a) Definition. As used in this chapter the term "normal-tax net income" means the net income minus the sum of—

(1) Interest on obligations of the United States and its instrumentalities. The credit provided in section 26 (a).

(2) Dividends received. The credit provided in section 26 (b). Such credit shall not be allowed in the case of a mutual investment company, as defined in section 48.

(3) Dividends paid. In the case of a mutual investment company the credit provided in section 27, computed without the benefit of subsection (b) thereof (relating to dividend carry-over).

(b) **Imposition of Tax.** There shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every corporation, a normal tax as follows:

Upon normal tax net incomes not in excess of \$2,000, 8 per centum.

\$160 upon normal-tax net incomes of \$2,000; and upon normal-tax net incomes in excess of \$2,000 and not in excess of \$15,000, 11 per centum in addition of such excess.

\$1,590 upon normal-tax net incomes of \$15,000; and upon normal-tax net incomes in excess of \$15,000 and not in excess of \$40,000, 13 per centum in addition of such excess.

\$4,840 upon normal-tax net incomes of \$40,000; and upon normal-tax net incomes in excess of \$40,000, 15 per centum in addition of such excess.

(c) **Exempt Corporations.** For corporations exempt from taxation under this title, see section 103.

(d) **Banks and Trust Companies.** For rate of tax on certain banks and trust companies, see section 107. (June 22, 1936, 0:00 p. m., c. 690, § 13, 49 Stat. 1655.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provision of the Revenue Act of 1931 (Act May 10, 1931, c. 277, § 13, 48 Stat. 686, as amended by Act Aug. 30, 1935, c. 829, § 102 (a), 49 Stat. 1015). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. See also § 13a of this title.

§ 13a. Surtax on undistributed profits—(a) **Definitions.** As used in this chapter—

(1) The term "adjusted net income" means the net income minus the sum of—

(A) The normal tax imposed by section 13.

(B) The credit provided in section 26 (a), relating to interest on certain obligations of the United States and Government corporations.

(C) In the case of a holding company affiliate (as defined in section 221a of Title 12 of the amount allowed as a credit under section 26 (d).

(D) In the case of a national mortgage association created under Title 12, section 1716, the amount allowed as a credit under section 26 (e).

(2) The term "undistributed net income" means the adjusted net income minus the sum of the dividends paid credit provided in section 27 and the credit provided in section 26 (c), relating to contracts restricting dividends.

(b) **Imposition of Tax.** There shall be levied, collected, and paid for each taxable year upon the net income of every corporation a surtax equal to the sum of the following, subject to the application of the specific credit as provided in subsection (c):

7 per centum of the portion of the undistributed net income which is not in excess of 10 per centum of the adjusted net income.

12 per centum of the portion of the undistributed net income which is in excess of 10 per centum and not in excess of 20 per centum of the adjusted net income.

17 per centum of the portion of the undistributed net income which is in excess of 20 per centum and not in excess of 40 per centum of the adjusted net income.

22 per centum of the portion of the undistributed net income which is in excess of 40 per centum and not in excess of 60 per centum of the adjusted net income.

27 per centum of the portion of the undistributed net income which is in excess of 60 per centum of the adjusted net income.

(c) **Adjusted Net Income Less Than \$50,000.**

(1) **Specific credit.** If the adjusted net income is less than \$50,000, there shall be allowed a specific credit equal to the portion of the undistributed net income which is in excess of 10 per centum of the adjusted net income and not in excess of \$5,000, such credit to be applied as provided in paragraph (2).

(2) **Application of specific credit.** If the corporation is entitled to a specific credit, the tax shall be equal to the sum of the following:

(A) A tax computed under subsection (b) upon the amount of the undistributed net income reduced by the amount of the specific credit, plus

(B) 7 per centum of the amount of the specific credit.

(d) **Exemption From Surtax.** The following corporations shall not be subject to the surtax imposed by this section:

(1) Banks as defined in section 107.

(2) Domestic corporations which for any portion of the taxable year are in bankruptcy under the laws of the United States, or are insolvent and in receivership in any court of the United States or of any State, Territory, or the District of Columbia.

(3) Insurance companies subject to the tax imposed under section 201, 204, or 207.

(4) Foreign corporations.

(5) Corporations which, by reason of deriving a large portion of their gross income from sources within a possession of the United States, are entitled to the benefits of section 251.

(6) Corporations organized under chapter 4 of Title 15.

(7) Joint Stock Land Banks organized under sections 811 to 824 of Title 12.

(e) **Exempt Corporations.** For corporations exempt from taxation under this title, see section 103.

(f) **Tax on Personal Holding Companies.** For surtax on personal holding companies, see subchapter D.

(g) **Improper Accumulation of Surplus.** For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see section 101. (June 22, 1936, 0:00 p. m., c. 690, § 14, 49 Stat. 1655; as amended Aug. 26, 1937, 10 a. m., c. 815, Title I, § 2, 50 Stat. 817.)

Revenue acts prior to the Revenue Act of 1936 contained no provisions corresponding to this section. This section and section 13, as enacted by the Revenue Act of 1936, supersede section 13, as enacted by the Revenue Act of 1931 (Act May 10, 1931, c. 277, § 13, 48 Stat. 686) and as amended by Act Aug. 30, 1935, c. 829, § 102 (a), 49 Stat. 1015. It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

PART II.—COMPUTATION OF NET INCOME

§ 21. Net Income.

This section was reenacted without change by Act June 22, 1936, 0:00 p. m., c. 690, § 21, 49 Stat. 1657.

§ 22. **Gross Income—(a) General Definition.** "Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly.

(b) **Exclusions from Gross Income.** The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(1) **Life insurance.** Amounts received under a life insurance contract paid by reason of the death of the insured, whether in a single sum or otherwise (but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income);

(2) **Annuities, etc.** Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts and other than amounts received as annuities) under a life insurance or endowment contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. Amounts received as an annuity under an annuity or endowment contract shall be included in gross income; except that there shall be excluded from gross income the excess of the amount received in the tax-

able year over an amount equal to 3 per centum of the aggregate premiums or consideration paid for such annuity (whether or not paid during such year), until the aggregate amount excluded from gross income under this chapter or prior income tax laws in respect of such annuity equals the aggregate premiums or consideration paid for such annuity. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) or this paragraph;

(3) **Gifts, bequests, and devises.** The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

(4) **Tax-free interest.** Interest upon (A) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (B) obligations of a corporation organized under Act of Congress, if such corporation is an instrumentality of the United States; or (C) the obligations of the United States or its possessions. Every person owning any of the obligations enumerated in clause (A), (B), or (C) shall, in the return required by this chapter, submit a statement showing the number and amount of such obligations owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917 (other than postal savings certificates of deposit) and in the case of obligations of a corporation organized under Act of Congress, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from the taxes imposed by this chapter;

(5) **Compensation for injuries or sickness.** Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

(6) **Ministers.** The rental value of a dwelling house and appurtenances thereof furnished to a minister of the gospel as part of his compensation;

(7) **Income exempt under treaty.** Income of any kind, to the extent required by any treaty obligation of the United States;

(8) **Miscellaneous items.** The following items, to the extent provided in section 116:

Earned income from sources without the United States;

Salaries of certain Territorial employees;

The income of foreign governments;

Income of States, municipalities, and other political subdivisions;

Receipts of shipowners' mutual protection and indemnity associations;

Dividends from China Trade Act corporations;

Compensation of employees of foreign governments.

(c) **Inventories.** Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(d) **Distributions by Corporations.** Distributions by corporations shall be taxable to the shareholders as provided in section 115.

(e) **Determination of Gain or Loss.** In the case of a sale or other disposition of property, the gain or loss shall be computed as provided in section 111.

(f) **Gross Income from Sources Within and Without United States.** For computation of gross income

from sources within and without the United States, see section 110.

(g) **Foreign Personal Holding Companies.** For provisions relating to gross income of foreign personal holding companies and of their shareholders, see section 320. (June 22, 1936, 9:00 p. m., c. 600, § 22, 40 Stat. 1657, as amended Aug. 26, 1937, 10 a. m., c. 815, Title II, § 207 (b), 50 Stat. 826.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 22, 48 Stat. 680). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of additions to and changes in subsection (b). Act of Aug. 26, 1937, c. 815, Title II, § 207 (b), 50 Stat. 826, added subsection (g).

§ 23. **Deductions from Gross Income.** In computing net income there shall be allowed as deductions:

(a) **Expenses.** All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(b) **Interest.** All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 21, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from the taxes imposed by this chapter.

(c) **Taxes Generally.** Taxes paid or accrued within the taxable year, except—

(1) Federal income, war-profits, and excess-profits taxes (other than the excess-profits tax imposed by section 312);

(2) income, war-profits, and excess-profits taxes imposed by the authority of any foreign country or possession of the United States; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of section 131 (relating to credit for taxes of foreign countries and possessions of the United States);

(3) estate, inheritance, legacy, succession, and gift taxes; and

(4) taxes assessed against local benefits of a kind tending to increase the value of the property assessed; but this paragraph shall not exclude the allowance as a deduction of so much of such taxes as is properly allocable to maintenance or interest charges.

(d) **Taxes of Shareholder Paid by Corporation.** The deduction for taxes allowed by subsection (c) shall be allowed to a corporation in the case of taxes imposed upon a shareholder of the corporation upon his interest as shareholder which are paid by the corporation without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes.

(e) **Losses by Individuals.** In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(1) if incurred in trade or business; or

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; or

(3) of property not connected with the trade or business, if the loss arises from fires, storms, shipwreck, or other casualty, or from theft. No loss shall be allowed as a deduction under this paragraph if at the time of the filing of the return such loss has been claimed as a deduction for estate tax purposes in the estate tax return.

(f) **Losses by Corporations.** In the case of a corporation, losses sustained during the taxable year and not compensated for by insurance or otherwise.

(g) **Wagering Losses.** Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

(h) **Basis for Determining Loss.** The basis for determining the amount of deduction for losses sustained, to be allowed under subsection (e) or (f), shall be the adjusted basis provided in section 113 (b) for determining the loss from the sale or other disposition of property.

(i) **Loss on Wash Sales of Stock or Securities.** For disallowance of loss deduction in the case of sales of stock or securities where within thirty days before or after the date of the sale the taxpayer has acquired substantially identical property, see section 118.

(j) **Capital Losses.** Losses from sales or exchanges of capital assets shall be allowed only to the extent provided in section 117 (d).

(k) **Bad Debts.** Debts ascertained to be worthless and charged off within the taxable year (or, in the discretion of the Commissioner, a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part, the Commissioner may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

(l) **Depreciation.** A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each.

(m) **Depletion.** In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the Commissioner, with the approval of the Secretary. In any case in which it is ascertained as a result of operations or of development work that the recoverable units are greater or less than the prior estimate thereof, then such prior estimate (but not the basis for depletion) shall be revised and the allowance under this subsection for subsequent taxable years shall be based upon such revised estimate. In the case of leases the deductions shall be equitably apportioned between the lessor and lessee. In the case of property held by one person for life with remainder to another person, the deduction shall be computed as if the life tenant were the absolute owner of the property and shall be allowed to the life tenant. In the case of property held in trust the allowable deduction shall be apportioned between the income beneficiaries and the trustee in accordance with the pertinent provisions of the instrument creating the trust, or, in the absence of such provisions, on the basis of the trust income allocable to each. (For percentage depletion allowable under this subsection, see section 114 (b), (3) and (4).)

(n) **Basis for Depreciation and Depletion.** The basis upon which depletion, exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be as provided in section 114.

(o) **Charitable and Other Contributions.** In the case of an individual, contributions or gifts made within the taxable year to or for the use of:

(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty

to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) the special fund for vocational rehabilitation authorized by section 440 of Title 38;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual; or

(5) a fraternal society, order, or association, operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals; to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. (For unlimited deduction in contributions and gifts exceed 90 per centum of the net income, see section 120.)

(p) **Pension Trusts.** An employer establishing or maintaining a pension trust to provide for the payment of reasonable pensions to his employees (if such trust is exempt from tax under section 165, relating to trusts created for the exclusive benefit of employees) shall be allowed as a deduction (in addition to the contributions to such trust during the taxable year to cover the pension liability accruing during the year, allowed as a deduction under subsection (a) of this section) a reasonable amount transferred or paid into such trust during the taxable year in excess of such contributions, but only if such amount (1) has not theretofore been allowable as a deduction, and (2) is apportioned in equal parts over a period of ten consecutive years beginning with the year in which the transfer or payment is made. Any deduction allowable under section 23 (g) of the Revenue Act of 1928, May 29, 1928, c. 852, 45 Stat. 802, or the Revenue Act of 1932, June 6, 1932, c. 209, 47 Stat. 179, or the Revenue Act of 1934, May 10, 1934, c. 277, 48 Stat. 688, which under such section was apportioned to any taxable year beginning after December 31, 1935, shall be allowed as a deduction in the years to which so apportioned to the extent allowable under such section if it had remained in force with respect to such year.

(q) **Charitable and Other Contributions by Corporations.** In the case of a corporation, contributions or gifts made within the taxable year to or for the use of a domestic corporation, or domestic trust, or domestic community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or the prevention of cruelty to children (but in the case of contributions or gifts to a trust, chest, fund, or foundation, only if such contributions or gifts are to be used within the United States exclusively for such purposes), no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; to an amount which does not exceed 5 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary.

(r) **Dividends.** For deduction of dividends paid by certain banking corporations, see section 121. (June 22, 1936, 9:00 p. m., c. 690, § 23, 49 Stat. 1658.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 23, 48 Stat. 688), as amended by Act Aug. 30, 1935, c. 829, § 102 (c) (h), 49 Stat. 1015. It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 24. Items not deductible—(a) General Rule. In computing net income no deduction shall in any case be allowed in respect of—

- (1) Personal, living, or family expenses;
- (2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;
- (3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;
- (4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy; or
- (5) Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by this title.

(b) Losses from sales or exchanges of property—
(1) Losses disallowed. In computing net income no deduction shall in any case be allowed in respect of losses from sales or exchanges of property, directly or indirectly—

- (A) Between members of a family, as defined in paragraph (2) (D);
- (B) Except in the case of distributions in liquidation, between an individual and a corporation more than 50 per centum in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;
- (C) Except in the case of distributions in liquidation, between two corporations more than 50 per centum in value of the outstanding stock of each of which is owned by or for the same individual, if—

(1) Either one of such corporations, with respect to the taxable year (if beginning after December 31, 1935) of the corporation preceding the date of the sale or exchange, was a personal holding company as defined in section 332, or

(2) Either one of such corporations, with respect to the taxable year (if not beginning more than 12 months before August 26, 1937, 10 a. m.) of the corporation preceding the date of the sale or exchange, was a foreign personal holding company as defined in section 326;

- (D) Between a grantor and a fiduciary of any trust;
- (E) Between the fiduciary of a trust and the fiduciary of another trust, if the same person is a grantor with respect to each trust; or
- (F) Between a fiduciary of a trust and a beneficiary of such trust.

(2) Stock ownership, family, and partnership rule. For the purposes of determining, in applying paragraph (1), the ownership of stock—

(A) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;

(B) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;

(C) An individual owning (otherwise than by the application of subparagraph (B)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;

(D) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(E) Constructive Ownership as Actual Ownership. Stock constructively owned by a person by reason of the application of subparagraph (A) shall, for the purpose of applying subparagraph (A), (B), or (C), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of subparagraph (B) or (C) shall not be treated as owned by him for the purpose of again applying either of such subparagraphs in order to make another the constructive owner of such stock.

(3) **Special rule for year 1936.** In applying paragraph (1) (C) (1) in a case where the preceding taxable year therein referred to began in the calendar year 1936, the determination as to whether the corporation was a foreign personal holding company shall be made under section 331 (b) (1) before the amendment of subchapter D made by section 1 of the Revenue Act of 1937.

(c) Unpaid expenses and interest. In computing net income no deduction shall be allowed in respect of expenses incurred under section 23 (a) or interest accrued under section 23 (b)—

(1) If not paid within the taxable year or within two and one half months after the close thereof; and

(2) If, by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not, unless paid, includible in the gross income of such person for the taxable year in which or with which the taxable year of the taxpayer ends; and

(3) If, at the close of the taxable year of the taxpayer or at any time within two and one half months thereafter, both the taxpayer and the person to whom the payment is to be made are persons between whom losses would be disallowed under section 24 (b).

(d) Holders of life or terminable interest. Amounts paid under the laws of any State, Territory, District of Columbia, possession of the United States, or foreign country as income to the holder of a life or terminable interest acquired by gift, bequest, or inheritance shall not be reduced or diminished by any deduction for shrinkage (by whatever name called) in the value of such interest due to the lapse of time, nor by any deduction allowed by this chapter (except the deductions provided for in subsections (l) and (m) of section 23) for the purpose of computing the net income of an estate or trust but not allowed under the laws of such State, Territory, District of Columbia, possession of the United States, or foreign country for the purpose of computing the income to which such holder is entitled.

(e) Tax withheld on tax-free covenant bonds. For nondeductibility of tax withheld on tax-free covenant bonds, see section 143 (a) (3). (As amended June 22, 1936, 9:00 p. m., c. 690, § 24, 49 Stat. 1602; Aug. 26, 1937, 10 a. m., c. 815, Title III, § 301, 50 Stat. 827.)

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 24, 49 Stat. 1602.

Act August 26, 1937, c. 815, § 301, 50 Stat. 827, substantially affected subsection (a), added subsections (b) and (c), and renumbered former subsections (b) and (c) as (d) and (e). It is applicable only to taxable years beginning after December 31, 1936.

§ 25. Credits of individual against net income—
(a) Credits for Normal Tax Only. There shall be allowed for the purpose of the normal tax, but not for the surtax, the following credits against the net income:

(1) Interest on United States obligations. The amount received as interest upon obligations of the United States which is included in gross income under section 22.

(2) Interest on obligations of instrumentalities of the United States. The amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(3) Earned income credit. 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(4) Earned income definitions. For the purposes of this section—

(A) "Earned income" means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered, but does not include any amount not included in gross income,

(B) "Interest on obligations of instrumentalities of the United States" means interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(C) "Earned income credit" means 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(D) "Earned income definitions" means the definitions of "earned income" and "interest on obligations of instrumentalities of the United States" for the purposes of this section.

(E) "Interest on United States obligations" means the amount received as interest upon obligations of the United States which is included in gross income under section 22.

(F) "Interest on obligations of instrumentalities of the United States" means the amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(G) "Earned income credit" means 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(H) "Earned income definitions" means the definitions of "earned income" and "interest on obligations of instrumentalities of the United States" for the purposes of this section.

(I) "Interest on United States obligations" means the amount received as interest upon obligations of the United States which is included in gross income under section 22.

(J) "Interest on obligations of instrumentalities of the United States" means the amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(K) "Earned income credit" means 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(L) "Earned income definitions" means the definitions of "earned income" and "interest on obligations of instrumentalities of the United States" for the purposes of this section.

(M) "Interest on United States obligations" means the amount received as interest upon obligations of the United States which is included in gross income under section 22.

(N) "Interest on obligations of instrumentalities of the United States" means the amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(O) "Earned income credit" means 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(P) "Earned income definitions" means the definitions of "earned income" and "interest on obligations of instrumentalities of the United States" for the purposes of this section.

(Q) "Interest on United States obligations" means the amount received as interest upon obligations of the United States which is included in gross income under section 22.

(R) "Interest on obligations of instrumentalities of the United States" means the amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(S) "Earned income credit" means 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(T) "Earned income definitions" means the definitions of "earned income" and "interest on obligations of instrumentalities of the United States" for the purposes of this section.

(U) "Interest on United States obligations" means the amount received as interest upon obligations of the United States which is included in gross income under section 22.

(V) "Interest on obligations of instrumentalities of the United States" means the amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(W) "Earned income credit" means 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(X) "Earned income definitions" means the definitions of "earned income" and "interest on obligations of instrumentalities of the United States" for the purposes of this section.

(Y) "Interest on United States obligations" means the amount received as interest upon obligations of the United States which is included in gross income under section 22.

(Z) "Interest on obligations of instrumentalities of the United States" means the amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(AA) "Earned income credit" means 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(AB) "Earned income definitions" means the definitions of "earned income" and "interest on obligations of instrumentalities of the United States" for the purposes of this section.

(AC) "Interest on United States obligations" means the amount received as interest upon obligations of the United States which is included in gross income under section 22.

(AD) "Interest on obligations of instrumentalities of the United States" means the amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(AE) "Earned income credit" means 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(AF) "Earned income definitions" means the definitions of "earned income" and "interest on obligations of instrumentalities of the United States" for the purposes of this section.

(AG) "Interest on United States obligations" means the amount received as interest upon obligations of the United States which is included in gross income under section 22.

(AH) "Interest on obligations of instrumentalities of the United States" means the amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

(AI) "Earned income credit" means 10 per centum of the amount of the earned net income, but not in excess of 10 per centum of the amount of the net income.

(AJ) "Earned income definitions" means the definitions of "earned income" and "interest on obligations of instrumentalities of the United States" for the purposes of this section.

(AK) "Interest on United States obligations" means the amount received as interest upon obligations of the United States which is included in gross income under section 22.

(AL) "Interest on obligations of instrumentalities of the United States" means the amount received as interest on obligations of a corporation organized under Act of Congress, if (A) such corporation is an instrumentality of the United States; and (B) such interest is included in gross income under section 22; and (C) under the Act authorizing the issue thereof, as amended and supplemented, such interest is exempt from normal tax.

nor that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer, not in excess of 20 per centum of his share of the net profits of such trade or business, shall be considered as earned income.

(B) "Earned income deductions" means such deductions as are allowed by section 23 for the purpose of computing net income, and are properly allocable to or chargeable against earned income.

(C) "Earned net income" means the excess of the amount of the earned income over the sum of the earned income deductions. If the taxpayer's net income is not more than \$3,000, his entire net income shall be considered to be earned net income, and if his net income is more than \$3,000, his earned net income shall not be considered to be less than \$3,000. In no case shall the earned net income be considered to be more than \$14,000.

(b) **Credits for Both Normal Tax and Surtax.** There shall be allowed for the purposes of the normal tax and the surtax the following credits against net income:

(1) **Personal exemption.** In the case of a single person, a personal exemption of \$1,000; or in the case of the head of a family or a married person living with husband or wife, a personal exemption of \$2,500. A husband and wife living together shall receive but one personal exemption. The amount of such personal exemption shall be \$2,500. If such husband and wife make separate returns, the personal exemption may be taken by either or divided between them.

(2) **Credit for dependents.** \$400 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(3) **Change of status.** If the status of the taxpayer, insofar as it affects the personal exemption or credit for dependents, changes during the taxable year, the personal exemption and credit shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month. (June 22, 1936, 9:00 p. m., c. 690, § 25, 49 Stat. 1662.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 25, 48 Stat. 692). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 26. **Credits of corporations.** In the case of a corporation the following credits shall be allowed to the extent provided in the various sections imposing tax—

(a) **Interest on Obligations of the United States and Its Instrumentalities.** The amount received as interest upon obligations of the United States or of corporations organized under Act of Congress which is allowed to an individual as a credit for purposes of normal tax by section 25 (a) (1) or (2).

(b) **Dividends Received.** 85 per centum of the amount received as dividends from a domestic corporation which is subject to taxation under this title. The credit allowed by this subsection shall not be allowed in respect of dividends received from a corporation organized under Chapter 4 of Title 15, or from a corporation which under section 251 is taxable only on its gross income from sources within the United States by reason of its receiving a large per-

centage of its gross income from sources within a possession of the United States.

(c) **Contracts Restricting Payment of Dividends.**

(1) **Prohibition on payment of dividends.** An amount equal to the excess of the adjusted net income over the aggregate of the amounts which can be distributed within the taxable year as dividends without violating a provision of a written contract executed by the corporation prior to May 1, 1936, which provision expressly deals with the payment of dividends. If a corporation would be entitled to a credit under this paragraph because of a contract provision and also to one or more credits because of other contract provisions, only the largest of such credits shall be allowed, and for such purpose if two or more credits are equal in amount only one shall be taken into account.

(2) **Disposition of profits of taxable year.** An amount equal to the portion of the earnings and profits of the taxable year which is required (by a provision of a written contract executed by the corporation prior to May 1, 1936, which provision expressly deals with the disposition of earnings and profits of the taxable year) to be paid within the taxable year in discharge of a debt, or to be irrevocably set aside within the taxable year for the discharge of a debt; to the extent that such amount has been so paid or set aside. For the purposes of this paragraph, a requirement to pay or set aside an amount equal to a percentage of earnings and profits shall be considered a requirement to pay or set aside such percentage of earnings and profits. As used in this paragraph, the word "debt" does not include a debt incurred after April 30, 1936.

(3) **Double credit not allowed.** If both paragraph (1) and paragraph (2) apply, the one of such paragraphs which allows the greater credit shall be applied; and, if the credit allowable under each paragraph is the same, only one of such paragraphs shall be applied.

(d) **Bank Affiliates.** In the case of a holding company affiliate (as defined in section 221a of Title 12), the amount of the earnings or profits which the Board of Governors of the Federal Reserve System certifies to the Commissioner has been devoted by such affiliate during the taxable year to the acquisition of readily marketable assets other than bank stock in compliance with section 61 of Title 12. The aggregate of the credits allowable under this subsection for all taxable years shall not exceed the amount required to be devoted under such section 61 of Title 12 to such purposes.

(e) **National Mortgage Associations.** In the case of a national mortgage association created under section 1716 of Title 12, the amount of the earnings or profits which the Federal Housing Administrator certifies to the Commissioner has been devoted by such association during the taxable year to the acquisition of such reserves as the Administrator may require under the provisions of section 1718 of Title 12. (June 22, 1936, 9:00 p. m., c. 690, § 26, 49 Stat. 1664.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (May 10, 1934, c. 277, § 26, 48 Stat. 693). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 27. **Corporation credit for dividends paid—(a) Dividends Paid Credit in General.** For the purposes of this chapter, the dividends paid credit shall be the amount of dividends paid during the taxable year.

(b) **Dividend Carry-Over.** In computing the dividends paid credit for any taxable year, if the dividends paid during the taxable year are less than the adjusted net income, there shall be allowed as part of the dividends paid credit, and in the following order:

(1) Dividends paid during the second preceding taxable year in excess of the adjusted net income for such year, to the extent not needed as a dividends paid credit for the taxable year preceding the taxable year the tax for which is being computed; and

(2) Dividends paid during the first preceding taxable year in excess of the adjusted net income for such year.

No credit shall be allowed for dividends paid by a corporation prior to its first taxable year under this chapter.

(c) **Dividends in Kind.** If a dividend is paid in property other than money (including stock of the corporation if held by the corporation as an investment) the dividends paid credit with respect thereto shall be the adjusted basis of the property in the hands of the corporation at the time of the payment, or the fair market value of the property at the time of the payment, whichever is the lower.

(d) **Dividends in Obligations of the Corporation.** If a dividend is paid in obligations of the corporation, the amount of the dividends paid credit with respect thereto shall be the face value of the obligations, or their fair market value at the time of the payment, whichever is the lower. If the fair market value is lower than the face value, then when the obligation is redeemed by the corporation, the excess of the amount for which redeemed over the fair market value at the time of the dividend payment (to the extent not allowable as a deduction in computing net income for any taxable year) shall be treated as a dividend paid in the taxable year in which the redemption occurs.

(e) **Taxable Stock Dividends.** In case of a stock dividend or stock right which is a taxable dividend in the hands of shareholders under section 115 (f), the dividends paid credit with respect thereto shall be the fair market value of the stock or the stock right at the time of the payment.

(f) **Distributions in Liquidation.** In the case of amounts distributed in liquidation the part of such distribution which is properly chargeable to the earnings or profits accumulated after February 28, 1913, shall, for the purposes of computing the dividends paid credit under this section, be treated as a taxable dividend paid.

(g) **Preferential Dividends.** No dividends paid credit shall be allowed with respect to any distribution unless the distribution is pro rata, equal in amount, and with no preference to any share of stock as compared with other shares of the same class.

(h) **Nontaxable Distributions.** If any part of a distribution (including stock dividends and stock rights) is not a taxable dividend in the hands of such of the shareholders as are subject to taxation under this chapter for the period in which the distribution is made, no dividends paid credit shall be allowed with respect to such part. (June 22, 1936, 9:00 p. m., c. 690, § 27, 49 Stat. 1665.)

Revenue acts prior to the Revenue Act of 1936 contained no provisions corresponding to this section.

PART III.—CREDITS AGAINST TAX

§ 31. Taxes of foreign countries and possessions of United States.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 31, 49 Stat. 1666.

§ 32. **Taxes withheld at source.** The amount of tax withheld at the source under section 143 or 144 shall be allowed as a credit against the tax. (June 22, 1936, 9:00 p. m., c. 690, § 32, 49 Stat. 1666.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 32, 48 Stat. 693). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 33. Credit for overpayments.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 33, 49 Stat. 1666.

PART IV.—ACCOUNTING PERIODS AND METHODS OF ACCOUNTING

§ 41. General rule.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 41, 49 Stat. 1666.

§ 42. Period in which items of gross income included.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 42, 49 Stat. 1636.

§ 43. **Period for which deductions and credits taken.** The deductions and credits (other than the dividends paid credit provided in section 27) provided for in this chapter shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period. In the case of the death of a taxpayer there shall be allowed as deductions and credits for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly allowable in respect of such period or a prior period. (June 22, 1936, 9:00 p. m., c. 690, § 43, 49 Stat. 1666.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 43, 48 Stat. 694). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the addition of the matter in parentheses.

§ 44. Installment basis.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 44, 49 Stat. 1667.

§ 45. Allocation of income and deductions.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 45, 49 Stat. 1667.

§ 46. Change of accounting period.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 46, 49 Stat. 1668.

§ 47. **Returns for a period of less than twelve months—(a) Returns for Short Period Resulting from Change of Accounting Period.** If a taxpayer, with the approval of the Commissioner, changes the basis of computing net income from fiscal year to calendar year a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December 31. If the change is from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year. If the change is from one fiscal year to another fiscal year a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year.

(b) **Income Computed on Basis of Short Period** Where a separate return is made under subsection (a) on account of a change in the accounting period, and in all other cases where a separate return is required or permitted, by regulations prescribed by the Commissioner with the approval of the Secretary, to be made for a fractional part of a year, then the income shall be computed on the basis of the period for which separate return is made.

(c) **Income Placed on Annual Basis.** If a separate return is made (except returns of the income of a corporation) under subsection (a) on account of a change in the accounting period, the net income, computed on the basis of the period for which separate return is made, shall be placed on an annual basis by multiplying the amount thereof by twelve and dividing by the number of months included in the period for which the separate return is made. The tax shall be such part of the tax computed on such annual basis as the number of months in such period is of twelve months.

(d) **Earned Income.** The Commissioner with the approval of the Secretary shall by regulations prescribe the method of applying the provisions of subsections (b) and (c) (relating to computing income on the basis of a short period, and placing income on an annual basis) to cases where a taxpayer makes a separate return under subsection (a) on account of a change in the accounting period, and it

appears that for the period for which the return is so made he has received earned income.

(e) **Reduction of Credits Against Net Income.** In the case of a return made for a fractional part of a year, except a return made under subsection (a), on account of a change in the accounting period, the personal exemption and credit for dependents shall be reduced respectively to amounts which bear the same ratio to the full credits provided as the number of months in the period for which return is made bears to twelve months.

(f) **Closing of Taxable Year in Case of Jeopardy.** For closing of taxable year in case of jeopardy, see section 146 (June 22, 1936, 9:00 p. m., c. 690, § 47, 49 Stat. 1668.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 47, 48 Stat. 695). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of changes in subsection (c).

§ 48. **Definitions.** When used in this chapter—

(a) **Taxable Year.** "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this Part. "Taxable year" includes, in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the Commissioner with the approval of the Secretary, the period for which such return is made.

(b) **Fiscal Year.** "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(c) **Paid, Incurred, Accrued.** The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this Part.

(d) **Trade or Business.** The term "trade or business" includes the performance of the functions of a public office.

(e) **Mutual Investment Companies**

(1) **General definition.** The term "mutual investment company" means any corporation (whether chartered or created as an investment trust, or otherwise), except as provided in paragraph 3, if— (As amended Aug. 26, 1937, 10 a. m., c. 815, Title VI, § 602, 50 Stat. 831.)

(A) It is organized for the purpose of, and substantially all its business consists of, holding, investing, or reinvesting in stock or securities; and

(B) At least 95 per centum of its gross income is derived from dividends, interest, and gains from sales or other disposition of stock or securities; and

(C) Less than 30 per centum of its gross income is derived from the sale or other disposition of stock or securities held for less than six months; and

(D) An amount not less than 90 per centum of its net income is distributed to its shareholders as taxable dividends during the taxable year; and

(E) Its shareholders are, upon reasonable notice, entitled to redemption of their stock for their proportionate interests in the corporation's properties, or the cash equivalent thereof less a discount not in excess of 3 per centum thereof.

(2) **Limitations.** Despite the provisions of paragraph (1) a corporation shall not be considered as a mutual investment company if, subsequent to a date thirty days after June 22, 1936, at any time during the taxable year—

(A) More than 5 per centum of the gross assets of the corporation, taken at cost, was invested in stock or securities, or both, of any one corporation, government, or political subdivision thereof, but this limitation shall not apply to investments in obligations of the United States or in obligations of any corporation organized under general Act of Congress if such corporation is an instrumentality of the United States; or

(B) It owned more than 10 per centum of the outstanding stock or securities, or both, of any one corporation; or

(C) It had any outstanding bonds or indebtedness in excess of 10 per centum of its gross assets taken at cost; or

(D) It fails to comply with any rule or regulation prescribed by the Commissioner, with the approval of the Secretary, for the purpose of ascertaining the actual ownership of its outstanding stock.

(3) **Corporations excepted.** This section shall not apply to any corporation—

(A) With respect to a taxable year beginning after December 31, 1936, if the corporation is with respect to such year a personal holding company as defined in section 332.

(B) With respect to a taxable year beginning before January 1, 1937, if the corporation is with respect to such year a personal holding company as defined in section 331 (b) (1) before the amendment of subchapter D by section 1 of the Revenue Act of 1937.

(C) With respect to a taxable year ending after August 26, 1937, 10 a. m., if the corporation is with respect to such year a foreign personal holding company as defined in section 326. (June 22, 1936, 9:00 p. m., c. 690, § 48, 49 Stat. 1669, as amended Aug. 26, 1937, 10 a. m., c. 815, Title VI, § 602, 50 Stat. 831.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 48, 48 Stat. 696). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the addition of subsection (c).

Act August 26, 1937, c. 815, Title VI, § 602, 50 Stat. 831, changed reference in subsection (c) (1) and added paragraph (3) to subsection (c).

PART V.—RETURNS AND PAYMENT OF TAX

§ 51. **Individual returns—(a) Requirement.** The following individuals shall each make under oath a return stating specifically the items of his gross income and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this title as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife; and

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income.

(b) **Husband and Wife.** If a husband and wife living together have an aggregate net income for the taxable year of \$2,500 or over, or an aggregate gross income for such year of \$5,000 or over—

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

(c) **Persons Under Disability.** If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(d) **Fiduciaries.** For returns to be made by fiduciaries, see section 142. (June 22, 1936, 9:00 p. m., c. 690, § 51, 49 Stat. 1670.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 51, 48 Stat. 697). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of changes in subsection (a).

§ 52. **Corporation returns.** Every corporation subject to taxation under this chapter shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe. The return shall be sworn to by the president, vice president, or other principal officer and by

the treasurer, assistant treasurer, or chief accounting officer. In cases where receivers, trustees in bankruptcy, or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the corporations of whose business or property they have custody and control. (June 22, 1936, 9 p. m., c. 690, § 52, 49 Stat. 1670.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 52, 48 Stat. 697). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a re-enactment of such provisions with the exception of changes in the first sentence.

§ 53. Time and place for filing returns.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 53, 49 Stat. 1670.

§ 54. Records and special returns—(a) By taxpayer. Every person liable to any tax imposed by this chapter 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) To determine liability to tax. 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 under this chapter.

(c) Information at the source. For requirement of statements and returns by one person to assist in determining the tax liability of another person, see sections 147 to 150.

(d) Copies of returns. If any person, required by law or regulations made pursuant to law to file a copy of any income return for any taxable year, fails to file such copy at the time required, there shall be due and assessed against such person \$5 in the case of an individual return or \$10 in the case of a fiduciary, partnership, or corporation return, and the collector with whom the return is filed shall prepare such copy. Such amount shall be collected and paid, without interest, in the same manner as the amount of tax due in excess of that shown by the taxpayer upon a return in the case of a mathematical error appearing on the face of the return. Copies of returns filed or prepared pursuant to this subsection shall remain on file for a period of not less than two years from the date they are required to be filed, and may be destroyed at any time thereafter under the direction of the Commissioner.

(e) Foreign personal holding companies. For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see sections 329d, 329e, and 329g. For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see sections 329f and 329g. (June 22, 1936, 9:00 p. m., c. 690, § 54, 49 Stat. 1671, as amended Aug. 26, 1937, 10 a. m., c. 815, Title II, § 207 (c), 50 Stat. 826.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 51, 48 Stat. 698). It is a re-enactment of such provisions, including subsection (d) which was added by the Act of April 10, 1936, c. 189, 49 Stat. 1190. However, subsection (d) as added by the Act of April 10, 1936, contained the words "beginning after December 31, 1934", after the word "year" appearing in the third line of the text, and contained a sentence, preceding the last sentence now set out in the text, as follows: "In case of a person who filed a return for any taxable year not beginning after December 31, 1935, such amount of \$5 or \$10 shall be due and assessed only if the copy is not filed before the expiration of fifteen days after the mailing by the collector in whose office the return is filed, of a request to such person for the filing of the copy." It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

Act August 26, 1937, c. 815, § 207 (c), 50 Stat. 826, added subsection (e).

§ 55. Publicity of returns—(a) Inspection generally; regulations. Returns made under this chapter 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 (44 Stat. 10 69); and all returns made under the Revenue Act of 1936 shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President.

(b) Who may inspect; use of information; penalty. (1) All income returns filed under this chapter (or copies thereof, if so prescribed by regulations made under this subsection), shall be open to inspection by any official, body, or commission, lawfully charged with the administration of any State tax law, if the inspection is for the purpose of such administration or for the purpose of obtaining information to be furnished to local taxing authorities as provided in paragraph (2). The inspection shall be permitted only upon written request of the governor of such State, designating the representative of such official, body, or commission to make the inspection on behalf of such official, body, or commission. The inspection shall be made in such manner, and at such times and places, as shall be prescribed by regulations made by the Commissioner with the approval of the Secretary.

(2) Any information thus secured by any official, body, or commission of any State may be used only for the administration of the tax laws of such State, except that upon written request of the Governor of such State any such information may be furnished to any official, body, or commission of any political subdivision of such State, lawfully charged with the administration of the tax laws of such political subdivision, but may be furnished only for the purpose of, and may be used only for, the administration of such tax laws. Any officer, employee, or agent of any State or political subdivision, who divulges (except as authorized in this subsection, or when called upon to testify in any judicial or administrative proceeding to which the State or political subdivision, or such State or local official, body, or commission, as such, is a party) any information acquired by him through an inspection permitted him or another under this subsection shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both. (June 22, 1936, c. 690, 9:00 p. m. § 55, 49 Stat. 1671.)

* * * * *

This section, as enacted by the Revenue Act of 1936, supersedes subsections (a) and (b) of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 55, 48 Stat. 698, as amended April 19, 1935, c. 74, 49 Stat. 158) as to taxable years beginning after Dec. 31, 1935.

§ 56. Payment of tax.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 56, 49 Stat. 1672.

§ 57. Examination of return and determination of tax.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 57, 49 Stat. 1673.

§ 58. Additions to tax and penalties.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 58, 49 Stat. 1673.

§ 59. Administrative proceedings.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 59, 49 Stat. 1673.

Word "title" in first clause of this section should read "chapter."

§ 61. Laws made applicable.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 61, 49 Stat. 1673.

§ 62. Rules and regulations.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 62, 49 Stat. 1673.

The following sections of the Revenue Act of 1936 are omitted:

§ 63 Taxes in Lieu of Taxes under 1934 Act. The taxes imposed by this title and Title IA shall be in lieu of the

Taxes imposed by Title I and IA of the Revenue Act of 1934, as amended.

1 of Short Title. This title may be cited as the "Income Tax Act of 1936."

SUBCHAPTER C—SUPPLEMENTAL PROVISIONS

SUPPLEMENT A—RATES OF TAX

§ 101. Capital gains and losses—(a) General rule. In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

100 per centum if the capital asset has been held for not more than 1 year;

80 per centum if the capital asset has been held for more than 1 year but not for more than 2 years;

60 per centum if the capital asset has been held for more than 2 years but not for more than 5 years;

40 per centum if the capital asset has been held for more than 5 years but not for more than 10 years;

30 per centum if the capital asset has been held for more than 10 years.

(b) Definition of capital assets. For the purposes of this chapter, "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

(c) Determination of period for which held. For the purpose of subsection (a)—

(1) In determining the period for which the taxpayer has held property received on an exchange there shall be included the period for which he held the property exchanged, if under the provisions of section 113, the property received has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as the property exchanged.

(2) In determining the period for which the taxpayer has held property however acquired there shall be included the period for which such property was held by any other person, if under the provisions of section 113, such property has, for the purpose of determining gain or loss from a sale or exchange, the same basis in whole or in part in his hands as it would have in the hands of such other person.

(3) In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under the provisions of section 112 (g) of the Revenue Act of 1928, May 29, 1928, c. 852, 45 Stat. 818, or the Revenue Act of 1932, June 6, 1932, c. 209, 47 Stat. 196, there shall be included the period for which he held the stock or securities in the distributing corporation prior to the receipt of the stock or securities upon such distribution.

(4) In determining the period for which the taxpayer has held stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 118 of this title or section 118 of the Revenue Act of 1928, May 29, 1928, c. 852, 45 Stat. 818, or the Revenue Act of 1932, June 6, 1932, c. 209, 47 Stat. 196, or the Revenue Act of 1934, May 10, 1934, c. 277, 48 Stat. 715, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, there shall be included the period for which he held the stock or securities the loss from the sale or other disposition of which was not deductible.

(d) Limitation on capital losses. Losses from sales or exchanges of capital assets shall be allowed only to the extent of \$2,000 plus the gains from such sales or exchanges. If a bank or trust company incorporated under the laws of the United States or of any State or Territory, a substantial part of whose business is the receipt of deposits, sells any bond, debenture, note, or certificate or other evidence of indebtedness issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, any loss resulting from such sale (except such portion of the loss as does not exceed the amount, if any, by which the adjusted basis of such instrument exceeds the par or face value thereof) shall not be subject to the foregoing limitation and shall not be included in determining the applicability of such limitation to other losses.

(e) Gains and losses from short sales, etc. For the purpose of this chapter—

(1) gains or losses from short sales of property shall be considered as gains or losses from sales or exchanges of capital assets; and

(2) gains or losses attributable to the failure to exercise privileges or options to buy or sell property shall be considered as gains or losses from sales or exchanges of capital assets held for one year or less.

(f) Retirement of bonds, etc. For the purposes of this chapter, amounts received by the holder upon the retirement of bonds, debentures, notes, or certificates or other evidences of indebtedness issued by any corporation (including those issued by a government or political subdivision thereof), with interest coupons or in registered form, shall be considered as amounts received in exchange therefor. (June 22, 1936, 9:00 p. m., c. 691, § 117, 49 Stat. 1691.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 117, 48 Stat. 714). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 102. Sale of oil or gas properties. In the case of a bona fide sale of any oil or gas property, or any interest therein, where the principal value of the property has been demonstrated by prospecting or exploration or discovery work done by the taxpayer, the portion of the tax imposed by section 12 attributable to such sale shall not exceed 30 per centum of the selling price of such property or interest. (June 22, 1936, 9:00 p. m., c. 690, § 105, 49 Stat. 1678.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1932 (Act June 6, 1932, c. 209, § 102, 47 Stat. 192). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 103. Exemptions from tax on corporations. The following organizations shall be exempt from taxation under this chapter—

(1) Labor, agricultural, or horticultural organizations;

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

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

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

(5) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

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

which is carrying on propaganda, or otherwise attempting, to influence legislation;

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

(8) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes;

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

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

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

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

(13) Corporations organized by an association exempt under the provisions of paragraph (12), or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting pre-

ferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, upon dissolution or otherwise, beyond the fixed dividend.) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose;

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

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

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

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

(18) Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro-rata shares, whether distributed or not, of the net income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received. (June 22, 1936, 9:00 p. m., c. 690, § 101, 49 Stat. 1673.)

This section, as enacted by the Revenue Act of 1934, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 101, 48 Stat. 700). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a re-enactment of such provisions with the addition of paragraph (18).

§ 104. Surtax on corporations improperly accumulating surplus—(a) Imposition of tax. There shall be levied, collected, and paid for each taxable year (in addition to other taxes imposed by this title) upon the net income of every corporation (except as provided in subsection (f)) if such corporation, however created or organized, is formed or availed of for the purpose of preventing the imposition of the surtax upon its shareholders or the shareholders of any other corporation, through the medium of permitting earnings or profits to accumulate instead of being divided or distributed. (As amended Aug. 26, 1937, 10 a. m., c. 815, Title VI, § 601, 50 Stat. 830.)

(1) In the case of corporations not subject to the surtax on undistributed profits imposed by section 13a, a surtax equal to the sum of the following:

25 per centum of the amount of the retained net income not in excess of \$100,000 plus

35 per centum of the amount of the retained net income in excess of \$100,000.

(2) In the case of corporations subject to the surtax on undistributed profits imposed by section 13a, a surtax equal to the sum of the following:

15 per centum of the amount of the retained net income not in excess of \$100,000, plus

25 per centum of the amount of the retained net income in excess of \$100,000.

(b) **Prima facie evidence.** The fact that any corporation is a mere holding or investment company, or that the earnings or profits are permitted to accumulate beyond the reasonable needs of the business, shall be prima facie evidence of a purpose to avoid surtax upon shareholders.

(c) **Definitions.** As used in this chapter—

(1) **Special adjusted net income.** The term "special adjusted net income" means the net income minus the sum of—

(A) **Taxes.** Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year, to the extent not allowed as a deduction by section 23, but not including the tax imposed by this section or a corresponding section of a prior income-tax law.

(B) **Disallowed charitable, etc., contributions.** Contributions or gifts, not otherwise allowed as a deduction, or for the use of donees described in section 23 (a), for the purposes therein specified.

(C) **Disallowed losses.** Losses from sales or exchanges of capital assets which are disallowed as a deduction by section 101 (d).

(D) **Bank affiliates.** In the case of a holding company affiliate (as defined in section 221a of Title 12), the amount allowed as a credit under section 26 (d).

(E) **National mortgage associations.** In the case of a national mortgage association created under section 1716 of Title 12, the amount allowed as a credit under section 26 (e).

(2) **Retained net income.** The term "retained net income" means the special adjusted net income minus the sum of the dividends paid credit provided in section 27 and the credit provided in section 26 (e), relating to contracts restricting dividends. For the purposes of this subsection, such credits shall be computed by substituting in section 26 (e) and in section 27 for the words "adjusted net income" wherever appearing in such sections the words "special adjusted net income."

(d) **Payment of surtax on pro rata shares.** The tax imposed by this section shall not apply if (1) all the shareholders of the corporation include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the retained net income of the corporation for such year, and (2) 90 per centum or more of such retained net income is so included in the gross income of shareholders other than corporations. Any amount so included in the gross income of a shareholder shall be treated as a dividend received. Any subsequent distribution made by the corporation out of earnings or profits for such taxable year shall, if distributed to any shareholder who has so included in his gross income his pro rata share, be exempt from tax in the amount of the share so included.

(e) **Tax on personal holding companies.** For surtax on personal holding companies, see subchapter D. (As amended Aug. 26, 1937, 10 a. m., c. 815, Title I, § 2, 50 Stat. 817.)

(f) **Corporations excepted.** This section shall not apply to any corporation—

(1) With respect to a taxable year beginning after December 31, 1936, if the corporation is with respect to such year a personal holding company as defined in section 332.

(2) With respect to a taxable year beginning before January 1, 1937, if the corporation is with respect to such year a personal holding company as defined in section 331 (b) (1) before the amendment of subchapter D by section 1 of the Revenue Act of 1937.

(3) With respect to a taxable year ending after August 26, 1937, 10 a. m., if the corporation is with respect to such year a foreign personal holding company as defined in section 326. (June 22, 1936, 9:00 p. m., c. 690, § 102, 49 Stat. 1676, as amended Aug. 26, 1937, 10 a. m., c. 815, Title I, § 2, 50 Stat. 817; Aug. 26, 1937, 10 a. m., c. 815, Title VI, § 601, 50 Stat. 830.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 102, 48 Stat. 702).

Act August 26, 1937, c. 815, Title VI, § 601, 50 Stat. 830, changed second parenthetical phrase in subsection (a) and added subsection (1). Section 2 of Act Aug. 26, 1937, c. 815, Title I, affected subsection (e).

§ 106. **Rates of tax on citizens and corporations of certain foreign countries.** Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 11, 12, 13, 201 (b), 204 (a), 210 (a), and 231 (a) shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by sections 11, 12, 13, 201 (b), 204 (a), 210 (a), or 231 (a), as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 per centum of the net income of the taxpayer. Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made. (June 22, 1936, 9:00 p. m., c. 690, § 103, 49 Stat. 1677.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 103, 48 Stat. 703). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of changes in the first sentence.

§ 107. **Banks and trust companies—(a) Definition.**

As used in this section the term "bank" means a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any State, or of any Territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts, or of exercising fiduciary powers similar to those permitted to national banks under section 248 (k) of Title 12, and which is subject by law to supervision and examination by State or Federal authority having supervision over banking institutions.

(b) **Rate of tax.** Banks shall be taxable in the same manner as other corporations, except that they shall not be subject to the surtax imposed by section 13a, and except that the normal tax imposed by section 13 shall be at the rate of 15 per centum instead of at the rates provided in such section. (June 22, 1936, 9:00 p. m., c. 690, § 104, 49 Stat. 1677.)

Revenue acts prior to the Revenue Act of 1936 contained no provisions corresponding to this section.

SUPPLEMENT B.—COMPUTATION OF NET INCOME

§ 111. Determination of amount of gain or loss.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 111, 49 Stat. 1678.

In subsection (c) of this section the word "title" should read "chapter."

§ 112. **Recognition of gain or loss—(a) General rule.** Upon the sale or exchange of property the entire amount of the gain or loss, determined under section 111, shall be recognized, except as hereinafter provided in this section.

(b) **Exchanges solely in kind**

(1) **Property held for productive use or investment.** No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for prop-

erty of a like kind to be held either for productive use in trade or business or for investment.

(2) **Stock for stock of same corporation.** No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(3) **Stock for stock on reorganization.** No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(4) **Same—Gain of corporation.** No gain or loss shall be recognized if a corporation a party to a reorganization exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation a party to the reorganization.

(5) **Transfer to corporation controlled by transferor.** No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(6) **Property received by corporation on complete liquidation of another.** No gain or loss shall be recognized upon the receipt by a corporation of property distributed in complete liquidation of another corporation. For the purposes of this paragraph a distribution shall be considered to be in complete liquidation only if—

(A) the corporation receiving such property was, on the date of the adoption of the plan of liquidation, and has continued to be at all times until the receipt of the property, the owner of stock (in such other corporation) possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the owner of at least 80 per centum of the total number of shares of all other classes of stock (except nonvoting stock which is limited and preferred as to dividends), and was at no time on or after the date of the adoption of the plan of liquidation and until the receipt of the property the owner of a greater percentage of any class of stock than the percentage of such class owned at the time of the receipt of the property; and

(B) no distribution under the liquidation was made before the first day of the first taxable year of the corporation beginning after December 31, 1935; and either

(C) the distribution is by such other corporation in complete cancellation or redemption of all its stock, and the transfer of all the property occurs within the taxable year; in such case the adoption by the stockholders of the resolution under which is authorized the distribution of all the assets of such corporation in complete cancellation or redemption of all its stock, shall be considered an adoption of a plan of liquidation, even though no time for the completion of the transfer of the property is specified in such resolution; or

(D) such distribution is one of a series of distributions by such other corporation in complete cancellation or redemption of all its stock in accordance with a plan of liquidation under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year during which is made the first of the series of distributions under the plan, except that if such transfer is not completed within such period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, no distribution under the plan shall be considered a distribution in complete liquidation.

If such transfer of all the property does not occur within the taxable year the Commissioner may require of the taxpayer such bond, or waiver of the statute of limitations on assessment and collection, or both, as he may deem necessary to insure, if the transfer of the property is not completed within such three-year period, or if the taxpayer does not continue qualified under subparagraph (A) until the completion of such transfer, the assessment and collection of all income, war-profits, and excess-profits taxes then imposed by law for such taxable year or subsequent taxable years, to the extent attributable to property so received. A distribution otherwise constituting a distribution in complete liquidation within the meaning of this paragraph shall not be considered as not constituting such a distribution merely because it does not constitute a distribution or liquidation within the meaning of the corporate law under which the distribution is made; and for the purposes of this paragraph a transfer of property of such other corporation to the taxpayer shall not be considered as not constituting a distribution (or one of a series of distributions) in complete cancellation or redemption of all the stock of such other corporation, merely because the carrying out of the plan involves (1) the transfer under the plan to the taxpayer by such other corporation of property, not attributable to shares owned by the taxpayer, upon an exchange described in paragraph (4) of this subsection, and (2) the complete cancellation or redemption under the plan, as a result of exchanges described in paragraph (3) of this subsection, of the shares not owned by the taxpayer.

(c) Gain from exchanges not solely in kind

(1) If an exchange would be within the provisions of subsection (b) (1), (2), (3), or (5) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(2) If a distribution made in pursuance of a plan of reorganization is within the provisions of paragraph (1) of this subsection but has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under paragraph (1) shall be taxed as a gain from the exchange of property.

(d) Same—Gain of corporation. If an exchange would be within the provisions of subsection (b) (4) of this section if it were not for the fact that the property received in exchange consists not only of stock or securities permitted by such paragraph to be received without the recognition of gain, but also of other property or money, then—

(1) If the corporation receiving such other property or money distributes it in pursuance of the plan of reorganization, no gain to the corporation shall be recognized from the exchange, but

(2) If the corporation receiving such other property or money does not distribute it in pursuance of the plan of reorganization, the gain, if any, to the corporation shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property so received, which is not so distributed.

(e) Loss from exchanges not solely in kind. If an exchange would be within the provisions of subsection (b) (1) to (5), inclusive, of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such paragraph to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(f) Involuntary conversions. If property (as a result of its destruction in whole or in part, theft or

seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Commissioner with the approval of the Secretary, expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

(g) **Definition of reorganization.** As used in this section and section 113—

(1) The term "reorganization" means (A) a statutory merger or consolidation, or (B) the acquisition by one corporation in exchange solely for all or a part of its voting stock: of at least 80 per centum of the voting stock and at least 80 per centum of the total number of shares of all other classes of stock of another corporation; or of substantially all the properties of another corporation, or (C) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (D) a recapitalization, or (E) a mere change in identity, form, or place of organization, however effected.

(2) The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another.

(h) **Definition of control.** As used in this section the term "control" means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and at least 80 per centum of the total number of shares of all other classes of stock of the corporation.

(i) **Foreign corporations.** In determining the extent to which gain shall be recognized in the case of any of the exchanges (made after June 22, 1936) described in subsection (b) (3), (4), (5), or (6), or described in so much of subsection (c) as refers to subsection (b) (3) or (5), or described in subsection (d), a foreign corporation shall not be considered as a corporation unless, prior to such exchange, it has been established to the satisfaction of the Commissioner that such exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes. (June 22, 1936, 9:00 p. m., c. 690, § 112, 49 Stat. 1678.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 112, 48 Stat. 794), as amended by Act August 30, 1935, c. 820, § 110, 49 Stat. 1020. It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 113. **Adjusted basis for determining gain or loss—(a) Basis (unadjusted) of property.** The basis of property shall be the cost of such property; except that—

(1) **Inventory value.** If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(2) **Gifts after December 31, 1920.** If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that for the purpose of determining loss the basis shall be the basis so determined or the fair market value of the property at the time of the gift, whichever is lower. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Commissioner shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Commissioner finds it impossible to obtain such facts, the basis in the

hands of such donor or last preceding owner shall be the fair market value of such property as found by the Commissioner as of the date or approximate date at which, according to the best information that the Commissioner is able to obtain, such property was acquired by such donor or last preceding owner.

(3) **Transfer in trust after December 31, 1920.** If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a bequest or devise) the basis shall be the same as it would be in the hands of the grantor, increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer was made.

(4) **Gift or transfer in trust before January 1, 1921.** If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

(5) **Property transmitted at death.** If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, the basis shall be the fair market value of such property at the time of such acquisition. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death. For the purpose of this paragraph property passing without full and adequate consideration under a general power of appointment exercised by will shall be deemed to be property passing from the individual exercising such power by bequest or devise. If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, and if the decedent died after August 26, 1937, 10 a. m., and if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was a foreign personal holding company, then the basis shall be the fair market value of such property at the time of such acquisition or the basis in the hands of the decedent, whichever is lower. (As amended Aug. 20, 1937, 10 a. m., c. 815, Title II, § 204, 50 Stat. 825.)

(6) **Tax-free exchanges generally.** If the property was acquired, after February 28, 1913, upon an exchange described in section 112 (b) to (e), inclusive, the basis (except as provided in paragraph (15) of this subsection) shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 112 (b) to be received without the recognition of gain or loss, and in part of other property, the basis provided in this paragraph shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. This paragraph shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(7) **Transfers to corporation.** If the property was acquired after December 31, 1917, by a corporation in connection with a reorganization, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to

the year in which the transfer was made. This paragraph shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee as the consideration in whole or in part for the transfer.

(8) Property acquired by issuance of stock or as paid-in surplus. If the property was acquired after December 31, 1920, by a corporation—

(A) by the issuance of its stock or securities in connection with a transaction described in section 112 (b) (5) (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money, in addition to such stock or securities), or

(B) as paid-in surplus or as a contribution to capital,

then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(9) Involuntary conversion. If the property was acquired, after February 28, 1913, as the result of a compulsory or involuntary conversion described in section 112 (f), the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

(10) Wash sales of stock. If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under section 118 of this chapter or corresponding provisions of prior income tax laws, relating to wash sales) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(11) Property acquired during affiliation. In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, without regard to inter-company transactions in respect of which gain or loss was not recognized. For the purposes of this paragraph, the term "period of affiliation" means the period during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after January 1, 1922, unless a consolidated return was made, nor any taxable year after the taxable year 1928. The basis in case of property acquired by a corporation during any period, in the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928, May 29, 1928, c. 852, § 141, 45 Stat. 831, or the Revenue Act of 1932, June 6, 1932, c. 209, § 141, 47 Stat. 213, or the Revenue Act of 1934, May 10, 1934, c. 277, § 141, 48 Stat. 720, shall be determined in accordance with regulations prescribed under section 141 (b) of this chapter or the Revenue Act of 1928, May 29, 1928, c. 852, § 141, 45 Stat. 831, or the Revenue Act of 1932, June 6, 1932, c. 209, § 141, 47 Stat. 213, or the Revenue Act of 1934, May 10, 1934, c. 277, § 141, 48 Stat. 720. The basis in the case of property held by a corporation during any period, in

the taxable year 1929 or any subsequent taxable year, in respect of which a consolidated return is made by such corporation under section 141 of this chapter or the Revenue Act of 1928, May 29, 1928, c. 852, § 141, 45 Stat. 831, or the Revenue Act of 1932, June 6, 1932, c. 209, § 141, 47 Stat. 213, or the Revenue Act of 1934, May 10, 1934, c. 277, § 141, 48 Stat. 720, shall be adjusted in respect of any items relating to such period, in accordance with regulations prescribed under section 141 (b) of this chapter or the Revenue Act of 1928, May 29, 1928, c. 852, § 141, 45 Stat. 831, or the Revenue Act of 1932, June 6, 1932, c. 209, § 141, 47 Stat. 213, or the Revenue Act of 1934, May 10, 1934, c. 277, § 141, 48 Stat. 720, applicable to such period.

(12) Basis established by Revenue Act of 1932. If the property was acquired, after February 28, 1913, in any taxable year beginning prior to January 1, 1934, and the basis thereof, for the purposes of the Revenue Act of 1932, June 6, 1932, c. 209, 47 Stat. 173, was prescribed by section 113 (a) (6), (7), or (8) of such Act, then for the purposes of this chapter the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

(13) Partnerships. If the property was acquired, after February 28, 1913, by a partnership and the basis is not otherwise determined under any of the paragraphs (1) to (12), inclusive, of this subsection, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made. If the property was distributed in kind by a partnership to any partner, the basis of such property in the hands of the partner shall be such part of the basis in his hands of his partnership interest as is properly allocable to such property.

(14) Property acquired before March 1, 1913. In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subsection, adjusted (for the period prior to March 1, 1913) as provided in subsection (b), is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(15) Property received by a corporation on complete liquidation of another. If the property was received by a corporation upon a distribution in complete liquidation of another corporation within the meaning of section 112 (b) (6), then the basis shall be the same as it would be in the hands of the transferor.

(16) Basis established by Revenue Act of 1934. If the property was acquired, after February 28, 1913, in any taxable year beginning prior to January 1, 1936, and the basis thereof, for the purposes of the Revenue Act of 1934, May 10, 1934, c. 277, 48 Stat. 640, was prescribed by section 113 (a) (6), (7), or (8) of such Act, then for the purposes of this chapter the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

(b) Adjusted Basis. The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

(1) General rule. Proper adjustment in respect of the property shall in all cases be made—

(A) for expenditures, receipts, losses, or other items, properly chargeable to capital account, including taxes and other carrying charges on unimproved and unproductive real property, but no such adjustment shall be made for taxes or other carrying charges for which deductions have been taken by the taxpayer in determining net income for the taxable year or prior taxable years;

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amorti-

zation, and depletion, to the extent allowed (but not less than the amount allowable) under this chapter or prior income tax laws. Where for any taxable year prior to the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income.

(C) in respect of any period prior to March 1, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

(D) in the case of stock (to the extent not provided for in the foregoing subparagraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of the Revenue Act of 1918, Feb. 21, 1919, c. 18, § 218, 40 Stat. 1070, or the Revenue Act of 1921, Nov. 23, 1921, c. 136, § 218, 42 Stat. 215); and

(E) to the extent provided in section 329e (f) in the case of the stock of United States shareholders in a foreign personal holding company. (As added Aug. 26, 1937, 10 a. m., c. 815, § 203, 50 Stat. 825.)

(2) **Substituted basis.** The term "substituted basis" as used in this subsection means a basis determined under any provision of subsection (a) of this section or under any corresponding provision of a prior income tax law, providing that the basis shall be determined—

(A) by reference to the basis in the hands of a transferor, donor, or grantor, or

(B) by reference to other property held at any time by the person for whom the basis is to be determined.

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in paragraph (1) of this subsection shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases. (June 22, 1936, 9:00 p. m., c. 690, § 113, 49 Stat. 1682, as amended Aug. 26, 1937, 10 a. m., c. 815, Title II, §§ 203, 204, 50 Stat. 825.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 113, 48 Stat. 708). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

Act August 26, 1937, c. 815, § 203, 50 Stat. 825, added paragraph (E) to subsection (b) (1), and section 204 of said act added last sentence to paragraph (5) of subsection (a).

§ 114. Basis for depreciation and depletion—(a) Basis for depreciation. The basis upon which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property.

(b) Basis for depletion

(1) **General rule.** The basis upon which depletion is to be allowed in respect of any property shall be the adjusted basis provided in section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property, except as provided in paragraphs (2), (3), and (4) of this subsection.

(2) **Discovery value in case of mines.** In the case of mines (other than metal, coal, or sulphur mines) discovered by the taxpayer after February 28, 1913, the basis for depletion shall be the fair market value of the property at the date of discovery or within thirty days thereafter, if such mines were not acquired as the result of purchase of a proven tract or

lease, and if the fair market value of the property is materially disproportionate to the cost. The depletion allowance under section 23 (m) based on discovery value provided in this paragraph shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance under section 23 (m) be less than it would be if computed without reference to discovery value. Discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after February 28, 1913, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

(3) **Percentage depletion for oil and gas wells.** In the case of oil and gas wells the allowance for depletion under section 23 (m) shall be 27½ per centum of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance under section 23 (m) be less than it would be if computed without reference to this paragraph.

(4) **Percentage depletion for coal and metal mines and sulphur.** The allowance for depletion under section 23 (m) shall be, in the case of coal mines, 5 per centum, in the case of metal mines, fifteen per centum, and, in the case of sulphur mines or deposits, 23 per centum, of the gross income from the property during the taxable year, excluding from such gross income an amount equal to any rents or royalties paid or incurred by the taxpayer in respect of the property. Such allowance shall not exceed 50 per centum of the net income of the taxpayer (computed without allowance for depletion) from the property. A taxpayer making his first return under this title in respect of a property shall state whether he elects to have the depletion allowance for such property for the taxable year for which the return is made computed with or without regard to percentage depletion, and the depletion allowance in respect of such property for such year shall be computed according to the election thus made. If the taxpayer fails to make such statement in the return, the depletion allowance for such property for such year shall be computed without reference to percentage depletion. The method, determined as above, of computing the depletion allowance shall be applied in the case of the property for all taxable years in which it is in the hands of such taxpayer, or of any other person if the basis of the property (for determining gain) in his hands is, under section 113, determined by reference to the basis in the hands of such taxpayer, either directly or through one or more substituted bases, as defined in that section. The above right of election shall be subject to the qualification that this paragraph shall, for the purpose of determining whether the method of computing the depletion allowance follows the property, be considered a continuation of section 114 (b) (4) of the Revenue Act of 1934, May 10, 1934, c. 277, 48 Stat. 710, and as giving no new election in cases where such section would, if applied, give no new election. (June 22, 1936, 9:00 p. m., c. 690, § 114, 49 Stat. 1686.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 114, 48 Stat. 710). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 115. Distributions by corporations—(a) Definition of dividend. The term "dividend" when used in this chapter (except in section 203 (a) (3) and section 207 (e) (1), relating to insurance companies) means any distribution made by a corporation to its shareholders, whether in money or in other property,

(1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made.

(b) **Source of distributions.** For the purposes of the Revenue Act of 1936 every distribution is made out of earnings or profits to the extent thereof, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of property accrued, before March 1, 1913, may be distributed exempt from tax, after the earnings and profits accumulated after February 28, 1913, have been distributed, but any such tax-free distribution shall be applied against and reduce the adjusted basis of the stock provided in section 113.

(c) **Distributions in liquidation.** Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under section 111, but shall be recognized only to the extent provided in section 112. Despite the provisions of section 101 (a), 100 per centum of the gain so recognized shall be taken into account in computing net income, except in the case of amounts distributed in complete liquidation of a corporation. For the purpose of the preceding sentence, "complete liquidation" includes any one of a series of distributions made by a corporation in complete cancellation or redemption of all of its stock in accordance with a bona fide plan of liquidation and under which the transfer of the property under the liquidation is to be completed within a time specified in the plan, not exceeding two years from the close of the taxable year during which is made the first of the series of distributions under the plan. In the case of amounts distributed (whether before January 1, 1931, or on or after such date) in partial liquidation (other than a distribution within the provisions of subsection (h) of this section of stock or securities in connection with a reorganization) the part of such distribution which is properly chargeable to capital account shall not be considered a distribution of earnings or profits. If any distribution in complete liquidation (including any one of a series of distributions made by the corporation in complete cancellation or redemption of all its stock) is made by a foreign corporation which with respect to any taxable year beginning on or before, and ending after, August 26, 1937, 10 a. m., was a foreign personal holding company, and with respect to which a United States group (as defined in section 326 (a) (2)) existed after August 26, 1937, 10 a. m., and before January 1, 1938, then, despite the foregoing provisions of this subsection, 100 per centum of the gain recognized resulting from such distribution shall be taken into account in computing net income—

(1) Unless such liquidation is completed before January 1, 1938; or

(2) Unless (if it is established to the satisfaction of the Commissioner by evidence submitted before January 1, 1938, that due to the laws of the foreign country in which such corporation is incorporated, or for other reason, it is or will be impossible to complete the liquidation of such company before such date) the liquidation is completed on or before such date as the Commissioner may find reasonable, but not later than June 30, 1938. (As amended Aug. 26, 1937, 10 a. m., c. 815, Title II, § 205, 50 Stat. 825.)

(d) **Other distributions from capital.** If any distribution (not in partial or complete liquidation) made by a corporation to its shareholders is not out of increase in value of property accrued before March 1, 1913, and is not a dividend, then the amount of such distribution shall be applied against and reduce the

adjusted basis of the stock provided in section 113, and if in excess of such basis, such excess shall be taxable in the same manner as a gain from the sale or exchange of property.

(e) **Distributions by personal service corporations.** Any distribution made by a corporation, which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or the Revenue Act of 1921, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918, Feb. 24, 1919, c. 18, 40 Stat. 1670, or section 218 of the Revenue Act of 1921, Nov. 23, 1921, c. 136, 42 Stat. 245, shall be exempt from tax to the distributees.

(f) **Stock dividends.**

(1) **General rule.** A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend to the extent that it does not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution.

(2) **Election of shareholders as to medium of payment.** Whenever a distribution by a corporation is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either (A) in its stock or in rights to acquire its stock, of a class which if distributed without election would be exempt from tax under paragraph (1), or (B) in money or any other property (including its stock or in rights to acquire its stock, of a class which if distributed without election would not be exempt from tax under paragraph (1)), then the distribution shall constitute a taxable dividend in the hands of all shareholders, regardless of the medium in which paid.

(g) **Redemption of stock.** If a corporation cancels or redeems its stock (whether or not such stock was issued as a stock dividend) at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock, to the extent that it represents a distribution of earnings or profits accumulated after February 28, 1913, shall be treated as a taxable dividend.

(h) **Effect on earnings and profits of distributions of stock.** The distribution (whether before January 1, 1936, or on or after such date) to a distributee by or on behalf of a corporation of its stock or securities or stock or securities in another corporation shall not be considered a distribution of earnings or profits of any corporation—

(1) if no gain to such distributee from the receipt of such stock or securities was recognized by law, or

(2) if the distribution was not subject to tax in the hands of such distributee because it did not constitute income to him within the meaning of the Sixteenth Amendment to the Constitution or because exempt to him under section 115 (f) of the Revenue Act of 1934, May 10, 1934, c. 277, 48 Stat. 711, or a corresponding provision of a prior Revenue Act.

As used in this subsection the term "stock or securities" includes rights to acquire stock or securities.

(i) **Definition of partial liquidation.** As used in this section the term "amounts distributed in partial liquidation" means a distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

(j) **Valuation of dividend.** If the whole or any part of a dividend is paid to a shareholder in any medium other than money the property received other than money shall be included in gross income at its fair market value at the time as of which it becomes income to the shareholder. (June 22, 1936, 9:00 p. m., c. 690, § 115, 49 Stat. 1687, as amended Aug. 26, 1937, 10 a. m., c. 815, Title II, § 205, 50 Stat. 825.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 115, 48 Stat. 711).

Act August 26, 1937, c. 815, § 205, 50 Stat. 825, added last sentence to subsection (c).

§ 116. Exclusions from gross income. In addition to the items specified in section 22 (b), the following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(a) **Earned income from sources without United States.** In the case of an individual citizen of the United States, a bona fide nonresident of the United States for more than six months during the taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts would constitute earned income as defined in section 25 (a) if received from sources within the United States; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this subsection.

(b) **Teachers in Alaska and Hawaii.** In the case of an individual employed by Alaska or Hawaii or any political subdivision thereof as a teacher in any educational institution, the compensation received as such. This subsection shall not exempt compensation paid directly or indirectly by the Government of the United States.

(c) **Income of foreign governments.** The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States.

(d) **Income of states, municipalities, etc.** Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof.

Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior to September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility—

(1) If by the terms of such contract the tax imposed by this chapter is to be paid out of the proceeds from the operation of such public utility, prior to any division of such proceeds between the person and the State, Territory, political subdivision, or the District of Columbia, and if, but for the imposition of the tax imposed by this chapter, a part of such proceeds for the taxable year would accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then a tax upon the net income from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter, but there shall be refunded to such State, Territory, political subdivision, or the District of Columbia (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this chapter) would have accrued directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, bears to the amount of the net income from the operation of such public utility for such taxable year.

(2) If by the terms of such contract no part of the proceeds from the operation of the public utility for the taxable year would, irrespective of the tax imposed by this chapter, accrue directly to or for the use of such State, Territory, political subdivision, or the District of Columbia, then the tax upon the net income of such person from the operation of such public utility shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter.

(e) **Bridges to be acquired by state or political subdivision.** Whenever any State or political subdivision thereof, in pursuance of a contract to which

It is not a party entered into before May 20, 1928, is to acquire a bridge—

(1) If by the terms of such contract the tax imposed by this chapter is to be paid out of the proceeds from the operation of such bridge prior to any division of such proceeds, and if, but for the imposition of the tax imposed by this chapter, a part of such proceeds for the taxable year would accrue directly to or for the use of or would be applied for the benefit of such State or political subdivision, then a tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter, but there shall be refunded to such State or political subdivision (under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary) an amount which bears the same relation to the amount of the tax as the amount which (but for the imposition of the tax imposed by this chapter) would have accrued directly to or for the use of or would be applied for the benefit of such State or political subdivision, bears to the amount of the net income from the operation of such bridge for such taxable year. No such refund shall be made unless the entire amount of the refund is to be applied in part payment for the acquisition of such bridge.

(2) If by the terms of such contract no part of the proceeds from the operation of the bridge for the taxable year would, irrespective of the tax imposed by this chapter, accrue directly to or for the use of or be applied for the benefit of such State or political subdivision, then the tax upon the net income from the operation of such bridge shall be levied, assessed, collected, and paid in the manner and at the rates prescribed in this chapter.

(f) **Dividend from "China Trade Act" corporation.** In the case of a person, amounts distributed as dividends to or for his benefit by a corporation organized under chapter 4 of Title 15, if, at the time of such distribution, he is a resident of China, and the equitable right to the income of the shares of stock of the corporation is in good faith vested in him.

(g) **Shipowners' protection and indemnity associations.** The receipts of shipowners' mutual protection and indemnity associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder; but such corporations shall be subject as other persons to the tax upon their net income from interest, dividends, and rents.

(h) **Compensation of employees of foreign governments.**

(1) **Rule for exclusion.** Wages, fees, or salary of an employee of a foreign government (including a consular or other officer, or a nondiplomatic representative) received as compensation for official services to such government—

(A) If such employee is not a citizen of the United States; and

(B) If the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(C) If the foreign government whose employee is claiming exemption grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

(2) **Certificate by Secretary of State.** The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries. (June 22, 1930, 9:00 p. m., c. 690, § 116, 40 Stat. 1689.)

This section, as enacted by the Revenue Act of 1930, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 116, 48 Stat. 712), as amended by Act Aug. 27, 1935, c. 707, § 1, 49 Stat. 908. It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 118. Loss from wash sales of stock or securities.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 118, 49 Stat. 1692.

§ 119. Income from sources within and without United States—(a) Gross income from sources in United States. The following items of gross income shall be treated as income from sources within the United States:

(1) **Interest.** Interest from the United States, any Territory, any political subdivision of a Territory, or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including—

(A) Interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States and not having an office or place of business therein, or

(B) Interest received from a resident alien individual, a resident foreign corporation, or a domestic corporation, when it is shown to the satisfaction of the Commissioner that less than 20 per centum of the gross income of such resident payor or domestic corporation has been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such payor preceding the payment of such interest, or for such part of such period as may be applicable, or

(C) Income derived by a foreign central bank of issue from bankers' acceptances;

(2) **Dividends.** The amount received as dividends—

(A) from a domestic corporation other than a corporation entitled to the benefits of section 251, and other than a corporation less than 20 per centum of whose gross income is shown to the satisfaction of the Commissioner to have been derived from sources within the United States, as determined under the provisions of this section, for the three-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or

(B) from a foreign corporation unless less than 50 per centum of the gross income of such foreign corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of this section; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources; but dividends from a foreign corporation shall, for the purposes of section 131 (relating to foreign tax credit), be treated as income from sources without the United States;

(3) **Personal services.** Compensation for labor or personal services performed in the United States, but in the case of a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year, compensation received by such an individual (if such compensation does not exceed \$3,000 in the aggregate) for labor or services performed as an employee of or under a contract with a nonresident alien, foreign partnership, or foreign corporation not engaged in trade or business within the United States, shall not be deemed to be income from sources within the United States;

(4) **Rentals and royalties.** Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property; and

(5) **Sale of real property.** Gains, profits, and income from the sale of real property located in the United States.

(6) **Sale of personal property.** For gains, profits, and income from the sale of personal property, see subsection (e).

(b) **Net income from sources in United States.** From the items of gross income specified in subsection (a) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States.

(c) **Gross income from sources without United States.** The following items of gross income shall be treated as income from sources without the United States:

(1) Interest other than that derived from sources within the United States as provided in subsection (a) (1) of this section;

(2) Dividends other than those derived from sources within the United States as provided in subsection (a) (2) of this section;

(3) Compensation for labor or personal services performed without the United States;

(4) Rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties; and

(5) Gains, profits, and income from the sale of real property located without the United States.

(d) **Net income from sources without United States.** From the items of gross income specified in subsection (c) of this section there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as net income from sources without the United States.

(e) **Income from sources partly within and partly without United States.** Items of gross income, expenses, losses and deductions, other than those specified in subsections (a) and (c) of this section, shall be allocated or apportioned to sources within or without the United States, under rules and regulations prescribed by the Commissioner with the approval of the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the net income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses or other deductions which can not definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as net income from sources within the United States. In the case of gross income derived from sources partly within and partly without the United States, the net income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which can not definitely be allocated to some item or class of gross income; and the portion of such net income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Commissioner with the approval of the Secretary. Gains, profits, and income from—

(1) transportation or other services rendered partly within and partly without the United States, or

(2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or

In part) by the taxpayer without and sold within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States. Gains, profits and income derived from the purchase of personal property within and its sale without the United States or from the purchase of personal property without and its sale within the United States, shall be treated as derived entirely from sources within the country in which sold, except that gains, profits, and income derived from the purchase of personal property within the United States and its sale within a possession of the United States or from the purchase of personal property within a possession of the United States and its sale within the United States shall be treated as derived partly from sources within and partly from sources without the United States.

(f) Definitions. As used in this section the words "sale" or "sold" include "exchange" or "exchanged"; and the word "produced" includes "created", "fabricated", "manufactured", "extracted", "processed", "cured", or "aged". (June 22, 1936, 9:00 p. m., c. 690, § 119, 49 Stat. 1693.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 119, 48 Stat. 710). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 120. Unlimited deduction for charitable and other contributions.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 120, 49 Stat. 1695.

§ 121. Deduction of dividends paid on certain preferred stock of certain corporations. In computing the net income of any national banking association, or of any bank or trust company organized under the laws of any State, Territory, possession of the United States, or the Canal Zone, or of any other banking corporation engaged in the business of industrial banking and under the supervision of a State banking department or of the Comptroller of the Currency, or of any incorporated domestic insurance company, there shall be allowed as a deduction from gross income, in addition to deductions otherwise provided for in this chapter, any dividend (not including any distribution in liquidation) paid, within such taxable year, to the United States or to any instrumentality thereof exempt from Federal income taxes, on the preferred stock of the corporation owned by the United States or such instrumentality. The amount allowable as a deduction under this section shall be deducted from the dividends paid credit otherwise computed under section 27. (June 22, 1936, 9:00 p. m., c. 690, § 121, 49 Stat. 1696.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 121, as added by Act Aug. 27, 1935, c. 767, § 3, 49 Stat. 908). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

SUPPLEMENT C.—CREDITS AGAINST TAX

§ 131. Taxes of foreign countries and possessions of United States.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 131, 49 Stat. 1696.

SUPPLEMENT D.—RETURNS AND PAYMENT OF TAX

§ 141. Consolidated returns of railroad corporations—(a) Privilege to file consolidated returns. An affiliated group of corporations shall, subject to the provisions of this section, have the privilege of making a consolidated return for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all the corporations which have been members of the affiliated group at any time during the taxable year for which the return is made consent to all the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1934, May 10, 1934, c. 277, 48 Stat.

420, insofar as not inconsistent with this chapter) prescribed prior to the making of such return; and the making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) Regulations. The Commissioner, with the approval of the Secretary, shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be determined, computed, assessed, collected, and adjusted in such manner as clearly to reflect the income and to prevent avoidance of tax liability.

(c) Computation and payment of tax. In any case in which a consolidated return is made the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under subsection (b) (or, in case such regulations are not prescribed prior to the making of the return, then the regulations prescribed under section 141 (b) of the Revenue Act of 1934, May 10, 1934, c. 277, 48 Stat. 720, insofar as not inconsistent with this chapter) prescribed prior to the date on which such return is made.

(d) Definition of "affiliated group." As used in this section an "affiliated group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 95 per centum of the stock of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 95 per centum of the stock of at least one of the other corporations; and

(3) Each of the corporations is either (A) a corporation whose principal business is that of a common carrier by railroad or (B) a corporation the assets of which consist principally of stock in such corporations and which does not itself operate a business other than that of a common carrier by railroad. For the purpose of determining whether the principal business of a corporation is that of a common carrier by railroad, if a common carrier by railroad has leased its railroad properties and such properties are operated as such by another common carrier by railroad, the business of receiving rents for such railroad properties shall be considered as the business of a common carrier by railroad. As used in this paragraph, the term "railroad" includes a street, suburban, or interurban electric railway.

As used in this subsection (except in paragraph (3)) the term "stock" does not include nonvoting stock which is limited and preferred as to dividends.

(e) Foreign corporations. A foreign corporation shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(f) China Trade Act corporations. A corporation organized under Chapter 4 of Title 15, shall not be deemed to be affiliated with any other corporation within the meaning of this section.

(g) Corporations deriving income from possessions of United States. For the purposes of this section a corporation entitled to the benefits of section 251, by reason of receiving a large percentage of its income from possessions of the United States, shall be treated as a foreign corporation.

(h) Subsidiary formed to comply with foreign law. In the case of a domestic corporation owning or controlling, directly or indirectly, 100 per centum of the capital stock (exclusive of directors' qualifying shares) of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for the purpose of this title as a domestic corporation.

(i) **Suspension of running of statute of limitations.** If a notice under section 272 (a) in respect of a deficiency for any taxable year is mailed to a corporation, the suspension of the running of the statute of limitations, provided in section 277, shall apply in the case of corporations with which such corporation made a consolidated return for such taxable year.

(j) **Receivership cases.** If the common parent corporation of an affiliated group making a consolidated return would, if filing a separate return, be exempt under section 13a (d) (2) from the surtax on undistributed profits imposed by section 13a, the affiliated group shall be exempt from such surtax imposed by section 13a. In all other cases the affiliated group making a consolidated return shall be subject to the surtax imposed by section 13a, regardless of the fact that one or more of the corporations in the group are in bankruptcy or in receivership.

(k) **Allocation of income and deductions.** For allocation of income and deductions of related trades or businesses, see section 45. (June 22, 1936, 9:00 p. m., c. 690, § 141, 49 Stat. 1698.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 141, 48 Stat. 720), as amended by Act Aug. 30, 1935, c. 829, § 102 (b), 49 Stat. 1015.) It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 142. **Fiduciary returns.** (a) **Requirement of return.** Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts stating specifically the items of gross income thereof and the deductions and credits allowed under subchapters A to C and such other information for the purpose of carrying out the provisions of subchapters A to C as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife;

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income;

(4) (A) Every estate, and every trust entitled to the personal exemption allowed by section 163 (a) (1), the net income of which for the taxable year is \$1,000 or over.

(B) Every trust, not entitled to a personal exemption under section 163 (a) (1), which has a net income for the taxable year.

(5) Every estate or trust the gross income of which for the taxable year is \$5,000 or over, regardless of the amount of the net income;

(6) Every estate or trust of which any beneficiary is a nonresident alien; and

(7) Regardless of the amount of the gross or net income, every trust, though having no net income, which would have a net income if distributions had not been made which under the terms of the trust instrument were in the discretion of the trustee or conditioned upon a contingency; but subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, a fiduciary required by this paragraph to file a return may be exempted from the requirement of filing such return. (As amended Aug. 26, 1937, 10 a. m., c. 815, Title IV, § 402, 50 Stat. 829.)

(b) **Joint fiduciaries.** Under such regulations as the Commissioner with the approval of the Secretary may prescribe a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that he has suffi-

cient knowledge of the affairs of the individual, estate, or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct.

(c) **Law applicable to fiduciaries.** Any fiduciary required to make a return under this chapter shall be subject to all the provisions of law which apply to individuals. (June 22, 1936, 9:00 p. m., c. 690, § 142, 49 Stat. 1709, as amended Aug. 26, 1937, 10 a. m., c. 815, Title IV, § 402, 50 Stat. 829.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 142, 48 Stat. 722). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

Act August 26, 1937, c. 815, Title IV, § 402, 50 Stat. 829, affected subsection (c) and added subsection (7), which change and addition applies only to taxable years beginning after December 31, 1936.

§ 143. **Withholding of tax at source—(a) Tax-free covenant bonds.**

(1) **Requirement of withholding.** In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this chapter upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to an individual, a partnership, or a foreign corporation not engaged in trade or business within the United States and not having any office or place of business therein: *Provided*, That if the liability assumed by the obligor does not exceed 2 per centum of the interest, then the deduction and withholding shall be at the following rates: (A) 10 per centum in the case of a nonresident alien individual (except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate, not less than 5 per centum, as may be provided by treaty with such country), or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, (B) in the case of such a foreign corporation, 15 per centum, and (C) 2 per centum in the case of other individuals and partnerships: *Provided further*, That if the owners of such obligations are not known to the withholding agent the Commissioner may authorize such deduction and withholding to be at the rate of 2 per centum, or, if the liability assumed by the obligor does not exceed 2 per centum of the interest, then at the rate of 10 per centum.

(2) **Benefit of credits against net income.** Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the credits provided in section 25 (b); nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 215.

(3) **Income of obligor and obligee.** The obligor shall not be allowed a deduction for the payment of the tax imposed by this title, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.

(b) **Nonresident aliens.** All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States and not having an office or place of business therein), divi-

dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, shall (except in the cases provided for in subsection (a) of this section and except as otherwise provided in regulations prescribed by the Commissioner under section 215) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 10 per centum thereof, except that such rate shall be reduced, in the case of a nonresident alien individual a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country: *Provided*, That no such deduction or withholding shall be required in the case of dividends paid by a foreign corporation unless (1) such corporation is engaged in trade or business within the United States or has an office or place of business therein, and (2) more than 85 per centum of the gross income of such corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of section 119: *Provided further*, That the Commissioner may authorize such tax to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent. Under regulations prescribed by the Commissioner, with the approval of the Secretary, there may be exempted from such deduction and withholding the compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals.

(c) **Return and payment.** Every person required to deduct and withhold any tax under this section shall make return thereof on or before March 15 of each year and shall on or before June 15, in lieu of the time prescribed in section 56, pay the tax to the official of the United States government authorized to receive it. Every such person is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.

(d) **Income of recipient.** Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(e) **Tax paid by recipient.** If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be recouped from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

(f) **Refunds and credits.** Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(g) **Withholding before enactment of act.** Notwithstanding the provisions of subsections (a) and (b), the deduction and withholding for any period prior to the tenth day after June 22, 1936 shall be upon the items of income and at the rates prescribed in section 143 (a) and (b) of the Revenue Act of 1934, May 10, 1934, c. 277, 48 Stat. 723, as amended by Act

Aug. 30, 1935, c. 829, § 102 (g), 49 Stat. 1015, in lieu of the items and rates prescribed in such subsections. (June 22, 1936, 9:00 p. m., c. 690, § 143, 49 Stat. 1700.)

This section, as enacted by the Revenue Act of 1930, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 143, 48 Stat. 723) as amended by Act Aug. 30, 1935, c. 829, § 102 (g), 49 Stat. 1015. It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 144. **Payment of corporation income tax at source—(a) General Rule.** In the case of foreign corporations subject to taxation under this title not engaged in trade or business within the United States and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 143 a tax equal to 15 per centum thereof, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country; and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: *Provided*, That in the case of interest described in subsection (a) of that section (relating to tax-free covenant bonds) the deduction and withholding shall be at the rate specified in such subsection.

(b) **Withholding before enactment of act.** Notwithstanding the provisions of subsection (a), the deduction and withholding for any period prior to the tenth day after June 22, 1936 shall be upon the items of income and at the rates prescribed in section 144 of the Revenue Act of 1934, May 10, 1934, c. 277, 48 Stat. 723, as amended by Act Aug. 30, 1935, c. 829, § 102 (f), (1), 49 Stat. 1015, in lieu of the items and rates prescribed in such subsection. (June 22, 1936, 9:00 p. m., c. 690, § 144, 49 Stat. 1702.)

This section, as enacted by the Revenue Act of 1930, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 144, 48 Stat. 723) as amended by Act Aug. 30, 1935, c. 829, § 102 (f), (1), 49 Stat. 1015. It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 145. Penalties.

(d) For penalties for failure to file information returns with respect to foreign personal holding companies and foreign corporations, see section 329g. (As added Aug. 20, 1937, 10 a. m., c. 815, Title II, § 207 (e), 50 Stat. 826.)

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 145, 49 Stat. 1703.
Act August 20, 1937, c. 815, Title II, § 207 (e), 50 Stat. 826, added subsection (d).

§ 146. **Closing by commissioner of taxable year—(a) Tax in jeopardy.** If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not,

shall be for all purposes presumptive evidence of the taxpayer's design.

(b) **Security for payment.** A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, security approved by the Commissioner that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The Commissioner may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section, provided the taxpayer has paid in full all other income, war-profits, or excess-profits taxes due from him under any Act of Congress.

(c) **Same—Exemption from section.** If security is approved and accepted pursuant to the provisions of this section and such further or other security with respect to the tax or taxes covered thereby is given as the Commissioner shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such respective taxes.

(d) **Citizens.** In the case of a citizen of the United States or of a possession of the United States about to depart from the United States the Commissioner may, at his discretion, waive any or all of the requirements placed on the taxpayer by this section.

(e) **Departure of alien.** No alien shall depart from the United States unless he first procures from the collector or agent in charge a certificate that he has complied with all the obligations imposed upon him by the income, war-profits, and excess-profits tax laws.

(f) **Addition to tax.** If a taxpayer violates or attempts to violate this section there shall, in addition to all other penalties, be added as part of the tax 25 per centum of the total amount of the tax or deficiency in the tax, together with interest at the rate of 6 per centum per annum from the time the tax became due. (June 22, 1936, 9:00 p. m., c. 690, § 146, 49 Stat. 1703.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provision of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 116, 48 Stat. 725). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of the provision in subsection (f) relating to the rate of interest which formerly read "at the rate of 1 per centum a month" etc.

§ 147. Information at source.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 147, 49 Stat. 1701.

§ 148. **Information by corporations—(a) Dividend payments.** Every corporation shall, when required by the Commissioner, render a correct return, duly verified under oath, of its payments of dividends, stating the name and address of each shareholder, the number of shares owned by him, and the amount of dividends paid to him.

(b) **Profits declared as dividends.** Every corporation shall, when required by the Commissioner, furnish him a statement of such facts as will enable him to determine the portion of the earnings or profits of the corporation (including gains, profits, and income not taxed) accumulated during such periods as the Commissioner may specify, which have been distributed or ordered to be distributed, respectively, to its shareholders during such taxable years as the Commissioner may specify.

(c) **Accumulated earnings and profits.** When requested by the Commissioner, or any collector, every corporation shall forward to him a correct statement of accumulated earnings and profits and the names and addresses of the individuals or shareholders who would be entitled to the same if divided or distributed, and of the amounts that would be payable to each.

(d) **Compensation of officers and employees.** Under regulations prescribed by the Commissioner

with the approval of the Secretary, every corporation subject to taxation under this title shall, in its return, submit a list of the names of all officers and employees of such corporation and the respective amounts paid to them during the taxable year of the corporation by the corporation as salary, commission, bonus, or other compensation for personal services rendered, if the aggregate amount so paid to the individual is in excess of \$15,000. The Secretary of the Treasury shall submit an annual report to Congress compiled from the returns made containing the names of, and amounts paid to, each such officer and employee and the name of the paying corporation. (June 22, 1936, 9:00 p. m., c. 690, § 148, 49 Stat. 1705.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 148, 48 Stat. 726). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 149. Returns of brokers.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 149, 49 Stat. 1705.

§ 150. Collection of foreign items.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 150, 49 Stat. 1705.

§ 151. **Foreign personal holding companies.** For information returns by officers, directors, and large shareholders, with respect to foreign personal holding companies, see sections 320d, 320e, and 320g. For information returns by attorneys, accountants, and so forth, as to formation, and so forth, of foreign corporations, see sections 320f and 320g. (June 22, 1936, c. 690, § 151, as added Aug. 26, 1937, 10 a. m., c. 815, Title 11, § 207 (d), 50 Stat. 826.)

SUPPLEMENT E.—ESTATES AND TRUSTS

§ 161. Imposition of tax.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 161, 49 Stat. 1706.

§ 162. Net income.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 162, 49 Stat. 1706.

§ 163. **Credits against net income—(a) Credits of Estate or Trust.** (1) For the purpose of the normal tax and the surtax an estate or trust shall be allowed the same personal exemption as is allowed to a single person under section 25 (b) (1), except that no exemption shall be allowed a trust if the trust instrument requires or permits the accumulation of any portion of the income of the trust and there is not distributed an amount equal to the net income. For the purposes of this paragraph the term "net income" does not include amounts included in gross income which, under the law of the jurisdiction under which the trust is administered, cannot (even if permitted or required by the trust instrument to be considered as income) be considered as income and are not distributable.

(2) If no part of the income of the estate or trust is included in computing the net income of any legatee, heir, or beneficiary, then the estate or trust shall be allowed the same credits against net income for interest as are allowed by section 25 (a). (As amended Aug. 26, 1937, 10 a. m., c. 815, Title IV, § 401, 50 Stat. 829.)

(b) **Credits of beneficiary.** If any part of the income of an estate or trust is included in computing the net income of any legatee, heir, or beneficiary, such legatee, heir, or beneficiary shall, for the purpose of the normal tax, be allowed as credits against net income, in addition to the credits allowed to him under section 25, his proportionate share of such amounts of interest specified in section 25 (a) as are, under this Supplement, required to be included in computing his net income. Any remaining portion of such amounts specified in section 25 (a) shall, for the purpose of the normal tax, be allowed as credits to the estate or trust. (June 22, 1936, 9:00 p. m., c. 690, § 163, 49 Stat. 1707,

as amended Aug. 26, 1937, 10 a. m., c. 815, Title IV, § 401, 50 Stat. 829.)

This section, as enacted by the Revenue Act of 1930, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 163, 48 Stat. 728). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of the omission of the words "dividends and" which formerly preceded the words "interest specified" in the sixth line of subsection (b).

Act August 23, 1937, c. 815, Title IV, § 401, 50 Stat. 829, substantially affected subsection (a). It applies only to taxable years beginning after December 31, 1936. Subsection (a) of section 163, Act June 22, 1936, c. 690, 49 Stat. 1707, read as follows: "For the purpose of the normal tax and the surtax the estate or trust shall be allowed the same personal exemption as is allowed to a single person under section 25 (b) (1), and, if no part of the income of the estate or trust is included in computing the net income of any legatee, heir, or beneficiary, then in addition the same credits against net income for interest as are allowed by section 25 (a)."

§ 164. Different taxable years. If the taxable year of a beneficiary is different from that of the estate or trust, the amount which he is required, under section 162 (b), to include in computing his net income, shall be based upon the income of the estate or trust for any taxable year of the estate or trust (whether beginning on, before, or after January 1, 1936) ending within his taxable year. (June 22, 1936, 9:00 p. m., c. 690, § 161, 49 Stat. 1707.)

This section, as enacted by the Revenue Act of 1930, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 161, 48 Stat. 729). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of the year designated in the parenthesis, which was "1934" in the 1934 Act.

§ 165. Employees' trusts. A trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer, or employees, or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under section 161, but the amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amounts paid in by him. Such distributees shall for the purpose of the normal tax be allowed as credits against net income such part of the amount so distributed or made available as represents the items of interest specified in section 25 (a). (June 22, 1936, 9:00 p. m., c. 690, § 165, 49 Stat. 1707.)

This section, as enacted by the Revenue Act of 1930, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 165, 48 Stat. 729). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of the omission of the words "dividends and" which formerly preceded the words "interest specified in section 25 (a)" at the end of the section.

§ 166. Revocable trusts.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 166, 49 Stat. 1707.

§ 167. Income for benefit of grantor.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 167, 49 Stat. 1707.

§ 168. Taxes for foreign countries and possessions of United States.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 168, 49 Stat. 1708.

§ 169. Common trust funds—(a) Definitions. The term "common trust fund" means a fund maintained by a bank (as defined in section 104)—

(1) exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian; and

(2) in conformity with the rules and regulations, prevailing from time to time, of the Board of Governors of the Federal Reserve System pertaining to the collective investment of trust funds by national banks.

(b) **Taxation of common trust funds.** A com-

mon trust fund shall not be subject to taxation under this chapter, or section 342 or 1358a, and for the purposes of such chapters and sections shall not be considered a corporation.

(c) **Income of participants in fund.** Each participant in the common trust fund shall include in computing its net income its proportionate share, whether or not distributed and whether or not distributable, of the net income of the common trust fund. The net income of the common trust fund shall be computed in the same manner and on the same basis as in the case of a individual. The proportionate share of each participant is the amount of interest specified in section 25 (a) received by the common trust fund shall for the purposes of this Supplement be considered as having been received by such participant as such interest.

(d) **Admission and withdrawal.** No gain or loss shall be realized by the common trust fund by the admission or withdrawal of a participant. The withdrawal of any participating interest by a participant shall be treated as a sale or exchange of such interest by the participant.

(e) **Returns by bank.** Every bank (as defined in section 107) maintaining a common trust fund shall make a return under oath for each taxable year, stating specifically, with respect to such fund, the items of gross income and the deductions allowed by this title, and shall include in the return the names and addresses of the participants who would be entitled to share in the net income if distributed and the amount of the proportionate share of each participant. The return shall be sworn to as in the case of a return filed by the bank under section 52.

(f) **Different taxable years of common trust fund and participant.** If the taxable year of the common trust fund is different from that of a participant, the proportionate share of the net income of the common trust fund to be included in computing the net income of the participant for its taxable year shall be based upon the net income of the common trust fund for any taxable year of the common trust fund (whether beginning on, before, or after January 1, 1936) ending within the taxable year of the participant. (June 22, 1936, 9:00 p. m., c. 690, § 169, 49 Stat. 1708.)

Revenue Acts prior to the Revenue Act of 1936 contained no provisions corresponding to this section.

SUPPLEMENT F.—PARTNERSHIPS

§ 181. Partnership not taxable.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 181, 49 Stat. 1709.

§ 182. Tax of partners.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 182, 49 Stat. 1709.

§ 183. Computation of partnership income.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 183, 49 Stat. 1709.

§ 184. Credits against net income.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 184, 49 Stat. 1709.

§ 185. Earned income.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 185, 49 Stat. 1709.

§ 186. Taxes of foreign countries and possessions of the United States.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 186, 49 Stat. 1709.

§ 187. Partnership returns. Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall

be sworn to by any one of the partners. (June 22, 1936, 9:00 p. m., c. 690, § 187, 49 Stat. 1709.)

The section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 187, 48 Stat. 730). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of the added words "and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe."

§ 188. Different taxable years of partner and partnership—(a) General rule. If the taxable year of a partner is different from that of the partnership, the distributive share of the net income of the partnership to be included in computing the net income of the partner for his taxable year shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1936) ending within the taxable year of the partner. (June 22, 1936, 9:00 p. m., c. 690, § 188, 49 Stat. 1710.)

* * * * *

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 22, 1934, c. 277, § 188, 48 Stat. 731). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of the provisions of subsection (a) of section 188 of the 1934 Act with the exception of the year designated in the parenthesis, which was "1934" in the 1934 Act.

SUPPLEMENT G.—INSURANCE COMPANIES

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

(b) Imposition of tax.

(1) In general. In lieu of the tax imposed by sections 13 and 13a, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every life insurance company a tax of 15 per centum of the amount thereof.

(2) Normal-tax net income of foreign life insurance companies. In the case of a foreign life insurance company, the normal-tax net income shall be an amount which bears the same ratio to the normal-tax net income, computed without regard to this paragraph, as the reserve funds required by law and held by it at the end of the taxable year upon business transacted within the United States bear to the reserve funds held by it at the end of the taxable year upon all business transacted.

(3) No United States insurance business. Foreign life insurance companies not carrying on an insurance business within the United States and holding no reserve funds upon business transacted within the United States, shall not be taxable under this section but shall be taxable as other foreign corporations. (June 22, 1936, 9:00 p. m., c. 690, § 201, 49 Stat. 1710.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 201, 48 Stat. 731) as amended by Act Aug. 30, 1935, c. 820, § 103, 49 Stat. 1017. It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 202. Gross income of life insurance companies.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 202, 49 Stat. 1710.

§ 203. Net income of life insurance companies—(a) General rule. In the case of a life insurance company the term "net income" means the gross income less—

(1) Tax-free interest. The amount of interest received during the taxable year which under section 22 (b) (4) is excluded from gross income;

(2) Reserve funds. An amount equal to 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable

year, except that in the case of any such reserve fund which is computed at a lower interest assumption rate, the rate of 3¾ per centum shall be substituted for 4 per centum. Life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, shall be allowed, in addition to the above, a deduction of 3¾ per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only;

(3) Reserve for dividends. An amount equal to 2 per centum of any sums held at the end of the taxable year as a reserve for dividends (other than dividends payable during the year following the taxable year) the payment of which is deferred for a period of not less than five years from the date of the policy contract;

(4) Investment expenses. Investment expenses paid during the taxable year: *Provided*, That if any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 per centum of the book value of the mean of the invested assets held at the beginning and end of the taxable year;

(5) Real estate expenses. Taxes and other expenses paid during the taxable year exclusively upon or with respect to the real estate owned by the company, not including taxes assessed against local benefits of a kind tending to increase the value of the property assessed, and not including any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. The deduction allowed by this paragraph shall be allowed in the case of taxes imposed upon a shareholder of a company upon his interest as shareholder, which are paid by the company without reimbursement from the shareholder, but in such cases no deduction shall be allowed the shareholder for the amount of such taxes;

(6) Depreciation. A reasonable allowance, as provided in section 23 (1), for the exhaustion, wear and tear of property, including a reasonable allowance for obsolescence; and

(7) Interest. All interest paid within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this chapter.

(b) Rental Value of Real Estate. The deduction under subsection (a) (5) or (6) of this section on account of any real estate owned and occupied in whole or in part by a life insurance company, shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property. (June 22, 1936, 9:00 p. m., c. 690, § 203, 49 Stat. 1710.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 203, 48 Stat. 732). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of subsection (c) and paragraph (3) of subsection (a) of the 1934 Act which were omitted from the 1936 Act.

§ 204. Insurance companies other than life or mutual—(a) Imposition of tax.

(1) In general. In lieu of the tax imposed by sections 13 and 13a, there shall be levied, collected, and paid for each taxable year upon the normal-tax net income of every insurance company (other than a life or mutual insurance company) a tax of 15 per centum of the amount thereof.

(2) Normal-tax net income of foreign companies. In the case of a foreign insurance company (other

than a life or mutual insurance company), the normal-tax net income shall be the net income from sources within the United States minus the sum of—

(A) Interest on Obligations of the United States and its instrumentalities.—The credit provided in section 26 (a).

(B) Dividends Received.—The credit provided in section 26 (b).

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

(b) Definition of income, etc. In the case of an insurance company subject to the tax imposed by this section—

(1) Gross income. "Gross income" means the sum of (A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners, and (B) gain during the taxable year from the sale or other disposition of property, and (C) all other items constituting gross income under section 22;

(2) Net income. "Net income" means the gross income as defined in paragraph (1) of this subsection less the deductions allowed by subsection (c) of this section;

(3) Investment income. "Investment income" means the gross amount of income earned during the taxable year from interest, dividends, and rents, computed as follows:

To all interest, dividends and rents received during the taxable year, add interest, dividends and rents due and accrued at the end of the taxable year, and deduct all interest, dividends and rents due and accrued at the end of the preceding taxable year;

(4) Underwriting income. "Underwriting income" means the premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred;

(5) Premiums earned. "Premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance. To the result so obtained add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year;

(6) Losses incurred. "Losses incurred" means losses incurred during the taxable year on insurance contracts, computed as follows:

To losses paid during the taxable year, add salvage and reinsurance recoverable outstanding at the end of the preceding taxable year, and deduct salvage and reinsurance recoverable outstanding at the end of the taxable year. To the result so obtained add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year;

(7) Expenses incurred. "Expenses incurred" means all expenses shown on the annual statement approved by the National Convention of Insurance Commissioners, and shall be computed as follows:

To all expenses paid during the taxable year add expenses unpaid at the end of the taxable year and deduct expenses unpaid at the end of the preceding taxable year. For the purpose of computing the net income subject to the tax imposed by this section there shall be deducted from expenses incurred as defined in this paragraph all expenses incurred which are not allowed as deductions by subsection (c) of this section.

(c) Deductions Allowed. In computing the net income of an insurance company subject to the tax imposed by this section there shall be allowed as deductions:

(1) All ordinary and necessary expenses incurred, as provided in section 23 (a);

(2) All interest as provided in section 23 (b);

(3) Taxes as provided in section 23 (c);

(4) Losses incurred as defined in subsection (b) (6) of this section;

(5) Subject to the limitation contained in section 101 (d), losses sustained during the taxable year from the sale or other disposition of property;

(6) Bad debts in the nature of agency balances and bills receivable ascertained to be worthless and charged off within the taxable year;

(7) The amount of interest earned during the taxable year which under section 22 (b) (4) is excluded from gross income;

(8) A reasonable allowance for the exhaustion, wear and tear of property, as provided in section 23 (f);

(9) Charitable, and so forth, contributions, as provided in section 23 (g);

(10) Deductions (other than those specified in this subsection) as provided in section 23, but not in excess of the amount of the gross income included under subsection (b) (1) (C) of this section.

(d) Deductions of foreign corporations. In the case of a foreign corporation the deductions allowed in this section shall be allowed to the extent provided in Supplement I in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein.

(e) Double deductions. Nothing in this section shall be construed to permit the same item to be twice deducted. (June 22, 1936, 9:00 p. m., c. 690, § 204, 49 Stat. 1711.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 204, 48 Stat. 733) as amended by Act Aug. 30, 1935, c. 829, §§ 102 (d), 104, 49 Stat. 1016, 1017. It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 205. Taxes of foreign countries and possessions of United States.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 205, 49 Stat. 1713.

§ 206. Computation of gross income.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 206, 49 Stat. 1713.

§ 207. Mutual insurance companies other than life—(a) Application of title. Mutual insurance companies, other than life insurance companies, shall be taxable in the same manner as other corporations, except as hereinafter provided in this section, and except that they shall not be subject to the surtax imposed by section 13a, and except that the normal tax imposed by section 13 shall be at the rate of 15 per centum instead of at the rates provided in such section, and such normal tax shall be applicable to foreign corporations as well as domestic corporations; but foreign insurance companies not carrying on an insurance business within the United States shall be taxable as other foreign corporations.

(b) Gross income. Mutual marine-insurance companies shall include in gross income the gross premiums collected and received by them less amounts paid for reinsurance.

(c) Deductions. In addition to the deductions allowed to corporations by section 23 the following deductions to insurance companies shall also be allowed, unless otherwise allowed—

(1) Mutual insurance companies other than life insurance. In the case of mutual insurance companies other than life insurance companies—

(A) the net addition required by law to be made within the taxable year to reserve funds (including in the case of assessment insurance companies the actual deposit of sums with State or Territorial officers pursuant to laws as additions to guarantee or reserve funds); and

(B) the sums other than dividends paid within the taxable year on policy and annuity contracts.

(2) Mutual marine insurance companies. In the case of mutual marine insurance companies, in addi-

tion to the deductions allowed in paragraph (1) of this subsection, unless otherwise allowed, amounts repaid to policyholders on account of premiums previously paid by them, and interest paid upon such amounts between the ascertainment and the payment thereof;

(3) **Mutual insurance companies other than life and marine.** In the case of mutual insurance companies (including interinsurers and reciprocal underwriters, but not including mutual life or mutual marine insurance companies) requiring their members to make premium deposits to provide for losses and expenses, the amount of premium deposits returned to their policyholders and the amount of premium deposits retained for the payment of losses, expenses, and reinsurance reserves. (June 22, 1936, 9:00 p. m., c. 690, § 207, 49 Stat. 1713.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 207, 48 Stat. 735). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 210. **Tax on nonresident alien individuals—(a) No United States Business or Office.** There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 11 and 12, upon the amount received, by every nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 10 per centum of such amount, except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country. The tax imposed by this subsection shall not apply to any individual if the aggregate amount received during the taxable year from the sources above specified is more than \$21,600. (As amended Aug. 26, 1937, 10 a. m., c. 815, Title V, § 501, 50 Stat. 830.)

(b) **United States Business or Office.** A nonresident alien individual engaged in trade or business in the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a). As used in this section, section 110, section 143, section 144, and section 231, the phrase "engaged in trade or business within the United States" includes the performance of personal services within the United States at any time within the taxable year, but does not include the performance of personal services for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of ninety days during the taxable year and whose compensation for such services does not exceed in the aggregate \$3,000. Such phrase does not include the effecting of transactions in the United States in stocks, securities, or commodities through a resident broker, commission agent, or custodian.

(c) **No United States Business or Office and Gross Income of more than \$21,600.** A nonresident alien individual not engaged in trade or business within the United States and not having an office or place of business therein who has a gross income for any taxable year of more than \$21,600 from the sources specified in subsection (a), shall be taxable without regard to the provisions of subsection (a), except that—

(1) The gross income shall include only income from the sources specified in subsection (a); and

(2) The deductions (other than the so-called "charitable deduction" provided in section 213 (e)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a); and

(3) The aggregate of the normal and surtax under sections 11 and 12 shall, in no case, be less than 10 per centum of the gross income from the sources specified in subsection (a). (June 22, 1936, 9:00 p. m., c. 690, § 211, 49 Stat. 1714, as amended Aug. 26, 1937, 10 a. m., c. 815, Title V, § 501, 50 Stat. 830.)

Revenue acts prior to the Revenue Act of 1936 contained no provisions corresponding to this section.

Act August 20, 1937, c. 815, Title V, § 501, 50 Stat. 830, added last sentence to subsection (a) and also added subsection (c) which apply only to taxable years beginning after December 31, 1936. This amendment is not to apply to a resident of a contiguous country so long as there is in effect a treaty with such country, ratified prior to August 20, 1937, under which rates of tax under subdivision (a) of this section, as it existed prior to August 20, 1937, were reduced.

SUPPLEMENT II.—NONRESIDENT ALIEN INDIVIDUALS

§ 211. Gross income.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 212, 49 Stat. 1715.

§ 212. Deductions.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 213, 49 Stat. 1715.

§ 213. Credits against net income.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 214, 49 Stat. 1715.

§ 214. Allowance of deductions and credits.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 215, 49 Stat. 1716.

§ 215. Credits against tax.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 216, 49 Stat. 1716.

§ 216. **Returns—(a) Requirement.** In the case of a nonresident alien individual the return, in lieu of the time prescribed in section 53 (a) (1), shall be made on or before the fifteenth day of the sixth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then on or before the fifteenth day of June.

(b) **Exemption from Requirement.** Subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, nonresident alien individuals subject to the tax imposed by section 210 (a) may be exempted from the requirement of filing returns of such tax. (June 22, 1936, 9:00 p. m., c. 690, § 217, 49 Stat. 1716.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 216, 48 Stat. 737). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of subsection (b) which is new.

§ 217. Payment of tax.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 218, 49 Stat. 1716.

§ 218. **Partnerships.** For the purpose of this chapter, a nonresident alien individual shall be considered as being engaged in a trade or business within the United States if the partnership of which he is a member is so engaged and as having an office or place of business within the United States if the partnership of which he is a member has such an office or place of business. (June 22, 1936, 9:00 p. m., c. 690, § 219, 49 Stat. 1716.)

Revenue acts prior to the Revenue Act of 1936 contained no provisions corresponding to this section.

SUPPLEMENT I.—FOREIGN CORPORATIONS

§ 231. **Gross income—(a) Nonresident Corporations.** There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 13 and 13a, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities,

compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(b) **Resident Corporations.** A foreign corporation engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsection (a), but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

(c) **Undistributed Profits Surtax.** A foreign corporation shall not be subject to the surtax imposed by section 13a.

(d) **Gross Income.** In the case of a foreign corporation gross income includes only the gross income from sources within the United States.

(e) **Ships Under Foreign Flag.** The income of a foreign corporation, which consists exclusively of earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States, shall not be included in gross income and shall be exempt from taxation under this title. (June 22, 1936, 9:00 p. m., c. 690, § 231, 49 Stat. 1717.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 231, 48 Stat. 737). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. Subsections (d) and (e) reenact without change the corresponding provisions of the 1934 act. Subsections (a), (b), and (c) are new in the 1936 act.

§ 232. **Deductions—(a) In General.** In the case of a foreign corporation the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources within and without the United States shall be determined as provided in section 119, under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(b) **Charitable, and so forth, Contributions.** The so-called "charitable contribution" deduction allowed by section 23 (a) shall be allowed whether or not connected with income from sources within the United States. (June 22, 1936, 9:00 p. m., c. 690, § 232, 49 Stat. 1717.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 232, 48 Stat. 737) as amended by Act Aug. 30, 1935, c. 820, § 102 (c), 49 Stat. 1016. It applies only to taxable years beginning after Dec. 31, 1936, by section 1, ante. It is in effect a reenactment without change of such provisions.

§ 233. Allowance of deductions and credits.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 233, 49 Stat. 1717.

§ 234. Credits against tax.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 234, 49 Stat. 1718.

§ 235. **Returns—(a) Time of Filing.** In the case of a foreign corporation not having any office or place of business in the United States the return, in lieu of the time prescribed in section 53 (a) (1), shall be made on or before the fifteenth day of the sixth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year then on or before the fifteenth day of June. If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return shall be made by the agent.

(b) **Exemption From Requirement.** Subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Commissioner, with the approval of the Secretary, corpo-

rations subject to the tax imposed by section 231 (a) may be exempted from the requirement of filing returns of such tax. (June 22, 1936, 9:00 p. m., c. 690, § 235, 49 Stat. 1718.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 235, 48 Stat. 738). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. Subsection (a) is a reenactment of such provisions. Subsection (b) is new with the 1936 act.

§ 236. Payment of tax—(a) Time of Payment.

In the case of a foreign corporation not having any office or place of business in the United States the total amount of tax imposed by this title shall be paid, in lieu of the time prescribed in section 56 (a), on the fifteenth day of June following the close of the calendar year, or, if the return should be made on the basis of a fiscal year, then on the fifteenth day of the sixth month following the close of the fiscal year.

(b) **Withholding at Source.** For withholding at source of tax on income of foreign corporations, see section 144. (June 22, 1936, 9:00 p. m., c. 690, § 236, 49 Stat. 1718.)

This section, as enacted in the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 236, 48 Stat. 738). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of the reference in subsection (b) to section 144 instead of section 143.

§ 237. Foreign insurance companies.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 237, 49 Stat. 1718.

§ 238. Affiliation.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 238, 49 Stat. 1718.

SUPPLEMENT J.—POSSESSIONS OF THE UNITED STATES

§ 251. **Income from sources within possessions of United States—(a) General Rule.** In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

(1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the three-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) If, in the case of such corporation, 50 per centum or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(3) If, in case of such citizen, 50 per centum or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

(b) **Amounts Received in United States.** Notwithstanding the provisions of subsection (a) there shall be included in gross income all amounts received by such citizens or corporations within the United States, whether derived from sources within or without the United States.

(c) **Tax in Case of Corporations.** In the case of a domestic corporation entitled to the benefits of this section the normal tax imposed by section 13 shall be at the rate of 15 per centum instead of at the rates provided in such section, and such a corporation shall not be subject to the surtax imposed by section 13a.

(d) **Definition.** As used in this section the term "possession of the United States" does not include the Virgin Islands of the United States.

(e) **Deductions.**

(1) Citizens of the United States entitled to the benefits of this section shall have the same deductions as are allowed by Supplement II in the case of a non-resident alien individual engaged in trade or business within the United States or having an office or place of business therein.

(2) Domestic corporations entitled to the benefits of this section shall have the same deductions as are allowed by Supplement I in the case of a foreign corporation engaged in trade or business within the United States or having an office or place of business therein.

(f) **Credits Against Net Income.** A citizen of the United States entitled to the benefits of this section shall be allowed a personal exemption of only \$1,000 and shall not be allowed the credit for dependents provided in section 25 (b) (2).

(g) **Allowance of Deductions and Credits.** Citizens of the United States and domestic corporations entitled to the benefits of this section shall receive the benefit of the deductions and credits allowed to them in this title only by filing or causing to be filed with the collector a true and accurate return of their total income received from all sources in the United States, in the manner prescribed in this title; including therein all the information which the Commissioner may deem necessary for the calculation of such deductions and credits.

(h) **Credits Against Tax.** Persons entitled to the benefits of this section shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 131.

(i) **Affiliation.** A corporation entitled to the benefits of this section shall not be deemed to be affiliated with any other corporation within the meaning of section 141. (June 22, 1936, 9:00 p. m., c. 690, § 251, 49 Stat. 1718.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 25, 48 Stat. 738). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of changes and additions in subsections (c) and (e).

§ 252. Citizens of possessions of United States.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 252, 49 Stat. 1719.

SUPPLEMENT K.—CHINA TRADE ACT CORPORATIONS

§ 260. **Taxation in general.** In the case of a corporation organized under chapter 4 of Title 15, the normal tax imposed by section 13 shall be at the rate of 15 per centum instead of at the rates provided in such section, and such a corporation shall not be subject to the surtax imposed by section 13a. (June 22, 1936, 9:00 p. m., c. 690, § 261, 49 Stat. 1720.)

Revenue acts prior to the Revenue Act of 1936 contained no provisions corresponding to this section.

§ 261. **Credit against net income—(a) Allowance of Credit.** For the purpose only of the taxes imposed by sections 13 and 342 of this title there shall be allowed, in the case of a corporation organized under Chapter 4 of Title 15, in addition to the credits against net income otherwise allowed such corporation, a credit against the net income of an amount equal to the proportion of the net income derived from sources within China (determined in a similar manner to that provided in section 119) which the par value of the shares of stock of the corporation owned on the last day of the taxable year by (1) persons resident in China, the United States, or possessions of the United States, and (2) individual citizens of the United States or China wherever resident, bears to the par value of the whole number of shares of stock of the corporation outstanding on such date: *Provided*, That in no case shall the diminution, by reason of such credit, of the tax imposed by such section 13 (computed without regard to this section) exceed the amount of the special dividend certified under subsection (b) of this section; and in no case shall the diminution, by reason of such credit, of the tax imposed by such section 342 (computed without regard to this section) exceed the amount by which such special dividend exceeds the

diminution permitted by this section in the tax imposed by such section 13.

(b) **Special Dividend.** Such credit shall not be allowed unless the Secretary of Commerce has certified to the Commissioner—

(1) The amount which, during the year ending on the date fixed by law for filing the return, the corporation has distributed as a special dividend to or for the benefit of such persons as on the last day of the taxable year were resident in China, the United States, or possessions of the United States, or were individual citizens of the United States or China, and owned shares of stock of the corporation;

(2) That such special dividend was in addition to all other amounts, payable or to be payable to such persons or for their benefit, by reason of their interest in the corporation; and

(3) That such distribution has been made to or for the benefit of such persons in proportion to the par value of the shares of stock of the corporation owned by each; except that if the corporation has more than one class of stock, the certificates shall contain a statement that the articles of incorporation provide a method for the apportionment of such special dividend among such persons, and that the amount certified has been distributed in accordance with the method so provided.

(c) **Ownership of Stock.** For the purposes of this section shares of stock of a corporation shall be considered to be owned by the person in whom the equitable right to the income from such shares is in good faith vested.

(d) **Definition of China.** As used in this section the term "China" shall have the same meaning as when used in Chapter 4 of Title 15. (June 22, 1936, 9:00 p. m., c. 690, § 262, 49 Stat. 1720.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 261, 48 Stat. 739) as amended by Act Aug. 30, 1935, c. 829, § 108, 49 Stat. 1019. It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante. It is a reenactment of such provisions with the exception of changes and additions in subsection (a).

§ 262. Credits against the tax.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 262, 49 Stat. 1721.

§ 263. Affiliation.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 263, 49 Stat. 1721.

§ 264. Income of shareholders.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 264, 49 Stat. 1721.

SUPPLEMENT L.—ASSESSMENT AND COLLECTION OF DEFICIENCIES

§ 271. Definition of deficiency.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 271, 49 Stat. 1721.

§ 272. Procedure in general.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 272, 49 Stat. 1721.

§ 273. Jeopardy proceedings.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 273, 49 Stat. 1723.

§ 274. Bankruptcy and receiverships.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 274, 49 Stat. 1725.

§ 275. **Period of limitation upon assessment and collection.**

* * * * *

(d) **Shareholders of foreign personal holding companies.** If the taxpayer omits from gross income an amount properly includable therein under section 329e (b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed Supplement Q net income of a foreign personal holding company) the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment,

at any time within seven years after the return was filed. (As added Aug. 26, 1937, 10 a. m., c. 815, Title II, § 206 (a), 50 Stat. 826.)

(c) **Return filed before last day.** For the purposes of subsections (a), (b), (c), and (d), a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (As renumbered and amended Aug. 26, 1937, 10 a. m., c. 815, Title II, § 206 (b), 50 Stat. 826.)

(f) **Corporation and shareholder.** If a corporation makes no return of the tax imposed by this chapter, but each of the shareholders includes in his return his distributive share of the net income of the corporation, then the tax of the corporation shall be assessed within four years after the last date on which any such shareholder's return was filed. (As renumbered Aug. 26, 1937, 10 a. m., c. 815, Title II, § 206 (c), 50 Stat. 826.)

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 275, 49 Stat. 1725.
Act August 26, 1937, c. 815, Title II, § 206, 50 Stat. 826, added subsection (d), amended and renumbered former subsection (d) to (e), and renumbered former subsection (e) as (f).

§ 276. Exceptions to general period of limitation.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 276, 49 Stat. 1726.

§ 277. Suspension of running statute.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 277, 49 Stat. 1726.

SUPPLEMENT M.—INTEREST AND ADDITIONS TO THE TAX

§ 291. **Failure to file return.** In case of any failure to make and file return required by this title, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax: 5 per centum if the failure is for not more than thirty days with an additional 5 per centum for each additional thirty days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. 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, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 1512 (d) (1). (June 22, 1936, 9:00 p. m., c. 690, § 291, 49 Stat. 1727.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 291, 48 Stat. 748). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 292. Interest on deficiencies.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 292, 49 Stat. 1727.

§ 293. Additions to the tax in case of deficiency.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 293, 49 Stat. 1727.

§ 294. Additions to the tax in case of nonpayment—(a) Tax Shown on Return.

(1) **General rule.** Where the amount determined by the taxpayer as the tax imposed by this title, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax, interest upon such unpaid amount at the rate of 6 per centum per annum from the date prescribed for its payment until it is paid.

(2) **If extension granted.** Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 295, is not paid in full prior to the expiration of the period of the extension, then,

In lieu of the interest provided for in paragraph (1) of this subsection, interest at the rate of 6 per centum per annum shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) **Deficiency.** Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 292, or under section 293, or any addition to the tax in case of delinquency provided for in section 291, is not paid in full within ten days from the date of notice and demand from the collector, there shall be collected as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum from the date of such notice and demand until it is paid. If any part of a deficiency prorated to any unpaid installment under section 272 (i) is not paid in full on or before the date prescribed for the payment of such installment, there shall be collected as part of the tax interest upon the unpaid amount at the rate of 6 per centum per annum from such date until it is paid.

(c) **Fiduciaries.** For any period an estate is held by a fiduciary appointed by order of any court of competent jurisdiction or by will, there shall be collected interest at the rate of 6 per centum per annum in lieu of the interest provided in subsections (a) and (b) of this section.

(d) **Filing of Jeopardy Bond.** If a bond is filed, as provided in section 273, the provisions of subsections (b) and (c) of this section shall not apply to the amount covered by the bond. (June 22, 1936, 9:00 p. m., c. 690, § 294, 49 Stat. 1727.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 294, 48 Stat. 747). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 295. Time extended for payment of tax shown on return.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 295, 49 Stat. 1728.

§ 296. **Time extended for payment of deficiency.** If the time for the payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended, at the rate of 6 per centum per annum for the period of the extension, and no other interest shall be collected on such part of the deficiency for such period. If the part of the deficiency the time for payment of which is so extended is not paid in accordance with the terms of the extension, there shall be collected, as a part of the tax, interest on such unpaid amount at the rate of 6 per centum per annum for the period from the time fixed by the terms of the extension for its payment until it is paid, and no other interest shall be collected on such unpaid amount for such period. (June 22, 1936, 9:00 p. m., c. 690, § 296, 49 Stat. 1728.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 296, 48 Stat. 748). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 297. **Interest in case of jeopardy assessments.** In the case of the amount collected under section 273 (i) there shall be collected at the same time as such amount, and as a part of the tax, interest at the rate of 6 per centum per annum upon such amount from the date of the jeopardy notice and demand to the date of notice and demand under section 273 (i), or, in the case of the amount collected in excess of the amount of the jeopardy assessment, interest as provided in section 292. If the amount included in the notice and demand from the collector under section 273 (i) is not paid in full within ten days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 6 per centum per annum (or, for any period the estate of the taxpayer is held by a fiduciary appointed by any court of competent jurisdiction or by will, at the rate of 6 per centum per annum) from

the date of such notice and demand until it is paid. (June 22, 1936, 9:00 p. m., c. 690, § 297, 49 Stat. 1728.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 297, § 297, 48 Stat. 748). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 298. Bankruptcy and receiverships. If the unpaid portion of the claim allowed in a bankruptcy or receivership proceeding, as provided in section 274, is not paid in full within ten days from the date of notice and demand from the collector, then there shall be collected as a part of such amount interest upon the unpaid portion thereof at the rate of 6 per centum per annum from the date of such notice and demand until payment. (June 22, 1936, 9:00 p. m., c. 690, § 298, 49 Stat. 1720.)

This section, as enacted by the Revenue Act of 1936, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 298, 48 Stat. 748). It applies only to taxable years beginning after Dec. 31, 1935, by section 1, ante.

§ 299. Removal of property or departure from United States.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 299, 49 Stat. 1720.

SUPPLEMENT N.—CLAIMS AGAINST TRANSFEREES AND FIDUCIARIES

§ 311. Transferred assets.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 311, 49 Stat. 1720.

§ 312. Notice of fiduciary relationship.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 312, 49 Stat. 1730.

SUPPLEMENT O.—OVERPAYMENTS

§ 321. Overpayment of installment.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 321, 49 Stat. 1730.

§ 322. Refunds and credits.

This section was reenacted without change by Act June 22, 1936, 9:00 p. m., c. 690, § 322, 49 Stat. 1731.

SUPPLEMENT Q.—FOREIGN PERSONAL HOLDING COMPANIES

§ 326. Definition of foreign personal holding company—(a) General Rule. For the purposes of this supplement and of subchapter D the term "foreign personal holding company" means any foreign corporation if—

(1) **Gross income requirement.** At least 60 per centum of its gross income (as defined in section 329 (a)) for the taxable year is foreign personal holding company income as defined in section 327; but if the corporation is a foreign personal holding company with respect to any taxable year, then, for each subsequent taxable year, the minimum percentage shall be 50 per centum in lieu of 60 per centum, until a taxable year during the whole of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 50 per centum of the gross income is foreign personal holding company income. For the purposes of this paragraph there shall be included in the gross income the amount includible therein as a dividend by reason of the application of section 329 (c) (2); and

(2) **Stock ownership requirement.** At any time during the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals who are citizens or residents of the United States, hereinafter called "United States group."

(b) **Exceptions.** The term "foreign personal holding company" does not include a corporation exempt from taxation under section 103. (June 22, 1936, c. 690, § 331, as added Aug. 26, 1937, c. 815, 10 a. m., Title II, § 201, 50 Stat. 818.)

§ 327. Foreign personal holding company income. For the purposes of this title the term "foreign personal holding company income" means the portion of the gross income determined for the purposes of section 326 (a) (1), which consists of:

(a) **Dividends, interest, royalties, annuities.** Dividends, interest, royalties, annuities.

(b) **Stock and securities transactions.** Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(c) **Commodities transactions.** Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

(d) **Estates and trusts.** Amounts includible in computing the net income of the corporation under Supplement B; and gains from the sale or other disposition of any interest in an estate or trust.

(e) **Personal service contracts.** (1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(f) **Use of corporation property by shareholder.** Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

(g) **Rents.** Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property; but does not include amounts constituting foreign personal holding company income under subsection (f). (June 22, 1936, c. 690, § 332, as added Aug. 26, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 818.)

§ 328. Stock ownership—(a) Constructive ownership. For the purpose of determining whether a foreign corporation is a foreign personal holding company, insofar as such determination is based on stock ownership under section 326 (a) (2), section 327 (e), or section 327 (f)—

(1) **Stock not owned by individual.** Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) **Family and partnership ownership.** An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) **Options.** If any person has an option to acquire stock such stock shall be considered as owned

by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) **Application of family-partnership and option rules.** Paragraphs (2) and (3) shall be applied—

(A) For the purposes of the stock ownership requirement provided in section 326 (a) (2), if, but only if, the effect is to make the corporation a foreign personal holding company;

(B) For the purposes of section 327 (e) (relating to personal service contracts), or of section 327 (f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

(5) **Constructive ownership as actual ownership.** Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

(6) **Option rule in lieu of family and partnership rule.** If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) **Convertible securities.** Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) For the purpose of the stock ownership requirement provided in section 326 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a foreign personal holding company;

(2) For the purpose of section 327 (e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as foreign personal holding company income; and

(3) For the purpose of section 327 (f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as foreign personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included. (June 22, 1936, c. 690, § 333, as added Aug. 20, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 819.)

§ 329. **Gross income of foreign personal holding companies—(a) General rule.** As used in this Supplement with respect to a foreign corporation the term "gross income" means gross income computed (without regard to the provisions of Supplement I) as if the foreign corporation were a domestic corporation.

(b) **Additions to gross income.** In the case of a foreign personal holding company (whether or not a United States group, as defined in section 326 (a) (2), existed with respect to such company on the last day of its taxable year) which was a shareholder in another foreign personal holding company on the day in the taxable year of the second company which was the last day on which a United States group existed with respect to the second company, there shall be included, as a dividend, in the gross income of the first company, for the taxable year in which or with which

the taxable year of the second company ends, the amount the first company would have received as a dividend if on such last day there had been distributed by the second company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement Q net income of the second company for its taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) **Application of subsection (b).** The rule provided in subsection (b)—

(1) shall be applied in the case of a foreign personal holding company for the purpose of determining its undistributed Supplement Q net income which, or a part of which, is to be included in the gross income of its shareholders, whether United States shareholders or other foreign personal holding companies;

(2) shall be applied in the case of every foreign corporation with respect to which a United States group exists on some day of its taxable year, for the purpose of determining whether such corporation meets the gross income requirements of section 326 (a) (1). (June 22, 1936, c. 690, § 334, as added Aug. 20, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 820.)

§ 329a. **Undistributed Supplement Q net income.** For the purposes of this title the term "undistributed Supplement Q net income" means the Supplement Q net income (as defined in section 329b) minus the amount of the dividends paid credit provided in section 27, computed without the benefit of subsection (b) thereof (relating to the dividend carry-over). (June 22, 1936, c. 690, § 335, as added Aug. 20, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 821.)

§ 329b. **Supplement Q net income.** For the purposes of this chapter the term "Supplement Q net income" means the net income with the following adjustments:

(a) **Additional deductions.** There shall be allowed as deductions—

(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 101, section 331 (either before or after its amendment on August 26, 1937, 10 a. m.), or a section of a prior income-tax law corresponding to either of such sections.

(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the company's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section, and without the inclusion in gross income of the amounts includible therein as dividends by reason of the application of the provisions of section 329 (b) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement Q net income of another foreign personal holding company in which it is a shareholder).

(b) **Deductions not allowed—(1) Taxes and pension trusts.** The deductions provided in section 23 (d), relating to taxes of a shareholder paid by the corporation, and in section 23 (p), relating to pension trusts, shall not be allowed.

(2) **Expenses and depreciation.** The aggregate of the deductions allowed under section 23 (u), relating to expenses, and section 23 (l), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the company, shall be allowed only in an amount equal to the rent or other compensation received for the use or right to use the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

(A) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(B) That the property was held in the course of a business carried on bona fide for profit; and

(C) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business. (June 22, 1936, c. 690, § 336, as added Aug. 26, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 821.)

§ 329c. Corporation income taxed to United States shareholders—(a) General rule. The undistributed Supplement Q net income of a foreign personal holding company shall be included in the gross income of the citizens or residents of the United States, domestic corporations, domestic partnerships, and estates or trusts (other than estates or trusts the gross income of which under this chapter includes only income from sources within the United States), who are shareholders in such foreign personal holding company (hereinafter called "United States shareholders") in the manner and to the extent set forth in this Supplement.

(b) **Amount included in gross income.** Each United States shareholder, who was a shareholder on the day in the taxable year of the company which was the last day on which a United States group (as defined in section 326 (a) (2)) existed with respect to the company, shall include in his gross income, as a dividend, for the taxable year in which or with which the taxable year of the company ends, the amount he would have received as a dividend if on such last day there had been distributed by the company, and received by the shareholders, an amount which bears the same ratio to the undistributed Supplement Q net income of the company for the taxable year as the portion of such taxable year up to and including such last day bears to the entire taxable year.

(c) **Credit for obligations of United States and its instrumentalities.** Each United States shareholder shall be allowed a credit against net income, for the purpose of the tax imposed by section 11, 13, 13a, 201, or 204, of his proportionate share of the interest specified in section 25 (a) (1) or (2) which is included in the gross income of the company otherwise than by the application of the provisions of section 329 (b) (relating to the inclusion in the gross income of a foreign personal holding company of its distributive share of the undistributed Supplement Q net income of another foreign personal holding company in which it is a shareholder).

(d) **Information in return.** Every United States shareholder who is required under subsection (b) to include in his gross income any amount with respect to the undistributed Supplement Q net income of a foreign personal holding company and who, on the last day on which a United States group existed with respect to the company, owned 5 per centum or more in value of the outstanding stock of such company, shall set forth in his return in complete detail the gross income, deductions and credits, net income, Supplement Q net income, and undistributed Supplement Q net income of such company.

(e) **Effect on capital account of foreign personal holding company.** An amount which bears the same ratio to the undistributed Supplement Q net income of the foreign personal holding company for its taxable year as the portion of such taxable year up to and including the last day on which a United States group existed with respect to the company bears to the entire taxable year, shall, for the purpose of determining the effect of distributions in subsequent taxable years by the corporation, be considered as a contribution to capital.

(f) **Basis of stock in hands of shareholders.** The amount required to be included in the gross income of a United States shareholder under subsection (b) shall, for the purpose of adjusting the basis of his

stock with respect to which the distribution would have been made (if it had been made), be treated as having been reinvested by the shareholder as a contribution to the capital of the corporation; but only to the extent to which such amount is included in his gross income in his return, increased or decreased by any adjustment of such amount in the last determination of the shareholder's tax liability, made before the expiration of seven years after the date prescribed by law for filing the return.

(g) **Basis of stock in case of death.** For basis of stock or securities in a foreign personal holding company acquired from a decedent, see section 113 (a) (5).

(h) **Liquidation.** For amount of gain taken into account on liquidation of foreign personal holding company, see section 115 (c).

(i) **Period of limitation on assessment and collection.** For period of limitation on assessment and collection without assessment, in case of failure to include in gross income the amount properly includible therein under subsection (b), see section 275 (d). (June 22, 1936, c. 690, § 337, as added Aug. 26, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 822.)

§ 329d. Information returns by officers and directors—(a) Monthly returns. On the fifteenth day of each month each individual who on such day is an officer or a director of a foreign corporation which, with respect to its taxable year (if not beginning more than twelve months before August 26, 1937, 10 a. m.) preceding the taxable year in which such month occurs, was a foreign personal holding company, shall file with the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this Act. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns shall be filed, a longer period than a month. In such case the return shall be due on the fifteenth day of the succeeding period, and shall be filed by the individuals who on such day are officers and directors of the corporation.

(b) **Annual returns.** On the sixtieth day after the close of the taxable year of a foreign personal holding company each individual who on such sixtieth day is an officer or director of the corporation shall file with the Commissioner a return setting forth—

(1) In complete detail the gross income, deductions and credits, net income, Supplement Q net income, and undistributed Supplement Q net income of such foreign personal holding company for such taxable year; and

(2) The same information with respect to such preceding taxable year as is required in subsection (a); except that if all the required reports with respect to such year have been filed under subsection (a) no information under this paragraph need be set forth in the annual report. (June 22, 1936, c. 690, § 338, as added Aug. 26, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 823.)

§ 329e. Information returns by shareholders—(a) Monthly returns. On the fifteenth day of each month each United States shareholder, by or for whom 50 per centum or more in value of the outstanding stock of a foreign corporation is owned directly or indirectly (including in the case of an individual, stock owned by the members of his family as defined in section 328 (a) (2)), if such foreign corporation with respect to its taxable year (if not beginning more than twelve months before August 26, 1937, 10 a. m.) preceding the taxable year in which such month occurs was a foreign personal holding company, shall file with

the Commissioner a return setting forth with respect to the preceding calendar month the name and address of each shareholder, the class and number of shares held by each, together with any changes in stockholdings during such period, the name and address of any holder of securities convertible into stock of such corporation, and such other information with respect to the stock and securities of the corporation as the Commissioner with the approval of the Secretary shall by regulations prescribe as necessary for carrying out the provisions of this Act. The Commissioner, with the approval of the Secretary, may by regulations prescribe, as the period with respect to which returns shall be filed, a longer period than a month. In such case the return shall be due on the fifteenth day of the succeeding period, and shall be filed by the persons who on such day are United States shareholders.

(b) **Annual returns.** On the sixtieth day after the close of the taxable year of a foreign personal holding company each United States shareholder by or for whom on such sixtieth day more than 50 per centum of the outstanding stock of such company is owned directly or indirectly (including in the case of an individual, stock owned by members of his family as defined in section 328 (a) (2)), shall file with the Commissioner a return setting forth the same information with respect to such preceding taxable year as is required in subsection (a); except that if all the required reports with respect to such year have been filed under subsection (a) no information under this subsection need be set forth in the annual report. (June 22, 1936, c. 690, § 339, as added Aug. 26, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 823.)

§ 329f. **Returns as to formation, organization, or reorganization of foreign corporations—(a) Requirement.** Under regulations prescribed by the Commission with the approval of the Secretary, any attorney, accountant, fiduciary, bank, trust company, financial institution, or other person—

(1) Who, on or after August 26, 1937, 10 a. m., aids, assists, counsels, or advises in, or with respect to, the formation, organization, or reorganization of any foreign corporation, shall, within 30 days thereafter, file with the Commissioner a return; or

(2) Who, since December 31, 1933, and prior to 90 days after August 26, 1937, 10 a. m., has aided, assisted, counseled, or advised in the formation, organization, or reorganization of any foreign corporation shall, within 90 days after such date, file with the Commissioner a return.

(b) **Form and contents of return.** Such return shall be in such form, and shall set forth, under oath, in respect of each such corporation, to the full extent of the information within the possession or knowledge or under the control of the person required to file the return, such information as the Commissioner with the approval of the Secretary prescribes by regulations as necessary for carrying out the provisions of this Act. Nothing in this section shall be construed to require the divulging of privileged communications be between attorney and client. (June 22, 1936, c. 690, § 340, as added Aug. 26, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 824.)

§ 329g. **Penalties.** Any person required under sections 329d, 329e, or 329f to file a return, or to supply any information, who willfully fails to file such return, or supply such information, at the time or times required by law or regulations, shall, in lieu of the penalties provided in section 145 (a) for such offense, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$2,000, or imprisoned for not more than one year, or both. (June 22, 1936, c. 690, § 341, as added Aug. 26, 1937, 10 a. m., c. 815, Title II, § 201, 50 Stat. 824.)

§ 329h. **Effective date.** This supplement shall not apply to a taxable year (either of a shareholder or of a foreign corporation) ending on or before the date of the enactment of this Act; and in no case shall the

stock ownership requirement provided in section 326 (a) (2) of such Supplement be satisfied unless a United States group (as therein defined) existed with respect to the corporation after the date of the enactment of this Act. If under section 329d or 329e of this Supplement the date on which a return is required to be filed occurs prior to November 1, 1937, the return shall be considered as filed on time if filed prior to December 1, 1937. (Aug. 26, 1937, 10 a. m., c. 815, Title II, § 202, 50 Stat. 825.)

SUBCHAPTER D—ADDITIONAL INCOME TAXES

§ 331. **Surtax on personal holding companies; imposition of tax.** There shall be levied, collected, and paid, for each taxable year (in addition to the taxes imposed by Title I), upon the undistributed adjusted net income of every personal holding company a surtax equal to the sum of the following:

(1) 65 per centum of the amount thereof not in excess of \$2,000; plus

(2) 75 per centum of the amount thereof in excess of \$2,000. (June 22, 1936, c. 690, § 351, 49 Stat. 1732, as amended Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 813.)

Title I of Revenue Act of 1936 comprises sections 1 to 322 inclusive of this title.

This section and sections 332-337c, as enacted by Revenue Act of 1937, constitute an amendment of corresponding provisions of Revenue Act of 1936, formerly collected under this section.

The provisions of Revenue Act 1936 (Act June 22, 1936, c. 690, § 351, 49 Stat. 1732), in turn constituted an amendment of corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 351, 48 Stat. 751), as amended by Act August 30, 1935, c. 820, § 109, 49 Stat. 1020.

Section 331 (b) (1) of the Revenue Act of 1936, as formerly incorporated in section 331 of this title, Act June 22, 1936, c. 690, § 351, 49 Stat. 1732, read as follows:

"(b) As used in this subchapter—
 "(1) The term 'personal holding company' means any corporation (other than a corporation exempt from taxation under section 103, and other than a bank, as defined in section 107, and other than a life-insurance company or surety company) if—(A) at least 80 per centum of its gross income for the taxable year is derived from royalties, dividends, interest, annuities, and (except in the case of regular dealers in stock or securities) gains from the sale of stock or securities, and (B) at any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals. For the purpose of determining the ownership of stock in a personal holding company—(C) stock owned, directly or indirectly, by a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries; (D) an individual shall be considered as owning, to the exclusion of any other individual, the stock owned, directly or indirectly, by his family, and this rule shall be applied in such manner as to produce the smallest possible number of individuals owning, directly or indirectly, more than 50 per centum in value of the outstanding stock; and (E) the family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants."

This section, as enacted by the Revenue Act of 1936, and as amended by Revenue Act of 1937, supersedes the corresponding provisions of the Revenue Act of 1934 (Act May 10, 1934, c. 277, § 351, 48 Stat. 751), as amended by Act Aug. 30, 1935, c. 820, § 109, 49 Stat. 1020.

§ 332. **Definition of personal holding company—(a) General rule.** For the purposes of this title and of Title I the term "personal holding company" means any corporation if—

(1) **Gross income requirement.** At least 80 per centum of its gross income for the taxable year is personal holding company income as defined in section 333; but if the corporation is a personal holding company with respect to any taxable year, then, for each subsequent taxable year, the minimum percentage shall be 70 per centum in lieu of 80 per centum, until a taxable year during the whole of the last half of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 70 per centum of the gross income is personal holding company income; and

(2) **Stock ownership requirement.** At any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

(b) **Exceptions.** The term "personal holding company" does not include a corporation exempt from taxation under section 103, a bank as defined in section 107, a life insurance company, a surety company, or, except with respect to a taxable year ending on or before August 26, 1937, 10 a. m., a foreign personal holding company as defined in section 326. (June 22, 1936, c. 690, § 352, as added Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 814.)

Title I of Revenue Act of 1936 comprises sections 1 to 322 inclusive of this title.

§ 333. Personal holding company income.

For the purposes of this subchapter the term "personal holding company income" means the portion of the gross income which consists of:

(a) **Dividends, interest, royalties, annuities.** Dividends, interest, royalties (other than mineral, oil, or gas royalties), annuities.

(b) **Stock and securities transactions.** Except in the case of regular dealers in stock or securities, gains from the sale or exchange of stock or securities.

(c) **Commodities transactions.** Gains from futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange. This subsection shall not apply to gains by a producer, processor, merchant, or handler of the commodity which arise out of bona fide hedging transactions reasonably necessary to the conduct of its business in the manner in which such business is customarily and usually conducted by others.

(d) **Estates and trusts.** Amounts includible in computing the net income of the corporation under Supplement E of chapter I; and gains from the sale or other disposition of any interest in an estate or trust.

(e) **Personal service contracts.** (1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(f) **Use of corporation property by shareholder.** Amounts received as compensation (however designated and from whomsoever received) for the use of, or right to use, property of the corporation in any case where, at any time during the taxable year, 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for an individual entitled to the use of the property; whether such right is obtained directly from the corporation or by means of a sublease or other arrangement.

(g) **Rents.** Rents, unless constituting 50 per centum or more of the gross income. For the purposes of this subsection the term "rents" means compensation, however designated, for the use of, or right to use, property; but does not include amounts constituting personal holding company income under subsection (f).

(h) **Mineral, oil, or gas royalties.** Mineral, oil, or gas royalties, unless (1) constituting 50 per centum or more of the gross income, and (2) the deductions allowable under section 23 (a) (relating to expenses) other than compensation for personal services rendered by shareholders, constitute 15 per centum or more of the gross income. (June 22, 1936, c. 690, § 353, as added Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 814.)

§ 334. Stock ownership—(a) Constructive ownership. For the purpose of determining whether a cor-

poration is a personal holding company, insofar as such determination is based on stock ownership under section 332 (a) (2), section 333 (e), or section 333 (f)—

(1) **Stock not owned by individual.** Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries.

(2) **Family and partnership ownership.** An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family or by or for his partner. For the purposes of this paragraph the family of an individual includes only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(3) **Options.** If any person has an option to acquire stock such stock shall be considered as owned by such person. For the purposes of this paragraph an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(4) **Application of family-partnership and option rules.** Paragraphs (2) and (3) shall be applied—

(A) For the purposes of the stock ownership requirement provided in section 332 (a) (2), if, but only if, the effect is to make the corporation a personal holding company;

(B) For the purposes of section 333 (e) (relating to personal service contracts), or of section 333 (f) (relating to the use of property by shareholders), if, but only if, the effect is to make the amounts therein referred to includible under such subsection as personal holding company income.

(5) **Constructive ownership as actual ownership.** Stock constructively owned by a person by reason of the application of paragraph (1) or (3) shall, for the purpose of applying paragraph (1) or (2), be treated as actually owned by such person; but stock constructively owned by an individual by reason of the application of paragraph (2) shall not be treated as owned by him for the purpose of again applying such paragraph in order to make another the constructive owner of such stock.

(6) **Option rule in lieu of family and partnership rule.** If stock may be considered as owned by an individual under either paragraph (2) or (3) it shall be considered as owned by him under paragraph (3).

(b) **Convertible securities.** Outstanding securities convertible into stock (whether or not convertible during the taxable year) shall be considered as outstanding stock—

(1) For the purpose of the stock ownership requirement provided in section 332 (a) (2), but only if the effect of the inclusion of all such securities is to make the corporation a personal holding company;

(2) For the purpose of section 333 (e) (relating to personal service contracts), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income; and

(3) For the purpose of section 333 (f) (relating to the use of property by shareholders), but only if the effect of the inclusion of all such securities is to make the amounts therein referred to includible under such subsection as personal holding company income.

The requirement in paragraphs (1), (2), and (3) that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding securities are convertible only after a later date than in the case of others, the class having the earlier conversion date may be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included. (June 22, 1936, c. 690, § 354, as added Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 815.)

§ 335. Undistributed adjusted net income. For the purposes of this subchapter the term "undistributed

adjusted net income" means the adjusted net income (as defined in section 336) minus—

(a) The amount of the dividends paid credit provided in section 27, computed without the benefit of subsection (b) thereof (relating to the dividend carry-over); and

(b) Amounts used or irrevocably set aside to pay or to retire indebtedness of any kind incurred prior to January 1, 1934, if such amounts are reasonable with reference to the size and terms of such indebtedness. (June 22, 1936, c. 690, § 355, as added Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 816.)

§ 336. **Adjusted net income.** For the purposes of this subchapter the term "adjusted net income" means the net income with the following adjustments:

(a) **Additional deductions.** There shall be allowed as deductions—

(1) Federal income, war-profits, and excess-profits taxes paid or accrued during the taxable year to the extent not allowed as a deduction under section 23; but not including the tax imposed by section 104, section 331 (either before or after its amendment on August 26, 1937, 10 a. m., by the Revenue Act of 1937), or a section of a prior income-tax law corresponding to either of such sections.

(2) In lieu of the deduction allowed by section 23 (q), contributions or gifts made within the taxable year to or for the use of donees described in section 23 (q) for the purposes therein specified, to an amount which does not exceed 15 per centum of the taxpayer's net income, computed without the benefit of this paragraph and section 23 (q), and without the deduction of the amount disallowed under subsection (b) of this section.

(3) In the case of a corporation organized prior to January 1, 1936, to take over the assets and liabilities of the estate of a decedent, amounts paid in liquidation of any liability of the corporation based on the liability of the decedent to make contributions or gifts to or for the use of donees described in section 23 (q) for the purposes therein specified, to the extent such liability of the decedent existed prior to January 1, 1934. No deduction shall be allowed under paragraph (2) of this subsection for a taxable year for which a deduction is allowed under this paragraph.

(b) **Deductions not allowed.** The aggregate of the deductions allowed under section 23 (a), relating to expenses, and section 23 (1), relating to depreciation, which are allocable to the operation and maintenance of property owned or operated by the corporation, shall be allowed only in an amount equal to the rent or other compensation received for the use or right to use the property, unless it is established (under regulations prescribed by the Commissioner with the approval of the Secretary) to the satisfaction of the Commissioner:

(1) That the rent or other compensation received was the highest obtainable, or, if none was received, that none was obtainable;

(2) That the property was held in the course of a business carried on bona fide for profit; and

(3) Either that there was reasonable expectation that the operation of the property would result in a profit, or that the property was necessary to the conduct of the business. (June 22, 1936, c. 690, § 356, as added Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 816.)

§ 337. **Meaning of terms used.** The terms used in this subchapter shall have the same meaning as when used in subchapters A to C. (June 22, 1936, c. 690, § 357, as added Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 817.)

§ 337a. **Administrative provisions.** All provisions of law (including penalties) applicable in respect of the taxes imposed by subchapters A to C, shall insofar as not inconsistent with this subchapter, be applicable in respect of the tax imposed by this subchapter, except that the provisions of section 131 shall not be applicable. (June 22, 1936, c. 690, § 358, as added

Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 817.)

§ 337b. **Improper accumulation of surplus.** For surtax on corporations which accumulate surplus to avoid surtax on stockholders, see section 104. (June 22, 1936, c. 690, § 359, as added Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 817.)

§ 337c. **Foreign personal holding companies.** For provisions relating to foreign personal holding companies and their shareholders, see Supplement Q of chapter 1. (June 22, 1936, c. 690, § 360, as added Aug. 26, 1937, 10 a. m., c. 815, Title I, § 1, 50 Stat. 817.)

§ 337d. **Effective date.** The amendment made by sections 331 to 337c shall apply only with respect to taxable years beginning after December 31, 1936; and section 331, as it existed prior to such amendment, shall not apply to a foreign personal holding company (as defined in section 326) with respect to any taxable year ending after August 26, 1937, 10 a. m. (Aug. 26, 1937, 10 a. m., c. 815, Title I, § 3, 50 Stat. 817.)

SUBCHAPTER E—EXCESS PROFITS TAX

§ 342. **Same; tax after June 30, 1935—(a) Rate.** There is imposed upon the net income of every corporation for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 1358a, an excess-profits tax equal to the sum of the following:

6 per centum of such portion of its net income for such income-tax taxable year as is in excess of 10 per centum and not in excess of 15 per centum of the adjusted declared value;

12 per centum of such portion of its net income for such income-tax taxable year as is in excess of 15 per centum of the adjusted declared value.

(b) **Adjusted declared value.** The adjusted declared value shall be determined as provided in section 1358a as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year). If the income-tax taxable year in respect of which the tax under this section is imposed is a period of less than 12 months, such adjusted declared value shall be reduced to an amount which bears the same ratio thereto as the number of months in the period bears to 12 months. For the purposes of this section the net income shall be the same as the net income for income tax purposes for the year in respect of which the tax under this section is imposed, computed without the deduction of the tax imposed by this section, but with a credit against net income equal to the credit for dividends received provided in section 26 (b).

(c) **Other laws applicable.** All provisions of law (including penalties) applicable in respect of the taxes imposed by sections 1-322 shall, insofar as not inconsistent with this section, be applicable in respect of the tax imposed by this section, except that the provisions of section 131 shall not be applicable.

(d) **Application of former tax.** The excess-profits tax imposed by section 341 shall not apply to any taxpayer with respect to any income-tax taxable year ending after June 30, 1936. (Aug. 30, 1935, 6:00 p. m., c. 829, § 106, 49 Stat. 1019, as amended June 22, 1936, 9:00 p. m., c. 690, § 402 (a), 49 Stat. 1733.)

Subsection (b) of Act June 22, 1936, c. 690, § 402, 49 Stat. 1733, provided that the amendment to subsection (b) of this section "shall not apply to any income-tax taxable year beginning before January 1, 1936."

SUBCHAPTER F—TAX ON UNJUST ENRICHMENT

§ 345. **Tax on net income from certain sources.** (a) The following taxes shall be levied, collected, and paid for each taxable year (in addition to any other tax on net income), upon the net income of every person which arises from the sources specified below:

(1) A tax equal to 80 per centum of that portion of the net income from the sale of articles with re-

spect to which a Federal excise tax was imposed on such person but not paid which is attributable to shifting to others to any extent the burden of such Federal excise tax and which does not exceed such person's net income for the entire taxable year from the sale of articles with respect to which such Federal excise tax was imposed.

(2) A tax equal to 80 per centum of the net income from reimbursement received by such person from his vendors of amounts representing Federal excise-tax burdens included in prices paid by such person to such vendors, to the extent that such net income does not exceed the amount of such Federal excise-tax burden which such person in turn shifted to his vendees.

(3) A tax equal to 80 per centum of the net income from refunds or credits to such person from the United States of Federal excise taxes erroneously or illegally collected with respect to any articles, to the extent that such net income does not exceed the amount of the burden of such Federal excise taxes with respect to such articles which such person shifted to others.

(b) The net income (specified in subsection (a) (1)) from the sale of articles with respect to which the Federal excise tax was not paid, and the net income specified in subsection (a) (2) or (3), shall not include the net income from the sale of any article, from reimbursement with respect to any article, or from refund or credit of Federal excise tax with respect to any article (1) if such article (or the articles processed therefrom) were not sold by the taxpayer on or before the date of the termination of the Federal excise tax; (2) if the taxpayer made a tax adjustment with respect to such article (or the articles processed therefrom) with his vendee; or (3) if under the terms of any statute the taxpayer would have been entitled to a refund from the United States of the Federal excise tax with respect to the article otherwise than as an erroneous or illegal collection (assuming, in case the tax was not paid, that it had been paid).

(c) The net income from the sales specified in subsection (a) (1) shall be computed as follows:

(1) From the gross income from such sales there shall be deducted the allocable portion of the deductions from gross income for the taxable year which are allowable under the applicable Revenue Act; or

(2) If the taxpayer so elects by filing his return on such basis, the total net income for the taxable year from the sale of all articles with respect to which each Federal excise tax was imposed (computed by deducting from the gross income from such sales the allocable portion of the deductions from gross income which are allowable under the applicable Revenue Act, but without deduction of the amount of such Federal excise tax which was paid or of the amount of reimbursement to purchasers with respect to such Federal excise tax) shall be divided by the total quantity of such articles sold during the taxable year and the quotient shall be multiplied by the quantity of such articles involved in the sales specified in subsection (a) (1). Such quantities shall be expressed in terms of the unit on the basis of which the Federal excise tax was imposed.

For the purposes of this section the proper apportionment and allocation of deductions with respect to gross income shall be determined under rules and regulations prescribed by the Commissioner with the approval of the Secretary.

(d) The net income from reimbursement or refunds specified in subsection (a) (2) or (3) shall be computed as follows: From the total payment or accrual (1) of reimbursement to the taxpayer from vendors for amounts representing Federal excise tax burdens included in prices paid by the taxpayer to such vendors or (2) of refunds or credits to the taxpayer of Federal excise taxes erroneously or illegally collected, there shall be deducted the expenses and fees reasonably incurred in obtaining such reimbursement or refunds.

(e) For the purposes of subsection (a) (1), (2), and (3), the extent to which the taxpayer shifted to others the burden of a Federal excise tax shall be presumed to be an amount computed as follows:

(1) From the selling price of the articles there shall be deducted the sum of (A) the cost of such articles plus (B) the average margin with respect to the quantity involved; or

(2) If the taxpayer so elects by filing his return on such basis, from the aggregate selling price of all articles with respect to which such Federal excise tax was imposed and which were sold by him during the taxable year (computed without deduction of reimbursement to purchasers with respect to such Federal excise tax) there shall be deducted the aggregate cost of such articles, and the difference shall be reduced to a margin per unit in terms of the basis on which the Federal excise tax was imposed. The excess of such margin per unit over the average margin (computed for the same unit) shall be multiplied by the number of such units represented by the articles with respect to which the computation is being made; but

(3) In no case shall the extent to which the taxpayer shifted to others the burden of the Federal excise tax with respect to the articles be deemed to exceed the amount of such tax with respect to such articles minus (A) the portion of the amount of the Federal excise tax (or of the reimbursement specified in subsection (a) (2)) with respect to the articles which is paid or credited by the taxpayer to any purchasers as specified in subsection (f) (3) and minus (B) the amount of any increase in the tax under section 602 of the Revenue Act of 1932, June 6, 1932, c. 209, 47 Stat. 261, for which the taxpayer under this section became liable as the result of the nonpayment or refund of the Federal excise tax with respect to the articles.

(f) As used in this section—

(1) The term "margin" means the difference between the selling price of articles and the cost thereof, and the term "average margin" means the average difference between the selling price and the cost of similar articles sold by the taxpayer during his six taxable years preceding the initial imposition of the Federal excise tax in question, except that if during any part of such six-year period the taxpayer was not in business, or if his records for any part of such period are so inadequate as not to furnish satisfactory data, the average margin of the taxpayer for such part of such period shall, when necessary for a fair comparison, be deemed to be the average margin, as determined by the Commissioner, of representative concerns engaged in a similar business and similarly circumstanced.

(2) The term "cost" means, in the case of articles manufactured or produced by the taxpayer, the cost to the taxpayer of materials entering into the articles; or, in the case of articles purchased by the taxpayer for resale, the price paid by him for such articles (reduced in both cases by the amount for which he is reimbursed by his vendor).

(3) The term "selling price" means selling price minus (A) amounts subsequently paid or credited to the purchaser on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered into on or before March 3, 1936, as reimbursement for the amount included in such price on account of a Federal excise tax; and minus (B) the allocable portion of any professional fees and expenses of litigation incurred in securing the refund or preventing the collection of the Federal excise tax, not to exceed 10 per centum of the amount of such tax.

(g) In determining costs, selling prices, and net income, the taxpayer shall, unless otherwise shown, be deemed to have sold articles in the order in which they were manufactured, produced, or required. Where the taxpayer's records do not adequately establish the quantity of a commodity taxable under chapter 26 of Title 7, entering into articles sold by him, such quantities shall be computed by the use of the conversion factors prescribed in regulations under such chapter.

(b) If the taxpayer made any purchase or sale otherwise than through an arm's-length transaction, and at a price other than the fair market price, the Commissioner may determine the purchase or sale price to be that for which such purchases or sales were at that time made in the ordinary course of trade.

(i) Either the taxpayer or the Commissioner may rebut the presumption established by subsection (e) by proof of the actual extent to which the taxpayer shifted to others the burden of the Federal excise tax. Such proof may include, but shall not be limited to:

(1) Proof that the change or lack of change in the margin was due to changes in factors other than the tax. Such factors shall include any clearly shown change (A) in the type or grade of article or materials, or (B) in costs of production. If the taxpayer asserts that the burden of the tax was borne by him while the burden of any other increased cost was shifted to others, the Commissioner shall determine, from the respective effective dates of the tax and of the other increase in cost as compared with the date of the change in margin, and from the general experience of the industry, whether the tax or the increase in other cost was shifted to others. If the Commissioner determines that the change in margin was due in part to the tax and in part to the increase in other cost, he shall apportion the change in margin between them.

(2) Proof that the taxpayer modified contracts of sale, or adopted a new contract of sale, to reflect the initiation, termination, or change in amount of the Federal excise tax, or at any such time changed the sale price of the article (including the effect of a change in size, package, discount terms, or any other merchandising practice) by substantially the amount of the tax or change therein, or at any time billed the tax as a separate item to any vendee or indicated by any writing that the sale price included the amount of the tax, or contracted to refund any part of the sale price in the event of recovery of the tax or decision of its invalidity; but the taxpayer may establish that such acts were caused by factors other than the tax, or that they do not represent his practice during the period in which the articles in question were sold.

(j) As used in this section—

(1) The term "Federal excise tax" means a tax or exaction with respect to the sale, lease, manufacture, production, processing, ginning, importation, transportation, refining, recovery, or holding for sale or other disposition, of commodities or articles, provided for by any Federal statute, whether valid or invalid, if denominated a "tax" by such statute. A Federal excise tax shall be deemed to have been imposed with respect to an article if it was imposed with respect to (or with respect to the processing of) any commodity or other article, from which such article was processed.

(2) The term "date of the termination of the Federal excise tax" means, in the case of a Federal excise tax held invalid by a decision of the Supreme Court, the date of such decision.

(3) The term "refund or credit" does not include a refund or credit made in accordance with the provisions and limitations set forth in sections 644 to 659 of Title 7, or in section 621 (d) of the Revenue Act of 1932, June 6, 1932, c. 209, 47 Stat. 267.

(4) The term "tax adjustment" means a repayment or credit by the taxpayer to his vendee of an amount equal to the Federal excise tax with respect to an article (less reasonable expense to the vendor in connection with the nonpayment or recovery by him of the amount of such tax and in connection with the making of such repayment or credit) if such repayment or credit is made on or before June 1, 1936, or thereafter in the bona fide settlement of a written agreement entered into on or before March 3, 1936.

(5) The term "taxpayer" means a person subject to a tax imposed by this section.

(k) All references in this section to the purchase or sale (or to parties to the sale) of articles with respect to which a Federal excise tax was imposed shall be

deemed to include the purchase or sale (or parties to the sale) of services with respect to which a Federal excise tax was imposed, and for the purposes of subsection (a) the extent to which the taxpayer shifted to others the burden of such Federal excise tax with respect to such services shall be presumed to be an amount computed as follows: From the selling price of the services there shall be deducted the average price received by the taxpayer for performing similar services during the six taxable years preceding the initial imposition of the Federal excise tax in question. The balance (to the extent that it does not exceed the amount of such Federal excise tax with respect to such services minus any payments or credits with respect to the services made to purchasers as specified in subsection (f) (3)) shall be the extent to which the taxpayer shifted the burden of such Federal excise tax to others. If during any part of such six-year period the taxpayer was not in business, or if his records for any part of such period are so inadequate as not to furnish satisfactory data, the average price of the taxpayer for such part of such period shall, when necessary for a fair comparison, be deemed to be the average price, as determined by the Commissioner, of representative concerns engaged in a similar business and similarly circumstanced. The presumption established by this subsection may be rebutted by proof of the character described in subsection (1).

(l) The taxes imposed by subsection (a) shall be imposed on the net income from the sources specified therein, regardless of any loss arising from the other transactions of the taxpayer, and regardless of whether the taxpayer had a taxable net income (under the income-tax provisions of the applicable Revenue Act) for the taxable year as a whole; except that if such application of the tax imposed by subsection (a) is held invalid, the tax under subsection (a) shall apply to that portion of the taxpayer's entire net income for the taxable year which is attributable to the net income from the sources specified in such subsection. (June 22, 1936, 9:00 p. m., c. 690, § 501, 49 Stat. 1734.)

Section 602 of Revenue Act of 1932, referred to in subsection (e) (3) of this section is set out in the note following chapter 20. Section 621 (d) of the Revenue Act of 1932, referred to in subsection (j) (3), is set out in the same note.

§ 345a. Credit for other taxes on income. There shall be credited against the total amount of the taxes imposed by this subchapter an amount equivalent to the excess of—

(a) The amount of the other Federal income and excess-profits taxes payable by the taxpayer for the taxable year, over

(b) The amount of the other Federal income and excess-profits taxes which would have been payable by the taxpayer for the taxable year if his net income were decreased by the amount of net income taxable under this subchapter. (June 22, 1936, 9:00 p. m., c. 690, § 502, 49 Stat. 1738.)

§ 345b. Administrative provisions. (a) All provisions of law (including penalties) applicable with respect to taxes imposed by subchapters A, B and C of this chapter, shall, insofar as not inconsistent with this subchapter, be applicable with respect to the taxes imposed by this subchapter, except that the provisions of sections 103, 131, 251, and 252 shall not be applicable.

(b) Every person (1) upon whom a Federal excise tax was imposed but not paid, or (2), who received any reimbursement specified in subsection (a) (2), or (3) who received a refund or credit of Federal excise tax, shall make a return under this subchapter, which return shall contain such information and be made in such manner as the Commissioner, with the approval of the Secretary, shall prescribe. For any taxable year ended prior to June 22, 1936, the return shall be filed, and the total amount of the taxes shall be paid, not later than the fifteenth day of the third month after June 22, 1936, in lieu of the time otherwise prescribed by law.

(c) If the Commissioner finds that the payment, on the date prescribed for the payment thereof, of any part of the amount determined by the taxpayer as the tax under this subchapter, or of any delinquency with respect thereto, would impose undue hardship upon the taxpayer, the Commissioner may grant an extension for the payment of any such part for a period not in excess of three years. In such case the amount with respect to which the extension is granted shall be paid on or before the date of the expiration of the period of the extension, and the running of the statute of limitations for assessment and collection shall be suspended for the period of any such extension. If an extension is granted, the Commissioner may require the taxpayer to furnish a bond in such amount, not exceeding double the amount with respect to which the extension is granted, and with such sureties as the Commissioner deems necessary, conditioned upon the payment of the amount with respect to which the extension is granted in accordance with the terms of the extension. There shall be collected, as a part of any amount with respect to which an extension is granted, interest thereon at the rate of 6 per centum per annum from the expiration of six months after the due date thereof to the expiration of the period of the extension. (June 22, 1936, 9:00 p. m., c. 690, § 503, 49 Stat. 1738.)

§ 345b-1. Extension of time for filing returns. The Commissioner of Internal Revenue is authorized to grant additional reasonable extensions of time for filing returns under this subchapter for the calendar year 1935 and any fiscal year ending on or before August 31, 1936: *Provided*, That, except in the case of taxpayers who are abroad, no such extension shall be made beyond June 15, 1937. (Mar. 13, 1937, 11 a. m., c. 40, 50 Stat. 29.)

§ 345c. Taxable years to which subchapter is applicable. The taxes imposed by this subchapter shall apply only with respect to taxable years ending during the calendar year 1935 and to subsequent taxable years. (June 22, 1936, 9:00 p. m., c. 690, § 504, 49 Stat. 1739.)

§ 345d. Application of subchapter to possessions. With respect to the following income, the tax under this subchapter shall be in force in any possession of the United States (including the Philippine Islands); such tax shall (without regard to the residence or citizenship or place of organization of the taxpayer) be collected by the appropriate internal-revenue officers of such possession; and the proceeds thereof shall accrue to the general government of such possession: (a) Any income specified in subsection (a) (1) or (3) of section 345 if the Federal excise tax with respect to the articles in question accrued in such possession; and (b) any income specified in subsection (a) (2) of section 345 if the reimbursement specified therein relates to articles sold in such possession by the taxpayer under this subchapter and if the geographical scope of the Federal excise tax in question extended to such possession. Income taxable as provided in this section shall not be otherwise taxable under this subchapter. In applying section 345 to such income, the gross income and deductions shall be determined in accordance with the Federal Revenue Act applicable to the taxable year. In applying section 345a to such income, income taxes paid to such possession shall be deemed to be Federal income taxes. (June 22, 1936, 9:00 p. m., c. 690, § 505, 49 Stat. 1739.)

§ 345e. Closing agreements. Any person who is liable for the tax imposed by this subchapter and who has filed any claim or claims for refund of any amount paid or collected as tax under chapter 26 of Title 7, may apply to the Commissioner of Internal Revenue for an adjustment of such liability for tax in conjunction with such claim or claims for refund, and thereafter, the Commissioner, for such purposes, may, in his discretion, consider such liability and such claim or claims as one case and, in his discretion, may enter into a written agreement with such person for

the settlement of such case by such payment by, or refund to, such person as may be specified in such agreement. Such agreement shall be a final settlement of the liability for tax and the claim or claims for refund covered by such agreement, except in case of fraud, malfeasance, or misrepresentation of a material fact. In the absence of fraud or mistake in mathematical calculation, any action taken or any consideration given by the Commissioner pursuant to this section shall not be subject to review by any court, or any administrative, or accounting officer, employee, or agent of the United States. (June 22, 1936, 9:00 p. m., c. 690, § 506, 49 Stat. 1739.)

Chapter 3.—ESTATE TAX

SUBCHAPTER A—BASIC ESTATE TAX

§ 411. Gross estate.

* * * * *

(d) Revocable transfers. (1) To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona-fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death.

(2) For the purposes of this subsection the power to alter, amend, or revoke shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, or revocation takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(3) The relinquishment of any such power, not admitted or shown to have been in contemplation of the decedent's death, made within two years prior to his death without such a consideration and affecting the interest or interests (whether arising from one or more transfers or the creation of one or more trusts) of any one beneficiary of a value or aggregate value, at the time of such death, in excess of \$5,000, then, to the extent of such excess, such relinquishment or relinquishments shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this chapter.

(4) Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under subsection (d) (1) unless it was includible under such subsection before its amendment by Act June 22, 1936, c. 690, § 805 (a), 49 Stat. (As amended June 22, 1936, 9:00 p. m., c. 690, § 805 (a), (b), 49 Stat. 1744, 1745.)

* * * * *

(j) Valuation of estate. If the executor so elects upon his return (if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law), the value of the gross estate shall be determined by valuing all the property included therein on the date of the decedent's death as of the date one year after the decedent's death, except that (1) property included in the gross estate on the date of death and, within one year after the decedent's death, distributed by the executor (or, in